

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO.: D62 of 1999

BETWEEN

NOELLINA MARIE PROSPERE nee MADORE
(acting herein and represented by her Attorney
Bernard Monplaisir of Bernard Hill, Castries)

Claimant

and

FREDERICK PROSPERE
JENNIFER REMY

Defendants

Appearances

M. W. Waldron-Ramsay for the Claimant

The First Defendant in person

Mr. H. Deterville with Ms. J. Drysdale for the Second Defendant

2001: November 7th and 10th

JUDGMENT

[1] **Saunders J:** Mr. and Mrs. Prospere were married to each other in 1956. In 1977 Mr. Prospere acquired by purchase an undivided one third share in certain portions of lands in Saint Lucia. I shall hereafter refer to the undivided one third share acquired by Mr. Prospere as "the said lands". In 1982 Mr. Prospere sold an undivided half share interest in the said lands to Ms. Jennifer Remy. Mrs. Prospere did not join in the conveyance.

[2] The marriage between Mr. and Mrs. Prospere was dissolved in 1995. The couple thereafter sought to have divided up and vested in their sole names alleged community property previously existing between them. To this end Mrs. Prospere filed a summons seeking orders that Mr. Prospere transfer all his half share interest in lands, which included

some of the said lands, to her and that she transfer certain lands to him. It is that summons that commenced this suit.

- [3] Neither Mr. nor Mrs. Prospere saw it fit to draw to the attention of the court hearing that summons the fact that Mr. Prospere had previously sold a half share interest in the said lands to Ms. Remy. Mr. Prospere must have known that he had already disposed of one half of the said lands. Mrs. Prospere, for her part, had been put on notice that there were adverse claims being made in respect of the said lands because in 1988 Ms. Remy had entered cautions on the land Registers relating to the said lands.
- [4] The application by Mrs. Prospere was not defended by Mr. Prospere. The summons proceeded as though the said lands were free and clear of all encumbrances. It was made to appear that the said lands were community property at the time of the divorce and that Mr. and Mrs. Prospere were at liberty to partition the same so as to accord ownership rights therein to each other without regard to the interests of Ms. Remy. There is nothing to suggest that when the summons was heard the learned judge adverted to or was advised of the existence two pertinent judgments of the Courts. The first was a judgment of the Court of Appeal of which more will later be said. The other was a judgment after trial in High Court Suit No. 635 of 1992.
- [5] In light of the material placed before her, the learned judge not surprisingly granted the relief prayed for in the summons. It was accordingly ordered that
- “1. the Respondent Frederick Prospere do transfer all his community ½ share in the property situate at Mongiraud in the Quarter of Gros Islet recorded as B 1257 B P. 214 and the property situate at Beausejour in the Quarter of Gros Islet No. B 1456 B P. 589 to the Applicant Noelina Maria Prospere.
 2. the Applicant Noelina Maria Prospere do transfer all her community ½ half share in and to all remaining properties to the Respondent Frederick Prospere.
 3. there will be no order as to Costs.”

- [6] This order, made on the 9th July, 1999, proved to be unworkable. The description of the parcels of land therein did not accord with the actual descriptions on the Land Register. Some parcels referred to in the order did not exist because they had been mutated. A variation of the order became necessary in order to render it effectual.
- [7] Mrs. Prospere therefore again approached the court with an application to vary the court order of 9th July, 1999. On this occasion she exhibited the Land Register in relation to the said lands. She was therefore obliged to explain away the cautions recorded thereon. She attempted to do so by alleging that “the restrictions and incumbrances recorded and attached to the community properties were contracted, in most part, without ... [her] ... knowledge or consent, neither did she enjoy any appreciable portion of the proceeds of the said dealings”.
- [8] By this time, Ms. Remy had become aware of the efforts on the part of the Prosperes to seek, behind her back, orders of the court that could possibly have the effect of infringing on her property rights. Ms. Remy therefore applied to intervene and be added as a party to the proceedings. This application was granted. Ms. Remy then filed an application of her own requesting the court to set aside the order made without her knowledge on the 9th July, 1999. She further moved the court to affirm her half share entitlement to the said lands. It is this latter application that has come before me for determination.
- [9] The basis upon which Counsel for Mrs. Prospere attempted to resist Ms. Remy's application was to challenge the validity of Ms. Remy's deed and, if that failed, to establish that in any event the said lands formed community property between the Prosperes down to the time of their divorce. It was submitted that Mrs. Prospere's rights to one half of all the community property hitherto enjoyed by herself and Mr. Prospere ought not to be denied by the unauthorised or improper or unlawful conduct of Mr. Prospere in selling or purporting to sell to Ms. Remy a one half share in the said lands. Mrs. Prospere was a stranger to that transaction, it was said. If Ms. Remy had to get a one half share of anything then that one half share should come out of the portion of previously existing community property that had been awarded, by the order of 9th July, 1999, to Mr.

Prosperre. It was urged that this court ought not to make any order that violated the sanctity of the 1999 order made in this suit.

