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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. H-073 of 1994

BETWEEN	WESLEY HALL	FIRST PLAINTIFF
	AND	
	LILY HALL	SECOND PLAINTIFF
A N D	WILLIAM ALLEN	DEFENDANT

Mr. Ernest Smith and Miss Smith instructed by Messrs. Ernest Smith and Company for Plaintiffs.

Mr. Leon Palmer instructed by Williams, McKoy and Palmer for Defendant.

HEARD: 16th, 17th October, 1997 and 5th December, 1997.

ELLIS, J.

By a Statement of Claim the plaintiffs seek:

(i) Specific Performance of an Agreement between themselves and the Defendant for the sale and purchase of a plot of land at Maxfield in Trelawny part of land registered at Volume 1006 Folio 9 of The Register Book of Titles of Jamaica;

(ii) declaration that they are the legal and equitable owners of the said plot of land;

(iii) alternatively damages for breach of contract.

The defendant in his statment of defence admits the existence of the alleged agreement but he denies that there was any agreement to sell more than 4 acres of land.

In any event the agreement to sell the land was subject to the Trelawny Parish Council granting approval for a subdivision. If that approval was not given the plaintiffs deposit of $3,000.00 would be returned. He admits that he placed the first plaintiff in possession of 4 acres of land. He denies that he agreed to sell the plaintiffs an extra acre of land.

The first plaintiff gave evidence. He said that on the 6th

May, 1970 the second plaintiff and himself agreed to the defendant selling them 4 acres of land at $1,000.00 per acre. On the said date he paid to the defendant an amount of $3,000.00 on deposit and he was placed in possession. At the time the land sold subject to an approval for sub-division and it was agreed that the balance of $1,000.00 would have been paid on receipt of title.

The plaintiff said that he fenced the 4 acres and planted red peas, pumpkins and reaped sugar cane from the said land for 15-18 years. He also planted orchard cops such as avocado pears, naseberry and pastured his cattle on the land.

In 1980 he said the defendant informed him that the parish council's approval was for sub-division into 5 acre lots and not 4 acres. He was offered on sale and he agreed to buy an extra acre of land adjoining the 4 acres to conform with the acreage of the approved sub-division.

In 1987 he sent an amount of $2,000.00 on being $1,000.00 the balance of the purchase price of the original 4 acres and $1,000.00 for the extra acre. In the said 1987 he received a surveyors diagram for a 5 acre plot - Exhibit 1.

The first plaintiff said he was in occupation of the said 5 acres up to 1992. He visited the property and saw the defendant's son and daughter on the land. He spoke to the defendant as to what he saw and brought proceedings for trespass to his property. He also lodged a caveat against any dealing with the said land.

Mr. Palmer cross-examined this plaintiff.

The answers given in cross-examination were not really contradictory of the plaintiff's case. It was denied that $3,000.00 was refunded to him because he failed to negotiate the price of the additional acre of land. The second plaintiff gave evidence in support of the claim and she was cross-examined.

The defendant gave evidence. He said in 1970 he did agree to sell 4 acres of land at Maxfield to the plaintiffs. Sub-division of approval was sought for 4 acre lots but approval was granted for 5 acres. He said there was a payment of $3,000.00. There was no agreement between the plaintiffs and himself about an additional acre

of land at $1,000.00 per acre.

He was cross-examined by Mr. Smith. He denied the suggestion that he initiated the survey which resulted in the diagram for 5 acre plot. He did however admit that he wanted the second plaintiff to have the land in question.

He did not admit that the first plaintiff cultivated the land and pastured any cattle there.

Mr. Smith addressed to say that the plaintiffs have fully established their case. The fact of their continuous possession of the land has not been challenged.

Mr. Palmer contended that there has been no contract for the sale of land. If there was such a contract it was for 4 acres and not 5 acres. It cannot be altered by parol evidence to be one for 5 acres.

He submitted that the contract was void as it contravened the section 5 of the Local Improvements Act. That section requires a sub-divider to deposit, with the relevant parish council, a map setting out the details of the proposed sub-division before he embarks upon a sub-division.

This was not done in the instant case and therefore the contract was void. He cited **Watkis v. Roblin (1964) 8 J.L.R. 444** in support of his submission.

I am sure that Mr. Palmer made that submission without considering section 13(1) of the Local Improvements Act. That section is as follows:

> 13(1) The validity of any sub-division contract shall not be affected by reason only of failure, prior to the making of such contract, to comply with any requirement of section 5 ---------------------- but such contract shall not be executed by the transfer or conveyance of the land concerned unless and until the sanction of Council hereinbefore referred to has been obtained.

That provision in the statute nullifies the effect of the cited case and therefore Mr. Palmer's submission fails.

I find on the evidence that the plaintiffs had a proper agreement with the defendant to purchase land the subject of this action.

Moreover, they part performed the contract by taking possession

of the 5 acres with the consent of the defendant. The defendant has raised no credible defence and the plaintiffs succeed in their claims.

There will be judgment for the plaintiffs and it is ordered that there be Specific Performance of the contract to sell 5 acres of land. The plaintiffs are to pay to the defendant the amount of $5,000. being the price of the said lands.

The plaintiffs are also declared to be the equitable owners of the plot of land the subject of this action.

Costs to the plaintiffs to be agreed or taxed.