

**THE EASTERN CARRIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCV2018/0299

BETWEEN:

LLOYD GRANT

Claimant

and

ST. CLAIR WILKES

1st Defendant

VALENTINE GRANT

2nd Defendant

MONROE DANIEL

3rd Defendant

Appearances:

Mr. Glenford Hamilton and Ms. Zoie Hamilton for the Claimant

Mr. Nassibou Butler and Ms. Indira Butler for the Defendants

2023: September 20;
November 2.

JUDGMENT

- [1] **GILL, J.:** Both sides of this suit claim rightful ownership of a lot of land.
- [2] By an amended fixed date claim filed on 5th April 2019, the claimant Lloyd Grant ("Mr. Grant") seeks a declaration that he is entitled to exclusive possession of property situate at Keys Village in the island of St. Christopher and recorded in Liber S Vol 7 Folios 243-250 ("the property"), an order of injunction prohibiting the defendants and/or their agents from trespassing or entering the property, damages for trespass, damages for loss of use and enjoyment, costs and interest.

The claimant's case

- [3] Mr. Grant asserts that he is the exclusive owner of the property which according to his evidence measures 11,645.77 square feet.
- [4] Mr. Grant was born on 27th June 1962. He states that he remembers from about the age of four, he lived in a family house on the property with his mother, grandfather, grandmother and his brothers and sisters.
- [5] He further states that on 15th February 1991, his mother, Emily Flaherty Grant nee Benjamin, appointed him as her lawful attorney for the purpose of applying to the High Court for the issuance of a first certificate of title to the property. That process was never completed. The evidence reveals that the land for which Mr. Grant's mother applied measured 4,847 square feet, that is, a portion of the property.
- [6] Mr. Grant claims that he was in exclusive and undisturbed possession of the property since 1993. He states that he continued to live in the said family house where he lived all his known life. In 1998, he constructed a garage made of wood and galvanize on the property. He used the garage for parking.
- [7] In 1998, Hurricane George destroyed the family house, making it uninhabitable. At trial, Mr. Grant amplified his witness statement and testified that the house was also affected by Hurricane Hugo in 1989. At the time of Hurricane George, he was the only family member residing on the property. A shop he operated two plots away from the property was also destroyed during Hurricane George.
- [8] After the house was destroyed, Mr. Grant left Keys Village and moved to Molineaux Village.
- [9] In 1999, by a self-conveyance dated 27th May 1999, Mr. Grant conveyed the property to himself.¹

¹ No. 11563 in Liber S Vol 7 Folios 243-250

- [10] He states that he started building a new structure on the property. He built a foundation and put up pillars that remained on the property. He discontinued this new structure but continued to use the property for parking and gave permission to certain neighbours to park there as well. He states that he did so undisturbed until September 2018.
- [11] Mr. Grant also purchased a parcel of land opposite the property and rebuilt his shop and a house on this new parcel.
- [12] Mr. Grant alleges that in September 2018, the first defendant, St. Clair Wilkes (“Mr. Wilkes”) started trespassing on the property and clearing the foundation and pillars Mr. Grant had put up, and uprooting trees that had long been on the property. He states that Mr. Wilkes came onto the property with his agents and earth-moving equipment such as bulldozers and backhoes, and began removing topsoil and stones from the property without his permission. He complains that as a result, he was unable to park on the property as he had done all those years because stones and boulders which were elsewhere on the property had been moved into areas he used for parking.
- [13] Therefore, in October 2018, he instructed his attorneys to file for an injunction restraining Mr. Wilkes from trespassing on the property. The injunction was granted on 16th October 2018.
- [14] The second and third defendants, Valentine Grant and Monroe Daniel, are claiming to be the owners of the property. Mr. Grant avers that they never lived on the property nor ever had possession of the property. Further, he asserts that neither his predecessors or himself have ever paid any monies to anyone in relation to the occupation of the property as it is rightly their property.

