

EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2022/0014

BETWEEN:

LEO JOSEPH

Claimant

AND

JUNIOR JOSEPH

Defendant

Before: The Her Ladyship the Hon. Justice Gertel Thom (Ag.)

High Court Judge

Appearances:

Ms. Kensha Theobalds of Counsel for the Claimant

Mr. Art Williams of Counsel for the Defendant

2024: December 11

2025: January 15

March 31

JUDGMENT

Introduction

- [1] **THOM J (Ag):** This is a claim for possession of a parcel of land measuring 13,110 sq. ft of land situate at Fair Hall and bearing registration number 3422 of 2007 (the subject land).

- [2] The claimant Leo Joseph is the brother of the defendant Junior Joseph. Leo Joseph claims that the property was gifted to him by his father Leon Davis in 2007. Leon Davis had received the land as a gift from his mother Christiana Davis in 1982. The deed of gift was registered as No.1697 of 1982.
- [3] Junior Joseph resides in a structure on a portion of the property (the disputed land) that was once a shop which was built and operated by one Arden Martin.
- [4] Leo Joseph by his solicitor, wrote to Junior Joseph on 20th February 2016 and on 6th August 2020 giving him notice to vacate the property. Junior Joseph having failed and or refused to vacate the property, Leo Joseph instituted these proceedings.

Pleaded Case

- [5] Leo Joseph in his claim which was filed on the 3rd day of February 2022 contends that he is the lawful owner of the property by Deed No. 3422 of 2007. Since 2007 he has continuously exercised ownership of the property by cleaning the property and paying the property tax. Junior Joseph resides in a "board structure that" was once a shop on the property. He has made several oral requests of Junior Joseph to vacate the property, and he caused his solicitor to send Junior Joseph two notices to vacate the property in 2016 and 2020, but Junior Joseph has failed to do so. Junior Joseph has fenced part of the property using old galvanize in an attempt to prevent him from accessing his property.
- [6] Mr. Joseph seeks the following reliefs:
- (a) A declaration that he is the fee simple owner of the property.
 - (b) A declaration that he is entitled to possession of the property.
 - (c) A mandatory injunction compelling Junior Joseph to vacate the property.
 - (d) Such other reliefs as the Court deems fit.
 - (e) Costs.

- [7] In his defense Junior Joseph contends that Leo Joseph was not all material times the owner of the property. He only became owner in 2007. Leo Joseph first visited the property around 2020 and cut down a breadfruit tree, three coconut trees and a zaboca tree.
- [8] Junior Joseph claimed that he was not in occupation of the property, but only in exclusive possession of 4,197sq.ft (the disputed land) of the property. He has been in exclusive possession from about early 1970's. He has converted a shop into a house where he resides on the disputed land. He has planted several crops on the land. He sells the produce for his livelihood.
- [9] Leo Joseph's title to the disputed land has extinguished by virtue of the Limitation Act Chapter 129 of the Revised Laws of State Vincent and the Grenadines 2009.
- [10] In his counterclaim Junior Joseph seeks the following r liefs:
- (a) A declaration that Mr. Joseph's title to the disputed land is extinguished by virtue of the Limitation Act.
 - (b) A declaration that he has been in exclusive possession of the disputed land for a period in excess of 12 years and is entitled to occupy and possess it by virtue of the Possessory Titles Act Ch.328
 - (c) An injunction prohibiting Mr. Leo Joseph and/or his servants or agents from preventing him from enjoying his right to quiet and peaceful enjoyment of the said land
 - (d) Costs
 - (e) Such further or other reliefs

Evidence

- [11] Leo Joseph testified and called one witness being Brian Joseph. Junior Joseph testified and he called two witnesses being Arden Martin, and Irene Roberts.

