

SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE
THE EASTERN CARIBBEAN SUPREME COURT

CLAIM NO.: 32 OF 2003

BETWEEN:

MARCELLE ALEXANDER FINDLAY

Claimant

AND

TRELDON CONNELL

Defendant

Appearances:

Mr. Richard Williams for the Claimant

Mr. Olin Dennie for the Defendant

2004: May 8
July 22
November 5

JUDGMENT

- [1] **BLENMAN, J:** Mr. Selwyn Connell deceased and Mrs. Claribelle Connell deceased (Mrs. Connell) were husband and wife. Mr. Selwyn Connell died on 27th May 1976 without making a will, leaving property situate at Barrouallie in the Parish of Saint Patrick in the State of Saint Vincent and the Grenadines (the disputed property).
- [2] By way of Deed No. 997 of 1985, Mrs. Claribelle Connell obtained Letters of Administration to the Estate of Mr. Selwyn Connell. She later vested the disputed property in herself and subsequently conveyed it by Deed of Gift No. No. 1027 of 1985, on 3rd May 1985, to Ms. Marcelle Alexander Findlay (Ms. Findlay) who is her niece.

[3] Ms. Findlay alleges that Ms. Trelton Connell (the illegitimate child of Mr. Sheldon Connell) unlawfully entered the disputed property on 26th January 2003 and remains in its possession. She requests a declaration that she is the legal owner of the disputed property and seeks to obtain an injunction restraining him from entering the property together with damages. The disputed property consists of an old house and two garages.

[4] Mr. Trelton Connell denies that he unlawfully entered the disputed property. He challenges the ability of Mrs. Connell to convey the disputed property to Ms. Findlay since the property never formed part of Mr. Selwyn Connell's estate. The property was purchased equally by his late mother Ms. Imore Caesar and Mr. Selwyn Connell, deceased, who lived as man and wife and together had three children. Mr. Trelton Connell asserts that his father gave him the disputed property; as a consequence he is lawfully entitled to its possession and occupation.

[5] Mr. Trelton Connell states that due to the fact that there was no deed for the disputed property it was impossible for a conveyance to be executed. He states that he worked to assist to construct the property and insists that the disputed property never belonged to Mrs. Connell. In fact, she was aware that her husband Selwyn had only given her life interest in the property. On the death of Mrs. Claribelle Connell in January 2004 the property became vested in him solely. Ms. Findlay has no legal right to or interest in the disputed property.

[6] The issues which arise for my determination are:

- (a) who is the lawful owner of the disputed property?
- (b) whether Ms. Findlay is entitled to obtain the reliefs she seeks?

[7] At the commencement of the matter, Learned Counsel for Mr. Trelton Connell rose to make a preliminary point. I advised Counsel to address the point in his submissions. Learned Counsel for Mr. Trelton Connell's objection, which I will deal with now that is Ms. Findlay's claim cannot be pursued in its present form. Counsel argued that the Power of Attorney executed by Ms. Findlay and dated 28th August 2003 and registered in St. Vincent

and the Grenadines which authorize Marissa Crease to act as signatory to Ms. Findlay in regard to any transactions relevant to land referred to in Deed Number 997 of 1995, does not conform to the provisions of Power of Attorney Act Chapter 91 Laws of St. Vincent and the Grenadines. This failure he submits is fatal to the success of Ms. Findlay's claim. He submits that the entire claim should be dismissed due to this non-compliance with s. 8 of the Act. The claim was filed on the 28th January 2003 by Ms. Findlay and there is no evidence before this court to prove that she did not sign the claim form. Mr. & Mrs. Crease indicate that they are authorized by Ms. Findlay to file witness statements in support of the claim in their own name. Mrs. Crease admitted under cross examination that when she signed the documents in her name she had not at that time received the Power of Attorney.

[8] There is no requirement in law that a witness who testifies on behalf of a party to a claim must be authorized by a Power of Attorney. I am of the view that there is no merit in Learned Counsel's submission. There is no need for a person to be authorized by a Power of Attorney in order to be able to provide evidence on behalf of a party to a claim. I therefore overrule Counsel's submission.

