

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A No. 3965 of 1991

Between

GURSION ROBERTSON

Plaintiff

And

DEXTER MARTIN
and
LENNARD MARTIN

Defendants

Appearances: J. Koorn for the Plaintiff
P. Wilson for the Defendants

JUDGMENT

The Plaintiff's Claim

The plaintiff claims to be the holder of the leasehold interest in possession of a parcel of land at Febeau Village, Laventille Road, San Juan comprising approximately 578 square metres. The leasehold interest is purported to be evidenced by a Memorandum of Lease dated 22nd May, 1987 registered as #9078 of 1987. He also claims to be the owner of two dwelling houses erected on the parcel of land.

He contends that the defendants, sometime in the months of September and October, 1991 wrongly entered and took possession of the land and dwelling houses, and continued to remain in possession thereof, and that they threatened him with the use of force should he attempt to enter the property or to remove them from the property.

He seeks possession of the land and the dwelling houses, damages for loss of income and an injunction to restrain the defendants from entering upon or remaining on the property.

The Defendants' Claim

The defendants deny that the plaintiff is the tenant or holder of "any leasehold interest in possession" of the parcel of land. They say that the original tenants of the parcel of land were one Vita Martin and Olive Martin, who were respectively their grandmother and aunt. They deny that the plaintiff is the owner of the dwelling houses and also deny that they threatened the plaintiff.

They contend that the original dwelling house standing on the parcel of land was erected by their father Jescomb Martin, the son of Vita Martin and brother of Olive and that Jescomb Martin resided at that house together with both women until he left leaving them both in occupation.

They contend as well that the plaintiff with the express permission of Olive Martin and Vita Martin erected, in or about September 1983, a small dwelling house on the rear portion of the parcel of land south of a

ravine which traverses the same and that he lived in it until Olive Martin died.

They counterclaim for a declaration that the plaintiff was never a tenant of the parcel of land and not entitled to the statutory lease, and accordingly, the statutory lease is null, void and of no legal effect.

The plaintiff, his wife Effelyn and Mrs. Ursula Wickham, owner of the fee simple, testified on behalf of the plaintiff. The two defendants and their father testified on their behalf.

The evidence

There are two competing accounts. The plaintiff's account is that he and his wife who is purportedly related to the Martins, got quite close to Vita and Olive after regular visits by Mrs. Robertson to the Martins. Vita was blind and Olive had a foot ulcer which had ultimately to be amputated. Mrs. Robertson visited them frequently and took care of them. She washed, cleaned and ironed. Her visits became daily visits. Eventually the plaintiff and his family moved into the house with both women. When both women died they assisted in funeral expenses.

According to the plaintiff, he improved on the house owned by the Martins after he moved in, adding an additional bedroom and a bath.

The defendants' account which is supported by their father is that the plaintiff was permitted to build a small house at the back of the lot. He lived there with his wife and three children. The house at the front ("the

front house”) was built in 1962 by Jescomb who was a carpenter by trade. It initially consisted of 2 bedrooms. The third bedroom was built subsequently by Olive. The plaintiff did not help in the construction of that bedroom. The land was rented by Vita and Olive and they paid an annual rent for it. Jescomb lived at the front house but left in 1972 to live next door.

The plaintiff came onto the property in 1983 when he built the “back house” as it came to be referred during the trial. He lived in that house with his wife and children one of them a young baby who was born in 1987.

In 1988 there was a landslide which brought debris down on the back house. There was a lot of mud inside. The place was wet and muddy. The plaintiff and his wife had a young baby. Olive having died in 1988, Jescomb, out of sympathy, permitted the plaintiff and his family to live in the front house. He stayed there until 1990 when he left with his family for St. Vincent.

There was much conflict on the evidence. The plaintiff contended in his evidence that they went to live with the Martins in 1983. He was told that the tenancy was transferred to his name by Olive Martin. Vita Martin was still alive at that time. He started paying rent to Anna Rennie, agent for Mrs. Ursula Wickham. The plaintiff however produced no written document showing actual purchase or assignment of the leasehold interest in the property from Vita Martin.

Mr. Jescomb Martin insisted however that the plaintiff only moved into the front house after both Olive and Vita had died. He denied that the plaintiff and his family lived in the front house when both women were alive. He said that both he and Lennard assisted Olive with the cooking.

He also denied that the plaintiff's older children shared bedrooms with Olive and Vita as contended by the plaintiff and his wife.

There was also conflict between the plaintiff's evidence and that of his wife as to the number of children they had an occurrence that was more than a little odd given that they had only three children. Mrs. Robertson in cross-examination stated that they had two children, Garth and Gail. The plaintiff admitted to a third child, Gail Anne but only after considerable pressure from Mr. Wilson. Even then he had difficulty recalling her date of birth and her age while still denying Mr. Wilson's suggestions that she was in fact the baby they were caring for when the landslide occurred.

A bundle of documents were tendered into evidence by consent. It included a number of land rent receipts issued to Vita Martin for the lot of land over the period 1972 to 1979, receipts issued to the plaintiff for rent paid in respect of the lot of land from May 1983 to September 1992, and receipts in respect of house taxes paid by the plaintiff in respect of both buildings.

Also referred to during the course of the trial were the affidavits of the plaintiff and Mrs. Wickham, given in interlocutory proceedings herein.

Certain exhibits attached thereto were also referred to, the most relevant of which were exhibits “U.W.1” and “U.W.2” appended to Mrs. Wickham’s affidavit, and “G.R.1” exhibited to the affidavit of the plaintiff which purports to be a statutory lease by which Mrs. Wickham purported formally to give the plaintiff a leasehold of the parcel of land for a period of thirty years from 1st June, 1981, pursuant to the 1981 Act.