Leo Joseph

- [12] Leo Joseph testified that the property was gifted to him in 2007 by his father as evidenced in Deed No. 3422/2007. Since 2007 having received his Deed, he has gone onto the property continuously and cleared the land. Junior Joseph his brother resides on the land in a "board structure" that once housed a shop. He has on several occasions orally requested Junior Joseph to vacate the property. His requests have been met with threatening language. Junior Joseph fenced part of the property with old galvanize to exclude him from the property. He caused his lawyer to give notice to Junior Joseph dated 20th February 2016 to vacate within three months. Junior Joseph having failed to vacate the property he caused his Solicitor to send a further letter dated 26th August, 2020, to offer to sell Junior Joseph the property and if he declines the offer and refuses to vacate the property, legal proceedings would be instituted against him to recover possession of the land.
- [13] Leo Joseph exhibited several property tax receipts for the property.
- [14] In his witness summary dated the 14th day of November 2024, he stated that after his father gave him the Deed of gift, his father showed him the boundaries of the property. In 2007, he took a group of workmen including, Clare, Sam, Joseph, Berisford Davis aka King and Brian Joseph also known as Brian Davis with him on the property to trim and clean the entire property (13,110 sq.ft), including the area where Junior Joseph resides. He cut down a breadfruit tree, a coconut tree, and a Zaboca/avocado tree. Junior Joseph was present. When the clearing was finished, Junior Joseph came from inside of the house that is situated on the disputed land and sat on the steps to the house with him and they "old talked and laughed." Junior Davis did not prevent him from clearing the property which includes the disputed land.
- [15] When Christiana Davis gifted the property to Leon Davis, Leon Davis requested Arden Martin to vacate the property, and he did so. Junior Joseph then occupied the shop on the disputed land with the permission of their father Leon Davis. Prior to living on the disputed land, Junior Joseph rented a house at Belair, Fountain and Fairbairn Pasture. He offered to give Junior Joseph a piece of land at the back of the property because they had a good relationship. He has not visited the property between 2021-2024 because of threats from Junior Joseph.

- [16] Under cross-examination Leo Joseph testified that he was born on the property. He grew up with his grandmother Christiana Davis. He agreed that the shop was built by Arden Martin but he could not recall when the shop was built. Arden Martin operated the shop for several years. He was not present when Arden Martin stopped operating the shop. He did not observe any addition to the structure left by Arden Martin.
- [17] He tried to get Junior Joseph off the land when he got his Deed. Leo Joseph was shown a copy of a survey plan prepared on the instruction of Junior Joseph and he agreed that was the area occupied by Junior Joseph. He also agreed that Junior Joseph has been occupying the land since Arden Martin left. He insisted that it was their father Leon Joseph who gave Junior Joseph permission to reside on the disputed property until he (Leo Joseph) was ready to use the land. He cleared the whole land one Sunday. The area cleared included the disputed land.

Brian Joseph

- [18] In 2007 he went with Leo Joseph his father and some other men to the property and cleaned the entire land. They also trimmed and cleared the disputed land. After the clearing was completed, Junior Joseph had a friendly conversation with them. About three months later he returned to the property and sprayed the entire property including the disputed land. Junior Joseph saw him spraying the property and they spoke amicably. During the years, family members visited the property and there was no difficulty.
- [19] Under cross-examination Brian Joseph testified he was present when the property was surveyed. He was shown a survey plan dated 2024. He testified that he did not know when the survey was done. He could not recall the year. It was after the survey was done, that the trees were cut and the property cleared. Under re-examination he clarified that the survey he referred to, was the survey commissioned by his father.

Defendant's Evidence

Arden Martin

- [20] In his witness summary Arden Martin stated that Junior Joseph is his cousin they shared the same grandmother Christiana Davis.
- [21] In the 1970's or 1980's he built a shop on the disputed land having received permission from Christiana Davis. Junior Joseph now resides in the structure on the disputed land. Junior Joseph expanded the shop and renovated it. He bought a "board house" from someone and added it onto the back of the shop. He uses this area as his bedroom. Junior Joseph has been paying property taxes for the land.
- [22] Under cross-examination, Arden Martin testified that he built the shop around 1982. He operated the shop for about ten (10) years. Christiana Davis was alive when he moved off the land.
- [23] The shop is a "board structure" with a concrete foundation. Junior Joseph built an addition to the shop. Junior Joseph bought a "board house" from someone and added it to the back of the shop. He (Arden Martin) lives next to the property. Several family members live next to the property.

