

IN THE SUPREME COURT OF GRENADA  
AND THE WEST INDIES ASSOCIATED STATES  
HIGH COURT OF JUSTICE  
(CIVIL)

GRENADA

CLAIM NO. GDAHCV 2023/0441

BETWEEN:

IN THE MATTER OF THE POSSESSORY TITLES ACT NO. 22 OF 2016

IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF POSSESSORY  
TITLE OF LAND

BERNARD JOHN

Applicant

and

MICHELLE MARECHEAU

Opposer

**Before:**

The Hon. Mde. Justice Agnes Actie

High Court Judge

**Appearances:**

Mrs. Chandelle Delzin-Bartholomew for the Applicant

Ms. Lawrene Griffith for the Opposer

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2025: September 30<sup>th</sup>;  
2026: February 19<sup>th</sup>.  
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**JUDGMENT**

- [1] **ACTIE, J.:** This is an application for a declaration of possessory title pursuant to the **Possessory Titles Act No. 22 of 2016** (hereafter referred to as “the Act”), in respect of a parcel of land situate at New Hampshire in the parish of St. George, measuring approximately Eleven Thousand Two Hundred and Thirty-nine Square Feet (11,239 sq. ft.) (hereafter referred to as “the disputed land”). For the reasons set out below, the application is refused.

### **Applicant's case**

- [2] On 7<sup>th</sup> September 2023, the applicant filed an application seeking a declaration of possessory title in respect of the disputed land. The applicant asserts that there are no competing claims or interests affecting the disputed land, and that he is its sole owner in his own right.
- [3] The applicant, now seventy-five years old, claims to have occupied the land since the age of five, initially with his grandfather Levi John, together with his uncles, Nathan and Linton John. The applicant asserts that following the death of Levi John in 1970, he continued to occupy, cultivate and harvest the land with his uncles. He states that Nathan John and Linton John died between the years 1974 and 1976 and he remained in sole and undisturbed possession after their respective deaths. He states that he began cultivating the land with bananas, pumpkins and figs for his own benefit from the age of sixteen, despite migrating to the United States in the 1980s. He said he returned annually for approximately five months to maintain his connection with the land.
- [4] The applicant also states that no documentary title existed in respect of the land prior to the commencement of his adverse possession. The applicant's evidence was supported by affidavits from Myrtle Bridgeman and Edward Radix. Evidence from Julien Frank was also presented, however at the close of the trial, the applicant elected to not rely on same.

### **Opposer's case**

- [5] On 9<sup>th</sup> April 2025, Michelle Marecheau, who is a first cousin of the applicant, filed an affidavit in opposition to the application pursuant to Section 15 of **the Act**.
- [6] She deposed that her late mother, Mary Marecheau, was one of the children of Levi John (deceased). A Grant of Letters of Administration in the estate of Levi John was issued to Mary Marecheau on 31<sup>st</sup> July 1995. She states that her uncle, Linton John, was born and lived on the subject land until his death in

1996, leaving his undivided share to the said Mary Marecheau in a Will dated 25<sup>th</sup> September 1995. She states that Mary Marecheau attempted to administer and partition the estate of Levi John, but was unsuccessful, as the beneficiaries did not want to share the costs of settling the estate, or were simply not interested.

[7] The opposer avers that the said Mary Marecheau paid property taxes for the land in the name of her father Levi John, which she continued after her mother's death in November 2020. The said Mary Marecheau migrated from Grenada, but continued making periodic visits to the land whenever she was in Grenada. In her absence she left a neighbour, Louisa Frank, to oversee the land for her and then Andy Frank after the death of Louisa Frank. She states that the said Mary Marecheau surveyed the disputed land in 1999.

[8] The opposer said that the applicant is fully aware of Mary Marecheau's interest in the land, which he acknowledged in a phone call on or about the 24<sup>th</sup> December, 2024, seeking a letter to convey the share interest to him. The opposer contends that the applicant is one of the decedents of Levi John and cannot claim the entirety of the estate. The opposer asserts that the applicant is a permanent resident of the USA, is merely one of the descendants of the said Levi John, and has not established any acts of ownership adverse to his beneficial interest.

[9] The opposer's evidence as presented in her affidavit was not tested by cross-examination at trial.

### **Legal Analysis**

[10] The determinative issue before this court is whether the applicant has discharged the statutory burden required for a declaration of possessory title pursuant to **the Act**.

[11] **Section 2 of the Act** defines "adverse possession" as:

"factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Grenada for a continuous period not less than twelve

years immediately preceding the claim, accompanied by the requisite intention to possess the said land as owner thereof.”

