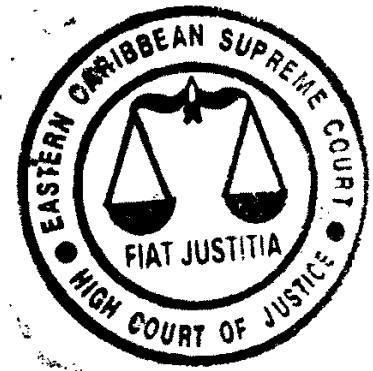


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO. 491 OF 2005



BETWEEN:

HAMILTON RICHARDS
BERISFORD RICHARDS
HERLAN ROGERS

Claimants

V

CARMEL MATTHEWS
ORANDE MATTHEWS
SUREN MATTHEWS
KEISHA MATTHEWS
WINSTON CHARLES

Defendants

Appearances:

Mr. R. Browne for the Claimants

Mr. O.J.B. Dennie for the Defendants

2007: April 4, 11 & 20

JUDGMENT

- [1] **MATTHEW J (Ag.):** On October 28, 2005 the Claimants, who are the children of James Richards deceased and Ruby Richards, brought an action against the Defendants asking for possession of their land located at Calder; an injunction to restrain the Defendants from threatening them and from remaining in possession of the said land; and costs. Defendants 2 to 4 are the children of the First Defendant and the Fifth Defendant is her boyfriend.

- [2] In their defence filed on November 24, 2005 the First Defendant alleged that she has for over 12 years been living on the said parcel of land at Calder with her three children whose father is the First Claimant, Hamilton Richards.
- [3] The First Defendant further alleged that in the year 1992 Hamilton Richards moved the Defendant's chattel house and her children from a spot at Bonhomme where they rented to the said parcel of land at Calder and in effect gave her the portion of land where the house is presently located.
- [4] The First Defendant denied paragraph 4 of the Statement of Claim that she is or was a tenant at will and stated that the house she is living in is a wall house which was constructed with the knowledge and assistance of Hamilton Richards.

EVIDENCE

- [5] At the trial Hamilton Richards and his sister, Herlan Rogers, produced witness statements and were subject to cross-examination. Carmel Matthews, Keisha Matthews and Suren Matthews also tendered witness statements and were subject to cross-examination.
- [6] Hamilton Richards stated that his father, James Richards, died on October 24, 1988 leaving a portion of land at Calder measuring about $\frac{3}{4}$ of an acre to his wife and seven children.
- [7] On October 16, 2001, Master Charmaine Pemberton granted an order empowering the Registrar of the High Court to execute a deed of assent in favour of the beneficiaries who had not received their share and entitlement.
- [8] The First Claimant stated that he had a common-law relationship with the First Defendant during which she bore him two children but the relationship ended many years ago. He said they never at any time lived together, he being married all along.

- [9] The First Claimant alleged that when the First Defendant was evicted from Bonhomme, with her chattel house thrown in the road, she begged him to talk to his siblings to allow her to rest her house on the land for a little while as she had spoken to someone about renting a piece of land to her. They all agreed.
- [10] Hamilton Richards said he never gave any land in Calder to the First Defendant. He said all taxes are being paid in his father's name and Carmel Matthews has no legal document to prove her ownership of the land.
- [11] He stated that himself and his siblings were often threatened by the Defendants who destroyed their crops on the land. The First and Fifth Defendants threatened to chop him up and to burn him with acid. Winston Charles had previously injured him with a piece of building block over his left eye. As a result he stopped frequenting the land.
- [12] He said the First Defendant began to use blocks, which he had purchased for his sister, to transform her chattel house into a wall structure. Her son, Larry Matthews, attacked Herlan Rogers and was found guilty at the Calliaqua Magistrates' Court. Larry was again found guilty of assaulting his niece, Eloise Rogers.
- [13] When he was cross-examined he said Carmel Matthews moved from Argyle to Bonhomme on land belonging to Samuel Nelson but he was not the one who contacted Samuel Nelson and who used to pay the rent for the land. He said he could not remember the year he allowed Carmel to place the house on the land and did not tell her his children are not going to live at Diamond where she intended to obtain a lot for rent.
- [14] He said the parcel of land where Carmel's house was placed is not his, but belongs to his sister Anita, who resides in England. Anita had sent \$800.00 to him to purchase blocks which he put on the land before Carmel went on the land. He said the land was not divided.