Irene Roberts

- [24] In her witness statement, Irene Roberts testified that she is the sister of Leo Joseph and Junior Joseph. She resides in Trinidad and Tobago. She assisted Junior Joseph in getting the survey plan for the disputed land. Junior Joseph added a room to the back of the shop. He has not paid rent or accounted to anyone for the disputed land.
- [25] Under cross-examination Irene Roberts testified that she was not living in St. Vincent when Arden Martin left the disputed land where he was operating a shop. Both her grandmother and her father gave Junior Joseph permission to occupy the disputed land. Junior Joseph was in

possession, but her father Leon Joseph was the owner. She accepted that Leo Joseph went onto the subject land after he received the Deed for the land. It was around 2017 not 2007.

Junior Joseph

- [26] Junior Joseph testified that he is the grandson of Christiana Davis. He grew up with her. His grandmother gave him a portion of the property. She marked out the area. She drew a line by the breadfruit tree. In 2024 he caused the area that Christiana Davis marked out for him to be surveyed. The area measures 4,179 sq. ft. and is shown on Survey Plan G74/104. His cousin Arden Martin had built a shop on the disputed land. After Arden ceased operating the shop which is a "board structure", he moved into the shop and he continues to live there.
- [27] The electricity bill for the "board structure" was in the name of Arden's wife Beryl Martin, but he changed it in 2002 to his name and he has been paying the electricity bill from that date. He exhibited several electricity bills. He testified further that there was no water supply at the disputed property. He paid for water to be connected to the disputed property.
- [28] He bought an old board house for \$2,500. He used it to renovate the shop and add a back portion to the shop. The front portion is the living room and kitchen, and his bedroom is at the back. He renovated the shop. He replaced the galvanize on the roof which had deteriorated and replaced the windows and doors and painted it. He planted several crops on the land. Leo Joseph has never been in physical possession of the disputed land where his house is situated. He has been in possession of the disputed land since the 1980s.
- [29] Under cross-examination, Junior Joseph testified that he could not recall when Arden Martin **built** the shop. He also could not recall when Arden Martin stopped operating the shop. His grandmother gave him permission to live on the disputed land. His father also gave him permission to live on the land. He agreed the land is not registered in his name, but he paid the land taxes in his name.

[30] He does not own a "board house" at Belair. He denied that he lived in a "board house" in Whim. Leo Joseph told him that he would build a house for him at Whim. He worked in Whim. He has a hut there. He does not sleep there. Leo Joseph never requested him to move the "board house". He reiterated that he renovated the house. Leo Joseph only cleaned the property when the survey was done.

[31] Whether Leo Joseph's title to the disputed land has been extinguished pursuant to the provisions of the Limitation Act Cap 129.

Legislative Provision

[32] The relevant provisions of the Limitation Act are Sections 17 (1), 19 and Part 1 Section 8 (1) of the Schedule. They read as follows:

"17. Time Limit for actions to recover land

(1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action occurred to some person through whom he claims to that person.

19. Extinction of title to land after expiration of time limit

Subject to section 20, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished.

8 (1) No right of action to recover land shall be treated as accruing unless the land is in possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as adverse possession); and where pursuant to the preceding provisions of this schedule any such right of action is treated as occurring on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land."

Submissions And Discussion

- [33] Learned Counsel advanced three reasons why Leo Joseph's title to the disputed land was not extinguished pursuant to the Limitation Act, being:
- (a) Leo Joseph was in occupation of the disputed land continuously from 2007 to present, therefore time did not begin to run pursuant to the Limitation Act.
 - (b) Junior Joseph lived on the disputed land with the permission of the previous owners.
 - (c) Junior Joseph's occupation was interrupted prior to the 12 years period under the Limitation Act.

