

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. G081 of 1996

BETWEEN	LORIN GOLDING	1ST PLAINTIFF
AND	VERNAL CARGILL (Executors of Arnold Cargill Deceased)	2ND PLAINTIFF
AND	THEODORE PRINCE	1ST DEFENDANT
AND	GEORGE PRINCE	2ND DEFENDANT
AND	JOSEPH PRINCE	3RD DEFENDANT
AND	OMEGA PRINCE	4TH DEFENDANT

Ms. Carol Davis instructed by Davis Bennett and Beecher-Bravo for Plaintiffs.

Mr. Keith Bishop instructed by Kingston Legal Aid Clinic for Defendants.

HEARD: 15TH, 16TH, 17TH, December, 1999, 10th, 12th January, 2000,
20th, 21st March, 7th April, 2000 and 13th December, 2001

JAMES, G.G. J.

In 1996 the plaintiffs as executors of the estate of the deceased Arnold Cargill issued a writ against the several defendants in this action. They are seeking a declaration that the defendants are not entitled in any way whatsoever to make any claim to the land in dispute, an injunction

restraining the defendants, their servants or agents from entering on to the plaintiffs' land and causing surveys of same or part or parts of same to be done. They also seek an order restraining the defendants, their servants or agents from in any way whatsoever interfering with the plaintiffs' removal of survey pegs wrongfully inserted on their said land.

The Court heard testimony from the plaintiff Lorin Golding and Clunis Gayle as well as the defendants George and Joseph Prince. What the Court has been left with is a virtual jigsaw puzzle with some missing pieces. The Court is therefore asked to see the full picture from these pieces of the puzzle it has been given.

The main issue to be decided is to whom does the piece of disputed land belong. If it belongs to the plaintiffs then the court is obliged to grant the reliefs prayed. If it is found that the land does in fact belong to the defendants 'the Prince', then they would be entitled to the relief prayed for in their counterclaim.

The Evidence

The evidence of Lorin Golding is that his uncle Arnold Cargill inherited the land in dispute from his mother who had survived his father. The land, formerly 'Prince land', had been transferred to Uriah Cargill sometime after 1904. The witness then referred to Exhibit 2 which is a

diagram showing three sections of land. The top piece is coloured in green. The witness identified the two areas to the top and bottom (that is, the areas shaded green) as Prince land. He identified the orange piece as that of his uncle as well as being the disputed portion. He said his uncle Arnold Cargill lived on that portion of the land up to the time of his death in 1986.

He also said under cross-examination that his uncle sold the land to Franklin Williams in 1985 but did not sell the portion of land on which he, Arnold Cargill, had a house. The witness identified land to the west of the top piece (green in Exhibit 2) as land owned by Polson. To the north of the disputed land (the orange area) is land occupied by Theodore Prince. To the northeast of the orange area is land occupied by Miriam Haye (presently occupied by Andrew Prince). To the east of the disputed land lies the land of the McGowans (occupied by Ruby Josephs). To the south of the disputed land is the land of Cyril Prince (occupied by Gayle).

The witness denied that up to the time of his death in 1956 Josiah Prince (father of the first defendant) was owner of the land in question. The witness stated that there were no graves on the orange section for Altamont, Alberta, Rachel or Josiah Prince.

The next witness called was Clunis Gayle. Exhibit two was shown to him and the witness identified Wireless Station Road as being at the top of

the diagram (shaded yellow). The land at the top of the diagram is divided by Reservoir Road (also shaded in yellow). The land at northwest (top left) belongs to Theodore Prince. The northeast piece (top right) belongs to Ervin Haye, while the bottom piece (that is, of the top section of the diagram) belongs to Arnold Cargill. During cross-examination Mr. Gayle identified the total area of the land in Exhibit 2 to be approximately three and a half (3.5) acres. He estimated the orange piece to be about half of an acre. The witness also identified graves for various members of the Prince family on the top and bottom sections of the diagram (that is, the green areas) but none on the disputed (that is, the orange) area.

The witness could not say how Arnold Cargill acquired the land but said that Theodore, Joseph and Oliver Prince have not been in possession of the land since 1956. In re-examination the witness identified land to the left of the disputed area as land belonging to the Polsons.

The first witness for the defence was George Prince, son of Theodore Prince. He stated that there was no registered title for "the land". He identified the original owner as Frederick Prince and that Josiah, Altamont and Caleb Prince "control the entire piece of land". He identified seven houses on this land as well as a church and two shops. He also confirmed the presence of several tombs on "the land". He stated that part of the land

was surveyed and his father asked for the survey. No date was given. To his knowledge there were no other survey pegs. Taxes for the "whole area" was paid by Theodore Prince. He also stated that Arnold Cargill was his grand uncle and that he never owned any of the particular area that the Court was dealing with. He lived on a part of the land in question but did not own any house on that piece of land. Arnold Cargill did not live in any one of the seven houses. He said in examination-in-chief that the house in which Cargill lived was a Prince house and that another house was being built by Clunis Gayle nearby. He said the land was just one piece of land divided by a road and everywhere is occupied.

