

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV2002/1021

BETWEEN:

1. RAYMOND DUPRES
2. GEORGE DUPRES
3. AUGUSTUS LAURENCIN

Claimants

AND

1. THERESA REYNOLDS
2. CLIFFORD GEORGE
3. HENRIETTA GEORGE
4. CUTHBERT JOSEPH
5. PETER FELIX
6. BENJAMIN ROSEMOND
7. UNICE GEORGE
8. EDDIE GEORGE

Defendants

Appearances:

Evans Calderon for Claimant

Michelle Louis for the Second, Third, Sixth, Seventh and Eighth Defendants

First Defendant represented by her attorney John Delmar

No appearance by Fourth or Fifth Defendants

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2005: 27 June
1 July
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JUDGMENT

Introduction

- [1] SHANKS J: The First Claimant is the registered owner of parcel nos 1048C 38, 40, 41 and 42 which are beside the main road at Four Roads in the Quarter of Castries.

The Second Claimant (his deceased brother, whose succession I ordered that he should represent) along with their two sisters is the registered owner of parcel no 1048C 36. The Third Claimant (who resides in Barbados and did not appear at the trial) is the registered owner of parcel no 1048C 39. They were all registered as owners on 19 August 2002 following the execution of a deed of partition dated 24 July 2002. In these proceedings they claim possession of their respective parcels of land. The claim against the Fourth Defendant who is in occupation of parcel 38 was settled before trial.

First Defendant

[2] The First Defendant now lives in England. She was represented at the trial by her brother John Delmar who gave evidence on her behalf. She purchased a wooden house on parcel 42 well over twelve years ago from their uncle Henson James. Henson had originally rented from a lady called "My Dear" who was married to a man called Florant Jn Paul, the First Claimant's grand-uncle. Henson had planted various fruit trees there. When the First Defendant moved into the wooden house she built a concrete kitchen and was converting the house to a wall house. When the First Claimant claimed the land she stopped work on the house. She moved to England some years ago. Mr Delmar, who looks after the house for her, has allowed a lady and her seven children to occupy the house rent free.

[3] No Defence was filed by the First Defendant and I do not see that she would have any defence to the action for possession based on those facts. She may have had a claim under Art 372 of the Civil Code but no counterclaim was filed and no evidence was put forward to quantify such a claim. I will therefore make an order for possession of

parcel 42 in favour of the First Claimant. In fairness to the lady with the seven children I will say that such order cannot be enforced without the leave of the court obtained on notice to the current occupants of the house.

Second and Third Defendants

[4] The Third Defendant, who recently died aged about 72, was the mother of the Second Defendant. The Third Defendant lived in the house which had been owned by My Dear which is on parcel 41. The Second Defendant was born on the land and grew up in that house. He always believed the land belonged to his mother's family. About eleven years ago he started to build a concrete and wooden house close to his mother's house. In about 1994 after he had put in the foundations the First Claimant passed by and said he was the owner of the property and demanded rent from the Second Defendant. A rent of \$20 per month was agreed. In cross-examination the First Claimant said that rent was paid for ten years from 1987 to 1997 but I prefer the Second Defendant's evidence that he paid rent for a year and then stopped because some people known as the Squareheads were also claiming ownership of the property. He completed the building of his house and lived peacefully on the land until this claim was filed.

[5] Although I was not told how old the Second Defendant is or when the Third Defendant moved into My Dear's house it is a reasonable inference from the Second Defendant's appearance and the fact that he started building a house in the early 1990s that he and his mother were in occupation more than 30 years ago. The claim against the Second Defendant is therefore prima facie prescribed under Arts 2074 and/or 2103 and the Second Defendant has an overriding interest as against the First Claimant's

registered title. Mr Calderon for the Claimants relied on the fact that the Second Defendant had agreed to pay rent and on the principle that a tenant is estopped from denying his landlord's title. I am not at all sure that the mere payment of rent in the circumstances of this case for a short period constituted the Second Defendant a tenant of the First Claimant but anyway I do not think this is any answer to the prescription defence for at least two reasons. First, the Second Defendant is not denying the First Claimant's title to the land: he is setting up a defence of prescription. And second, no notice to quit has ever been given terminating the tenancy which the First Claimant relies on.