- [12] This statutory definition accords with the common law principles as affirmed in **J A Pye v Graham**<sup>1</sup>, and further elucidated in **Powell v McFarlane and Another**<sup>2</sup>, where Slade J stated that:

“Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession... The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed.”

- [13] Crucially, Slade J also clarified that the intention to possess (animus possidendi) requires an intention<sup>3</sup>:

“...in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title...”

- [14] Consequently, to obtain a declaration under **the Act**, the applicant must prove, on a balance of probabilities, exclusive, continuous and undisturbed adverse possession of the disputed land for at least twelve years immediately preceding the application, accompanied by the intention to possess the land as owner.

#### Failure to Establish a Joint Tenancy

- [15] Counsel for the applicant relies heavily on the doctrine of joint possession, submitting that the applicant, along with his uncles and grandfather, jointly possessed the land.

- [16] It is settled law that two persons in possession of the same property, jointly exercising acts of ownership, may obtain an estate in that property as joint tenants. Counsel for the applicant referred the court to **J A Pye v Graham**<sup>4</sup> where the House of Lords approved the proposition that there could be single possession of a parcel of land exercised by or on behalf of several persons jointly.

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<sup>1</sup> [2002] UKHL 30

<sup>2</sup> (1977) 38 P & CR 452

<sup>3</sup> (1977) 38 P & CR 452

<sup>4</sup> [2002] UKHL 30

- [17] Counsel also referred to the decision of Ellis J. (as she then was) in **Shirley Hodge**<sup>5</sup> where Her Ladyship stated the following at paragraphs 15 and 60 of her judgment:

“Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. A tribunal must consider whether the squatter/trespasser has dispossessed the paper owner (in this case, the registered proprietor) by going into ordinary possession of the land for the requisite period without the consent of the owner.”

...

“The judgments in *Ward v Ward* [1817] LR 6 Ch. App 789 and *MacCormack v Courtney* [1895] 2 IR 97, make it clear that two persons may jointly exercise acts of ownership, and they may thus gain a possession which vests in them an estate as joint tenants. Where two or more persons acquire a title under the statute of limitation by joint possession, they would become joint tenants of the property so acquired. In such a case, there is really one possession, with the possessors enjoying together the rights which flow from it.”

- [18] Ellis J. further stated at paragraph 61 that:

“It would of course be very different where there are two persons on land, each claiming possession independently of the other. In that case, neither could acquire actual possession without excluding the other. Unfortunately, it appears that this is precisely the case advanced on behalf of Ms. Smith.”

- [19] Ellis J. further referred to the judgment of Thom J. (as she then was) in **Jacqueline Chance v Jane Sutherland et al**<sup>6</sup> where she concluded at paragraph 43:

“However, I do not find that Jane Sutherland was in joint possession with Isaac Brown of the disputed land. Jane Sutherland recognised the land as belonging to Isaac Brown, living in his household she assisted him from time to time in cultivating the small area of land around their home. She did not have joint factual possession as explained in the case of *J A Pye*, she was not dealing with the land as an occupying owner might have been expected to deal with it. She thought the land belonged to Isaac Brown and she was merely helping him being a member of his household.”

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<sup>5</sup> BVIHCV2017/0004

<sup>6</sup> St. Vincent High Court Civil Claim No. 90 of 2008

- [20] The submission of joint possession as advanced in counsel's arguments is not supported by the applicant's own application. There is no mention of joint ownership of the land with Levi John, Nathan John or Linton John. Instead, the applicant states that during Levi John's lifetime, he, along with his uncles, occupied, cultivated and harvested the disputed land "**with Levi John's consent**". Furthermore, during cross-examination, the applicant admitted that "the land belonged to my grandfather." These unequivocal admissions fatally undermine any suggestion of joint ownership.
- [21] Furthermore, the conduct of Linton John by executing a Will dated 25<sup>th</sup> September 1995, devising his undivided share interest to his sister, Mary Marecheau, is wholly inconsistent with the existence of a joint tenancy. Linton John also recognised the sole ownership by Levi John and referred to same in his Will as "family lands".
- [22] Further, the applicant's claim that he has been in sole possession since 1976 contradicts the evidence that Linton John died in 1996. Such contradictions are not minor. They go to the heart of the applicant's credibility and undermine the truthfulness of the sworn evidence in breach of **Section 30 of the Act**.
- [23] The court over the years has lamented that the **Possessory Titles Act** is being used as an instrument of fraud whereby false and misleading information/documents are tendered by applicants and supported by witnesses in applications for declaration of possessory title. **The Act** is also used to circumvent administration of estates, even in circumstances where the applicants as personal representatives/trustees seek declaration of adverse possession in their own name, rather than on behalf of the estate in keeping with Section 3(3) of **the Act**.
- [24] **Section 30 of the Act** provides:-
- (1) If, in the course of any proceedings under this Act, a person
    - (a) Knowingly makes or assists in the making of any material false statement or representation; or

- (b) With intent to deceive, suppresses or refuses to disclose, or assists in the suppression or non-disclosure of, any material document or information,

any declaration or title obtained as a result of the making of the material false statement or representation, or the suppression or non-disclosure of the material document or information, shall be null and void, except as against a bona fide purchaser for valuable consideration without notice or a second or subsequent mortgagee in respect of that piece or parcel of land.

