

MONTserrat

IN THE HIGH COURT OF JUSTICE

A.D. 2002

CLIAM NO. 11 of 2001

BETWEEN:

CHARLOTTE PIPER

Claimant

and

BENJAMIN PONTEEN

Defendant

APPEARANCES:

Mr. Jean Kelsick for Claimant

Mr. Warren Cassell for Defendant

21st May, 2002, 26th May 2002

JUDGMENT

- 1 **EDWARDS J:** By his Will made on the 17th March, 1979, Testator JAMES PONTEEN among other gifts, gave to his daughter Charlotte Piper “my land known as Cotton Ground on the condition that my other children shall have the right to use the Pond thereon”.

- 2 The Executor under the Will is Catherine Ponteen, daughter of the Testator and mother of the Defendant Benjamin Ponteen.
- 3 The Testator made specific devises of land known as “Fire Burn” to the Defendant, and his sons James Alfred Ponteen, and Martin Ponteen. James Alfred Ponteen is now deceased.
- 4 The Testator gave and devised the remainder of his land to his children Margaret Cabey, Sarah Lindsay, Catherine Ponteen, May Molyneaux, Martin Ponteen and Isabel Donoghue. All of the Beneficiaries reside abroad.
- 5 The Testator died on the 3rd January 1983 and for 17 years the Will was not Probated.
- 6 On the 21st February, 2000 Probate was granted to the Defendant Benjamin Ponteen lawful Attorney of the Executrix Catherine Ponteen. Benjamin Ponteen currently resides in Boston, Massachusetts, USA.
- 7 The Claimant by the application seeks the following relief:-
“1. An Order for the Defendant to transfer title to the land known as “Cotton Ground” located at Drummonds, Montserrat registered in the Rendezvous Registration Section Block 15/9 and measuring 17, 178 square meters or 184, 903 square feet or 4.265 acres devised to the Plaintiff by the said James Ponteen deceased in his last Will dated 17th day of March, 1979.
2. Further or other relief.
3. The Costs of this Application “.
- 8 The Affidavit of **CHARLOTTE PIPER** supporting the Application sworn to on the 27th April, 2001 and filed on the 30th April, 2001 disclosed that the Defendant had failed and/or refused to transmit title of the said land to her despite the submission of an instrument of transfer by her Solicitor. Mr. J.C. Kelsick to the Defendant’s Solicitor. Mr. Hogarth Sergeant with a letter dated the 23rd May 2000 requesting that he do so.
- 9 The Affidavit of the Defendant opposing the Application sworn to and filed on the 8th August 2001 disclosed the reasons why “Cotton Ground” had not been transmitted to the Claimant.
- 10 The Defendant asserted that the Claimant had surveyed more land than that described as “Cotton Ground”, as a piece of land called “Wall which was included as a part of the remainder of the deceased Estate was surveyed along with “Cotton Ground”; and transferring title as surveyed will deprive the beneficiaries under the Will of the property devised to them by the deceased Testator.

- 11 The Defendant further asserted that a part of the land was given to Lillian Collins the daughter of James Ponteen and this part was also included in the surveyed "Cotton Ground" land by the Claimant.
- 12 The Defendant requested that the Court should not grant the relief sought until the "Cotton Ground" land is resurveyed to exclude "Wall".
- 13 On the 15th May 2002 when the case came up for Trial, the Court made Pre-Trial Review Orders including an Order that Chartered Surveyor Mr. Bertrand Burke visit the land in question in the presence of both parties and having regard to the information given by both Parties, prepare a report for the Court as to the land that comprises "Cotton Ground" in compliance with Part 32 of CPR 2000.
14. The land Surveyor had previously in March 1997 surveyed the "Cotton Ground" land at the request of the Claimant and had taken instructions from her prior to surveying the land in question and preparing a plan.
15. On the 21st May 2002 when the case was tried, the Court had the benefit of the Surveyor's Report and Plan; and Mr. Burke also gave evidence under Cross Examination and Re-Examination.
16. The evidence of the Claimant was that she grew up on the land in Drummonds owned by the Testator and then migrated to England. She returned to Montserrat several times thereafter and in 1975/76 she and her husband. Samuel Piper came back to Montserrat and built their home at Davy Hill. The deceased Testator who was always living on his land known as "Fire Burn" came to live at Davy Hill in her house after it was built. Both Claimant and her husband returned to England upon completing the house. In or about 1980 she came back to Montserrat with her husband and they went with the deceased Testator and Martin Ponteen to "Cotton Ground" where the deceased pointed out the boundaries to them. There were large boulders at the boundaries and her husband Samuel Piper chiseled the letter "B" on some of these boulders.
- 17 There was also sweet grass hedges and dry stone wall at the boundaries. Samuel Piper gave evidence confirming that he chiseled the letter "B" on the boulders despite his inability to read.
- 18 Counsel Mr. Cassell sought to make mileage of the fact that Mr. Piper could not read and submitted to the Court in his closing address that it was impossible for Mr. Piper to write letter "B" and he was lying. However, the Court observed that the Witness had signed his Witness Statement and upon being requested by the Court to write the letter "B", Mr. Piper wrote the letter "B" on a piece of yellow paper for all to see.

