

**EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHPT2016/22

BETWEEN:

[1] GERSHUM THOMAS

Applicant

and

[1] LADY ANTROBUS

[2] SUZANNE FORDE RANGER

Respondents

Before: The His Lordship the Hon. Justice Brian Cottle

High Court Judge

Appearances:

Mr. Richard Williams for Applicant

Mr. Joseph Delves for Respondents

2024: July, 31

JUDGMENT

[1] **COTTLE, B:** The applicant approached the court for an order granting him possessory title to a parcel of land at Argyle in St. Vincent. The respondents resisted his application. They counterclaimed for a declaration that the applicant is not entitled to the order for possessory

title. They also sought to have the sum of \$106,000.00 paid to them by the applicant representing the sale price he received for selling a part of the land in question. The matter came on for trial before me on 17th October 2017. At the end of the hearing, I ordered both parties to file written closing submissions within 7 days. I reserved the decision. The written closing submissions were not filed until 6th December 2017 and 2nd March 2018 respectively. By that time, I had been transferred to deal with criminal matters exclusively. The matter thus languished.

[2] The applicant's position is that he and his father before him had occupied a parcel of land 2.99 acres in extent, at Argyle, since 1962, when his father took possession, having purchased the land from Walter Briggs. No deed was executed. In 2001 the applicant's father filed a deed declaring that he held the fee simple in the parcel and was in exclusive possession. He then executed a deed transferring his interest to the applicant in 2001. Obviously, one cannot vest title to land by merely creating and registering a deed declaring oneself to be the fee simple owner of the land in issue. It follows that the deed transferring the interest in the land to the applicant was completely ineffective as *nemo dat quod non habet*. Still the applicant remained in possession. He was able to sell a portion of the land to the Argyle International Airport Development Company for use as a by-pass road, for the sum of \$106,000. Matters came to a head when the applicant sought possessory title to the land on the basis that he and his predecessor in title had been in exclusive possession of the land for in excess of 12 years. In his application he placed a value of \$74,750.00 on the entire 2.99-acre parcel. He did not notify the respondents of his application for possessory title.

[3] The respondents say that the first respondent is the widow of Walter Briggs. The second respondent is co-trustee of the will of Walter Briggs. They say that the land in question was never sold to the father of the applicant as alleged. They say the applicant knows this and had engaged in negotiations to buy the land from them at a price of \$200,000. He had offered to buy 3.185 acres which they say is essentially the disputed land albeit now revealed to be 2.99 acres by a subsequent resurvey. They say the lands are part of a larger estate owned by Walter Briggs and his predecessors in title, and the claimant's father and others were allowed to occupy the land as sharecroppers on the understanding that they would vacate when the lands were being sold.

[4] As a preliminary argument the applicant urges the court to find that the defendants are now statute barred from maintaining their defence and the subsequent claim they have filed in

response to the applicant having sought a possessory title. Section 17 of the Limitation Act Cap 129 of the Laws of St. Vincent and the Grenadines provides that no action shall be brought by any person to recover land after the expiration of 12 years from the date on which the right of action accrued to him or any predecessor in title. Section 19 goes on to add that the title of any person to land shall be extinguished at the expiration of the limitation period. Section 19 is subject to section which is in turn subject to sections 23(1) and 23 (2).

- [5] The respondents argue that as trustees, their cause of action is not barred against any person generally and against the applicant in particular. They rely on *Milad Sassine V Lady Gloria Antrobus* HCVHPT 2011/0079 from St Vincent and the Grenadines. In that case Henry J., as she then was, decided that the claim of Lady Antrobus was not statute barred. At paragraph 9 the learned judge opined....

“Lady Antrobus has provided details of the trust property which includes the disputed land. I find therefore that the text of clause 3 of the will creates a trust for sale of those lands, of which Lady Antrobus is not only the sole trustee but a beneficiary. The will names 19 beneficiaries. Lady Antrobus has deposed that all except one of them are alive. This means that she is not the only beneficiary under the will. Those provisions of the Limitation Act which deal with trustees and beneficiaries under trusts are therefore applicable to her. The law clearly is that time will not run against a trustee of a trust for sale who is in possession of the subject land if he is not the only person entitled to the land or the proceeds. Similarly, no right of action will accrue to any of the beneficiaries of such a trust. This means that while she has possession of the disputed land as trustee under the will and one of several beneficiaries, Lady Antrobus’ cause of action as trustee and heir does not arise and is not barred against any person seeking to establish title to the land by adverse possession. Her claim is therefore valid as her rights as trustee have not been extinguished. I find therefore that Lady Antrobus’ claim as trustee and heir under the will of Walter Briggs has neither accrued nor become statute barred.”

