

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

NO. 321 OF 1999

BETWEEN:

ZENA BENTHAM PLAINTIFFS

AND

MERVIN BENTHAM

AND

MIGNETTE HOLDER DEFENDANTS

AND

ALVIN HOLDER

Before the Honourable Mr. Justice Carlisle Payne, Judge of the High Court

2004: October 5, 6 and 7

Mr. St. Clair Howell for the Plaintiffs

Mr. Gregory Nicholls for the Defendants

With Ms. Nicole Roachford

DECISION

[1] The Benthams claim possession of a parcel of land in Rock Hall, St. Thomas, occupied by the Holders. The Holders claim that the Benthams are estopped from claiming possession. They further claim a proprietary interest in that they spent substantial sums of money on their house with permission of the Benthams.

[2] Sometime in 1980 or 1981, the Benthams, who then lived in England, permitted the Holders to put a chattel house on the land. The Holders were recently married. Mrs. Bentham is the aunt of Mrs. Holder, and there was such a close family relationship that the Benthams allowed the Holders to live on the land rent-free. This continued for some 15 years, until 1995.

[3] Meanwhile the Holders had built the toilet and bath, kitchen, part of the dining room and part of the gallery in wall. But the Benthams said that the Holders requested and were given permission to build the toilet and bath only in wall.

[4] The evidence of Mr. Holder however is as follows:

“Mr. Bentham looked around and inspected the house. He said the kitchen was too small. He also spoke about the bathroom. He asked us why not put it in wall. Then on the kitchen part, he asked why waste your money in board, why not put the whole bloody thing in wall. This was 1982. He also stated that he and his wife were not interested in the land, to make ourselves comfortable and happy ... the toilet and bath were not already in wall at that time. We constructed the toilet and bath out of wall. This was 1982 ... After 1982 he asked us why not build the whole bloody thing in wall.”

[5] Mr. Bentham denied making any of those statements or representations attributed to him. He maintained that they became aware that parts of the house, apart from the toilet and bath, were in wall for the first time in 1995 when Mrs. Bentham visited the house. The Holders were then asked to pay rent of \$4 per week, and the position adopted by Mr. Holder, as given by Mr. Bentham, was this:

“I give you two options, you buy my house or sell me your land, we were living there on the land for 17 years and do not intend to pay rent now.”

[6] Mr. Holder's position from his oral evidence was this:

"They stated that they need us to pay rent. I questioned the two parties and asked them why the sudden change. I stated to them that rent was never mentioned before, why all of a sudden that these changes come about."

[7] I find the attitude of the Holders to this request to pay a modest rent quite remarkable in the circumstances. It had never been disputed that the land belonged to the Benthams. The attitude of the Holders brought to an end decades of apparently good friendships and family relationships.

[8] The Holders have since gone to live in the USA and have rented out the property.

[9] It is not an easy task for the court when persons who are given the licence of a chattel house spot later claim a proprietary interest in the land based on alleged oral representations from the owners which are denied. In this case the owners maintain that permission was given for the toilet and bath only in wall at the specific request of Mrs. Holder. This was according to Mr. Bentham in the late 1980s when he came to Barbados for a funeral and was during a conversation with Mrs. Holder at the cemetery. Mrs. Holder denied this conversation at the cemetery, and as far as her evidence goes, it does not appear when or if at all such limited permission was given. Nor does this appear in the evidence of Mr. Holder. It was however pleaded at paragraph 3 of the Defence filed on 11th October, 2002 that Mrs. Bentham gave Mrs. Holder such limited permission although the year is not indicated nor is the occasion. But Mr. Bentham is alleged by the Holders in their oral evidence to have been saying "put the whole bloody thing in wall" as early as 1982.

[10] It is further to be observed that the Defence filed 11th October 2002 is to the effect that Mrs. Bentham represented to the Holders that the Holders would be permitted to reside on the premises for as long as they desired. No evidence was given in support of this. And nowhere is it pleaded that Mr. Bentham made any representations whatsoever.

[11] In any event, both the Benthams and the Holders are educated and sophisticated people. It would seem strange for the Benthams to be telling the Holders that they could live on the land for as long as they desired, that they the Benthams had not interest in the land, and that the Holders should build their house of wall, from as far back as 1982, and yet the Holders never offered to buy, nor the Benthams to sell, the land. This was not a case, as is common in Barbados, where the owners have no title deeds. The land had been conveyed to the Benthams in 1964.

[12] I find the version as given by the Benthams more probable than that given by the Holders, and I also find the Benthams more credible.

[13] I accept the evidence of the Benthams that no permission was given by them for any construction in wall apart from the toilet and bath. This forms a very small part of the house.

[14] The Benthams will therefore have an order for possession. Possession is to be given

within 10 weeks of today.

[15] Costs for the Plaintiffs.

[16] Liberty to apply.

Carlisle Payne

Judge of the High Court

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