

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. : 110 OF 2003

BETWEEN:

LILIAN JARVIS

Claimant

v

ALLAN LEWIS

Defendant

Appearances:

Mr. Olin Dennie for the Claimant

Ms. Nicole Sylvester with Ms. Rochelle Forde for the Defendant

2004: February 17
May 14

JUDGMENT

[1] **BLENMAN J:** This is a land dispute matter.

[2] Ms. Lillian Jarvis seeks a number of declarations against Mr. Allan Lewis including that she is the fee simple owner of a parcel of land described in a Deed of Settlement No. 118 of 2002 dated 2nd January 2002 situate at O'car Bequia in the State of St. Vincent and the Grenadines. She alleges that the lands were formerly owned by Mr. Rupert Jarvis deceased who was her father and seeks to have the court restrain Mr. Allan Lewis from entering the land or exercising any rights of ownership over the land.

[3] Mr. Allan Lewis disputes that the lands in question were ever owned by Mr. Rupert Jarvis deceased and asserts that they were owned by Ms. Marcelina Jarvis deceased. He contends that the Deed of Settlement is incapable of creating or giving Ms. Lillian Jarvis title to or an interest in the lands that belongs to Ms. Marcelina Jarvis. Mr. Rupert Jarvis owned other lands he alleged, and on the death of Mr. Rupert Jarvis his nephews Mr. Neville and Mr. Julian Jarvis took possession of the land and later disposed of the lands to their children and relatives who went into possession of them. He denied that Ms. Lillian Jarvis is entitled to the land or is to be granted the reliefs which she claims.

[4] The issues that arise for determination are:

- (i) Whether the land in question belonged to Mr. Rupert Jarvis deceased
- (ii) Whether Ms. Lillian Jarvis has established title to or interest in the said land
- (iii) Whether Ms. Lillian Jarvis is entitled to the declarations and reliefs she seeks.

[5] Ms. Jarvis, her nephew and attorney on record Mr. Elfic Grant and Mr. Matthew Stewart a land surveyor provided the court with evidence on her behalf. While Mr. Allan Lewis testified on his own behalf

[6] Ms. Lillian Jarvis is 84 years old. She stated that she was born to Elizabeth Grant and Mr. Rupert Jarvis deceased the latter who owned a parcel of land located at O'Car, Bequia. Her father gave her the land since 1940 and she has been on the land since then even though she was not given a deed. From 1940 to 1967 she planted peas and corn on the land together with her aunt Miriam Lewis who she called Minnie. Her father died in 1941. In 1967 she came to live on the mainland and discontinued working on the lands. During the time in which she lived on the mainland she visited the lands regularly to look over them. By Deed of Settlement No. 118 of 2002 she received her first paper title to the land. While she knew Mr. Julian and Mr. Neville Lewis, both of whom were her aunt Miriam's children, she was sure that they never worked on the lands at O'Car Bequia which belonged to her father. Both Mr. Julian and Neville were seamen who spent most of their time away from home. They traveled between Canouan, Bequia and St. Vincent.

- [7] During cross-examination she said that she called her father Daddy Rupert even though her mother and father were not married. She admitted to vending in the Kingstown market, but maintained that she visited the land regularly throughout the years. She was in contact with her relatives, even though she did not attend some of her deceased relatives' funeral and all of whom had treated her very well. She lives with her nephew Elfic Grant who takes care of her. She denied that her nephew Mr. Elfic Grant was encouraging her to make the claims against the land. She admitted that she had savings in her bank account when she went to live with her nephew about 10 years ago but that she no longer has the money.
- [8] Mr. Elfic Grant said that he is the 54-year old nephew of Ms. Lillian Jarvis and her Attorney on Record. He resides at Bequia and grew up with her since she has no children. He knew that his aunt Lillian cultivated a parcel of land at O'Car Bequia which belonged to her father since the early 60's. She appointed him as her attorney on record on 31st August 2002 and he retained the services of Mr. Matthias Stewart to survey the boundaries of the parcel of land which she was occupying since Mr. Allan Jarvis was seeking to claim it. He is aware that Mr. Julian Lewis, who was Mr. Allan Lewis' father owned lands which bounded with the same land formerly owned by Mr. Rupert Jarvis deceased. At his request, Mr. Stewart Matthias surveyed the lands in dispute in the presence of Allan Lewis the latter, who pointed out the boundaries of the lands for Rupert Jarvis.
- [9] During cross-examination he admitted that he tried to have the disputed land surveyed before he had obtained the Power of Attorney but that the surveyor was chased away by Mr. Allan Lewis. Subsequently, Mr. Stewart Matthias surveyed the land, at his instance, in his capacity as his aunt's attorney. He was adamant that while he knew where the lands that his aunt owned were located he did not know where the "stubbs" were. He maintained that it was Mr. Allan Lewis who pointed out the boundary of the late Mr. Rupert Lewis' land to Mr. Matthias Stewart. He admitted to being interested in the lands that belonged to Mr. Rupert Jarvis.
- [10] Mr. Mathias Stewart is an authorized Land Surveyor attached to the Lands and Surveys Department of the Ministry of Agriculture since 1999. He stated that in April 2002, he was requested by Mr. Elfic Grant to survey a parcel of land located at O'Car Reform, Bequia. Before surveying the land he investigated the matter at the Land and House Tax Department where he