The defendants’ case

- [15] The second and third defendants, Valentine Grant and Monroe Daniel (“the brothers”), claim to be the rightful owners of the property by inheritance. The second defendant Valentine Grant passed away before the trial. In their joint witness

statement, the brothers claim that they inherited the property from their mother Mary Ann Eliza Phillip who inherited the property from her mother Henrietta Phillip nee Simon. They assert that the property originally belonged to John William Simon, the grandfather of Henrietta Phillip nee Simon, and the great grandfather of their mother Mary Ann Eliza Phillip.

- [16] John William Simon was the owner of the land by paper title. He purchased the property in the year 1874 from one John Samuel Berridge. This is evidenced by an Indenture dated 10th June 1874 and recorded in Liber Y, Volume 4 Folios 211 to 214 of the Register of Deeds for the St. Christopher Circuit. The 1874 Indenture measures the property as 12,000 square feet.
- [17] The brothers obtained a Grant of Letters of Administration of the estate of their mother Mary Ann Eliza Phillip recorded in Liber Wills Volume T Folio 280 of the Probate Registry for the St. Christopher Circuit. They contend that the estate is comprised of the property.
- [18] The brothers maintain that they are the persons who can establish a title as claiming through John William Simon, the paper owner of the property.
- [19] They state that Mr. Grant and his relatives occupied the property with the permission and at the will of their mother Mary Ann Eliza Phillip and her ancestors before her.
- [20] They aver that they gave permission to Mr. Wilkes (the first defendant) to enter upon the property which they agreed to sell to him.
- [21] The brothers reject Mr. Grant's deed of self-conveyance, that is, from himself to himself, as a good root of title.
- [22] They ask that (1) Mr. Grant's declarations and orders be denied; (2) the claim be dismissed; (3) the self-conveyance be declared a nullity; (4) the self-conveyance be rescinded; and (5) Mr. Grant be ordered to pay them costs of these proceedings.

The trial

- [23] The court heard evidence from six witnesses; Mr. Grant, his sister Christine Wattley, retired police officer Kenyon Sutton and retired Director of Culture Creighton Pencheon for the claimant's side, and for the defence, the third defendant Munroe Daniel and Ralph Phillip, a brother of the brothers.
- [24] When Mr. Wilkes (the first defendant) took the stand, in relation to his witness statement, he declared that he did not know what he had signed to, and was most un-cooperative when his own counsel attempted to lay the foundation for the admission of the witness statement as examination-in chief. In the circumstances, Mr. Wilkes' witness statement was struck out.

Issues

- [25] In determining the owner of the property, the court is enjoined to consider:
- i. Whether to set aside the self-conveyance which gives Mr. Grant paper title to the property;
 - ii. Whether Mr. Grant is the owner of the property by adverse possession;
 - iii. Whether the brothers are the owners of the property by inheritance through John William Simon, the paper title owner since 1874;
 - iv. If Mr. Grant is determined to be the owner of the property, to what relief is he entitled?

The self-conveyance

- [26] At the trial, learned counsel for Mr. Grant raised what amounts to a preliminary point in relation to the self-conveyance. Learned counsel submits that this court has no jurisdiction at this time to interfere with an order given some twenty years ago by a different judge of the court.
- [27] In his witness statement, Mr. Grants says that in 1999, he caused a self-conveyance to be filed in the court's registry and conveyed the property to himself. The self-conveyance is dated 27th May 1999 and registered on 31st January 2000.

[28] Learned counsel for Mr. Grant relies on the following learning in the UK Supreme Court Practice 1973² where it is stated:

“There is no power to re-hear an application after any order made on the hearing has been perfected, even though made in absence of a party and even though made in interlocutory proceedings except by consent of all parties concerned and except in certain specified cases...

On the other hand the Court has power to rehear an application so long as the order has not been perfected.... After an order has been perfected the Court may make a supplemental order on new facts (*Re Scowby*, [1897] 1 Ch. 741)”

[29] Learned counsel submits that there is no application before this court to set aside the order made by Smith J, and even if there were, then this court as presently constituted has no jurisdiction to rehear and, in any way, alter the order of Smith J.

[30] The basis of this submission is that a court of similar jurisdiction has no authority to overrule another of its kind. The practice and the longstanding principle is that if a party is dissatisfied with a particular order, then an appeal is made to the court above. Counsel contends that no such order was made in the case at bar and it does not lie within the authority of this court to interfere with the longstanding order of Smith J.

