

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL CLAIM NO. 469 OF 2002

BETWEEN:

**GODFREY DAVIS
AND
ALECINE DAVIS by her duly constituted Attorney
on record COLBERT STRAKER** Claimants
v
CALVERT BUSHAY OF VERMONT Defendant

Appearances:

Mr. Arthur Williams and Ms. Roxanne Knights for the Claimants
Ms. Nicole Sylvester and Ms. Rochelle Forde for the Defendant

2003 November 13
December 10
2004: April 7

JUDGMENT

- [1] **BLENMAN, J (Chambers):** This is claim by Mr. Godfrey Davis and Mrs. Alecine Davis (the Davis') for a Declaration that they are the owners of the land in dispute reflected in Deed No. 129 of 1988 and also for an injunction preventing Calvert Bushay from trespassing on the land. Calvert Bushay seeks a declaration that he is lawfully in possession of the land in dispute reflected in Deed No. 285 of 2000 and he prays for injunctive relief against the Davis.
- [2] By a Deed of Conveyance dated 6th July 1988 between Reginald Straker and the Davis' they became the owners of a parcel of land located at Retreat Village Vermont in St. Vincent and the Grenadines. The Davis', who are a married couple, have built a house on

the land since purchasing the land Mr. Calvert Bushay is occupying a chattel house which is on the same land. There are two houses therefore on the land. The Davis assert that Mr. Reginald Straker who was Mrs. Davis' father permitted Mr. Ardon Baker to put the chattel house on the land. Ardon Baker is the father of Calvert Bushay. Mr. Reginald Straker having sold the land to the Davis he requested Mr. Baker to remove the chattel house. Mr. Baker is alleged to have promised to vacate the chattel house which is now occupied by Calvert Bushay. Despite several requests by the Davis' of Calvert Bushay that he removes from the land he has failed to remove thereby depriving them of its use and occupation.

[3] Calvert Bushay states that Ardon Baker is the fee simple owner of the land. He contends that he is in possession of the land with Ardon Baker's permission. Ardon Baker bought the land from Powell Mattis and lived on it since 1959. Calvert Bushay has lived continuously and without interruption in the chattel house. He disputes that the land on which the chattel house is located belonged to Reginald Straker.

Each party has stated that the other has committed acts of trespass

The case of both parties was presented through witness statements and the oral testimony of witnesses.

[4] The issues that arise for determination are as follows:-

- (a) Whether the disputed land on which the chattel house is situate belonged to Reginald Straker?
- (b) Alternatively whether Ardon Baker owned the land?
- (c) Whether Mr. Davis and/or Calvert Bushay can properly assert title to the disputed land?

[5] **Claimants Case**

The Claimants case was presented through Godfrey Davis' evidence and that of three witnesses namely Sebastian Alexander, Hamilton Gould and Colbert Straker (the latter who is the Attorney on Record for the Mrs. Alecine Davis).

[6] **Godfrey Davis**

Godfrey Davis in his witness statement opined that Reginald Straker formerly owned the land and that he and his wife Alecine Davis bought the disputed property from Mr. Straker in 1988. He said that before selling the land to them, Reginald Straker had permitted Ardon Baker to build a chattel house on it. Upon Reginald Straker's request, Ardon Baker vacated the chattel house and built his house elsewhere, leaving his sons including Calvert Bushay in the chattel house.

[7] When cross examined he testified that he commenced living in Vermont from 1988. He was aware that several surveyors went to survey the land in dispute but were prevented from doing so by his wife. When he started to live on the disputed land in 1988 Ardon Baker was not living there at that time. Importantly when further cross examined he admitted that he did not have any personal knowledge about whether or not Reginald Baker had put Ardon Baker to live on the land. Mr. Davis' evidence under cross examination was far from satisfactory in so far as Ardon Baker's occupation of the disputed land is concerned. He did not have personal knowledge of the circumstances or time at which Mr. Reginald Straker is alleged to permit Mr. Ardon Baker to build a chattel house on the land. However his evidence as to Mr. Reginald Straker's original ownership of the land was not tested in cross examination. I am satisfied that Mr. Davis is not familiar with the history of Ardon Baker's occupation of the disputed land, even though he knew that Reginald Straker owned the land which he and his wife have purchased.

