

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

IN THE HIGH COURT OF JUSTICE

SVGHPT2021/0007

BETWEEN

GILLIAN PHILLIPS

APPLICANT

and

MICHELLE DEBIQUE

RESPONDENT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Ms. Kensha Theobalds holding papers for Mrs. Maferne Mayers-Oliver for the applicant.

Mr. Cecil Blazer Williams for the respondent.

2023: Oct. 24 & 31
Nov. 2

JUDGMENT

INTRODUCTION

[1] **Henry, J.:** In this case, Ms. Gillian Phillips seeks a declaration of possessory title in respect of a parcel of land ('the disputed land') at Villa in the State of Saint Vincent and the Grenadines. She claims that she has enjoyed exclusive and undisturbed possession and control of the disputed land for a period in excess of 12 years.

[2] Ms. Debiq ue filed a written claim in her personal capacity. She seeks an order that Gillian Phillips' claim be dismissed and a declaration that the disputed land is part of her father Raymond Debiq ue's estate.

[3] She contends that her deceased mother Janet Marjorie Debique née Antrobus is the registered owner of the disputed land by virtue of Deed of Conveyance 227 of 1946 and that she never ceased being in possession and control of the disputed land up until her death. She asserted that her mother devised the disputed land to her father Raymond Debique who left it by his Will to her and her two siblings.

[4] Ms. Debique's mother and father passed away respectively on 3rd October 2018 and 26th July 2019¹. She averred that she is the executrix of her father's estate, having been so appointed in his last Will and Testament. Her

[5] I have found that Ms. Phillips failed to establish her claim on a balance of probabilities. Her application for a declaration of possessory title is dismissed. Ms. Debique did not lead adequate evidence that the land conveyed by Deed of Conveyance 227 of 1946 and mortgaged by Deed 645 of 1960 is the same land as the disputed land. No order is made declaring that the disputed land forms part of the estate of Raymond Debique.

ISSUES:

[6] The issues are whether:

1. A declaration of possessory title should be granted to Gillian Phillips.
2. A declaration should be made that the disputed land forms part of Raymond Debique's estate.

DISCUSSION

Issue 1 – Should Gillians Phillips be granted a declaration of possessory title of the disputed land?

[7] The law governing the grant of a declaration of possessory title is outlined in the eponymous **Possessory Titles Act** ('the Act')². Ms. Phillips' application must therefore be assessed against the provisions in the **Act** and relevant legal authorities. I shall address the legislative provisions first followed by one of the leading precedents.

¹ See death certificates produced and marked as Ex. 'MD4'.

² Cap. 328 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

- [8] A successful applicant must satisfy a number of procedural and evidentiary requirements. The **Act** prescribes the form³ to be used to apply for a declaration of possessory title. An applicant is required to furnish relevant specifics such as a description of the land and the name of the person who is registered in the Registry as owner.
- [9] The **Act** stipulates that the applicant must provide evidence as to the factual basis on which the application is made, corroborated by affidavit testimony from at least two other persons⁴. Other mandatory documentary evidence are an authenticated survey plan and a valuation of the subject land.
- [10] An applicant is required to publish notification of the application at the High Court Registry, on the notice board of the Magistrate's Court in the District where the land is located and in two newspapers circulating in the State of Saint Vincent and the Grenadines ('the State'). Owners or occupiers of property adjoining the land must also be served by the applicant with such notification.⁵
- [11] Anyone claiming an interest in the subject land is entitled to enter an appearance and file a claim setting out the nature of their interest and the name of the person who has title to the land.⁶ Inclusion of this facility in the **Act** affords an opportunity to interested persons to lodge objections to the grant of a declaration of possessory title to the applicant; and in appropriate cases to protect from alienation, land that is beneficially or legally owned by another person who has remained in effective possession and control of such land.
- [12] A declaration of possessory title to land may be granted to a person only if she establishes on a balance of probabilities that she has enjoyed adverse possession of a parcel of land for the requisite period.

Adverse possession is defined in the **Act** as:

³ Section 4 of the Act.

⁴ Section 5 of the Act.

⁵ Sections 7 and 8 of the Act.

⁶ Sections 7(2) and 9 of the Act.

‘factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Saint Vincent and the Grenadines for a continuous period of twelve years or more accompanied by the requisite intention to possess the said land as owner thereof;’⁷

Inpractical terms, this means that the applicant has to prove that she enjoyed exclusive and undisturbed factual possession of the subject land for an unbroken period of at least 12 years and that while doing so she intended to own the land.

