SAINT LUCIA

Comment [a1]: Final copy. Issued to parties on June 26,2001.

IN THE HIGH COURT OF JUSTICE
(Civil)

Civil Suit No. 1042 of 1998

BETWEEN:

CORNEIL JnBAPTISTE

Plaintiff

and

(1) GONZAGUE RICHARD
(2) MARIE MADELEINE JOSEPH

Defendants

Appearances:

Ms V. Georgis Taylor for the Plaintiff.
Ms Cybelle Cenac for the Defendants.

2001: April 30;
May 29;
June 1 and 26.

JUDGMENT

[1] **Barrow J (Ag.)** On 28th November 1986 the plaintiff was registered as absolute owner of parcel 1631B 65 in the Registration Quarter of Praslin with an undemarcated boundary. By a plan of survey dated December 19, 1997 made by John Cenac, licensed land surveyor, a photocopy of which is in evidence, and lodged, I am told, at the Survey Office on 19th February 1998, the plaintiff established his boundaries. In his Statement of Claim endorsed on the writ of summons filed 2nd November 1998 the plaintiff alleged that the defendants had trespassed on his land by building a wooden house on it and were then in the process of further constructing a wall house on the land. The plaintiff claimed an injunction to restrain the defendants from remaining on his land and to compel the defendants to remove the structures and sought damages for the destruction of the plaintiff's crops and for the occupation of the land. The plaintiff's witness statement gives details of the alleged trespass, including the uprooting of iron pegs that I assume to be survey pegs.

[2] The Defence reveals that the dispute between the parties is as to the title to the land. The defendants are son and mother respectively but the

substantive defendant is the mother because all that the son did was on the mother's behalf and for convenience she will hereafter be referred to as the defendant. The Defence admits the building of the structures but the defendant says that she built the structures on land that belonged to her. The defendant also says, by way of Counterclaim, that the plaintiff's title was obtained by mistake, that the defendant was entitled to prescriptive title to the land and that the defendant had an overriding interest in the land for which the plaintiff has registered title.

[3] As a first step it is important to identify the land that is in dispute. I am not sure that this has been done in the preparation and conduct of this litigation, or that this identification has been borne in mind, and significant confusion seems to have resulted.

[4] In her chronology of events the defendant says that she and her husband bought the land in question from her mother, Justina Joseph, and built a house on it in 1957. Her three children were born on the land. In 1960 there was a formal conveyance of the land into the names of the defendant and her husband. After she and her husband divorced, in 1983 the defendant bought out her husband's share and became the sole owner of this land. In paragraph 7 of her Amended Defence the defendant pleads that the plaintiff is claiming this portion of land. In that same paragraph the defendant pleads that "the boundaries to his [the plaintiff's] land and that of the second-named defendant appear to be the same".

[5] I am satisfied that this assertion of the defendant is demonstrably false. In paragraph 2 of her Counterclaim the defendant gives the area and boundaries of her land. It is ½ carre bounded as follows:

South: by Stephen Charles
East: by Clive Victor
North: by the remaining lands
West : by the remaining lands

In paragraph 6 of her Counterclaim the defendant gives the area and boundaries of the plaintiff's land. It is ½ acre bounded as follows:

South: by Clive Victor
East: by a house
North: by the remaining lands
West: by Thompson Richard .

Both in size and boundaries the two parcels of land are clearly not the same. From the documents placed before me by the parties and from the tenor of what the defendant says in her witness statement I gather that what the defendant may actually mean to say is that the plaintiff's ½ acre

of land falls within the boundaries of her ½ carre of land. While I have seen, as I said, a photocopy of the plaintiff's survey plan I have not seen a plan of the boundaries of the defendant's land and I do not know what are her boundaries relative to the plaintiff's boundaries.

[6] There is a further flaw in the framing of the defendant's case that may have misinformed her endeavour. The defendant has it that the plaintiff is claiming her land. The reality is that the plaintiff has registered title to a designated parcel of land and is asserting title to that land. That title makes him the owner of that parcel. It is the defendant who is claiming the plaintiff's land, not the other way around as the defendant has misconceived it to be. It is therefore the burden of the defendant to establish her claim or have it dismissed.

[7] The first of the defendant's claim is that the plaintiff became registered as proprietor of the parcel of land by mistake. There are two aspects of mistake raised in the Counterclaim. The first mistake alleged is that Peter Joseph, the defendant's brother who was the Administrator of their mother's estate, acted wrongfully when he sold the said parcel of land to the plaintiff in 1972. What made the sale wrongful, according to paragraph 8 of the Counterclaim, was that all Peter Joseph had title to sell, by virtue of the Letters of Administration, was an undivided one-fifth share of one carre. From paragraph 9 of the Counterclaim it appears that the contention is that Peter Joseph's beneficial share in his mother's estate was an undivided one fifth share of one carre.

