

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

GRENADA

CLAIM NO. GDAHCV2004/0254

IN THE MATTER OF THE ESTATE OF LORD FRANCIS, DECEASED

AND

**IN THE MATTER OF THE PARTITION ACT CAP 255 REVISED LAWS OF RENADA
1990**

BETWEEN:

[1] STEPHANIE DELFISH

(Administratrix of the Estate of Lord Francis, deceased)

[2] STEPHANIE DELFISH

(Administratrix of the Estate of Olive Francis, deceased)

[3] ALBENA BELL

(Administratrix of the Estate of Philbert Bell, deceased)

Claimants

and

[1] ESTATE OF JOSEPH FRANCIS (Deceased)

[2] ESTATE OF CHRISTINA ANDREWS

(Deceased)

[3] ANN MARIE ANDREWS

[4] AGATHA ANDREWS

[5] KEVIN ANDREWS

[6] AGNES EDDIE

[7] SHERLYANN ANDREWS

Defendants

Before:

The Hon. Mde. Justice Agnes Actie
Court Judge

High

Appearances:

Mrs. Celia Edwards, KC with Mr Deloni Edwards for the Claimants
Dr. Francis Alexis, KC with Ms Shireen Wilkinson for the Defendants

JUDGMENT

- [1] **ACTIE, J.:** The claimants seek an order for the partitioning and vesting of land comprising approximately four acres and twenty-six poles (4 Acs. 26 Pls.) (hereafter referred to as “the property”) forming part of the lands belonging to the estate of Lord Francis (deceased) by virtue of an indenture of conveyance dated 21st December 1918 situate at Calliste/True Blue in the parish of Saint George.
- [2] The matter came on for trial and the defendants made certain concessions acknowledging the claimants’ entitlement to part of the property but raised the issue of proprietary estoppel. The court, after taking the evidence, was of the view that the parties should try to resolve the issues through further mediation. The parties after valiant attempts failed to settle and accordingly the court gives this ruling.

Background Facts

- [3] The late Lord Francis executed a Will on 24th August 1949 appointing his son-in-law, Mc Millan Andrews, as Executor. The Will devised two acres of the property to his daughter, Christina Andrews; one acre to his son Joseph Francis; one acre to his daughter, Olive Francis; and the other acre to his step grandson, Philbert Bell.
- [4] Lord Francis died on 16th December 1949. The executor, Mc Millan Andrews obtained probate of the deceased’s Will on 31st July 1951 but died intestate on 13th November 1996 without fully administering the estate.
- [5] The beneficiaries, namely (i) Joseph Francis died on 13th October 1973 leaving one child (ii) Philbert Bell died intestate on 31st August 1978 leaving a widow and thirteen lawful children (iii) Albenia Bell, the third claimant was appointed administratrix of Philbert Bell’s estate.

- [6] Letters of Administration (with will annexed) de bonis non in the Estate of Lord Francis was granted to Christina Andrews on 2nd January 1998. She died on 6th September 2002 without completing administration of the deceased's estate.
- [7] Letters of Administration (with will annexed) de bonis non in the Estate of Lord Francis was granted to Stephanie Delfish, the first claimant, on 7th January 2003. Stephanie Delfish was also by power of attorney appointed administratrix of the estate of Olive Francis on 20th May 1998.
- [8] The first and second defendants are named beneficiaries under the deceased's Will. The third to seventh defendants are children of Christina Andrews who is a named beneficiary of two acres under the deceased's Will. Christina Andrews during her lifetime executed five deeds of gift, one made on 15th October 1990 in favour of Wilfred Nelson and the others made on 11th January 1991 to the third, fourth, fifth, sixth and seventh defendants, respectively, conveying portions of the property to them.
- [9] The third to seventh defendants aver that Christina Andrews together with her husband Mc Millan Andrews (Executor of Will of Lord Francis) and their children occupied the two (2) acres bequeathed under the Will of the late Lord Francis since February 1950 until her death in 2002. They aver that Christina Andrews remained in undisturbed possession, paid taxes for the property to the Government and cultivated many crops, fruits and provisions.
- [10] The fifth defendant contends that he has been living in a concrete dwelling house on a portion of the property since 1999 and the land is also mortgaged to the then Bank of Nova Scotia. The third to seventh defendants, save and except Agatha Andrews, reside in dwelling houses on respective lots of land. However, Agatha Andrews contends that she cultivates the land with crops, fruit trees and other produce.

- [11] The defendants contend that the claimants are estopped in equity from denying that any of the claimants are entitled to their lots of land as they stood by and took no action while the defendants expended substantial sums of money erecting dwelling houses and have been in occupation in excess of twelve years.