Occupation by Leo Joseph

- [34] Learned Counsel Ms. Theobalds referred to Section 2 of the Possessory Titles Act which reads as follows:

"2. Adverse possession means factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Saint Vincent and the Grenadines for a Continuous period of twelve years or more accompanied by the requisite intention to possess the said land as owner thereof."

- [35] In my opinion the Possessory Titles Act has no application to this case. The Possessory Titles Act provides a mechanism whereby persons who have been in adverse possession of land may obtain title to the land.

- [36] Ms. Theobalds also relied on the following passage in the judgment of Lord Brown-Wilkinson in the well-known case of **JA Pye (Oxford) Ltd and Ors. v Graham and Another** [2002] UKHL 30:

"The owner of land with the paper title is deemed to be in possession of the land as being the person with the prima facie right to possession. The law will thus without reluctance, ascribe possession either to the proper owner or to persons who can establish a title as claiming through the paper owner."

[37] Learned Counsel also relied on the passage in the judgment of George-Creque JA (as she then was) in **Arnold Celestine v Carlton Baptiste**:

"It appears to have been overlooked that those provisions are directed at the right of the paper owner to bring a claim for recovery of land and limited the time frame within which the paper owner may do so. This contemplates that the paper owner must have become dispossessed of the land by the adverse possessor. What these provisions do not permit or contemplate is the situation where, as here, the adverse possessor brings a claim against the paper owner and then sets up the limitation bar as against the paper owner as a basis upon which the adverse possessor becomes entitled to ownership of the land."

[38] Learned Counsel further submits that the evidence of Junior Joseph and his witnesses are conflicting on when he commenced occupation of the disputed land. Under cross-examination Junior Joseph could not recall when Arden Martin built the shop or when Arden Martin stopped operating the shop. In contrast Leo Joseph is very clear of the date he got the Deed for the property and the activities he did on the property as the owner of the property. He paid the property taxes. Junior Joseph never objected to Leo Joseph's acts of ownership.

[39] Mr. Art Williams in response acknowledged Junior Joseph's testimony in relation to when his occupation of the disputed land commenced was conflicting. He however submitted that the evidence shows that Junior Joseph was in possession in the 2000's and definitely prior to Leo Joseph receiving his Deed in 2007. The period of his physical control of the disputed land is at least from 2007 and the claim was not filed until 3rd February 2022. When the claim was instituted more than twelve (12) years had elapsed since Junior Joseph was in possession of the disputed land.

[40] Learned Counsel submitted further that ' Junior Joseph treated the land as his own. He has been living on the disputed land, paying the utilities in his name. He exhibited VINLEC bills from 2002. He also planted fruit trees and vegetables. He made alterations to the house including changing the galvanise on the roof, repaired windows and doors and painted the

house. He also added another room to the back of the house. Further, he refused to vacate when requested by Leo Joseph to do so.

[41] I agree that the evidence of Junior Davis of when he first entered possession of the disputed land was conflicting. However, it is not disputed when the land was conveyed to Leo Joseph in 2007, Junior Joseph was living in the shop on the disputed land. It is also not disputed that the land was cleared by Leo Joseph and he cut down certain trees. However, his evidence is that this was in circumstances where they were having amicable conversation and it must be borne in mind that Junior Joseph was only occupying a part of the property. There was no attempt to disrupt Junior Joseph's occupation of the disputed land. Indeed, it was Leo Joseph's son Brian Joseph who testified on his behalf stated that clearing of the entire land took place in 2007. In my opinion, the difficulty arose when Leo Joseph tried to get Junior Joseph off the land sometime around 2016 and Junior Joseph refused to vacate and continued to occupy the land as his own.

[42] I accept the testimony of Mr. Martin that Junior Joseph made an addition to the "board structure". Leo Joseph denies this, but he accepts that Junior Joseph painted the "board structure" where he lived. Leo Joseph also does not deny that Junior Joseph has been planting food crops on the disputed property. I find that the various acts done by Junior Joseph when viewed conjointly, shows that Junior Joseph had the requisite intention to possess the disputed property as his own.

