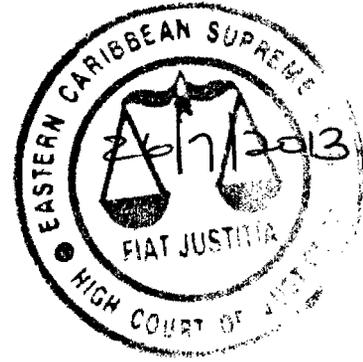


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 402 OF 2009
BETWEEN:



REBECCA REECE

Claimant

v

DORIL WILLIAMS

Defendant

Appearances: Mr. C.B. Williams for the Claimant.
Mr. A. Coombs for the Defendant.

2013: July 4
July 26

JUDGMENT

- [1] **THOM, J:** The Claimant and the Defendant are the children of Jean Hammond now deceased. Jean Hammond was the owner of a parcel of land at Questelles.
- [2] The Claimant contends that she is the owner of the property subject of Deed of Gift No. 3969 of 2004 dated 25th November 2004 by which Jean Hammond conveyed to her 6,466 square feet of land as delineated on Plan A9/27 and approved and lodged at the Lands and Surveys Department on October 6, 2004 ("the disputed property"). She seeks among other reliefs, a declaration that she is the lawful owner of the disputed property.
- [3] The Defendant in his defence denies that the Claimant is the owner of the disputed property. He alleges that the disputed property was part of a portion of land which was conveyed to him around 1998 by Jean Hammond by a Deed of Gift. However, the Deed of Gift was not registered in accordance with the Registration of Documents Act Chapter 93.

Further since the execution of the deed he has been in possession of the disputed property and has been exercising acts of ownership over it by cultivating crops for his own use and benefit. Also, the Claimant resides overseas and has never been in occupation of the disputed property.

- [4] In his counterclaim the Defendant contends that he is the owner of the disputed property. He further contends that the Deed of Gift to the Claimant was obtained as a result of undue influence and further in 2004, Jean Hammond was not a person of sound mind and memory. He seeks a declaration that he is the lawful owner of the disputed property, cancellation of the Claimant's Deed No. 3969 of 2004, damages and costs.
- [5] In her defence to the counterclaim, the Claimant alleges that the Defendant was never in occupation of the land, he entered in possession of the land in 2009.

ISSUES

- [6] (1) What is the legal effect of an unregistered Deed of Gift which seeks to convey real property to the Donee?
- (2) Whether the Deed of Gift No 3969 of 2004 was executed as a result of undue influence.
- (3) Whether the Defendant has acquired title to the disputed property by adverse possession.
- [7] At the trial the Defendant did not pursue his contention that in 2004 Jean Hammond was not a person of sound mind and memory.

EVIDENCE

- [8] The Claimant testified and called one witness, her sister Jennifer Williams. The Defendant testified and called no witnesses.

Evidence on Behalf of the Claimant

- [9] The Claimant testified that she resides in Barbados. The disputed property was conveyed to her by Deed of Gift on 6th October 2004. Her sister Jennifer Williams who is her agent took possession of the property and used it for agricultural purposes.
- [10] In June 2009 the Defendant entered on the disputed property without her consent and ordered Jennifer Williams off of the disputed property. Her Attorney wrote to the Defendant on July 28, 2009 requesting the Defendant to stop interfering with her agent Jennifer Williams and to cease his acts of trespass. She denied that the Defendant ever cultivated or was in possession of the disputed property, rather the Defendant was in possession of a parcel of land owned by their mother on which he built a house. This portion of land is next to their mother's house.
- [11] The Claimant denied that she unduly influenced her mother to convey the disputed property to her. At the time when the disputed property was conveyed to her she was resident in Barbados, she was not present in St. Vincent.
- [12] The Claimant's testimony was supported by her sister Jennifer Williams.

Defendant's Evidence

- [13] The Defendant testified that he resides at Questelles and he is a farmer. In 1998 his mother Jean Hammond accompanied him to the Law Chambers of Gonsalves, Williams, Williams and Marks and gave instructions to Mr. Colin Williams Attorney-at-Law to prepare a Deed of Gift transferring her remaining lands at Questelles to him. The Deed was prepared and his mother signed it, but he did not have the fees to pay for the registration of the deed so the deed was never registered. The remaining lands of his mother in 1998 included the disputed property. The Defendant exhibited a letter purportedly signed by Attorney-at-Law Colin Williams which supported the Defendant's testimony.