[8] **Colbert Straker**

The Davis' main supporting witness, Colbert Straker is a child of Reginald Straker and brother and Attorney on record of Alecine Davis. He stated in his witness statement that

his father bought some lands at Vermont from Christopher Punnett by virtue of Deed of Conveyance No. 620 of 1966 dated 29th April 1966. The land comprised 4 acres 3 rods and 0 poles. It was bounded on the North by Alfred Simon and Beryl Daniel and on the West by lands of Alfred sworn. He said that his father always helped persons and permitted them to build on his lands. Ardon Barker was permitted by his father to erect a chattel house on the land. Later his father sold the land to the Davis. Having bought the land from Mr. Straker, the Davis built a house on the land in 1988. His father told Ardon Baker that he had to move his chattel house because his sister and her husband now owned the land. Baker promised to move but because of his financial constraint at the time, he would some time to move. He was clear that Ardon Baker was living on the land with his entire family. He indicated that his sister and her husband built their house on the land above where the chattel house is located. Ardon Baker eventually built his house, elsewhere and removed from his chattel house leaving his sons.

In 2000, Ardon Baker's daughter Noreen Bushay started to dig a foundation on the disputed land but she was not given permission by the Planning Department since she had no title to the disputed land, as a result she left the land. All of Ardon Baker's sons left the chattel house except for Calvert Bushay. He denies that Powell Mattis owned the land and disputes the fact that Mattis sold the land to Ardon Baker. Powell Mattis owned other lands at Sugar Ridge consisting of 2 acres.

[9] In cross examination he admitted not being present when his father Reginald Straker was alleged to put Ardon Baker in possession of the land. He was however very certain and indicated that he was present when Reginald Straker asked Ardon Baker to remove his chattel house from the disputed land and Baker promised to remove. His evidence does not afford any assistance of the circumstances in which Ardon Baker was put in occupation however it was precise and very satisfactory in relation to discussion which Ardon Baker and Reginald Straker had in relation to Baker's removal of the chattel house from the land. It is clear that this witness's evidence can only be relied upon to establish that Reginald Straker owned the land and the inference can also be drawn from the discussion between Ardon Baker and Reginald Straker that Straker permitted him to build the chattel house on

the disputed land. Colbert Straker was clear in his testimony that his father had a Deed No. 620 of 1966 which was registered 1966 for the lands his father had bought.

- [11] When Colbert Straker was re-examined he stated that he has seen Deed No. 2856 of 2000 which conveys lands from Powell Mattis to Ardon Baker and is referred to as CS6. He stated that according to the deed Powell Mattis land was south of his father Reginald Straker's land. His testimony fits very well with the testimony of both Mr. Hamilton Gould and Mr. Godfrey Davis on the important aspect of the ownership of the land in question. It also clearly indicates that Ardon Baker had promised to vacate the chattel house upon Reginald Straker's request and that he did vacate the land leaving his sons in the chattel house. He is a very credible witness.

Hamilton Gould

He was the third witness on whom the Davis relied. He filed a witness statement in the matter and testified on oath. In his witness statement he stated that he knows the land which is the subject matter of the dispute very well. When he left St. Vincent in 1959 to go to England no one was living on the land in question. Reginald Straker lived on the lands as the top of the disputed lands. Straker owned the disputed land. He knows Ardon Baker well and that in 1959 when he left St. Vincent and the Grenadines to go to England Ardon baker was not living there. He returned to St. Vincent and the Grenadines from England in 1994. In cross examination he was adamant that he knew the disputed lands very well. His testimony was very clear and precise that Reginald Straker bought the disputed land in 1947. He harboured no doubt in stating that while he knows Ardon Baker very well he had never seen him on the disputed land up to 1959. He admitted that he knew Powell Mattis and was aware that Powell Mattis owned other lands. Reginald Straker lands bounded Powell Mattis. He asserted that if Ardon Baker had lived on Reginald Straker's land that must have occurred while he was in England. He is an honest witness who provided much need information to the Court. He was re-examined and he stated that Powell Mattis owned acres of land which was not the disputed lands. Mr. Gould was fully frank with the Court.

