



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 5263 of 2010

BETWEEN	CLARENCE SCOTT	CLAIMANT
	AND RUBY RICKETTS	
	(O/C RONJ WALKER)	DEFENDANT

Claim for interest in the land – Registered land – Equitable estoppels – whether transfer defeated equitable claim

Latoya Stevenson for Claimant

Debayo Adeipe for Defendant

Heard: 9th July, 10th July and 31st July, 2014

BEFORE: JUSTICE DAVID BATTS

[1] At the commencement, both parties indicated they were ready to proceed. The Claimant's Counsel made submissions on the admissibility of a document. This was what purported to be the surveyor's report of Mr. Damian Masters an attorney at law and a Commissioned Land Surveyor. Strenuous efforts to serve him with a witness summons had been unsuccessful. The Defendant had served a counter notice to the Claimants notice to adduce the document.

[2] The document was not signed by Mr. Masters and the Claimant did not have a signed copy of it. I ruled that it could not be said to be an expert report made by the witness. The witness being absent and unavailable, the document had no probative value. The last 2 lines of Paragraph 6 of the Affidavit in Support of Fixed Date Claim Form filed on the 3rd November 2010 were ordered struck out and exhibit CS3 to that affidavit removed.

[3] The Claimant then applied to amend the Fixed Date Claim form to seek an order for exhumation of a body. The circumstances being that a burial occurred on the land some weeks before the commencement of the trial. The Defendant's Counsel opposed the application. I refused the application. Exhumation involves issues of public health and other concerns which this court as at present advised is not competent to assess. If successful the Claimant can seek such permits or orders in separate proceedings.

[4] All witnesses were then asked to remain outside as the hearing of evidence commenced. The Claimant Clarence Scott then gave evidence. He is blind and his affidavit had been read over to him and his mark made. No objection was taken and his Affidavits dated 29th October 2010 and 3rd October, 2011 with attached exhibits stood as his evidence in chief, pursuant to Order made at Case Management on the 4th October 2011.

[5] Mr. Scott describes himself as a retired farm worker then 76 years old. He lived with his mother and his siblings on land owned by his father in Old Porus Manchester. His grandfather died in 1961 leaving his mother on the land. The Defendant is one of his 3 siblings. He being the eldest while she is the youngest.

[6] The Claimant says he did farm work overseas. In 1967 he got married. His wife lived at his mother's home. In 1968 when his first daughter was born he told his mother he was going to buy land to make a house for his family. He says his mother said,

“No, have enough land. I can give you a little piece to make a little house. She point out the land to him. He said that it stretched from the tomb at the front to just above the pond. It was about a square and a half of land. “

[7] The Claimant said he built a house there. It took time but he built one room in 1968; in 1979 the house consisted of 3 rooms. Eventually a verandah was built.

[8] The Claimant says that in 1986 his mother gave him a piece of paper written by Mr. Maxwell and that it was for the land she had given him. That paper is Exhibit CS4. The document is dated 19th January 1986 and commences with the words-

“I Lucille Nation give one half square of my land....”

[9] It ends with a description ‘the said piece of land is bounded as follows on the north Joseph Douglas, South Lucille Nation, east George Wright West Manchester Parish Council Road.’ It is signed by Lucille Nation and witnessed by S. Maxwell.

[10] The Claimant states further that his wife went to Cayman and worked for over 18 years. In that period she sent money and further improvements and additions to the house were made by them. In 2003 his mother, Lucille Nation died at the age of 90.

[11] The Claimant says he had been living on the land and no one has molested him for the entire time. They continued to do so even after his mother’s death. He lost his eyesight in 1994.

[12] In 2010 his sister Rubie Ricketts told him that he should not build any more on the house and that she did not know how his family would make out after he died. She had a solicitor write him a letter in mid 2010. That letter is Exhibit CS6 and is as follows:

*Mr. Clarence Scott
Old Porus
Manchester
Jamaica*

10th March, 2010

Dear Mr. Scott,

I am advising and assisting your younger sister Ronj Walker, and she has consulted me regarding the land she owns at Old Porus and your occupation of part of it with your family.

She has asked me to write to you to remind you that your occupation of the land in question is by her licence only and does not confer any property rights upon you or any member or members of your family.

The period of your licence to occupy is for your life only and does not extend for any longer thereafter than is reasonably required for your family to remove their goods and effects from the site.

I hope you are clear as to these points and that you will ensure that your family members also thoroughly understand their position.