[8] This, to my mind, is both irrelevant and misleading because Peter Joseph, when he sold to the plaintiff, was selling as personal representative and not as beneficiary. He was not selling his share, he was selling a portion of what his mother owned or was purporting to do so. It appears that even to this date, almost thirty years later, this fact has not been appreciated. It seems to me that this is the root of the refusal of the defendant to accept that the plaintiff owns any land whatsoever from the mother's holdings. Nothing has been put before me to say that Peter Joseph lacked capacity as Administrator or otherwise to show that the sale was wrongful. The closest that the defendant gets to showing that the sale was wrongful is in the assertion that Peter Joseph sold to the plaintiff land that the mother had previously sold to the defendant and her husband. Unfortunately for the defendant her failure to put before the court any plan or other evidence to indicate what were the boundaries of the land that the mother sold to her is fatal. No doubt the defendant knows these boundaries or what she considers these boundaries to be but that is not enough: she needed to state what they are and give the plaintiff the opportunity to challenge what she states and put the court in a position to make a determination on the issue. She has totally failed to do any of this and I dismiss the contention as unsubstantiated.

[9] It is important to recognize at this juncture that it may seem that what the defendant has so far been permitted to do is to assert the superiority of the conveyance from her mother over the registered title of the plaintiff. Given the curative effect of the registration of the plaintiff as proprietor with an absolute and therefore indefeasible title (as to which see the decision of Mitchell J in Suit No.760 of 1995 B*erthillia Ennis v Phyllis Barras*) the effort to impugn the sale to the plaintiff and his registered title by reference to the defendant's earlier purchase is not a matter that I would have allowed to proceed but for the fact that the defendant makes a claim to rectification of the register on the permissible ground of mistake.

[10] Rectification is sought on, inter alia, the basis of the second alleged mistake. The defendant alleges that the Recording Officer mistakenly granted absolute title to the plaintiff when he had no legal authority to do so. In the land adjudication process, says the defendant, she and the plaintiff made rival claims to "the land in question". That, states the defendant, means there was a dispute and that dispute ought to have been referred, under the Land Adjudication Act (the LAA), to the Adjudicator for him to determine. He alone, the defendant submits and I accept, had authority to determine disputes. The Recording Officer, I accept, had no right to record the plaintiff as proprietor if there was a dispute.

[11] Was there a dispute? Ms Taylor for the plaintiff says no and refers to copies of claim forms and other documents, forming part of the land adjudication process under the LAA, which were put in evidence by both sides, that seem to support that view. Specifically, the Demarcator noted on the Demarcation Certificate relating to the plaintiff's claim to his land the fact that both the plaintiff and the defendant were claiming land in the area and that neither the plaintiff nor the first defendant was able to show the plaintiff's boundary. The Demarcator appended a sketch showing the location of the plaintiff's land and the defendant's land and showing them to be contiguous parcels. The Demarcator also appended notes of his interview with the first defendant and on this sheet he noted the history of the land, the sale by Peter Joseph, the sale by Justina Joseph to the defendant and the respective sizes of the plaintiff's land and the defendant's land. Finally, on this sheet, appear the words across the sheet "NO DISPUTE".

[12] Ms. Cenac for the defendant says there was a dispute but has produced no evidence to support this assertion. Specifically, I have nothing before me to say that the parties made rival claims to the land in question or to overlapping portions of land. The evidence of the adjudication process says to the contrary. The evidence of a dispute simply does not exist and I reject the assertion. The great hope that the defendant placed on the decision in Civil Appeal No 6 of 1993 from Anguilla W*ebster v Fleming*

does not bear fruit because there is no evidence of any usurpation of power by the Recording Officer in this case. I refrain from any discussion of what is the effect, even had the situation that the defendant asserted been proved to exist, of the Adjudicator having nonetheless signed the certificate of completion of the adjudication record. Such a certificate is intended by law to achieve finality. But the issue does not arise. I find that there is no proof of any mistake.

[13] Prescription is the other basis upon which the defendant says that the register should be rectified. She pleads that she has been in continuous, uninterrupted, peaceable, public, unequivocal possession and as proprietor of the land from 1957 to 1998. Assuming, without deciding, that the defendant has been in occupation of the plaintiff's land, the question arises whether that occupation had the quality that the defendant pleads. The plaintiff points to at least two interruptions of that occupation to say no. In 1973, says the plaintiff, the plaintiff sent a land surveyor, Mr. Vernon Augustin, to survey the property. The survey was not completed because of the interference of the defendant's adherents. But, nonetheless, says the plaintiff, that was an entry by the plaintiff and an interruption by the plaintiff of the defendant's occupation. With proper candour Ms Cenac conceded, in answer to the court, that the entry by the surveyor would amount to an interruption. Secondly, says the plaintiff, the claim to the land by the plaintiff in the land adjudication process, to the certain knowledge of the defendants, and the consequent registration of the plaintiff as proprietor in 1986 interrupted the defendant's occupation. Again Ms Cenac conceded that this constituted an interruption. It follows that the defendant has failed to prove uninterrupted possession and I therefore reject the assertion by the defendant that she would qualify for title by prescription.