- [14] The Defendant further testified that after his mother executed the Deed of Gift in his favour he commenced occupying the remaining lands and cultivated crops on the land for his own use and benefit.
- [15] In 2004 Attorney-at-Law Grenville Williams visited his mother's home and presented her with a deed to sign. He explained to Mr. Grenville Williams and to the Claimant who were present at his mother's home that the land belonged to him since his mother had already executed a deed in his favour in relation to her remaining lands. The Defendant further testified that the Claimant unduly influenced their mother to sign the deed by promising to take her to Barbados.
- [16] The Defendant further testified that in 2009 Jennifer Williams attempted to pass some livestock on the disputed property and he informed her she could not do so. Also in 2009 he was desirous of obtaining a loan from the bank and at his request his mother conveyed a portion of the lands referred to in the unregistered deed to him. A copy of the Deed of Gift No. 3527 of 2009 was exhibited. He agreed that the disputed property does not form part of the land described in Deed of Gift No. 3527 of 2009.

SUBMISSIONS

LEGAL EFFECT OF AN UNREGISTERED DEED

- [17] Learned Counsel Mr. C.B. Williams submitted that the Deed of Gift relied on by the Defendant was not produced in court so the description of the land referred to in the said deed is unknown. Further, the fact that the Deed was not registered in accordance with the Registration of Documents Act meant that the Deed was of no effect. It did not convey any interest in the disputed property to the Defendant. The Claimant is the true owner of the disputed property by virtue of Deed of Gift No. 3969 of 2004 which was registered in accordance with the Registration of Documents Act on the 28th day of October 2004. Learned Counsel referred the Court to section 5(1) of the Registration of Documents Act.

- [18] Mr. A. Coombs submitted that while Section 3(1)(a) of the Registration of Documents Act mandates that documents relating to title, transfer of or incumbrance on any real estate be registered, where the document is not registered it does not automatically become void. Registration is required for two reasons, being, firstly to determine the issue of priority in the event of competing claims in which case the earliest registered document would have the superior entitlement and secondly, registration serves as a form of notice to any interested person. Learned Counsel referred the Court to Section 5(1) and (3) of the Act.
- [19] Learned Counsel further submitted that pursuant to Section 5(2) the title to land in an unregistered deed would only be defeated by a subsequent bona fide purchaser or mortgagee for valuable consideration without notice of the unregistered document. The Act does not provide a limitation period for registration of documents. An unregistered deed is therefore not invalid, it remains registerable and the transferee acquires an equitable interest in the land.
- [20] Learned Counsel also referred the Court to the following statement of Lord Browne-Wilkinson in the case of Tai and Others v Wu Yau Loi 1996 UKPC 33 at p. 34:
- "Deeds which ought to be registered but have not been are not declared to be generally void. However section 3(2) provides that they shall be absolutely null and void as against 'any subsequent bona fide purchaser for valuable consideration of the land'."
- [21] Learned Counsel submitted that the Claimant does not fall within section 5(2) since the Deed granted to her was a Deed of Gift, there was no valuable consideration and secondly she had notice that the land was already transferred to the Defendant by their mother since the Defendant had so informed her on the very day that she sought to have their mother execute the Deed of Gift in her favour.

FINDINGS

- [22] The law governing registration of deeds in Saint Vincent and the Grenadines is the Registration of Documents Act. The applicable sections are sections 3(1) and 5. Section

3(1) outlines the various documents which are required to be registered, while section 5 outlines the effect of registration. The sections read as follows:

- "3(1) The following documents shall be registered under this Act –
- (a) documents relating to the title to, transfer of or incumbrance on, any real estate;
 - (b) powers of attorney and deeds of substitution thereunder empowering any person to represent and act for any other person in Saint Vincent and the Grenadines;
 - (c) certified office copies of the probate of every will and of the grant of letters of administration by the Court."

5(1) Every document relating to real estate required to be registered under this Act shall, on registration, operate both at law and in equity according to the priority of time of registration and the right, title and interests of the person conveying, incumbering or otherwise dealing with such real estate against every other document subsequently registered with respect to such real estate.

(2) Every such document that shall not be registered shall be deemed fraudulent and void as to the real estate affected by such document against any subsequent purchaser or mortgagee for valuable consideration without notice whose document shall be first registered or against any person who may have, subsequently to the date of such unregistered document, obtained a judgment operating as a charge against such real estate.

(3) The registration of documents required to be registered under this Act shall be deemed due notice of their contents to all persons whomsoever claiming any estate or interest in, or incumbrance on, any real estate comprised in, connected with or affected by the document registered."

[23] It is not disputed that the Defendant has not produced any deed which conveyed the disputed property to him, nor was a deed conveying the disputed property to him registered in accordance with the Registration of Documents Act.