Yours sincerely,

Robin J. Oliver

Rubie it should be noted was living in England. In February 2010 his nephew Alfred (Freddie) put up a fence between the houses and fenced off his back yard. He as a result cannot get to his fruit trees and bananas that are beyond the fence in his backyard. The Claimant only became aware that his sister's name was on the title to the land in 2010.

[13] In his affidavit filed on the 4th October 2011 the Claimant says he only seeks the one square and half of land his mother gave him. He says there was no mango tree there when the land was given to him. Further the coconut tree was planted by his son. He says Alfred fenced the land so he cannot even access the back door to his house. The Claimant says cultivation was done by himself and his sons. The Claimant says that he did have the land surveyed and notice was served on Alfred. Alfred did not object and walked the land with the Surveyor. Alfred subsequently pulled up the pegs put in by the surveyor. He said,

“I called him and spoke to him about pulling up the pegs. I said to him “I grow you and oonuh a run me out.” He said to me that “anything I am doing is on behalf of my aunty.” I was upset I started to cry.”

[14] The Claimant says he planted banana, coconut and cash crops on his land in front of the pond. It is since the letter from the solicitor in 2010 that his sister and Alfred started to restrict him.

[15] When cross examined he admitted that the land was never surveyed while his mother was alive, nor was it fenced off. He admitted he had not paid any property tax for the land. It was suggested to him that in 1986 when his mother gave him the letter she was no longer the owner of the land. He denied that and said he knew nothing about that.

The following exchange occurred,

“Q. mother did not mention tomb or pond in 1986.

A. Don't know

Q. the paper what it say.

A. that nobody must molest me

Q. she mention tomb and pond in paper

A. yes

Q. why the paper say sir?

J: Registrar please read the document to the witness (document read)

Q. no mention of pond and tomb.

A. the paper is alright.

Q. no mention of pond and tomb

A. agreed'

[16] The Claimant admitted that the Defendant rebuilt his mother's house. Further that she was a regular visitor even after she migrated. He admitted that in 2009 his wife was prevented from building a pigsty about ½ chain from his house. It was the Defendant who said no pigsty was to be built. When it was suggested to the witness that some old coconut trees were there he said,

“Please sir, 5 coconut tree, was in front and Gilbert lick down everyone. No dead coconut tree in there.”

[17] When it was suggested to him that he had not been occupying and cultivating 1 ½ squares of land the witness said.

“Mi a old man mi nuh tell lie. Mi plant every little thing. “

[18] Mrs. Olga Scott the Claimant’s wife then gave evidence. Her affidavit dated 15th October 2010 stood as her evidence in Chief pursuant to the Order at case Management. She says that after her marriage to Clarence she went to live with Lucille Nation her mother in law. Her evidence in chief corresponded with her husband’s, in particular that her mother in law had walked the land with her son, pointed it out, and that it extended from the tomb at the front to just above the pond.

[19] In cross examination the witness stated that the source of her knowledge that the Claimant was given 1.5 square of land is the document signed by Lucille Nation exhibit CS4. She contradicted a portion of her affidavit in that she said her husband never sent money home to pay taxes. The cross examination was otherwise uneventful.

[20] The Claimant’s next witness was Mr. Wesley Francis. Pursuant to the Order at case Management his affidavit dated 6th December 2010 stood as his evidence in chief. He is a retired policeman and was a most impressive witness. He has known the property in question since he was 5 years old. He refers to the Claimant as Sonny. He could not however say the extent of the property that belongs to Sonny. In cross examination he admitted that himself and the Claimant were friends as also the Defendant. The cross examination was otherwise uneventful. Thus ended the case for the Claimant.

[21] The Defendant then gave evidence. Her affidavit with exhibits attached stood as her evidence in chief pursuant to the Order at case Management. She states

that she had been the registered proprietor of land registered at Volume 796 Folio 92 of the Register Book of Titles since the 6th June 1974. She said this was land formerly owned by her grandfather Joseph Daniel Nation on the 23rd July 1956. A transmission application was made by Lucille Nation on the 15th August 1966. It was noted as being “entered” on the 6th June 1974. A Transfer No. 211731 was registered on the 6th June 1974 from Lucille Nation to Rubie Ricketts “by way of gift.”

[22] The Defendant admits that in 1968 the Claimant was given, by their mother, a spot on which to build a small house. She denies it was one and a half squares of land. She states that the land he occupied over the years extends to a mango and coconut tree behind his house. She denied that the document relied on by the Claimant could affect title as she had already been registered as owner on the Title. She said the land beyond the mango and coconut tree had not been cultivated by the Claimant. The Defendant says that her nephew informed her that the Claimant instructed him to run a fence to enclose his portion of the land. The Claimant has sought to increase his portion since the fence was run. She says the Claimant is entitled to the spot his house is on extended down to where her nephew had erected the fence.