[31] This begs the question as to which order of the court counsel is asking this court to consider. Learned counsel for Mr. Grant submits that it is against the background of Mr. Grant's family's occupation of the property undisturbed for several decades that an application for self-conveyance was made pursuant to section 25 of the Conveyancing and Law of Property Act,³ and the said application was granted by Smith J.

[32] Section 25 of the Conveyancing and Law of Property Act allows conveyances by a person to himself. It reads:

25. Conveyances by a person to himself, etc.

² Page 491; 32/1-6/10

³ Cap. 10:04 of the 2002 Revised Laws of the Federation of St. Christopher and Nevis

- (1) *In conveyances made after the 12th of August, 1859, personal property, including chattels real, may be conveyed by a person to himself or herself jointly with another person by the like means by which it might be conveyed by him or her to another person.*
- (2) *In conveyances made after the 31st of December, 1881, freehold land, or a thing in action, may be conveyed by a person to himself or herself jointly with another person by the like means by which it might be conveyed by him or her to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.*
- (3) *After the commencement of this Act a person may convey land to or vest land in himself or herself.*
- (4) *Two or more persons (whether or not being trustees or personal representatives) may convey, and shall be deemed always to have been capable of conveying, any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third party:*

Provided that if the persons in whose favour the conveyance is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside.

[33] The self-conveyance itself is not an order of the court. Learned counsel is referring to an order for late registration of the self-conveyance. That order was made by Smith J on 28th January 2000. One may apply to the court for late registration of a deed which is not lodged for registration within three months (in this case) after it is duly executed. Such an application is usually grounded on clerical inefficiency or oversight or error. It has nothing to do with the substantive parts of an Indenture.

[34] Therefore, in my respectful view, this submission is of no merit. By the order of the learned judge to grant the application for late registration, it is difficult to see how one can argue that the order for late registration could be construed as making an order as to the conveyance itself. A late registration application does not require a judge to consider the contents of a conveyance, but the contents of the application and evidence in support of the application. On a late registration application, the judge is not enjoined to go beyond the four corners of the application and delve into

the merits of a conveyance. The preliminary point fails and the court will consider whether the self-conveyance ought to be set aside or invalidated.

Whether the self-conveyance should be set aside/declared a nullity

- [35] In one of the recitals to the self-conveyance, it is averred that the vendor (Mr. Grant including his heirs, executors, administrators and assigns) and his predecessors in title had been in possession of the property for upwards of fifty years and had been in undisturbed possession of the property continuously and had exercised all acts of ownership over the property and had taken and appropriated all rents, fruits and profits accruing out of the property as owner during the said period and paid all land and house taxes to the Government.
- [36] Mr. Grant submits that there is clear and distinct evidence that his family occupied the property undisturbed for several decades. He explains that the lineage shows his grandparents occupying the property undisturbed, it shows his mother occupying the property undisturbed and it shows him being on the property without meaningful interference from anyone. It is against this background that Mr. Grant made the self-conveyance.
- [37] The brothers allege that the self-conveyance is fraudulent and cannot be relied on as a proper document of title. They submit that the statement in the recital that Mr. Grant and his predecessors in title had been in undisturbed possession of the land for fifty years is false and not shown by the evidence in this case. They assert that Mr. Grant's predecessors had no title and that he and his mother had been continuously disturbed in their occupation of the land in question.
- [38] Whereas the brothers challenge the self-conveyance on the allegation of false assertions therein, I am of the view that there is a more fundamental basis for nullifying it.
- [39] Section 25 of the Conveyancing and Law of Property Act does not and cannot apply to a person attempting to acquire title to property by adverse possession. One cannot convey that which he does not own to himself or anyone else. Simply put,

he cannot give what he does not have. At the time Mr. Grant executed the self-conveyance, he could not have conveyed the property to another person. Section 25 contemplates legal ownership of the person conveying, not adverse possession. Mr. Grant was not capable in law of conveying the property to himself. Therefore, the self-conveyance must be nullified.

Ownership through the 1874 Indenture

[40] The brothers are defending the claim on the basis that they are the owners in possession of the property (measuring 12,000 square feet in the Indenture). They are claiming the property through their mother Mary Ann Eliza Phillip, a descendant of John William Simon who purchased the property by Indenture of Conveyance dated 10th June 1874.

