

BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 29 OF 1998

BETWEEN:

LISTON WILLIAMS

Claimant

and

**1. ELMO SCATLIFFE
2. LYNTON SCATLIFFE**

Defendants

Appearances:

Mr. J. Carrington for the Claimant

Mrs. T. Small Davis for the Defendants

2002: March 15 and 18;
April 11.

JUDGMENT

[1] **MATTHEW J. Ag:** The Claimant is the grandson of Samuel Harrigan Williams. The First Defendant is married to the grand daughter of Samuel Harrigan Williams, and the Second Defendant is the great grandson of the said Samuel Harrigan Williams.

- [2] On April 11, 1998 the Claimant claimed against the Defendants for, inter alia,-
- (i) a declaration that the Defendants are not entitled to enter upon the Claimant's land known as Parcels 71 and 72 of Block 2639B West Central Registration Section;
 - (ii) an injunction to restrain the Defendants from entering on the said land;
 - (iii) damages for trespass by themselves and their cattle.
- [3] On or about April 11, 1998, the Claimant obtained injunctive relief against the Defendants which has been continued until the determination of the action.
- [4] On April 11, 1998 the Claimant filed an affidavit in support of the application for injunction and on May 12 the First Defendant filed an affidavit in opposition. The Claimant filed an affidavit in reply on May 25, 1998.
- [5] On May 27, 1998 Benjamin J made an order that the affidavits filed shall be the pleadings and that the matter be set down for hearing on a date to be fixed by the Registrar. A request for hearing was filed by the Claimant on December 2, 1998.
- [6] The Parties filed witness statements between November 15, 2001 and December 13, 2001. The trial took place on March 15 and 18, 2002.

BACKGROUND

- [7] Samuel Harrigan Williams was the patriarch of the family. He purchased 22 acres of land at Anderson Hill in 1905 for which he received no deed. He died intestate in 1938 leaving several children including, his eldest child, Samuel Wilford or Wilfred Williams and David Emmanuel Williams.
- [8] Samuel Wilford Williams died intestate in 1948 leaving eleven surviving children including Iris Williams Scatliffe, the wife of the First Defendant and the mother of the Second Defendant.
- [9] In 1973, the land adjudicating process was taking place on the island. Parcel 10 said to contain 6 1/4 acres was adjudicated to the Heirs of Samuel Wilford Williams and Parcel 18 containing 3 1/4 acres which borders with Parcel 10 was adjudicated as belonging to David Emmanuel Williams.
- [10] In 1990, a civil action was brought by the children of Samuel Wilford Williams against David E. Williams claiming Parcels 9 and 10 as belonging to the Estate of Samuel Wilford Williams. In 1991, there was a Consent Order and David Williams, who had been registered as the owner of the Parcels 9 and 10, gave the lands back to the Heirs of Samuel Wilford Williams.
- [11] In 1998, there was the alleged entry by the Defendants on Parcel 18 which had by that time been subdivided into Parcels 71 and 72.

PLEADINGS

[12] As stated above, the affidavits of the Claimant and the First Defendant were ordered to be treated as the pleadings in the action and there has been no amendment to the pleadings.

[13] In his affidavit filed on April 11, 1998, the Claimant alleged that he is the registered owner and entitled to possession of Parcels 71 and 72 and that on March 25, 1998, the First Defendant tied his cattle on the parcels and destroyed his crops.

[14] He stated that the Second Defendant has continually trespassed on his property and has made threats to him. He alleged that the Defendants have destroyed part of his fence and have claimed that his land belongs to the wife of the First Defendant and the mother of the Second Defendant.

[15] In his affidavit in reply, Elmo Scatliffe alleged that what is now Parcel 10 is not the full extent of the lands which were owned by Samuel Wilfred Williams but in fact includes what is now described as Parcels 71 and 72.

[16] He alleged that the family burial ground is situated on a portion of both Parcels 71 and 72. He stated that over the years he has cleared the lands on Parcels 71 and 72 and since 1990, has tended cattle there without the permission of the Claimant.

[17] In his affidavit dated May 25, 1998, the Claimant stated that in Suit 32 of 1990 brought against his father, the Claimants did not claim any interest in Parcels 71 and 72. He alleged that those lands were given to his father by Samuel Harrigan Williams in 1926; that he was born on that land in 1943 and has lived there for his entire life.

[18] He denied that the First Defendant had tethered his cattle on that land since 1990 and stated that no one other than his immediate family has occupied the land from the time he was born.

[19] Learned Counsel for the Claimant has submitted that on the pleadings there is no denial that the Claimant was in possession at all material times and that there is no dispute as to the trespass or to the assault by the Second Defendant.

[20] While Counsel's submissions are justified, it must be noted that the Second Defendant made no affidavit in reply and therefore has not pleaded in this case. So it would not be appropriate to conclude that on the pleadings, there is only a question of damages to be considered against the Parties.

EVIDENCE FOR THE CLAIMANT

[21] Liston Williams gave evidence and called his older sister Rita Browne, as his only witness. Liston testified that he is the registered proprietor of Parcels 71 and 72 and that in March 1998, the Defendant's cattle

came on to his land and that the First Defendant actually tied his cattle on Parcel 71.

[22] He stated that the Second Defendant blocked the driveway to his house on Parcel 72 on about four occasions with his black Toyota truck and also threatened to assault him. By reference to a map, Document 17, he illustrated where his lands were in relation to the parcel which belongs to the Defendants.

[23] In cross-examination he was shown the adjudication record for Parcel 18, Document 13, in which it was stated that the Heirs of Samuel Williams were the claimants for that parcel.

[24] Rita Browne supported the Claimant in her testimony that Parcel 18 was always occupied by her father and it is not family land. Under cross-examination, she admitted that there was a burial ground on Parcel 71.

EVIDENCE OF DEFENDANTS

[25] Elmo Scatliffe, aged 69, and Lynton Scatliffe, aged 39, gave evidence and called as witnesses Antonio Freeman, first cousin to David Williams; Stanley Nibbs, first cousin to Liston Williams; Iris Williams Scatliffe, wife of the First Defendant; and Mavis Williams Samuel, sister to Iris Williams Scatliffe.

- [26] Elmo Scatliffe was not a strong witness. He first said all that he said in his witness statement was not true. He said he did go on the land in question and he went along because his wife and family were planning to give him the land to farm. He said there was no Parcel 18 at the time and he was not shown the map with the division of the land according to their registration.
- [27] He virtually admitted that his cattle were on the land and that his wife's family told him to use that land and he did so.
- [28] Lynton Scatliffe was a belligerent witness and I had to speak to him concerning the manner of his replies to the questions from learned Counsel for the Claimant. He said that he went by what his grandmother told him. He admitted that he and his father tied cattle on Parcel 18 at a time when Liston Williams probably occupied it. He denied that he threatened or assaulted the Claimant in March 1998.
- [29] Antonio Freeman, aged 76, who lives in St. Thomas said he came to say that there is a family burial ground on Parcel 71. He stated that during the land adjudication process, he heard the Cadastral Surveyor say to David Williams that he was on Samuel Williams' land.
- [30] Stanley Nibbs, aged 74, admitted that David Williams used to work and live on Parcel 18. He said David lived there all his life but he said himself and other members of the family used Parcel 18 as well.

[31] Iris Williams Scatliffe, aged 66, admitted her uncle lived on Parcel 18 until his death in 1992 but said that her father and later her mother were the ones who allowed David to use the land.

[32] Mavis Williams Samuels, aged 64, stated that she had a little conversation with Liston in which he said that her father gave him the land and then later said her former attorney gave it to him. She admitted that her uncle lived on Parcel 18 from the time she was a little girl until the time he died. She stated that Liston did not give back all the land after the Consent Order.

SUBMISSIONS OF COUNSEL

[33] Learned Counsel for the Defendants submitted that there was no denial that the Defendants were on the property but their defence was that they were in occupation of the land for as long as they could remember.

[34] With reference to the adjudication record of Parcel 18, Counsel submitted that the claim was made by David Williams on behalf of the Heirs of Samuel Williams so the land rightfully belongs to the family of the Defendants because there was an error by the Adjudicating Officer.

[35] Counsel submitted that the case of the Defendants is that Parcel 18 is in fact a part of Parcel 10, together containing 9 1/2 acres.

[36] Counsel submitted that the Defendants had an overriding interest in the land in question and cited the following authorities:

(1) **GRAHAM DAVIS V CHARLES** 43 WIR 188.

(2) **MOUNT CARMEL INVESTMENTS V THURLOW** 1988 3 ALL ER 129.

[37] Learned Counsel for the Claimant submitted that there was no evidence that the Defendants were in sole possession of the land; that the defence of jus tertii was not a proper defence; and there was no overriding interest in favour of the Defendants.

[38] Counsel submitted that as a result of Suit 32 of 1990, the Defendants were estopped from pursuing in these proceedings that Parcel 18 was part of Parcel 10.

[39] In respect of the submission that the stated claimants of Parcel 18 were the Heirs of Samuel Williams, this did not refer to the Heirs of Samuel Wilfred Williams but to the Heirs of Samuel Harrigan Williams which included David Emmanuel Williams.

CONCLUSIONS

[40] I do not believe the Defendants have been on Parcel 18 as long as they can remember. I do not believe Stanley Nibbs that himself and other members of the family used Parcel 18 together with David Williams. I do not believe Iris Williams Scatliffe that her father or mother allowed David Williams to work and use Parcel 18.

- [41] I also do not believe Mavis Williams Samuels that Liston Williams told her that her father was the one who gave him the land and later said it was her former attorney who gave it to him.
- [42] Rather I believe the Claimant that his father and himself have occupied the land since 1926. This was admitted to some extent by some of the witnesses for the defence although they sought to deny that he was the only person to occupy and use the said land.
- [43] The Defendants rely on the adjudication record of Parcel 18 where it was stated the claimants were the Heirs of Samuel Williams. But who exactly is the Samuel Williams referred to? Samuel the father, or Samuel the son?
- [44] The exhibit to the affidavit of the First Defendant shows that David Emmanuel Williams obtained Letters of Administration dated August 13, 1975 in the estate of his father, Samuel Harrigan Williams. It would not be surprising if he is an Heir of Samuel Williams the father. Samuel Williams, the son, was already dead. He died intestate in 1948.
- [45] But even if David Williams in applying to be registered as owner of Parcel 18 stated that the claimant was Samuel Williams the son, that is Samuel Wilford/Wilfred Williams, the adjudication record shows that title "Absolute" was granted to David Emmanuel Williams and that title cannot be interfered with. See **SKELTON V SKELTON** (1986) 37 WIR

177. There was no error by the Adjudicating Officer in the recording of the ownership of Parcel 18.

[46] The evidence of Antonio Freeman as to what he heard the Cadastral Surveyor say to David Williams cannot be relied on to affect the final decision of the adjudication process.

[47] I reject the submission that Parcel 18 is or was part of Parcel 10. In *Suit 32 of 1990* brought by Luther Alberto Williams and Mavis Icena Williams Samuels against David Emmanuel Williams, the Claimants stated in their statement of claim that Parcel 9 was to the extent of 3 1/2 acres and Parcel 10 was to the extent of 6 1/4 acres.

[48] Judgment by consent was given in their favour. The Claimants claimed on their behalf and on behalf of all other nine surviving children of Samuel Wilfred Williams and that includes Iris Williams Scatliffe, the wife of the First Defendant and the mother of the Second Defendant.

[49] Learned Counsel for the Claimant is right, in my opinion, to submit that the Defendants are estopped from alleging that Parcel 18 is part of Parcel 10.

[50] I also agree that there could be no overriding interest in favour of the Defendants.

[51] I find the Defendants are liable for the trespass of themselves and their cattle on the Claimant's land. Although I believe the Claimant that the

Second Defendant did threaten and assault the Claimant, in view of the circumstances I do not propose to make a specific award in damages for these torts.

[52] I am of the view that the Claimant is entitled to his special damages in the sum of \$1774.33. I believe that the remedy which the Claimant seeks in particular is the remedy for injunction. I believe he is entitled to it.

[53] In my judgment, the Defendants are to pay the Claimant general damages for trespass by themselves and their cattle in the sum of \$5,000.00, \$1,774.33 as special damages and costs in the sum of \$2,225.67 amounting to a total of \$9,000.00.

[54] The Defendants are restrained whether by themselves or their servants or agents howsoever from entering or allowing their cattle to enter or from tethering their cattle upon the Claimant's land known as Parcels 71 and 72 Block 2639 B, West Central Registration Section.

A.N.J. MATTHEW
High Court Judge, Ag.