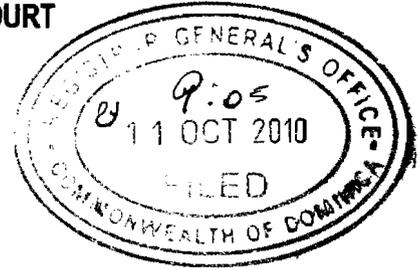


IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
DOMINICA CIRCUIT
(CIVIL)



Claim No. DOMHCV 0172 OF 2003

BETWEEN:-

LUCY PAUL nee JOSEPH

as Personal Representative of Ivan Alphonso Joseph

also known as Ivon Joseph

Claimant

-and-

EMANUEL JOSEPH

Defendant

Appearances: Mrs. Hazel Johnson, Counsel for the Claimant
Mr. Micheal Bruney, Counsel for the Defendant

2010: 25th - 27th May
1st October

[1] **STEPHENSON-BROOKS J.:** This is a claim brought by Lucy Paul nee Joseph as Personal Representative of her father's estate against her uncle, Emanuel Joseph. She is asking this Court to find that she is entitled to 2290 square feet of land which is part of a parcel of land currently comprising 3248 square feet and registered in the name of the

Defendant, Emanuel Joseph. The said land is located at Coulibistrie and is registered in the book of titles G7 folio 74.

The Claimant's case.

- [2] Rossi Joseph was the Claimant's grandfather and the Defendant's father and he was the owner of the land the subject of these Court proceedings. The Claimant's contention is that the parcel which she is claiming, which is part of the bigger parcel owned by the Defendant along with a one room house located thereon was sold to her father on the 3rd day of August 1946 at a purchase price of £10.00.
- [3] That Ivan Joseph occupied the land from 1941 prior to purchasing the land from his father and after he purchased the land and the one room wooden house on it. He built two small buildings on the land and continued in occupation of the parcel until he migrated to England from Dominica.
- [4] That Ivan Joseph migrated to England in 1955 and died intestate in England shortly after his arrival there. That upon his death he left surviving him his wife ,Martha Joseph (*who subsequently became Martha Charles and who I will refer to as Martha Joseph for simplicity sake*) and their four children who were the beneficiaries of his estate and who were in possession and occupation of the disputed parcel of land.
- [5] That Martha Joseph the wife of Ivan Joseph herself migrated to England in 1957 leaving her children in occupation of the property with their grandmother Irene Bruno and they

remained there until they themselves one by one migrated to England with the last one moving in 1962.

[6] That Irene Bruno lived in the house that was on the parcel of land from 1957 to 1990 when she died, and that she lived on the land rent free with the permission and consent of Martha Joseph who was one of the beneficiaries of the estate of Ivan Joseph and the mother of the other then minor beneficiaries.

[7] That there was a one room building (*the shop*) also located on the property which was rented by Irene Bruno on behalf of Martha Joseph to various tenants who all paid rent to Irene Bruno. That the said one room house remains on the parcel of land and is currently occupied by one Kenny Jno Baptiste. There was also another building identified as the kitchen which was occupied by Clayton Roudette, the Claimant's cousin, with the permission of the Claimant's mother.

[8] That from 1990 to present the two room house on the said parcel and has been occupied by the tenants who have paid rents to firstly a representative of Martha Joseph and then of the Claimant.

[9] That by Deed of Conveyance in 1993 between herself, her mother and her siblings; the property, the subject matter of this case was conveyed to the Claimant personally.

[10] That the Claimant then in 1993 discovered that the Defendant allegedly fraudulently caused First Certificate of Title to be issued to him, when in 1987 he had Ellis Joseph and Holeman Shillingford swear to affidavits of long possession which were false, and when he also swore to an affidavit of long possession which was false.

[11] The Claimant alleges that the Defendant made false statements in his affidavit when he said:

- (i) Rossi Joseph placed him in physical possession of the said land and he entered in possession and occupation of same where he lived until 1944;
- (ii) When he migrated to Curacao in 1944 he left his brother Ivan in charge of the land;
- (iii) That Irene Bruno, who was his brother's mother-in-law along with his brother wrote him in Curacao asking his permission for Irene Bruno to live on the land.