[41] After the death of their mother Mary Ann Eliza Phillip in 1996, the brothers obtained Letters of Administration of their mother's estate.

[42] The 1874 Indenture of Conveyance and Letters of Administration of the estate of the brothers' mother Mary Ann Eliza Phillip's estate were not challenged. The brothers submit that their mother's estate comprises the property in question. They contend that they are persons who can establish a title as claiming through John William Simon, the paper owner of the property.

[43] In **Wilhelmina McLaren v Leroy Davidson**,⁴ Baptiste J (as he then was) quoting Slade J. in **Powell v McFarlane**,⁵ stated:

“In the absence of evidence to the contrary, 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 paper owner **or to persons who can establish a title as claiming through the paper owner**. If the law is to attribute possession of land to a person who can establish no proper title to possession, he must be shown to have both factual possession and a requisite intention to possess (*animus possidendi*).” (*Emphasis added*)

⁴ GDAHCV1990/03999 at paragraph 8

⁵ [1977] 38 P & CR 452 at 470

[44] Mr. Grant submits that the only evidence of note emanating from the brothers is that John William Simon acquired a deed of indenture to the property in 1874. Learned counsel for Mr. Grant points out that there is no indication as to when John William Simon died or what became of his estate. There is oral evidence indicating that he had about seven offspring. There is no indication as to whether he had, and if he did, then who was his representative after he died. There is also no further indication as to what became of his estate.

[45] Mr. Grant further submits that there is bare oral evidence that Mary Ann Eliza Phillip was an owner in occupation of the land but nothing to substantiate either that ownership or that occupation. Nothing was presented to this court indicating her ownership except that in very recent years, prior to her death, a payment for land and house tax was made at the inland revenue department. It is not demonstrated to this court that she did any acts consistent with being in possession and/or real ownership. There is no true lineage revealed that shows any link between John William Simon and the brothers.

[46] In order to ground their ownership of the property by inheritance in reliance on the 1874 Indenture, the brothers must produce evidence that demonstrates to the satisfaction of the court the chain and passage of the title which John William Simon possessed by virtue of the said Indenture.

[47] The brothers attempt to do so in paragraph 4 of their witness statement. Paragraph 4 reads:

4. John William Simon the grandfather of Henrietta Phillip nee Simon purchased the land in question i.e. 12,000 square feet of land from one John Samuel Berridge and obtained an Indenture dated the 10th June 1874 and recorded at Liber "Y" Volume 4 Folios 211 to 214 of the Register of Deeds for the Saint Christopher Circuit. The said John W. Simon remained in sole undisturbed possession and occupation of the said land up to the time of his death. After his death, his daughter Henrietta Phillip remained in sole absolute and undisturbed possession of the land until her death. After her death her daughter Mary Ann Eliza Phillip remained in sole absolute and undisturbed possession of the land until her death and after her death in 1996 the 2nd and 3rd Defendants remained in absolute possession of the land and obtained Letters of Administration of the estate of their mother

Mary Ann Eliza Phillip recorded in Liber Wills Volume "T" Folio 280 of the Probate Registry for the Saint Christopher Circuit.

- [48] This evidence comprises bare assertions on the part of the brothers as to how title to the property passed down from John William Simon to them. In light of the evidence (including the evidence of the third defendant Munroe Daniel) that John William Simon had several children, it cannot be accepted blindly that upon his death, one of his daughters remained in sole undisturbed possession of the property. The subsequent passing of the purported title from his daughter is also dubious and suspect in the absence of the requisite cogent evidence.
- [49] The third defendant Monroe Daniel, in cross-examination, testified that John William Simon had a will which was probated. When asked who were the beneficiaries under the will, he named Ann Phillip and Henrietta Phillip and did not remember anyone else. He was a "little kid" when he saw the will. He was asked, "Where is the will now?" His answer was, "I don't know. It is somewhere around." He said that Henrietta Phillip had a will too, the contents of which he did not know. A bit of confusion arose as it appears that in the chain of the descendants of John William Simon, there were two Henrietta Simons.
- [50] The brothers' evidence before this court is woefully inadequate in tracing the paper title of John William Simon leading up to them. The evidence is void of any supporting documentation such as wills, grants of probate or letters of administration (apart from the letters of administration the brothers obtained in respect of their mother's estate). I am not satisfied that the estate of their mother Mary Ann Eliza Phillip comprised the property. The lines of title from John William Simon to the brothers have not been properly set out and therefore, I rule that the brothers have not established that they are the owners in possession of the property through the paper owner John William Simon.