Law and Analysis

- [12] The issues to be considered are whether the claimants or the defendants are entitled to the estate of Lord Francis and or in the alternative, whether the claimants are estopped from denying the possession given the erection of the dwelling homes, some of which are concrete.

Adverse Possession

- [13] The law on adverse possession is well settled. The case of **Hector Caesar Luke v Bernard Alexander**¹ which was referred to and followed by our Court of Appeal in **Marlon Mills v Stacey McKie**² aptly explained the law on the ingredients for adverse possession. In **Hector Caesar**, Rawlins J stated:

“The Court will, *prima facie*, ascribe possession to the paper owner of land or a person who can establish title through the paper owner. The court can only ascribe possession to a person who does not have paper title if that person has factual possession and *animus possidendi*, the requisite intention to possess the land. **Factual or physical possession means a single and conclusive possession, or exclusive physical control of the land.** The acts that constitute a sufficient degree of exclusive physical control will depend upon the circumstances, particularly the nature of the land and the manner in which land of that nature is commonly used and enjoyed. **The *animus possidendi*, has been described as the intention to possess the land to the exclusion of all other persons, including the owner with the paper title, so far as is reasonable and so far as the process of law will allow.**”³ (emphasis added)

- [14] The court explained that apart from factual possession, one must be able to show the requisite *animus possidendi*, the intention to possess the land against all others,

¹ [2002] ECSCJ No. 186 or alternative citation DOMHCV2001/0161

² SVGHCVAP2016/0001 at para. 4 of the Headnote

³ Ibid at para. 15

including the paper title owner. It is the evidence that the paper title owner was Lord Francis. The defendants rely on Christina Andrews' adverse possession of the property to show the root of devolution of title to them. However, the court is of the view that the following actions on the part of Christina Andrews are inconsistent with a person claiming adverse possession as owner to the exclusion of all others:

- (1) Christina is a beneficiary of two acres devise under the Will of Lord Francis.
- (2) The survey plan conducted by Andrew Alleyne on 5th November 1989 which is annexed to a statutory declaration in favour of Christina Andrews reveals that the survey was carried out “**at the request of Mc Millan Andrews executor of the estate of Lord Francis to be allotted to Christina Andrews**”.
- (3) The statutory declaration in favour of Christina Andrews also reveals that she was only claiming the two acres of the property and not the entire 4 plus acres. Those two acres are consistent with her beneficial share allotment in the will of Lord Francis.
- (4) The property tax receipts between 1971 and 1994 reveal that the property taxes for the property were paid on behalf of the estate of Lord Francis.
- (5) Christina Andrews was appointed administrator of the Estate of Lord Francis.

[15] The defendants allege that Christina Andrews has been in adverse possession of the property since the February 1950. However, the court does not see how that can be maintained considering the compendium of the above facts which suggest that Christina Andrews did not have the requisite intention as owner to claim possession of the entire property to the exclusion of all other beneficiaries, including her father, Lord Francis, the paper title owner. Equally, it is the evidence that when Lord Francis died in 1949, Christina Andrews moved onto the property and resided on a two-acre lot which she was beneficially entitled to, even though the property had not been administered and partitioned.

[16] Further, the third to seventh defendants, through the actions of Christina Andrews, became “paper title owners” by virtue of deeds of gift purporting to convey lots of

land to the individual defendants. Despite reliance on their paper title, the defendants also argue their adverse possession as well as that of Christina Andrews as their predecessor, to that of Lord Francis. The defendants assert that any action for recovery of possession of any of the lands did not first accrue to the claimants within twelve (12) years next before the commencement of the action in 2004, thus the claimants' claim is barred by the provisions of Section 4 of the Limitation of Actions Act.

[17] The defendants cannot claim to be the paper title of property as of right and on the other hand assert, in the alternative, that their predecessor-in-title, namely Christina Andrews, was in adverse possession of the land having dispossessed the estate of Lord Francis of the property. The authority from the court of appeal in **Arnold Celestine v Carlton Baptiste**⁴ is pellucid that a person cannot claim to be possession of property as of right, whilst being in adverse possession at the same time. The court of appeal dismissed the claim on that ground alone and did not even consider the claim for adverse possession.

[18] The survey plans attached to the deeds made by Christina Andrews to the parties acknowledge that the survey was done in 1990, that the lots were stated to belong to Lord Francis, and that the lots were to be allotted to Christina Andrews. The defendants up to 1990 acknowledged that their entitlement was from the estate of Lord Francis and cannot now claim entitlement by adverse possession to defeat the title of Lord Francis. It is also the evidence that Christina Andrews was appointed administratrix de bonis non with will annexed of the Estate Lord Francis in 1998 and cannot maintain an action of adverse possession against her own interest. Accordingly, the defendants' claim that Christina Andrews was in adverse possession of the entire property comprising Four Acres Twenty-six Poles since 1950 fails.

