BARBADOS

[Unreported]

IN THE SUPREME COURT OF BARBADOS

HIGH COURT

CIVIL DIVISION

No. 1545 of 2006

BETWEEN

IBRAHIM NOUMEH	**PLAINTIFF**
AND	
BHANMATIE SRIGOBIND	**FIRST DEFENDANT**
AWAD SOOKRAM	**SECOND DEFENDANT**

Before the Honourable Madame Justice Jacqueline Cornelius, Judge of the High Court

2013: July 03

Mr. Deighton Rawlins for the Plaintiff

Mr. Steve Gollop for the Defendant

DECISION

Summary of Facts

[1] The plaintiff was the owner of two sections of a parcel of land situated at #14 Suttle Street in the parish of Saint Michael. By conveyance dated the 26th day of June, 1998 the plaintiff sold the said parcel of land containing by admeasurement some 199.40 square metres to the defendants. At the time of sale there was a wall

building with a shop on the land and the defendants now own and occupy same. The parcel of land is abounded on one side by Suttle Street and on another side by Hopes Alley.

[2] Prior to purchasing the property, the first defendant sold vegetables in the shop, but after purchase, the defendants expanded their business to a bar and a small supermarket. The defendants paved the area next to their business and also repaired the roof and the floor of the building they occupied. The plaintiff alleges that the defendants have committed acts of trespass on his land, namely:

a) Constructing a door to the Bar which opens onto his property to allow entry to the Bar and Restaurant;
b) Paving a portion of the plaintiff's land and using the land and causing it to be used for parking vehicles and as a socializing area;
c) Using a portion of the land to dump garbage.

[3] The plaintiff therefore, applied by Originating Summons filed on the 30th day of August 2006, for the following orders:

1. An Order to restrain the defendants, their servants or their agents from opening a door onto the plaintiff's property situate at Suttle Street in the parish of Saint Michael;
2. An Order that the defendants desist from dumping garbage on the plaintiff's property situate as aforesaid;
3. An Order that the defendants whether by themselves, their servants, agents or customers henceforth not trespass on the Plaintiff's property situate as aforesaid;
4. An Order that the defendants desist from using the plaintiff's property in anyway whatsoever situate as aforesaid;
5. An Order that the defendants restore the plaintiff's property to the condition it was before the paving thereof;
6. An Order that the defendants do pay the plaintiff's costs of this action;

7. Further and other relief as the Court deems fit.

PLAINTIFF'S EVIDENCE

Evidence of Ibrahim Noumeh

[4] The plaintiff deposed that he was the owner of a piece of land located at Suttle Street in the city of Bridgetown. He sold a parcel of the property to the defendants in 1998; the portion on which a wall building consisting of a shop stood. This parcel of land stood abutting and abounding his property.

[5] The plaintiff stated that the defendants operated a bar out of the building and constructed a door to it which opened onto his property to allow entry to the bar and restaurant. He made a complaint to the police of trespass on his land by the defendants. After carrying out investigations, the Royal Barbados Police Force wrote to him by letter dated the 17th day of July 2006 and signed by the Superintendant of Police William E. Yeardwood, stating that the second defendant "paved an area adjoining his wall structure to provide parking space and a socializing area."

[6] The plaintiff contended that in addition to paving the land and causing it to be used as a parking space and socializing area, the defendants dumped garbage on the land. When the property was sold, he stated that there was no land next to the building itself. There were two doors on the building, one which opened onto Suttle Street and one which opened onto Hopes Alley. There was no door opening onto his land at the back of the building and he would park his vehicles on the land. When the defendants started to repair the roof and back of the building, whatever was taken out of the building was dumped on his land and prevented him from parking on the land.

[7] In 2007, he instituted proceedings to prevent the defendants from dumping things on his land and to have the land free and clear. The proceedings came to an end on 15th February 2008. After the discharge of the proceedings, the defendants paved the land and placed benches and a freezer on it. He subsequently had the land surveyed and stated that he has been dispossessed of his land from the 30th day of January 2001. (In consequence) he had to park at Trident House Property

Management and had been paying VAT and charges for the car park from the 30th day of January 2001.

Cross Examination

[8] The plaintiff stated that when he sold property to the defendants, there was no door between the land and the building. The defendants dumped garbage on the land and it was still there to be seen. Consequent upon the defendants paving of the land, the plaintiff stated that he could not park on the lot. He subsequently made a complaint to the police alleging that the defendants trespassed on his property.

EVIDENCE OF ROMEL BEST

[9] Mr. Best resided at #4 Pilgrim Land, Christ Church. He was a registered land surveyor and had been such for three years prior. On 13th February 2008 he swore an affidavit with a plan of the property in question attached.

[10] Mr. Best deposed that through his research, he established that the property was abutting and abounding to the north by lands of the second defendant. The conveyance between the plaintiff and the defendants contained abuttals which matched the land in question.

