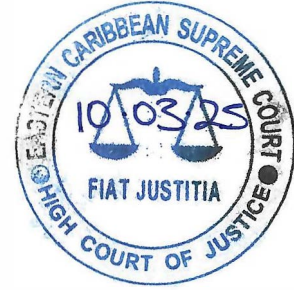


IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ST VINCENT & THE GRENADINES
(CIVIL) -



CLAIM NO. SVGHCV2021/0109

BETWEEN:

AQUADUCT LIMITED

Claimant

and

SELVIN PHILLIP

Defendant

BEFORE:

The Honourable Mde. Justice M E Birnie Stephenson

APPEARANCES:

Mr G Graham Bollers of Regal Law Chambers for the Claimant

Mr Johnathon Lewis and Ms Kemiesha Joyles of Johnathon Lewis Chambers for the Defendant

2024: June
August 16 & 19
2025: January 24
March 10th (Issued)

JUDGMENT

[1] **STEPHENSON J.:** On the 27th August 2020, the claimant Aquaduct Limited (Aquaduct) filed a claim form with a statement of claim making the following claims against the defendant Selvin Phillip (Mr Phillip):

- a. For an injunction restraining the defendant whether by himself, his servants, agents or licences or otherwise howsoever demolish forthwith, the house constructed on the claimant's land and to remove, forthwith, any structure, building or otherwise, temporary or permanent, put up by the defendant on the claimant's land.
- b. Damages for trespass.

- c. Interest on damages at such rate as the court deems fit.
- d. Such other orders and relief as the Honourable court deems fit.
- e. Costs.

[2] Aquaduct is the paper title owner of a parcel of land situate at Penniston Estate in the parish of St Andrew in the State of Saint Vincent and the Grenadines containing 208 acres of Land. (the disputed land). Aquaduct has adduced into evidence its paper title being a copy of the Indenture of Conveyance dated 13th July 1982.

[3] The property is described as land located at "*Penniston Estate, Aquaduct Gulf Club and Hog Hole*" with exceptions thereto in the parish of St Andrew in the island of Saint Vincent". The disputed property was transferred from Barclays Bank International Limited (formerly Barclays Bank D.C.O.) to Aquaduct Ltd on the 13th of July 1982 for the purchase price of \$800,000.00. (eight hundred thousand dollars). A copy of a map of the land was attached to the indenture.

[4] The defendant has mounted the defence of adverse possession and maintains that he entered the property and occupied three acres of the land through an open, peaceful, quiet undisturbed possession for upwards of 12 years there by extinguishing the claimant's title by his adverse possession. The defendant has remained in possession and occupation of the disputed land despite notices sent to him by the Aquaduct to remove.

[5] The matter proceeded to trial with viva voce evidence being presented by both sides. At the conclusion of the trial the parties were ordered to file their written closing submissions with authorities, and this was done on the 16th and 19th August 2024 respectively.

[6] This is essentially a question of fact to be ascertained from the evidence received at trial, a consideration of the circumstances as disclosed by the evidence and the principles of the law of Adverse Possession.

[7] Mr Phillip in his statement of defence claims to have taken possession of the disputed land in excess of 20 years, that is in 1999 when he initially he was engaged in farming the land and that subsequently, he first built a wooden dwelling house on the portion of land he occupies and in or about 2011 he converted the wooden house into a concrete house and continues to live there with

his family. That in the circumstances of the case he has adversely acquired possession of the land. Further, that Aquaduct's action is statute barred by virtue of section 17 of the Limitation Act. 1.