[13] The case of **Powell v McFarlane and Another** illustrates this principle. In delivering judgment, Slade J. explained:

‘If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (“animus possidendi”).... Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, ... The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed...’.⁸

I bear these legal provisions and principles in mind as I examine Ms. Phillips’ application.

Applicant’s case

[14] Gillian Phillips filed her application for possessory title on 24th February 2021 using the prescribed form. She supplied most of the mandatory information and claimed that the disputed land never had a paper title prior to 2001 when she went into occupation. She filed a survey plan G67/158 which depicted a triangular shaped parcel of land comprising 11,080 square feet situated in Villa in the Parish of St. George. It was approved and lodged at the Lands and Survey Department on 15th September 2020 by Chief Surveyor Keith Francis. Significantly, a notation on it states that it supersedes plan G60/152.

[15] The area on the left or western part of the plan bears the name ‘Evelyn Samuel’ and the alphanumeric ‘G3/99’. The rest of the triangular shape is bordered by a road from the windward

⁷ Section 2 of the Act.

⁸ (1977) 38 P & CR 452 Ch D at 470 – 471; See also J A Pye (Oxford Ltd & Ors v Graham and Another [2002] UKHL 30.

highway running north to east and a road to Fairhall running from the southwest to the northeast.

Based on

the valuation report⁹, the estimated value of the disputed land as at October 8th 2020 is \$177,280.00.

[16] The boundaries of the land were described in the application are as follows:

‘ALL THAT LOT PIECE OR PARCEL of land situate at Villa in the Parish of George(sic) in the State of Saint Vincent and the Grenadines and admeasuring Eleven Thousand and Eighty Square Feet (11080 sq. ft) and abutted and bounded as follows: - on or towards the North by a Road on or towards the West by lands of Evelyn Samuel as shown and delineated on a Survey Plan drawn by Licensed Land Surveyor Rudyard Coombs and approved and lodged at the Lands and Surveys Department of the State of Saint Vincent and the Grenadines on the 15th day of September 2020 and bearing Drawing Number G67/158 and howsoever otherwise the same may be butted bounded known ...’.

[17] In addition to her own affidavit, Ms. Phillips filed¹⁰ three supporting affidavits which were sworn to by Gellizeau King, King Fields and his girlfriend Meisha George. She provided proof of publication in two newspapers circulating in the State¹¹, at the Registry¹² and Magistrate’s Court¹² and the requisite notification to adjoining landowners¹³.

[18] Ms. Michelle Debique entered an appearance in her personal capacity on 23rd March 2021. On 25th April 2021, she filed a written claim also in her personal capacity, objecting to the grant of a declaration of possessory title to Ms. Phillipson on the ground that the land is the subject of deed No. 227 of 1946 and that it was left to her and her siblings by their father who inherited it from their mother Janet Debique. She filed an affidavit subsequently in which she repeated much of the contents of her claim.

⁹ Prepared by Franklyn G. H. Evans and produced by Ms. Phillips.

¹⁰ On 24th February 2021.

¹¹ See publications from the News and Searchlight newspapers dated March 19th 2021 and May 28th 2021 respectively and filed on 3rd June 2021 and exhibited to the affidavit of Kenroy Robertson of even date.

¹² Filed on 18th March 2021 and 20th May 2021 respectively.

¹³ See Affidavit of Cedel Webb filed on 10th March 2021.

- [19] The case came on for trial on October 24th and 31st 2023. Ms. Phillips, Mr. Fields, Ms. George and Ms. Debique gave evidence consistent with their affidavits and were each cross-examined. Ms. Phillips applied for Mr. Gellizeau King's attendance to be dispensed with and an order was made to that effect.
- [20] Ms. Phillips maintained that she has occupied the disputed land since 2001 when she assumed control over it. She stated that before then, her mother Laurel Phillips had cultivated the disputed land from 1984 planting crops such as peas, peanuts and potatoes, but eventually stopped.
- [21] Ms. Phillips asserted further that she took workmen onto the disputed land in 2001 to clear trees and shrubs. She testified that thereafter she planted fruit trees including golden apple, sugar apple, plumrose and mango and vegetables such as carrots, cucumbers, squash, pumpkin and tomatoes. She denied that anyone other than her has cultivated the disputed land since her mother stopped working it. She averred that she has continued to personally clean and clear the property over the years with the assistance of others. She averred that she erected a 'DO NOT TRESPASS' sign on the disputed land at some point and replaced it in 2020 when she returned to the State from Canada because it had faded.
- [22] Ms. Phillips refuted Ms. Debique's assertions that Janet Debique, Raymond Debique and Michelle Debique confronted her in July 2016, for cutting trees and running a pipe on the disputed land or that they sought compensation from her for such trespass. She denied being approached by the Debiques' agent and caretaker of the disputed land Alfred Mulraine aka Freddie Browne and being informed by him that the Debiques own the disputed land.
- [23] Her witnesses King Fields and Meisha George did not advance Ms. Phillips' case. They alluded to her carrying out certain works on lands owned by her in Villa. However, they made no connection between the disputed land and the lands they described as being owned by her. Their testimony was not probative of any relevant aspect of Gillian Phillips' case and is accordingly disregarded.