Statutory Declaration/ Vesting title

⁴ GDAHCVAP2008/011

- [19] The evidence of a statutory declaration in favour of Christina Andrews dated 30th August 1990 is also before the court. In that statutory declaration, the deponent, Urias Forde, stated that Christina Andrews had been in undisturbed possession for upwards of forty years. The law is clear that statutory declarations do no transfer or vest title.
- [20] The statutory declaration of Urias Forde made on 30th April 1990 deposed that he knew and was well acquainted with a lot measuring Two Acres abutted and described in the attached plan, and that Christina Andrews had been in uninterrupted possession of the said lands without accounting to anyone in excess of forty years.
- [21] The plan or survey attached drawn by Andrew Alleyne on 5th November 1989 was made at the request of Mc Millan Andrews, executor of the estate of Lord Francis, to be allocated to Christina Andrews. The evidence does not support long possession but instead suggests a survey for the purpose of administration of the estate of by the executor, Mc Millan Andrews. It is the evidence that Mc Millan Andrews died before administering the estate, and his wife Christina Andrews and beneficiary of the estate obtained Letters of Administration de bonis non with will annexed on 2nd January 1998.
- [22] In the consolidated case of **Nancy Jaleel v Michael John**⁵, the court in relying on the case of **Gordon Charles v Claire Holas** stated at para. 45:

“The Statutory Declaration put forward by the defendant ‘does not have the legal effect of vesting title in land’. As stated in **Gordon Charles v Claire Holas** Civil Suit No. 151/1996: ‘A statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in form of law. It may have certain limited evidential value, but it is not an alternative method of conveying title to land.’”

⁵ GDAHCV2002/0490/GDAHCV2003/0213

- [23] Therefore, the deeds of gift made by Christina Andrews in favour of the defendants are defective since they do not recite how Christina became seised of the property, nor could the deeds transfer any legal title to the defendants.

Proprietary estoppel /Equitable estoppel

- [24] Apart from the claim for adverse possession, the defendants raise the principle of equitable estoppel in their defence and contend that the claimants are estopped in equity from denying that defendants are entitled to the lots they occupy on the land.

- [25] It is the evidence of the third to seventh defendants that they entered into exclusive uninterrupted undisturbed possession of their respective lots from 1990, and since then have been exercising ownership thereof. In their evidence of possession, the third and fifth defendants illustrate that they built concrete houses on their portions of the property, with respective mortgages attached to the said portions.

- [26] The principles on equitable proprietary estoppel were developed to recognise the equity in property where persons expend monies developing property to their detriment with the full knowledge or acquiescence of the person who holds the legal title to the property.

- [27] The text from the **Halsbury's Laws of England**⁶ on Proprietary estoppel states the following:

“Proprietary estoppel developed from common law estoppel by representation, and has been described as follows. The owner of land, A, in some way leads or allows the claimant, B, to believe that he has or can expect some kind of right or interest over A's land (or, more generally, his property). To A's knowledge, B acts to his detriment in that belief. A then refuses B the anticipated right or interest in circumstances that make that refusal unconscionable. In those circumstances, an equity arises in B's favour which gives B the right to go to court and seek relief. The court has a very wide discretion as to how it will give effect to this equity”

It is further stated in **Halsbury's Laws of England**⁷ that:

⁶ (5th edn., 2014) vol. 47, para 309

⁷ (5th edn., 2019) vol. 98, para 120

“The principle of the doctrine in its broadest form is that where one person (A) has acted to his detriment on the faith of a belief which was known to and encouraged by another person (B) that he either has or is going to be given a right over B's property, B cannot insist on his legal rights if to do so would be inconsistent with A's belief. If a proprietary estoppel claim is established, the court has a broad discretion to decide what form the relief should take. The aim is to achieve the minimum equity to do justice to the claimant, tailoring the remedy to fit all the circumstances of the case and so leading to the conferral of a life interest or a lease or a mere licence or an equitable tenancy in common or the award of a sum of money, which might or might not be secured against the relevant property.”

[28] These principles were applied by the Privy Council in **Plimmer and Another v The Mayor, Councillors, and Citizens of the City of Wellington**⁸, even though this case dealt with a person who obtained a licence from the Government. The headnote of **Plimmer** states thus:

“Land having become vested in the respondents under the Wellington Harbour Board and Corporation Land Act, 1880, the appellants claimed compensation under the Public Works Act, 1882, on the ground of their having some estate or interest therein within the meaning of the latter Act.