- 19 The Claimant and her Witness James Farrell agreed that the deceased Testator planted cotton on the land in question and that is why it was called “Cotton Ground”.
- 20 The Defendant’s evidence was that the “B’s” on the boulders had been there before 1980 and he knew this since he grew upon and worked the land with his grandfather who showed him the boundaries and the sweet grass hedge. His evidence was that his grandfather called a part of the land in question “Wall” and often sent him to tether animals at “Wall” and give them water.
- 21 The land adjacent to the Western boundary of the land in question is owned by William tine Allen and the Defendant said that his grandfather told him that he had sold that piece of land to William tine Allen’s father. There is a dry stone wall separating William tine Allen’s land from the deceased Testator’s land. The Defendant’s evidence was that his grandfather referred to one area as Inside Wall and another area as Outside Wall, and the disputed portion of land got the name Wall because of the stone wall there.
- 22 The Defendant said that his grandfather told him that the land got the name “Cotton Ground” because of where he used to plant cotton.
- 23 The Defendant also gave evidence that the disputed portion of land had been occupied by Lillian Collins who is now deceased and his grandfather told him he had given Lillian Collins that piece and he saw Lillian Collins planting cotton and other things there. The Defendant migrated to the USA in 1986 and before that had always lived and farmed on the land at Drummonds.
- 24 The deceased Testator had other lands at Drummonds which he called Fire Burn, Watch House Hill, Congo Gut, Quarry Hole, Cane Piece. Apart from the land known as “Fire Burn” and “Cotton Ground” none of the other lands were described by name in the deceased’s Will.
- 25 The Claimant and her Witnesses gave evidence that they knew of no land called Wall owned by the deceased. However, under Cross Examination the Claimant said that she was familiar with that portion of land called Wall.
- 26 The Surveyor’s Report
- The Report of Mr. Bertrand Burke identified the boundaries of the land in question known as “Cotton Ground” according to the Claimant and her Witnesses. A Surveyor’s Plan was exhibited in the Report.
- 27 The Report also identified on the Surveyor’s Plan the area of land referred to on the plan as “Disputed Section”, which the Defendant has described as “Wall” The Western Boundary of the Disputed Section is the Stone Wall, the Northern boundary has a sweet grass hedge. That area of land is triangular in shape on the

- plan and consists of 1.1 acres. The unbroken line on the map which divides the Disputed Section from the Undisputed Section reflects the absence of any boundary between these two (2) portions of land.
- 28 Mr. Burke gave evidence that the Defendant had pointed out a Cherry Tree and a big stone in the middle of the land as where the division was between “Wall” and “Cotton Ground”. He saw no markings on this stone. The Defendant took him by some trees and then some grass and imprecisely said that this was where the boundary connected with the stone. On the other hand the Defendant gave evidence that he had pointed out two (2) cedar trees and a “Bodeka” tree to Mr. Burke as where the boundary was. Mr. Burke mentioned in his Report that one Unol Ponteen who was present with the Defendant confirmed what the Defendant told him and where the Defendant showed him to be Wall. Unol Ponteen was not called as a Witness.
- 29 The Surveyor concluded in his Report that by his observations he had formed the view that there was never a separation of any portion of this land.
- 30 Counsel Mr. Cassell accused the Surveyor of being biased and argued that because he was acquainted with the Claimant, his Report and evidence was not credible. Counsel also pointed to inconsistencies and discrepancies in the evidence of the Claimant and her Witnesses and urged the Court to find that they had been discredited.
- 31 Counsel Mr. Kelsick argued that despite the Defendant’s denial that he had been motivated by malice and a pending lawsuit between the Claimant and his mother; the Defendant was in breach of his duty as Executor to Distribute the estate to the Claimant who was properly entitled to “Cotton Ground” under the deceased James Ponteen’s Will. Counsel questioned the veracity of Defendant.
- 32 The Defendant’s evidence was that he had transferred title to himself for the lands that he had inherited under the Will and he was the only person after 17 years who had benefited under the Will. That the other surviving beneficiaries, excluding Martin Ponteen, had all told him that they had no intentions of returning to Montserrat and they were not interested in the lands they had inherited under the Will. That the reason for the delay in administering the Estate was because his mother the Executrix had no money to do this.
- 33 In order to determine what land answers the description of “Cotton Ground” under the Will of the deceased James Ponteen, the law requires the Court to ascertain the intention of the Testator as expressed in his Will when it is read as a whole.
- 34 The law also recognizes that sometimes extrinsic evidence is admissible to assist in the interpretation of the Will, but the language of the Will is central to its