discovered that there were two separate pieces of land at O'Car Reform, Bequia that belonged to the Jarvis family. The parcel of land listed in the name of the Rupert Jarvis is 2 acres more or less and another in the name of Marcelina Jarvis which is approximately 3 acres. He carried out a survey of the land the boundaries of which were pointed out to him by Mr. Allan Lewis. The perimeter of both parcels of land was 5 acres. He demarcated 2 acres that belonged to the Heirs of Estate of Rupert Jarvis and caused a plan GR802 to be prepared. He stated further that he examined the schedules to Deed Nos. 658 of 1975 and 659 of 1975 and the total size of the lands described in these schedules is approximately 3 acres more or less which is in keeping with the size of Marcelina Jarvis' land as shown on Plan GR802.

[11] During cross-examination, he conceded that his description of the boundaries of the land in the Deeds, and that on the plan was not consistent but had no doubt that he surveyed two separate pieces of land that belonged to Heirs of Rupert Jarvis and the other Heirs of Marcelina Jarvis. He maintained that Mr. Allan Lewis identified the boundaries to the two pieces of land to him. When he made the plan GR 802 he was new to the profession and the plan had an error in the description of the boundary. However, he was adamant that it was Mr. Allan Lewis who had pointed out the boundaries of the two pieces of land owned by the Heirs of Marcelina Jarvis and Rupert Jarvis. Mr. Allan Lewis was the only person present with him during the entire exercise.

[12] In re-examination he stated the lands he surveyed have a perimeter of 5.3 and Ms. Lillian Jarvis claims 2.65 acres. Apart from the misdescription of the boundaries, he felt that generally speaking the land in the Deed of Settlement and the plan are the same as that he observed during the survey. Before surveying the land, Mr. Allan Lewis provided him with other deeds in relation to the Lewis' lands which he examined. Mr. Allan Lewis also told him what Mr. Elfic Grant was trying to do. He was sure that the Heirs of Marcelina Jarvis were entitled to 3 acres of land and Heirs of Rupert Jarvis were entitled to 2 acres of land based on his survey and the documents he examined.

[13] Allan Lewis of Bequia asserts that the land that is described in the schedule of the Deed of Settlement No. 118 of 2002 belonged to Ms. Marcelina Jarvis deceased and was never owned by Mr. Rupert Jarvis deceased. Plan GR802 incorrectly shows that a portion of Marcelina Jarvis' land

belongs to the Heirs of Rupert Jarvis. After Mr. Rupert Jarvis' death, his nephews Neville and Julian Lewis took possession of his land and later severed the joint tenancy by virtue of Deed No. 658 of 1975 and 659 of 1975 respectively. Mr. Allan Lewis states further that he and his relatives have been in rightful possession of the portions of land, reflected on the Plan on the authority of his being the attorney for the heirs of Marcelina Jarvis. They have acquired rightful possession to portions of land also reflected on the plan GR802 through the rights acquired by Mr. Neville Lewis and Mr. Julian Lewis. Ms. Lillian Jarvis was never treated or recognized as Mr. Rupert Jarvis' child by his relatives.

[14] Mr. Julian Lewis was his father, he stated during cross-examination. He was born on 7th August 1952 and is not in a position to dispute that Mr. Rupert Jarvis was Ms. Lillian's father. While he has lands also at O'Car he does not have any deeds for these lands. He admitted to not being able to say whether Mr. Julian Lewis and Mr. Neville Lewis, both of whom were sailors for most of their entire lives, took possession of Mr. Rupert Lewis' land on his death since he was not born at that time. Mr. Matthias surveyed the land in his presence and he showed him the land that belongs to the Heirs of Ms. Marcelina Jarvis. However, the names of the Heirs of Marcelina Jarvis and the Heirs of Rupert Jarvis are on the wrong place. The land that is identified on the plan as belonging to the heirs of Ms. Marcelina Jarvis belongs to Rupert Jarvis. He is familiar with the lands since he worked on them. The schedules to Deeds Nos. 658 of 1975 and 659 of 1975 indicate that the lands in question mention 2 ½ acres which he says refer to the lands obtained from Mr. Rupert Jarvis deceased. He has given Mr. Rupert Jarvis' will to his solicitor. While he has never seen a deed for Marcelina Jarvis' lands, he has read her will which is lodged in the Court House and his uncle Lester Jarvis who resides in Canada has the copy of the will. He maintained that the lands as described in the Deeds are not the same as those reflected in the plan.

[15] This is a civil matter and the onus is on Ms. Lillian Jarvis to prove her case on a balance of probabilities. She has the onus of proving that she has acquired interest in or title to the land. The matter is rendered more challenging due to the absence of the original documentary title to the land. However, having analyzed the evidence, I make the following findings of fact –
I do not find either Ms. Lillian Jarvis or Mr. Allan Lewis to be entirely truthful. I have no doubt that Ms. Lillian Jarvis is the daughter of Mr. Rupert Jarvis deceased, the latter who was the owner of

the land in dispute. I am not convinced that he gave her the lands at Bequia as she has sought to persuade me. Neither am I satisfied that Mr. Allan Lewis has occupied the land in question as he has sought to convince me. I am of the view that in recent years he tried to lay claim to the lands and as a result the dispute has developed.

[16] I am satisfied that Mr. Rupert Jarvis died in 1941 but he did not give his land at O'Car to his daughter Ms. Lillian Jarvis even though she cultivated it from 1941 up to 1967. There is no doubt that there are two separate pieces of lands located at O'Car Bequia, one belonged to Marcelina Jarvis and the other to Rupert Jarvis. I am far from persuaded based on the evidence that Mr. Rupert Jarvis gave his lands at O'Car to Julian and Neville Lewis by will and that they took possession of the lands. There is no evidence to substantiate Mr. Allan Lewis' story. I am of the firm view that she merely occupied the land and planted them periodically but never treated them as her own. I do not believe that she took possession of the lands and visited it regularly when she came to live on the mainland, as she would have the court believe. There is not any doubt in my mind that Mr. Allan Lewis pointed out the boundaries of the two pieces of land to Mr. Matthias Stewart. I accept Mr. Stewart's evidence that based on his survey the lands that are referred to in Deeds Nos. 658 and 659 of 1994 are basically the same as that of the Heirs of Marcelina Jarvis. I am of the strong view that there are two distinct pieces of land as shown on Plan GR 802. One belongs to the heirs of Marcelina Jarvis and the other belongs to the heirs of Rupert Jarvis.

[17] I do not accept that Mr. Rupert Jarvis ever prepared a will which can now be found but has not been produced. It is easy to reason that in addition to my general disbelief in the truth of Mr. Allan Lewis' assertions that if Mr. Rupert Jarvis had willed the lands to Neville and Julia Lewis who were his nephews, I am sure that if that were so the Deeds Nos. 658 and 659 of 1975 would have reflected this, it is passing strange that these two deeds do not in any way refer to the original title of Mr. Rupert Jarvis but curiously state that both Neville and Julian Lewis were in possession of the lands for over 20 years. The question is asked why they waited in excess of 30 years after the death of Mr. Rupert Jarvis to seek to execute the Deeds Nos. 658 and 659 of 1975 (which are admitted as being the first paper title to the lands).