[12] That as a result of the false statements made by the Defendant along with the false statement made by Ellis Joseph and Holeman Shillingford, a Certificate of Title was issued to the Defendant for a piece and parcel of land which included the parcel of land purchased by the Claimant's father from his father which has been signed over to her by her mother, brothers and sisters all being the heirs of her father, the true owner of the parcel in question.

[13] The Claimant seeks inter alia a declaration that the Defendant is not entitled to the portion of land in question and that she is the owner of the disputed parcel of land.

[14]The Defendant in his defence and counterclaim alleges that the land in question was owned by his father and that his father did not sell the parcel of land to his brother Ivan Joseph. That his father sold the one room wooden house that was on the land to Ivan and that the understanding was that Ivan would move the house to another part of the village of St Joseph which was subsequently done.

[15]That his father gave him (Emanuel Joseph) the land in 1937 and he has been exercising full acts of ownership over the said property since then. The Defendant claims that the buildings on the said parcel of land were built by him and belong to him.

[16]The Defendant contends that when he migrated to Curacao in 1944 he left his brother Ivan Joseph in charge of his land to look over it.

[17]The Defendant also contends that Martha Joseph and her children lived on the said land with his permission and that Irene Bruno his brother's mother in law lived on the said land with his permission. That he gave her permission to live on the land after her house was destroyed by fire. The Defendant also denies that Irene Bruno (Irene Gardier) rented out the houses on the property and if she did so she did so without his knowledge and permission.

[18] The Defendant denied that his affidavit of long possession and the affidavits of long possession by Ellis Joseph and Holeman Shillingford were false and he denies that there was any fraud perpetuated by himself to obtain First Certificate of Title.

[19] The Defendant counterclaims against the Claimant for declaration that the Claimant is not entitled to enter or cross the land containing 3248 Square feet of land at Coulibistrie in the parish of St Joseph registered in book G7 Folio 74, for an order that the Claimant, her servants and or agents do vacate the said land and an injunction restraining the Claimant or her servants or agents from entering or crossing the said land, damages for trespass and mesne profits.

[20] From the pleadings and evidence presented it is clear that the major fact in dispute in this case is whether or not Ivon /Ivan Joseph did in fact purchase the disputed parcel of land with the house on it from his father Rossi Joseph. This is a fact alleged by the Claimant and a fact denied by the Defendant. It is my view that the whole case turns on the finding regarding this disputed fact.

The Claimants Case:

[21] The Claimant testified and she called two witnesses being Eurilia Thomas and Robert Vidal in support of her claim. The Defendant testified on his own behalf and he called no supporting witnesses.

[22] The evidence on behalf of the Complainant is that the disputed land was part of a larger parcel of land which was owned by her grandfather. In her evidence she spoke of a narrow foot path which divided the land owned by her grandfather and she also spoke of the front portion of the land between the narrow footpath and the public road belonging to her uncle Emanuel who at some point lived in Curacao. She also spoke of the other portion of land from the footpath extending down to the river which was owned by her father and that is that is the parcel which her father purchased from her grandfather.

[23] The Claimant's evidence is that she was born in the house located on the disputed land and that she and her family lived there. She spoke to her father building an extension to the one room house they lived in and also building a grocery shop on the parcel and a kitchen as well as a bakery. That all the buildings save and except the bakery is still on the land today. The Claimant was able to identify the various buildings on the parcel and the steps as well as the boundary marker on the map which was part of the bundle of documents filed and entered into evidence as an exhibit with the consent of Defence Counsel.

[24] The Claimant in her evidence also spoke of her father first moving to England where he died and of her mother moving to England and sending for her and her brother and sisters one by one. That when her mother moved to England she and her brother and sisters were left in the care of her maternal grandmother, Irene Bruno also known as Mimine and that they moved between the house and her grandmother's house and that while she was in England before her last sister joined them, her grandmother's house was destroyed by

fire and her grandmother, her younger sister and her cousin Clayton Roudette went to live in their house.

[25] The Claimant said that from the time she was a little child she knew that her father purchased the house and the land from her grandfather and she spoke of seeing a document saying that her father bought the land from her grandfather. The Claimant was referring to the office copy of the document which she claimed was the receipt given to her father by her grandfather which was dated 3 August 1946; which her father had registered in the Registry. That searches have been made at the registry but the deed book was never found. It was accepted that the deed book was destroyed in the Registry fire. The copy of the receipt produced by the Claimant was admitted into evidence by consent.