[12] While the evidence of Mr. Gould does not afford any assistance as to how Ardon Baker came to be living on the land at one time (which is undisputed) it does provide significant corroboration of the other witnesses testimony that Reginald Straker owned the disputed land. He is an independent credible witness. He was of great assistance in confirming that Reginald Straker owned the land which he knew well and the fact that that Ardon Baker never occupied the land prior to 1959 this is consistent with the Davis' position that the disputed land belonged to Reginald Straker. Mr. Gould proved to be a vital and trustworthy witness and has no interest in the matter.

[13] **Sebastian Alexander**

Sebastian Alexander was the Davis' final witness. He is a Surveyor. He filed a witness statement with a report attached and provided the court with oral testimony. He stated in his witness statement that in the month of February 2003 he went to Vermont to visit the disputed lands to prepare the report. He examined Deed Number 2854 of 2004 which belong to Ardon Baker, together with the registered survey plan A8/43, that was registered on the 12th February 2003, of the land in dispute. He opined that the boundaries shown on the survey plans are as follows –

“towards the north west by the heirs of Reginald Straker South West by the road and towards the east partly by Walcott Mattis and partly by Joseph Straker. The land is triangular in shape”

He further stated that the Boundaries to Mr. Baker's Deed are as follows”

“towards the north by lands in possession of Walcott Mattis South by a village road east by lands in the possession of Joseph Straker and West by lands in the possession of Reginald Straker.

Accordingly he concluded that the land described in Baker's Deed is located on the Western Side of the lands that belong to Joseph Straker as shown on the plan, and not on the disputed land.

[14] Ordinarily in a matter of this nature, the Court usually expects quite a bit of assistance from the land surveyor. However, his evidence is insufficient to determine the true position of the land since in cross examination he conceded that he did not survey the land.

During re-examination, he stated the he understood survey to mean measure the land. It is clear to me that what Mr. Alexander did was to seek to verify the information contained in the plan with the situation on the ground. He did not think that it was not necessary to measure the land. His evidence would have been more conclusive had he carried out an independent survey of the land. There is not doubt that he was satisfied that the lands he saw were located in the areas on a consistent manner with the plan.

[15] **Defendant's Case**

Calvert Bushay's case was presented through his witness statement and evidence together with the testimony and witness statements of Darrel Wiseman and Ardon Baker. A surveyor's report by Ms. Ollivierre was also received by the court.

Calvert Bushay

Mr. Bushay stated that his father Ardon Baker bought the disputed and from Powell Mattis in 1955 and that he lived in his father's chattel house which was located on the disputed land since 1959. He was born in 1969. He states that his father removed from the chattel house when he bought other land. He continued to live in the chattel house with his father's permission. The witness cannot properly give evidence of the fact that his father bought the land from Powell Mattis since he was not born when the alleged sale took place. There is evidence before the Court that the land was bought from Powell Mattis as is reflected in deed number 2854 of 2000 as shown on Plan AS/43. Mr. Bushay says that he lived on the land in the chattel house all of his life. The Davis disputes that he lived in chattel house for his entire life without interruption. Considering the probabilities, it is plausible that he lived in the chattel house from birth and there after for a considerable period of time.

[16] His sister Noreen Bushay started to build a house on the land in dispute but discontinued because she did not get planning permission. This testimony is consistent with the Davis case. He first said that Mr. Davis never gave him notice to leave the land later he

conceded that he received more than one notice from Davis to leave the land. In cross examination, the witness was not as forthcoming. From his demeanour and his lack of candour the Court is unable to rely on his evidence. There is serious doubt about his personal knowledge of his father's ownership of the disputed land since his answers were for the most part vague and imprecise. The Court could not rely on his testimony in order to determine that his father owned the disputed.

[17] **Darrell Wiseman**

Darrell Wiseman provided the court with a witness statement and testified at the trial.

He is the Executor of the Estate of Powell Mattis who died on August 1966.

