

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. W - 228 of 1992

BETWEEN	VINCENT WILLIAMS	PLAINTIFF
A N D	ELIAH SAMPSON	1ST DEFENDANT
A N D	J.M. AIKENS	2ND DEFENDANT
A N D	DOTTY WILLIAMS	3RD DEFENDANT
A N D	LINDA SCOTT	4TH DEFENDANT
A N D	DELROY ANDERSON	5TH DEFENDANT

Mr. David Batts instructed by Livingston, Alexander and Levy for the Plaintiff.

Mr. Seymour Stewart for First Defendant instructed by A.A. Hines, Attorney-at-Law.

Miss Dorcas White for Third Defendant

(The Second Defendant is deceased).

HEARD: 10th and 21st October, 1993 and 27th February, 1998

G. JAMES, J.

In this action commenced by Writ, the Plaintiff claims against the Defendants or any or all of them jointly and severally to recover possession of all that parcel of land known as 9 Sevens Road, May Pen in the parish of Clarendon being land registered at Volume 1209 Folio 460 of the Register Book of Titles. The Plaintiff also claims rent and/or mesne profits due and owing from the Defendants or any of them to the Plaintiff.

An Interlocutory Judgment in default of Appearance was entered against the Fifth Defendant on 12th February, 1993.

There is now before me a Summons for Summary Judgment.

The Plaintiff is the holder of a Registered Title in respect of the land at 9 Sevens Road, May Pen, in the parish of Clarendon (hereinafter referred to as the land in question). He claims that the Defendants were monthly tenants in possession of the premises. The Plaintiff further claims that the monthly tenancies were terminated by Notices to Quit dated 24th May, 1990. It is the Plaintiff's case that he requires the premises for his own use. There is an alternative claim for Recovery of Possession consequence of the termination of a licence.

During the course of his submission, Mr. Batts argued that the

application for Summary Judgment ought to be granted as the Plaintiff is the holder of a Registered Title which is indefeasible unless actual fraud is demonstrated in the purchaser. Mr. Batts referred to Sections 68, 71 and 72 of the Registration of Titles Act. It is his contention that none of the Affidavits filed by the Defence make reference to actual fraud. Fraud should be particularised in the affidavits but in this case all that is done is to make general allegations of fraud.

In so far as the allegation of adverse possession is concerned Mr. Batts submitted that no rights accrue as against the superior landlord because there is no privity between the superior landlord and the sub-tenant.

Mr. Seymour Stewart for the First Defendant is alleging adverse possession which he contends must be established by facts. He further pointed out that the Plaintiff never in any of his affidavits state that he was ever put in possession.

Further, Mr. Stewart submitted that the relationship of landlord and tenant never existed between Plaintiff and the First Defendant. It is contended on behalf of the First Defendant that there is an issue to be tried as to whether the First Defendant ought to retain possession of the land in question.

Mr. Stewart further submitted the proof of an allegation of adverse possession must be seen on the evidence at the trial and cannot be shown in an affidavit. He submits that the First Defendant ought to be allowed to call his witnesses in support of his claim.

Miss Dorcas White who appears for the Third Defendant submitted that the Plaintiff has not averred that he is entitled to possession of the land, it is only a person so entitled who can recover possession. It is also her submission that the holder of a Registered Title does not by itself give a right to possession. According to Miss White, the Plaintiff has not disclosed a cause of action by his pleadings. The jurisdiction to grant Summary Judgment does not apply until a <sup>u</sup>case of action has been disclosed.

Counsel for the Third Defendant made extensive submissions relating to conveyancing practise. She submitted that the Plaintiff is a purchaser, not a bona fide pruchaser. It is also her submission that where the Defence has a Counterclaim arising out of the same subject-matter and connected with the grounds of Defence there should be unconditional leave to defend.

I have carefully reviewed the submissions made by all three Attorneys-at-Law and I have read over the affidavits. It is my view that leave ought to be granted to defend. There are triable issues in this case. Accordingly,

the application for Summary Judgment is refused with costs to be costs in the cause.

Due to the inordinate delay in giving this judgment I recommend that the case be placed on the Speedy Trial List.

I regret the delay in giving this judgment, the note book had been mislaid at a time when my tenure on the High Court bench was intermittent.