



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COLONY OF MONTSERRAT
(CIVIL)
A.D 2014

CLAIM NO. MNIHCV2007/0029

BETWEEN:

IRENE ROACH

Claimant

and

RAYMOND ALLEN

FRANCES KIRWAN

Defendants

APPEARANCES:

Mr. Jean Kelsick for the Claimant

Mr. Hogarth Sergeant for the Defendants

2014: January 21

2014: April 16

JUDGMENT

[1] **REDHEAD J. (ag):** This is an action by the Claimant seeking an order under the provisions of the Registered Land Ordinance 1979 that the register of parcel 253 Block 14/4 St. John's Section be rectified "by the instatement" of the Estate of John Henry Allen as the proprietor of the said parcel of land.

[2] In her statement of Claim, the Claimant alleges that she is the legitimate daughter of John Henry Allen who died in 1986 and his wife Sarah Allen who died in 1996. There

were 8 children of the marriage. Three are deceased. The first Defendant is the Claimant's brother. The second Defendant is the first Defendant's girlfriend.

[3] The Claimant alleges that the said John Henry Allen occupied the land that encompasses Parcel 253 Block 14/4 St. John's Registration Section for upwards of eighty (80) Years and built a family house on the land.

[4] The Claimant alleges that under the Intestates Estate Act, the said Parcel of land and family house belong to the Estate of the said John Henry Allen, the beneficiaries of whom are all of the Claimant's siblings who are alive and the issue of her siblings who are deceased.

[5] In 2006 the first Defendant applied to the Registrar of Lands for Title in his sole name to the said parcel of land. This application was supported by an affidavit sworn to be the first Defendant and his brother Michael Peter Allen.

[6] In August 2006 the Registrar of Lands after advertising the said application in a local newspaper granted the first named Defendant title to the said parcel of land.

[7] The Claimant alleges that the first named Defendant obtained title to the said parcel of land fraudulently as contrary to what is stated in the affidavits, it was not given to him by his father, nor was he in exclusive possession of it for upwards of thirty (30) years. I accept the first named Defendant's evidence that he was in exclusive possession of the property for upwards of thirty (30) years.

[8] Furthermore, the said affidavit concealed the beneficial interest of the Claimant and her siblings or the issue of those siblings who are deceased in the said parcel of land.

[9] The Claimant alleges that she did not read the advertisement and that she first became aware that the first Defendant obtained title to the said parcel of land on 5th September 2007.

[10] On 12th January 2007, the first Defendant made the second Defendant a joint proprietor of the said parcel of land.

[11] In November 2006 the first Defendant gave notice of his intention to demolish the said family home and replace it with a new structure and in early August 2007 he placed building blocks on the said parcel of land.

[12] On 10th September 2007 the High Court granted the Claimant an injunction restraining the Defendants from demolishing the said family house and ordered that an inhibition be placed on the title to the said parcel of land.

[13] The first named Defendant in his defence alleges that John Henry Allen died leaving his property undivided. His siblings subdivided the property and built their houses on the said lands.

[14] The first named Defendant in his defence alleges that Michael Allen a brother of the first named Defendant together with his wife Vera Allen subdivided the property and claimed Block 14/4 Parcel 122 and Block 14/4 Parcel 131 in their respective names. Randolph Allen another brother of the first named Defendant claimed Block 14/4 Parcel 229. Catherine West a sister of the first named Defendant claimed Block 14/4 Parcel 230 which was transferred to the Claimant and her husband Cyril Roach on 23rd July 2003.

[15] The original land according to the first named Defendant was Block 14/4 Parcel 112 that was divided into various parcels upon which all the siblings of the first named Defendant built their respective homes.

[16] The first named Defendant says that at the time of the death of Sarah Allen in 1996 he was the only sibling living with his mother. During the period prior to 1996 the property 14/14 Parcel 253 comprised a two room house; a sitting room and a bedroom. The other facilities were located outdoors.

[17] The first named Defendant claims that he renovated the two roomed house and made additional facilities available inside of the house.

[18] In 2003 he again constructed an additional bedroom to the said house. The Claimant was at all times aware of these additions.

[19] The Defendant says that he was the only sibling who was caring for his aged parents since all his siblings had migrated to England and the Claimant was married and living with her husband in Gages, Montserrat.

[20] The first named Defendant says that because of the love and care he showed his parents, his mother told him that the house is his since he was the one who was there with her over the years.

[21] The first named Defendant in his defence says that before the death of his parents, his siblings returned from England and subdivided the property and took what they wanted. He did not take any subdivision because he knows that the house in which he lived belongs to him.