His witness statement has a copy of the Powell Mattis' Will attached. The Will makes no mention of the sale of the property to Ardon baker. It would not have been unusual for the Will to address this matter. He stated that in his duty as Executor of the Will to convey the land at Sugar Ridge, Vermont. Powell Mattis during his life time sold a piece of land to Ardon Barker but no Deed was executed in his favour and as Executor he executed a Deed in his favour which bears the registration Number 2854 of 2000. He saw a copy of the Chief Surveyor's Report which confirms that the lands at Sugar Ridge rightfully belongs to Ardon Barker. This is the extent of the witness' evidence in chief.

[18] In cross examination, he stated that he knew on the day of the sale that Powell Mattis sold the land to Ardon Baker. He is familiar with the land and is himself a landowner and is well acquainted with boundaries. He is adamant that the disputed land was not Straker's land. Powell Mattis owned 2 acres of land at Sugar Ridge. Powell Mattis sold a portion of his land before he died In 1967 he sold an acre of the Sugar Ridge land to Jack Punnette. The other portion of Sugar Ridge land, he sold to Walcott Mattis. He stated that even though in the document he had stated the land measured one acre it did not. I do believe that entire land was sold so there was no land remaining to sold to Ardon Barker. I do not accept Wiseman's version of the sale of the 2 acres of land. Walcott Mattis and Jack Punnett having bought 2 acres of land from Wiseman there was no land remaining at Sugar Ridge to sell.

[19] He opined that a part of Ardon Baker's land was bounded by Powell Mattis' remaining land. Powell Mattis used to be at the bottom and Reginald Straker used to be at the top. He was sure that the two pieces of land were separate. He was sure that Reginald Straker land was to the North. He read the relevant parts of Deed No. 2854 of 2000 into the record as follows –

To the South of land is a road

To the East of the land was Joseph Straker

And to the West of the land was Reginald Straker.

This information was inconsistent with his earlier statements and he admitted to being puzzled.” He quickly asserted that when he was requested to sign Deed No. 2854 he did not give them the description of the land”. The credibility of this witness leaves much to be desired. He stated that it was Powell Mattis' wife who gave him instructions to go to Mr. Isaacs – the Barrister to have the Deed prepared in order to convey the land to Ardon Baker. He signed the Deed but did not check the boundaries. The Court finds it difficult to accept that someone who is familiar with land and boundaries did not check to ensure that the boundaries were correctly stated, yet he was able to say that the information the plan was correct. He did not prove to be very reliable. He was not to be able to clarify the discrepancies in his previous statement in a convincing manner.

[20] He signed the deed for Ardon Baker who had not shown him a receipt for the purchase of the land. Having told the Court that he prepared the Deed on the instructions of Powell Mattis' wife (whose words he said he took). Mrs. Mattis' told him that Ardon Baker bought the land, and did not get a Deed, he changed his story to say that Mr. Mattis had told him about the land before he died. The two statements are very inconsistent. This conflict operates to render his version of events less than cogent and accurate. He sought to clarify his self contradiction by saying that before the death of Mr. Mattis, Mattis told him that he had sold lands to Barker and how much he paid to him. Mattis made a Will on his way to the hospital the week before died and told him of the sale to the disputed land to Barker. In the absence of any mention of the land in the Will and in view of the witness's contradictory evidence I am unable to believe him. He is totally unreliable. He stated that he “administrated” for the land on 22nd July 1967 and took 35 years to sign the Deed.

During his further cross-examination he admitted that when he signed the Deed No. 2854 in 2000 he was aware of the dispute in relation to the land. He denied being friends with Barker.

[21] He was of little assistance in advancing Mr. Bushay's case due to his lack of credibility. I do not believe that he had any personal knowledge of the sale of lands to Barker. He opined that Barker paid Powell Mattis. Unfortunately, this statement was not tested further. What is even more interesting is the fact that he denied that himself and Ardon Barker are friends, this is clearly in conflict with Ardon Barker's Testimony. Barker stated in cross examination that he knew Darnell a long time and that they are very good friends. I believe Darrell Wiseman has given evidence in support of his friend Ardon Barker in order to help his friend.