It appeared that the appellants' lessor (or his predecessor in title) had in 1848 erected a wharf on the said land, with the permission of the Government, and in 1855 a jetty; that in 1856, at the request and for the benefit of the Government, he incurred large expenditure for the extension of his jetty and for the erection of a warehouse; that in subsequent years the Government used, paid for, and, with the consent of the said lessor, improved the said land and works:-

Held, that the lessor must be deemed to have occupied the ground from 1848 under a revocable license to use it for the purposes of a wharfinger; that by virtue of the transactions of 1856 such license ceased to be revocable at the will of the Government, whereby the lessor acquired an indefinite, that is, practically, a perpetual right to the jetty for the purposes aforesaid. The equitable right so acquired is an "estate or interest in, to or out of land" within the wide meaning of the Act of 1882, which directs that in ascertaining title to compensation the Court should not be bound to regard strict legal rights only but should do what is reasonable and just.”

⁸ (1884) 9 App. Cas. 699

[29] Counsel for the defendants also rely on **Bibby v Constantine**⁹ where Henry J recited the learning from the House of Lords case of **Ramsden v Dyson and Thornton**¹⁰ as follows:

“If a stranger begins to build on land supposing it to be his own, and the real owner, perceiving his mistake, abstains from setting him right, and leaves him to persevere in his error, a court of equity will not afterwards allow the real owner to assert his title to the land. But if a stranger builds on land knowing it to be the property of another, equity will not prevent the real owner from afterwards claiming the land, with the benefit of all the expenditure upon it.”

[30] In all those cases, the court recognised the equity of the persons involved who were allowed to build or develop property with the full knowledge or consent of the legal paper title to their detriment. In **Plimmer**, the court determined that the licensee held an irrevocable licence and that licence should amount to fee simple interest.

[31] The deeds of gift made by Christina Andrews were recorded in the Deeds and Land Registry in 1990 as public records. Therefore, the estate of Lord Francis had constructive notice that Christina Andrews unlawfully divested or attempted to divest property from the estate. Further, there is no evidence that Mc Millan Andrew objected or filed any action against the recording of those deeds of gift. It is therefore not open to the claimants to merely assert their right under the estate of Lord Francis without acknowledging that the majority of the property is occupied by the defendants and other persons who are not parties to this claim. There is no evidence that the personal representatives nor persons entitled to a beneficial interest in Lord Francis’s estate made any attempt to remove the defendants from the property. In fact, the executor of Lord Francis’ estate, Mc Millan Andrews, was the husband of Christina Andrews. He died in 1996 without formally administering and partitioning the estate.

[32] It is noted that the survey report suggests that a partition would be futile as the majority of the lots on the property are occupied, with persons residing mostly in

⁹ SVGHCV2013/0260 para. 76

¹⁰ (1866) LR 1 HL 129, 12 Jur NS 506

concrete dwelling houses erected on parts of the property. The defendants in the circumstances are entitled to rely on the principles of proprietary estoppel to claim the equity in the part of the property where their homes are erected. Accordingly, the claimants are estopped in equity from merely asserting their beneficial legal title against the defendants.

Conclusion

- [33] In relation to the claim for a partition of the property, the court accepts the evidence that it will be a herculean task to get the other persons off the property since they are not parties to the claim. The claimant, Stephanie Delfish, as personal representative of the estate of Lord Francis has not administered or vested the property in accordance with the law. It is the law that property which devolves upon the personal representative is held in right of the deceased estate. The beneficiaries have no specific interest in any of the property until administration of the estate is completed by the personal representative. The defendants admit that the area that they occupy comprises the two-acre entitlement of their mother Christina Andrews under the deceased's Will. A further survey will be required to determine what lots or portions of the property remain unoccupied because the joint survey report before the court is unclear. It is therefore for the claimant, Stephanie Delfish, as administratrix of estate of Lord Francis, to retain the services of a licensed land surveyor to delineate the remainder of the property forming part of the estate to complete the administration, partitioning and vesting in the remaining beneficiaries.

ORDER

- [34] In conclusion and for the foregoing reasons, this court acting pursuant to Section 4 of the Partition Act orders and declares as follows:
- (1) The defendants claim for adverse possession of the entire property of the deceased fails. However, given the long line of authorities on proprietary estoppel, the defendants should be allowed to remain on their respective lots.

- (2) Stephanie Delfish as administratrix de bonis none of the Estate of Lord Francis shall retain the services of a licensed land surveyor to partition the property and shall vest the remaining lands of the estate of Lord Francis into the residual beneficiaries with the power to sell and distribute the proceeds to the beneficiaries if partitioning is not feasible.
- (3) The costs of the partition survey and vesting shall be borne by the remaining beneficiaries or shall be deducted from their share entitlements.
- (4) Both parties having had some measure of success and accordingly each party shall bear its own costs.

Agnes Actie
High Court Judge

By the Court

Registrar