[24] The Claimant based her case on section 5(1), that her Deed having been registered, and there being no deed registered prior to the registration of her Deed, her Deed takes priority and the legal and equitable interest in the land is vested in her. While I agree with Mr. Coombs that the Act does not prescribe a time for the registration of a deed, Section 5(1)

clearly provides that the deed first registered in time takes priority. In this case not only did the Defendant not have a deed in relation to the disputed property registered pursuant to the Act; the Defendant did not produce a deed in relation to the disputed property. Further, Attorney-at-Law Mr. Colin Williams did not testify. The Court was in no position to determine what lands were included in the deed and more particularly whether the disputed property was included in the deed. The Claimant's Deed being the only deed registered in relation to the disputed property the Claimant is the lawful owner of the disputed property.

UNDUE INFLUENCE

- [25] Mr. C.B. Williams submitted that the Defendant did not adduce any evidence to show that Jean Hammond was unduly influenced to execute the Deed of Gift in favour of the Claimant. Learned Counsel referred the Court to two earlier decisions of this Court being **Winston Sergeant v Morris Sergeant** HCV 244/2008; and **O'Neal Creese v Kelvin Joslyn** HCV 243/2004.
- [26] Learned Counsel also submitted that the mere fact that there is a loving relationship between a mother and daughter and the daughter periodically assisted the mother financially does not raise the presumption of undue influence.
- [27] Mr. A. Coombs referred the Court to the case of **Barclays Bank PLC v O'Brien** and submitted that the case at bar falls within the Class 2B classification because of the mother and daughter relationship which existed between the Claimant and Jean Hammond.
- [28] Learned Counsel also submitted that the Claimant often enticed Mrs. Hammond with promises of taking her to the State of Barbados where the Claimant has been a resident for many years and was resident there in 2004.
- [29] Learned Counsel also submitted that once the relationship of mother and daughter is established it raises the presumption of undue influence and the onus is on the beneficiary

of the transaction, in this case the Claimant to show that there was no undue influence, this the Claimant has failed to do.

FINDINGS

[30] Sir Vincent Floissac in **Robert Murray v Reuben Dewberry and Denfield Matthew** ANU HCVAP No. 16 of 1993 explained the doctrine of undue influence in the following manner:

"The doctrine of undue influence comes into play whenever a party (the dominant party) to a transaction actually exerted or is legally presumed to have exerted influence over another party (the complainant) to enter into the transaction. According to the doctrine, if the transaction is the product of the undue influence and was not the voluntary and spontaneous act of the complainant exercising his own independent will and judgment with full appreciation of the nature and effect of the transaction, the transaction is voidable at the option of the complainant. This means that the complainant may elect to have the transaction rescinded if he has not in the meantime lost his right of rescission."

[31] In this case the Defendant is not alleging that undue influence was exerted on him but rather on his mother now deceased.

[32] In **Barclays Bank v O'Brien** [1993] 4 All E.R. p. 417 Lord Browne-Wilkinson classified undue influence into two classes, being, actual undue influence and presumed undue influence. He explained the two classes in the following manner:

Class 1: Actual undue influence

In these cases it is necessary for the claimant to prove affirmatively that the wrongdoer exerted undue influence on the complainant to enter into the particular transaction which is impugned.

Class 2: Presumed undue influence

In these cases the complainant only has to show, in the first instance, that there was a relationship of trust and confidence between the complainant and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused that relationship in procuring the complainant to enter into the impugned transaction. In Class 2 cases therefore there is no need to produce evidence that actual undue influence was exerted in relation to the particular transaction impugned: once a confidential relationship has been proved, the burden then shifts to the wrongdoer to prove that the complainant entered into the impugned transaction freely, for example by showing that the complainant had independent advice. Such a confidential relationship can be established in two ways, viz:

Class 2A. Certain relationships (for example solicitor and client, medical advisor and patient) as a matter of law raise the presumption that undue influence has been exercised.

Class 2B. Even if there is no relationship falling within Class 2A, if the complainant proves the de facto existence of a relationship under which the complainant generally reposed trust and confidence in the wrongdoer, the existence of such relationship raises the presumption of undue influence. In a Class 2B case therefore, in the absence of evidence disproving undue influence, the complainant will succeed in setting aside the impugned transaction merely by proof that the complainant reposed trust and confidence in the wrongdoer without having to prove that the wrongdoer exerted actual undue influence or otherwise abused such trust and confidence in relation to the particular transaction impugned.

[33] In his evidence on the issue of undue influence the Defendant stated at paragraph 9 of his witness statement as follows:

"It is my belief that the Claimant who is my sister unduly influenced our mother by promising to take her to Barbados where she lived and coaxed her to eventually transfer the said land to her particularly described in Deed of Gift 3969 of 2004. She did so despite the fact that I had explained to her that our mother has already signed a deed to transfer her remaining lands at Questelles to me."