[22] The first named Defendant says that in or about 2006 after all the land was claimed and all his siblings had built their respective dwelling houses, he made an application to the Registrar of Lands to be registered as the absolute owner of Block 14/4 Parcel 253 in order to renovate the property since it was falling apart.

[23] Mr. Raymond Allen says that the Claimant who owns and operates a bar near the said lands was fully aware of what was being done since she spoke to the surveyor who explained what he was doing and the procedure he had to follow.

[24] Mr. Allen further states that the Claimant never made any objection and she knew or ought to have known that the property was being advertised as unclaimed lands in his name. The Claimant was fully aware and made no objections until he decided to add his common law wife's name to the certificate of title.

[25] I agree that the Claimant knew or is deemed to have known that the Defendant made application to be registered as the owner of Parcel 253 Block 14/4 having regard to the advertisements in the newspaper.

[26] Finally the first named Defendant says that none of his siblings has ever lived in the house since the death of his parents or intend to live in the house because they have all built on the lands of his parents.

[27] I make the observation that if the Claimant is vested with the legal authority to bring this Claim or challenge the grant of a Certificate of title to the first named Defendant, then in my considered opinion, it does not matter if she was motivated by spite or improper motive so to do, once she has the legal right to bring these proceedings.

However I ask the important question, does she possess the legal authority to launch these proceedings? Is she doing so in a representative capacity? Obviously not.

[28] In her Statement of Claim, the Claimant pleads as follows (paragraphs 2 and 3)

2. "The said John Henry Allen died leaving a will that cannot be found nor reconstructed and the said Sarah Allen [first named Defendant's mother] died intestate.

3. There are 7 other children of the said marriage who are alive..."

[29] The first named Defendant is one of the issues who is alive. None of the other issues joined the Claimant in bringing this action. In fact, one of the issues joined the first named Defendant in filing an affidavit in support of his application for a first Certificate of Title to the land in question. As Mr. Hogarth Sergeant in his Legal Submission observed that none of the Claimant's eight siblings joined her in the action.

[30] For all intents and purposes, John Henry Allen died intestate. The Claimant is therefore not bringing this action as an executrix named in any will by John Henry Allen.

[31] In an affidavit sworn by the Claimant, she deposes as follows:

Paragraph 5

"In the 1970's my father made a will, which I read after his death. It was prepared by John Stanley Weekes, a Lawyer then practicing in Montserrat, but was not probated. In his will, my father left the family land including the family house to his children in equal shares, subject to his wife having a right to

occupy the same during her life time. After my mother's death in 1996 the will was lost. My mother died intestate.

[32] In my view this is an attempt by the Claimant to give evidence contained in a document which does not exist. In any event as I have said above, John Henry Allen is considered to have died intestate. Any property which he may have owned at the time of his death would be governed by the 'Intestate Succession of Properties Act'.

[33] The Claimant in my judgment is in no superior position to the first named Defendant in so far as property rights are concerned in any property which John Henry Allen would have owned at the time of his death. As I have said above she is certainly not bringing this action in a representative capacity. She does not even say so. The Claimant is not bringing this action as executrix of the estate of John Henry Allen. In what capacity is she bringing this action? Did John Henry Allen die possessed of the land which is in dispute?

[34] From the evidence, I have no doubt that John Henry Allen lived on this parcel of land which is in question for a number of years, but never obtained title to the land.

[35] In her Statement of Claim, the Claimant at paragraph 4 says: **"[4] The said John Henry Allen occupied the land, this encompasses Parcel 253 Block 14/4 St. John's Registration Section for upwards of 80 years and built a family house on it. Due to inadvertence on his part the said John Henry Allen failed to have the said Land registered in his name before death"**

[36] It is clear to me therefore that John Henry Allen did not at the time of his death own Parcel 253 Block 14/4 in fee simple.

[37] John Henry Allen died in 1986. The first named Defendant's mother died 10 years later in 1996. The first named Defendant occupied the house since then.

[38] In 2006, 20 years after the first named Defendant's father's death, he made application to be registered as the absolute owner of Parcel 253 Block 14/4. This was granted by the Registrar of Lands after the requisite procedure was followed by the Registrar of Lands. I have no doubt that this was so.

[39] In my judgment, the Claimant has no Legal Standing to bring this action. Even if the Claimant was granted Letters of Administration of the estate of John Henry Allen, she could not administer Parcel 253 Block 14/4 St. John's Registration Section because her father did not have legal title to the land. The Defendant is now the legal owner of Parcel 253 Block 14/4 having regard to the title issued to him by the Registrar of Lands on 12th January 2007.

[40] Costs to the Defendants to be paid by the Claimant to be agreed, if not agreed on a Prescribed Costs basis.


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Albert J Redhead
High Court Judge