

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CHAMBERS

M.87/90

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|---------|------------------------|------------------|
| BETWEEN | MAVIS RODNEY | PLAINTIFF |
| AND | JANE RODNEY-SEALE | FIRST DEFENDANT |
| AND | LELIETH RODNEY-ROBERTS | SECOND DEFENDANT |

Dennis Goffe and Ms. Minett Palmer for Plaintiff
Crafton Miller and Miss Nancy Anderson for Defendants

HEARD: January 24, 1991. January 28, 29, 30 & 31, 1992
July 23, 1992, February 25, 1994.

JUDGMENT

CHESTER ORR, J.

Henrietta Rodney died testate on the first day of October, 1958. By her Will she bequeathed 107 acres of land at Toll Gate in the parish of Clarendon to ten of her children, in the following terms:

"to be amicable handled and any proceeds from the said land to be equally divided among the ten (10) children mentioned above."

One of her sons Percival Rodney, the deceased husband of the Plaintiff was named as her Executor. Probate of the will was duly granted to him on the 8th day of April, 1959.

At the time of her death some of the children of Henrietta Rodney resided abroad. There is conflict in the Affidavits as to the number who so resided. Percival Rodney proposed to subdivide the land among the beneficiaries and to this end obtained a sketch plan, dated 6th January, 1966 prepared by Mr. Irvine a Land Surveyor. Under this plan the first defendant who then resided in England, received a portion of land which adjoins that chosen by Percival Rodney. She had a house built on the land by Percival Rodney and resided there on her return to the Island in 1974.

There is no evidence that this proposed sub-division was approved by all the beneficiaries.

In 1979, Gwendolyn Bryan nee Rodney one of the beneficiaries filed an Originating Summons in which Percival Rodney was the Defendant. The summons sought an Order in respect of the division of the land, the subject of the Will. This summons was not heard and no further action has been taken thereon.

In 1980, prior to the death of Percival Rodney, Lucille Rodney-Gooden a beneficiary and her husband Charles Gooden built a house on the portion of land allotted to her by Percival Rodney. In 1988 a registered title was issued to Charles Gooden in respect of this portion. Percival Rodney died on the 20th May, 1980. The plaintiff, Mavis Rodney obtained Probate of his estate.

In 1986, the surviving beneficiaries of the Will of Henrietta McLeod and the children of the deceased beneficiaries held a meeting at which they decided to sub-divide a portion of the 107 acres to effect an amicable distribution. Sub-division approval was obtained for 56 acres and 2 rods of the land. There is no evidence as to the disposal of the remaining portion of the land.

On the 11th September, 1990, the plaintiff applied to have the portion of land selected by her late husband, registered under the Registration of Titles Act. The defendants filed a Caveat which the plaintiff sought to have removed in this summons.

Mr. Goffe submitted that the first defendant was estopped from pursuing her claim. She was guilty of laches, had given a waiver and was constrained by the Limitation of Actions Act.

The defendants contend that the objection is based on the fact that the plaintiff seeks to register more land than that to which she is entitled. In these circumstances, until the plaintiff had defined the boundaries of the land which she claims, the first defendant could not be said to have acquired in the plaintiff's claim. I hold that the first defendant is not debarred by reason of laches, waiver or the Limitation of Actions Act.

The plaintiff's Affidavit does not disclose that there was at any time any amicable settlement of the estate. On the contrary there was disagreement by Gwendolyn Bryan who filed an Originating Summons seeking inter alia "Directions as to how the said 107 acres of land should be divided".

In addition, the first defendant at the meeting in 1986 agreed to a new sub-division of the land. It is clear that there never has been an amicable settlement of the land as contemplated by the testator Henrietta Rodney.

Mr. Coffe submitted that the defendants had not established an interest in the land sufficient to support the Caveat. He further submitted that there was non compliance with the provisions of the Act relating to Caveats and that there was no evidence of a nexus between the Will and the Caveators to an interest in the parcel of land which was sought to be registered. In short the Caveat was invalid.

Section 139 of the Registration of Titles Act states:

"Any beneficiary or other person claiming any estate or interest in land under the operation of this Act may lodge a caveat with the Registrar in the Form in the Thirteenth Schedule, or as near thereto as circumstances will permit, forbidding the registration of any person as transferee or proprietor thereof"

No Caveat shall be received

(a)

(b) unless some definite estate or interest be specified and claimed by the caveator, and if such claim be under any document or writing, unless such Caveat is accompanied by a copy of such document or writing"

The Caveat in question was in the Form in the Thirteenth Schedule. The defendants claimed as daughter and grand-daughter. The particulars of the estate or interest claimed was stated thus -

"Claim on Estate and Interest as beneficiary under the Will of Henrietta Rodney".

A copy of the Probate with a copy of the Will of Henrietta Rodney was attached. The plan lodged with the Application refers to the Estate of

Henrietta Rodney c/o Percival Rodney.

Mr. Goffe submitted that the Will created a joint tenancy among the beneficiaries, Mr. Miller, a tenancy in common. In either case the defendants have an interest in the land until the matter has been amicably settled.

In the circumstances, the application to remove the Caveat is refused.

Costs to the Defendants to be agreed or taxed.