Adverse possession by the claimant

- [51] Further to his claim to title to the property by the self-conveyance, Mr. Grant is claiming the title by adverse possession. His evidence is that he was in exclusive and undisturbed possession of the property from 1993. Notwithstanding his

assertion that his family occupied the property undisturbed for many years, he is asking the court to declare that he is in his own right entitled to exclusive possession of the property.

[52] The brothers assert that they are the owners of the property through the paper title of John William Simon. Notwithstanding that I have already determined that the brothers are not the owners of the property, I will proceed on this aspect of the case based on the submissions before the court. The brothers contend that if Mr. Grant was in exclusive and undisturbed possession of the property from 1993, then he discontinued his actual or factual possession when he left the property in 1998 following Hurricane George, and never returned. They submit that he manifested his abandonment of the property when he purchased and rebuilt his home and shop on lands elsewhere in Keys Village.

[53] The brothers further submit that Mr. Grant's possession of the land was disturbed by (1) letters from their attorneys asserting their rights and (2) the knocking down of a structure that Mr. Grant and his mother had erected on the property.

[54] In order to ground his entitlement to the property by adverse possession, Mr. Grant must prove that he has been in actual, continuous, uninterrupted, peaceable, public, unequivocal, sole, exclusive possession of the property, without the permission or consent of anyone else and without the acknowledgement of the title of anyone else for a period of twelve years,⁶ and he must have the necessary animus possidendi, that is, the intention to possess the land to the exclusion of the world at large including the rightful owner for twelve years.⁷

[55] In **JA Pye (Oxford) Ltd v Graham**⁸, the House of Lords stated that legal possession by the adverse possessor requires the following:

⁶ See section 6(3) of the Limitation Act, Cap. 5:09 of the 2002 Revised Laws of Saint Christopher and Nevis

⁷ See **Lillian Agatha Clarke nee Coker v Attorney-General of Saint Christopher and Nevis** Misc Civil Suit No 26 of 2000 at paragraph 13; see also **Burton v Elvin** (1996) 46 WIR 120

⁸ [2003] 1 A.C. 419

- (i) a sufficient degree of physical custody and control (factual possession), and
- (ii) an intention to exercise such custody and control on one's own behalf and for one's own benefit (intention to possess, or *animus possidendi*).

[56] In a judgment on applications for First Certificate of Title by **Bernadine Forbes and Alford Wattle**,⁹ in the Nevis Circuit of this jurisdiction, at paragraphs 35 to 37, the court was guided by the dicta in **Powell v McFarlane** and stated:

“[35] The evidence presented on his behalf must show that possession was factual and that there was the requisite intention to possess or **animus possidendi**.

[36] Slade LJ defined factual possession in **Powell v. McFarlane** as single and exclusive possession, signifying an appropriate degree of physical control. It is not sufficient to establish possession concurrent with the paper owner. If the person claiming by possession, establishes possession in the full sense of exclusive possession, that by itself connotes the absence of possession on the part of the paper owner. The question as to what acts would be found to constitute a sufficient degree of exclusive control depends entirely on the circumstances of each case.

[37] With regard to *animus possidendi*, [what] a claimant must show for the purposes of his claim is not an intention to own or even an intention to acquire ownership. The only intention that must be demonstrated is an intention to exercise control over the land for oneself and to occupy and use it as one's own. The intention must be to unequivocally exclude the world at large, including the owner with paper title, so far as is reasonably practicable and as the process of law will allow. However, there need not be a conscious or deliberate intention to exclude the paper owner, just an intention to exercise exclusive control.”