He identified Franklin Williams as a person who "tried to claim ownership" of a part of the land. He said graves were scattered around "the land". He identified Exhibit 2 as representing all the land that he calls family land. He identified the diagram shown in Exhibit 3 as fitting the shape of the entire land. He identified the area referred to in Exhibit 6 as being 2 roods and 6 perches and said that Stony Hill Pen is in the region of Wireless Station Road. He was not aware of any survey notices being served upon him or on any other member of his family.

After Arnold Cargill died no other person occupied his house. Under cross examination, the witness said the middle piece (orange) was not the

section on which Arnold Cargill lived. Arnold Cargill lived on part of the land (northeast section of the middle part). He put him as living there since 1950 until his death in 1986. He too could not say how Arnold Cargill came to be living there.

He put Cyril Prince as “occupying” the areas in green and further stated that it was not a “question of ownership but of occupancy”. He denied that the land was sold to Uriah Cargill. He denied that a survey was done by Arnold Cargill as owner of the land shown in Exhibit 4 and denied that Exhibit 4 was the same piece of land as the middle section in Exhibit 2. Under re-examination the witness again reaffirmed that the family houses were in the green area.

The final witness for the defence was the third defendant Joseph Prince. The witness when shown Exhibit 2 put Arnold Cargill as living on one side of the road that runs through the land. In front of Cargill’s house, mixed crops were cultivated and the witness alleged that these crops were planted by the “owners”. The witness lives on the green area (northwest in the diagram). He also, stated that there were seven houses on the Prince land.

Cargill planted crops on another piece of land (not the land in dispute) and the witness stated that during the time he was reaping in front of where

Arnold Cargill lived, he did not need permission to reap the crops. Under cross-examination the witness placed Cargill as living on the land but had no knowledge of the house being Cargill's. He could not say whose house it was. He again restated that "all the land" is Prince land. He denied that Exhibit 3 was the same as the brown (orange/pink) section of Exhibit 2 and that Arnold Cargill owned the piece of land represented in Exhibits 3 and 4.

The Court is dealing with unregistered land. In the absence of a title held by either the plaintiffs or the defendants, the Court is forced to look at the evidence that has been presented in order to come to a determination as to who is the owner of the disputed land.

A preliminary issue concerns the actual size and location of the land which the plaintiffs claim belongs to them. A number of documents have been admitted in evidence as exhibits. In particular, the Court refers to Exhibit 2, 3 and 4. Exhibit 3 is the earliest in time and bears the date July 20, 1904. The document is the result of a survey of a piece of land measuring 2 roods and 6 perches located at Stony Hill Pen in Saint Andrew and in the district of Saint Christopher. This document also evinces the intention of one Amelia Prince to convey the said land to one Uriah Cargill. The survey was done at the instanced of Uriah Cargill.

Exhibit 4 is a diagram representing land measuring 3 roods and 0.43 perches and known by the name of Kingswood in the Parish of Saint Andrew. The document is dated February 21, 1953 and the land was surveyed at the request of Arnold Cargill. The diagram has the same shape as that in Exhibit 3.

The land represented in Exhibit 3 is bound to the east, by A. James, west by Alonzo McGowan, north by Amelia Prince and south by Alex Prince. In Exhibit 4, the land is bound to the east by John Polson and northwest by Miriam Haye.

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Exhibit 2 is dated March 23, 1978. The title of the document is "Position of land occupied by Cyril Prince and Arnold Cargill at Kingswood District, Saint Andrew". The land is bound to the southeast by Alonzo McGowan and to the northwest by Polson. The diagram is divided into three major sections. The top section is shaded in green, the middle section in orange (pink) and the bottom section in green. There is also a Parochial Road, at the top of the diagram that has been identified as Wireless Station

Road. Exhibit 6 is a document entitled 'Particulars of Taxes Account' for premises at Stony Hill Pen.

In written submissions, Counsel for the defendants, Mr. K. Bishop stated that there was some uncertainty as to whether Stony Hill Pen, Wireless Station Road and St. Christopher district are the same place. It is the opinion of this Court that the disputed land is located in the parish of Saint Andrew and that the references to Kingswood in Exhibits 2 and 4 as well as Stony Hill Pen in Exhibit 3 are references to the same district. This is supported by the fact that in Exhibit 4, the words "Stony Hill P.O." appear after the names of the persons on the surrounding land and in Exhibit 2 the address of both Polson and Aston McGowan are given as:

Kingswood District

Wireless Station Road

Stony Hill P.O.