[11] He produced a plan dated the 3rd day of February 2008 after completing research. The plan indicated that he found 4 tables, an ice freezer and a paved area all of which occupied some 95% of the land.

Cross Examination

[12] Mr. Best stated that the defendants did not admit to owning that tables and freezer on the land. He did not ask them. He did not know who paved the area and he could not say who placed the items there. He was retained by the plaintiff through Mr. Panacino.

DEFENDANT'S EVIDENCE

Evidence of Bhanmatie Srigobind Sookram

[13] Mrs. Sookram resided at Lot #14 Suttle Street in the City of Bridgetown and so resided from about 1996. Prior to purchasing the property in question, she was a tenant and could only sell vegetables. She continued to do so after purchasing the property.

[14] She stated that they purchased the entire property. The building only had one door to Suttle Street at the time. It was a wide door through which customers would come to purchase vegetables. There were other doors on each side of the building. The buildings are joined together; three sides had a door, front, back and side; the rear had a back door with a mechanic shop.

[15] She stated further that the property was in a mess when they purchased it. She had to purchase material from Caribbean Lumber Company and then get the property fixed up. With respect to the old materials and garbage, Mrs. Sookram stated that she did not put the old material from the repairs on the plaintiff's land but had to hire a truck to remove it because she ran her business from that location. The plaintiff could not park his car at the back of the building because there were lots of old cars.

[16] Mrs. Sookram deposed that she expanded the business to a Bar and sold everything in the way that a supermarket would. Patrons could not enter from the back anymore but there was a front and side entrance. When asked how long she operated the bar, Mrs. Sookram said that she could not recall.

[17] She stated that when she purchased the property 'he (the plaintiff) tell me all of that is mine' and she paved it and cleaned it up. The bar was still functioning and if garbage was there, the Health Authority would have closed her down. The three tables and chairs were all moveable and there was no ice freezer on the land at this point. There was an ice freezer there a long time ago, about four years prior but the freezer was moved because people kept breaking into it.

Evidence of Awad Sookram

[18] Mr. Sookram stated that they carried out some repairs on the building. The property was in 'more than a mess' and the repairs included changing the roof and building the floor. He never constructed a door to the southern side of the building; the door was there when they purchased the property. During the repairs, they put the old materials on the land but they cleared it away because garbage could not be kept there.

[19] He stated further that customers could go from the paved area to the bar. He recalled that there was a freezer on the land but said that it was not there anymore. He could not recall if was last there in 2008.

[20] Mr Sookram deposed that they beautified the piece of land and had a table or two on it. He stated that 'no man in his right mind would buy property with a door onto the owner's land'. He purchased the property about 1998 and understood that the purchase included the paved area.

SUBMISSIONS

[21] Mr. Rawlins for the plaintiff submitted that the parties were owners of adjacent properties and the defendants became owners of a building that they purchased from the plaintiff. There was no door when they purchased the property and they had to effect repairs to the roof of the building.

[22] Counsel submitted that the first act of trespass was throwing debris onto the plaintiff's property. From the time of the repairs, legal proceedings were initiated against the second defendant. Counsel contended that from the time the door was made, application before the court commenced but the application was dismissed because of procedural irregularity. The plaintiff contended that it was an outstanding untruth that the door was already there. The defendants gave the evidence that they sold produce and paved the plaintiff's property despite the court application.

[23] Counsel referred the court to the letter from the Royal Barbados Police Force and invited the court to restrain the defendants from opening the door which opened onto the plaintiff's property and from dumping garbage. He pleaded further that the defendants should be made to remove the benches and tables and requested that an injunction be granted to make the defendants restore the plaintiff's land to the condition in which they found it.

[24] The case of ***Swordheath Properties Ltd. v Tabet and Others*** **[1979] 1 W.L.R. 285** was submitted for the court's consideration. In ***Swordheath*** it was held that

> "where a plaintiff established that a defendant had occupied residential premises as a trespasser, then without adducing evidence that he could or would have let those premises to

> someone else had the defendant not been in occupation; he was entitled to damages for trespass…"

[25] Counsel suggested further that the principle in ***Swordheath*** should be adopted because the defendants admitted that they enhanced their business from a mere grocery store to a bar and further that they opened the door, occupied the plaintiff's property and made money there from.

[26] In his view the evidence was that the plaintiff and his wife would park on the property. The cost of parking around Bridgetown was about $150.00 per month and the plaintiff was asking for damages at a rate of normal parking fees for two vehicles for 11 years and for costs to be agreed or taxed.

[27] Mr. Gollop on behalf of the defendants submitted that the instant matter turned on evidence and the defendant's disputed the application. Even if the court accepted that the door was not there and the defendants put it there, the damage caused by an opening door could only be minimal. There were Town Planning rules and the extent of any compensation can only be minimal.

