THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2004/0339

IN THE ESTATE OF ADOLPHUS CHARLES DECEASED

BETWEEN:

SHAWN CHARLES
(Executor of the estate of Adolphus Charles, Deceased)

CLAIMANT

and

WILBERT CHARLES
of Spring Village

DEFENDANT

Appearances:
Mr. Emery W. Robertson Snr. for the Claimant
Mr. Andreas Coombs for the Defendant

2017: Oct. 18
2017: Nov. 16

ORAL DECISION

[1] **BYER, J.:** This was a brief trial in which the Claimant herein pleaded by claim form filed on the 13th July 2004 some 13 years ago for certain declarations and injunctive relief against the Defendant and damages.

[2] In essence, the issue for the Court at trial was whether the Deceased Adolphus Charles (hereinafter called "the Deceased") could dispose of a chattel house at Spring Village by way of his will dated the 26th January 2002. All other reliefs claimed by the Claimant flow from this determination and a claim for special damages for alleged damage to the property of the Deceased after his death.

[3] The issues not being complex, this oral decision will stand as the judgment of the court.

[4] The brief background to this matter is that in 2002 the Deceased made a will naming the Claimant herein as Executor and among other devises made the following devise "*I give devise and bequeath to my grandson Shawn Charles the chattel house in which I now live."*

[5] The Claimant further pleaded that in contravention of the terms of the will the Defendant remained in possession of the said chattel house and refused to leave and additionally had caused damage to the said house in the sum of $2,000.00.

[6] The Defendant in his defence denied that the chattel house in fact belonged to his father the Deceased but to his mother Olga Samuel who predeceased his father on 23rd January 1998 intestate leaving the Deceased and children, whom one is the Defendant.

The Defendant maintained that he lived in the house with the Deceased who he pleaded in any event was illiterate and could not have executed a will in the manner in which the same was presented for Probate. In essence therefore, the house did not belong to the Deceased to devise to anyone. In passing, I will say that this limb of the Defence with regard to the Deceased's illiteracy was not pursued by the Defendant at trial so the court makes no determination on the same.

[7] At trial the Claimant gave evidence on his own behalf as his witnesses did not appear and the concession was made by counsel Mr. Robertson that they added nothing to the issues to be determined, they all being unaware of the real issue of ownership. The Defendant and his sister gave evidence on his behalf and they sought to reiterate to the Court that the house belonged to both the Deceased and his wife as they in their words, "contributed to the same".

[8] It was telling to this court the manner in which the evidence was given by both parties.

[9] On a balance of probabilities, this Court is satisfied by the version of events regarding the Deceased's intention to give the property to the Claimant and accept that this was the intention of the Deceased. It was also apparent to the Court that the Defendant and his sister were suitably peeved that their father had not provided for them in the terms of this purported will. However, be that as it may, that finding is of little comfort to the Claimant as the real question that must now arise is that even if the Deceased intended to devise his property to the Claimant, could he have in fact done so.

[10] Counsel for the Claimant sought to rely on cross examination and in his submissions that the mere fact that the grant of probate was granted by the Court, with no opposition by the Defendant or any other family member by way of caveat or otherwise meant, in his submission that the issue of entitlement under the will was settled. Counsel for the Defendant, on the other hand, submitted that on the facts it was clear that the Deceased did not own the house in its entirety, it having been, he submitted, at the very least owned by both the deceased and his wife. In that factual matrix he submitted to this Court that the Deceased was not in a position to devise the house to the Claimant. He invited this Court to look at the words used in the devise and because they clearly said that he devised the chattel house, and not a part thereof, he further submitted that this Court must not import that that is what he in fact meant. Therefore, the submission by Counsel for the Defendant was that the gift must fail outright and fall to devolve an intestacy, in effect, to the Defendant and his siblings.

[11] Williams on Wills [1] makes it clear that in general a testator may dispose of any property vested in him at the time of his death for an interest not ceasing on his death, for example, a life interest only. Thus it is without question that a testator can devise any property whatsoever that he has an interest in, the operative words being "an interest in".

