SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. P 14 of 1998

BETWEEN:

SCHOLASTICA CHRISTINA DELMAR

Claimant

and

ERROL ROBERTSON FELICIEN

Defendant

Appearances:

Ms. Lorraine B. Williams for the Claimant.
Mr. Andre T.M. Arthur for the Defendant.

2002: April 22, 26 May 16
May 27

WHETHER CLAIMANT IS SOLE AND LEGAL OWNER OF HOUSE STANDING ON LAND BELONGING TO HER DECEASED SISTER…CONTRIBUTIONS…DECEASED MADE WILL…DEFENDANT MADE EXECUTOR UNIVERSAL AND RESIDUARY LEGATEE AND DEVISEE…ARTICLE 817 OF CIVIL CODE…COULD DECEASED BEQUEATH WHAT SHE DOES NOT POSSESS…RESULTING TRUST…PRESUMPTION OF ADVANCEMENT

JUDGMENT

[1] **HARIPRASHAD-CHARLES J:** The Claimant, Scholastica Christina Delmar initiated these proceedings against the Defendant, her grand nephew alleging that her deceased sister, Marie Rose Delmar (hereinafter referred to as the Deceased) did not have the authority or capacity legal or otherwise to bequeath the dwelling house standing on a parcel of land

shown as Parcel No. 1047E 19 to the Defendant as the Deceased was never the owner of the said house.

[2] On 8th day of June 1995, the Deceased executed her Last Will and Testament before renowned Queen's Counsel, Winston Francis Cenac and witnesses in which she named the Defendant her Sole Executor, Universal and Residuary Legatee and Devisee. Clause 4 of the said will states:

> "I give devise and bequeath unto ROBERTSON FELICIEN better known as ERROL FELICIEN my house and land shown as Parcel No. 1047E 19 situate at Ti Rocher in the Quarter of Castries subject to stipulation that he should permit my sister SCHOLASTICA CHRISTIANA DELMAR to reside in the said house free of charge during the term of her natural life."

[3] The Deceased died on 27th day of February 1997. On 3rd day of March 1998, the Defendant petitioned the Court for a Grant of Probate of the Last Will and Testament of the Deceased. An efficient Deputy Registrar approved the Grant of Probate on the said day. On 11th day of March 1998, a Caveat was filed. It reads:

> "LET NO GRANT be sealed in the Succession of the late MARIE ROSE DELMAR of Ti Rocher, Quarter of Castries deceased who died on the 27th day of February 1997 without notice to SCHOLASTICA CHRISTINA DELMAR."

[4] On 22nd day of March 2001, the Claimant filed a Statement of Claim. The gist of it alleged that at all material times she is the sole and legal owner of the property in question. She alleged that in 1967 when she was resident in the United States, she returned to Saint Lucia on vacation and commenced building a small wooden house on the said parcel of land for herself and agreed that her deceased sister who was in want of care would occupy the said house in her absence. Later on, she renovated the said property to its present state so as to make it more comfortable for her retirement.

[5] The Defendant alleged that the Deceased is registered as the absolute owner of Parcel No. 1047E 19 and the concrete house erected thereon and that he has no knowledge that the Claimant built the house on the said parcel of land. He further alleged that the property

is hypothecated with the Saint Lucia Development Bank since August 1994 in respect of a student's loan which was done during the lifetime of the Deceased.

[6] The sole issue which falls to be determined is whether the Defendant should be allowed to benefit from the improvements made to the property according to the circumstances of the case or alternatively, whether the Claimant is the sole and legal owner of the dwelling house in dispute erected on lands belonging to her deceased sister?

[7] The Claimant alleged that she is the sole and legal owner of the dwelling house and that the Deceased could not bequeath what she did not possess. This is the law. Article 817 of the Civil Code is instructive:

> "The bequest of a thing which does not belong to the testator, whether he was aware or not of another 's right to it, is void, even when the thing belongs to the heir or legatee charged with the payment of it."

[8] Learned Counsel for the Claimant forcibly argued that the Claimant is the sole and absolute owner of the concrete house standing on lands belonging to her deceased sister. The Claimant produced documentary evidence to show that building materials aggregating $17,000.00 was purchased. A few other contemporaneous exhibits were produced.

[9] Learned Counsel for the Defendant was equally vociferous in his submissions that the Claimant is not the sole and legal owner of the property in question. Counsel posed the following two questions: if the house really belonged to the Claimant, why did she not claim it during the lifetime of her deceased sister and secondly, why, did the Claimant leave the disputed house to seek alternative accommodation when there was a family conflict sometime in the mid-nineties?

[9] The Defendant acknowledged that he was not even born when the alleged construction of the house commenced in 1967. Indeed, he knows little of the case except that the Deceased was his grand aunt and she named him the principal beneficiary under her will.

His father, Eurance Hippolyte was his witness. He knew more of this case than the Defendant. At paragraph 4 of his witness statement, Eurance Hippolyte deposed:

> "That the two sisters, the deceased, Marie Rose Delmar and the Claimant stayed together when she came from the United States. The deceased operated a shop and the two parties built the house it appeared to me."

[10] The Defendant seemed to accept that the Claimant assisted her deceased sister to build the house. What is disputed is the Claimant's sole ownership of the property in question. I share some of the concerns raised by Learned Counsel for the Defendant. On the totality of the evidence, I find as a fact that the Claimant contributed to the acquisition of the property in question. I find it difficult to conclude that she is the sole owner to the property in dispute and that her deceased sister held the property on trust for her. Commensurate with her contributions, I would award her a one-half share in the dwelling house.

[11] Learned Counsel for the Defendant raised the legal issue of presumption of advancement. Mrs. Williams for the Claimant submitted that the presumption of advancement is inapplicable in this case and the intention of the Claimant is of paramount consideration. I find the arguments advanced by Mrs. Williams to be more compelling. I am therefore of the view that the issue of presumption of advancement has no place in the instant matter.

[12] A few other issues were raised which I have not specifically addressed. I find them unhelpful in order for me to arrive at a decision.

[13] Accordingly, I will make the following Order:

(a) That the Claimant is entitled to a one-half share in the dwelling house situate at Ti Rocher, Quarter of Castries on a parcel of land shown as Parcel No. 1047E 19 in the Land Registry.

(b) That a Valuer to be agreed upon by the parties view and value the said dwelling house not later than 30th day of June 2002.

(c) That the Defendant do pay to the Claimant her half-share of the dwelling house on or before 31st day of December 2002.

(d) That the Cost of the Valuation is to be borne equally by the parties.

(e) That each party do bear his or her own Costs.

INDRA HARIPRASHAD-CHARLES

High Court Judge