

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

GRENADA

CLAIM NO. GDAHCV2023/0087

BETWEEN:

IN THE MATTER OF THE POSSESSORY TITLES ACT 2018

AND

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

DANIEL STRACHAN

Applicant

and

JOHN VENTOUR

Opposer

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Herricia Willis for the Applicant

Mr. Anslem Clouden for the Opposer

2025: February 5; 6; 12.

RULING

- [1] **ACTIE, J.:** The applicant, Daniel Strachan, on 21st February 2023 filed an application for declaration of possessory title of all that lot piece or parcel of land situate at Constantine the parish of St. George, measuring approximately Thirty-six Thousand One Hundred and Ninety-eight Square Feet (36,198 sq.ft.) (hereafter “the disputed land”). The application is opposed by John Ventour.

Applicant's case

- [2] The applicant, born on 3rd October 1945, is 79 years old and contends that the disputed land was occupied by his deceased parents, Edward Strachan and Minnie Strachan. Edward Strachan and Minnie Strachan died intestate on 27th February 1979 and on 21st November 1985, respectively. The applicant obtained grants of letters of administration for both parents.
- [3] The applicant states that he has been in exclusive and undisturbed possession of the said lot of land in excess of twelve years as owner. He asserts that his father lived on the disputed land, cultivated it, and he continued the cultivation after his father' died. .
- [4] It is the applicant's evidence that he migrated to the USA in excess of forty years but visits Grenada often to ensure that the disputed land is kept clean and cultivated and allowed persons to plant short crops and reaping with his permission.
- [5] With respect to intent to possess, the applicant relies on his employment of Hector Pierre as caretaker to the disputed land. The applicant also relies on his registration as a member of the Grenada Co-operative Nutmeg Association (hereafter referred to as "GCNA"). The applicant produces a GCNA identification card issued in 1989 to him as administrator of the estate of his father, Edward Strachan. On assessment, the court notes that on that on the face of this document the address of the applicant is identified as Vendomme, St. George, though the applicant asserts that he is from Constantine, St. George where the land is located. The court also notes that though the location of the land for production is stated to be Constantine, St. George on the identification card, the acreage is recorded as Three Acres Two Roods, far more than the Thirty-six Thousand One Hundred and Ninety-eight Square Feet that the applicant claims in the extant matter.

Opposer's case

- [6] The opposer, John Ventour, is 50 years old and the son of Eileen Strachan-Ventour, who is the niece of the applicant's father, and second cousin to the applicant.
- [7] The opposer contends that he has lived in Constantine all his life in close proximity of the disputed land but does not know the applicant who has lived outside of Grenada for most of his adult life. The opposer said he first met the applicant in 2021. The opposer said that the applicant has never been in occupation, possession or physical control and custody of the disputed land.
- [8] The opposer asserts that his mother, Eileen Strachan-Ventour, was always in physical control and custody of the disputed land, and that he went to the disputed land daily with his mother and his brother to pick up nutmegs for sale.
- [9] The opposer states that after the passage of Hurricane Ivan in 2004, he cleared the disputed land and cultivated it with plantains and bananas. The opposer avers moreover that his mother died in 2018 and was buried in an existing family cemetery on the said land.
- [10] The opposer contests the applicant's application, and states that he was the only person in possession of the disputed land in excess of twelve years.

Analysis of parties' possession

- [11] The court having heard the evidence of the parties did a site visit of the disputed land. The first observation is that the disputed land is bounded by the main road with easy access through a side road. The part of the disputed land adjoining the side road is well cultivated with plantains in keeping with the opposer's and his witnesses version of facts.