- [8] It is this court's view that the sole issue to be determined is whether the claimant's title to the portion of land occupied by Mr Phillip has been extinguished by Mr Phillip's open, continuous undisturbed possession.
- [9] The law regarding adverse possession has been conclusively established by long-standing authorities.
- [10] The court has reviewed the submissions of both parties in the case at bar, and reference will be made to those submissions which this court considers necessary to explain its conclusions. It is to be noted that failure to make specific mention of any point of submissions does not mean that it has not been considered or ignored, it is that this court does not see it necessary to discuss same to resolve the issue at bar.
- [11] Mr Joshua Da Silva and Mr Mc Aurthur Robertson gave evidence on behalf of the claimant.
- [12] Aquaduct claims that at all material times it is the owner of the disputed land and relies on the documentary evidence that the company is the registered owner of the land at Penniston Estate in the parish of St Andrew comprising 208 acres of land "give or take" by virtue of an indenture dated 15th October 1982 and registered in the Land Registry bearing Deed number 1547 of 1982.
- [13] It is the claimant's case that in 2018 they were in the process of surveying their lands and to do so retained the services of Mr Mc Aurthur Robertson, a duly licensed surveyor to conduct the survey on their behalf.
- [14] It is Mr Robertson's evidence that in or about the year 2018 he was conducting a survey on the lands owned by Aquaduct and that he was asked to identify the lands in the process of the survey. Mr Robertson said that to carry out the survey he examined the deed of conveyance in the name of the company and identified that deed to be Deed bearing Registration number 1547/1982. He went on to say that the stated size of the land owned by Aquaduct was 208 acres and in carrying

¹ Chapter 129 of the Law of Saint Vincent and the Grenadines 2009 (Revised Edition)

out the survey he was required to examine certain survey plans to determine that the lands in question were part of the lands of Aquaduct as per the deed.

- [15] Mr Robertson identified the survey plan numbered A188 as one of the survey plans examined during his survey. This plan was duly admitted into evidence and marked "MR1". It is of note that Survey Plan A 188 shows what appears to be a subdivision of the entire estate into several lots. Based on the subdivisions as shown on the map, this witness stated that Mr Phillip is claiming "lots 5,6,7,8,9,11 and part of the road as shown on the map"².
- [16] This witness said that during the time he was doing the survey which was being conducted by him and his men that an unfinished wall structure was observed on the property and to that end he spoke to a young lady at the site who give him certain information which he passed on to Mr Da Silva.
- [17] Mr Robertson described the structure that he observed to be an unfinished structure with what appeared to be a rough shelter behind and that they were unable to properly see the structure as they did not get out of the vehicle due to the presence of bad dogs that were around the vehicle.
- [18] Mr Robertson in his witness statement said he estimated the construction to be approximately 1,200 square feet and that including the banana and fruit trees around it approximately 10,000 feet of land was in occupation.
- [19] Mr Robertson said that there were no other occupied residences close by and that based on the survey he was conducting he came to the professional conclusion that the land with fruit trees and banana trees with the incomplete concrete building and obscured shack was on land which formed part of the land belonging to Aquaduct.
- [20] This witness also spoke to reviewing a Plan numbered A389 drawn by one Carls Jeffers who is also a licensed surveyor. Survey Plan A389 was drawn up at the instance of Selvin Phillip as was indorsed on the face of the map and is described as "plan of a parcel of Land bordered pink containing One hundred and forty-four thousand five hundred and forty-nine square feet (3.32 acres)". It was also noted by Mr Robertson that the endorsed on the plan A839 it refers to Plan

² Quoted directly from the witness' viva voce evidence

A188 and states that "it supersedes lots 5,6,7,8,9,11 a portion of lots 4 and 12 of plan A188 and a portion of the 26ft road".

- [21] Mr Robertson said that the survey was conducted on different days over a period of two weeks and that Mr Philip did not make any objections to the survey being done.
- [22] Mr Robertson said he met with Mr Phillip and Mr Da Silva and informed Mr Phillip that he was trespassing on lands belonging to Aquaduct and in answer to the question as to who gave him permission to go onto the lands Mr Phillip said Mr Othniel Sylvester gave him permission to work the land.
- [23] Mr Robertson said he then told Mr Phillip to remove from the land as it was not Mr Sylvester's land that Mr Sylvester was not authorised to permit him to come onto that land.
- [24] Mr Robertson stated that Mr Phillip was not doing anything on majority of the land that he Mr Phillip was claiming and that there was no fence or sign of cultivation except for a kitchen garden and a few banana trees located close to the house. He also said that the land was covered mostly in heavy vegetation.
- [25] Mr Robertson told this court that the first time he met Mr Phillip is when he returned to the site with Mr Da Silva and that was when Mr Phillip claimed to have been put there by Mr Sylvester and in response to a question from Mr Bollers on behalf of Aquaduct he said that Mr Phillip never claimed to own the land.
- [26] This witness was cross-examined by Mr Johnathon Lewis on behalf of Mr Phillip. Mr Robertson stated that he did not identify the entire 208 acres as stated on the deed as some of the lands were sold resulting in his survey being done on different parcels of the lands and he agreed with counsel Lewis that at the time Mr Da Silva did not know exactly where Aquaduct's lands were.
- [27] Mr Robertson said that 2018 was not the first time he had been on the land, in that, over the years since 2008 he has been traversing the portion of land and that he did not recall seeing any activity on the disputed portion of land, however, he said that it could have been possible that Mr Phillip was in occupation of the land during that time.