[6] In case I am wrong to find that the Second Defendant has a good defence to the possession action I shall consider his claim for compensation under Art 372 of the Code. It seems to me clear that the house he built was an unnecessary improvement made in good faith within the meaning of Arts 372 and 367. In such circumstances he is entitled to be paid compensation for the value of the improvement. The uncontroverted expert evidence of Stephen Montrope is that the house is worth \$10,871 which sum I would have awarded the Second Defendant. He would also have been entitled to a lien on the property until this sum had been paid under Art 374.

Fifth Defendant

[7] The Fifth Defendant did not respond to the claim or appear at trial but there was no evidence that he was or is in occupation of any part of the land.

Sixth, Seventh and Eighth Defendants

- [8] The Sixth and Seventh Defendants gave evidence. Although they were not sure which parcel they occupied I accept the First Claimant's evidence that they live on parcel 39 which is confirmed by the report of the valuer Andre Mathurin (see trial bundle page 46).
- [9] The Seventh Defendant is the sister of the Third Defendant and the mother of the Sixth and Eighth Defendants and of another son called Olandi as well as four other children. She is 53 years old. As a child she used to sleep in My Dear's house which her and the Third Defendant's father Rosemond George had built for My Dear when he was caretaker of the land for her. She built her own house on parcel 39 partly of wood and partly concrete about 37 years ago and planted temporary and permanent crops all around it. She was given permission to build by her father who she always believed had been left the land by My Dear by will when she died in the 1960s. She went to live in Martinique about six years ago and has stopped cultivating the land but she visits from time to time and has left her son Olandi in occupation of her house. There was no dispute that the house was worth \$26,470.
- [10] The Sixth Defendant is 36 and he was born on the land and grew up in his mother's house. As a child he helped his mother cultivate the land. In 1996 she gave him permission to build a house close to hers. The house is part concrete and on pillars; it is not disputed that it is worth \$2,270. The First Claimant saw the house being built but made no objection. After it was finished he asked the Sixth Defendant to pay rent. The Sixth Defendant was shown some documents and was afraid and paid rent for a year. He also stopped because the Squareheads became involved and because he believed the land had belonged to his grandfather Rosemond George. He cultivated

short term crops until five years ago and planted a plum tree and after his mother left for Martinique he looked after the permanent crops she had planted. The crops on the land he occupies have been valued by Mr Mathurin at \$26,395.

[11] The Sixth and Seventh Defendants also gave evidence that the Eighth Defendant and Olandi were given permission by their mother to build houses close to hers. The Eighth Defendant's house was built before the Sixth Defendant's and is worth \$3,540. He has been living in Miami for three years and his house was rented until recently. Olandi is currently living in his mother's house. The four houses belonging to the mother and her three sons are all close together.

[12] In my view this group of Defendants also have a valid defence based on prescription and the overriding interest created thereby. Whatever may apply in relation to the other two, the Sixth Defendant has been in continuous occupation of the land for more than 30 years. The same comments apply in relation to his payment of rent as apply to the Second Defendant. There was no suggestion that the Seventh or Eighth Defendants had ever paid any rent to the First Claimant.

[13] If I am wrong in that conclusion it seems clear that these Defendants should also be entitled to compensation under Art 372 and a lien under Art 374. I would have awarded the figures I have mentioned above in respect of the three buildings and the crops.

Other parcels

[14] There were also claims in respect of parcels 36 and 40 but no evidence that anyone was in occupation of these parcels. In the circumstances I decline to grant any order for possession in relation to them.

Result

[15] There shall be an order that the First Defendant deliver possession of parcel 1046C 42 to the First Claimant but such order is not to be enforced without the permission of the court the application for which must be served on those in occupation of the house on that parcel of land. All the remaining claims and counterclaims are dismissed. I was told that costs were to be prescribed but, given the nature of the case, that does not provide a straightforward solution. I will hear the parties but at the moment I think the fairest result would be that there should be no order as to costs of the claim against the First Defendant (against whom a somewhat Pyrrhic victory was obtained) and an order that the costs of the Second, Third, Sixth, Seventh and Eighth Defendants should be paid by the First Claimant on the basis of a claim for \$50,000, that is in the sum of \$14,000.

MURRAY SHANKS
HIGH COURT JUDGE (Ag)