- [12] From all accounts, the disputed land forms part of an unadministered estate. It is the applicant's evidence that his grandparents, who were the previous owners, left three children, namely the applicant's father and his two aunts. When asked by the court of the names of his aunts, the applicant was quite hesitant in his response in acknowledging that the opposer's deceased grandmother was his aunt, who is one of the beneficiaries of the grandfather's estate.
- [13] The opposer's mother, cousin to the applicant, died in the year 2018, following which the opposer was granted permission to have the body of his deceased mother interred on the part of the land that he cultivates. This is undisputed evidence.
- [14] On further inspection at the site visit, the court noted a column on the lower end of the disputed property which is alleged to be part of the ruins of the applicant's parents' dwelling house which was demolished during hurricane Ivan in 2004.
- [15] The applicant suggests that the young trees shown in the aerial photographs entered into evidence were not sowed by the opposer but are suckers from fallen banana and plantain trees. The court does not accept this assertion as the visit to the locus proves that there is proper cultivation of mature plantain trees and maintenance of the disputed area.
- [16] The evidence of Mr. Leary Mc Burnie and Mr. Conroy Andrew supports Mr Ventour's claim. It is the court's view that Mr. Conroy Andrew, as a resident and owner of property in boundary with the disputed land is better placed to give to give evidence of the status quo.
- [17] Mr. Mc Burnie in his witness statement states that knows Mr. Ventour for over 40 years. As a young boy, he accompanied Mr. Ventour with his mother Eileen and his brother Leroy to visit the disputed property to help pick nutmegs for sale. When the nutmeg trees were all destroyed during hurricane Ivan, Mr. Ventour cleared the property and with paid help replanted plantain trees which he harvested and sold to hotels and supermarkets. Mr. Mc Burnie states he was hired on a regular basis and was paid \$500.00 for the past 5 years to clean and maintain the disputed land and he never saw anyone on the property.

[18] Counsel for the applicant did not cross examine Mr. Mc Burnie. In **Griffiths v TUI (UK) Ltd**¹ Lord Hodge DPSC, with whom the other members of the court agreed, held that a long-standing general rule in civil cases is that a party is required to challenge by cross-examination the evidence of any witness (whether of fact or an expert) of the opposing party on a material point if he or she wishes to submit to the court that the evidence should not be accepted.

[19] The court accepts the evidence of the opposer and his witnesses. It is pellucid that Mr. John Ventour has been in open, unconcealed occupation of the property. The court is further of the view that the disputed lot forms part of “Strachan” estate. The two parties are beneficially entitled to the disputed land which forms part of the estate of the applicant’s grandfather, the opposer’s great grandfather, to which the heirs of the applicant’s grandfather are beneficially entitled.

[20] With a finding of the entitlement of the estate of the applicant’s grandfather, this court takes judicial notice of the case of **Reginald Penny v Estelle Charmaine Penny**², a matter involving the Possessory Titles Act, which referred to the doctrine of “non-adverse possession amongst beneficial co-owners” in the following manner:

“This doctrine precludes a claim of adverse possession of an unadministered estate. There is no right of action in favour of a beneficiary while trust land is in possession of a person entitled to a beneficial interest in the said land or parcel of land.

The author Kevin Gray in the text Elements of Land Law under the Rubric “Family Relationships” states:

‘There is a tendency to find that any possession exercised by one family member against another within the context of a loosely organised family arrangement is not in any real sense “adverse”, but is more realistically attributed to some form of licence, whether expressed or implied.’”

[21] **Section 4(c) of the Possessory Titles Act** requires an application to state whether to the applicant’s knowledge any other person claims or is capable of claiming to be the owner of the land for which the declaration is being sought.

¹ [2023] UKSC 48; [2023] 3 WLR 1204

² GDAHCV2018/0489

- [22] The applicant admits that he knew the opposer's mother, and that she would visit his father often. He states that his parents were "very close" with the opposer's mother. However, the applicant's application is devoid of any information in relation to the opposer's mother and other potential heirs of his grandfather's estate capable of making a claim of the disputed land. Neither did the applicant claim as a trustee on behalf of the estate of his grandfather, though he relies on his grandfather's possession of the disputed land in keeping with Section 3(3) of the Act.
- [23] The applicant in his application and his witness Hector Pierre have attempted to mislead the court. The applicant in his application avers that after his father's death in 1979 he continued to cultivate the disputed land and is the only person in full free open exclusive possession of the property. The application filed on 21st February 2023 was supported by Harold Andrews and Fitzroy O'Neale but they were not called as witnesses at the trial. It was only in response to the opposer's claim filed on 18th April 2024 that the applicant confirmed his familial relationship with the opposer. The applicant acknowledges that his father as well as grandparents, aunts and the opposer's mother are all buried on the said land. However he failed to depose all this evidence in his application, which is fatal.
- [24] Mr. Hector Pierre who is the purported overseer did not file an affidavit in support of the applicant's application for possessory title neither did the applicant make any mention of Mr Pierre as an overseer in his when he initially filed the application for the declaration of possessory title.
- [25] Mr Hector Pierre in his witness statement and at trial states that he took possession of the land as caretaker/watchman since 2004. He said he was not involved in the cultivation but was overseeing and reporting to the applicant. He said he that he first saw Mr Ventour in 2018 bending down and assumed that he was weeding. He said he did not disturb Mr Ventour as he knew he was a family member and assumed he had the applicant's permission. He further stated that he has encountered the opposer on the disputed land on several occasions.