Permission

[43] Ms. Theobalds submitted that Junior Davis was in possession of the property with the permission first of Christiana Davis and then Leon Davis. I agree. This was not disputed by Junior Joseph. Ms. Theobalds further submitted that Junior Joseph having entered the property with permission and having continued with the permission of Leo Joseph he was not in adverse possession. Learned Counsel relied on the following passage in **Megarry and Wade The Law of Real Property**, where the learned authors stated at p.417:

"If a person is in possession of land with the permission of the true owner, his possession cannot be adverse. The permission may be expressly given or it may be

implied. It will be implied where there has been some overt act by the landowner or some demonstrable circumstances from which it can be inferred that permission was given. It is immaterial whether a squatter was aware of the matters, but they must be probative of and not merely consistent with the giving of permission. They must be such that a reasonable person would have appreciated that the user was with the permission of the land owner. Possession with permission which can never be adverse is quite different from the possession in which the land owner acquiescence may be adverse."

- [44] Learned Counsel Mr. Art Williams in response accepted that possession by a licensee cannot amount to adverse possession. Learned Counsel however referred to **Halsbury's Law of England** (Vol 6 2022) paragraph 2 which read as follows:

"Since a license does not create an interest in land, it is not binding upon a successor in title of their original grantor unless the circumstances are such as to give rise to a constructive trust. A purely personal licence is not assignable. A person cannot grant a licence to himself nor to himself jointly with another. A gratuitous license is revocable by notice at any time, and is revoked by the death of either party or by an assignment of the land over which the license is granted."

- [45] Mr. Art Williams also relied on the following excerpts from the case of **Riley v Brathwaite & Another** (1984) 37WIR 66 where:

"The appellant was permitted to occupy a parcel of land by his natural mother. His mother died intestate in 1939 and was survived by (inter alias) her husband and her eldest lawful son, her heir-at-law.

The husband took out letters of administration in 1950, but he took no steps to dispossess the appellant before his death in 1962. In 1966 the heir-at-law conveyed some land, including the parcel occupied by the appellant, to his sister. The sister mortgaged the land and shortly afterwards the mortgagee commenced foreclosure proceedings. The appellant intervened in the foreclosure proceedings to claim the parcel of land which he occupied. The trial judge ruled that the appellant had occupied the land after his mother's death by family arrangement and had continued in

occupation by such arrangement during the husband's life. He had been a mere licensee throughout his period of occupation."

The Court of Appeal found that "the mother's fee simple in the land did not pass to her husband on her death and the husband could not give or withhold permission until he had taken out letters of administration during the intervening years only the heir-at-law could have given or withheld permission and neither he nor the husband had in fact done anything; the appellant had occupied the parcel of land independently of any permission since his mother's death and had thereby acquired a good prescriptive title."

[46] Mr. Art Williams also relied on the Court of Appeal's decision in **Winston Molyneaux v Hugh Smith et al** BVIHCVAP 2009/0022 where:

"In 1956, the appellant moved onto a portion of a parcel of land more specifically delineated as Mount Sage Registration Section, Block 233J B Parcel 40 and cohabited with Victoria Molyneaux nee Cameron (Victoria) who was found by the trial judge to be a sharecropper for the respondents. During the time that the appellant and Victoria lived together on the land they maintained four structures on it, and lived in undisturbed possession of same until Victoria's death on 16th August 1992.

The appellant continued in exclusive possession. The evidence disclosed that at no time prior to the year 2006 did the respondents perform any act of ownership in relation to the land nor did the appellant ever had any discussions or arrangements with the respondents about his presence on the land.

The respondents claimed and were granted permission of the land as the learned trial judge found that the appellant's defense that the claim was statute barred would only be applicable if the appellant was able to show that the respondents had either discontinued their possession or that the appellant had shown an intention to oust them from possession of the land."

The Court of Appeal held:

"The respondents had a right of action against the appellant as a trespasser and this right existed from the date of Victoria's death. The latest date by which an action could have been brought by the respondents to recover possession from the appellant was 16th August 2004 being 12 years from the date when the cause of action first accrued to them. The claim was commenced on 5th April 2007; consequently, it was statute barred".