- [18] In any event, Ms. Jarvis cannot claim any title to the lands since he posits that her solicitor by letter dated 2nd August 2002 wrote to his solicitors conceding that his client has not title or claim to the land of Rupert Jarvis. I find as a fact that Deeds Nos. 658 and 659 do not refer to the lands that belong to the Heirs of Rupert Jarvis. At no time did Neville and Julian Jarvis take possession of the lands that belonged to Mr. Rupert Jarvis. They were seamen and spent most of their time at sea traveling between St. Vincent, Bequia and Canouan. The lands were not given to them by Mr. Rupert Jarvis, neither did they occupy them. Mr. Allan Lewis is not speaking the truth when he stated that he works all of the land. He feels that because Ms. Lillian Jarvis is the illegitimate child of Rupert Jarvis she is not entitled to benefit from him.
- [19] Mr. Olin Dennie learned Counsel submitted that Ms. Lillian Jarvis was not claiming to be entitled to inherit the disputed land through the Status of Children Act, Cap. 118 of the Laws of Saint Vincent and the Grenadines, rather she was merely asserting her right to the land she was given by her father Mr. Rupert Jarvis deceased and of which she took possession. The fact that she was an illegitimate child was therefore of no moment.
- [20] Ms. Nicole Sylvester, learned Counsel submitted that Ms. Lillian Jarvis cannot properly claim to be entitled to Mr. Rupert Jarvis' land since she, if at all, is illegitimate and since he died in 1941 in possession of the land she is debarred from seeking the declaration in relation to them in 2001. Counsel relies on Section 4 of the Status of Children Act Cap. 118 of the Laws of Saint Vincent which prevents illegitimate children from making any claim to the property of their father.
- [21] In view of my finding that Ms. Lillian Jarvis never took possession of the lands that belonged to her father Mr. Rupert Jarvis and had intention to do so for over fifty years she has not acquired the necessary title and ownership to the land. She therefore cannot assert any right to the land since she possesses no rights in relation to it.
- [22] Ms. Sylvester next submitted that Ms. Lillian Jarvis is estopped from asserting her interest to the lands since her solicitor by letter dated 2nd August 2002 wrote to Mr. Allan Jarvis, she conceded that she did not have any title or claim to the land of Rupert Jarvis. The letter is exhibited as A.J. 1.

- [23] Mr. Dennie refutes the submission and indicates that the letter was written before the survey was carried out by the Surveyor Mr. Matthias Stewart and merely gave the approximation of the acreage Ms. Jarvis was claiming. To the contrary, the letter suggested that having examined the schedules in Deeds numbers 658 and 659 of 1975 it was apparent that Mr. Allan Jarvis was claiming 3 acres of the land, therefore it was suggested that a survey be done in order to ascertain the true ownership. He does not agree that he conceded that his client had no title.
- [24] Having examined the letter, I am satisfied that Ms. Lillian Jarvis' solicitor made no concession but rather the suggestion was for the survey to be carried out in order for Mr. Allan Lewis to be able to obtain his 3 acres from the appropriate 5 acres and the remainder of 2 acres should be given to Ms. Lillian Jarvis. The letter indicates that Ms. Lillian Jarvis was claiming to be entitled to 5 acres of land situate at O'Car, Bequia.
- [25] Finally, Ms. Sylvester submitted that the Deed of Settlement dated 2nd November 2002 and registered as Deed No. 118 of 2002 does not create or pass title or interest in the land, and cannot since it is not a document recognized by law. Most specifically, Ms. Lillian Jarvis is prevented from denying the truth of the statements in the Deed of Settlement which are contradictory. The deed states that at the time of his death Rupert Jarvis owned the land free from all encumbrances and if that is correct, Ms. Jarvis' claim that he gave her the land cannot be correct. Further, when she states that she took possession of the land in 1940 cannot be correct because the said Deed also states that Mr. Rupert Jarvis was seised in fee simple in possession, free from all encumbrances and these two statements are inconsistent. Counsel therefore posits that the Deed of Settlement is a fraudulent and hastily trumped up and concocted device to unlawfully lay claim to the land.
- [26] Mr. Dennie countered that the Deed of Settlement is a reflection of Ms. Jarvis' possessory title and that it is the law that a party who does not have documentary title to land can obtain legal title by being in factual possession of the land. It is not disputed that Ms. Jarvis had physical control and custody of the land and an intention to exercise control over the land for her own benefit. He relied on *JA Pye Oxford Ltd v Graham* (2002) 3 ALL ER 865 at 866.

[27] The nature of the possessory title is immaterial; it can even be in the nature of a declaration or oath before a Notary Public which is registered in the Deeds Registry. However, the court must be convinced however that the person who is seeking to obtain title to the property has been in actual and exclusive possession of the land and has not paid any rents but rather has treated the lands as his. Having found that Ms. Lillian Jarvis never acquired possession and title to the land, I am of the firm view that the Deed of Settlement cannot convey any possessory interest or title in the land since she never had possession of the land.

[30] The Deed of Settlement is not genuine since I do not believe that Ms. Lillian Jarvis was given the land by her father neither do I believe that she was in possession of it since 1940 or even still that she visited Bequia regularly to oversee it. She has not made out her claims to the land and is not entitled to any of the reliefs.

[31] Accordingly, I dismiss Ms. Lillian Jarvis' claim against Mr. Allan Lewis with costs in the sum of \$8,000.00.

[32] I thank both learned counsel for their assistance in this matter.

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Louise Esther Blenman
HIGH COURT JUDGE