- [15] He admitted that in 1999 he caused a letter to be written to Carmel asking her to leave and it took six years to bring the action. He said he was a married man when he was with Carmel and never slept at the house in Calder. No evidence of that letter was tendered.
- [16] He said Carmel's house is completely wall and he did not know how long it took her to build it. He said she used his sister's blocks to do so. He said he went to his solicitor when he saw her building the house.
- [17] Upon re-examination Hamilton stated that a number of letters were sent to Carmel Matthews by his solicitor. He said he went to his solicitor to have him write to her when she was building the wall house and proceedings began shortly thereafter. He said on one occasion Carmel Matthews attended the solicitor's office in his presence when she asked him to give her some more time to leave as she was looking around to get somewhere to go.
- [18] Herlan Rogers stated that her brother asked her to give permission to the First Defendant to rest her house for a little while and she agreed especially as Carmel had the children.
- [19] She said in 2004 the First Defendant and her son, Larry Matthews, attacked her, beating her to the ground on the said land and kicking her viciously in her back. She said the following year the First Defendant attacked her daughter, Eloise Rogers, who lived on the land and she was found guilty of assault by Magistrate Simone Churaman at the Calliaqua Magistrates' Court.
- [20] When she was cross-examined she said she had identified her portion of land but had not received her share. She said Berisford and Hamilton had also identified their portions. And so did her sister Anita. She said her deed has been prepared but she had not received it yet. She said it was on her sister's portion that Carmel had built the wall house. She said she saw the wall house being built by Carmel in 2006, after the proceedings in this suit had begun.

- [21] She said Carmel's wall house is on a foundation that was built by her brother for Anita. She could not say how long it took to build the wall house. She said she does have an interest in the action for the land is not yet divided.
- [22] In her witness statement Carmel Matthews stated that she knows Hamilton Richards for over 23 years and they began an intimate relationship in the year 1992. She said at the time she was living on a parcel of land at Argyle. She said she had to vacate the land at Argyle and it was Hamilton who made arrangements for her to get her chattel house to Bonhomme.
- [23] She said while at Bonhomme she gave birth to three children for Hamilton Richards, namely Kevin Matthews, born May 26, 1986; Shanique Matthews born January 20, 1988; and Alonso Matthews born September 18, 1989. She said she lived on the parcel of land at Bonhomme for about 10 years.
- [24] She stated that Hamilton said he was going to give her a portion of land his father had left for him because he did not want his children to live at Diamond where she was trying to locate her chattel house.
- [25] She said she then moved to Calder in 1993 and has been living there ever since. She said Hamilton got someone to move the house from Bonhomme to Calder and he then began to build blocks around the house. She said Hamilton used to sleep in the house at Calder from time to time until they broke up in 1999.
- [26] She said in the year 2003 by which time she had made the improvements to the house she received a letter from Lawyer Theodore Browne dated October 10, 2003 in connection with her occupation of the said parcel of land.
- [27] Under cross-examination she denied that Mr. Samuel Nelson, her landlord at Bonhomme, had broken down the house while she was sleeping and put it on the road. She said she did not ask Hamilton Richards to put the house at Calder and she did not see a wall

basement when she first moved to Calder. She said Hamilton Richards built the foundation for the house and bought the blocks for her house. Mr. Richards did tender a receipt for the blocks dated 1992.

[28] She denied receiving several notices from Mr. Theodore Browne and denied going to his office with Hamilton Richards. She admitted being at the Calliaqua Magistrates' Court for assaulting Herlan Rogers' daughter. She said she started building a wall house in 1993 and not in 2003. Planning Department did not give her permission to build but Mr. Richards gave her permission.

[29] Keisha Matthews was born on June 28, 1980. She lived with her mother, Carmel Matthews, at Bonhomme until the year 1993 when they relocated to Pomsette Calder where Hamilton Richards had a parcel of land. In December 1996 she went to Canada where she spent eight months.

[30] Under cross-examination she said she lived with her mother at Calder for 8 years and she was living there when her mother started to build the wall house in 1998.

[31] Suren Matthews whose correct name is Larry, is a carpenter and was born on April 17, 1982. He is the son of Carmel Matthews. He too remembers that in 1993 his mother relocated her house to Pomsette, Calder on a portion of land owned by Hamilton Richards.

