

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 605 of 1999

BETWEEN:

**GUARDSMAN QUAMMIE (by his
Attorney-on-Record LEWIS STEPHENS)**

Claimant

v

HELON QUAMMIE

Defendant

Appearances: Mr. Emery Robertson Sr. and Mr. Moet Malcolm for the Claimant.
Mr. Carlyle Dougan Q.C. for the Defendant

2005: October 26;
2008: April 16;
September 16.

JUDGMENT

[1] **THOM, J:** This is a claim for a declaration that Guardsman Quammie is the fee simple owner of a dwelling house and a parcel of land situate at Ratho Mill.

[2] Guardsman Quammie (now deceased) and Helon Quammie were brothers. Their father was Prince Quammie (deceased). In 1974 Prince Quammie owned a dwelling house at Ratho Mill along with one and one quarter acres of land. Prince Quammie also owned several other parcels of land. The dwelling house and land at Ratho Mill were subject to a mortgage. By Deed of Gift No. 2355 of 1974 Prince Quammie conveyed his dwelling house and one-half acre of land to Guardsman Quammie, along with one acre of land at Glamorgan. The Deed was duly registered. Guardsman Quammie's name was registered at the Land Tax Department and he commenced payment of the taxes for the property. During 1980 Prince Quammie was hospitalized. When he was released from hospital he

made a will in which he bequeathed lands to both Guardsman Quammie and Helon Quammie. He also executed several Deeds of Gift disposing of several parcels of his land. One such Deed of Gift was Deed No. 1264 of 1980 by which he conveyed the same dwelling house at Ratho Mill and 5, 367 square feet of land to Helon Quammie. This Deed was also registered, and Helon Quammie commenced payment of taxes for the property. Guardsman Quammie's name was removed from the Tax Register and it was subsequently reinstated. It was later again removed. On September 8, 1999 Guardsman Quammie instituted these proceedings seeking among other things a declaration that he is the lawful owner of the dwelling house and the land described in the schedule of Deed No. 2355 of 1974.

[3] Helon Quammie in his defence and counterclaim alleged the following:

- (a) Guardsman Quammie is estopped from claiming that the land does not belong to him.
- (b) The Deed was executed under fraudulent circumstances.
- (c) The Deed was executed under a mistake; Prince Quammie intended to give the land at Glamorgan to Guardsman Quammie but was not aware that the property was included in Guardsman Quammie's Deed.

Helon Quammie sought inter alia the following reliefs:

- (a) Cancellation of the first schedule to the Plaintiff's Deed.
- (b) A declaration that the Defendant is the fee simple owner of the parcel of land mentioned in the Deed of the Defendant.

ISSUE:

[4] The issue is whether Deed No. 2355 of 1974 is a valid Deed.

FINDINGS OF FACTS:

[5] Guardsman Quammie testified and called one witness, his son Nesta Quammie. Helon Quammie testified and called three witnesses being Obed Quammie his son, Ingrid

Quammie his daughter and Hyacinth Morgan the niece of both Helon and Guardsman Quammie. However, the evidence in relation to Deed No. 2355 of 1974 and Deed No. 1264 of 1980 were given by Guardsman Quammie and Helon Quammie. Neither witness was contradicted in a material way.

[6] Having seen both witnesses, I believe the testimony of Guardsman Quammie. He was the eldest son of Prince Quammie and Miriam Quammie and he lived with them at Ratho Mill while he resided in St. Vincent and the Grenadines, and he contributed financially to their upkeep. When he migrated to Canada in 1971, he continued to support them financially. In 1974 Prince Quammie executed Deed No. 2355 in his favour thereby conveying to him the dwelling house and one-half acre of land at Ratho Mill, and one acre of land at Glamorgan. At that time Helon Quammie had a parcel of land and had built a house thereon. When Prince Quammie took ill in 1980 and was hospitalized Helon Quammie took care of him. When he was released from hospital Prince Quammie made a will and executed several Deeds of Gift thereby conveying lands to his children. Deed No. 1264 of 1980 was one such gift made in favour of Helon Quammie in which Prince Quammie sought to convey to him the dwelling house and 5,374 square feet of land at Ratho Mill.

[7] Helon Quammie in his evidence in chief stated that he became aware of Deed No. 2355 of 1974 in 1999 when he was served with a writ. However, under cross-examination he agreed that he learnt of the Deed in 1995. I believe that he learnt of the Deed the latest in 1995 when his name was taken off the Tax Register.

SUBMISSIONS:

- [8] Learned Queen's Counsel for Helon Quammie made the following submissions:
- (a) The lands described in the schedules of the Deeds differ in every material particular.
 - (b) In 1974 Prince Quammie did not own the legal estate in the land.
 - (c) In 1974 Prince Quammie was married to Miriam Quammie who was entitled to one-half share interest in the property.

- (d) There were differences in the signature of the witness Maureen Gabriel on the Deed and on the Declaration.
- (e) Guardsman Quammie's Deed was executed under fraudulent circumstances.
- (f) Guardsman Quammie is estopped from claiming the property.
- (g) The doctrine of laches apply.
- (h) Undue influence.

DESCRIPTION OF LAND:

[9] Learned Queen's Counsel submitted that the description of the lands in the schedules of the Deeds differ in every material particular. On examination of the Deeds I agree that the description differs; however I note that the land that was being conveyed to Guardsman Quammie was only a portion of the parcel of land that was owned by Prince Quammie. Further, no evidence was led to show that the description did not form part of the parcel of land owned by Prince Quammie. I find that this submission has no merit.

