

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV437 / 2000

BETWEEN:

PERCY BURKE

Claimant

and

HAMILTON LUKE

Defendant

Appearances:

Mr. Cecil Williams for the claimant

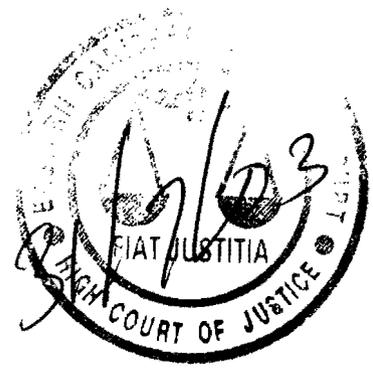
Mrs. Agnes Cato for the defendant

2003:January 28, May 9, July 31

JUDGMENT

ALLEYNE J.

[1] Percy Burke is the owner of a little over 2 acres of agricultural land at Byera Mountain. A public road traverses his land as well as the land on his western boundary, owned by the family Tittle. On the southern boundary of Mr. Burke's land is a stream separating it from the lands of Samuel Hackshaw and Hamilton Luke. Access to Mr. Luke's land as shown on Mr. Burke's plan and a general plan of the area is by way of a track which separates the western boundary on the southern part of Mr. Burke's land from the eastern boundary of the southern part of the Tittle land, enters the northern part of Mr. Hackshaw's land, and traverses that land to the western boundary of Mr. Luke's land.



- [2] Several years ago Mr. Luke built a banana shed on land which he claims to be the public road, but which Mr. Burke claims as his land. This shed was apparently used, over the years, by several of the banana farmers in the area, including Mr. Luke and Mr. Burke. Mr. Burke complains that some time in or about 1998 Mr. Luke began to use a track on Mr. Burke's land to access his land, as a result of which he erected poles and blocked Mr. Luke's access by that route. Mr. Luke, for his part, asserts that the track which Mr. Burke blocked is the access path provided by their common predecessor in title, by way of which he has a legitimate right to access his land. This blockage has caused him inconvenience.
- [3] Mr. Burke claims to have written to Mr. Luke in July 1999 demanding that Mr. Luke remove the shed from his land, and complaining of other acts of trespass. He followed up with a writ claiming mandatory and prohibitory injunctive relief, damages and costs. Mr. Luke counterclaimed for damages for nuisance, damages for obstructing the access road, a declaration of his entitlement to continue to use the access road, and a mandatory injunction requiring Mr. Burke to pull down and remove the obstruction.
- [4] For reasons which are not entirely clear to me, but which cannot now be questioned, the case management order made on 8th November 2002 struck out the claim as having no real prospect of succeeding, and made orders for the trial of the counterclaim.
- [5] It seems to me that the central issues in this case, on which everything turns, are the questions of the location of the shed in relation to the public road and the land of Mr. Burke, and the precise location of the allowed track giving Mr. Luke access to his land.
- [6] The evidence of the witnesses called on behalf of both parties left these questions unresolved, and the court decided to visit the site. What became clear on the visit to the site is that the access which Mr. Burke claims to be the one allowed by the vendors and reflected on the plans is very much more difficult than the access

which Mr. Luke claims, and which is the subject of the dispute. Nevertheless, ease of access and convenience to the parties are not the deciding factors.

[7] It was agreed by the parties and their respective counsel, and the court, upon the visit to the site, that an independent surveyor be appointed to report on these questions, and the court ordered that surveyor Macarthur Robertson be appointed to determine the location of the shed and the disputed access road as these relate to the plan of Mr. Burke's land, and to report to the court. The surveyor has not reported within the timeframe set by the court, or indeed within an expanded timeframe set by the court on the agreement of counsel. It was agreed that in that event the court would decide the issue on the evidence before it.

[8] I am satisfied, having heard the witnesses and visited the site, that the shed is on Mr. Burke's land, as is the track which Mr. Luke decided to use to access his land. I am satisfied that, having found the allowed track difficult, Mr. Luke decided to appropriate the easier path, which, in my view, traverses Mr. Burke's land and is an unauthorised incursion.

[9] There will therefore be judgment against the counterclaim, with costs to the claimant Percy Burke on the counterclaim. By consent, each party to bear his own costs.

Brian G.K. Alleyne
High Court Judge