THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 446 OF 2004

BETWEEN:

EVERARD GELLIZEAU

Claimant

V

ULRIC HUTCHINSON

Defendant

Appearances:
Mr. C. Dougan Q.C. for the Claimant
Mr. E. Robertson for the Defendant

2007: February 21 and 28

JUDGMENT

[1] **MATTHEW, J. (Ag)**: The Claimant and the Defendant entered into an agreement whereby the Claimant would transfer to the Defendant One Thousand, Five Hundred and Forty Seven (1,547) square feet of land and would receive from the Defendant One Thousand, Five Hundred and Four (1,504) square feet of land nearby.

[2] The agreement was evidenced by a deed of exchange, No. 1157 of 2001, made between the Parties on March 18, 2001. The deed was prepared by a solicitor who acted for both Parties.

[3] The purpose of the deed of exchange was to facilitate the Defendant whose road could only connect to the 20 foot main road leading to Ashton Village in Union Island, if a crossing could be made across the Claimant's land.

[4] The Claimant would receive land in exchange adjoining land which he had already purchased from the Defendants mother in 1972.

[5] It appears that subsequently the relation between the Parties deteriorated. The Defendant put an electric gate just where the newly constructed road joined the main road so that he alone or those whom he wished could traverse that newly constructed road going on to the main road.

[6] As a result the Claimant brought an action against the Defendant alleging that the deed of exchange is null and void and requesting a cancellation of the deed of exchange among other remedies.

[7] In his statement of claim the Claimant contended that the Defendant was not entitled in law to vest his grandfather's land in himself, because when his grandfather Edward Hutchinson, died on March 12, 1917 the law of entitlement to the estate of an intestate observed and applied the Primo Genitor Rule and Defendant was therefore not entitled to share in the estate of his grandfather.

[8] At the hearing the Claimant led evidence to the effect that he never received the expected 1,504 square feet of land and his Counsel sought to support this when he submitted that there was a total lack of consideration.

[9] The Parties executed the deed of exchange on March 18, 2001 at the instance of a common solicitor. Three years later, on October 14, 2004 the Claimant filled his statement of claim; but there is no allegation that he did not receive the 1,504 square feet of land. I do not believe the Claimant and I reject the submission that there was no consideration for the Claimant's 1,547 square feet of land.

[10] I find as a fact that the Claimant received the 1,504 square feet of land which is now joined to the portion of land he bought from the Defendant's mother on October 3, 1972 and

which resulted in a total amount of 10,879 square feet of land shown as lot 6 in Drawing No. GR722, approved and lodged on June 13, 2000.

[11] Besides asking that the Grant of Letters of Administration No. 16 of 1988, dated September 13, 1988 and the deed of assent, No. 2449 of 1988, be declared null and void; learned Queen's Counsel for the Claimant made two other submissions, one based on the recital in the 2449/88 deed, and the other based on the second schedule to the deed of exchange, No. 1157 of 2001.

[12] The first submission stated that a Crown grant cannot be made to a dead man. In the first recital to the deed there was the statement that in 1930 there was a deed of an indenture by the Crown to Edward Hutchinson; and in the following recital it stated that Edward Hutchinson died on March 12, 1917. Counsel was advocating that the deed should be set aside for that purpose.

[13] The short answer to that submission is that the operative parts of a deed are not controlled by the recitals. See if Halsbury's Laws of England, Fourth Edition, Volume 12, paragraph 1509 and 1510. See also Gibson's Conveyancy 21st edition, page 219 which states " If there is a discrepancy between the recitals and the operative words, the latter will prevail if they are clear and unambiguous".

[14] But in point of fact it is quite possible to have a conveyance in the name of a dead person; but that does not render the conveyance bad. All that happens is the personal representative deals with it.

[15] A few weeks before I came to St. Vincent I obtained a certificate of title in the name of a deceased lady. She had dealt with the government for a housing lot. She paid for the lot and went into occupation and built her house which she devised to her daughter who lives in England. When she died the daughter wanted to put things right and continued the dealings with the government, and because the plans and documents were in the mother's

name, the title was issued in the mother's name. All the Executor did was to take the title and with the grant of probate transferred the property into the daughter's name.