[22] Wiseman's witness statement exhibited Survey report by Adolphus Ollivierre. Mr. Ollivierre should have made himself available to test the accuracy of his conclusion in the report when he said "based on the evidence of an existing line of trees between the heirs of Reginald Straker and Walcott Mattis, Mr. Baker claim of the boundary line seems to be justified . The line M to M4 is in confirmation with the line of trees extended. A national mapping done in 1980 also shows evidence of a distinction between both parcels of land." Mr. Ollivierre's survey was executed on 2nd February 2003, the boundaries of the disputed parcel were pointed out by Mr. Ardon Baker Representatives for Walcott Mattis and Joseph Straker adjoining neighbour to the last agreed to the boundaries while the representatives for the heirs of Reginald Straker objected to the boundary line shown M to M4. They stated that they did not know any land there belong to Ardon Barker." In view of the circumstances in which the report was prepared and the fact that Mr. Ollivierre did not testify so the Court can assess the basis of his report, I am unable to accept the conclusion of Mr. Ollivierre as conclusive of the issue whether Ardon Baker owned the disputed land.

[23] It is the task of the court even faced with this difficulty to seek to determine the real issue of whether or not Ardon Baker owned the disputed land or whether it was Reginald Straker who had owned it. The evidence of Ardon Baker is important.

[24] **Ardon Barker**

Ardon Barker filed a witness statement and testified in the matter. In the pleadings it was stated that he lived on the land since 1959 and later bought it from Powell Mattis. On oath he said that he bought the piece of land at Sugar Ridge, Vermont from Powell Mattis in 1959 and erected a chattel house. He lived in the chattel house. He has exhibited Deed No. 2854/2000 between Darrel Wiseman (as executor of Powell Mattis) and himself as evidencing his purchase of the land. No receipts were tendered in support of his contentions of purchase. He states that he removed from this piece of land, at Sugar Ridge (the disputed land) to another piece of land which he bought at Sugar Ridge. He permitted his children including Calvert Bushay to continue to reside in the chattel house which he had built on the disputed land Calbert Bushay resided in the chattel house from his birth in 1963 to present. He stated that he bought the land from Powell Mattis in 1955 Darell Wiseman was his close friend for a long time. He built the chattel house on the land in 1955 and later built a concrete house on the other land that he had bought. He stated that he and Reginald “never used to move good” and denied that Reginald Straker gave him permission to build the chattel house on the land. I ask myself if Mr. Barker bought the land in 1955 why it is that Mr. Hamilton Gould never saw him on the land up to 1959? Barker said the land was surveyed in 1955 after he bought the land. The Court would have been expected him at least go on the land before 1959.

[25] There is the undisputed evidence that Powell Mattis died in 1966. I have to ask the question why didn't Barker seek to obtain the Deed before Powell Mattis' death. No explanation was given for the delay. There are so many inconsistencies in his story in relation to the date when he bought the land.

[26] He denied that Mrs. Alecine Davis told him to move the chattel house in 1999 if and stated that it was not as a result of her request he sought to obtain the Deed from Darell

Wiseman (who is his friend). Darell Wiseman and Mrs. Mattis organized for Deed Number 2854 of 200 to be executed in favour him Mrs. Mattis is dead. He admitted quite reluctantly that Deed No. 2854 of 2004 indicates that the proposed date of disposition is 1963 and not 1955 (yet another inconsistency). While he admitted that he waited 34 years to get Deed and that it was because of the dispute he obtained the Deed he strongly denied that he got a false Deed executed .

[27] Mr. Barker is not truthful. It is obvious that Deed No. 2854 of 2000 was executed to stem off a claim by Mr. Godfrey Davis and Mrs. Alecine Davis to the disputed land. This is based on Mr. Barker's own admission together with the closeness between the date of the execution of the Deed and the date of dispute.