- [28] When the defendant's case was put to Mr Robertson that Mr Phillip was in occupation of the land for over 20 years and that the disputed land was cultivated by Mr Phillip, Mr Robertson's response was that he could not say whether Mr Phillip was living on the land but what he can say is that in passing he can say he never saw any cultivation of those lands as he drove along.
- [29] Mr Robertson under pressing cross examination from Mr Lewis stated that the actual inspection of the land was done by his men and he agreed that it would be fair to say that he never inspected the disputed land or could he say what was going on, on the entirety of the said land and that was why he possibly saw only one structure on the land. Mr Robertson was adamant that Mr Phillip said that Mr Sylvester put him on the land.
- [30] Under re-examination this witness reiterated that the disputed land did not appear to be under cultivation and that he drove past the land and observed it to be under heavy vegetation and that over a long period of time he had cause to be traversing the lands and never saw any cultivation thereon.
- [31] In response to a question from the court, this witness said he had cause to traverse the land as he has done work for the estate (Penniston) over the years.
- [32] Mr Joshua Da Silva also gave evidence on behalf of Aquaduct. He is a director of the company. He duly identified his witness statement, with the two letters attached to his witness statement and the witness statement was admitted as his evidence in chief and the two letters written to Mr Phillip.
- [33] Mr Da Silva's evidence in essence is that the services of Mr Robertson were retained to survey the land belonging to Aquaduct Ltd located at Penniston estate and that upon receiving a report of some incomplete structure on the land a visit was made to the land by himself, Mr Robertson and one Mr Bertille Da Silva. That based on the conversation in his presence with Mr Robertson and Mr Bertille Da Silva, Mr Phillip informed them that he had been on the land for over 19 years and that he went onto the land with Mr Sylvester's permission.
- [34] This witness in his witness statement stated that Mr Robertson informed Mr Phillip that the land he was occupying belonged to Aquaduct Limited. Mr Phillip was silent when asked by Mr Robertson whether he had any documents to support his claim to the land.

- [35] At that time Mr Phillip was informed that Mr Robertson was carrying out a survey of the land and he was told by Mr Bertille Da Silva that he was to vacate the land. Mr Da Silva told this court that after speaking with Mr Phillip, he along with Mr Bertille Da Silva and Mr Robertson inspected the entirety of the estate and that they noticed no evidence of significant cultivation of crops.
- [36] Mr Joshua Da Silva went on to state that over the years he has gone back to the property and to the area of the disputed land and he noted and took pictures of an unfinished concrete building which is surrounded by heavy vegetation and noted that there is no evidence of there being an electrical connection to the premises. Those pictures were attached to and exhibited to Mr Joshua Da Silva's witness statement.
- [37] Of note Mr De Silva said that the disputed land is a distance away from other residences and was visible from various vantage points and further that Mr Sylvester was a previous caretaker of the land and noted that Mr Sylvester died in 2011.
- [38] Under cross examination Mr Da Silva agreed with Counsel Johnathon Lewis that he was appointed a director of Aquaduct in 2015 and that prior to his appointment he was not aware of the disputed lands.
- [39] Mr Joshua Da Silva under cross examination from Mr Lewis told this court that in 2018 Aquaduct had an idea of where the disputed lands were but he did not know specifically where they were, and that in 2018, when he first went onto the site of the disputed lands he observed what he estimated to be a structure that was about 30% complete. He agreed with counsel that he did not walk around the disputed lands, but he could see parts of it. This witness informed the court that when he went, he exited the vehicle but had to run back to the vehicle because of the presence of the dogs.
- [40] Mr Da Silva told the court in answer to counsel Lewis' question that on subsequent visits to the disputed land he could only see parts of the land, not up close and this was due to the presence of the dogs. This witness said that he observed the lush vegetation which included marijuana, stinging nettle, high grass lemon grass and things that looked like wildflowers. Mr Da Silva quite candidly said that because of the trees on the land he could not have possibly seen certain areas where Mr Phillip would have cultivated the land. He, however, disagreed with counsel's suggestion