[28] The defendants remain resolute that they have not kept the adjoining lot in an unsightly fashion and that they kept it in a sanitary manner. The evidence was that they are engaged in buying and selling food and having an adjoining property that was used as a dumping ground would only encourage rodents and pests. This would not be in the best interest of their business. Counsel submitted that the defendant's stories corroborated each other and ought to be given more weight than the plaintiff's alone.

[29] He submitted that the Land Surveyor could not say to whom the tables and chairs belonged and even if one concluded that the items were the defendants, the plaintiff would only be entitled to nominal damages. The defendants put themselves to expense to ensure that the area was kept sanitary. If the court concluded that the area was owned by the plaintiff, then by reason of the defendant's activities of paving the area and cleaning it, the plaintiff would have benefitted, not lost. The property had been enhanced.

[30] There was the claim that the applicant was prevented from parking his vehicle. That is disputed and the court's record of evidence will show that second defendant on cross examination indicated that when he first bought the land it could not be parked on because it was in a deplorable state and it was the defendants who sought to have the land cleared. This notion that the plaintiff used his vehicle to park on the land does not fit the evidence. If the plaintiff's submission is that the defendants paved and maintained the land, the defendant's submitted that the court should draw the inference that the land could not accommodate the plaintiff or anyone on his behalf as a proper facility for parking vehicles. In that regard the plaintiff could not have suffered any loss as a result of having to look for 'another' parking space.

[31] It is the defendant's case that the parcel of land in dispute was owned by the defendant. The case as presented by the plaintiff did not flow consistently and the defendants requested that the court dismiss the application with costs.

DISCUSSION

[32] It is noteworthy that the parties have agreed to the two conveyances exhibited before the court. It is essential in this matter based on the evidence provided to determine who was the owner of the property in question and therefore whether any issue of trespass was capable of being maintained.

[33] The plaintiff's case is that he is the owner of the land and the defendants have dispossessed him of the use and benefit of the land. The defendant's case is that the land is owned by them and on purchase this was the understanding that they had. In the circumstances, therefore, the court must initially examine the conveyances exhibited before it.

[34] The first conveyance exhibited showed that the plaintiff purchased the land in question from one Joseph Hammond Jordan in 1986. This lot is the one on which the tables and chairs belonging to the defendants were placed. The court notes at this point, that the evidence is sufficient to indicate that the defendants paved the lot and put tables and chairs on it and in the circumstances, the court so holds.

[35] A plot of the entire portion of land in question shows two sections of land, A and B. The plaintiff via the 1986 conveyance purchased what was then the parcel of land known as Section B. The full measurement of Sections A and B amounted to 199.40 square metres. There is no evidence to indicate that the plot was otherwise sub-divided in any way and the 1986 conveyance contains a description of land located at Hopes Alley alone. This is consistent with the plot as exhibited to the court.

[36] By conveyance dated the 26th day of June 1998, the plaintiff sold land located at #14 Suttle Street and Hope Alley to the defendants. In the conveyance, the following description was provided

> "The vendor as beneficial owner hereby CONVEYS unto the Purchasers ALL THAT land situate at Suttle Street and Hope Alley containing by admeausrement 199.40 square metres or thereabouts"

[37] The conveyance was signed by the plaintiff and the defendants and witnessed by their respective Attorneys-at-Law in both instances. Based on the conveyances, it stands to reason and I so hold (1) that the plaintiff owned sections A and B of the single parcel of land; and (2) that he sold the entire parcel of land (sections A and B) to the defendants. The conveyance was duly recorded in the Land Registry and there was no evidence before the court to indicate any impropriety. Indeed the evidence showed that the plaintiff knowingly sold the plot of land to the defendants. I accept the first defendant's evidence that the plaintiff told them all of the land was theirs and I must hold therefore that the defendants are the owners of the paved section of land in addition to the land on which their bar and restaurant resides.

[38] The court notes however the findings of the land surveyor. It was his evidence that he produced a plan from his research. Having examined the surveyor's evidence, a number of issues have arisen. The court has not seen any of the research which was used to determine that the plot was the plaintiff's. There was no evidence of the plaintiff's continued ownership of the land; no land tax bills or

evidence of a sub-division have been produced and the plaintiff's have not argued that the 1998 conveyance was incorrect or not a true and accurate representation of the sale.

[39] The court must therefore find on the evidence that the defendants' version of events is more credible and the entire parcel of land was indeed conveyed to them as is evidenced by the 1998 conveyance between the parties; a conveyance which all of the parties have agreed to.

[40] In the circumstances therefore, any action for trespass or injunctive relief by the plaintiff cannot now be maintained on the evidence. Given my holdings therein, the plaintiff has no remaining proprietary interest in the land located at #14 Suttle Street and Hopes Alley in the City of Bridgetown.

DISPOSAL

[41] Accordingly, the orders sought in the plaintiff's originating summons filed on the 30th day of August 2006 are refused.

[42] On the issue of costs, the parties are at liberty to apply for a hearing before the court at the earliest convenient date.

Jacqueline Cornelius
Judge of the High Court