[10] At the hearing Mr. Prosperre was not represented by counsel. He however gave evidence on his own behalf. He was cross-examined and he also addressed the court. He launched, on several different bases, a vigorous attack on the validity of Ms. Remy's purchase and he made a tearful plea to the court to preserve the integrity of his wife's entitlement under the order of 9th July, 1999. His wife, he said, had worked tirelessly in the cold winters of England to help build up the community property. If at all Ms. Remy had to be satisfied, he was content that she should be satisfied out of such of the said lands as were accorded to him by the order of 9th July, 1999.

[11] It is perhaps not without significance that all of the property to be transferred to Mrs. Prosperre formed part of the said lands. Counsel for Ms. Remy submitted that the Prosperres were colluding to defeat, at all costs, his client's just entitlements. While there is not sufficient evidence for me so to find, taking all the evidence before me into account, the circumstances do have a hint of suspicion about them.

[12] My task in resolving this dispute has been made easier by the fact that many of the issues that arise here for determination have already been adjudicated upon by the courts in Saint Lucia. A High Court Suit, No. 367 of 1989, was brought by Ms. Remy against Mr. Prosperre. The fundamental issue involved in that suit was whether Ms. Remy's deed was a valid one or whether it was invalid on the ground that Mr. Prosperre had flouted Article 1211 of the Civil Code. Broadly speaking, Article 1211 debars one spouse from disposing of community property without the consent of the other. At first instance Mr. Prosperre succeeded on this ground. Ms. Remy's Deed of Sale was declared null and void. This decision was however reversed on appeal where it was held that in the court below, no evidence had been adduced of Mr. Prosperre's Saint Lucian domicile and as such he had failed to prove his marriage in community of property. The Court of Appeal also held that Mr. Prosperre was estopped from challenging his own deed. This is the judgment I alluded to earlier in paragraph 4 above.

- [13] Counsel involved in the application before me had different interpretations of the import of the Court of Appeal's reversal. All I would say is this. It would be illogical for the courts to find, in a suit involving a husband and a third party, that certain lands were, at the time of the sale thereof by the husband to the third party, not community property but then, in a suit involving both the husband and the wife on the one hand and the same third party on the other, conclude that the very same lands did indeed form part of community property. In my view the only reasonable inference to draw from the order made by the Court of Appeal is that Ms. Remy's entitlement to a half share in the said lands had been thereby validated. Moreover, it cannot be said that Mrs. Prospere was unaware of the proceedings brought by Ms. Remy against Mr. Prospere. Indeed, the first instance judgment shows that in the course of those proceedings one of Mr. Prospere's witnesses testified and put into evidence a general Power of Attorney from Mrs. Prospere to himself.
- [14] There is another suit. Mrs. Prospere herself, in High Court Suit No. 635 of 1992, had brought proceedings to impeach and have declared null and void Ms. Remy's Deed of conveyance from Mr. Prospere. In that suit Mr. Prospere was also made a defendant. The suit was dismissed on the 23rd April, 1996. The matter of the validity of Ms. Remy's deed has been twice adjudicated between these three parties. It cannot now be relitigated. The law regards that matter as *res judicata*.
- [14] Although Ms. Remy appears to have a sound basis for setting aside the order of 9th July, 1999, I am of the view that to reaffirm her entitlement to a one half share in the said lands actually does no violence to that order. Nothing in that order states the true extent in law of Mr. or Mrs. Prospere's entitlement in the said lands. The extant order can be interpreted to mean that Mrs. Prospere was merely awarded a one half share in such community property as Mr. Prospere may have owned therein and vice versa. The order would have been effectual (assuming the Parcel numbers had been correctly identified) if account were first taken of the fact of Ms. Remy's entitlement to a one half share in the said lands.

[15] In light of the evident history of acrimony and repeated litigation that has plagued relations between Ms. Remy and the Prosperes, it is best that the court should attempt to put some measure of finality to their ongoing disputes. Taking into account the various mutations of the land that have taken place since her purchase from Mr. Prosperere, and for the avoidance of doubt, I do therefore order and declare as follows:

1. Jennifer Remy is the owner of an undivided one half share in Parcels 1256B 277, 1256B 278, 1257B 257 and 1456B 589.
2. Jennifer Remy is the owner of an undivided one-sixth share in Parcel 1256C 125.
3. Jennifer Remy is the owner of an undivided half share owner of any lands falling due to Frederick Prosperere from Parcels 1256B 64, 1456B 375, 1456B 376 and 1456B 377.
4. The community property referred to in the order of 9th July, 1999 and any variation thereof shall not be construed in any manner as to defeat Ms. Remy's entitlement aforesaid.
5. Mr. and Mrs. Prosperere shall, jointly and severally, be liable for the payment of Ms. Remy's costs which costs are to be assessed by the Registrar or a Master.

Adrian D. Saunders
High Court Judge

Saint Lucia Civil Code Article 1211.....Land held in community of property.....Order made by High Court for partition.....Claim by third party to intervene and assert claim to portion of community property.....Res judicata.....Whether order can be set aside by third party.....