[16] Learned Counsel for the Defendant submitted that something similar happened in this case when he drew attention to the Crown Deed between the Officer Administrating the Government of Saint Vincent and Edward Hutchinson with the inscription at the bottom "Date of Allotment 15th May, 1911". Learned Queen's Counsel thought that was insignificant. I do not. It suggests that the transaction began in 1911 when Edward Hutchinson was alive even though completion by signature on the grant was placed after the death of Hutchinson.

[17] As far as the second schedule of the deed of exchange is concerned, there seems to be an error with reference to a deed, but the operative parts of the deed are clear. In addition the Parties gave evidence by reference to drawings showing the locations of both portions of land. Nobody was deceived by the incorrect reference in the second schedule. Both submissions are over ruled.

[18] I now turn to the submission based on the primo genitor rule. Reference was made by both Counsel to chapter 89 of the Inheritance Act. What section 8 stipulates is that the male line is to be preferred and takes priority.

[19] Evidence was given that Edward Hutchinson had six children as follows:

(a) Alfred;
(b) George;
(c) Gordon;
(d) Joseph;
(e) Adina, the mother of the Defendant; and
(f) Felicia

Learned Queen's Counsel cross-examined the Defendant and received the answer that Alfred, the first child, died intestate and without issue. He went no further. The evidence is

that at the time the Defendant obtained the grant of letters of administration in 1988 all the children of Edward Hutchinson were deceased.

[20] Counsel for the Claimant made the bold submission that Defendant could not obtain the grant because he was a grandchild. But applying the same primo genitor rule suppose when Alfred died he left a son called Alick. Could Alick as a grandchild not be entitled to a grant?

[21] Learned Queen Counsel also relied on a deed, No. 598 of 1964 between Gordon Hutchinson and Adina Hutchinson. He submitted that by that deed the Defendant's mother became owner of the land and had sold some of the land to the Claimant. He said that the Defandant could not deal with the remainder of the land as the grant should have gone to Edward's estate.

[22] It has not been disputed that Edward Hutchinson died intestate but a recital in the deed 598 of 1964 said before his death Edward gave the lands to his wife Mary Ann. It does not say how that was done. Did he make a will? Or did he execute a deed? There is no evidence to that effect. One has to be so careful with recitals in those deeds. Besides it should be noted there is a penalty for administering an estate without probate or letters of administration. See Halsbury's Laws of England, Volume 17, paragraph 764. Perhaps Gordon and Adina are at fault here.

[23] As I indicated even under the primo genitor rule it was possible for the Defendant to obtain a grant if all the male lines had failed and his mother was next in line. But there is another aspect of the case. If as seems to be the case that the estate of Edward Hutchinson remained unadministered in 1988. Could not the Defendant apply for administration under the post 1947 law?

[24] In my judgment either under the old or the new law the Defendant was entitled to the grant and could make the vesting deed in himself and with that obtain the authority to exchange the land with the Claimant.

[25] But what really is the concern of the Claimant? He entered into a contract with the Defendant and no body has interfered with his possession to this day. Section 52 of the Administration of Estates Act states that the validity of the conveyance is not affected by revocation of a grant of letters of administration. Paragraphs 735 and 736 of Volume 17 of Halsbury's Laws of England dealing with "the doctrine of relation back" is to the same effect. So the Claimant is protected even if the Defendant's grant was impeachable.

[26] I am of the view that the Claimant was motivated by spite or some other factor to bring this action which is totally unjustified. Needless to say I do not believe him that the Defendant cut any of his peas trees except those that were over hanging the constructed road and causing a nuisance to those using it. In any case the Claimant did not plead or give evidence of the value of the trees and would not be entitled to special damages.

[27] For the reasons stated above the Claimant's suit is dismissed and he is to pay the Defendant's costs in the amount of $4,000.00.

A.N.J. MATTHEW
HIGH COURT JUDGE (Ag.)