[47] Mr. Art Williams submitted that any permission granted by Christiana Davis and Leon Joseph would have ceased upon the execution of the Deed of Gift dated 13th May 1982 and which was registered at the Land Registry Under Deed No.1697 of 1982 on the Deed of Gift dated 24th August 2007.

[48] It is not disputed that Junior Joseph was in possession with the permission of Christiana Davis and later Leon Joseph. I agree with the submission of Mr. Williams that in 2007 when the property was conveyed to Leo Joseph, permission granted by Christiana Davis and Leon Davis ceased. In fact, Christiana Davis's permission ceased when she conveyed the land to Leon Joseph and the permission granted by Leon Joseph ceased when he conveyed the property to Leo Joseph. Junior Joseph's occupation of the disputed land from 2007 was not with the permission of anyone. Indeed Leo Joseph denied that he granted permission to Junior Joseph to occupy the disputed land.

Interruption of Time

[49] Ms. Theobalds submitted that Junior Davis' occupation was interrupted firstly by the actions of Mr. Leo Joseph by going onto the property since 2007 and exercising ownership on the property. Secondly, Leo Joseph caused his solicitor to send Junior Joseph two letters to vacate the disputed property in 2016 and 2020.

[50] Mr. Art Williams submitted in response that the letters do not amount to disturbance of adverse possession. Learned Counsel relied on the case of **Ulric Charles and Others v Kristy**

Antoine et al, Claim No. 37 of 2010, and the following dicta of Sir Vincent Floissac CJ in **Belton's** case at p.7:

"The respondent's extra judicial protests, objections and demands do not in law constitute acts of ownership (i.e. acts which evince an intention to assert ownership) or acts of possession (i.e. acts which evince an intention to assume, retain or regain possession) or acts which legally interrupt, disturb or otherwise affect the quality of adverse possession."

- [51] I agree. Neither of the letters from the Solicitor giving notice to vacate the property or the acts of clearing the subject property amount to disturbance of adverse possession. Leo Joseph only instituted legal proceedings on 3rd February 2022. Junior Joseph having been in undisturbed possession with the intention to own the disputed land in 2007 when the land was conveyed to Leo Joseph, he was in adverse possession of the property more than 12 years before Leo Joseph instituted these proceeding on 3rd February 2022. Pursuant to the provisions of Section 17 and 19 of the Limitation Act, Leo Joseph's title to the disputed land was already extinguished when these proceedings were instituted.
- [52] In conclusion, I find that Leo Joseph was in adverse possession of the disputed land measuring 4.197 sq.ft. as shown on Survey Plan G74/104 for more than twelve (12) consecutive years before Leo Joseph's claim was instituted. Leo Joseph is statute barred from recovering possession from Junior Joseph. His claim is accordingly dismissed.
- [53] In relation to the counterclaim of Junior Joseph in which he seeks a declaration that Leo Joseph's title to the disputed land is extinguished, in view of my findings above I make the declaration as prayed.
- [54] In relation to the declaration pursuant to the Possessory Titles Act, I decline to grant this relief. In my opinion the Possessory Titles Act was not engaged. The Possessory Titles Act outlines a specific procedure which must be followed by an applicant for relief pursuant to the Act.

[55] In relation to the injunction sought against Mr. Leo Joseph, in my opinion no evidence was led by Junior Joseph in support of the grant of an injunction. I therefore do not grant the relief sought.

[56] The parties have agreed that each party shall bear their own costs.

[57] It Is Ordered:

1. The claim is dismissed.
2. The counterclaim succeeds in part.
3. It is declared that Mr. Leo Joseph's title to the 4,179sq. ft of land as shown on survey plan G74/100 is extinguished by virtue of the provisions of the Limitation Act.
4. By consent of the parties, each party shall bear their own costs.

Gertel Thom

High Court Judge (Ag.)

By The Court

Registrar