[23] When cross examined, the witness stated, she migrated in 1983. She had lived in Montego Bay, had worked at Jamintel and with the post office. In 1968 she was not living with her mother but went home weekends. She stated she was present when her mother gave the Claimant a house spot. She says she was not aware that her mother had walked the spot with him. She denied her bother planted crops on the land. In testifying and contrary to the statement in her Affidavit, the witness said that in 2010 she instructed Alfred to fence the property. She denied that in 2010 she wanted her brother and his family off the land. She admitted that the solicitor wrote on her behalf. She admitted that she had never told her brother that she got title to the land. There was no reexamination.

[24] I showed her Exhibit CS6 and asked whether she recognized her mother's signature. she said,

"there is a resemblance."

She said over the years she saw cultivation and is able to say who planted because her mother told her.

[25] It only became clear to the Court that the Defendant was not challenging the Claimant's right to the house upon completion of the Defendant's evidence. This of course is because no statements of case (pleadings) were filed in this case.

[26] The Defendant's next witness was Alfred Douglas. His affidavit dated 24th April 2011 stood as his evidence in chief pursuant to the Order on case Management. He lives in the United States. The Claimant and Defendant are his uncle and aunt. He says he grew up on the land in question. Although he migrated he visited his grandmother frequently until her death in 2003. He said his uncle built a house on land given to him by his grandmother but that the land he occupied did not extend beyond a common mango tree and a coconut tree located a short distance behind his house. He said that in 2009 to 2010 while on a visit he observed the area behind the house to be in ruinate. He therefore cultivated and cleared it. He says his uncle asked him to wire off his portion of the land. He was going to put the fence just beyond the common mango and coconut tree but his uncle Haynes advised him to give Uncle a little more. He put the fence thirty feet beyond the mango tree and coconut tree.

[27] When cross examined he admitted that when he went to live with his grandmother his uncle's house had already been built. He denied his uncle occupied from the tomb to the pond. Interestingly, when cross examined about the fence he erected the following occurred,

"Q. Did you fence the land

A. He ask me to do it.

Q. He never did ask you

A. I tell you, Clarence Scott told me to fence off his piece. I call my aunt and she tell me where to fence.”

[28] The witness stated that prior to going to the United States he had worked in Cayman. He mentions that he always visited Jamaica regularly. His cross examination was otherwise uneventful although he admitted that his uncle's clothes line was in the vicinity of the tombs. He denied his uncle did any cultivation.

[29] The Defendant's next witness was Alvin Haynes. He stated he was unable to read or write. His affidavit did not indicate it had been read over to him. An objection was taken. I ruled that I would allow the witness to give evidence in chief orally and that the Affidavit would not be allowed to stand as his evidence in chief. If any new material emerged an application by the Claimant for an adjournment to take instructions might be favourably considered. Defendant's Counsel asked for time to consult with his client. Having done so he indicated they no longer wished to call the witness. That was the case for the Defendant.

[30] The parties made oral submissions. In his submissions Mr. Adedipe for the Defendant stated that there was no challenge to the Claimant's entitlement to the house. It was conceded by the Defence that this extended to two trees behind the house the mango and coconut tree. This could be protected by a Declaration of Trust. The Court he said could order an application for subdivision but could not Order a Subdivision.

[31] In her submissions Claimant's Counsel, said the issue was how much land was occupied by the Claimant. His possession for over 12 years defeated all others. She argued that as the mango and coconut tree were not there when his mother gave him the land then they cannot be the relevant boundaries. She submitted that the equity can be satisfied by Ordering a lien or prescriptive right and relied

on *Chalmers v Pardoe (1963) 3 All ER 552*. Alternatively, that a survey and rectification of title could be ordered.

[32] Each party had earlier filed Written Submissions with authorities.

[33] I find that the Claimant and his wife were witnesses of truth. It is not only their demeanour while giving evidence on which I relied. It seems to me more probable than not that the Claimant would have embarked on some form of cultivation on the land. I do not accept, as suggested by the Defendants and her witnesses, that he did no cultivation. Secondly the Defendants evidence did not impress me. I find that her effort, by way of her attorney's letter of 10th March 2010 to deny that her brother had a beneficial interest in any part of the land to be less than honest. It is clear from that letter that her intent was to reclaim the house after the Claimant's death. Neither did it enhance her credibility when in her affidavit she stated that her nephew told her it was the Claimant who instructed him to run a fence. In oral evidence she said she it was who instructed Alfred to fence the property. Interestingly, Alfred stated "his uncle" instructed him to erect the fence. These inconsistencies surrounding who gave instructions for the erection of the fence are most material. I find as a fact that it was the Defendant who instructed her nephew Alfred when and where to erect the fence. I find it troubling that the Defendant and Alfred tried to create the impression that the Claimant had positioned the fence. It is manifest to me that steps were being taken to take advantage of his infirmity and to secure a greater portion of the land than was hers.