[12] On the balance of probabilities, I accept as was accepted by the Claimant, that the Deceased and Olga Samuel owned and lived in this property together. Whether the Deceased, met Olga Samuel, with the same or they built it together is not an issue in this action. The Claimant in his evidence clearly stated that the house was there because of "*her [grandmother] and [her] husband*

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[grandfather]" and again stated "*(It was his) grandmother and grandfather who built the house together."*[2]

[13] It was accepted therefore, in this Court's mind that the Deceased and Olga Samuel therefore owned the property in equal shares, at the very least. It is also accepted that the natural meaning of the words of the testator must be given effect. However, in saying so it is clear that those words must be read within the proper context and the court draws the parties attention to the case of **Hendry v. Perpetral Exertors and Trustees Annovation of Australia Ltd**[3] where the Court held that where a testator made a gift of all his livestock and all his real estate and the only livestock and real estate he had was an interest in a partnership which included the property, that all the testator could devise, was the interest he held in the property which was only equivalent to his share in the partnership.

[14] I am therefore satisfied that all the testator, the Deceased could have passed by his gift was the interest he had in the same which was not the entirety of the chattel.

[15] Just for the sake of completeness, regarding the submission by Counsel for the Claimant that the issue of the grant by the Court solidified the gift without more, there having been no objection to the grant, this Court is in full disagreement with that proposition. Indeed it is accepted that "the grant is conclusive of the testamentary nature of the instrument and the validity of the will as regards the capacity of the testator, form and exertion"[4]. However, as the case of Smart V. Tranter [5][affirmatively stated "probate is **not** conclusive of the right of the testator to dispose of the property concerned." Therefore, the mere assertion that the failure to question the grant must put the issue of the devise to bed is rejected completely.

[16] On the basis of the foregoing, the prayer of the Claimant for a declaration that he is entitled to the chattel house and declaration that the Respondent is not entitled to occupy the chattel house, are refused.

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[2] Extract from evidence of the Claimant at trial
[3] [1961]106 CLR 256
[4] Williams on Wills Vol 1 Ch 49.7
[5] [1890] 43 ChD 587 at 593

[17] The Deceased passed his interest to the Claimant together with his entitlement in the same upon the death of his wife. The Defendant and his siblings are entitled to the portion inherited from their mother. The shares will therefore be 2/3 (two thirds) to the Claimant and 1/3 (one third) to the Defendant and siblings.

[18] All other prayers regarding injunctions and removal of items from the said house are also refused in light of the finding of ownership.

[19] With regard to the claim for special damages, it was indeed unfortunate that the Claimant simply decided to plead the claim and not prove his claim. In the words of Chief Justice Rawlins in the case of Vernantius James v Ferguson John [6] out of St Lucia *"pleading is one thing, proving is another."*

[20] It is accepted that the standard of proof would be on a balance of probabilities whether special damages have been proven. The Claimant dearly stated in cross examination that no estimate was done of the damage and provided no documents or report on the damage to itemize the same.

[21] I believe that there was a certain amount of animosity towards the Claimant by the Defendant but I cannot accept that the Claimant has proven on a balance of probabilities the damage as claimed. Therefore that prayer is also dismissed.

[22] With regard to the claim for damages for trespass. It is clear that the definition of trespass is "a person's **unlawful** presence on land in possession of another even though no actual damage has been done"[7].

[23] In this case, this Court having found that the Defendant is lawfully entitled to a share of the said chattel, there was no unlawful interference on the part of the Defendant when he entered and/or remained on the same. In the premises, that prayer is also refused.

[24] Of the eight prayers of the Claimant, he was only partially successful on one of the same and fully on another I find that he has therefore been largely unsuccessful in this matter. Therefore, the Claimant is ordered to pay costs to the Defendant on a prescribed basis on an unvalued claim.

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[6] HCVAP 2007/025 per paragraph 17

[7] Halsburys Laws of England 5th Ed Vol 97 Para 562

IT IS HEREBY ORDERED AS FOLLOWS:

ORDER

[1] A Declaration that the Claimant is entitled to the chattel house belonging to his grandfather Adolphus Charles of Spring Village who died on the 2nd day of May 2004 testate is refused save and except as to a two thirds (2/3) interest therein.

[2] A declaration that the Respondent is entitled to occupy the said chattel house referred to in prayer #1 is refused.

[3] An order compelling the said Respondent to forthwith remove all of his belongings from the chattel house is refused.

[4] An interlocutory injunction restraining the Respondent whether by himself his servants or agents from entering the dwelling house is refused.

[5] An injunction restraining the Respondent from threatening the claimant is granted.

[6] A perpetual injunction restraining the Respondent from entering the dwelling house and entering the land is refused.

[7] The claim for special damages is dismissed.

[8] The claim for damages for trespass is dismissed.

[9] Costs to the Defendant on a prescribed basis on an unvalued claim.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar