

GRENADA
CLAIM NO. GDAHCV2023/0251

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

APPLICANT

CLAIM NO. GDAHCV2023/0167
BETWEEN

AND

APPLICANT

High Court Judge

Ms. Thira Dumont for the applicant, Marsha Berrotte
Ms. Rena Banfiled of Renwick & Payne for the applicant, Irva Frank-Roberts

2024: July 11; 24 (Submissions)
August 21

RULING

- [1] **ACTIE, J.:** The central issue in these two extant applications is whether the applicants who are paper title holders are entitled to declarations of possessory title pursuant to the Possessory Titles Act.

Background

- [2] The first applicant, Marsha Berrotte of Limes, Grand Anse, Grenada is a registered owner of a parcel of land measuring Five Thousand Five Hundred and Seventy-eight Square Feet (5578 sq. ft.) through a deed of gift dated 21st June 2016 from her mother, Ann Berrotte. Her predecessor, Ann Berrotte, obtained title through a deed of conveyance dated 7th May 2001 from Joseph and Agatha Berotte. The applicant filed an application for Possessory Title on 12th March 2023 on the ground that she has been advised that the title deed is defective because a necessary party to the deed, namely the administrator of the estate of Joseph Berrotte Sr. signature was omitted from the 2001 deed of conveyance to Anne Berotte. The applicant states that the defect cannot be cured as the necessary party to sign the deed has died and a grant of letters of administration de bonis has not been issued by the court. The applicant further asserts that it is unknown whether the beneficiaries shall apply for the grant.
- [3] The second applicant, Irva Frank-Roberts, purchased a lot of land measuring Eleven Thousand Square Feet (11,000 sq. ft.) at Cherry Hill in the Island of Carriacou pursuant to a Deed of Indenture of Conveyance dated 15th December 2006 from Christina Frank. The said Christina Frank obtained title through a Deed of Assent dated 1st December 2003 as a beneficiary under the Will of her father, Joseph Andrew. The applicant states that the land was originally owned by Lilly Stafford and upon her death, her daughter Beatrice Andrew and her husband Joseph Andrew took possession of the property. Joseph Andrew remained in sole possession after Beatrice's death without further title.

- [4] Both applicants contend that their titles are defective and do not provide a good root of title. Counsel for both parties assert that financial institutions and purchasers are reluctant to accept the titles which are possessory in nature unless the court grants a declaration of title under the Possessory Titles Act.

What is the purpose of the Purpose of the Possessory Titles Act

- [5] The courts in conducting statutory interpretation are 'seeking the meaning of the words which Parliament used. In **Barclays Mercantile Business Finance Ltd v Mawson**¹, Lord Nicholls of Birkenhead set out the requirement to have regard to the purpose of a particular provision, so far as possible. He said:

“... the modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose.”

- [6] The purpose of the **Possessory Titles Act**² is provided in its short title as an act to facilitate the obtaining of possessory title to land by persons claiming through adverse possession. The Act defines “adverse possession” as factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Grenada for a continuous period not less than twelve years immediately preceding the claim, accompanied by the requisite intention to possess the said land as owner thereof.
- [7] Lord Bingham of Cornhill explained in **R (Quintavalle) v Secretary of State for Health**³, legislation is usually enacted to make some change, or address some problem, and the court’s task, within the permissible bounds of interpretation, is to give effect to that purpose. In citing Lord Wilberforce in *Royal College of Nursing of the United Kingdom v Department of Health and Social Security* [1981] AC 800, 822, where Lord Wilberforce said:

¹ [2004] UKHL 51, [2005] 1 AC 684, at para 28

² *Act 22 of 2016*

³ [2003] UKHL 13, [2003] 2 AC 687, at para 8

“In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament’s policy or intention is directed to that state of affairs.”

- [8] It was a well-known practice in the State of Grenada, Carriacou and Petite Martinique that persons in occupation of land in excess of twelve years would usually make statutory declarations seeking to obtain titles to the said lands. However, the statutory declarations did not confer any title as Alleyne J. in **Gordon Charles v Claire Holas**⁴ said:

“a statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in the form of law. It may have certain limited evidential value, but is not an alternative method of conveying land.”

- [9] It is the court’s view that the **Possessory Titles Act**⁵ was enacted to cure the defects in attempts to procure titles through statutory declarations. The legislative purpose of the Act is to provide secure and indefeasible titles to squatters who have been in adverse possession of lands belonging to another and performing acts of ownership in their own right in excess of twelve years. The Act also allows applications by an executor, administrator, trustee or other persons in a fiduciary capacity on behalf of the estate or beneficiaries of deceased persons who had been in factual possession more than twelve years prior to their demise.

- [10] The Latin phrase used to satisfy factual possession required for adverse possession is stated as “***Nec vi, nec clam, nec precario***”, that it must be open, not secret, peaceful, not by force, not by the consent of the owner. The concept of adverse possession was outlined by the author, Kevin Gray, in the text **Elements of Land Law**⁶ where it states:

⁴ GDAHCV 1996/0151

⁵ CAP 22 of 2016

⁶ 2nd Edition

“The law of adverse possession effectively upholds the land rights of certain persons who have no formal ownership. The acquisition of rights by adverse possession operates in conjunction with the Limitation Act and differs markedly from any form of acquisition by conveyance and transfer. Its central feature is the idea that if an owner of property fails within a certain period to secure the eviction of a squatter or trespasser from his land, his own title is extinguished and he is thereafter barred from recovering possession of the land⁷.”