that because of the presence of the trees and the slope of the land that Mr Phillip was cultivating the land and had been doing so for the last 20 years.

- [41] Mr Lewis, on behalf of Mr Phillip put quite a few questions to Mr Da Silva regarding the fact that according to his instructions Mr Phillip has been in occupation and cultivation of the disputed lands in excess of 20 years, all of which were adamantly denied by Mr Da Silva. Mr Da Silva, however, did say that it was possible that Mr Sylvester gave Mr Phillip permission to be on the land. Mr Da Silva was also quite adamant that the structures on the disputed land could not have been there for 14 years.
- [42] In re-examination Mr Da Silva stated as he has said before that he looked at the land from various check points and not from a single point.
- [43] That was the case for the Aquaduct.
- [44] Two witnesses gave evidence on behalf of the defendant. A witness summary was filed on behalf of Mr Phillip. Under oath, he said he gave instructions to his lawyer to prepare the witness summary and if he saw it he would recognise it by its contents which he did. The witness summary was entered into evidence as his evidence in chief.
- [45] At paragraph 2 of his witness summary, this witness says he is a citizen of St Vincent and the Grenadines and that he was born in 1954 "in this State". Under cross examination he said he was born in Antigua and naturalised in St Vincent that he in fact moved to St Vincent in 1997 at the age of 44. His evidence is that he married a Vincentian National and naturalised as a Vincentian. His evidence is that he lived diverse places and finally on the "disputed land".
- [46] Mr Phillip stated that he is Stove technician and started farming in 1998 to 1999 and in doing so he was taking care of everybody in the village he was supplying them with vegetables. He said he did so in conjunction with his wife and that he would sometime hire one person and pay them for the day or so.
- [47] Mr Phillip did not sign the statement of truth to his statement of defence, and which was signed on his behalf by his lawyer. He said that the document was prepared according to his instructions.

- [48] Mr Phillip agreed that he met with Messrs. Joshua and Bertille Da Silva and Robertson and had a conversation with them at Penniston about what he was doing on the land. Mr Phillip also agreed that Mr Da Silva asked him to vacate the land.
- [49] Mr Phillip insisted that he did not tell Messrs. Da Silva and Robertson that Mr Sylvester put him on the land his words were that "*that is a wrong concept*". Mr Phillip said that he was burning coal on the land and gave it to Mr Sylvester's wife and Mr Sylvester had no objection to him being there.
- [50] He said that he knew Mr Sylvester was a lawyer and thought that it was he who owned the land. When asked by Mr Bollers counsel for the claimant whether he would agree that Mr Sylvester gave him permission to be on the land his response was "*I told them (De Silvas and Robertson) that Mr Sylvester knew that I was on the land.*"
- [51] Mr Phillip maintained that Messrs. Da Silva and Robertson had "the wrong concept" and he insisted that he told them Mr Sylvester knew that he was on the land. He said Mr Sylvester never asked him to vacate the land.
- [52] When questioned about Mr Da Silva, Mr Phillip said that after Mr Da Silva came to him that that was the first time he saw Mr Da Silva on the property. He said that he never saw anyone else on the property and the only person he knew was Mr Da Silva.
- [53] Mr Phillip said he thought Mr Sylvester was the owner of the property and that was what everybody around there was saying. Mr Phillip was adamant that Mr Sylvester knew he was on the land and that he never asked him to vacate.
- [54] Regarding the survey conducted by Mr Robertson, Mr Phillip said he permitted the survey as he had no control over it because "*they come and go and do as they like*".
- [55] When he was asked by Counsel Bollers if he was saying the land was his land, Mr Philips response was "*a misconception again. I was possessing the land for many years*".
- [56] When counsel asked him what that meant his response was "*I was going on the land and working the land and selling the stuff in the areas and nobody objected. The only objection was in 2018*".