[26] The office copy of the receipt produced by the Claimant and exhibited in this matter speaks to the purchase of the house and a lot of land at Coulibistrie by the Claimant's father "Ivan Joseph" from Rossi Joseph for the sum of £10.00. It should be noted that the Defendant, Emanuel Joseph disputed this document and stated that his brother showed him a document with that information on it but his father showed him a different document stating that what was sold to Ivan was the house not the land. The Defendant stated in his evidence that the document that was shown to him had alterations such as the words "and the piece of land" being added after his father's mark and in a different ink. The Defendant essentially said that the receipt produced is false and that his father never sold the parcel of land in question and the house to his brother Ivan. That only the house was sold and that the house was to be removed from the land to elsewhere in the village and that it was in fact removed.

[27] The Claimant stated that during her childhood the Defendant was living abroad and the house on the portion of land which she knew belonged to him was occupied by her uncle, George Bruno and his family. That she knew of her grandmother renting out the other buildings on the property belonging to her father.

[28] The Claimant testified that her mother came to Dominica in 1982 and had the property surveyed and a plan was drawn that that the property comprised of 2290 square feet. That there were several attempts to have the title registered as early as 1974 but that task was never completed.

[29] Mrs Paul, the Claimant, spoke to deciding to move back to Dominica and of her mother, sisters and brother signing over their interest in the land to her and that in pursuit of having the property registered in her name in 1993 she discovered that the Defendant had the property registered in his name. She spoke to subsequently moving back to Dominica in 2000 and taking the necessary action to preserve the property and finally seek the Court's assistance to have the property registered in her name.

[30] The Claimant called two witnesses in support of her claim and they essentially testified that they grew up and lived as adults in the area of the property in dispute. Robert Vidal gave evidence of working on the extension of the one bedroom house on the parcel and that Ivan lived in the house with his family. He also said that he never knew the Defendant's wife "Triphilia" to live in the house close to the road that she always lived in "Canal".

[31] The second witness was Eurilia Thomas who lived in the shop as a tenant with her family for nine years. She spoke to the shop being rented to her by Irene Bruno who she knew to be in charge of the property and that when the Defendant returned to Dominica she was still living in the shop. Mrs Thomas gave evidence also about the Defendant fencing off the piece of the property between the footpath and the road and of his planting citrus on that parcel. Mrs Thomas was also able to tell us of remembering Ivan living in the house on the parcel of land.

The Defendant's Case

[32] The Defendant alone gave evidence on his own behalf in the case. He testified to being 91 years old and that even though he is physically challenged, lost the sight in his left eye and that he has a myriad of medical complaints that his memory is pretty good. He gave his evidence clearly and did not at all appear to be in anyway or manner incapable of doing so.

[33] The Defendant in his evidence spoke to the lot of land being a single lot of land which he inherited from his grandmother, he said that "the land which is in dispute was once owned by my grandmother who on her deathbed in the early 1940's when she directed my father, Rossie Joseph to give me the land. My father who was the only child of my grandmother, inherited the land and in keeping with my grandmother's wishes, gave me the land in or about the year 1948."

[34] The Defendant testified that he lived on the land in the house with his wife until he migrated to Curacao in 1944. In his evidence in chief he said the he improved on the chattel house and chattel store room.

[35] The Defendant said that there was once a chattel house on the land that was sold to his brother Ivon (*the Claimant's father*) and that Ivon was supposed to move this house further up the road to his mother in law's property.

[36] The Defendant was adamant in his evidence that the property which was registered in his name was never sold to his brother Ivon as the Claimant claims and that the Claimant's father occupied the house on the land with his permission and that the Claimant's father never built a kitchen or shop on the property as claimed.

[37] That the additional buildings on the land; that is, the shop and the kitchen were either built or repaired by him and that when the additional room was built on to the main house on the property his brother Ivan did so with his permission and his assistance. That when his brother Ivan built the oven on the land it was with his permission and assistance.

