

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2014/0168

BETWEEN

YVETTE BROWNE

CLAIMANT

and

IRVIN FINDLAY

DEFENDANT

Appearances :

Mr. Jaundy Martin for the claimant.

Ms. Samantha Robertson for the defendant.

2017: Jun. 6 & 16

REASONS FOR DECISION

BACKGROUND

[1] **Henry, J.:** This matter involved a claim for delivery of possession of land. The claimant Yvette Browne alleged that she owned property at Kelbourney in the Mesopotamia Valley, in the Parish of Saint George in the State of Saint Vincent and the Grenadines. She claimed that she permitted her stepfather Mr. Irvin Findlay to live on the property until she was ready for it. She learnt while she was abroad that Mr. Findlay had started constructing a concrete structure on the land.

[2] Mrs. Browne consequently brought this suit for a declaration that she is the sole owner of the land; for an order for vacant possession; for an injunction restraining Mr. Findlay from further construction and an order that he remove all structures erected on the said property.

[3] Mr. Findlay did not resist the claim. He filed no pleadings or witness statements. Judgment was entered against him following a trial at which he called no witnesses. The reasons for the decision were summarized at that time. They are outlined more fulsomely in this decision. The full text of the orders is also included at the end for completeness and ease of reference.

ISSUE

[4] The issues which arose for consideration are:

(1) Whether Yvette Browne owned the subject property? and

(2) To what relief is Yvette Browne entitled?

ANALYSIS

Issue 1 - Does Yvette Browne own the subject property?

[5] Yvette Browne filed her fixed date claim form in this matter on 22nd September, 2014. It was served on Mr. Findlay on 7th October, 2014 by bailiff Rodwell Alexander who swore an affidavit to this effect. Mr. Findlay did not file an acknowledgement of service or defence. He appeared in court on 21st January 2015 for the first time. The matter was adjourned to enable him to obtain legal representation.

[6] The case was listed next on 18th May, 2016. Mr. Findlay was unrepresented. Learned Counsel Mr. Joseph Delves appeared *amicus curiae* at the court's invitation. The matter was adjourned for the parties to pursue settlement through mediation. On the next hearing date (12th October, 2016) Mr. Findlay indicated that he did not intend to retain legal counsel. He was granted an extension time to 16th November 2016 to file his defence.

[7] On 7th December 2016, Mr. Findlay was represented by learned counsel Ms. Samantha Robertson who appeared *pro bono*. Directions were given for among other things filing of witness statements, skeleton arguments and list of authorities and the trial window was set for March/April 2017. The deadline for filing of skeleton arguments and list of authorities was extended on the subsequent hearing date - 15th February 2017.

[8] Mr. Findlay filed nothing. He filed no applications for relief from sanctions for such failure or for extension of time to remedy his default. The trial date was fixed for 6th June, 2017 and the parties duly notified. Mr. Findlay did not attend court that morning. Through his counsel, he represented to the court that he lost his common law wife two weeks before and was too emotionally distraught to attend court. He filed no application for an adjournment.

[9] The case was stood down and Mr. Findlay was summoned to appear. The trial commenced with the testimony of Yvette Browne. An extended break of roughly 4 hours was taken after Mrs. Browne's evidence in chief, to permit Mr. Findlay to give final instructions to his legal practitioner. The court decided to proceed with the trial in furtherance of the overriding objective to do justice between the parties. In this regard, the court noted that the issues were not complex; and that Mr. Findlay had been given repeated extensions of time to instruct counsel, file pleadings and testimony and had failed to do so.

[10] In the circumstances, it appeared that he had no intention to make any defence in writing. In any event, the time limited for doing so by rules of court and by order of court had long elapsed. In the premises, the allotment of additional time and resources to accommodate Mr. Findlay further was seemingly unlikely to bear fruit and not merited.

[11] Mrs. Browne was cross-examined. She was not discredited. She recounted that Mr. Findlay was married to her mother. She described him as the only father figure she knew from the age of four years. Many years ago, Mr. Findlay and Mrs. Browne's mother obtained a mortgage from Russell Bank¹ to purchase lands at Spicey, Kelbourney. They defaulted on the mortgage payments.

[12] Mrs. Browne who was a young teacher at that time bought the land through a loan she secured from the National Commercial Bank. However, the property remained registered in Mr. Findlay's name. Sometime

¹ Which eventually became the First Saint Vincent Bank.

later, Mr. Findlay migrated to Trinidad and Mrs. Browne assumed responsibility for the management of the home and payment of the loan. She subsequently arranged for a loan to renovate the home.

[13] Her mother decided to migrate to the United States but could not afford the fare. Mr. Findlay was in no better position. Mrs. Browne approached the Teacher's Co-operative Credit Union for credit but needed collateral. Mr. Findlay permitted her to use the deed for the subject lands at Kelbourney as collateral.

