

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NUMBER SLUHCV 2003/0147

BETWEEN:

1. IGNATIUS EVANS
2. MARIE EVANS

Claimants

AND

ANTOINE W. RHIBAHIE also known as NELSON WILLIAM

Defendant

Appearances:

Ms. Beverley Downes for Claimant

Mr. Evans Calderon and Mr. Vernantius James for Defendant

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2005: January 24, 28
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JUDGMENT

Introduction

1. **SHANKS J:** The Claimants are each registered proprietors of a quarter share in two parcels of land at Augier in the quarter of Vieux Fort. The Defendant is the registered proprietor of the other half share in each parcel. The Claimants seek an order for the partition of their half of the two parcels from the Defendant's half. The Defendant says that the Claimants' title to the land is defective and he should hold full title to the two parcels and that the claim should therefore be denied and the Register rectified.

Facts

2. The Defendant's parents originally owned the land. His mother died in 1948 and his father in 1951. Their only lawful heirs were the defendant and his sister Theresa.
3. The Defendant left St Lucia for England in 1957 taking all his papers with him. It seems from the evidence of his son Athanasius William at paragraphs 4 and 18 that among those papers must have been a will dated 10 January 1940 made by his father which made the Defendant his executor and left him all property to which he was entitled at death. For some reason no steps were taken in relation to that will by the Defendant until probate was obtained some time in 2003 or 2004.
4. Instead, in the course of a visit to St Lucia in 1974 the Defendant made the declaration of succession in relation to the land which is at paragraph 26-8 of the trial bundle. That document recorded that both his parents had died intestate and that he and Theresa were now the sole owners of the land (as was indeed the position under the Civil Code on an intestate succession).
5. In 1986 land registration was introduced and owners were required to make their claims to the Adjudication Officer. Theresa sought the assistance of the first Claimant who was a well respected resident of Augier and a Justice of Peace. He helped her to put in a claim form in respect of the land which referred to the declaration of succession and stated that the land was also claimed by the Defendant (see page 43). The Defendant himself put in a claim form which stated that Theresa also claimed the land (see page 41).
6. Before registration took effect Theresa entered into a deed of sale with the first Claimant in respect of her share of the land which is dated 29 July 1996 (see paragraphs 29-31). The deed of sale records the consideration given by the Claimant as being \$25,000 but it was both his and Theresa's evidence that in fact the consideration he provided was to build her a house on the land and to provide her to this day with a weekly allowance of \$70 and pay her medical expenses. Having seen both the first Claimant and Theresa in the witness box I am quite satisfied that, although possibly open to question on its face, this transaction was entered into quite

voluntarily by Theresa and has proved to her substantial advantage; in any event she has not sought to set it aside.

7. Before the first Claimant entered into the sale a letter was written on his behalf by Winston Hinkson to the Defendant in England dated 11 July 1986 (page 57); the letter stated that the first Claimant had told Mr Hinkson that all the land had been left to the Defendant by his father in his will and that since no copy of the will could be found by the first Claimant proposed to go ahead with the purchase and sought an amicable partition. In evidence the first Claimant denied knowing anything about a will or giving Mr Hinkson any such instructions. I am afraid he must be mistaken about this and I am satisfied that he must have been told by Theresa or one of the Defendant's sons that it was believed that there was such a will. It is common ground that there was no answer to Mr Hinkson's letter.
8. On 15 February 1987 the first Claimant personally wrote to the Defendant again seeking a partition and stating that he would petition the judge if necessary (see page 34). Bizarrely the copy of this letter produced by the Defendant was different to that produced by the Claimants, the former (page 46) including a threat to seek his committal to prison if the Defendant did not comply with the request. I cannot see how this little issue can be resolved and since it is of the most peripheral relevance I do not propose to make any finding about it. In any event, a reply was sent to the first Claimant by Floissac & Giraudy who said they had been instructed by the Defendant and that he agreed to an amicable partition and proposed certain terms (which proved unacceptable: (see papers 45 and 46). It was the Defendant's case that he gave no such instructions to any lawyer at this time; again I am afraid he must be mistaken about this: I am quite satisfied that Floissac & Giraudy would not have written a letter in those terms if they had not been instructed by him to do so.
9. On 23 June 1987 the land was registered in the names of the Claimants and the Defendant.
10. In 1996 the Claimants started an action for partition and a notice of appearance was entered on behalf of the Defendant but the action was later automatically deemed abandoned under the existing rules of court. The action prompted the Defendant to

consult a St Lucian lawyer in England who was the one who turned up the 1940 will. Notwithstanding that he located the will in 1996 the Defendant did nothing about it until after these proceedings were started in 2003.

Defendant's case

11. The Defendant's case is that the first Claimant obtained the half share in the land from Theresa and the Claimants' registration as owners thereof by fraud and that the Register should be amended accordingly. The fraud alleged is that he knew that the land had been left in its entirety to the Defendant by will and that Theresa had no right to convey any share but that he nevertheless used his influence over her as an impecunious person to buy her purported half share.

12. I am quite satisfied that this case is unsustainable for at least the following reasons:
 - (1) Mr Calderon's premise that Theresa had no right to convey a half share in the land to the first Claimant because of the will is not correct: so long as the 1974 declaration had not been set aside she had good title to her share and since more than 10 years had passed since she had acquired title in good faith under the 1974 declaration no action to set aside could have been brought (see Art 2112 of the Civil Code);

 - (2) Particularly in the light of Mr Hinkson's letter of 11 July 1986 it is clear that the first Claimant did not deceive the Defendant in any way and Theresa has not made any complaint that undue influence was exercised on her: I can see no basis on the facts for a finding of fraud against him;

 - (3) If any kind of fraud was practised the Defendant long ago lost the right to raise the point: in 1987 he indicated agreement in principle to a partition between himself and the first Claimant at a time when he must have had at least as much knowledge as the first Claimant about the will (and was in possession of it) and then, having found the will in 1996, he did nothing whatsoever about it until these proceedings were started; I am quite satisfied that it would not be right for the court to order rectification under section 98 of the Land Registration Act 1984 in these circumstances.

Result

13. The rejection of the Defendant's case necessarily means that the Claimants are entitled to a partition (see Article 632 of the Civil Code): I will so order. I will hear counsel as to directions for the partition and on costs.

MURRAY SHANKS
High Court Judge (Acting)