Actual or factual possession

[57] Mr. Grant must show that he was in exclusive and undisturbed possession of the property for twelve years. In this case, notwithstanding his evidence of his family's occupation of the property from since he was a child, Mr. Grant's claim to adverse

⁹ NEVHCV2004/0031 & NEVHCV2005/0159

possession is based on his occupation of the property since 1993. As pointed out by the brothers, on the evidence, Mr. Grant is not claiming adverse possession through his ancestors. Therefore, he must prove that he was in exclusive, undisturbed possession of the property for at least twelve years, that is, from 1993. He claims that he remained on the property undisturbed until 2018.

[58] Mr. Grant's evidence is that since 1993, he lived on the property where he had lived all his known life. He constructed a garage where he parked his vehicles and allowed others to park their vehicles. He moved to Molineux Village after his house on the property, where he lived alone at that time, was destroyed by Hurricane George in 1998. At the trial, under cross-examination, he stated that when he "came back", he purchased land opposite the property and rebuilt his shop and home on this new parcel of land. Mr. Grant told the court that after 1998, he continued to use the property as a parking area for his vehicles. He started building a new structure on the property by building the foundation and putting up pillars.

[59] It is the brothers' contention that Mr. Grant abandoned the property in 1998 when he moved to Molineux Village, up to present, thereby discontinuing possession. Therefore, they submit that 1993 to 1998 constitutes only five years of actual possession.

[60] The brothers also rely on letters from their attorneys over the years, including 1998 and beyond, asserting their right to the property. Mr. Grant submits that these letters were of no moment in respect of his claim to adverse possession, and relies on the *ratio decidendi* of the English Court of Appeal in **Mount Carmel Investments Limited v Peter Thurlow Limited and another**¹⁰ where the Court held:

"The mere assertion by a true owner of a claim to possession of land in a letter sent to a squatter was not sufficient to prevent the squatter obtaining title by adverse possession. Accordingly, the letter sent to the defendants by the plaintiff's solicitors did not have the effect of causing the defendants to cease to be in possession for the purposes of acquiring title by adverse possession."

¹⁰ [1988] 3 All ER 129 (Counsel quoted from the headnote)

[61] In addition to the letters, the brothers contend that Mr. Grant was disturbed in his possession of the property, when, on legal advice, the third defendant, Monroe Daniel knocked down a wall structure that Mr. Grant and his mother had erected on the property.

[62] In **Ulric Charles and Sonia Charles v Kristy Antoine and Ridley Antoine**,¹¹ Joesph J dealt with the issue of disturbance. At paragraphs 50 to 52 of the judgment, Her Ladyship stated:

“[50] The possession of the adverse possessor must not be disturbed during the limitation period. A disturbance act must not be a mere warning to the adverse possessor in relation to the land but must be a legal interruption of the running of the statutory period. It is necessary for the person who considers that his rights are being infringed to assert those rights, by legal process, against the adverse possessor.

[51] The unsuccessful institution of an action in trespass against the Respondent’s son Anthony: the Second Respondent preventing utility workers from making connections without his permission: the making of repeated oral requests by the respondents for the Applicants to vacate disputed land: do not constitute interruption in law.

[52] A paper title owner cannot rely on statements made outside of the legal process to support a claim of disturbance of an adverse possessor. Similarly, the Respondents (who are claiming possession) cannot so rely. The law on this is outlined in the Belfon case at p.7 where Sir Vincent Floissac CJ stated:

“The respondents’ 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.””

¹¹ High Court Civil Claim No. 37 of 2010 (Saint Vincent and the Grenadines), delivered July 14, 2011

[63] The Caribbean Court of Justice in **Toolsie Persaud Limited v Andrew James Investments Limited and Others**,¹² expressed the view that if a dispossessed landowner is to stop time from running in favour of the person in undisturbed possession of the land, he must bring proceedings against that person.

Animus possidendi (intention to possess)

[64] In order to succeed in his claim for adverse possession, Mr. Grant must show his intention in his own mind and on his own behalf to exclude the world at large. Evidence of this is the self-conveyance executed by Mr. Grant. This clearly demonstrates Mr. Grant's intention to exercise exclusive control over the property, and to exclude others. Further, he controlled the property by directing who was allowed to park on the property.

