

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 983 of 1996

BETWEEN

JOAN BERNADETTE MAINGOT
Executrix of the estate of Rose Mary Maingot, deceased

Claimant

and

MONICA DEVAUX

Defendant

Appearances

For the Claimant: Mr. H. Deterville QC with Mr. G. Delzin
For the Defendant: Mr. K. Foster QC

2003: February 14th and 21st

JUDGMENT

[1] **Saunders J:** This case concerns a dispute between siblings. It relates to a property that had been purchased and initially placed in the name of one sister, the defendant, Mrs. Monica Devaux nee Maingot. Ms. Joan Maingot, the claimant, is her sister and the executrix of the estate of their deceased mother.

The factual background

[2] The Maingots are natives of Trinidad & Tobago but Mrs. Devaux settled in St. Lucia and is a citizen. The property in question was purchased in 1972 for \$16,743.00. The entire purchase price for the property was provided by Mr. Edward Joseph Maingot, the father of the parties to this action. The deed of sale was made in the sole name of Mrs. Devaux. Shortly after the purchase, the father and mother applied to the St. Lucia Government for

an Alien's Land Holding License to permit them to acquire from their daughter, Mrs. Devaux, the said parcel of land. It was the father's wish to construct on the land a residence and residential flats.

[3] The License was duly granted and some time in 1973 a deed of sale, undated as to the day and the month, was executed by Mrs. Devaux and her parents. In this deed Mrs. Devaux divested herself entirely of the property and the same was transferred to her parents. That same year, Mr. Maingot, the father, a contractor/builder by profession, personally supervised and funded the construction of four (4) apartments on the land.

[4] Mr. Maingot died in 1977 leaving a Will in which, inter alia, he devised his one half share in the property to his wife. It is of some significance that his hand written Will makes specific reference to the property.

[5] Unknown to her siblings, Mrs. Devaux never registered the transfer from herself to her parents. She was placed in charge of the rental and maintenance of the property but this responsibility was later transferred to a real estate firm. Throughout the latter part of the 1970s, to the knowledge of Mrs. Devaux, that real estate firm accounted to and received directions from John Maingot, the very businesslike brother of Mrs. Devaux. Looking at the exhibited correspondence as a whole, it is clear that in this respect John Maingot acted on the basis that the apartments were owned, not by Mrs. Devaux alone but rather by the family. In one letter he even called upon his sister to render an account regarding the rental income from the property. The correspondence also makes clear that it was the common intention that at some point the property should be sold. In a letter of 5th March, 1979 to Mrs. Devaux, John Maingot stated:

"As discussed and also mentioned to Mum again on my return from St. Lucia, I fully agree that we should sell as soon as an attractive offer comes along. Payment should be in US \$ to be deposited in a US Bank of our choice and operated as a "fixed deposit" under both our signatures or any two (2) of three (3) – i.e. Jean Pat. Mum should have the option of use of the interest so accrued during her lifetime..."

[6] It seems that Mrs. Devaux was plagued by doubts that her mother might disinherit her and/or unfairly give a large portion of the family estate to her sister, Joan. In 1988, while her mother was ailing, Mrs. Devaux confided in another of her sisters that she had sold the property and placed one half of the purchase proceeds into a credit union account for the family and that she intended to hold on to the other half until she knew what was contained in her mother's Will. She further begged this sister not to divulge this information for fear that it would cause too much family confusion. She also told her brother John that she had never registered the deed of sale between herself and their parents because she was afraid that she would be left out of her parents' Wills.

[7] The property was sold by Mrs. Devaux in 1985 to a Mr. Ward for \$290,000.00. Mrs. Devaux's mother died in March 1988 but Mrs. Devaux's fears proved unfounded as old Mrs. Maingot devised her estate to all the children in equal shares. Following the mother's passing, the claimant, as executrix of that estate, requested Mrs. Devaux to account for the rents and income from the property and the proceeds of sale. As a result of her refusal to so account, this action was instituted in 1996.

[8] Mrs. Devaux's pleaded defence to the action is that her father had gifted her the property as an expression of his love for her and that, in any event, the action is prescribed pursuant to the relevant provisions of the Civil Code of St. Lucia

The presumption of advancement

[9] At the trial, counsel for the claimant addressed the court at some length on the doctrine of the presumption of advancement where a parent purchases property in the name of a child. Counsel submitted that in this case, the clear evidence is that this presumption has been rebutted. I agree with this submission and do not propose to spend a great deal of time addressing it as counsel for Mrs. Devaux seemed to concentrate his closing submissions on the issue of prescription.

[10] Normally, the court would not receive into evidence or consider the *ex post facto* acts and declarations of a donor who has clearly given his child what the law presumes to be a gift.

