

ANTIGUA & BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 12 of 1988

BETWEEN :

RUTH BROWNE - Appellant
and
ST. CLAIR PERRY - Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: R.A. Francis for the Appellant
F.A. Clarke for the Respondent

1989: June 5,
Nov. 27.

JUDGMENT

MOE, J.A.

This appeal is concerned with the ownership and right to possession of a plot of land registered under the Registered Land Act, 1975 as Lot 16 of Block 64 1892C in the Sutherlands Registration Section and is against a judgment of the High Court wherein it was decided that the respondent is entitled to possession of the lot and the appellant ordered to deliver up possession of it to the respondent on or before the 30th July 1988 with mesne profits at \$50.00 per month from the date of judgment until delivery of possession.

BACKGROUND

In 1971 the appellant bought from John Rowan Henry Lot No. 14 of the Block 64 1892C in the Sutherland Registration Section. In 1972 the appellant mistook Lot 16 for Lot 14, and went into occupation of Lot 16, built a house there and since then has been living there continuously. When the mistake of the appellant was discovered there were negotiations about swapping of the Lots 14 and 16. The respondent declined to swap and gave the appellant notice to quit and give up possession of the Lot 16.

/The appellant . . .

The appellant did not move and so the respondent sought possession through the Courts issuing a Writ against the appellant on the 23rd May, 1986. The appellant relies on section 2 of the Real Property Limitation Act Cap. 290 which provides:-

"After the commencement of this Act, 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."

The learned Judge found that the appellant discovered that she was living on the wrong land in or about 1983 and negotiated with the respondent to exchange her Lot 14 for his Lot 16. He held that the appellant in 1983 admitted the right of the plaintiff to the Lot 16 when she discovered that she was on the respondent's land and negotiated with him for the exchange of lots. He concluded that the appellant had not acquired a prescriptive title to the Lot 16.

There were five grounds of appeal which may be dealt with in relation to the two following issues:-

1. Was there an acknowledgement of the respondent's right to the land by the appellant in 1983?
2. Did time stop running against the respondent acquiring prescriptive title?

ACKNOWLEDGEMENT

— All of the appellant's grounds of appeal relate to this issue and were as follows:-

- (1) The learned Judge erred in Law in holding that a verbal acknowledgement made by a trespasser to the legal

/owner.....

owner of property within a period of twelve years is sufficient to deny the trespasser the protection afforded by Section 2 Chapter 290 of the Revised Laws of Antigua and Barbuda.

- (2) The Learned Judge having found as a matter of fact that "the defendant at the time thought that Elvin Perry was the owner of the land....." and that the appellant/defendant had".....told him that she had made a mistake in that she had placed her house on Lot # 16 thinking that it was # 14....." erred in Law in his finding that as against the respondent/plaintiff time for the purposes of limitation of actions under (1) Chapter 290 Section 2 of the Revised Laws of Antigua and Barbuda and (2) Section 136(6)(e) of the Registered Land Act No. 17 of 1975 of the Laws of Antigua and Barbuda was broken by this admission.
- (3) The Learned Judge erred in Law in his finding that statements made by the appellant/defendant to one Elvin Perry were sufficient to constitute an acknowledgement even though such statement was not evidenced in writing signed by the appellant/defendant.
- (4) The respondent/plaintiff having pleaded his statement of claim that..... "In or about March 1985 the appellant/defendant informed one Elvin Perry of Old Runaway in the Parish of Saint John in the Island of Antigua, the respondent/plaintiff's agent that she had placed a house on the plaintiff's land mistakenly believing it to be her land....." the Learned Judge erred in Law in giving judgment on a finding contrary to Pleading.
- (5) The finding of the Learned Judge that there was an acknowledgement made by the appellant/

/defendant.....

defendant in 1983 of mistaken possession of the property the subject of this suit goes against the weight of the evidence.

The burden of the submissions of Counsel for the appellant was that the evidence as a whole would lead to the conclusion that the respondent was not sure as to the matters raised in the evidence. One of these is that the acknowledgement took place in 1983. He pointed to the variation between the pleading in which it was alleged to have occurred in 1985 and the evidence leading to the conclusion that it took place in 1983. He submitted that the finding that it took place in 1983 ought not to have been taken into consideration for that was tantamount to an amendment of the respondent's Statement of Claim which deprived the appellant of the Statutory Defence under section 2 of Cap. 290. Counsel also directed the Court's attention to various portions of the evidence from various witnesses in support of this contention that the decision is against the weight of the evidence. It was also Counsel's submission that an acknowledgement of a person's right to land is not valid in law unless it is in writing signed by the trespasser and given to the owner or owner's agent. He referred to section 14 Real Property Limitation Act 1883 U.K. which he says is in force in Antigua by virtue of section 10 of the Real Property Limitation Act Cap. 290, the latter section having provided for certain provisions of the Imperial Act to be read with the Local Act. Section 14 of the Real Property Limitation Act 1883 reads:-

"Provided always, that when any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed, according to the meaning of this act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last-mentioned person, or any person claiming through him, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given."

/Respondent....