- [57] When pressed by Counsel Bollers as to why he did not stop Mr Robertson from surveying the land his response was "how could he when he raised all his children on the land".
- [58] When pressed about a stranger coming onto the land and why he did not run him or anything like that, Mr Phillip said he asked who he was, and he was given a letter which told him to come off the land.
- [59] When questioned about the letters he received, this witness became very evasive and agitated and said that the letter he got a letter in 2018 and that the letter dated 1st March 2019 was the second letter he got. And that he took the letters to his lawyer. It is noted that there was no response to the letters either from Mr Phillip or his lawyer.
- [60] When pressed about the letters he received from the Lawyer on behalf of Aquaduct and why he did not leave. Mr Phillip said "*I was there from late 1999 to 2001 and from that time to now that is 24 years. I spent my life saving to set up those structures. I was there raising my children I had to put a defence. I told them for all these years, and no one ever come and nobody ever stop me*".
- [61] Counsel Bollers pressed on about the survey done by Mr Phillip dated April 2019 and it was suggested to him that after he got a letter in March 2019 and in April 2019, he called another surveyor to survey for him and then asked why did he not respond to the letter of March 2019. This witness insisted that he took the letter to his lawyer.
- [62] Counsel asked the witness why he would claim he was occupying and planting 3.2 acres of land when the claimant's witnesses spoke to the land being vastly overgrown, his response was that they planted in segments. This suggests to the court that Mr Phillip did not occupy all that he claims to be occupying continuously. (emphasis mine)
- [63] Counsel put to Mr Phillip that it is only in 2019 when faced with a demand that he decided to make a claim for the land. Mr Phillips' response was no, but after he got the letter, he knew he was working the land for all the years, and he spend money on the land. He went on to say the whole land was a forest and that he brought infrastructure everything, so he had to secure his investment.

- [64] Mr Calvert Davy (Mr Davy) gave evidence on behalf of the defendant. A witness summary was filed on the 16th of March 2022 on his behalf. In his sworn evidence he stated that the summary was prepared and filed upon his instructions.
- [65] Mr Davy essentially in his evidence, said he knew Mr Phillip for over 23 years and that he knows Mr Phillip to have live in Penniston for the past 20 years of so and that over the years he visited him at his home there and that he purchased fruits, vegetables and produce from him which he sent down to Union Island to his business there.
- [66] Mr Davy told this court that he visited Mr Phillip at his place of residence in Penniston and that he knew Mr Philip lived there initially in a board structure which he converted into a concrete structure and that he lives there with his family.
- [67] In his witness statement Mr Davy said *"I have always known Selvin to be the owner of the said land and as far as I know no one has ever questioned his ownership of the said land."* (para 10 of the WS)
- [68] Under Cross examination Mr Davy said when he first met Mr Phillip it was around 1998 and that he was living in Penniston. He said he did not know Mr Phillip when he lived in other places on the island, neither did he know Mr Phillip when he was working at the Ice Cream Plant. It is noted that based on Mr Phillips own evidence 1998 would have been one year after he came to Saint Vincent and the Grenadines and by his own evidence he lived in a few other places for about two years before he moved to Penniston. So, when did Mr Phillip really move to Penniston?
- [69] Mr Davy further told the court that he has been going down in the Vermont Vally for over thirty years and was familiar with the Cane Grove Estate and that it was owned by the Punnett family and of the Casino in Penniston knowing it as a landmark.
- [70] This witness under cross examination from Counsel Bollers said he did not know who the owners of the land at Vermont were. He said, however, that regarding the Penniston Estate he heard Mr Sylvester's name being mentioned concerning some parcels of land.

[71] Mr Davy spoke of Mr Phillip starting with a small structure and that he cultivated a big parcel of land. However, he never asked him who owned the land or if he owned the land, he assumed that Mr Phillip owned the land.

[72] Mr Davy said he did not know when Mr Phillip worked for the ice cream factory, or when he worked on any other parcel of land.

[73] At this point it is convenient to set out in summary the applicable legal principles in the case at bar. These principles have been taken into consideration and applied by this court in considering the evidence and making the finding set out in this judgment.

[74] Adverse possession is a means by which title to land can be acquired by taking possession for a period. Adverse possession is linked to the principle of limitation of action.

[75] The Law concerning limitation of actions in a claim for possession of land in Saint Vincent and the Grenadines is contained in:

a. Section 2 of the Interpretation Act which provides

"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."

b. Sections 17(1), 17(5), Part 8(1) of the Schedule of the Limitation Act Chapter 129 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009. Section 17(1) provides
17(1) No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims to that person.

...

17(5) Part 1 of the Schedule contains provisions for determining the date of accrual of rights of action to recover land in the cases therein mentioned."

...

"8(1) No right of action shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as "adverse possession") and where the preceding provision of this schedule any such right of action is treated as accruing 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."

- [76] The case **JA Pye (Oxford) Ltd and Another -v- Graham and Another**³ sets out the law on adverse possession in the judgment of Lord Browne Wilkinson. The statement of Slade J in **Powell -v- MacFarlane**⁴ was approved when he said that "... *what must be shown in constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and no one else has done so ...*"
- [77] Adverse possession is a matter of fact. To amount to adverse possession there must be clear evidence that the trespasser is not merely a persistent trespasser but that he is seeking to dispossess the owner. (**Re: Powell -v- McFarlane (1979 38 P & CR 452)** The burden of proving adverse possession lies with the person alleging it. In the case at bar that would be Mr Phillip. He must prove that either Aquaduct was dispossessed by his occupation of the lands that he claims that is 3.2 acres, or that the claimant discontinued its possession of said land. (emphasis mine)
- [78] Counsel Mr Grahame Bollers on behalf of the claimant referred the court to **sections 17(1) and Paragraph 81 of part of the first schedule of the Limitation Act** and to the authorities of **Powell -v- MacFarlane** op cit and **JA Pye (Oxford) Ltd and Another -v- Graham and Another** op cit as stating the principles to be applied by this court in determining whether the defendant was in adverse possession of the property as he claims.
- [79] Counsel Bollers also cited and relied on the case of **Goomti Ramnarace -v- Harrypersaud Lutchman**⁵ and on the definition of Adverse Possession as stated by Lord Millet who said: "*Generally speaking Adverse Possession is possession which is inconsistent with and in denial of the title of the true owner. Possession is not normally adverse if it is enjoyed by a lawful title or with the consent of the true owner*"⁶.
- [80] The submission made on behalf of the claimant is that in determining "possession" under the Limitation Act that a high standard of proof is placed on the defendant to establish factual possession of the disputed land and an intention to possess the said land on his own behalf and

³ (2002) 3 ALL E R 895

⁴ (38 P & C 452 Ch D)

⁵ (PC Appeal no 8 of 2000)

⁶ *ibid* at paragraph 10

for his own benefit. Counsel Bollers quoted Slade J statement in **Powell -v- Mc Farlane (op cit)** when he said

“An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. This is my judgment, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. The position, however, is quite different from a case where the question is whether a trespasser has acquired possession. In such a situation the Courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite possession to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly clear to the world at large by his actions or words that he has intended to exclude the owner as best as he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner.”

- [81] This court agrees with Counsel Bollers that this is the law. The question to be asked, however, is, do the facts of the case particularly as presented by the defendant support his claim for adverse possession?
- [82] Counsel Bollers on behalf of the claimant contends that neither the defendant nor his witnesses were entirely truthful witnesses. Counsel sought to have the court consider the defendant's demeanour and the numerous contradictions when he was under cross examination.
- [83] To this court's mind the preponderance of evidence suggests that Mr Phillip entered the land with Mr Sylvesters' knowledge and consent. Mr Phillip is asking this court to believe that he planted crops and fruits on the 3.5 acres of land and supplied the village but there is a lack of independent evidence to support his case. This court cannot also help but note that his supporting witness was not the most reliable witness. The witness said he knew Mr Phillip from time back, but his evidence does not line up with Mr Phillip's evidence that at the time this witness would have known him as he worked at the Ice Cream Factory. If they were such good friends, this is a simple fact that he would have known.
- [84] It is further noted that Mr Phillip has not brought his spouse or any member of his family to support his evidence relative to his occupation, working the land or building the structures now seen on the land.