[34] In these circumstances my findings of fact are as follows:

- a. In or about 1967 the Claimant's and Defendant's mother gave the Claimant a square and a half of land.
- b. She did this to prevent him going to live elsewhere with his wife as he had expressed an intention to do.

- c. She walked the land with him and it extended from the tombs at the front to just above the pond at the rear.
- d. The Defendant was aware of this gift.
- e. The Claimant over time, along with his wife and children, built a substantial residence there, planted trees and cultivated crops.
- f. This was done in full and open view and was known by the Defendant.
- g. In or about 1974 the Claimant's and Defendants mother obtained title and was registered on transmission and then transferred it to the Defendant. All this appears to have been effected at the same time in 1974.
- h. Neither the Defendant nor her mother told the Claimant about the registration of title or the transfer. It may be because they did not regard it as applicable to the portion the Claimant occupied. In this regard it is significant that the Claimant's mother did tell him to have his piece surveyed.
- i. I find that the document given to the Claimant by his mother in 1986 (Exhibit CS4) was written in the present tense but I find it was intended by her to evidence that which she had given in 1967. It was her way of attempting to protect her son and daughter in law from the very eventuality that has occurred. That is efforts by the registered proprietor to have him evicted.
- j. I find that the Defendant at all material times and in particular when she received the registered title knew that the Claimant had been given 1 ½ squares of land and that she took the legal estate subject to that equitable entitlement. This the Claimant became entitled to because he had forgone the chance of purchasing his own lot, in preference to building a house and cultivating on land adjacent to his mother's house based on the representation that the 1.5 square of land was his.

[35] The consequence in law is now well established. Equity will in such circumstances impose a trust constructive or proprietary. The Defendant is estopped from denying his entitlement and will be prevented from taking any

steps to enforce a right to possession against the Claimant or his successors. Such equity is enforceable even against a holder of a Registered Title. It is a claim *in personam* and based on the Defendant's knowledge and acquiescence and on the Claimant's acting to his detriment as aforesaid. See ***Gardner v Lewis (1998) UKPC 26 (22 June 1998); Frazer v Walker (1967) AC 569; International Hotel (Jamaica) Ltd. v. Proprietors Strata Plan NO. 461 SCCA 135/2008 [2013] JMCA Civ 45; Blue Haven v Tilly UKPC February 21 2006; Chalmers v Pardoe [1963] 3 All ER 552.***

[36] In these circumstances and taking into account the authorities, I ask myself how best is the Claimant's equity to be protected. Given the history of the matter, the only protection is by way of registration, either by issue of a separate title and/or notation of his interest on the existing title.

[37] I therefore propose to give effect to my decision on the merits with an Order as follows:

- I. A Declaration that Clarence Scott of Old Porus District in the parish of Manchester is the legal and beneficial owner of one and a half squares of land at Old Porus District in the parish of Manchester on which stands a dwelling house and extending from the tomb to just before the pond and bounded on the north by Joseph Douglas, South by Lucille Nation now deceased but occupied by Alvin Haynes, East by George Wright and West by the Parish Council road and being part of all that land registered at Volume 796 Folio 72 of the Register Book of Titles.
- II. The Claimants aforesaid beneficial interest as declared constitutes a Registrable Proprietary interest in the said land which may be protected by notation on the title until and unless a separate title is obtained.
- III. It is hereby declared that the Defendant holds by way of Constructive Trust for the Claimant his heirs successors and assignees all that part of land as defined in Para (i) above.

- IV. It is ordered that the parties take such steps as may be advised to subdivide and/or obtain separate titles and/or otherwise howsoever to secure the Claimants legal and beneficial interest in the parcel of land defined in Para (1) above.
- V. The Registrar of Supreme Court is authorized to execute on behalf of the Defendant any relevant document or instrument necessary to give effect to this judgment in the event the Defendant refuses or neglects so to do.
- VI. The costs related to the said applications and transfer are to be borne by the parties equally.
- VII. There is liberty to apply to either party generally.
- VIII. Costs of this action to the Claimant to be taxed if not agreed.

I will hear submissions from the parties before making these Orders final.

David Batts
Puisne Judge
31st July, 2014