[9] Mrs. Marissa Crease (Ms. Findlay's daughter) and her husband Mr. Ethron Crease provided witness statements and gave oral evidence on her behalf. Mr. Trelton Connell and his older brother Mr. Grenfell Connell provided witness statements and testified on behalf of the defence.

[10] I am satisfied that Mr. & Mrs. Crease are reliable witnesses whose credibility I have no reason to question. I prefer their versions of events to that of Mr. Trelton Connell. I am afraid I cannot say the same for Mr. Trelton Connell. In my view he proved to be an extremely unreliable witness. His main witness and brother Mr. Grenfell Connell contradicted several fundamental aspects of his case. I accept Mr. Grenfell Connell's evidence since he struck me as being an extremely forthright and honest man.

- [11] Mr. & Mrs. Creese stated that Mrs. Connell was granted Letters of Administration of the Estate of her late husband Mr. Selwyn Connell, on the 18th day of April 1985. The estate included the disputed property which she subsequently vested in herself and became its owner. Mrs. Connell gave the disputed property to Ms. Findlay by way of Deed of Gift in 1985.
- [12] Initially, Mrs. Connell paid the taxes on the disputed property, rented the ground floor of the house to Mr. Norris Roberts and collected the rents. Ms. Findlay collected the rents from 1985 from Mr. Roberts upon her receipt of the disputed property from Mrs. Connell.
- [13] From 1985 to the year 2003, Ms. Findlay maintained the disputed property and treated it as her own. She resides in England for approximately 26 years, and periodically visited Saint Vincent and the Grenadines during this time. She assisted to maintain Mrs. Connell financially. With Ms. Findlay's permission, subsequently, Ms. Creese collected the rents from the tenant in Ms. Findlay's absence.
- [14] I also accept Mr. & Mrs. Creese's evidence that they stored miscellaneous items in one of the garages from 1986 with the permission of Ms. Findlay. Mr. Creese was however more forthright and honest in stating the nature and quality of the items. I prefer his evidence to that of his wife on that issue that he stored an old refrigerator, pieces of wood and some items of building materials. These items were removed in January 2003 by Mr. Trelton Connell without their permission. I am satisfied that Ms. Findlay also stored some of her personal belongings in one of the garages and permitted her daughter and son-in-law Mr. and Mrs. Ethron Creese to have possession of the disputed property. They stored various items in one of the garages while the other one was rented. Mr. and Mrs. Creese secured the door of the garage which contained their belongings with a padlock. On the 26th day of January 2003, Mr. Trelton Connell entered the disputed property, removed the lock from the door to the garage. He took Mr. and Mrs. Creese's articles out of the garage and replaced them with his belongings. He has since exercised control over the disputed property without Ms. Findlay's permission. He changed the lock to the downstairs of the house and prohibited persons from entering the disputed property.

- [15] Learned Counsel for Mr. Trelton Connell's cross examination focused to a large extent on the fact that Mrs. Connell in her application for the Letters of administration to Mr. Selwyn Connell's estate had stated that she was entitled to 1/3 share and Mr. Trelton Connell was entitled to 2/3 share of the estate. I am unable to see how this assertion, erroneous as it may be, if he died intestate can have any effect on Mr. Connell's case. Mr. Trelton Connell maintained that his late father had given the disputed property to him and in my view this statement in the declaration cannot assist him.
- [16] Of significance, Mr. Grenfell Connell stated that the disputed property was bought by his deceased mother Imore Caesar and Mr. Selwyn Connell. Ms. Caesar died before Mr. Selwyn Connell and she was survived by three sons, yet Mr. Trelton Connell asserts that the entire property belonged to his father without attempting to explain what became of his late mother's interest. Mr. Trelton Connell simply stated that the disputed property was owned by his deceased father Selwyn Connell who gave it to him. Mr. Trelton Connell lived in England for 28 years and came home permanently in January 2002. It is very unusual, that it is only very recently he learnt that Mrs. Connell had executed Deed No.1027 of 1985 in favour of Mrs. Findlay. He executed a Deed of Settlement No. 236 of 2003 17th January 2003 from himself to himself in which he purports to convey the disputed property to himself. He subsequently instructed the tenant Mr. Norris Roberts to discontinue paying the rent to Mrs. Crease and he collected the rents and took them to Mrs. Connell who at the time was living with Mrs. Crease. He felt that Mrs. Connell was entitled to the rents because she had a life interest in the disputed property. He maintained that his father gave him the disputed property but that he has no documentary proof of his ownership since his father never possessed any written title.
- [17] Mr. Selwyn Connell (deceased) had three illegitimate sons, Grenfell Connell and Allison Connell, and himself the latter who was born on 9th May 1938 to Imore Caesar and Mr. Selwyn Connell. This relationship ended and Mr. Selwyn Connell married Mrs. Claribelle Connell, the latter who was 94 years old Mr. Trelton Connell, at the time of the filing of this claim. She is now deceased.