- [85] Counsel Mr Johnathon Lewis on behalf of Mr Phillip is asking this court to find that the claimant has failed to prove its case. This court is of the view that counsel has misguided in this regard. The claimant was at all material times the titled owner of the land in question. Mr Phillip is seeking to adversely possess a portion of the land owned by Aquaduct. The law is clear that the burden in this regard falls squarely on the shoulder of the person claiming adverse possession and not on the titled owner to prove his ownership.
- [86] Counsel for the defendant has in his submissions made the point that the claimant has not been able in its evidence to disprove Mr Phillip's occupation of the land and the extent to of the defendant's occupation.
- [87] Counsel Lewis contends that the defendant has established the principles as set out in **re JA Pye (op cit)** in that he produced evidence to satisfy the court of his actual possession of the land particularly by the evidence of building on the land which was only discovered by Aquaduct in 2008 when they were seeking to ascertain the boundaries of their land by way of land survey.
- [88] Mr Lewis submitted that Mr Phillip has established that his occupation was with intention to possession to possess and exclude the paper owner. Counsel submitted that Aquaduct's evidence of Mr Phillip erecting a bamboo barricade to block access to the disputed lands is evidence of the clearest intention by Mr Phillip to occupy the lands to the exclusion of all persons including the paper owners from that part of the land that he occupied.
- [89] Mention was made regarding Aquaduct not having control of its entire holdings. This is of no moment. It is noted that in **Powell -v- Mc Farlane** Slade J said that *"In the case of open land, absolute control is normally impracticable if only because it is generally impossible to secure every part of a boundary so as prevent intrusion"*. This is noted by the court since the land owned by Aquaduct is considerable and based on the evidence adduced before the court it is heavily forested and has an undulating topography. This is not land that the owner has fenced or taken positive steps to secure every part of the boundary of the land. In fact, it is noted that some parts have in fact been sold off.
- [90] Further what we do know is that Aquaduct was in the process and had taken steps to survey their property to which they held title. They did not quite abandon their property.

- [91] Was Mr Phillip in sole undisturbed possession of the parcel of land he is claiming? **Powell -v- McFarlane** (op cit) addressed the question of what acts can amount to exclusive possession is a question of degree and depends on the circumstances of each case. The law, as this court understands, is that one must take into consideration the nature of the land and the way the land is used and the nature of the occupation.
- [92] This court also accepts the claimant's evidence that there is no patent evidence of the land being planted. It is noted that the evidence on behalf of the claimant has been consistent and frank and this is against the background with them being the titled owners and their title is indefeasible unless the defendant can prove on the balance of probabilities that he has indeed adversely acquired title *nec vi nec clam nec precario*.
- [93] This court finds that Mr Phillip did in fact enter the disputed property with the permission and knowledge of Mr Sylvester, who the claimant agrees was an agent for the land. And when Mr Phillip entered the land with Mr Sylvester's permission and knowledge he would not have had the necessary *animus possidendi*, he entered the land where he burnt coal he says and took to Ms Sylvester.
- [94] It must always be borne in mind that adverse possession is a matter of fact where a stranger takes possession of land with the intention to exclude the previous owner so far as it is practicable and to take ownership of the said land.
- [95] To make good his claim, Mr Phillip would have to show this court that he had established title by prescription over the portion of the claimant's land which according to the survey he produced into evidence comprising 3.2 acres of land.
- [96] Mr Phillips' evidence in support of his claim for prescriptive title is that he entered the land in excess of twenty years ago and he planted crops on the land, that he built houses thereon lived there with his wife and raised a family there.
- [97] As to the cultivation, the weight of the evidence is in favour of the claimant in that Aquaduct's witnesses speak to their observations of the portion of land claimed by Phillip to be heavily wooded and that there seemed to be evidence of a little planting. Mr Phillip himself says that he and his wife planted various places at various times. Based on the evidence which this court accepts there

seems to be evidence of gardening in some spots. The defendant this court finds gave no definite evidence as to the specific areas which he cultivated. The claimant's witnesses never mentioned seeing any animals on the land as contended by Mr Phillip, that is save for the dogs.

