

SAINT VINCENT & THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 6 of 1991

BETWEEN:

GEORGE CHARLES

Appellant
(Third Party)

and

GWENDOLYN GITTENS

Respondent
(Plaintiff)

and

SYDNEY HUTCHINSON
ZISCA HUTCHINSON

Respondents
(Defendants)

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. Justice C.M.D. Byron J.A.
The Honourable Mr. Justice A.N.J. Matthew J.A. (Ag.)

Appearances: Mr. B. Frederick for the Appellant (Third Party)
Mr. O. Sylvester Q.C. and Mr. M. Williams for the
Respondent (Plaintiff)
Mr. C. Dougan for the Respondents (Defendants)

1992: July 24;
December 7.

JUDGMENT

SIR VINCENT FLOISSAC C.J.

The issue in this appeal is the ownership and right to possession of a lot of land dismembered from the Belvedere Estate in the Parish of St. George in the island of Saint Vincent. The rival claimants to the ownership are the plaintiff-respondent (Gittens) and the defendants-respondents (the Hutchinsons).

Gittens relies on documentary as well as possessory title to the lot. The documentary title invoked is a Deed of Sale or Conveyance (Deed No. 1187 of 1974) which was executed by Percival Steinson Nanton and others (the Nantons) in her favour on the 17th June 1974. The possessory title adduced is her alleged adverse possession which allegedly began in April 1959 (when the Nantons agreed to sell the lot to her) and allegedly lasted for about 27 years or up to the 25th March 1986 (when the Hutchinsons claim to

have purchased the lot from the appellant).

As their title to the lot, the Hutchinsons rely on a Deed of Sale or Conveyance (Deed number 675 of 1986) which was executed by the appellant in their favour on the 25th March 1986. The appellant contends that when he sold the lot to the Hutchinsons, he had documentary as well as possessory title to the lot. The documentary title cited is a Deed of Sale or Conveyance (Deed No. 1218 of 1960) which was executed by Stephanie Rosalie Beach and Percival Steinson Nanton in the appellant's favour on the 22nd September 1960. The possessory title asserted is the appellant's alleged possession from the years 1956 to 1986.

On the 28th May 1986, Gittens instituted legal proceedings against the Hutchinsons for the purpose of determining the general issue as to the ownership of the lot and the right to possession thereof. The appellant was joined as a third party to the proceedings and the action was tried by Joseph J. By judgment dated 8th April 1991 and delivered on the 15th April 1991, the learned judge declared that the Hutchinsons are not entitled to exercise acts of ownership on the lot and granted an injunction against the Hutchinsons in that behalf. The learned judge also ordered the appellant to repay to the Hutchinsons the purchase price of \$10,000.00 with interest thereon. The appellant is dissatisfied with that judgment and has appealed against it.

The solution to this appeal is supplied by sections 3, 4(a) and 31 of the Real Property Limitation Act (Cap.86). Section 3 provides that:

"No person shall make an entry or distress, or bring an action or suit, to recover any land or rent, but within twelve years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to some person through whom he claims; or if such right shall not have accrued

to any person through whom he claims, then within twelve years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to the person making or bringing the same."

Section 4 provides that:

"In the construction of this Act, the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such times as hereinafter is mentioned (that is to say):-

(a) When the person claiming such land or rent, or some person through whom he claims, shall in respect of the estate or interest claimed have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession, or receipt, then such right shall be deemed to have first accrued at the time of such dispossession, or discontinuance of possession, or at the last time at which any such profits or rent were or was so received;"

Section 31 provides that:

"At the determination of the period limited by this Act to any person for making an entry or distress, or bringing an action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively, might have been made or brought within such period, shall be extinguished."

The cumulative effect of sections 3, 4(a) and 31 of the Real Property Limitation Act (Cap.86) is to extinguish a proprietor's right and title to his land and his right to recover the land from an adverse possessor, where the adverse possessor has been in adverse or prescriptive possession of the land (i.e. continuous, uninterrupted, peaceable, public and unequivocal possession of the

land as owner thereof and to the exclusion of the proprietor for at least 12 years) whether the adverse or prescriptive possession was the result of dispossession of or discontinuance of possession by the proprietor. Accordingly, the crucial question required to be decided in this appeal is whether Gittens had been in adverse or prescriptive possession of the lot on the 25th March 1986 (when the appellant purported to sell the lot to the Hutchinsons). That question is a question of fact which was answered by the learned judge in her judgment.

The learned judge said:

"I accept the evidence of the plaintiff and her witnesses Carlyle Adams and Irene Alexander in preference to the evidence given on behalf of the third party in respect of possession of the disputed land."

Later she said:

"I believe the plaintiff's evidence that in 1959, with Mr. Nanton's permission, she went into possession of the disputed land. She built a house on that land in which her mother Doris Bradshaw lived until she died in 1968, after which time she cultivated and maintained the disputed land.

I find as a fact that the plaintiff was in possession of the disputed land from 1959. I am satisfied that when the third party purchased the disputed land he must have been aware of her possession, as a house was on the land in which plaintiff's mother lived."

These findings of fact (which relate to possession and adverse possession) were necessarily based solely or substantially on the credibility of witnesses. A general rule therefore applies. The general rule is that an appellate court (which does not resee or rehear the witnesses but merely conducts a hearing based on the cold printed record and the arguments of counsel) should not normally reverse a trial judge's findings based on the credibility

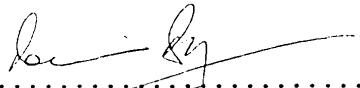
of witnesses. This general rule is founded on the recognition of the advantages which the trial judge enjoys over an appellate Court in the assessment of such credibility. Those advantages are derived from the fact that the trial judge actually sees and hears the witnesses and observes their demeanour in the unique atmosphere of the trial.

In this case, there is no good reason to depart from the general rule. The net legal result of the facts found is that at the time when the appellant purported to sell the lot to the Hutchinsons, the appellant's right or title (if any) to the lot had already been extinguished by Gittens' adverse or prescriptive possession of the lot. The sale to the Hutchinsons was therefore invalidated by the rule "nemo dat quod non habet". Consequently, Gittens' documentary and possessory rights, titles and interests prevailed with the result that the learned judge was justified in making the orders under appeal.

Accordingly, this appeal must be dismissed with costs to the respondents (Gittens and the Hutchinsons).

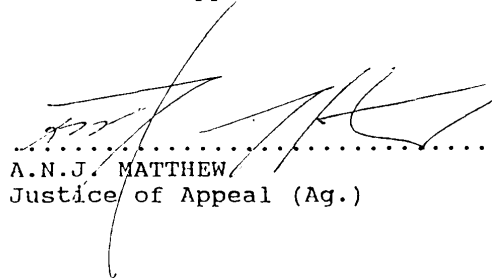


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SIR VINCENT FLOISSAC
Chief Justice/President



I concur.

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C.M.D. BYRON
Justice of Appeal



I concur.

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A.N.J. MATTHEW
Justice of Appeal (Ag.)