[14] Mrs. Browne testified that Mr. Findlay told her that he intended to return to Trinidad and had no intention to come back to Saint Vincent and the Grenadines. He told her that since she had paid for the land he would transfer it into her name by deed of gift. He proceeded to do so. She explained that a few years later Mr. Findlay was deported from Trinidad and he lived with his brother for a while. After conflict arose in that relationship, Mrs. Browne allowed Mr. Findlay to build a 'shack' on the subject lands.

[15] This arrangement continued until 2014 when Mrs. Browne travelled to Taiwan for medical reasons. While there, she learnt that Mr. Findlay had began to build a concrete house on the property without consulting her or seeking her permission. She immediately took legal proceedings to obtain an injunction. It was not granted.

[16] Mr. Findlay completed his building. Under cross-examination, Mr. Findlay suggested to Mrs. Browne that he was the one who paid off the loan for the subject lands; that another piece of land and not the subject land was mortgaged. She denied both assertions and I believe her. Mr. Findlay submitted that he did not sign the Deed of Gift. He provided no evidence to support this contention and there is no proof that he did not. Mr. Findlay also argued that Mrs. Browne did not bring the mortgage instrument to the court's attention. She did not. This omission does not negate her claim that she is the owner of the subject property. In fact, Mr. Findlay did not seek to challenge her claim to ownership.

[17] Mrs. Browne produced the Deed of Gift No. 46 of 1988. It was registered on 8th January 1988 and became effective on that date. It is dated 28th September 1987 and conveys ½ acre of land at Kelbourney from Irvin Findlay to Yvette Cordelia Browne in consideration of natural love and affection and \$5.00.' The Schedule describes the boundaries of the property.

[18] Mrs. Browne's case is simply that she gave Mr. Findlay permission to erect and live in a 'shack' on the subject property. She contended that contrary to and in excess of that permission Mr. Findlay constructed a concrete building on her land. In essence, Mrs. Browne has alleged that Mr. Findlay undertook acts on her property which he was not authorized to do. She did not dispute that Mr. Findlay had her permission to occupy the property and build a shack on it in which to live. In this regard, he thereby became her licensee. Mrs. Browne claimed further that she did not authorize Mr. Findlay to erect a concrete structure for use as his home. When she learnt that he had started such construction, she signaled to him that the previous living arrangement had run its course. She did this by firstly applying for an injunction and secondly lodging this claim 3 years ago.

[19] Mr. Findlay has had adequate notice that Mrs. Browne has taken exception to his decision to exceed the agreed terms of his use of the subject property and that he is no longer welcome on Mrs. Browne's property. His extended stay without Mrs. Browne's permission and without lawful justification on his part renders his continued presence on the property an act of trespass.

[20] Mrs. Browne's testimony stands uncontroverted and is therefore believed and accepted. She has established on a balance of probabilities that she owns the subject lands and that Mr. Findlay had no right or permission to erect a concrete building on it. She has also demonstrated that her bare licence to Mr. Findlay has been terminated. In face of the documentary proof of title of the

subject lands, I find that Yvette Browne is the owner and that Mr. Findlay has no right or interest in it.

Issue 2- To what relief is Yvette Browne entitled?

[21] Mrs. Browne is entitled to the reliefs claimed. Accordingly judgment is entered for her on her claim. Yvette Browne is the sole owner in law and in equity for an estate in fee simple absolute of the property described in Deed of Gift 46 of 1988. She is entitled to have full and vacant occupation of her property. Further, Irvin Findlay is restrained from continuing to construct a dwelling house or any other structure on the said property. As the successful party, Mrs. Browne is entitled to recover her costs.

ORDER 1

[22] For the foregoing reasons, it was ordered and declared:

1. The claimant Yvette Browne is the sole owner in law and in equity for an estate in fee simple absolute in possession of the lands described in Deed of Gift No. 46 of 1988.
2. The defendant Irvin Findlay shall quit and deliver up possession of the said lands registered by Deed of Gift No. 46 of 1988, on or before 31st August, 2017.
3. The defendant Irvin Findlay shall remove or caused to be moved or pay the cost of removal of all structures that he has erected or caused to be erected upon the subject lands described in Deed of Gift No. 46 of 1988.
4. An injunction is granted restraining the defendant Irvin Findlay whether by himself, his servants, agents or howsoever otherwise from constructing or continuing to construct a dwelling house or from encumbering or alienating, or from attempting to encumber or alienate the said property registered by Deed of Gift No. 46 of 1988; or from doing any act, deed or thing whereby Yvette Browne's legal and/or equitable rights in and over the property may be adversely affected.
5. The defendant Irvin Findlay shall pay to Yvette Browne prescribed costs pursuant to CPR 65.5 (2) (b), in the sum of \$7500.00.

Esco L. Henry

HIGH COURT JUDGE

By the Court

Registrar