

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2018/0057



BETWEEN

EVRAL PHIL STEWART

CLAIMANT

and

FLOYD JOSEPH

DEFENDANT

and

THE ATTORNEY GENERAL

Added Party

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

Appearances:

Mr. Joseph Delves for the claimant.

Mr. Matthias Stewart for the defendant.

Ms. Moureeze Franklyn for the added party.

2022: Nov. 15 & 17

2023: Jan. 12

May 4

JUDGMENT

BACKGROUND

[1] **Henry, J.:** This is a claim by Mr. Evral Phil Stewart against Floyd Joseph for an injunction to restrain Mr. Joseph from entering or trespassing on a parcel of land in Ashton, Union Island purportedly comprising 5,600 square feet and bordering the seashore on its southern boundary ('the disputed

land'). Mr. Stewart claims¹ that he acquired ownership of the disputed land through adverse possession, having occupied it exclusively, continuously and without interruption since 1987. He asserts that Mr. Joseph trespassed onto it in 2016 and has resisted all of his attempts to have him vacate the disputed property. Mr. Stewart seeks a declaration that he owns the disputed land, damages for trespass or alternatively mesne profits, exemplary damages and costs.

- [2] Mr. Joseph contended that the disputed property is Crown land. He denies the allegations of trespass and refutes Mr. Stewart's claim to entitlement to the reliefs sought. The Attorney General was added as a party. He contended that the property is indeed Crown land. He submitted that Mr. Stewart's claim should be dismissed. I make no finding that the disputed land belongs to either Mr. Stewart or the Crown. Mr. Stewart's claim against Mr. Joseph is dismissed with costs.

ISSUES

- [3] The issues are:
1. Whether Everal Stewart owns the disputed land?
 2. To what remedies if any is Everal Stewart entitled?

Issue 1 – Ownership of the disputed land

- [4] Mr. Stewart asserted in his Statement of Claim and his witness statement² that he and his brother Denzil Stewart bought from the Crown in 1987, a parcel of land situated in Union Island ('the purchased land'). Title to that land is registered by Crown Grant No. 6 of 1987 and depicted as Lot No. 4 on the attached survey plan GR 1/42. It reflects that the land measures 3,262 square feet. The Crown Grant and survey plan were produced into evidence.³
- [5] Mr. Stewart testified that the disputed land is very close to the purchased land, towards the south and measures approximately 75 feet by 40 feet. He explained that the disputed land shares a common boundary with the purchased land.

¹ By Claim Form and Statement of Claim filed on 24th April 2018.

² Filed on 16th September 2021.

³ And marked respectively, 'Ex. EPS1'

[6] He explained that at high tide, water from the sea was reaching the purchased land, and so he decided to backfill the disputed land which was a swampy area between the purchased land and the seashore. According to him, in the 1990s, the high tide water mark was about 30 to 40 feet away from the purchased land. However, roughly once or twice a year, the entire area would be flooded by the sea. As a result, between 1992 and 1997 he collected materials at great expense and filled in the area that was prone to flooding. Under cross-examination, he indicated that 1992 was not the earliest date that he started back-filling the disputed land. He did not elaborate. He said that he planted several palm trees on the disputed land and fenced it. Mr. Joseph contradicted him, saying that it was only partially fenced. Mr. Stewart adopted this version in his submissions.

[7] At some point, Mr. Stewart rented the disputed land to Ms. Ann Harvey to operate the 4H Club. He said that the agreement took effect from 1998 and was formalized by written contract in 2006 when Ms. Harvey traveled to the USA where he lives. The 'agreement' (in the form of a memorandum by Ms. Harvey) was produced into evidence⁴ and is dated 28/8/06. It is signed by Mr. Stewart and Ms. Harvey and witnessed by Mishka James. In it, Ms. Harvey acknowledged:

'having received temporary Privilege in good faith from Phil Stewart (owner of Land/Property) to erect a wooden club house Building 3 years ago, on a parcel of land located North East of Ashton jetty, Union Island. Agree in full to surrender this privilege and remove any building on the property at the request of the owner of the said property as of (sic) August 31, 2007.'

[8] Mr. Stewart explained that although the agreement states that Ms. Harvey erected the building three years before its execution, she had been occupying the disputed land since 1998. Ms. Harvey testified that she rented the disputed land from Mr. Stewart and got his permission to construct a building on it, which she started doing in 2001. Other than by the memorandum in writing, she gave no indication of the date on which she commenced occupation of the disputed land. It is not controverted that she paid rent to Mr. Anthony Stewart (Mr. Evral Stewart's agent) for use of the disputed land.