[38] That Irene Bruno went to live in the house with his permission after her house was burned down and that he also permitted her to rent out the shop and the store room and use the income for herself and that this permission extended to Milton Roudette and revoked at his death.

[39] That any person occupying the property after Milton Roudette was doing so illegally and that any rents collected from any persons living on that parcel was done so illegally and without his permission. That he wrote to persons occupying the land in 2002 to pay rent or face eviction.

[40] That his father never sold the land to his brother and that what was sold was a chattel house alone. The Defendant stated in his evidence that his brother did show him a receipt saying that he purchased the land and the house from their father. That when he approached his father on the issue, his father told him he did not sell the land to Ivon only the chattel house. The Defendant also spoke to alterations that he saw on the receipt which suggested to him that the document was not a valid one.

[41] That when he applied for the certificate of title to the property that everything he stated in his affidavit of long possession was true and correct and that he did not obtain the title by fraud as alleged.

[42] I find that the Defendant's evidence was not straightforward and he in fact gave contradictory evidence on a couple of issues. The evidence given by the Defendant regarding how he came to be the owner of the land I find to be unreliable at best. The Defendant in his evidence in chief said firstly that the land in dispute was owned by his grandmother, who on her death bed directed his father to give the land to him, which he did in 1948; then he also said his father gave him the said piece of land because he was the one taking care of his mother. Then he later said that his father said that the lot of land (the same land) was the "only thing he has to bury him when he dies". He later went on to

say in cross examination that Rossi his father gave him the land in 1938, now this is the same land that his grandmother said to give him on her death bed in the early 1940's.

[43]The Defendant, in his evidence, said that there was a single lot of land. He said in his evidence in chief that "the lot was never separated, that there is a foot track coming from the main road entering the property but there is no division". He later said in cross examination that "the one room house that was sold to Ivan was a small room 13x16 which my father built even before my birth that was on a lot that my grandmother had given him." This suggests to me that there were two lots and that Rossi's ownership of the lot closer to the road predated 1918, the year that the Defendant was born. The Defendant said the single lot of land was given to him by his father and it is the same single lot of land that his father told him he owned and was to be sold to bury him. He also said in cross examination that his father did not give him the land that it is his grandmother who left him the property. The Defendant also said under cross examination that "Rossi did not own any other property".

[44]The Defendant also said that his father told him he sold Ivan the little house and that Ivan was to remove the house and take it to the area where his mother in law lives and that Ivan never moved the house and it remained on the property. Yet later he says that the house that was sold to Ivan was dismantled and carried over to St Joseph.

[45] The Defendant said in his evidence in chief that, "I moved into the house with my wife until I migrated to Curacao in 1944. I then proceeded to improve on the chattel kitchen and chattel store room on the land" He later says that he built the two shacks.

[46] The Defendant in his evidence in chief said that, "he was not aware that Irene Bruno rented the property to anyone and I did not grant her permission to rent the land", and then later he says "he had no problem with Irene renting out the place as she was destitute"; and then he said, "I had given her permission to rent it out". Under cross examination the Defendant said, "I did not enquire because I gave Irene permission to rent and I was not interested in what she did. After Irene died Clayton stayed with my permission and he retained Irene's right"- this evidence is to be viewed against the contents of the Defendant's defence which contains a certificate of truth signed by the said Defendant which says at paragraph 8, "... the Defendant does not admit that the land was rented by Irene Bruno to tenants as stated in the said paragraph and states that if any rent was collected by Irene Bruno she did so unlawfully, without the requisite authority or the knowledge, approval or consent of the Defendant".

[47] I regard the contradictions in the Defendant's evidence as an attempt by him to mislead the Court in his defence to the claim. I agree with the submissions of Learned Counsel for the Claimant that "the Defendant's evidence is thwart with inconsistencies in respect of matters that are central to the Claimant's case and allegations of fraud".

[48] On the other hand having viewed the Claimant's demeanour and the manner when she gave her testimony, the Court finds that she was a truthful witness who was certain of her evidence. I accept that the office copy of the receipt for the purchase of the parcel of land by the Claimant's father from his father Rossi Joseph to be a true copy of the transaction between Rossi and Ivan Joseph. I do not accept the Defendant's evidence that his father showed him a different receipt, and that the receipt his brother showed him contained alterations. I am of the view that if the Defendant's story is to be believed it would have been reasonable for him to take his brother to task on the "funny" document, particularly in the circumstances, that he would have us believe existed that this was land already given to him by his father. Further the Defendant has not produced any credible evidence to contradict the receipt produced by the Claimant.

