

2014

No. 82 W/S

BERBICE

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
(CIVIL JURISDICTION)

BETWEEN:

CLYDE ROSS

Plaintiff

-and-

SHERROL MINGO

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Lloyd Thomas for the Plaintiff

Mr. Ryan Crawford for the Defendant

Delivered December 22nd 2017

RULING

The Plaintiff's claim against the Defendant is for trespass to land situate at Sublot X, being portions of lot 30 and subplot A of lot 31, Section A, Paradise, West Coast Berbice.

The Plaintiff's claim is based on the fact that he is the owner of the said Sublot X by Transport No. 229 of 2013 (Berbice County).

The Defendant contends that, in fact, she and one Elizabeth Sealey (now deceased) are the owners of a portion of land that includes a portion of subplot A of lot 31, Section A by Transport No. 199 of 2010 (Berbice County).

The actual portion of land that is common to both Transports and therefore the land that is material to this action is **a portion of subplot A of lot 31, Section A.**

The tort of trespass is an injury to possession and the undisputed fact that the Defendant entered upon the land while being a Transported owner of the land **and** who had not leased the land to anyone or in any other way given possession of the land to anyone means that she could not be a trespasser if she entered upon or occupied the land.

The evidence at the trial in fact and reality did not really relate to an action in trespass but rather an action as to who holds the true title to that **portion of subplot A of lot 31 Section A**, Paradise, West Coast Berbice.

Based on the evidence at the trial the Court finds that the following facts have been proven;

Edward Ross owned several pieces of land in Paradise, West Coast Berbice prior to his death including **subplot A of lot 31, Section A**.

On March 18th 1988, Elizabeth Sealey and Sherrol Mingo, in their capacities as the duly constituted attorneys of Mary Ross who was the Administratrix of the Estate of Edward Ross, deceased sold lot 32, Section A, Paradise, West Coast Berbice to Euty George by an agreement in writing (**Exhibit “H1 - H2”**).

By virtue of that contract Euty George became the owner of lot 32, Section A, Paradise, West Coast Berbice by Transport No. 358 of 1990 (Berbice County) (**Exhibit “G1 - G2”**). Inexplicably, most likely by error, Transport No. 358 of 1990 included several other pieces of property that were owned by Edward Ross, including lot 30 and **subplot A of lot 31, Section A**.

Exhibit “G1 - G2” relates only to **Exhibit “H1 - H2”**; this is confirmed from the fact that the value of the contract and the value on the Transport are identical. In other words the lands on Transport No. 358 of 1990 did not emanate from any other contract.

On July 7th 1995 Euty George, by way of a gift, gave Elizabeth Sealey and Sherrol Mingo several portions of land including **a portion of subplot A of lot 31, Section A** (**Exhibit “E4 - E5”**).

By virtue of this gift Elizabeth Sealey and Sherrol Mingo became the owners of the several portions of land, including **a portion of subplot A of lot 31, Section A**, by Transport No. 199 of 2010 (Berbice County) (**Exhibit “E1 - E2”**).

Sherrol Mingo testified that Euty George gave them these properties because Euty George realised these lands were transported though not purchased.

On November 22nd 2007 Euty George, by way of a Deed of Gift, gave to Clyde Ross portions of land including **a portion of subplot A of lot 31, Section A (Exhibit “B1 - B2”)**.

Clyde Ross eventually obtained Transport to these lands on February 26th 2013 in the form of Transport No. 229 of 2013 (Berbice County) (**Exhibit “A1 - A2”**).

Clyde Ross testified that Euty George gave him these lands because the lands had belonged to his grandfather and he (Clyde Ross) had instituted an action in the High Court against Euty George with respect to the lands.

Based on the evidence and these findings of facts the Court concludes that Euty George gave to Clyde Ross, Sherrol Mingo and Elizabeth Sealey that which he did not own.

To state the obvious Euty George could not give that what he did not own.

The Transport ought simply to have been corrected and the properties not purchased, revert back to the Estate of Edward Ross rather than Euty George attempting to correct it by giving gifts.

The Court will not make any orders with respect to these findings regarding Transports Nos. 199 of 2010 and 229 of 2013 since the parties nor their Attorneys were required to address these issues during the trial either through evidence or submissions and the fact that Elizabeth Sealey’s Estate was not a party to this action and that Estate is a co-owner on Transport No. 199 of 2010 (Berbice County).

It would appear that Clyde Ross’ cause of action is against the Estate of Euty George.

With respect to the claims made in this action, they are all dismissed.

There is no order as to costs.

Justice N. A. Singh