Respondent's case

- [24] For her part, Ms. Debique testified that the disputed land is registered by Deed No. 227 of 1946 as being owned by Janet Marjorie Debique. The land registered by that deed is described in it as:
- ‘ALL THAT Lot Piece or Parcel of land situate at Villa being one quarter ($\frac{1}{4}$) acre in area more or less and forming part of Lot No. 38 and bounded on the East by a Private Road, on the North by a Private Road on the South by lands belonging to the said Aroer Fidelity Clarke or howsoever otherwise the same may be bounded butted known ...’
- [25] Ms. Debique produced a survey plan drawn by Rudyard Coombs that on its face was approved and lodged at the Lands and Survey Department on 23rd August 2016 by Chief Surveyor Keith Francis. It bears the alpha numeric identifier G60/152 and depicts a triangular parcel of land situated in Villa in the Parish of St. George that comprises 11,073 square feet. The area or land on the western boundary bears the name Egbert Samuel. The northern, eastern and south-easterly boundaries are demarcated by a road.
- [26] This survey plan bears a very close resemblance to the survey plan produced by Ms. Phillips. In view of the statement on plan G67/158 that it supersedes G60/152, I am satisfied that the entire area depicted on the later plan (G67/158) comprises all of the land shown on survey plan G60/152 and is the disputed land.
- [27] It is worth noting that the name ‘Aroer Fidelity Clarke’ appears nowhere on survey plan G60/152. Further, no notations on it refer to lot 38. The only similarities between the description in Deed 227 of 1946 and survey plan G60/152 are the references to roads. That is not enough to establish on a balance of probabilities that the same parcel of land is being referred to in each. I make no finding that it is.
- [28] Ms. Debique relied further on Mortgage Deed No. 645 of 1960 by which she claimed that the disputed land was mortgaged to the Saint Vincent Cooperative Bank Limited. The Schedule describes the mortgaged property as:

‘ALL THAT Lot piece or parcel of land situate at Villa being Lot Number 76 triangular in shape containing 12632 square feet and shown on the Cadastral Plan of the said allotments dated the 18th day of November 1956 and registered under Number CV 1 at the Surveys Office of the Colony and abutted and bounded on the South-East by an allotment road on the West by Lot 102 and on the North by a Public Road or as the same is more particularly delineated and shown on the said Plan...’.

- [29] This description does not assist Ms. Debique because the Lot numbers mentioned in it have no corresponding reference in Deed No. 227 of 1946 or survey plan G60/152. Without more, the reference to roads in the mortgage Deed does not take her case any further. Curiously, Ms. Debique did not seek to introduce evidence of the Cadastral Plan mentioned in the Schedule. This might have been helpful to her case.

SUBMISSIONS– POSSESSORY TITLE

- [30] On Ms. Phillips’ behalf, learned counsel Ms. Kensha Theobalds submitted that she entered into possession of the disputed land in 2001, has been in possession for a continuous period of 20 years from then and remains in possession at present. She argued that Ms. Phillips has therefore met the statutory requirements for the grant of a declaration of possessory title.
- [31] Learned counsel Mr. Cecil Williams countered that Ms. Phillips and her witnesses were not credible and should not be believed. He argued that proof of ownership is *prima facie* proof of possession unless there is evidence to the contrary. He contended that Deed 227 of 1946 and Mortgage Deed 645 of 1960 prove that Janet Debique née Antrobus is the registered owner of the disputed land. He contended that a squatter cannot claim to be in effective control of land if the paper owner opposes and acts in a way to indicate that he or she does not acquiesce to the actions of the trespasser. He argued that even though Ms. Phillips denied being confronted by the Debiques, Ms. Debique’s contrary testimony should be accepted.

DISCUSSION – POSSESSORY TITLE

[32] Ms. Phillips' case to a large extent rests on the evidence of her witnesses. Sadly for her, her account about cultivating the disputed land and exercising other acts of ownership over it was not corroborated by independent evidence as required by the **Act**. Her witnesses made no mention of the disputed land but referred instead to lands owned by her. This is fatal to her claim because the **Act** expressly mandates that an applicant's assertions as to factual possession, be supported by testimony from at least two witnesses.