There are exceptions to this principle however. The acts and declarations of the parties before, or at or immediately after the time of purchase, constituting part of the same transaction, are admissible as evidence against the party who made them. See: *Shephard vs. Cartwright (1955) A.C. 431*.

[11] Given the unchallenged evidence of John Maingot, and looking at the whole of the evidence, it would be artificial to separate into different transactions the initial purchase of the land, the application for and securing by the parents of an Alien's landholding License, the execution by Mrs. Devaux of a Deed of Sale of the property back to her parents and the erection by Mr. Maingot, the father, of the flats on the land. All of these events occurred within a relatively short space of time and are intimately linked with each other. The only reasonable inference to be drawn is that old Mr. Maingot desired to build flats on land that he wanted to acquire before he could await all the formalities that attend the obtaining of an Alien's Land holding License. The property was therefore, in the interim, secured and placed in the name of his daughter who did not require such a License. Once the Alien's Land Holding License was obtained, the property was transferred back to its proper owner.

[12] In my judgment the signature of Mrs. Devaux on that transfer back to her parents was not just a conclusive rebuttal of the presumption of advancement but more importantly, Mrs. Devaux thereby rendered herself a trustee of that property for her parents. See: Articles 1382, 954 and 957 of the Civil Code. She had sold the property to her parents. She might rightly be considered the owner by persons who did not know better but, as between herself and her parents, she was not the owner and she was aware of this as her subsequent conduct and statements were fully in keeping with that conclusion.

Prescription

[13] As indicated earlier, counsel for Mrs. Devaux virtually rested his case on the defence of prescription. This action was filed eleven years after the property had been sold to Mr. Ward by Mrs. Devaux and twenty-three years after the registration of the original deed in her favour. It was submitted that Article 2112 of the Civil Code provided a complete defence in this action.

[14] Article 2112 states:

“He who acquires a corporeal immovable in good faith under a written title, prescribes the ownership thereof and liberates himself from the servitudes, charges, and hypothecs upon it by an effective possession in virtue of such title during ten years”.

[15] It is often overlooked that the factual premise for the availability of the defence of prescription is not a mere reckoning of the length of time a person has been in occupation. In considering this defence, the quality or character of the possession is as important as the length of years for which the person has been in occupation of the immovable. Article 2057 states:

“For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor”

[16] The succeeding Articles of the Civil Code go on to state that a person is always presumed to possess for himself and as proprietor, in the absence of proof that his possession was begun for another. See: Article 2058. However, when possession is begun for another, it is always presumed to continue so, if there be no proof to the contrary. See: Article 2059. As long as one possesses for another, one can never prescribe the ownership, even by the continuance of one’s possession after the term fixed. See: Article 2067.

[17] Applying these Articles of the Code to the facts of this case, in my opinion, immediately upon executing the transfer back to her parents, Mrs. Devaux would have been in possession on their behalf and the burden is now upon her to establish the contrary. If she cannot establish the contrary, then her plea of prescription cannot get off the ground.

[18] The facts of this case, far from supporting the contrary, actually confirm their opposite, namely that her possession, right up to the demise of her mother in 1988, was indeed not on her own behalf. Mrs. Devaux was content to allow her brother to assume the responsibility of overseeing what the real estate firm was doing. After selling the flats she stated that she had put away the proceeds of sale for her siblings and herself as a form of insurance in case their mother devised her estate in unequal shares. These are all acts

that are more consistent with Mrs. Devaux's role as a trustee and, as long as she remained a trustee, the effect of Article 2067 is that she can never prescribe. In my view the defence of prescription fails and judgment must be entered for the claimant.

Order of the court

[19] The order of the court is that Mrs. Devaux should pay to the claimant the sum of \$290,000.00 plus interest at the rate of 4% from the date of the sale of the flats to Mr. Ward down to the date of this judgment following which the rate of interest will be the statutory rate on judgment debts. The judgment debt should be set off against whatever benefits accrue to Mrs. Devaux on the estate of Rose Mary Maingot. The claimant is hereby authorised to engage in that set off. If the sums due to Mrs. Devaux from the estate are less than her liability to the estate pursuant to this judgment, then the claimant has asked for a tracing order to the extent of the shortfall. See: *Foskett vs. McKeown (2001) 1 A.C. 102.*

[20] I agree that the circumstances here warrant the making of such an order in the event that the set off alluded to above proves incapable of satisfying the estate. Accordingly, in that event, I order that an inquiry should be held into the assets of Mrs. Devaux in order to determine what if any assets were purchased with the monies wrongfully appropriated by her. It is further ordered that in relation to any such assets the claimant is entitled to the ownership of a proportion of those assets as fairly reflect the amount of the misappropriated sums that were used for the acquisition of such assets. Liberty to both sides to apply in respect of this order.

[21] Mrs. Devaux shall pay the costs of the claimant which the court fixes at \$50,000.00

**Adrian D. Saunders
High Court Judge**