[26] As indicated above the court does not accept the evidence of the applicant and his witness, Mr. Hector Pierre. The overwhelming evidence supports Mr. John Ventour's open occupation and cultivation with unimpeded access to the disputed land. If Mr. Hector Pierre was making the frequent visits as he wants the court to believe, he could not have missed the extensive cultivation and Mr Ventour's continuous presence on the disputed land.

[27] The court is of the view that both the applicant and his witness Hector Pierre are knowledgeable of the facts that Mr. John Ventour is in occupation of part of the land and is a family member with a beneficial interest in the said property. The applicant and his witness are both making assertions in a judicial proceeding that is known to be false and intended to mislead the court. This is in clear breach of the Possessory Titles Act.

[28] The court takes further judicial notice of the case of **Reginald Penny v Estelle Charmaine Penny**³, where this court stated:

"The Possessory Titles Act is not to be used as an instrument of fraud to deprive beneficiaries of their entitlement under an un-administered estate. Section 30 of the Act makes it a criminal offence for any fraudulent declaration made by an applicant or any one in support of an application for possessory title. Section 30 (2) of the Act makes a person who swears or assist 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, liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years or both."

[29] The court is of the view that this matter warrants the engagement of Section 30 for contempt of court and would encourage the referral of this matter to the Director of Public Prosecutions.

³ GDAHCV2018/0489

Conclusion

- [30] Where more than one person claims a possessory title, the court is obliged to adjudicate the opposing claims and may make a declaration of possessory title in favour of any of the parties⁴.
- [31] The applicant has failed to prove possessory title and performing acts of ownership in his own right as owner in excess of twelve years and accordingly the application should be dismissed.
- [32] The opposer, Mr. John Ventour has established on a balance of probabilities his entitlement to possession through his mother who was the daughter of one of the three children of the deceased grandparents.
- [33] In the circumstances of the beneficial interest of the applicant and the opposer stemming from the same estate relied on by both of the parties, the court is of the view, having regard to the history of occupation, that both parties are entitled to the disputed property through the estate of their great/grandparents who had been in possession of the land.
- [34] It is the evidence that the grandparents although in long possession did not have paper title and accordingly a declaration of possessory title is made in favour of the estate of the deceased Johnathan and Sophia Strachan.

ORDER

- [35] In summary, it is ordered and directed as follows:
- i. The application by Daniel Strachan for a declaration of possessory title stands dismissed.
 - ii. The opposer, John Ventour, has a beneficial interest in the disputed land through his mother Eileen Strachan -Ventour who was the granddaughter of the deceased Johnathan and Sophia Strachan.

⁴ Section 13 of the Act

- iii. A declaration of Possessory title is made in favour of the estate of Johnathan and Sophia Strachan (deceased) for all that piece or parcel of land situate at Constantine in the parish of St. George, measuring approximately Thirty-six Thousand One Hundred and Ninety-eight Square Feet (36,198 sq.ft.).
- iv. The applicant, Daniel Strachan shall pay the opposer, John Ventour prescribed costs in the sum of \$10,000.00 within fourteen (14) days from today's date unless otherwise agreed.
- v. The Registrar shall comply with Section 23 of the Act.
- vi. Counsel for the opposer is at liberty to engage Section 30 of the Possessory Titles Act and refer the matter to the Director of Public Prosecutions.

Agnes Actie
High Court Judge

By the Court

Registrar