[65] The brothers submit that neither Mr. Grant nor his mother Emily had the intention to claim the land as owner by adverse possession. The brothers admit that Mr. Grant and his mother were occupying the property but argue that occupation is not possession. The brothers contend that Mr. Grant and his mother occupied the property by permission given to them by the brothers' ancestors, John William Simon giving Herbert Benjamin, ancestor of Emily and her son, Mr. Grant, permission to occupy the property. They submit that Herbert Benjamin was therefore a licensee of John William Simon and so, the descendants of Herbert Benjamin, including Mr. Grant's mother Emily, were all licensees of the descendants of John William Simon.

[66] The brothers point out that Mr. Grant's mother Emily in the year 1979 surveyed a portion of the property and applied to purchase it from Government. By doing so, the brothers posit that Emily impliedly admitted that she was not owner in possession of the land and had no intention to acquire the land by adverse possession but by purchase.

¹⁴ [2008] CCJ 5 (AJ) at paragraph 29

[67] It is the brothers who point out to this court that Mr. Grant's evidence on adverse possession is grounded on his claim to exclusive and undisturbed possession of the property since 1993. This notwithstanding, they rely on evidence prior to 1993 to convince the court that Mr. Grant had no intention to adversely possess the property, or a portion of the property. In my view, the requisite *animus possidendi* in this case must be established for the period for which adverse possession is being sought. Moreover, Mr. Grant is not required to show an intention to own or an intention to acquire ownership, but an intention to exercise exclusive control.¹³ In **Toolsie Persaud**,¹⁴ the Court stated, "Intention to possess thus extends to a person intending to make full use of the land in the way in which an owner would, **whether he knows he is not the owner** or mistakenly believes himself to be the owner..."

Findings on adverse possession

[68] On the evidence before the court, I find that Mr. Grant did not discontinue his actual possession of the property when he moved to Molineux Village after Hurricane George in 1998. I accept his evidence that he continued to park his vehicles on the property and that he started building a new structure, thereby exercising his control. Ralph Phillip, a brother of the brothers, stated in cross-examination that Mr. Grant parked his vehicles on the land in question. He told the court that the land was cleared about four years ago, and since the land was cleared Mr. Grant parked there. This bit of evidence appeared to support Mr. Grant's case. However, in re-examination, Mr. Phillip's evidence is that Mr. Grant parks on the same land on which the shop stands. Having heard and observed the witnesses, I resolve this dispute in Mr. Grant's favour and rule that he continued to exercise control over the property even though he moved after the destruction of his home in 1998.

[69] I further find that on the authorities, the letters claiming ownership of the property by attorneys for the brothers, and the knocking down of the structure erected by Mr. Grant and his mother do not constitute disturbances or interruptions in law. Those actions did not stop the twelve-year limitation period from running against Mr. Grant.

¹³ Per Slade J in **Powell v McFarlane** supra at paragraph 56 above

¹⁴ [2008] C CJ 5 (AJ) at paragraph 29

Mr. Grant's admission that he was disturbed in his possession of the property does not negative the legal position.

[70] Mr. Grant has proved to the satisfaction of the court that he was in factual possession, that is, sole and undisturbed possession of the property from 1993, not through his mother or ancestors but in his own right, before he initiated these proceedings. He has further proved that he had the requisite intention to exercise exclusive control of the property.

Order

[71] Based on the foregoing, I make the following orders:

- 1) The self-conveyance is a nullity.
- 2) The Registrar of Deeds shall cancel the self-conveyance recorded as No. 11563 in Liber S Vol 7 Folios 243-250 of the Register of Deeds for the St. Christopher Circuit.
- 3) The claimant is granted a declaration that he is entitled to exclusive possession of the property situate at Keys Village in the island of St. Christopher and currently recorded in Liber S Vol 7 Folios 243-250.
- 4) The defendants and/or their agents are prohibited from trespassing or entering the said property.
- 5) The defendants shall pay the claimant damages for trespass and loss of use and enjoyment agreed in the sum of \$1000.00.
- 6) The defendants shall pay the claimant costs agreed in the sum of \$2,500.00.

Tamara Gill
High Court Judge

By the Court

Registrar