[9] Ms. Harvey testified that she remained in occupation of the disputed land until September 2016

⁴ As ex. 'EPS 2'.

when she sold to Mr. Floyd Joseph the wooden building that she had constructed on it. She explained to him that he would have to remove the wooden part of the building from the disputed land and he agreed to do so but did not.

[10] Mr. Stewart had his lawyer write to Mr. Joseph demanding that he vacate the disputed land. The notice to quit dated April 21st 2017 was dispatched to Mr. Joseph. He did not budge. Consequently, the present proceedings were initiated against him.

[11] Mr. Joseph testified that Ms. Harvey told him that while the building belongs to her, the disputed land is owned by the government. He continued backfilling the disputed land and extended the building. He maintained that the disputed land belongs to the government and not to Mr. Stewart. He denied trespassing or knowing of any connection between Mr. Stewart and the disputed land.

[12] Mr. Stewart submitted that 'the defendant removed the chain link fence which enclosed the said land, renovated and conducted construction work on the structure on the premises.' He submitted further that his claim is 'principally one of trespass to land which he has been on since the late 1980s/early 1990s.' He argued that his case is that he is entitled to possession of the disputed land. Regrettably for him, his pleadings contain no such assertion. Although he attempted to amend his pleadings along those lines, he withdrew the application and proceeded to trial with 'ownership of the disputed land' being the sole basis for his claims in trespass and for a declaration that he owns the disputed property.

[13] Another argument advanced by Mr. Stewart is that Mr. Joseph's defence is one of bare denial. As to the Crown, he contended that like Mr. Joseph, its case is simply that the disputed land belongs to the Crown and further it failed to produce any supporting or corroborating material. He argued that the Crown's reliance on the **Three Chains Act**⁵ ('the **Act**') is misplaced because even though the Act applies to Saint Vincent, it does not extend to Union Island, a separate island. Mr. Stewart submitted that in any event, the **Act** states that land comprising the three chains remain vested in

⁵ Cap. 333 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

the proprietors of land adjoining it. Therefore, even if the **Act** applies to Union Island he is entitled to ownership of the disputed land since it comprises the three chains.

[14] Mr. Joseph countered that the disputed land is Crown land since it forms part of the seabed and seashore. He submitted that in any case Mr. Stewart was at no time in possession of it. He maintained he acquired all of Ms. Harvey's interest in the building on it, subject only to the Crown's ownership of the disputed land.

[15] On the matter of adverse possession, Mr. Joseph argued that an application for possessory title to land is not sustainable in respect of Crown lands. He contended that for this reason, Mr. Stewart's ownership claim is not maintainable. This submission misses the point that although Mr. Stewart's claim is based on adverse possession, he did not apply for a declaration of possessory title, pursuant to the **Possessory Titles Act**⁶.

Discussion

[16] In view of the overwhelming oral and documentary evidence including Ms. Harvey's memorandum, I find as a matter of fact that Mr. Stewart rented the disputed land to Ann Harvey between 2003 and 2016. He has thereby established that he occupied the disputed land exclusively for a continuous, uninterrupted period in excess of 13 years. I find too on his uncontested testimony that he occupied it exclusively from 1992 as he alleged and partially fenced it before returning to the United States in 1997. There is insufficient evidence regarding what if any control he exercised over it between 1997 and 2003 to support a finding that he remained in exclusive, undisturbed occupation of it during that period. I therefore make no finding that he occupied it exclusively and/or continuously during that time.

[17] Mr. Stewart makes a compelling argument that the **Act** applies only to the island of Saint Vincent. The recital in the heading of the Act states 'Whereas when the lands of the island of Saint Vincent were originally granted, the Commissioners appointed by His Majesty King George the Third for the sale and disposal of the same, reserved around the coast of the Island a strip or belt

⁶ Cap. 328 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

of land of Three Chains in breadth' I interpret this to mean that the Act is applicable only to the three chains bordering land on the island of Saint Vincent within the State of Saint Vincent and the Grenadines.

It has no applicability to the three chains on Union Island and is therefore not applicable to the facts in this case.

Extent and Description of the Disputed Land

[18] Central to a determination of who owns the disputed property is an understanding of its extent and dimensions. Mr. Stewart accepted that he has not surveyed the disputed land or paid any property taxes for it since it was back-filled. Significantly, he did not produce a survey plan of it. He described the disputed land in the claim form as follows:

'approximately five thousand six hundred square feet and is enclosed by a chain link fence butted and bounded as follows North by an access road on the South by the Ashton shore line on the East by a swamp and on the West by the road to the jetty.'

