

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV249 / 2001

BETWEEN:

JOANNE URCELLA HOYTE

and

FRED TOPPIN



Claimant

Defendant

Appearances:

Mr. Olin Dennie for the claimant
Mr. Moet Malcolm for the defendant

2003:January 13, 20

JUDGMENT

ALLEYNE J.

- [1] On 13th June 2001 the claimant filed a Writ by which she claimed a declaration that by a deed of assent she is entitled to various portions of land at Sandy Bay, St. Vincent, and further, cancellation of a deed of gift registered as Deed number 1399 of 2000 dated the 20th December 1999. The claimant claimed further consequential relief.
- [2] The statement of claim, filed on 14th January 2002, alleges that the claimant is 76 years old and "is weak both in mind and body". She alleges further that

"From about early in the year 1999 the plaintiff's health began to deteriorate and she had to visit the doctor on several occasions with the help of her caretaker Naomi Duncan".

[3] In his defence filed on 27th June 2002 the defendant admits the allegation that the claimant is weak in mind and body. Neither the allegation nor the admission, however, refers to her condition at the time of the execution of the disputed deed.

[4] Paragraph 6 of the claimant's statement of claim is in the following terms:

"(6) By a Deed of Gift dated the 20th December 1999 at which time the Plaintiff was physically weak both in body and in mind and was unable to sign her name it is purported that the Plaintiff gave 25 Acres of her land at Sandy Bay to the Defendant. The said Deed is registered at the Registry High Court of Justice as Deed number 1399 of 2000 and is dated 20th December 1999 some five months before it was actually registered."

[5] The land in question, being part of the land referred to in paragraph [1] of this judgment, was valued by the Inland Revenue Department for purposes of stamp duty on a voluntary conveyance at \$50,000.00, a valuation which is not in dispute.

[6] The claimant denies having signed the deed of gift, and denies any knowledge whatever of it. She denies ever having met Carl Williams, the Justice of the Peace who purportedly witnessed her signature to the document. She further alleged that at the time when it is claimed that she signed the deed she was ill and physically unable to sign her name.

[7] By letter dated 29th January 2000 the claimant through a Solicitor, Victor Cuffy, wrote to the defendant demanding that he vacate all her lands immediately upon having reaped his crops planted on the land.

[8] At the time of trial the claimant was both physically and mentally extremely feeble. Her evidence had to be transmitted to the court because her voice was barely audible at very close range. She frequently rambled and mumbled inaudibly, and sometimes rambled on about matters which had not been raised by examining

counsel. At other times she was quite emphatic, denied strongly that she had signed any document disposing of her land to the defendant, or that she had had any dealings with Carl Williams J.P. She also emphatically denied that the defendant was her caretaker, a role with which she credited Naomi Duncan, in whose favour she has now made a will granting her all her property subject to the payment of debts and funeral and testamentary expenses

- [9] The facts as I find them are that immediately after the death of her late husband in 1989, the claimant put the defendant in charge of all her lands and entrusted him with the conduct generally of her business, including the business of purchasing groceries for her. He handled her banking business and all her finances. He was allowed to cultivate a considerable portion of her land for his own exclusive benefit. She executed a general power of attorney in his favour. She has no complaint about his conduct of her affairs, except that she denies ever having gifted him with her land. She revoked the power of attorney by deed dated 3rd August 2001.
- [10] Naomi Duncan, who lived with the claimant in 1989, but left in or about that year to live separately, continued to relate with the claimant as "caretaker". She now, once again, lives with the claimant. She has 5 children who also live with the claimant.
- [11] The claimant, who cannot now sign her name but was formerly able to do so, cannot read. She is and has always been illiterate even when she was able to sign her name. That is her evidence and there is no evidence to the contrary. I believe her.
- [12] Carl Williams, a Justice of the Peace, is and has been a friend of the claimant ever since they were both members of the St. Vincent Police Force in the 1970's. They have maintained a friendship over the years. Williams lives at Sans Souci, some 10 miles away from where the claimant and the defendant both live. In 1999 when the deed of gift was executed there was a Justice of the Peace resident in Sandy

Bay, and I have no doubt that the defendant knew this. There were also Justices of the Peace resident in other communities nearer to Sandy Bay than Sans Souci. Nevertheless, the defendant chose to use his friend Williams to effect this transaction.

