

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.30 OF 2001

BETWEEN:

NOELINA MARIA PROSPERE [NEE MADORE]

Appellant

and

[1] FREDERICK PROSPERE

[2] JENNIFER REMY

Respondent

Before:

His Lordship, the Hon. Sir Dennis Byron

Chief Justice

His Lordship the Hon. Mr. Albert Redhead

Justice of Appeal

His Lordship the Hon. Mr. Ephraim Georges

Justice of Appeal [Ag.]

Appearances:

Dr. Waldo Waldron-Ramsey for the Appellant

Mr. Frederick Prospere in person

Mr. Hilford Deterville for the second Respondent

2002: October 28;

2003: June 18.

JUDGMENT

[1] **BYRON, C.J.:** This appeal determines the interest of Ms. Remy in the undivided half share in certain lands she had purchased from Mr. Prospere, evidenced by a Deed executed before Sir Keith Gordon, Notary Royal, on 25th June 1982.

[2] Mr. and Mrs. Frederick Prospere had been married for some thirty-nine years before they divorced in 1995. They commenced proceedings for property settlement ancillary to this divorce. The Prosperes included the property sold to Ms. Remy in their settlement as it has become their position that the sale to Ms.

Remy was a nullity being in breach of the laws relating to community of property in marriage.

The Previous Proceedings

[3] Before these present proceedings were instituted there were two previous suits concerning the issue of Ms. Remy's entitlement. In both, the question of community property was raised.

[4] The first case was initiated after Mr. Prospere had caused himself to be registered as proprietor of the lands and Ms. Remy entered cautions upon the land. She then sought declarations of her entitlement. The High Court ruled that Ms. Remy's deed of 1982 was null and void because the lands had been held in community of property by Mr. Prospere and Mrs. Prospere had not consented to, joined in or signed the Deed of Sale as was required by the provisions of the Civil Code.

[5] Ms. Remy appealed against this order. The matter was fully argued in the Court of Appeal¹ which set aside the order of the High Court. Sir Vincent Floissac who delivered the judgment of the court dismissed the contention that the deed was void. He concluded that Mr. Prospere had failed to prove that his marriage was in community of property in accordance with the provisions of the Civil Code Articles 48 to 51 inclusive. Leave to adduce fresh or additional evidence on this ground, was refused because there were no special grounds which permitted it. [The evidence sought to be adduced was a passport which the court concluded was easily available at the hearing]. The Court also concluded that the doctrine of estoppel by convention was applicable and concluded:

"In the present case, the deed of sale predicated the basic or underlying assumption that the properties which the respondent purported to sell to the appellant did not form part of the community [if any] which existed between the respondent and his wife. In any case, the deed of sale was based on the assumption that the respondent had the right to sell the properties without the consent or intervention of his wife. Significantly, the

¹ **Remy v Prospere** (1992) 44 WIR 173

respondent's wife has not impugned the deed of sale and did not even testify at the trial. In those circumstances, it would be unfair or unjust to allow the respondent to challenge his own deed of sale. He is estopped by convention or mutual assurance from so doing."

- [6] Another attempt to litigate this issue was made in 1992 when Mrs. Prospere brought proceedings to impropate and have declared null and void Ms. Remy's Deed. In that case Mr. Prospere was joined as a defendant. That suit was dismissed in 1996.

The High Court Proceedings

- [7] Between 1996 and 1997 the land to which Mr. Prospere was registered as owner was partitioned and it became mutated into smaller parcels. He was registered with absolute ownership of the entire lands. In 1999, some four years after their divorce, a summons was issued by Mrs. Prospere for the grant of an order that her husband transfer his community of property to her and vice versa. The proceedings were not contentious. They included in the proposed arrangement the lands in which Ms. Remy had an undivided interest. The Remy interest was not disclosed to the court. The order sought was granted. It proved unworkable and applications were made to the court for variations. At that time Ms. Remy became aware of the proceedings and was granted leave to intervene. Ms. Remy was now for the third time forced to litigate the matter in view of this order. At the trial, Mr. Prospere alleged that he had never sold any of his property to Ms. Remy. In the alternative he urged that any relief to Ms. Remy should be taken from his share of the couple's community of property and not his wife's. The learned trial Judge declared that Ms. Remy was entitled to the interest she had purchased and made ancillary orders to give effect to it.

The Appeal

- [8] This appeal is based on the contention that the learned trial Judge misinterpreted the Court of Appeal's decision, and challenges the meaning of the decision itself

basically asserting that it affirmed that the Prosperes held their property in community.