[32] He said that his mother over the years made improvements to the house which now comprises two bedrooms; a kitchen; and a bath and toilet. The house now has pipe borne water and electricity and valued at \$60,000.00

[33] Under cross-examination he stated that it was his mum and Mr. Richards who started the wall house. He admitted that Herlan Rogers and himself had an altercation and the matter reached Court and since the altercation Herlan Rogers does not come to the land as often.

[34] He said the wall house was finished about 1998.

SUBMISSIONS OF COUNSEL

- [35] Learned Counsel for the Claimants submitted that the Defendant's claim of undisturbed and uninterrupted possession of land over 12 years is not founded and cannot be maintained in the light of the Order of Master Charmaine Pemberton made on October 16, 2001, empowering the Registrar of the High Court of Justice to execute a Deed of Assent in favour of the Beneficiaries under the Will of James Richards.
- [36] As regards the Defendant's assertion of gift Counsel submitted that Section 3(1) of Cap. 93 of the Laws of Saint Vincent and the Grenadines – Registration of Documents – states that documents relating to land must be registered and the First Defendant has no such document.
- [37] By reference to the Third Edition of Halsburys Laws of England paragraph 1182 (Volume not given) Counsel seems to be indicating that the defence of laches is not maintainable.
- [38] Learned Counsel for the Defendants submitted that there was an inordinate delay on the part of the Claimants to institute legal proceedings against the Defendants and the Court of Equity will not support such inordinate delay.
- [39] Counsel asked the Court to find as a fact that the parcel of land in question represents the share of Hamilton Richards of his deceased father's estate and that Hamilton gave the said parcel of land to the First Defendant for her benefit and that of their children.
- [40] Counsel referred to the law of possessory estoppel found at the Third Edition of Halsbury's Laws of England, Volume 15, pages 175 to 176 and to the case **Central London Property Trust Ltd va High Trees House Ltd** 1956 1 All E.R. page 256 and per Lord Denning at page 258 letter E to page 259 letter A.

[41] Counsel also relied on the Limitation Act, Chapter 90 of the Laws of Saint Vincent and the Grenadines which at Section 17(1) states –

“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

CONCLUSIONS

[42] *Nemo dat quod non habet*. There is an undoubted principle of law that where land is undivided, none of the joint owners is able to lay claim to any particular spot or area of land. When I was a full fledged High Court Judge between 1986 and 1996, I gave several judgments to this effect, one being suit No. 381 of 1985 Mondesire v Jules, which were buttressed by the judgment of the Honourable Sir Neville Peterkin in the Court of Appeal in the case, Caesar Dolor v Martin Lee Magisterial Civil Appeal No. 2 of 1975. Herlan Rogers is correct that she has an interest in these proceedings.

[43] I took note of the fact that learned Counsel for the Defendants attempted to produce documentary evidence in this case after the trial was concluded. But the fact that the Registrar of the High Court made an order vesting the land in the beneficiaries does not mean the land was divided. Neither does the fact that most of the beneficiaries identified their spots. As stated by Herlan Rogers she had not yet received her deed and there is no evidence that other siblings have received deeds with boundaries and measurements demarcating their individual portions. In fact, Hamilton Richards when cross-examined said he has not received his deed.

[44] Land cannot be donated in the same way that a young man gives his fiancée a bar of chocolate. As learned Counsel for the Claimants submitted the documents relating to title to land must be registered. See Section 3 (1) (a) of Cap. 93 of the Laws of Saint Vincent and the Grenadines pertaining to Registration of Documents.

[45] It follows that Hamilton Richards did not have the capacity to make a gift of a portion of undivided land to Carmel Matthews. Learned Counsel for the Defendants asked me to find

as a fact that the parcel of land in question represents Hamilton Richards' share in his deceased father's estate and that Hamilton gave his portion to the First Defendant. I regret not being able so to find. I do not believe that Hamilton Richards ever gave or attempted to give the land to Carmel Matthews. I do not believe Hamilton Richards built or helped in building the wall house on the land in question.

[46] It would also follow that the Defendants' submissions based on promissory estoppel must fail for there were no words, conduct or promise made by Hamilton that would bring into operation the estoppel.

[47] I also respond to the first issue for determination set out by the Defendants, namely whether on a balance of probabilities the Court is satisfied from the evidence adduced at the trial that the Defendants are tenants at will of the Claimants or that the First Defendant was given the parcel of land by Hamilton Richards for herself and their children. My response is my finding in respect of the first alternative.