[13] The defendant had a lawyer prepare the deed of gift wholly on his own instructions, without the direct intervention at any stage of the claimant, and without the lawyer ever having any contact whatever with the claimant.

[14] The defendant had for many years enjoyed the full fruits of some 25 acres of the claimant's land, at no cost to himself and no direct benefit to the claimant. The defendant, during this period, supervised the cultivation of the claimant's other lands, did her banking, paid labour, and purchased groceries for her, using her money. There was no strict accounting but no allegation or suspicion of misconduct.

[15] The claimant signed the deed of gift presented to her for signature after the same had been read over to her by Carl Williams J.P. Williams did not explain the document or its effect to her, but claims to have been satisfied that she understood its contents.

[16] A little over a month after signing the said deed the claimant had a Solicitor write to the defendant demanding that he "vacate the said land immediately having reaped your entire crop." The letter went on to state

"I am also instructed to tell you that Mrs. Hoyte does not want you to interfere in anyway (*sic*) whatever in relation to any of land or properties. You have in the past tried to make people believe that you have some authority over her said land or properties. You have no such authority. Stop your meddling now."

It is to be noted that at the time of that letter the general power of attorney from the claimant to the defendant was subsisting.

[17] The claimant claims on the basis of *non est factum*. I find as a fact that the claimant signed the deed of gift. However, that is not the end of the matter. The **Illiterates Protection Act CAP. 223** provides at section 4 as follows:

“4. (1) No document shall be valid as against an illiterate person, unless it shall be signed by him in the presence of an official attestor and attested by the official attestor.

(2) Before the document is signed by the illiterate person, the official attestor shall explain it to him and shall refuse to attest it unless the illiterate person appears to understand its contents.

(3) The attestation of an official attestor shall be conclusive evidence that the illiterate person understood and approved the contents of the document before signing it.”

[18] “Illiterate person” is defined by section 2 of the Act as *including* a person who, at the time of the execution or purported execution of the document, was unable to write his name. That, in my view, was not the case with the claimant. However, the definition is not limited to such persons, but merely “includes” persons of that description. The natural and ordinary meaning of the word is reflected in the **Oxford Pocket Dictionary** as “uneducated person, especially one unable to read” and in the **Cambridge International Dictionary of English** as “a person not knowing how to read and write”.

[19] In her evidence the claimant said that she could at a former time in her life sign her name but she was unable to read. That evidence was not contradicted and I believe her. The claimant is accordingly entitled to the protection of the **Illiterates Protection Act**.

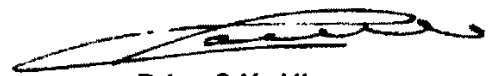
[20] The requirement in the Act of attestation of the signature of the claimant has not been met, nor did the witness Carl Williams, in my view of the evidence, explain the document to the claimant and ensure that she fully understood its contents and effect before signing it, as is required by the Act.

[21] The effect of the deed of gift is to divest the claimant of 25 acres of land worth some \$50,000.00. On the evidence this is approximately one half of the total landholding in terms of acreage of the claimant. There is no evidence of the relationship of this gift to the total assets of the claimant in terms of monetary value, but it was clear to me that the claimant is not a wealthy person, and her ability to earn a living is long past. She is entirely dependent on what she owns to sustain her for the remainder of her life. She has no children, and depends on Naomi Duncan for her basic needs. It was the duty of the Justice of the Peace, and of the defendant on whom the claimant obviously placed considerable trust, to ensure that she was protected to the fullest extent. This they clearly failed to do.

[22] In the result, I think the law requires that I declare the deed of gift invalid in accordance with the provisions of section 4 of the **Illiterates Protection Act**, and grant the claimant the prayers in the action.

[23] It is accordingly declared and ordered as follows:

- (1) That by virtue of a deed of assent dated the 28th day of March 1990 and registered as deed number 1872 of 1990, the claimant is entitled to possession of the lands therein described.
- (2) That the deed of gift registered as deed number 1399 of 2000 dated the 28th day of December 1999 be and is hereby cancelled.
- (3) That the defendant be and is hereby restrained, whether by himself, his servants or agents or otherwise howsoever, from selling, charging, leasing, mortgaging or in any other way disposing of the lands described in the Schedule to the said deed of gift.
- (4) The defendant will pay the claimant's costs, to be assessed if not agreed.



Brian G.K. Alleyne
High Court Judge