[14] Although it formed no part of her pleading the defendant submitted in her skeleton argument that she can claim an overriding interest based on her "long standing occupation of the property" even if she fails to show thirty years occupation to satisfy the requirement for prescription. The plaintiff had no objection to the defendant being permitted to argue what she did not plead. The plaintiff argued, in response, that mere occupation does not in itself create an interest: there must be an interest capable of surviving a change of ownership of the property. The case of *Williams & Glyn's Bank Ltd v Boland* (1980) 2 All ER 408 is relied on by the plaintiff in support of this proposition. I agree with the plaintiff's submission but I do not know that it takes him anywhere. The defendant has stated that she purchased the land. That would certainly give her a right in relation to land and, if coupled with actual occupation, it could amount to an overriding interest: this is precisely what W*illiams & Glyn's Bank* establishes.

[15] The plaintiff argues, however, that the defendant has not established that she is a purchaser of what is now registered as the plaintiff's land. I believe that there is force in this argument. I found at the outset that the land that the plaintiff owns is not the same as the land that the defendant bought. It was a serious flaw in the defendant's case that she has utterly failed to identify the boundaries of her land – the land she bought - and to show where her boundaries lie with reference to the boundaries of the plaintiff's land. In the absence of that evidence there is simply no way that I can say that the defendant bought land that is now registered as the plaintiff's land. If I rely on the documentation from the adjudication process the parties own contiguous but not overlapping parcels of land; if I do not rely on that material I know nothing of the boundaries of the land that the defendant bought. I realize that the defendant is saying, I bought all the land for which the plaintiff holds title and I was in occupation at the time that the plaintiff bought. But to claim and even to occupy a parcel of land are not sufficient: the further requirement is to prove that what is claimed and what was occupied is the same as what was bought.

[16] A further difficulty that faces the defendant in her claim to an overriding interest lies in the history of her claim to the land. The LAA obliged the defendant to claim the land that she bought; section 8 is imperative:

> "8 – (1) Every person … claiming any land or interest in land within an adjudication section shall make his claim in the manner and within the period fixed ……. "

As the documents put in evidence by the defendant show, the defendant did in fact claim the land that she bought. These documents include a Demarcation Certificate that shows that the defendant was awarded title to the specific land that she bought from her mother in community of property with her husband and whose half share she later bought out. It seems to me that the defendant's claim merged in the adjudication award in her favour. The adjudication award, it may be repeated, determined that the defendant's land and the plaintiff's land were neither the same nor overlapping parcels of land. That award is a final decision of a competent tribunal on the matter; the matter is therefore *res judicata*. See *Loopsome Portland v Sidonia Joseph,* Civil Appeal No.2 of 1992) (reported).

[17] I believe that disposes of the defendant's claim to an overriding interest and drives the final nail into the coffin of the counterclaim: there is to be no rectification of the register, whether on the basis of mistake or prescription or overriding interest. I dismiss the counterclaim with costs to the plaintiff.

[18] I turn now to the plaintiff's claim for trespass, left standing with no defence to it. The result would seem automatic. Except that the problem with

boundaries which haunted the defendant's counterclaim now haunts the plaintiff, as well.

[19] At the outset I referred to the survey of his boundaries that the plaintiff had done by John Cenac dated December 19, 1997. Subsections (2) and (3) of section 17 make clear that where there is a dispute between neighbours as to the position of any boundary, it is not for a party to establish his boundary but for the Registrar to determine the boundary. The subsections are in these terms:

> "(2) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.
> (3) Where the Registrar exercises the power conferred by subsection (2), he shall make a note to that effect on the Registry Map and in the register and shall file such plan or description as may be necessary to record his decision."

[20] The survey by John Cenac, therefore, is of no assistance to the plaintiff in these proceedings. So far as the Land Registration Act is concerned the plaintiff still has only an undemarcated boundary. The consequence of that situation is logical. It is ordained by section 17(4):

> "(4) No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section."

[21] The pleadings do not indicate that there is any boundary dispute between the parties. The dispute is as to title. But because the greater can include the lesser I asked counsel to return and to address me after they had had the opportunity of considering section 17 of the LRA. Counsel were both agreed that there was no dispute as to boundary. From that indication and the evidence of the survey and the uprooting by the defendant of pegs and plants cultivated by the plaintiff I gathered that the defendant accepts that the land on which she did these acts and commenced building is the land that the plaintiff, in her view, is claiming. If that is the case then the plaintiff's claim for trespass is made out.

[22] The plaintiff seeks an injunction to restrain the defendants whether by themselves, their servants or agents or howsoever otherwise from remaining on or continuing in possession of or building on parcel 1631B 65. I grant an injunction in those terms as well as the mandatory injunction that the plaintiff seeks that the defendants do remove the buildings that they have erected on the said lands. The claim for damages for mesne

profits at the rate of $500.00 per month was not supported by any evidence and I refuse such relief. While I accept that the defendant uprooted the plaintiff's crops, again because of the absence of any evidence as to description and value I cannot award the figure of $1,000.00 that is mentioned only in the pleading. Since there was a trespass the plaintiff is entitled to at least nominal damages and, in all the circumstances of this case, I award the sum of $500.00. Counsel had kindly provided an indication of their view as to costs and I award the sum of $5,000.00 as costs of the claim and counterclaim to the plaintiff.

Denys A. Barrow S.C.
High Court Judge (Ag.)