[49] The Defendant would like this Court to believe that the entire piece of land, comprising 3248 square feet, is legally and properly his property given to him either by his grandmother or by his father in 1938 or in 1948. Having found that his evidence given in the trial here in to be unbelievable I am unable to accept his claim.

FRAUD

[50] The Claimant's case is that the Defendant deceived the Registrar of Lands to obtain his certificate of title when he swore to an affidavit containing falsehoods which amounts to fraud and therefore the Defendant's Certificate of Title should be set aside.

[56] The affidavit sworn by the Defendant in support of his application for First Certificate of Title was exhibited in this matter and a review of the contents of the said affidavit shows that the Claimant painted an even different picture as to how he acquired title than that which he told this Court, he averred that in 1937 he was placed in physical possession of the property by Rossi Joseph. In his evidence before this Court he said that his grandmother "on her death bed in the early 1940's" directed his father to give the land to him. He also told this Court that his father gave him the land in or about the year 1948 in keeping with his grandmother's wishes.

[57] The Defendant also said in his affidavit in support of his application for First Certificate of Title that "whilst in Curacao, my brother's mother in law, Irene Gardier's house got burnt and both she and my brother wrote to me asking for permission for her to reside on the subject land", but in his evidence in chief before this Court he stated that whilst he was in New York he permitted Irene Gardier to live in the house after her house was burnt.

[58] From the evidence adduced in this Court it is clear that the Defendant, Mr Emanuel Joseph, was not speaking the truth when he made the affidavit in support of his application for First Certificate of Title and based on his evidence before this Court it is clear that the statements made by the Defendant when he made that affidavit were designed to mislead the Court to granting him First Certificate of Title to the piece of land and I find that Defendant.

[59] I am satisfied that it has been proved that the Defendant made false statements when he swore to his affidavit of long possession and would respectfully disagree with Learned Counsel for the Defendant when he submitted that Claimant has failed to prove the falsity of the Defendant's statements.

Conclusion:

[60] In view of the foregoing on the balance of probabilities I believe the Claimant's case and having regard to the evidence as a whole, I find Mrs Lucy Paul has proved her case and find that she is the owner of the disputed land purchased by her father Ivan Joseph from his father Rossi Joseph.

[61] Having regard to the evidence as a whole, I find that the Defendant, Mr Emanuel Joseph made statements in his affidavit of long possession sworn in support of his application for First Certificate of Title which were untrue and that he knew that those statements were untrue and as such the certificate of title that was issued is tainted with fraud and should be set aside.

[62] I am of the view that the quality of the evidence led by the Defendant has fallen short of the standard required to prove his Counterclaim, which is on a balance of probabilities. On a close analysis of the facts adduced in the case at Bar I do not believe his evidence adduced on material issues and accordingly his Counterclaim is dismissed.

[63] It is hereby ordered and declared that :-

- (i) The Defendant is not entitled to that portion of land in Coulibistri,e in the parish of St Joseph, containing 2290 square feet and bounded: on the North- by land of Lucita Pierre-Louise, on the South- by land of Maurice George on the East- by land of Rossi Joseph and on the West- by the Coulibistrie River;
- (ii) The Claimant, Lucy Paul nee Joseph is entitled to the said land.
- (iii) The Certificate of Title registered in Book of Titles G7 folio 74 in favour of the Defendant be set aside;
- (iv) That the Claimant be at liberty to apply for a Certificate of Title in her favour in respect of the said 2290 square feet of land;
- (v) That the Defendant's counterclaim is dismissed;
- (vi) Damages to be assessed on application of the Claimant such application to be made no later than the 31st December 2010;
- (vii) The Defendant shall pay the Claimant the agreed Costs of EC\$3,000.00.

[64] I wish to acknowledge the assistance of Learned Counsel on both sides of these proceedings.



Birnie Stephenson-Brooks
M. B. Birnie Stephenson-Brooks
High Court Judge