construction because the object is to discover the meaning of the words as intended by the Testator at the time when he made the Will, i.e. 17th March, 1979.

- 35 The deceased Testator died after the 31st of December 1982 and therefore Section 21 of the Administration of Justice Act 1982 U.K. is applicable here. Section 21 makes both direct and circumstantial extrinsic evidence of the Testator's intention admissible to assist in interpreting the intention of the Testator; in light of the uncertainty as to what land comprises "Cotton Ground".

FINDINGS

- 36 The Court therefore finds the evidence regarding the following to be of assistance in determining the Testator's intentions:-

- a) The reason why Testator called the land "Cotton Ground"
- b) The existence of the stone wall on the western boundary of the land.
- c) The farming activity of the Testator when the Defendant Benjamin Ponteen was growing up on the land.
- d) The Testator's mention of a Pond on the land
- f) The absence of a defined boundary separating the disputed portion from the undisputed portion.
- g) The Testator's conduct after making his Will in 1979 – i.e. in or about 1980 he pointed out the boundaries of "Cotton Ground" to Claimant and her husband who chiseled "B" on boulders by the boundaries.
- h) The absence of any chiseled mark on the boulder pointed out by Defendant to the Surveyor in the middle of the land.
- i) The fact that at the time the Testator made the Will he was then living in the house of the Claimant in Davy Hill.

- 37 The Court further finds on a balance of probability that at the time when the Defendant was a boy growing up on the land with the Testator, the Testator was then not actively involved in cultivating cotton on the land, but was more involved in animal farming.

- 38 The Testator's reference to "Wall" as it related to the tethering and watering of animals was a mere sub-description as to where on "Cotton Ground" the animals should be taken. Even though animals may have been kept on this area of land, cotton was still being grown there since it is the Defendant's evidence that Lillian Collins was cultivating cotton and other things on that area of land when he was growing up with his grandfather.

- 39 It is significant that in the devise of "Cotton Ground" to the Claimant in the Will, the Testator described a Pond on the land which the other beneficiaries should have access to. None of the Witnesses or the Parties have said anything about this Pond.

40. Notwithstanding this, the Court finds that the Testator's specific mention of the Pond evidences his intentions that all of the land where he had cultivated cotton, except for the Pond should go to the Claimant.
41. The Court therefore concludes that at the time when the Testator made his Will on the 17th March, 1979 he intended to give CHARLOTTE PIPER the Claimant all of the land comprised in the report and plan of the Surveyor Mr. Bertrand Burke known as "Cotton Ground", including the land which the Defendant describes as "WALL".
- 42 The Court therefore ORDERS:-

The Defendant to transfer title to the land known as "Cotton Ground" located at Drummonds, Montserrat, registered in the Rendezvous Registration Section Block 15/9 and measuring 17, 178 square meters or 186, 903 square feet or 4.245 acres devise to the Plaintiff by the said James Ponteen deceased in his last Will dated 17th March, 1979.

- 43 Regarding the cost of the application the Court accepts the explanations of the Defendant as to why he failed to transfer "Cotton Ground" to the Claimant. The Court finds that he was not acting unreasonable or for his own benefit; but for the benefit of the estate.
- The Court therefore excuses Defendant for his breach of duty as Executor, and for omitting to obtain directions of the Court as to how to resolve the "Cotton Ground" issue.

The cost of the application will be borne by the Estate.

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Justice Ola Mae Edwards
High Court Judge