ROYAL COURT

14th May, 1991 61.

Before the Judicial Greffier

BETWEEN	Victor Le Couteur Luce	PLAINTIFF
AND	Nicholas D. Brown	DEFENDANT

SUMMARY

Application by the Plaintiff for the Defendant's answer to be struck out on the grounds that it discloses no defence and/or is an abuse of the process of the Court.

Advocate R.A. Falle for the Plaintiff

Advocate P.C. Sinel for the Defendant

JUDGMENT

JUDICIAL GREFFIER:

The Plaintiff, Mr Luce, claims that he is the owner of a bungalow at Bonne Nuit which he was given by his father in 1975. He also claims that the Defendant, in breach of the Plaintiff's rights, entered upon the land and occupied the bungalow in August 1990.

Advocate Falle stated that the action, which was brought by an Order of Justice, was a possessory action or action possessoire. However, although the Order of Justice alleges that the Plaintiff is the owner of the bungalow it does not expressly state that the Plaintiff was in possession thereof in August 1990. Advocate Falle asked me to presume this from the claim of ownership together with the allegation that the Defendant was in breach of the Plaintiff's rights. Advocate Sinel

sunmitted that the Order of Justice was defective in as much that it did not include a claim that the Plaintiff had been in possession at the relevant time.

An action possessoire is founded upon a claim that the Plaintiff was in legal possession at the time of the alleged trespass and that the possession of the Plaintiff has not been displaced for more than a year and a day.

Rule 6/8(1) of the Royal Court Rules, 1982, as amended, states -
"Every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and a statement must be as brief as the nature of the case admits."

On the other hand Rule 6/8(3) states -
"A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party had specifically denied it in his pleading."

Furthermore, Rule 6/8(4) states -
"A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading."

In this case it appears to me that the possession of the Plaintiff is a matter which would normally be presumed and is a condition precedent necessary for the case of the Plaintiff and therefore should be implied in his pleading.

Having said that, I would have preferred if the pleading had contained an express claim that the Plaintiff was in possession at the relevant time. The Defendant, in his answer simply denied that the Plaintiff was the owner of the bungalow and thus, by implication must also be taken to have denied that the Plaintiff was in possession thereof. The Defendant does not make any claim that he had any right to enter the bungalow and admits that he is a trespasser as against the real owner. However, he denies that the Plaintiff is the real owner or, by implication, was in possession at the relevant time.

It is very well established law in Jersey that an application under Rule 6/13(a) cannot be supported by an affidavit or by any evidence. The cause of action or the defence must be bad on the face of the pleadings if it is to be struck out under that sub-paragraph.

Advocate Falle claimed that the Defendant, as an admitted trespasser, is not entitled to deny the possession of the owner. Advocate Falle claimed that there was legal authority to that effect but this was not produced at the hearing. I can see no reason why a person who is an admitted trespasser, should not be entitled to say that the person seeking to evict him is not entitled to possession. If for example, the Defendant had been wrongly in possession of my house then Advocate Falle would not have been entitled to seek to evict him therefrom. I can see that in an action pour exhiber titre a Defendant cannot simply deny the Plaintiff's title, as the essence of such an action is as to who has the superior title. But an action possessoire relates to a matter of fact as to who actually was in possession. If, hypothetically, the Plaintiff were the owner of the bungalow but had lost possession thereof to some previous trespasser for more than a year and a day and that other trespasser had then lost possession to the Defendant, then an action possessoire would not lie. A fortiori, if the Plaintiff was not the owner.

I can see that if the claim of the Defendant had arisen from the consent of the Plaintiff then the Defendant would be estopped from denying the right and title of the Plaintiff, but that also does not apply here. Accordingly, I am unable to find that the answer discloses no reasonable defence.