[48] The First Defendant was never in adverse possession of the land. She was permitted to rest her board house on the land until she found some where else to go: in my judgment, a tenancy at will.

[49] In his final submissions learned Counsel for the Defendants downplayed the defence that took prominence in his pleadings, namely, that the First Defendant has for over 12 years been living on a parcel of land at Calder and is in undisturbed and uninterrupted possession; and therefore the Claimant's title to the said parcel of land has been extinguished by virtue of the provisions of the Limitation Act, Chapter 90 of the Laws of Saint Vincent and the Grenadines. See paragraphs 1 and 16 of the defence in particular.

[50] I find that the First Defendant has been on the land from 1993 to the present time, approximately 14 years. But the possession has to be undisturbed and uninterrupted. The letter from Browne and Browne dated October 10, 2003 which has been in evidence at page 54 of the Trial Bundle interrupted the possession after 10 years. It was a "Notice to

Quit and not Build." The defence based on Section 17 of the Limitation Act, referred to above, would therefore likewise fail. And so is the defence based on laches or inordinate delay on the part of the Claimants to institute legal proceedings

[51] There were different versions as to when the First Defendant began to build the wall house. The First Defendant under cross-examination stated that she started to build the wall house in 1993 without Planning permission. Since that was the year she said she moved into Calder this was a bit of effrontery and exhibits the character and attitude of the First Defendant.

[52] Keisha Matthews under cross-examination stated that her mother started to build the wall house in 1998. Suren Mathews under cross-examination stated the wall house was finished about 1998 although in his witness statement he stated that his mother made improvements to the house over the years. Herlan Rogers under cross-examination stated that she saw the house being built just last year, in 2006. I find as a fact that the First Defendant began to make improvements or build the wall house before and after she received the Notice to Quit from the solicitors, Browne and Browne. In the first event as a tenant at will she was placing a concrete structure on the land without Planning permission and without the consent of the owners; and in the second event she was building despite the notice to quit and despite proceedings having begun on October 28, 2005.

[53] The First Defendant and her cohorts maintained possession by violence and threats of violence. The First Defendant's boyfriend had previously injured Hamilton Richards with a piece of building block over his left eye; she and her boyfriend later threatened to chop up Hamilton and burn him with acid. As a result he stopped frequenting the land. Hamilton was not cross-examined on that aspect of his evidence.

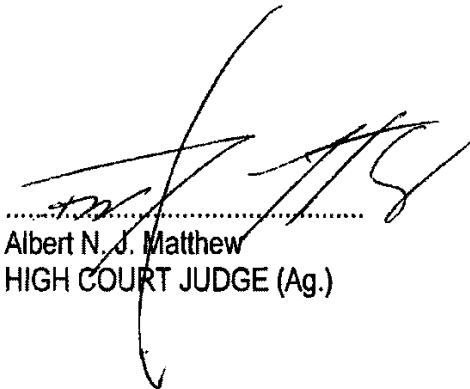
[54] In 2004 the First Defendant and her son, Suren, attacked Herlan Rogers beating her to the ground and kicking her viciously on her back. In the following year, the First Defendant attacked Herlan's daughter, Eloise Rogers, who was living on the land. There were convictions at the Calliaqua Magistrates' Court in respect of both events. Herlan Rogers

was not cross-examined on this aspect of her evidence. As a result Herlan Rogers would not come to the land often according to Suren Matthews under cross-examination.

[55] What comes to mind here is the parable of the owner of the vineyard who let his land to hirers. The owner sent a first set of servants to collect his rents. The hirers beat up one servant, stoned another and killed a third. The owner sent a second set of servants and they received the same treatment. The owner then sent his son saying they will reverence him. But the hirers jumped on the son saying he is the heir. They caught him, slew him and threw him out of the vineyard. The passage asks the question: "When the lord of the vineyard cometh what will he do unto those wicked husbandmen?"

[56] The answer was: He will miserably destroy those wicked men and will let out his vineyard to other husbandmen who will render him the fruits in their season.

[57] I order judgment for the Claimants. The Defendants are to deliver possession to the Claimants not later than June 30, 2007 and to pay the Claimants' costs in the amount of \$4,000.00.



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Albert N. J. Matthew
HIGH COURT JUDGE (Ag.)