SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2009/006

BETWEEN:

MARIUS WILSON

Appellant

and

[1] JULIENNE JAMES
[2] ANDREW WILSON
[3] MELCHAID WILSON

Respondents

Before:

The Hon. Mr. Hugh A. Rawlins	Chief Justice
The Hon. Mde. Ola Mae Edwards	Justice of Appeal
The Hon. Mde. Rita Joseph-Olivetti	Justice of Appeal [Ag.]

Appearances:

Mr. Marius Wilson in person
Mr. Hilford Deterville for the Respondents

2009: March 26;
July 06.

Application to adduce fresh evidence in civil appeal – notorial instruments – contradicting contents of deeds of sale outside of improbation proceedings – Articles 1141 – 1142 of Civil Code of St Lucia – Section 56(1) Land Registration Act – whether criteria for granting application satisfied

Upon a claim for improbation of a deed of sale relating to Parcel 2032B 12, the court after improbating the deed made orders including that the appellant account for his dealing with four (4) of the parcels carved from Parcel 2032B 12. The appellant accounted that he had subdivided the parcel into five (5) parcels and had disposed of four (4) parcels by conveying them to persons including Clarence Rambally and Clarencia Stephen. He stated that he had received no consideration for any of these conveyances despite the contents of the deeds of sale which clearly stated that the appellant as proprietor had sold the land for stipulated prices.

With regard to the parcel which were conveyed to Clarence Rambally and the parcel conveyed to Clarencia Stephen, the appellant stated that he was informed by the trustees for sale and Mr. Rambally that payment had been made by Mr. Rambally in 1982 to the trustees for sale in cash and kind.

Having appealed the order of Georges J of 4th February 2009 rejecting this account, the appellant filed an application to adduce fresh evidence from two (2) witnesses and to rely on fresh documentary exhibits discovered by him after 4th February 2009 which were a deed of sale registered in 1982 and a default judgment entered and registered in 1983. This fresh evidence he contended would establish that two (2) of the respondents had received payments from Mr. Rambally in 1982 for their respective 1/8th share and were not entitled to bring the claim against him; and that he had mistakenly or fraudulently conveyed all of the land to Mr. Rambally because of Mr. Rambally's non-disclosure.

Held: dismissing the application and awarding costs to the respondents to be assessed on submissions by counsel for the respondents and the appellant within 14 days from the delivery of this judgment.

1. "That there are three conditions which must be fulfilled; first, it must be shown that the evidence could not have been obtained with reasonable diligence for the use at the trial; second, the evidence must be such that if given, it would have an important influence on the result of the case, although it need not be decisive; third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible."

   Ladd v Marshall [1954] 1 WLR 1489 followed.

2. That the appellant has failed to fulfill conditions 1 and 2 where:

   (i) the 1982 registered deed of sale and the Default Judgment entered and registered in 1983 are public records which the appellant must be deemed to have notice of from the date of their registration;

   (ii) the deed that the appellant seeks to rely on as fresh evidence, could have been made available to the learned judge in the court below because his witness, Mark Wilson who is also his father, was a party to the transaction in this deed of 1982;

   (iii) having regard to section 56(1) of the Land Registration Act Cap 5:01 and Articles 1141 and 1142 of the Civil Code the fresh evidence sought to be adduced cannot be used to contradict the contents of the two (2) deeds of sale for which no improbation proceedings have been brought by the appellant as the deeds of sale are notarial instruments and authentic writings and their contents are deemed to be true until set aside by improbation proceedings.

JUDGMENT

[1] EDWARDS, J.A.: This is an application to adduce fresh evidence from 2 witnesses Ms. Irene Cadasse and her son Mr. Joseph Cadasse at the future hearing of the appeal against the decision of Georges J delivered on 4th February 2009. In this decision Georges J rejected the appellant's evidence and ordered him, among other things, to pay each of the respondents for the value of their 1/8th share in parcel 2032B 12 situate at Trous Gras Estate. The appellant had sub-divided this parcel into 5 parcels, retained one parcel for himself; while disposing of the other 4 parcels by deeds of sale. The appellant is an attorney at law who is related to the respondents, and the property comprised in parcel 2032B 12 is family land. The appellant's case is that he never received any consideration for the conveyances in the other 4 deeds of sale; and the 2nd and 3rd respondents cannot claim for their 1/8th shares in parcel 2032B 12 as he had acted in conformity with the instructions of the trustees for sale in dealing with the property.

Background Facts

[2] The respondents brought a claim against the appellant for improbation of the deed of sale for parcel 2032B 12, and consequential relief including payment of 1/8th share in the Trous Gras Estate to each respondent. The respondents contended that the deed of sale for parcel 2032B 12 which was registered on 29th March 1993, was allegedly executed by the respondents on 25th March, 1993 and was not executed in the presence of Esther Greene Notary Royal in accordance with the law. Under this deed of sale the family land was purportedly transferred to the appellant as purchaser for the sum of $10,000.00. The appellant thereafter sub-divided the family land into the following parcels: (a) parcel 2032B 17, (b) parcel 2032B 19, (c) parcel 2032B 21 (d) parcel 2032B 26 and (e) parcel 2032B 27.