Mrs. Wickham was quite candid in her evidence. She was not familiar with the property. She (and her sister) had inherited the property of her uncle, Mr. Joseph Stephens who was the landlord and owner of the fee simple in the lot of land. The lot was part of a sixty-two acre parcel on which stood many tenancies. Her uncle’s agent had prepared a list of tenants upon which she relied.

Cross-examination by Mr. Wilson revealed her lack of familiarity with both the tenants and the list. I note in her affidavit that she contended that Vita Martin was the tenant of the lot of land and that in 1983 it was transferred to the plaintiff by her agent, one Anna Rennie. I shall deal with that issue later in this judgment.

Statutory Lease

The primary question which falls to be determined here is whether the plaintiff holds a statutory tenancy under the Land Tenants (Security of Tenure) Act, 1981. The relevant provision of that Act is unambiguous.

Section 4(1) provides that notwithstanding any law or agreement to the contrary, every tenancy to which the Act applies and which was

subsisting immediately before the appointed day shall, as from the appointed day, become a statutory lease for the purposes of the Act. The appointed day for the purposes of the Act was 1st June, 1981. It meant that in order for the plaintiff to have acquired a statutory lease in 1981 he must have had a subsisting land tenancy immediately before 1st June, 1981. At that date the subsisting land tenancy was vested in Vita Martin.

Mrs. Wickham who inherited the fee simple from her uncle and who purported to issue a lease to the plaintiff was not familiar with the tenants who had been paying rents to her uncle and she proceeded on the basis that persons whose names appeared on the list, or who produced land rent receipts in their names were actual land tenants of the lots in question.

According to Mrs. Wickham, she issued a “*statutory lease*” to the plaintiff because he showed her receipts indicating that he was paying land rent. She had no clear idea who her tenants were.

She said she would execute a formal statutory lease once land rent receipts for a number of years were displayed by a person claiming to be a tenant.

The fact that a person may have paid land rent and obtained receipts issued to him or her as a “*tenant*” is not conclusive of the fact that he or she was in fact the tenant of the parcel of land. But it illustrated the predicament in which Mrs. Wickham found herself after she (and her sister) inherited the fee simple from her uncle. The evidence is however

that Vita Martin was the tenant in 1981. By operation of law she was entitled to a 30 year lease from 1st June, 1981.

There is no evidence that prior to her death in 1983 she assigned her statutory interest to the plaintiff. In this regard, the plaintiff's evidence that Olive Martin told him so apart from being hearsay, is insufficient to prove assignment. By 1983, Vita Martin by virtue of the 1981 Act was already the holder of a 30 year statutory lease and she would have been required to join in any assignment of that lease to the plaintiff. There is no evidence that she joined in such an assignment with Ms. Rennie as agent for Mr. Stephens. There being no evidence of any assignment of that interest to the plaintiff, upon her death in 1983 Vita Martin's interest devolved her legal personal representative for the benefit of her beneficiaries. No letters of administration were taken out by either Jescomb Martin or Oliver Martin. They were beneficially entitled to the residue of the lease. Olive Martin, having died in 1988 without issue, the sole beneficiary of the residue of the leasehold would be Jescomb Martin subject to proper administration of the estate. In those circumstances, the plaintiff's claim to a statutory lease fails. The purported statutory lease is null, void and of no effect.

The front house

As to ownership of the front house, the plaintiff's claim to it also fails. I reject his evidence and that of his wife. I accept the evidence of Mr. Jescomb Martin and that of Dexter Martin. Lennard Martin did not give reliable evidence. It was not that he was evasive as that he had an unreliable memory.

Mr. Jescomb Martin's account of the circumstances under which the plaintiff entered the front house was by far the more credible. The plaintiff and his wife were rather lacking in candour. Mrs. Robertson's omission to mention the birth of Gail Anne was not an error. Rather, it was a deliberate attempt to conceal the fact that she was quite a young child in 1988 for fear that such an admission would give credence to Mr. Jescomb Martin's account that he permitted them to reside in the front house out of sympathy for the young child and the circumstances under which they lived after the landslide. The plaintiff's reticence in admitting Gail Anne's existence and his efforts to conceal her age further undermined his case.

I also accept Mr. Jescomb Martin's evidence that the plaintiff never added to or improved on the front house. I find that the plaintiff is not the owner of the front dwelling house and that Mr. Jescomb Martin, as next of kin to Vita and Olive Martin, is the owner.

The back house

As to the house at the rear of the lot, Mr. Jescomb has admitted that it was built by the plaintiff. There was no issue taken before me as to whether it was a chattel or a fixture I do not propose to rule on it but given that Mr. Jescomb Martin has admitted to the plaintiff's construction of it and that no issue was taken by the defendants that he did build it, I find that the plaintiff has the equitable interest in that house.

I could find nothing in section 4 of the then Aliens Landholding Act prohibiting the plaintiff's equitable interest in the building, but in any event the plaintiff has been granted residency in Trinidad and Tobago since 1986, and the grant of residence would have regularised his status for the purposes of his equity in the back house.

I also reject the plaintiff's evidence that the defendants threatened him with violence. He was simply not a credible witness. However, in view of the decision to which I have come as to his equitable interest in the house, the question of injunctive relief still arises as it is not unlikely, in view of the nature of the claim that a breach of the peace may arise. I shall defer my order until I have heard further submissions from counsel.

The plaintiff's claim of a statutory lease of the lot of land at Febeau Village is rejected as is his claim of ownership of the front house. I find as to the house at the rear that the plaintiff has a 100% equitable interest in it. I shall hear further argument on the appropriate order I am to make in regard to possession, injunctive relief and costs.

Nolan P.G Beraux
Judge.

23rd September, 2002