SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 2004/0573

BETWEEN:

1. THERESA DANIEL
2. JOSEPH DANIEL

Claimants

AND

1. LUCY FLAVIUS
2. MARCIE JAMES
3. CORLETTA MCFARLANE

Defendants

Appearances:
Shriley Lewis for Claimants
Nicholas Frederick for Defendants

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2005: July 22, 29

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JUDGMENT

Introduction

[1] SHANKS J: The Claimants are the registered proprietors of 0.8 hectares (about 2 acres) of land to the south of the Desruisseaux road on what was formerly the Petit Morne estate in the Quarter of Micoud. The three Defendants, who are sisters, each have a wooden house on that land. The Claimants seek possession of the land but the Defendants say that the claim is prescribed by Art 2103 of the Civil Code and that the court should make a declaration of title in their favour under Art 2103A. In order to establish their case the Defendants have the onus of proving that they and their predecessors in title before them have been in possession of the land as proprietors for a continuous period of at least 30 years up to the filing of the claim on 23 July 2004 (ie since July 1974) (see Arts 2057, 2064, 2085, 2103 and 2103A).

Evidence

[2] Only the First and Third Defendants were called as witnesses in support of the Defendants' case. Their case in general terms was that all three Defendants were born on the land in question and had been living there ever since. Their joint witness statement also referred to occupation of the land in question by their parents and grandparents but this was hearsay evidence and extremely vague and I cannot place any reliance on it.

[3] The First Defendant was born in 1964 and is now 41. She lives in the older looking of the three wooden houses shown in the photos produced in support of their case. She said in evidence that she had lived there with her mother from the time she was a little girl. Her mother planted cashew, breadnut, mangoes, coconuts and an almond tree on the land. Her mother left the wooden house in 1973 and moved a short way to a plot on the north side of the Desruisseaux road where she built a wall house where she still lives. She left the First Defendant behind with her two sisters, the Second Defendant who was then about one year old and the Third Defendant who must have been new born, and moved with their other siblings. The First Defendant was left in charge but her mother would visit every day after work to care for them. The Second and Third Defendants put up their houses about 15 years ago (ie in about 1990). The First Defendant stayed on at the house where they had all been born. At some stage she had planted a sugar apple tree, dasheen and cassava.

[4] The Third Defendant was born in August 1972 and is nearly 33. She said she lived in the older wooden house with her sister from the time she was born until she put up the green house four years ago. She admitted she used to spend time during the day with her mother on the north side of the road but she never lived there. She agreed she had never planted any trees or crops. She stated that she had been 11 years old when her mother left the older wooden house and moved across the road. She said it was always her understanding that the land was family land.

[5] On the Claimants' side I heard evidence from the Second Claimant, from Philomene Hunte (the Second Claimant's aunt) and from Seton Campbell (a neighbour who purchased his land in 1979).

[6] The Claimant was born in Micoud in 1934 and went overseas in 1955. He said he became interested in purchasing the land in 1979 and he visited it with the vendor's representative Druscilla Charles in or about that year. When he visited there were no houses on the land. There was one large almond tree and a few coconut trees, which may have been cultivated or may have grown naturally. He paid for the land over the next few years and the deed of sale was executed in 1988. The Defendants did not occupy the land until about 1990. Notices to quit were served on them by Ms Lewis in September 2003.

[7] Mr Campbell said he purchased the neighbouring plot and moved to it in about 1976. When he moved in all the land was unoccupied and there was no dwelling house on the disputed land. He did not know if the Defendants might have visited the disputed land to cultivate coconut trees or to let animals graze. When he moved in the First Defendant was 15 or 16 and she lived with her mother on the north side of the Desruisseaux road. She worked as a home help for his wife for a period. One of the three wooden houses was put up in about 1986 and the others later.

[8] Ms Hunte produced some photos of a visit she had made with her nephew and his wife and another nephew to the land her nephew had purchased some time ago while she was on holiday. For what they are worth they appear to show the people concerned posing on an empty piece of scrub land. She remembered visiting the land (possibly on another occasion) when they were threatened by someone with a cutlass and obtained the help of the police to serve some papers on a young lady. She thought that that young lady had a wooden house which was on the land and that a notice to quit was being served on her. She thought the wooden house had been there the first time she had visited.

[9] There were two other pieces of evidence which were significant. The first was a copy of a plan based on a survey carried out in January 1980 for the Second Claimant at the instance of Ms Charles which did not show any indications of habitation. The second was a letter to Ms Lewis written by Andre Authur as an attorney dated 28 October 2003. Mr Authur stated that he acted for the First Defendant; that she had received a notice to quit; that she was not aware that the Claimants owned the land and that she

had been residing there for the past 21 years; and that she would require more time to vacate as she had been under the impression that the land was Crown land and would need to acquire alternative accommodation.

Finding

[10] Taking account of all this evidence, I have no hesitation in finding that the Defendants have failed to establish their case. I rely in particular on the following considerations:

(1) The Second Claimant must have inspected the land at some stage during the 1980's. I am sure he would not have proceeded with its purchase without doing something about it if indeed the older wooden house had been on the land and occupied by the Defendants as they allege.

(2) Mr Campbell was an independent witness and I found him credible and reliable. He was quite sure that the Defendants were not living on the land until 1986 at the earliest.

(3) The Defendants' story that their mother moved across the road leaving a nine year old in charge of two infants seems a little far fetched and there were a number of discrepancies relating to dates in their evidence.

(4) The First Defendant vehemently denied any knowledge of the 2003 notice to quit or that she had given Mr Authur any instructions to respond to it on her behalf. I am afraid I cannot accept that denial: I do not see how Mr Authur could possibly have written his letter of 28 October 2003 unless he had been instructed to do so by the First Defendant. In the letter there is effectively an admission that the First Defendant had not been in occupation of the land for more than 21 years in late 2003.

(5) I conclude that none of the Defendants have been living on the land for anything like a continuous period of 30 years. Any use of the land by planting trees or cultivating which may have been carried out by the First Defendant or her mother previously was nowhere near sufficient to amount to unequivocal possession of the land as a proprietor.

[11] I therefore reject the Defendant's defence to the claim for possession and reject their claim to a title by prescription. The Claimants also had a claim based on the destruction of some trees by the Defendants but the evidence about this was totally vague and not put to the Defendants: I accordingly reject it. There was also a claim for mense profits or rent since November 2003 which, although extremely modest, was unsupported by evidence so I reject it too. The Claimants are certainly entitled to nominal damages for trespass in any event. I will assess those damages at $100 each.

Result

[12] I will order as follows:

(1) The Defendants must give up possession of parcel no 1625B 27 to the Claimants and remove their chattel houses from the land by a suitable date to be agreed or fixed by the court;

(2) The Defendants must each pay to the Claimants damages for trespass assessed at $100;

(3) The Claimants' other claims and the counterclaim made by the Defendants are dismissed.

I will hear the parties on costs.

Murray Shanks
HIGH COURT JUDGE (Ag)