

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

BETWEEN:

WALTER PERSAUD

Plaintiff

-and-

MAHAICA-MAHAICONY AGRICULTURAL
AUTHORITY, a body corporate incorporated under
the Mahaica Mahaicony Abary/ Agricultural
Development Authority Act, No. 27 of 1977

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Messrs. Arudranauth Goosai and Murseline Bacchus for the Plaintiff

Mr. Hari Narayen Ramkarran S.C. for the Defendant

Delivered October 20th 2017

DECISION

The Plaintiff claims that the Defendant trespassed on lot 83 Rosignol, Berbice during May/June 2011 by removing and taking away a portion of the Plaintiff's fence at the northern boundary of the said lot and having done that left about 100 pepper plants that he had cultivated on the said land exposed to animals which grazed and destroyed all of the pepper plants.

The Plaintiff claims that the Defendant continues to trespass on a portion of the northern portion of the said land, since the Defendant is using a portion of the said land, equivalent to about half of a house lot of land, as an access dam.

It seems undisputed that up to May 2011 the Plaintiff was in physical possession of lot 83 Rosignol, Berbice and held title to the said lot by Transport No. 626 of 1995.

Sworn Land Surveyor Desmond Weekes testified that he surveyed the area on August 23rd 2017 and prepared a sketch plan (tendered and marked Exhibit "E"). He further testified that the area now being used as an access dam is 955.75 square feet.

SLS Weekes testified that he had previously surveyed lot 83 on June 6th 2011 and prepared a plan which is recorded with the Guyana Lands and Surveys Commission as plan numbered 51149 (Exhibit “C”). According to that plan the northern boundary of the said land was not breached at that time.

The Defendant admits to removing a section of fence from the northern area of the land, however the Defendant, through its sole witness and General Manager, Aubrey Charles testified that that section of land was acquired by the Defendant under the authority of the Mahaica-Mahaicony-Abary Development Authority Act, CAP 70:01 of the Laws of Guyana (hereinafter referred to as the MMA-ADA Act).

Mr. Charles testified that the area was surveyed by Sworn Land Surveyor S. Deodat from December 28th 1995 to March 18th 1996 and recorded on Guyana Lands and Surveys Commission plan No. 27563 (Exhibit “F”).

Based on this plan it appears that, as a result of the construction of a secondary drain, BD-17, by the Defendant, the northern area of the Plaintiff’s land now used as a dam, shown on SLS Weekes sketch plan (Exhibit “E”), was demarcated for such use by the MMA-ADA.

Mr. Charles testified that as far as he is aware the Plaintiff did not object to plan No. 27563, however, the Court observes that the plan, (Exhibit “F”), does not list lot 83 in the “Area Schedule” as a portion of private property “*vested*” in the MMA-ADA as a result of the construction of BD-17, which clearly demonstrates that the Defendant did not even acknowledge that a portion of the Plaintiff’s land is/ was being encroached upon in the scheme of the construction of BD-17.

The preparation of the plan, (Exhibit “F”), is governed by section 17 of the MMA-ADA Act.

The Defendant claims to have “**acquired**” the said portion of land to the northern boundary of lot 83, however, no evidence was led by the Defendant to demonstrate that the provisions of section 17 of the MMA-ADA Act have been complied with thereby proving that the land has been lawfully acquired.

SLS Weekes testified that he did not find any plan done by under the authority of the MMA-ADA of the area lodged in the Deeds Registry as is required by section 17 (7) of the MMA-ADA Act. This evidence was not challenged.

Paragraph 9 of the Statement of Defence is further instructive on this point, wherein it is pleaded, “... *the aforesaid portion of lot 83 has been acquired **or is in the process of being acquired** by the Defendant lawfully under the provisions of the aforesaid Act or by prescriptive title.*” (Bold and underline mine)

The Defendant submits that the plan (Exhibit “F”) “*clearly indicates that the area of BD-17 as demarcated was **acquired** by the Defendant*”.

The preparation of the plan is to be followed by a series of steps to lawfully complete such an acquisition, of course, as noted, the Defendant did not plead definitively that the portion of land was so acquired.

The Defendant submits that the doctrine of *omnia praesumuntur rite esse acta* applies in this case but the Defendant has failed to plead or establish the act much less the proper and correct execution of the acts to **acquire** the Plaintiff’s land.

In these circumstances, the Court finds that assuming that everything that the Defendant has testified to and produced to the Court is truthful with respect to the construction of BD-17, the Defendant has only proven that it may have been the intent of the MMA-ADA to acquire the said portion of the Plaintiff’s land but has not done so, lawfully or otherwise., and therefore legal title and possession of the said northern portion of lot 83 continues to vest in the Plaintiff.

The Plaintiff testified that the value of the fence destroyed is \$40,000.00 and the value of the pepper plants that he lost as a result of the removal of the fence is \$100,000.00. This evidence was not challenged.

In the circumstances, with respect to the portion of land at the northern part of lot 83, the Court awards the Plaintiff special damages in the sum of \$140,000.00 and \$750,000.00 for trespass and loss of use of the portion of land.

The Plaintiff also claims that the Defendant trespassed on the said land during May/ June 2011 by digging a drain through the middle of the land on the southern side of the land, thereby causing him to lose the equivalent of a house lot of land.

SLS Weekes testified that he surveyed this area also and the area now consists of a drain and the area west of the drain, all being part of lot 83, is used as a dam. He testified that the area of the drain and dam is altogether 2446.69 square feet.

Mr. Charles testified *“I can’t say if any part of the southern part of the lot 83 is taken in”* and *“I am not aware of MMA digging that drain”*.

It is inconceivable that the Plaintiff excavated that drain and then refused to occupy the said land because he believed the Defendant had also taken that portion of land to be used as a dam.

It is further inconceivable that a third party went to the great expense of excavating the Plaintiff’s land and then never attempt to use it.

The Court finds that on a balance of probabilities the Defendant did excavate the drain to the southern portion of lot 83 and in so doing excluded the Plaintiff from access to the western part of that southern portion of lot 83.

The Plaintiff testified that in that area a house lot is 4608 square feet (8 rods X 4 rods) and further that a house lot carried a value of \$1,500,000.00. This evidence was not challenged.

With respect to the portion of land at the southern part of lot 83, the Court awards the Plaintiff damages in the sum of \$750,000.00 for the damage done to the land and \$1,500,000.00 for trespass and loss of use of the portion of land.

In the circumstances judgment is awarded to the Plaintiff against the Defendant in the sum of \$3,140,000.00 together with interest at the rate of 6% per annum from July 9th 2013 to October 20th 2017 and thereafter at the rate of 4% per annum until fully paid.

Further, the Court hereby grants a permanent injunction against the Defendant, its servants and or agents from entering upon or remaining on any portion of lot 83 Rosignol, Berbice.

Costs to the Plaintiff in the sum of \$160,000.00

Justice N. A. Singh