Respondent Counsel's submission was that there was abundant evidence on which the learned Judge could find that the appellant found out her mistake in 1983 and negotiated in that year for exchange of the lots. He referred to section 3 and 136(6) of the Registered Land Act 1975 No.17 of 1975 which provide as follows:-

"Section 3(1) - Except as otherwise provided in this Act, no other Law and no practice or procedure, relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act...."

There is a proviso which is not relevant.

"Section 136(6) - Possession shall be interrupted -

(c) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted."

Now firstly section 14 of the 1883 Act U.K. cannot be of assistance to the appellant for in my opinion it does not provide as Counsel claims. That section sets out consequences that may follow if an acknowledgement is in writing. That is not a stipulation that an acknowledgement must be in writing. But by virtue of section 3(1) of the Registered Land Act 1975, the Law in that Act is the Law to be applied to the plot concerned, it being land registered under that Act and by section 136(6)(c) thereof there is no stipulation that an acknowledgement has to be in writing.

However pleadings by a party provide a measure for comparing the evidence adduced by a party with the case which he has pleaded and any variation between the case as pleaded and that established and the extent of that variation are all matters which affect the acceptability of a party's case. Reference may be made to Bullen, Leake and Jacobs, Precedents of Pleadings (12th Ed.) at pages 17 and 18.

"The respective cases of the parties can only be considered in the light of and on the basis of the pleadings, which act as fetters upon them, binding and circumscribing them closely and strictly to their own cases as pleaded, subject only to the power of amendment to free them from such fetters so as to put forward the real questions in controversy between the parties. Each party may thus be

/assumed.....

assumed to have put forward the best case he has in the best way he can in his pleading, and in this sense the pleadings manifest the true substantive merits of the case."

A real matter of controversy between the parties was the date which the acknowledgement of the respondent's right to the lot took place. The date of the event is important in view of the provisions of section 2 of Cap. 290. Unless there was an amendment of his pleadings the respondent was bound by his pleading that it was in 1985. In my view it would be wrong to come to conclusions in favour of the plaintiff and adverse to the appellant on the basis that the acknowledgement took place in 1983.

I would respectfully disagree with the learned Judge on the reason for finding that the appellant had not acquired prescriptive title and the respondent entitled to possession.

LIMITATION PERIOD

The appellant's submissions put simply were as follows:- The appellant was in possession of the lot from June 1972 and the latest time when the respondent would have successfully commenced an action against the appellant was in June 1984. The limitation period of twelve years could not have been broken by anything which occurred in 1985.

Submissions by Counsel for the respondent were that possession under Cap. 290 must be adverse possession which entails an intention on the part of the possessor to dispossess the true owner. If there is a mistake committed, there is not the animus possidendi. Reference was made to *Archer v Georgiana Holdings, Limited* 21 W.I.R. 431. Secondly adverse possession may be broken by doing something in relation to the land which amounted to claiming it. He relied on the evidence that the respondent made a claim for the lot when the lots in the area were surveyed by Cadastral Survey pursuant to the Land Registration Act 1975 and received his Land Certificate in 1980. On the evidence the respondent would have had the land surveyed between 1975 and 1980.

Appellant's Counsel made 2 points on the matter of the survey of the land. First according to the trial Judge's finding the survey would have to have been before 1972. Second, having a lot of land surveyed is not an act sufficient

/to amount....

to amount to a claim to the land.

The plaintiff gave evidence that after he bought the Lot 16, he got Mr. Egbert Wynter, a land surveyor to survey the land for him in 1979 or 1980. The surveyor said he surveyed the land in 1979 to establish the boundaries but when he did it was a vacant lot. This could not have been so for as the learned Judge found the appellant had a house on the lot from 1972. The learned Judge concluded Mr. Wynter was mistaken, that he must have surveyed before 1979. The appellant goes further and says that it must have been before the appellant had her house there in 1972.

But evidence which the learned Judge accepted was that when the Cadastral Survey was being done, the respondent handed in his Certificate of Title to the lot and received pursuant to the provisions of the Registered Land Act 1975 a Land Certificate dated 29th August 1980. As part of the process of the Cadastral Survey, the surveyor Egbert Wynter, as agent for the respondent pointed out Lot 16 (the lot he had surveyed for the respondent) to the Cadastral Surveyors. All this evidently for the purpose of the respondent obtaining the Land Certificate which he eventually received.

I take the view that the evidence in this case showing the steps taken by the respondent to obtain his Land Certificate to the Lot 16 shows an assertion by him of his right to the lot. In the circumstances when he asserted his right to the land he stopped the time which was running against him before that date. Between the date of the assertion of his right (1975) at the earliest) and the filing of the Writ in 1986 is not sufficient time to bar his proceedings for recovery of the lot. It is on this basis that I would support the decision that the respondent is entitled to possession of the Lot 16.

I would dismiss the appeal with costs to the respondent.

G.C.R. MOE,
Justice of Appeal

/L.S.

L.L. ROBOTHAM,
Chief Justice

E.H.A. BISHOP,
Justice of Appeal