[98] It is the finding of this court that the agricultural activities as claimed by Mr Phillip over the 3.2 acres of land is uncertain and cannot be described as an act of continuous dispossession of the titled owner or taking of adverse possession of the entire piece of land as claimed.

[99] There is no doubt that there has been some construction on the property by Mr Phillip. There has been no evidence to dispute that, however what is in dispute is whether the construction is such to establish that Mr Phillip has been living there for twenty years as he is asking this court to find.

[100] There is no evidence before this court as to when the construction commenced and based on the evidence it has clearly not been completed. The court accepts the evidence of Mr Da Silva and Mr Robertson that what could be seen by them was a partially completed building.

[101] There is no convincing evidence that Mr Phillip entered the parcel of land in 1999 as claimed and this court is of the view that when he entered the property he did so with the knowledge and permission of Mr Sylvester, who Aquaduct says was their agent.

[102] It is this court's finding that Mr Phillip has not made good his case for adverse possession of the entire 3.2 acres of land.

[103] What constitutes possession, adequate to establish possession, to establish a prescriptive claim or adverse possession depends in some instances on the physical characteristics of the land. This court is of the view that planting and reaping crops on various parts of the land from time to time is not sufficient to prove the sole occupation as is required for adverse possession against the title of the registered owner.

[104] This court finds that apart from the building on the land the actions of Mr Phillip are not consistent with the enjoyment of the 3.2 acres of land as he is claiming.

[105] What is a sufficient degree of sole possession and user must be measured according to the objective standard which can be related to the nature of the land under consideration by the court. There is no convincing evidence that Mr Phillip was in occupation of the 3.2 acres as he is claiming.

[106] This court is of the view that if there is to be the finding of adverse possession by Mr Phillip it would be limited to the area of which actual possession is clearly to be seen. Mr Phillip has to prove in the normal way, on the balance of probabilities acts of ownership that amounts to actual possession of the 3.2 acres of land and based on the evidence he has failed to do so. There has been no evidence adduced before this court to support Mr Phillip's contention that he cultivated and occupied 3.2 acres of land.

[107] It is noted that Mr Phillip claims to have built a shanty and two concrete structures on the land he has, however, not brought to this court of approval by the necessary authorities to construct these structures. Clearly this would have helped to put his building in a timeline and probably establish his case of occupation in excess of 12 years.

[108] There is clear evidence that Mr Phillip did not enjoy sole exclusive undisturbed possession of the entire portion of property he is claiming and there is no clear evidence before this court as to when he went onto the property. Mr Phillip has not met the crucial requirement for adverse possession of the 3.2 acres of land as he claims in his defence to Aquaduct's claim.

[109] In light of the court's findings of fact, Mr Phillip has not established on the balance of probabilities that he has possessed the 3.2 acres of land so as to extinguish Aquaduct's title to the land as is required by the Limitation Act.

[110] Taking all the facts into consideration and the preponderance of evidence led by both sides and on the balance of probabilities this court finds in favour of the claimant against the defendant.

[111] The court's order is therefore that:

1. That judgment is granted in favour of the claimant
2. The defendant shall remove from the claimant's property within 90 days
3. An injunction is hereby granted restraining the defendant whether by himself, his servants, agents or licences or otherwise howsoever demolish the house constructed on

the claimant's land and to remove, any structure, building or otherwise, temporary or permanent, put up by the defendant on the claimant's land within 90 days hereof.

4. Damages for trespass. To be assessed if not agreed
5. Interest on the assessed damages from the date of judgment to the date of payment
6. Costs to be assessed if not agreed between the parties within 28 days of the issue of the judgment
7. Liberty to apply

[112] This court wishes to thank Counsel for their helpful submissions in this matter.

M E Birnie Stephenson
High Court Judge

REGISTRAR'S OFFICE
BY THE COURT
ST. VINCENT AND THE GRENADINES
REGISTRAR