The Plaintiff also claimed that the defence was an abuse of the process of the Court. What Advocate Falle was really saying here was that the Defendant, who had a hopeless case, was spinning out the procedure as long as possible by means of the procedure of the Court. That argument would have some merit if there were no reasonable defence but had no merit once I found that on the face of the pleadings there was a reasonable defence.

Finally, Advocate Falle asked me to consider certain letters between the parties together with a leasing agreement between the Plaintiff and a Mr. Lillicrap dated 1976. Advocate Falle failed to comply with the practice direction dated 15th November, 1988, which requires that every application to strike out any claim or pleading under sub-paragraphs (b), (c) and (d) of Rule 6/13 of the Royal Court Rules, 1982, as amended, should be supported by an affidavit. The failure to furnish an affidavit in breach of a practice direction is a serious failure and one which would, in its self, entitle the Court to dismiss the application. However, in this case, as documentary evidence was available, I decided to examine the same. No evidence of the title of the Plaintiff was tendered to me.

I quote now the Judgment from the recent case of Le Cocq and Gillespie (un-reported 12th March, 1991) commencing with the last paragraph on page 6 thereof -

"There is a very close link in the English practice between a matter being frivolous or vexatious or an abuse of process of the Court and the exercising of the inherent jurisdiction of the Court and I quote now from the beginning of paragraph 18/19/18 of the 1991 White Book -

"Inherent jurisdiction - Apart from all rules and Orders and notwithstanding the addition of para. (1)(d) the Court has an inherent jurisdiction to stay all proceedings before it which are obviously frivolous or vexatious or an abuse of its process."

Further down in the same paragraph at the top of page 340 is a section which reads :-

"The inherent jurisdiction is a most valuable adjunct to the powers conferred on the Court by these rules. When application is made to the inherent jurisdiction of the Court, all the facts can be gone into; and affidavits as to the facts are admissible."

I quote now a section about half way down on page 341 from the same paragraph, which is as follows :-

"So, too, any action which the plaintiff clearly cannot prove and which is without any solid basis, may be stayed under this inherent jurisdiction as frivolous and vexatious."

Finally, I quote the last sentence of the same paragraph :-

"In a case where an alleged infringement of patent was based on what the plaintiff reasoned (without any evidence) that the defendants must have done, it was held that on the question of the inherent jurisdiction, the Court is entitled to look at evidence, and after looking at evidence that the plaintiff's case was speculation and accordingly the action was struck out (Upjohn Co. v. T. Kerfoot and Co. Ltd. [1988] F.S.R.1)."

The question immediately arises as to the relationship between Rule 6/13 and the inherent jurisdiction of the Court as exercised in England. Although the position under the inherent jurisdiction of the Royal Court in relation to this area prior to the enactment of this Rule is unclear, it appears to me that as the concepts of the English inherent jurisdiction and the matter being frivolous and vexatious or an abuse of the process of the Court are so closely intertwined, our Rules must be held to include the full breadth of jurisdiction afforded in England under the inherent jurisdiction in relation to striking out. Thus, I propose to follow the principles set out under paragraph 18/19/18 of the English White Book."

However, the striking out in the Le Cocq & Gillespie case was sought on the basis of vexatiousness rather than abuse of process and also in this case the Plaintiff has failed to show that the Defendant's case was so weak as to be obviously unsustainable, and so the application to strike out the answer as an abuse of the process of the Court is refused.

If a proper affidavit dealing with the title to the property alleged by the Plaintiff and dealing with the matter of recent possession, had been before me, and if the application had been upon the basis of the defence being vexatious then my decision might well have been different.
Accordingly, the summons is dismissed and the Plaintiff is ordered to pay the Defendant's taxed costs of and incidental to the application in any event.

AUTHORITIES.

Royal Court Rules, 1982, as amended: 6/8(1)(3)(4); 6/13(a)(b)(c)(d)

Le Cocq-v-Gillespie (12th March, 1991) Jersey Unreported.

R.S.C.(1991 Ed'n): 18/19/8.

4 Halsbury 37: pp.318-324.