Another issue is whether the piece of land represented by the diagrams in Exhibits 3 and 4 are the same piece of land as that represented by the WHOLE diagram in Exhibit 2. Based on the evidence, this Court can only conclude that the orange (pink) section in Exhibit 2 is the same piece of land shown in Exhibits 3 and 4.

In both Exhibits 3 and 4 the land is bound to the north and south by Princes. This is in keeping with the position of the orange (pink) section in Exhibit 2 which is shown as being bound to the north and south by land occupied by Cyril Prince. Further, in all three diagrams McGowans are shown to be occupiers of land to the east of the disputed land. In Exhibit 3, the earliest in time, land to the west is shown to be occupied by A. James. In Exhibits 4 and 2, land to the east is shown to be occupied by the Polsons. This consistency tends to establish the position of the disputed land as being the orange (pink) section in Exhibit 2 as well as the portion of land represented in Exhibits 3 and 4.

The Court was also urged not to rely on Exhibit 6. This exhibit purports to be proof that the plaintiff paid taxes for the disputed land for the years 1994 to 1996. The only date on this document (March 12, 1996) appears in the stamp located at the bottom of the document. It has no signature but purports to be issued from the office of the Collector of Taxes for the parish of Saint Andrew. In this document taxes were paid with respect to two roods and six perches of land located at Stony Hill. Exhibit 3 also refers to two roods and six perches of land. The fact that the document is unsigned affects the weight to be attached to it when the Court comes to

consider the issue before it. However, this Court cannot agree with the submission of Counsel for the defendants that it should be disregarded.

The witness Joseph Prince gave evidence that the owners planted mixed crops on the land in front of Arnold Cargill's house and that the Prince family reaped these crops. Further, he stated that he did not need permission from anyone to do so. The fact that the defendants reaped crops planted by them in front of Arnold Cargill's house is insufficient to prove that this was done by them as owners of the disputed land. The fact is that Arnold Cargill was also related to the Princess and the absence of express permission being granted to plant these crops could be referable to the family relationship. Further, the crops (breadfruit, bananas, naseberry) planted are of a sort that need little tending once the trees have reached maturity. In the absence of evidence as to the number of such trees, it is impossible to say that Arnold Cargill allowed the defendants to reap the crops in front of his house without interruption because he was not the owner of the land on which the crops were planted.

The defendant George Prince identified seven houses on the land he called family land. These houses were owned or occupied by members of the Prince family. He said specifically that the houses were located in the green area. He agreed that Arnold Cargill lived on a part of the land in

question but not one of the seven houses he had mentioned earlier as belonging to members of the Prince family. He said in examination-in-chief that the house in which Cargill lived was a Prince house and that another house was being built by Clunis Gayle nearby. Joseph Prince also confirmed that there were seven houses on the "Prince land". However, he would not say whether all seven houses were located on the areas shaded green. Further, he could not say in whose house Arnold Cargill lived, or whether Arnold Cargill owned it.

Based on the evidence it appears that, on a balance of probabilities Cargill's house was not one of the seven houses that the witnesses described as Prince family houses. Further, it seems that Mr. Cargill's house was the only house located in the orange (pink) section of Exhibit 2.

The plaintiff, Lorin Golding, told the Court that there were no graves on the orange section for certain members of the Prince family. These graves were put by the plaintiff's witness Clunis Gayle in the green sections at the top and bottom of the diagram in Exhibit 2. This is in keeping with the plaintiffs' contention that the disputed land was indeed conveyed to Uriah Cargill some time after 1904. The witness George Prince, while stating that there were tombs scattered all around "the land" did not

expressly refute Lorin Golding's contention that there were no graves or tombs on the orange section of the land.

Then there is also the fact that although George Prince in his evidence stated that Theodore Prince paid the taxes for the entire area and that he contributed to those payments, no evidence of these payments was received in Court. It would seem that in the absence of any other sufficient proof in writing to prove their ownership of the disputed land, the defendants would have wanted to bring these tax receipts to Court to support their case.

Another issue is whether the land was actually conveyed to Uriah Cargill after July 20, 1904. The argument of the defendants is that since the intention of Amelia Prince was put in writing, any subsequent sale agreement would also be in writing. The lack of such written evidence coupled with the fact that there is no evidence to suggest that any consideration passed, would suggest, it is said by the defendants that the land was not in fact conveyed to Uriah Cargill. However, the evidence is that Arnold Cargill, the son of Uriah Cargill lived on the land until the time of his death in 1986. Exhibits 3 and 4 refer to land of roughly the same size, 2 roods and 6 perches and 2 roods and 0.43 perches, respectively. It is to be remembered that what the Court is dealing with is 'common law' land. The defendants themselves, even if the Court concludes that the plaintiffs are the

owners of the land to which they lay claim, have not produced any written proof that they own the land in the green areas. Neither can it be said which Prince owns what portion of that land. The point, therefore, is that the absence of evidence in writing that the land was conveyed to Uriah Cargill after 1904 is not conclusive of its not having been so conveyed.