There are too many inconsistencies in his evidence. I am convinced of the correctness of my view having reviewed his evidence against the background of the statement in the deed that the land was bought in 1963 whereas he testified it was bought in 1955. The pleadings state he bought the land in 1959. This inconsistency indicates that he is not speaking the truth. Mr. Barker bought the other lands from Cleve Browne in the 1970 and he got a Deed. He is therefore not unfamiliar with Deeds. Why did he wait so many years after Powell Mattis death to obtain a Deed from his close friend Mr. Darrel Wiseman? He knew Wiseman was the executor of Powell Mattis land.

Analysis

[28] Once it is proven that Reginald Straker owns the disputed land, the matter will be at an end since it will enable the Davis to prove that they have acquired title to it is based on his original ownership. To the contrary, if Mr. Bushay proves that Ardon Barker was the owner of the land he would succeed on his counterclaim since there is no dispute that the rights he asserts are based on the permission he obtained from Ardon Barker.

[29] Mr. Calvert Bushay has sought to persuade the court that the land which the Davis was referring to were different to the lands on which the chattel house was located. He asserted rights to the disputed land based on Ardon Barker's ownership of the land. He expects the Court to believe that Mr. Barker bought the land from Mr. Powell Mattis.

[30] The witnesses Darrel Wiseman and Ardon Baker did not assist Mr. Calvert Bushay, since their testimony was not credible for the most part. They contradicted themselves and each other on vital issues such as their friendship, whether it was Mr. or Mrs. Mattis who gave Mr. Wiseman the instruction to prepare the Deed, the boundaries of the disputed land the dates of the alleged purchase of the disputed land, the Will which they produced did not assist his case. The question why Deed No. 2854 of 2000 was executed some 34 years after Darrel Wiseman was appointed Executor of Powell Mattis's Estate was unsatisfactorily unanswered. The Court is grateful for the Reports provided by the Surveyors, however they cannot assist in determining the true ownership or title to the disputed lands. Calvin Bushay was unable to prove on a balance of probabilities that Ardon Barker owned the land.

[31] **Conclusion**

[A] Mr. Calvert Bushay was unable to prove Ardon Barker owned the land. His evidence was unhelpful. The main witnesses for the defendant Ardon Barker and Darell Wiseman proved to be extremely unreliable. I do not for one minute believe that Powell Mattis sold any land to Ardon Barker. It seems to me that the entire story was concocted in an effort to permit Mr. Calvert Bushay to remain on the disputed land.

[B] On the strength of the Davis pleading and the evidence presented, the Court is of the view that Reginald Straker owned the land in question pursuant to Deed No.620 of 1966. I have no difficulty accepting the evidence presented. I am also of the view that Reginald Straker conveyed to Mr. and Mrs. Davis the lands in accordance with their pleadings and the testimony of the their witnesses. Colbert Straker, Hamilton Gould and Godfrey Davis. The Davis have proved their case on a balance of probabilities that Reynold Straker previously owned the land which he sold to them.

[C] The Davis have proven their case on a balance of probabilities on the basis of the very credible evidence of their witnesses. The Court has no grounds for upholding

Mr. Bushay's counterclaim. He has a the legal burden of establishing his case on a balance of probabilities which is central to proof in a civil suit. The evidence adduced by Mr. Calvert Bushay has failed to meet that standard. Accordingly I will dismiss the counterclaim and enter judgment for the Davis.

[32] In the premises, I will make the following orders –

- (a) Judgment be and is hereby entered for Mr. Godfrey Davis and Mrs. Alecine Davis
- (b) The Counterclaim filed by Mr. Calvert Bushay be and is hereby dismissed;
- (c) That by virtue of the Deed of Conveyance No. 1603 of 1988 Mr. Godfrey Davis and Mrs. Alecine Davis are the fee simple owners of the parcel of land on which Mr. Ardon Barker's Chattel house stands
- (d) Mr. Calvert Bushay and/or Mr. Ardon Barker do remove and demolish the chattel house from the said lands on or before the 1st June 2004
- (e) That with effect fro the 2nd June 2004 Calvin Bushay be and is hereby restrained from entering and trespassing whether by himself, he servants and or his agents over the lands on which the chattel house stands.
- (f) Mr. Calvert Bushay do pay Mr. & Mrs. Davis costs in the sum of \$8,000.

Louise Esther Blenman
High Court Judge