[19] Mr. Stewart exhibited approved architectural drawings⁷ which purport to show measurements of the purchased land on which his proposed house is to be erected. However, he did not supply any expert or other credible evidence as to the exact boundaries of the disputed land, whether through survey measurements, calculations or otherwise. The absence of such critical information creates serious uncertainty about the area of the disputed land. It cannot be over-emphasized how crucial it is for litigants to provide the Court with all relevant data pertaining to boundary demarcation and delineation in cases involving disputes over land ownership. Such details are indispensable for the purposes of description, computation of the land area and registration in the deed register, when making related judicial decisions.

[20] What is glaringly missing is a survey plan approved by the Lands and Survey Department by authority of the Chief Surveyor. The closest Mr. Stewart came to providing the necessary specifics was in re-examination when, in relation to the plan attached to Crown Grant No. 6 of 1987⁸, he offered:

⁷ At pg. 43 of the trial bundle which was filed on 30th June 2022.

⁸ See pg. 41 of the Trial bundle.

'The disputed land is on the Southern side which has the marker 55.2. The boundary peg B2123 going towards lot no. 5 is a common boundary between Lot No. 4 and the disputed land.'

[21] Mr. Floyd Joseph offered nothing useful to the description of the disputed land. He pleaded that the disputed land east of the Ashton Jetty is the reclaimed seashore and seabed and was at no time a swamp. Like Mr. Stewart, he presented no expert testimony as to the boundaries or area of the disputed land.

[22] Chief Surveyor Mr. Keith Francis testified on the Crown's behalf. He described the disputed land as 'a parcel of land at the Waterfront in Union Island in the Parish of the Grenadines in the state of Saint Vincent and the Grenadines.' This description adds nothing to Mr. Stewart's and Mr. Joseph's. It certainly does not supply specifics which would enable the Court to make a finding about the extent of the disputed property and/or the boundaries.

[23] The Court invited the parties to make submissions as to whether certain aspects of Mr. Keith Francis' testimony could be accepted as expert opinion, in the absence of an order appointing him as an expert. Mr. Everal Stewart helpfully submitted among other things, 'surveying is a matter calling for particular expertise as it requires knowledge the Court does not ordinarily have'. Citing **Bergan v Evans**⁹ he added 'the Court must carefully guard opinion evidence and must assess same using screening protocols set out in Part 32 [of the CPR]. Part 32 is a "sea change" in how expert evidence can be deployed, even if otherwise admissible. So even if admissible it cannot be deployed.'

[24] He submitted further that Mr. Francis' testimony about plans he had seen, including some provided by Mr. Joseph (and excluded from evidence) relates to 'illicit material'. He argued that the Crown 'having not adduced a single document, plan, survey, etc, it ought not to be allowed to plug gaps in proof at this stage, via the front or back door.' Mr. Stewart has articulated a cardinal evidentiary rule with respect to proof of primary facts and admission of expert testimony. Those points are equally applicable to his case in light of the lack of credible, objective and probative evidence on

⁹ [2019] UKPC 33.

the decisive matter of the dimensions, measurements, boundaries, shape, size and mapping features of the disputed land.

[25] The **Land Surveyor's Act** makes clear that with respect to land surveys, only licensed landsurveyors may conduct surveys in respect of any land in the State which affects, or may affect, the definition of the boundaries, or the location of survey marks, of any holding or land registered, or to be registered, under any law for the time being in force relating to the registration of land or of title to land.¹⁰ It provides further: -

'Every plan authenticated by the Chief Surveyor under subsection (1) shall, in any court of law or in any proceeding of a legal or quasi-legal nature, be conclusive evidence of the survey information comprised therein unless and until such plan is cancelled by the Chief Surveyor by virtue of section 26.'¹¹

[26] Mr. Stewart's approximation of the area of the disputed land falls woefully short of particularizing its dimensions, size, boundaries and mapping features to render certain those important essentials for quantification and registration purposes, if he is even able to establish the other prerequisites of ownership. In asserting ownership Mr. Stewart has the burden to establish each element of his claim on a balance of probabilities. Essential components of ownership of land are the area, boundaries and dimensions. Furthermore, the Court has not lost sight of the fact that only part of the disputed land was fenced. This means that Mr. Stewart is laying claim to a portion of land which is delineated neither by clear physical nor geographical markers or boundaries. This cannot be ignored. On the evidence as led, the Court is not in a position to supply such missing details, not even by inference.