- [18] During cross-examination Mr. Trelton Connell admitted that he sawed off a lock from the garage around the 20th January 2003 and took out old tyres, galvanize and wood and two shells of old fridges. He was of the opinion that Mr. Creese had placed the old items in the garage for approximately 15 years.
- [19] He claims to be entitled to the land through his father's estate and later said that his father gave him the disputed property. He could not recall whether at the time when he sawed off the lock, Mrs. Connell was still living with Mr. and Mrs. Creese. Contrary to his witness statement, he admitted that three pieces of wood and the old fridge that belonged to Mr. and Mrs. Creese were stored in the back house. He placed the rubbish which he had removed from the building in the back yard.
- [20] Mr. Connell contradicted himself in his evidence. I am far from satisfied as to his truthfulness. Firstly, he stated that he was claiming to be entitled to the disputed land through his father's estate. Later Mr. Trelton Connell alleges that he is not claiming "under his father's estate" but rather he asserts his right based on his father's gift to him. In my view this assertion is negated by the evidence of Mr. Grenfell Connell and is not consistent with his apparent lack of interest in the disputed property until 2003. There is no credible evidence that he showed any interest in the disputed property before 2003.
- [21] Mr. Grenfell Connell, the older brother of Mr. Trelton Connell, who is 68 years old, states that himself, his father Mr. Selwyn Connell, mother Imore Caesar and brothers lived in another property in Barrouallie. His parents were not married; his father married Mrs. Connell in 1976 after the relationship between his parents ended. Before that time, in 1954 his father purchased the disputed property and he later gave it to Mr. Trelton Connell with the understanding that his wife Mrs. Claribelle Connell was to have a life interest. This latter evidence proved to be no more than mere speculation. I do not believe Mr. Trelton Connell when he said that his father gave him the disputed property. It is passing strange that this could be so and he did not indicate that he took any steps during the

intervening years to concretize his alleged ownership of the disputed property. I am more convinced of my view having regard to the clear evidence of Mr. Grenfell Connell.

[22] During cross-examination Grenfell Connell stated that he may have a share in the disputed property even though he is not claiming a share. He lived about 6 blocks away from Mrs. Connell's residence (the disputed property) which has an old wooden house on it and has been residing in Saint Vincent and the Grenadines since 1975. He was aware of the fact that after the death of Mr. Selwyn Connell, Mrs. Connell commenced the rental of the disputed property to Mr. Norris Roberts. I believe him entirely on this issue.

[23] He was sure that Trelton Connell is in charge of the building and has occupied it since his return from England in 2002. He later stated that "he did not say that his father gave the disputed property to Trelton since his father died intestate and Trelton is laying claim to the property. I am of the firm view that this is exactly what happened and accepts his testimony on this matter. I am fortified in my view based on his assertion that he did not claim a share in his father's estate since he has his own property so he told Trelton that "he could have my share" in the disputed property.

[24] Mr. Grenfell Connell did not support Mr. Trelton Connell's evidence; in fact, he contradicted him in so many material aspects and clearly indicated the true position. For what it is worth Mr. Grenfell Connell later informed me that his father who had Parkinson's disease in his old age had never told him that he had given the disputed property to Trelton. In fact, "his father died intestate". Finally Mr. Grenfell Connell indicated that when he said in his witness statement that his deceased father had given the disputed property to Trelton, he had no personal knowledge of this but was merely relying on the information he was told by Trelton. This reinforces my view that his father Mr. Selwyn Connell never gave the disputed property to Mr. Trelton Connell as he would have me believe.

[25] I have no doubt that it was Mrs. Connell who rented the garage to Mr. Norris Roberts. I am fortified in my view considering Mr. Connell stated that he only "very recently" learnt that

Mrs. Connell gave the property to Mrs. Findlay by deed. He states that his father gave him the property before he died. The question arises as to why he didn't seek to assert his rights to the disputed property before 2003. He clearly stated that he took control of the buildings on the disputed property in June 2003 and requested Mr. Roberts to pay him the rents only "six to eight months" before the date of the hearing.

[26] The evidence, which I accept, is as follows: Mr. Selwyn Connell owned the disputed property and died intestate. The deceased's wife Mrs. Claribelle Connell properly obtained Letters of Administration of the Estate of Selwyn Connell vested the property in herself as the person lawfully entitled to the estate. After the death of her husband she rented the ground floor of the wooden house to Mr. Norris Roberts and collected the rents. Subsequently, she gave the disputed property to Ms. Findlay, the latter who contributed to the financial maintenance of the late Mrs. Connell. Ms. Findlay obtained proper title to the disputed property and is its lawful owner. She permitted her daughter and son-in-law Mr. and Mrs. Creese to occupy the garage as she was perfectly entitled to do. There is nothing preventing Ms. Findlay from authorizing her daughter to collect the rents from the property on her behalf.

[27] It is clear to me that Mr. Trelton Connell did not seek to lay claim to the disputed property until his return to Saint Vincent and the Grenadines in 2002. I have no reason to doubt that Mr. Trelton Connell unlawfully removed items that belonged to Ms. Findlay and Mr. and Mrs. Creese from the garage without their permission. He threatened Mr. Creese since he obviously did not want him to re-enter the disputed property. I have not been provided with the value of the items that were removed from the garage. Mr. Trelton Connell's "Deed of Settlement" is dated 17th January 2003 and being of such recent vintage, is, of course, of little if any value as evidence of interest in the property. It cannot give any life to his defence. In the Deed of Settlement he claimed to be in possession of the disputed property which was given to him by his deceased father. This is contrary to the evidence of his brother Grenfell Connell (who he called as his witness). Mr. Grenfell Connell's evidence severely undermined his case. The deed was evidently made for the purpose of bolstering his defence. The defendant is both grantor and grantee in this deed.

I am of the firm view that the purported conveyance does not serve to convey a good title. It is nothing more, in my view, than a colorable device of an opportunistic nature, calculated to assist Mr. Trelton Connell to acquire the land which belongs to Ms. Findlay.

[28] I am satisfied that Ms. Findlay has established her claim to the disputed property on a balance of probabilities. The evidence falls short of indicating that Mr. Trelton Connell's father gave him the disputed property in 1976. Mr. Trelton Connell has no legitimate claim to the disputed property. He unlawfully entered the disputed property and has prevented the Mr. and Mrs. Creese who have been given permission by Ms. Findlay from occupying the land.

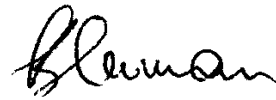
CONCLUSION:

[29] Accordingly, I am satisfied that Ms. Marcelle Alexander Findlay has proved her claim against Mr. Trelton Connell. In the circumstances, I enter judgment for Ms. Marcella Alexander Findlay against Mr. Trelton Connell. I make the following orders:

- (a) Declaration of Ms. Marcelle Alexander Findlay is the fee simple owner of the property which is the subject matter of Deed Number 1027 of 1995.
- (b) Mr. Trelton Connell do deliver up possession of the property on or before 1st December 2004 to Ms. Findlay her agents or servants.
- (c) Damages for trespass in the sum of \$2,000.00 is awarded against Mr. Trelton Connell in favour of Ms. Marcelle Alexander Findlay.
- (d) An injunction restraining Mr. Trelton Connell, whether by himself, his servants or agents or otherwise from entering or trespassing upon the property of Ms. Marcelle Alexander Findlay as described in the Deed No. 1027 of 1983 with effect from the 1st December 2004.

(e) Costs in the sum of \$3,500 as agreed by Counsel.

[30] I commend both learned Counsel for their industry.



.....
Louise Esther Blenman
HIGH COURT JUDGE