The Court of Appeal Decision

[9] The appellant contended that the decision of the court of appeal left open the question as to whether there was in fact community between the Prosperes and argued that it validated Ms. Remy's deed only insofar as it related to lands exclusively owned by Mr. Prospere. This argument was based on the fact that the reasons for decision included a ruling that Mr. Prospere was bound by the doctrine of estoppel by convention as cited above.

[10] In my view the argument is rebutted by reference to the terms of the Deed of conveyance, the pleadings and other sections of the judgment of Sir Vincent Floissac. The Deed specified in its schedule the land to which it referred by description. There were seven parcels of land identified and all were clearly described. The pleadings in the case did not raise the issue of some of the lands being held in community and others not so held. The Prosperes never contended otherwise than that all the lands were community property. The existence of property other than community property was never in issue. The order of the Court specifically related to the deed and by implication of the entirety of the interest conveyed by it.

[11] In explaining the jurisprudential rationale for rejecting that the law of community of property was relevant, Sir Vincent Floissac said:

“The codal definition of ‘community’ indicates that community of property is a question of status or matrimonial status. The definition signifies that community is a product, incident or consequence of the matrimonial status. Since article 5 provides in effect that the St. Lucian laws relating to matrimonial status (which is the source of community) apply only to persons domiciled in St. Lucia, it follows that the St. Lucian laws of community do not apply to a husband who was not domiciled in St. Lucia at the time of his marriage. Any doubt as to the restricted application of the St. Lucian laws of community is removed by the proviso to article 1180 which accentuates the otherwise

obscure precondition of St. Lucian community that the husband should be domiciled in St. Lucia at the time of his marriage.

The onus of proof of domicile

According to article 48 of the Civil Code "The domicile of a person, for all civil purposes, is at the place where he has his principal residence".

Counsel agree that articles 48 to 51 inclusive of the Civil Code encapsulate the principles developed on parallel lines in English and Quebec jurisprudence and tacitly acknowledge the concepts of domicile of origin and domicile of choice. A person who alleges that he inherited and retained a domicile of origin or acquired a domicile of choice makes an assertion based on facts which are peculiarly within his knowledge. The onus is therefore on such person to prove such domicile or the facts in support thereof. The respondent alleged that he was married in community of property, but he adduced no evidence of his St. Lucian domicile of origin or choice which was the *sine qua non* of such marriage. The respondent therefore failed to prove his marriage in community of property."

[12] In my view, that constitutes a complete rebuttal to the submissions made in support of those grounds of appeal.

[13] The reasoning of the learned trial judge on this issue that it would be illogical to come to any conclusion other than that Ms. Remy's title was validated, is supported.

The Meaning of the Trial Court Order

[14] Counsel for Mrs. Prospere submitted that the order of the trial court did not amount to a specific discharge of the original order which had been made on the basis of the Prosperes argument that the property had been community property so that the only proper interpretation of the rationale of the learned trial Judge is that Ms. Remy should only be entitled to Mr. Prospere's half share. This contention is obviously flawed. If the property was community property then Ms. Remy would not be entitled to anything at all. The Court of Appeal's decision meant that there was no community of property because Mr. Prospere had not been married in community since he was not domiciled in St. Lucia at the time of his marriage. It could not be open to him to raise that issue again. The order of the learned trial Judge, being based on the principle of *res judicata*, correctly concluded the matter.

The order of the learned trial Judge means that the property set out in his order does not form part of the community between the Prosperes. They could proceed to partition the other property they held. The law supports the conclusion of the learned trial Judge that as Ms Remy's entitlement had already been determined, it is not open for this matter to be relitigated. The appellants did not challenge the application of the res judicata principle, a principle that the facts support. Article 1171 of the Civil Code provides:

"the authority of a final judgment supplies a presumption incapable of contradiction in respect of that which had been the object of the judgment, when the demand is founded on the same cause, is between the same parties acting in the same qualities, and is for the same thing as in the actions adjudged upon."

This case fits squarely within these provisions.

- [15] Res judicata is a fundamental doctrine of all courts that there must be finality to all litigation. The principle is expressed in Halsbury's Laws of England Fourth Edition Reissue Volume 16 paragraph 975, which states the essentials of res judicata.

Conclusion

- [16] I hold that this appeal shall stand dismissed. I declare that the orders granted by the learned trial Judge should be upheld. An order for prescribed costs in this appeal should be made appropriately in Ms. Remy's favour in the sum of \$9,333.33.

Sir Dennis Byron
Chief Justice

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]