- [6] The respondents are trustees of the estate of Walter Briggs. Lady Antrobus is the sole surviving Executrix. The judge was content to conclude that, in her capacity as executrix, the right of Lady Antrobus to bring a claim to recover estate property would be extinguished after 12 years of adverse possession by an interloper. Applying that reasoning to this case, on the assumption that it is shown that the claimant was in possession of the disputed parcel for more than 12 years, the executrix would be statute barred from bringing a claim to recover possession. The issue of her ability to bring such an action as trustee remains in issue in my view.

[7] Section 20 of the Limitation Act provides as follows:

“(1) Subject to section 23(1) and (2), the provisions of this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, as they apply to legal estates. Accordingly a right of action to recover the land shall, for the purposes of this Act but not otherwise, be treated as accruing to a person entitled in possession to such an equitable interest in the like manner and circumstances, and on the same date, as it would accrue if his interest were a legal estate in the land (and any relevant provision of Part 1 of the Schedule shall apply in any case accordingly).

(2)....

(3) Where any land is held upon trust (including trust for sale) and the period prescribed by this Act has expired for the bringing of an action to recover the land by the trustees, the estate of the trustees shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has been barred by this Act; but if and when every such right of action has been barred the estate of the trustees shall be extinguished.”

[8] It seems to me that time does not run for the purposes of limitation where a beneficiary under a trust brings an action against a trustee in respect of fraud by the trustee. Time also does not run where the beneficiary of a trust brings an action to recover trust property from the trustee. The present case does not involve any such action. This is an action by beneficiaries to recover trust property where the trustees have failed to act to preserve and recover trust property. In my view time does run for the purposes of the Limitation Act in the present circumstances. The question which remains is whether the applicant can establish that he was in adverse possession of the disputed land for a period of more than 12 years. I realise that I have arrived at a conclusion which is inconsistent with that arrived at by the learned judge in the earlier case. While I retain the utmost respect for the position that Henry J adopted, I find myself unable to do the same and I respectfully decline to follow her. I find that the claim by the respondents is completely statute barred if the applicant is able to show that he has been in possession for longer than the statutory minimum period.

[9] The claim by the applicant for a possessory title remains to be dealt with.

Adverse Possession

- [10] To succeed in his application for possessory title the applicant must show that he has been in open peaceful possession of the disputed land for over 12 years. His possession must have been adverse in that he must not have occupied the land as a licensee of the true owner. The evidence of the applicant is that his father took possession in 1962. There is a document, deed 3476 of 2001 filed at the Land Registry in which he declared that he had been in exclusive possession of the land since 1962. The present application for possessory title was filed more than 12 years after that document and a subsequent deed of gift were registered. While these documents do nothing to confer title, they do evidence an intention on the part of the applicant and his predecessor in title to possess the land. They show animus possidendi.
- [11] In addition to the mental element the applicant must also show actual possession. The affidavit of the applicant says that he went into possession in 1962. He did so with the permission of the owner in that he says it was a purchase though he did not get a deed. To my mind possession with the permission of the owner is not adverse possession. The case for the respondents is that the applicant was allowed to occupy the land and cultivate crops on the basis that he would share the proceeds with the owner. This type of loose arrangement was quite common when dealing with former workers on large estates in St. Vincent and the Grenadines. There is also the evidence that the applicant signed an agreement to purchase the same parcel at a price of \$200,000.00. He says that he did so because he was advised that his father already had deeds to two other substantial parcels of the estate, and he had a purchaser willing to pay \$300,000 for part of the land. In his affidavit in support of his claim for possessory title the applicant stated the value of the entire parcel at \$74,750.00. All these inconsistencies make me feel that I cannot rely on the evidence of the applicant in this matter.
- [12] This claim is by the applicant. I do not find that he has satisfied me on a balance of probabilities that he did any acts which were unequivocally demonstrative of actual adverse possession. Adverse possession is an essential element of the claim for possessory title. Absent such proof of adverse possession the claim of the applicant must fail.
- [13] I decline to grant the application for possessory title. I find that the respondents have shown on a balance of probabilities that they never parted with possession of the subject parcel. They retain the legal title because they have never been dispossessed. The applicant himself signed a document acknowledging their ownership and possession when he offered to buy the subject parcel for \$200,000.00 in October 2014. In his application the applicant said that he had not

knowingly withheld any fact concerning the land which ought to be disclosed in his application and that he had truly and honestly represented the truth concerning the title. I have found this not to have been the case.

[14] **Order**

- (1) The application for possessory title is not granted.
- (2) The subject land remains vested in the respondents.
- (3) The applicant must pay to the respondents the sum of \$106,000
- (4) The applicant will pay the respondents prescribed costs on the respondents fixed date claim in which the respondents have been successful.

Brian Cottle
High Court Judge

By The Court

Registrar