[34] The Defendant relied on actual undue influence and on Class 2B presumed undue influence. The evidence does not show any basis for the Defendant's belief. The Claimant's testimony that as far back as 1986 when the Claimant got married Jean Hammond attended the wedding in Barbados and she visited on a second occasion at the Claimant's expense was not disputed. I believe the testimony of the Claimant that she always assisted her mother when it was possible to do so. I also believe her testimony where she denied the statements of the Defendant in paragraph 9. I found the Claimant to be a truthful witness. She was not contradicted, she answered all questions under cross-examination in a forthright manner.

[35] In the Robert Murray case Sir Vincent Floissac outlined the evidence that would be required to raise the Class 2B presumption of undue influence as follows:

"In my judgment, an isolated demonstration by a complainant of trust and confidence in a dominant party is insufficient to engender a Class 2B relationship

between the complainant and the dominant party. There must be evidence that the complainant generally reposed trust and confidence in the dominant party. The evidence required is evidence that before or at the time of the execution of the transaction, the complainant had habitually, frequently or repeatedly expressed or indicated his trust and confidence in the dominant party."

[36] I respectfully disagree with the submission of Mr. A. Coombs that the Defendant was only required to prove that the relationship of mother and daughter existed between Jean Hammond and the Claimant to raise the presumption of undue influence in Class 2B. The legal authorities: see the Robert Murray case and CIBC Mortgages PLC v Pitt [1994] 1 A.C. 200, all state, the complainant in order to raise the presumption of undue influence in Class 2B must prove:

- (1) The complainant generally reposed trust and confidence in the dominant party; and
- (2) That the transaction was to the manifest disadvantage of the complainant to a degree where it may be said to be unfair to the complainant or to be otherwise unconscionable.

[37] While there was a mother and daughter relationship between the Claimant and Jean Hammond, there is no evidence that Jean Hammond generally reposed trust and confidence in the Claimant. She did not look after the welfare of Jean Hammond. For example, there is no evidence that the Claimant dealt with the financial or other affairs of Jean Hammond. The Claimant has been resident in Barbados since 1977. She visited Saint Vincent each year from 1987 to around 1992 for about two weeks, on each occasion, the purpose being to visit Jean Hammond. Thereafter she visited once every year or two years. She was also in contact with Jean Hammond approximately once per month by telephone. The witness Ms. Jennifer Williams testified that occasionally the Claimant sent things for Jean Hammond and she paid Jean Hammond's water bill. Indeed, the Defendant's evidence is that Jean Hammond trusted him. He lived with Jean Hammond all his life. He took care of her. The Claimant did not take care of her.

[38] I agree with the submission of Learned Counsel for the Claimant that the acts referred to above are the usual acts of kindness of a daughter to a mother. Having regard to the evidence I find that there is no evidence which shows that Jean Hammond generally

reposed trust and confidence in the Claimant from which there could arise the Class 2B presumption of undue influence.

ADVERSE POSSESSION

[39] The Defendant in his witness statement at paragraphs 3, 7 and 10 stated in effect that in 1998 after Jean Hammond executed a deed in his favour for her remaining land at Questelles he commenced occupation of the said land and cultivated crops on the land for his own use and benefit and he exercised all rights of a lawful owner over the land.

[40] Section 17 of the Limitation Act provides in effect that a party's right to recover land is extinguished if the land was adversely possessed by another for a period of twelve years. The Defendant's evidence shows that he was not in occupation of the land for a period of twelve years prior to the institution of this claim since he testified that he only commenced occupation in 1998 and the claim was instituted on December 9, 2009. I therefore find that the Defendant did not acquire title to the disputed property by adverse possession.

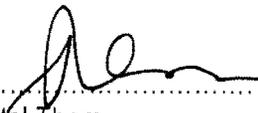
CONCLUSION

[41] In conclusion, I find that the Deed of Gift No. 3969 of 2004 was the voluntary act of Jean Hammond exercising her own free will. There was no actual undue influence exerted on Jean Hammond by the Claimant and there was no presumption of undue influence. I also find that the Defendant did not acquire title to the land by adverse possession. Based on his evidence he was not in possession of the disputed property for a period of twelve years prior to the commencement of this claim. I find further that the Claimant having registered the said Deed in accordance with the Registration of Documents Act she holds the legal title in the disputed property and she is entitled to the reliefs sought.

[42] It is ordered and declared that:

(1) Judgment is entered for the Claimant.

- (2) The Defendant's counterclaim is dismissed.
- (3) The Claimant is the lawful owner of the property situate at Questelles more properly described in the schedule of Deed of Gift Number 3969 of 2004.
- (4) The Defendant is hereby restrained by himself, his agents or servants from trespassing on the Claimant's land referred to in paragraph (3) above.
- (5) The Defendant shall pay the Claimant costs as prescribed by Part 65 of CPR 2000.



.....
Gertel Thom
HIGH COURT JUDGE