[3] The appellant conveyed to his sister Kate Wilson for $10,000.00 as purchaser of parcel 2032B 19, by a registered deed of sale executed on 12th October 1995. By another registered deed of sale the appellant conveyed to Kerby Allain and Cecilia

Allain as purchasers of parcel 2032B 17 comprising 1.16 acres of land for the sum of $47,250.00 on 12th August 1996.

[4] Parcel 2032B 26 comprising 7.21 acres was transferred by the appellant to Clarence Rambally and Josephine Rambally as purchasers for the sum of $119,000.00 by registered deed of sale executed on 3rd August 1999; but the whole of the purchase price was not paid at the time; the sum of $34,000.00 which was noted as outstanding in the deed was realized on 10th September 1999 when the appellant acknowledged receipt of the payment of that balance. Another parcel 2032B 27 comprising 23.97 acres of land was transferred to Clarencia Stephen as purchaser for the sum of $65,000.00 under a registered deed of sale executed on 24th August 2001 before Clarence Rambally, Notary Royal. Parcel 2032B 21 was retained by the appellant for himself.

[5] The appellant's case from the outset is that he received no consideration for the transfers to Kate Wilson, Clarence Rambally and Clarencia Stephen. He alleged that the conveyance to his sister was gratuitous to enable her to finance her legal studies. Regarding parcels 2032B 26 and 27, the appellant contended that he merely took instructions from Mr. Rambally and the trustees for sale namely Melchaid and Andrew Wilson (the respondents) to execute the deeds of sale for these parcels; and he conveyed all of the property comprised in these parcels because Clarence Rambally requested him to do so in that manner. He was informed by the trustees for sale that the payment for the property had previously been made by Mr. Rambally to them in 1982, partly in cash, with a green Toyota van, chainsaw equipment, lumber and a bull. The appellant's contention was supported by affidavit evidence from Mark Wilson and Jn Baptiste Wilson; both of whom are heirs to the property, the latter being a trustee for sale. Mark Wilson is the father of the appellant.

[6] On 19th September 2007 Mason J ordered, among other things, that the deed of sale for parcel 2032B 12 be improbated; that the respondents be registered as trustees for sale for parcel 2032B 21 and that the appellant account for his

dealings with the family land. Upon the final hearing of the claim by Georges J on 27th October 2008 the learned judge delivered a written judgment on 4th February 2009. In this judgment Georges J found that the appellant had failed to give proper financial accounting in respect of any of the transactions which allegedly occurred according to the appellant; and that Mark Wilson was at no time authorized by the trustees for sale or the respondents to act on their behalf with respect to parcel 2032B 12; or to survey, mutate, sell, transfer or dispose of the land on their behalf. The learned judge made the following order:

> "(i) That the Defendant [appellant] do pay each of the Claimants an amount equal to 1/8th of the net amount realized as a result of the sale of Parcel 2032B 17, Parcel 2032B 19, Parcel 2032B 26 and Parcel 2032 B 27 i.e. The value of their share in Parcel 2032B 12.
> (ii) That the Defendant [appellant] produces by the 16th February 2009 to the satisfaction of the Court verifiable accounts of the list of expenses incurred in effecting the said sales then the amount earned as a result of the said sales shall be deemed to be equal to the amount shown on the Deeds of Sale as the sale price for each of the said parcels.
> (iii) That the Defendant do pay to the Claimants their costs of and occasioned by this suit to be assessed on an indemnity basis."

The Application to Adduce Fresh Evidence

[7] The appellant's application was filed on 9th March, 2009. He contends that on 6th February 2009 following his diligent search to obtain corroborative evidence; he tracked down in a remote rural part of Sarrot, Irene and Joseph Cadasse whose evidence will support his version of the events concerning parcels 2032B 26 and 27. Joseph Cadasse was involved in a past transaction with the heirs of the Trous Gras Estate. Irene Cadasse who was the common law wife of Alexis Gaspard deceased, has direct knowledge of the business arrangements that Alexis Gaspard, Joseph Cadasse and Clarence Rambally entered into with 3 of the heirs of Trous Gras lands whereby Mark Wilson, Andrew Wilson and Melchaid Wilson were to sell their interests in the land to Clarence Rambally on the payment terms outlined by the appellant.

[8] The affidavit evidence of these 2 witnesses along with a documentary exhibit disclosed by Irene Cadasse also show that Mark Wilson one of the heirs to the property, sold his share to Alexis Gaspard for $6,000.00 by deed of sale executed on 5th March 1982 in the presence of Notary Royal Clarence Rambally. The proposed new witnesses have confirmed in their affidavit that no deed was executed by any of the heirs for their shares they had sold to Mr. Rambally. The appellant also contends that his documentary exhibit – default judgment entered in Suit No. 64 of 1983 between Clarence Rambally and Melchaid Wilson for the sum of $7,000.00, which bears the High Court Registry stamp dated 11th November 1983, supports his allegations that Clarence Rambally had prior dealings with the respondents.