[33] Moreover, Ms. Phillips provided no evidence as to the basis on which she pleaded (on the prescribed form) that the land had no paper title owner. She did not indicate what steps she took, if any, to ascertain this. This is remarkable in light of Ms. Debique's subsequent claim and contentions, and particularly in view of the disclosure by Ms. Debique of a survey plan commissioned by Janet Debique that was almost identical to hers. Further, the disclosure by Ms. Debique of the two Deeds, one of which referred to a Cadastral Survey with specificity as to its date, would have placed Ms. Phillips on inquiry as to whether the disputed land was registered in the name of another person. She had a duty under the **Act** to investigate and disclose to the court the results of such investigation.

[34] She appeared unconcerned. In fact, in response to a question from the court she stated that she had sight of the documents filed by Ms. Debique only the day before she gave her testimony, she reviewed some of them but did not have the time to review them all. She gave those answers in a dismissive and condescending tone of voice almost as if she was being bothered by the court and it was of no moment what Ms. Debique was seeking to advance. I note that two years elapsed between Ms. Debique's entry of appearance and the trial date, more than enough time for Ms. Phillips to make inquiries and familiarize herself with the defence. For these reasons, I formed the impression that Ms. Phillips was not being truthful. I therefore discount her testimony in its entirety.

[35] I have considered all of the evidence, the applicable legal principles and the submissions by counsel. For the reasons outlined in this judgment, I am satisfied and have concluded that Gillian Phillips has not established that she has for a period of 12 years enjoyed exclusive, continuous factual possession of the disputed land with the intention to own it. Her application for a grant of declaration

of possessory title is therefore dismissed.

Issue 2 – Should a declaration be made that the disputed land forms part of Raymond Debique’s estate?

SUBMISSIONS–RAYMOND DEBIQUE’S ENTITLEMENT

[36] Ms. Phillips submitted that Deed 227 of 1946 and Mortgage Deed 645 of 1960 do not support Ms. Debique’s contention that the disputed land is registered in Janet Debique’s name. She argued that there was nothing to show that either deed refers to the disputed land or that the land described in those two deeds are the same. She pointed out that the mortgage deed does not contain a root title and is not linked to Deed 227 of 1946 which was conveyed in trust for Janet Marjorie Antrobus and nothing about any further transfer of the referenced land to explain how Janet Marjorie Antrobus became registered as owner of the land described in deed 227 of 1946.

[37] Ms. Debique argued that she is an executrix, a beneficiary and one of the persons entitled. She referenced a decision in the case of **Milade Sassine v Lady Antrobus**, provided no citation and stopped short of articulating the legal principle enunciated in that case, on which she relied.

DISCUSSION – RAYMOND DEBIQUE’S ENTITLEMENT

[38] As stated earlier, Ms. Debique did not seek to adduce evidence from the Lands and Survey Department in relation to the Cadastral Plan mentioned in the Schedule to the mortgage deed. I agree with Gillian Phillip that Ms. Debique failed to establish any connection between her survey plan G60/152 and either Deed 227 of 1946 or the mortgage deed. There is no evidentiary or legal basis on which to find that the land described and registered by Deed No. 227 of 1946 or Deed of Mortgage 645 of 1960 is the same land that is shown on survey plan G60/152; or that it is therefore the disputed land or any part of it. I make no such finding.

[39] In any case, even if Ms. Debique had produced evidence that the disputed land is registered by either Deed No. 227 of 1946 or Mortgage Deed 645 of 1960, it is doubtful that she would have prevailed in her quest to secure a declaration that the disputed land is owned by Raymond Debique’s estate. She made no claim in a representative capacity as executrix or beneficiary of Raymond Debique’s estate, and could not in her personal capacity seek to make a case on behalf

of Raymond Debique's estate. Furthermore, declaratory relief is granted at the court's discretion if it is just and convenient to do so. The bottom line is, Ms. Debique has failed to establish her claim for the reasons already outlined. I therefore dismiss it.

COSTS

[40] Neither Ms. Phillips nor Ms. Debique succeeded on their respective claims. In keeping with the principles on which costs are awarded¹⁴, the appropriate order in my opinion is that each party bears her own costs.

DISPOSITION

[41] It is ordered:

1. Gillian Phillips' application for a declaration of possessory title is dismissed.
2. Michelle Debique's application for a declaration that the disputed land forms part of Raymond Debique's estate is refused.
3. Each party shall bear her own costs.

[42] I wish to thank counsel for their cooperation in progressing this matter.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar

¹⁴See CPR Part 64.