[11] Sampson Owusu author of the **Commonwealth Caribbean Land Law** text states:

“Title by adverse possession is instituted by legislation which operates to bar the claim of a true owner whenever the circumstances surrounding the possession of the stranger are found to be sufficient to manifest incompatibility with title of the true owner. The doctrine therefore affords a means by which title to land can be acquired without any payment.⁸”

[12] The starting point is that both applicants are duly registered paper title holders and are deemed to be the lawful owners of the respective parcels of land. **Section 5 of the Deeds and Land Registry Act⁹** provides that every instrument, affecting land in Grenada, duly registered in accordance with the provisions of the Act, shall be good and effectual in law and equity according to priority of registering.

[13] The Court of Appeal decision in **Arnold Celestine (Administrator of the Estate of O’Ferril Celestine) v Carlton Baptiste¹⁰** is apposite to the existing facts where Creque JA, as she then was, said:

“Adverse possession can only arise where it is recognized by the ‘adverse possessor’ that the paper title is vested in someone else. In essence, the adverse possessor seeks to say that he has dispossessed the paper owner. It is inconsistent for the respondent, Mr. Baptiste, to claim to be in possession of land ‘as of right’ whilst at the same time claiming to be in adverse possession.”

[14] The court continued at paragraphs 12 and 13:

⁷ Kevin Gray: Elements of Land Law (2nd edn) 284

⁸ Sampson Owusu: (1st edn., Routledge-Cavendish 2006) 267.

⁹ Chapter 79

¹⁰ HCVAP 2008/011

“[12] In my view, this is clearly an inconsistent pleading. To claim to be in possession of land ‘as of right’, whilst at the same time claiming to be in adverse possession of it, is simply incomprehensible, given the legal connotation of each. **If an owner is in possession ‘as of right’ (i.e. with the paper title) then the question of that owner being in adverse possession to his own paper title simply cannot arise as a matter of law. It goes without saying that the obverse position is this: Adverse possession can only arise where it is recognized by the ‘adverse possessor’ that the paper title is vested in someone else. In essence, the adverse possessor seeks to say that he has dispossessed the paper owner.** Accordingly, I agree with counsel for Mr. Celestine that the claims are inconsistent.

“[13] **The second and more substantive challenge made by counsel is that it was simply not open to the trial judge, having found that Mr. Baptiste was the paper owner, to proceed nevertheless, to grant a declaration of possessory ownership of the Land. A presumption of possession operates in favour of the paper owner...**” (emphasis added)

- [15] Applying the principles espoused in **Baptiste** to the facts of these extant applications, the applicants as registered paper title holders cannot claim adverse possession against their titles.
- [16] The legislative purpose of the **Possessory Titles Act** is clearly discernible from the short title. No wider purpose can be perceived from the legislation. The policies of lending institutions cannot be a reason to give a wider interpretation to the Possessory Titles Act. The applicants cannot use the financial institutions’ requirements to rewrite the law for a purpose not contemplated by the Act. The evidence is pellucid that the title deeds of the applicants and their predecessors have crystalized in excess of twelve years. It is the evidence that the applicant, Irva Frank-Roberts, has successfully mortgaged the said property three times, namely on 5th September 2011, 6th March 2012 and 25th September 2020 respectively with Republic Bank (Grenada) Ltd without issue.
- [17] Barring fraud, any purported challenge to the perceived defective registered titles of the applicants would be defeated by the provisions of the Limitation of Actions

Act. Lord Browne-Wilkinson in **JA Pye (Oxford) Ltd. & Ors v Graham and Another**¹¹ stated:

“It is to be noted that the right of action to recover the land is barred whenever twelve years have elapsed from the time when any right of action accrued.”

- [18] Further, **Section 28 of the Possessory Titles Act** provides that a person who obtains a declaration of possessory title under the Act shall be deemed to have a fee simple interest in the land. This provision further highlights that to grant a possessory title to the applicants who already have their registered paper titles would be contrary to the purpose of Possessory Titles Act, which proceeds on the basis that declaratory titles should be granted to persons without paper title. Hence there is no need to have recourse to a deeming provision to establish title by adverse possession in light of the applicants’ registered paper titles.

CONCLUSION

- [19] For the above stated reasons, the applicants cannot obtain declarations of possessory titles under the Possessory Titles Act. Accordingly, it is ordered and declared as follows:

- i. The application by **Marsha Berrotte** for a declaration of possessory title in claim GDAHCV2023/0251 is refused and is accordingly dismissed; and,
- ii. The application by **Irva Frank-Roberts** for a declaration of possessory title in claim GDAHCV 2023/0167 is refused and is accordingly dismissed.

Agnes Actie
High Court Judge

By the Court

Registrar

¹¹ [2002] UKHL 30