LEGAL ESTATE:

[10] Learned Queen's Counsel submitted that the legal estate in the property was not vested in Prince Quammie at the time he executed the Deed in favour of Guardsman Quammie since the land was subject to a mortgage. Prince Quammie only had the equity of redemption in the land and therefore the Deed is voidable. This submission has no merit. It is not disputed that the land was subject to a mortgage in 1974 and that it was released in 1976. Where land which is the subject of a mortgage is transferred, the land is transferred subject to the mortgage. The mortgagee's rights are in no way affected. Further, it cannot be said that Helon Quammie was a party to the contract and so could exercise the right of avoidance. In **Halsbury Laws of England** 4th Ed. Volume 9 at paragraph 207 the Learned Author stated:

"Imperfect Contracts

... A "voidable contract" is one which is initially valid, but where one or more of the parties has a right of election to avoid or to continue and so validate it. Unless and until a right of avoidance is exercised a voidable contract remains valid, but, whilst

the right of avoidance remains, it may be exercised whether the contract is executory or executed.”

MIRIAM QUAMMIE:

[11] Learned Queen’s Counsel submitted that in 1974 Prince Quammie was married to Miriam Quammie and she was entitled to one-half share interest in the property, therefore. He, Prince Quammie, could not transfer the property to Guardsman Quammie. This submission has no merit. This issue was not included in the pleadings. It is interesting to note that Miriam Quammie was alive when Prince Quammie executed Deed No. 1264 of 1980 in favour of Helon Quammie.

SIGNATURE OF MAUREEN GABRIEL

[12] Learned Queen’s Counsel submitted that there are differences in the signature of the witness Maureen Gabriel on the Deed No. 2355 of 1974 and the Declaration to the Deed. Having examined the Deed and the Declaration I see no difference in the signatures. Further, no expert evidence was led on which the court could find that the signatures were made by two different persons.

FRAUD:

[13] Learned Queen’s Counsel made no submissions on this issue. No evidence of fraud was led at the trial.

ESTOPPEL:

[14] Learned Queen’s Counsel submitted that the doctrine of estoppel by pais was applicable since Helon Quammie stated that in July 1985 Prince Quammie told Guardsman Quammie that he had not given the land to him but rather to Helon Quammie and Guardsman

Quammie waited until the death of Prince Quammie and his wife to challenge Helon Quammie's Deed.

[15] I find that this submission has no merit. The doctrine is not applicable in this case. As indicated earlier I believe the evidence of Guardsman Quammie. I believe that Helon Quammie looked after Prince Quammie while he was a patient in the hospital in 1980 and on his release he executed Deed No. 1264 of 1980 in favour of Helon Quammie, but he had already executed Deed No. 2355 of 1974 in favour of Guardsman Quammie in which he had conveyed the dwelling house and one half acre of land

LACHES:

[16] Learned Queen's Counsel submitted that the doctrine of Laches is applicable since Guardsman Quammie was aware in 1980 of Deed No. 1264 of 1980 in favour of Helon Quammie, and he was aware that Prince Quammie stated in 1985 that he had given the land to Helon Quammie and Guardsman Quammie only sought to have Helon Quammie's Deed cancelled in 1999.

[17] The doctrine of Laches applies to bar equitable claims that are attended by delay or prejudice. I find that the doctrine of Laches is not applicable in this case. Helon Quammie's Deed is void in so far as it purports to convey the dwelling house and any portion of the land conveyed in Deed No. 2355 of 1974. Prince Quammie having transferred the dwelling house and the land described in Deed No. 2355 to Guardsman Quammie in 1974 he could not transfer the same dwelling house and any portion of the land described in Deed No. 2355 to Helon Quammie in 1980.

UNDUE INFLUENCE:

[18] Learned Queen's Counsel submitted that in 1974 Prince Quammie was an old man who received no independent legal advice. This issue was not included in the pleadings. The evidence shows that Prince Quammie was sixty-eight years old in 1974. No evidence was

led to support an allegation of actual undue influence or to raise the presumption of undue influence. I note also that a conveyance which was as a result of undue influence may be set aside by the person influenced or on his bankruptcy by his trustee or on his death his personal representative. The personal representative of Prince Quammie was not a party to these proceedings.

[19] In view of the above, I find that Deed No. 2355 of 1974 is a valid Deed. Having executed Deed No. 2355 of 1974, Prince Quammie could not convey any legal interest in the dwelling house and any portion of the land described in Deed No. 2355 of 1974 to Helon Quammie by Deed No. 1264 of 1980.

COUNTERCLAIM:

[20] In his counterclaim Helon Quammie sought a cancellation of the First Schedule to Deed No. 2355 of 1974, and a declaration that he is the fee simple owner of the land described in Deed No. 1264 of 1980.

[21] In view of my findings above the counterclaim is dismissed.

[22] Judgment is entered for the Claimant. It is ordered that:

- (a) A declaration is hereby granted that the Claimant is the fee simple owner of all of the property described in Deed No. 2355 of 1974.

- (b) Deed No. 1264 of 1980 is void in so far as it purports to convey the dwelling house and any portion of the land described in Deed No. 2355 of 1974.

- (c) The Defendant shall pay the Claimant costs in the sum of \$20,000 pursuant to Case Management Order dated 11th April 2005.

.....
Gertel Thom
HIGH COURT JUDGE