[9] The appellant contends further that the fresh evidence reveals that 3/8th of the family land had been the subject matter of the 1982 transaction; and Clarence Rambally had misrepresented to the appellant that he was entitled to all of the lands comprised in parcels 2032B 26 and 27. The appellant submitted that 6/8th of these lands were mistakenly or fraudulently conveyed to Clarence Rambally who did not disclose that 1/8th share had already been conveyed to Alexis Gaspard. The appellant argued before us that the new evidence confirms that Andrew and Melchaid Wilson had received payment from Mr. Rambally in 1982 for their respective 1/8th share of the property and therefore were not entitled to bring the present claim against the appellant. The appellant concluded that had this new evidence been available in the court below it would probably or definitely have had an important influence on the result of his case which was rejected by the lower court.

The Law and Submissions

[10] The law governing this application has been accurately stated by both the appellant and Mr. Deterville Q.C. This court has repeatedly stated that fresh evidence will normally be admitted only in accordance with the principles in Ladd v Marshall[1].

[1] [1954] 1 WLR 1489

Denning L.J. explained in Ladd v Marshall "that there are three conditions which must be fulfilled; first, it must be shown that the evidence could not have been obtained with reasonable diligence for the use at the trial; second, the evidence must be such that if given, it would have an important influence on the result of the case, although it need not be decisive; third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible."

[11] The appellant has failed to fulfill conditions 1 and 2 in my view for 3 reasons advanced by learned counsel for the respondent. Firstly, as learned Queens Counsel Mr. Deterville argued, the registered deed of sale from Mark Wilson to Alexis Gaspard and the Default Judgment entered by Clarence Rambally against the respondent Melchaid Wilson could have been obtained with reasonable diligence for use at the trial. This deed of sale was registered in the Registry of Deeds and Mortgages on 5th March 1982 in Volume 122 No. 135369; while the default judgment was registered on 14th November 1983 in Volume 136A No. 142119. Having regard to the law existing before the Land Registration Act[2] came into force in 1985 and the organization of this registry office, the registers, and their contents[3], the registers are public records[4]; and the appellant must be deemed to have notice of both these documents from the date of their registration.

[12] Secondly, Mark Wilson who is the appellant's father and witness would have been aware of Mr. Alexis Gaspard's existence and the very deed that the appellant now seeks to rely on as fresh evidence, having been a party to the transaction in this deed in 1982. So this evidence could have been made available to the learned judge in the court below.[5]

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[2] Cap. 5:01 of the Revised Laws of Saint Lucia 2001 which came into force on the 15th July, 1985
[3] See articles 2038 to 2042 of the Civil Code of St Lucia Chapter 4:01
[4] See articles 2043 to 2046
[5] See Pemberton v Emmanuel (1986) 37 WIR 189; which was case in which Robotham C.J. refused to admit fresh evidence on the ground that the evidence could have been made available to the trial judge.

[13] Thirdly, the fresh evidence relates to the transactions in the deeds of sale for parcels 2032B 26 and 27; and these deeds are notarial instruments as prescribed by section 56(1) of the Land Registration Act. Section 56(1) provides:

> "A proprietor, by instrument in notarial form, may transfer his land, lease or hypothec to any person with or without consideration."

[14] The appellant as the registered owner of the land and vendor, sold the land under these two deeds of sale to purchasers for the sums of money stipulated in each deed; and the deeds were each executed by the purchasers and the appellant before one notary royal. These deeds are therefore authentic notarial instruments and authentic writings.[6] Article 1141 of the Civil Code provides that:

> "An authentic writing is complete proof between the parties to it and their heirs and legal representatives:
> 1. Of the obligation expressed in it
> 2. Of what is expressed in it by way of recital, if the recital has a direct reference to the obligation or to the subject of the instrument. If the recital be foreign to such obligation and to the subject of the instrument, it can serve only as a commencement of proof."

[15] Article 1142 of the Civil Code provides that "An authentic writing may be impugned and set aside as false in whole or in part, upon an improbation in the manner provided in the Code of Civil Procedure and in no other manner." Learned Queen's Counsel Mr. Deterville submitted that article 1142 dictates that all the contents of the deeds of sale that are authentic writings are deemed to be true until these deeds are set aside in improbation proceedings. Consequently, Mr. Deterville submits, the appellant's application to adduce fresh evidence to contradict the contents of the notarial instruments which have not been the subject of improbation proceedings and which state that the appellant sold as owner and vendor and received the sums stated as the purchase price from the respective purchaser(s) is not consistent with the law. I entirely agree with these submissions of learned Queen's Counsel.

[6] See Article 1139 of the Civil Code of St. Lucia Chapter 4:01

[16] For those reasons I would dismiss this application to adduce fresh evidence and award costs to the respondents to be assessed on submissions by counsel for the respondents and the appellant within 14 days from the delivery of this judgment.

Ola Mae Edwards
Justice of Appeal

I concur.

Hugh A. Rawlins
Chief Justice

I concur.

Rita Joseph-Olivetti
Justice of Appeal [Ag.]