The probated will of Arnold Cargill appears in Exhibit 1. In paragraph 5 (b), the deceased devised to Lorin Golding the land upon which he resided "containing by estimation two roods and butting and bounding north by Irvin Haye, east by Ruby McGowan, south by Jean Gayle and west by the Water Commission road". What we have, therefore, is a situation where Exhibits 1, 3, 4 and 6 refer to land measuring roughly 2 roods. Under cross-examination Clunis Gayle estimated the total area of land shown in Exhibit 2 to be three and a half (3.5) acres, and the orange section to be about half (0.5) of an acre. George Prince, on the other hand, estimated the total area of land to be five and a half (5.5) to six acres.

The Court takes judicial notice of the fact that four (4) roods make one (1) acre. Two (2) roods would, therefore, be equivalent to half (0.5) of an acre. This would be in keeping with Clunis Gayle's testimony that the orange section, (the section identified by the plaintiffs as the disputed land), measured half (0.5) an acre. The defendants claim that Exhibits 3 and 4

represent the entire piece of land that belongs to the Prince family. It is the opinion of this Court that this cannot be the case. Neither Mr. Cargill nor the plaintiffs have ever claimed to be entitled to more than 2 roods of land yet the defendants claim to own much more than this amount of land.

Further, given the position of the lands shown in Exhibits 2, 3 and 4, it is impossible for this court to conclude that the total area represented in Exhibit 2 is one and the same as those in Exhibits 3 and 4. It is more probable that the areas represented in Exhibits 3 and 4 are the same orange (pink) section in Exhibit 2 only.

The court must also mention in passing the fact that final judgment was entered against members of the Prince family, including the second and third defendants, in an action brought by Franklin Williams, a person with whom Arnold Cargill contracted to sell land before he died. The plaintiff Lorin Golding identified the land sold to Mr. Williams as part of the land represented by the orange section in Exhibit 2. George Prince in his testimony identified Mr. Williams as someone who “tried to claim ownership of a part of the land”. Paragraph 5 (a) of Arnold Cargill’s probated will also makes reference to a contract between himself and Franklin Williams to sell land to the latter.

This Court is not privy to the evidence adduced in the action brought by Mr. Williams. However, the judgment together with the evidence heard by this Court in the instant case, tends to support the plaintiffs' assertion that Arnold Cargill was the owner of the disputed land and therefore empowered to enter into contracts with other persons for its sale.

Based on the evidence presented before this Court, the conclusion is that the disputed land (being by estimation a little over 2 roods) belongs to the plaintiffs as executors of the estate of Arnold Cargill.

This is not the end of the matter, however. The defendants claim to be entitled to possession of the land by virtue of sections 3 and 30 of the **Limitation of Actions Act**. Section 3 of the Act stipulates that all persons claiming a right to land must bring all actions or suits with respect to that land within twelve years of that right accruing. If it is found that the defendants have enjoyed twelve years undisturbed possession of the disputed land from the time of Arnold Cargill's death in 1986, then this court will be obliged to hold that they are entitled to possession of the land in dispute. Paragraph 3 of the plaintiffs' Statement of Claim alleges that the defendants, their servants or agents have trespassed on the plaintiffs' land since on or about 1991. The Writ of Summons in this matter was issued on April 30, 1996. This means that the defendants cannot successfully claim to have

enjoyed twelve years of undisturbed possession of the plaintiffs' land. Even if it is accepted that the defendants have been on the land since 1986, only ten (10) years had passed by 1996 when the Writ of Summons was issued.

The plaintiffs are therefore entitled to the reliefs claimed in their Statement of Claim.

Accordingly the Court gives Judgment for the plaintiffs on the Claim and Counterclaim together with –

1. A declaration that the plaintiffs as executors of the estate of Arnold Cargill are the owner of the said land;
2. A declaration that the defendants are not entitled to the said land;
3. An injunction restraining the defendants from in any way whatsoever entering upon the plaintiffs' said land without the consent of the plaintiffs;
4. An injunction restraining the defendants their servants or agents from entering on the plaintiffs' land and causing surveys of same or part or parts of same to be done;
5. An order restraining the defendants, their servants or agents from in any way whatsoever interfering with the plaintiffs' removal of survey pegs wrongfully inserted on their said land.

The Court awards costs to the plaintiff in respect of the Claim and Counterclaim.