- (2) A person who swears, or assists in the making of, an affidavit in support of an application for declaration of possessory title, knowing the contents of the affidavit to be false, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years or both.

[25] The Form 1 in Schedule 1 of **the Act** outlines all the mandatory requirements for an application for a declaration of possessory title. Paragraphs 3 & 4 of the form require the applicant to state whether there are claims affecting the land and whether there are other persons claiming to be the owner of the land. Paragraph 8 of the form also requires the applicant to indicate that he has not knowingly withheld any fact concerning the said land which has been disclosed and has truly and honestly represented the truth concerning the title of the land.

[26] **The Act** mandates that possession be continuous for twelve years immediately preceding the application. The applicant is also required to show that his possession was exclusive in his own right.

[27] As can be seen, **the Act** requires full and frank disclosure with the condign consequences of a fine, imprisonment or both where fraudulent and/or misleading evidence is given or for nondisclosure of pertinent evidence.

[28] The totality of the evidence does not support the applicant's evidence that he has been in sole and continuous possession as owner in his own right for the twelve years immediately preceding the application. The applicant has not resided in Grenada since during the 1970s. He vaguely claims to have visited Grenada annually but offers little evidence of acts of possession consistent with ownership. However, his claim of returning annually from abroad and cultivating crops is contradicted by his testimony, including that of his own witnesses. He

states that he used the land for planting, and that he paid workers to maintain the land, however the evidence indicates that the land is overgrown and not in active use.

[29] The aerial photo in support of the claim does not reflect any clearance and cultivation as stated in his affidavit. The applicant concedes that “right now the land is in bush”, which suggests that there are no recent acts of ownership exercised on the land. This is corroborated by Myrtle Bridgeman in cross-examination, who stated that the land has “a lot of bush”, and that the applicant no longer plants on the disputed land, which is contrary to the evidence given on affidavit by both Myrtle Bridgeman and Edward Radix, which stated that the disputed land is well maintained.

[30] It is also the evidence of Julien Frank, witness for the applicant, that although the applicant informed him that he planted fruits and tress, he has not observed any fruit trees on the disputed land. Mr. Frank testified that the applicant “wasn’t really here” and stated that between 2000 and 2023, he had no knowledge of the applicant physically occupying the land. This suggests that the disputed land is no longer being used in the manner in which it was commonly used or enjoyed during the lifetime of the applicant’s grandfather and uncles, namely for the cultivation of crops for personal use.

[31] The evidence suggests that Mary Marecheau during her lifetime played an active part in the land, and no one contested her utilisation of the land nor asserted any competing claim. It is also accepted evidence that the said Mary Marecheau surveyed the disputed land. The applicant by his own conduct in contacting the opposer acknowledged Mary Marecheau’s beneficial interest.

[32] The court is of the view that the applicant and his witnesses have failed to disclose pertinent facts in contravention of **Section 30 of the Act**. The applicant was fully aware of Mary Marecheau’s share interest and that she arranged the survey of the said land. Mary Marecheau’s exercising of acts of control over the land, is inconsistent with the applicant’s claim to exclusive possession, especially in light of the evidence that he has been out of the jurisdiction in excess of forty years.

### **Conclusion**

- [33] The evidence does not support the applicant's claim to a possessory title under **the Act**. From the totality of the evidence presented, it is apparent that the disputed land forms part of the unadministered estate of Levi John, of which the applicant and the opposer are potential beneficiaries.
- [34] In light of the foregoing, the court finds that the applicant has failed to satisfy adverse possession in his own right for the statutory twelve-year period immediately preceding the filing of this application. The action of the applicant and his witnesses in making false statements and/or suppressing pertinent information engages **Section 30 of the Act**. Accordingly, the court directs that the Registrar refer the matter to the office of Director of Public Prosecutions (DPP) pursuant to **Section 30 of the Act**.

### **ORDER**

- [35] It is ordered and directed as follows:
- i. The application by Bernard John for a declaration of possessory title is refused.
  - ii. The applicant shall pay costs in the sum of \$7,500.00 within fourteen (14) days from today's date unless otherwise agreed.

**Agnes Actie**  
High Court Judge

**By the Court**

**Registrar**