[27] I am mindful that Mr. Stewart's claim against Mr. Joseph in trespass is based on his assertion that he owns the disputed land, as is his claim to ownership by virtue of adverse possession. Even

¹⁰Cap. 370 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 15(b).

¹¹ Cap. 370 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 14(2).

though the law does not require proof of ownership to prove trespass, Mr. Stewart has, by his pleadings, committed himself to establishing ownership with respect to the trespass aspect of his claim. He is bound by his pleadings and cannot seek to advance in his submissions, another basis that he did not plead. He seeks to do so by submitting that he is entitled to possession of the disputed land.

- [28] There are significant lacunae in the evidence as it relates to the description, boundaries and area of the disputed land over which Mr. Stewart and the Crown assert claims to ownership. For reasons best known to them, they did not seek to adduce the requisite evidence to establish that aspect of their cases. Undoubtedly, the most vital component of their respective assertions to ownership are the essential particulars of the disputed land. This is indispensable for dispositive and registration purposes. Those details are crucial for probative value. Without them, the Court's ability to ascertain and craft an accurate description in relation to the ownership and trespass issues is irremediably compromised.

Adverse possession

- [29] Mr. Stewart relies on paragraphs 5, 6 and 8 of the Schedule to the **Limitation Act**¹² to establish that he has been in adverse possession of the disputed land for over 12 years. Adverse possession is a key ingredient of his claim to title of the disputed land and to his cause of action in trespass. With respect to the ownership claim, Mr. Stewart has a problem in that the **Limitation Act** cannot be used as a sword to prove adverse possession and by extension, ownership of land. This principle was enunciated by the learned Chief Justice Dame Janice Pereira in **Arnold Celestine v Carlton Baptiste**.¹³

- [30] The learned Chief Justice declared: -

'It is most unusual for statutes of limitation to confer positive benefits or rights on those invoking such provisions. The whole purpose of such statutes growing out of public policy considerations and well recognized over many years, was to bar stale

¹² Cap. 129 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

¹³ GDAHCVAP2008/0011.

claims, or, put another way, they are designed to encourage the timeliness of claims.¹⁴

She went on to explain that the cited provisions of the Grenada **Limitation of Actions Act**¹⁵ may be used as a shield by a squatter to repel a claim made by the paper title owner to recover possession, but that they do not create a legal or other basis for the squatter to make a claim for prescriptive title to the subject property. She stated: -

'It appears to have been overlooked that these provisions are directed at the right of the paper owner to bring a claim for recovery of land and limit the time frame within which the paper owner may do so. This contemplates that the paper owner must have become dispossessed of the land – by the adverse possessor. What these provisions do not permit or contemplate is the situation where, as here, the adverse possessor brings a claim against the paper owner and then sets up the limitation bar as against the paper owner as a basis upon which the adverse possessor becomes entitled to ownership of the land.'¹⁶

[31] The learned authors of **Cheshire's Modern Law of Equity** expounded this principle of law more extensively. They made it clear that the related statutory provisions do not confer to the squatter a cause of action to establish title to the land on which he has squatted. The learned Chief Justice quoted approvingly from that treatise, including the following extract¹⁷: -

'There is no transfer, statutory or otherwise, to the squatter of the very title held by the dispossessed person.

"He is not at any stage of his possession a successor to the title of the man he has dispossessed. He comes in and remains in always by right of possession, which in due course becomes incapable of disturbance as time exhausts the one or more periods allowed by statute for successful intervention. His title, therefore, is never derived through but arises always in spite of the dispossessed owner."¹⁸

¹⁴ Supra. At para. 13.

¹⁵ Sections 4 and 27.

¹⁶ Supra. at para. 15.

¹⁷ 12th Edn. at p. 901.

¹⁸ Per Lord Radcliffe in *Fairweather v St. Marylebone Property Co. Ltd.* [1963] AC 510 at 535.

[32] It is worth noting that section 4 of the Grenada **Limitation of Actions Act** is similar to section 17 of the Saint Vincent and the Grenadines **Limitation Act**. The fact is that section 17 limits the time within which a dispossessed owner may sue to recover land from a squatter. Paragraphs 5, 6 and 8 of the Schedule on which Mr. Stewart relies, were made pursuant to section 17. They do no more than expand on the circumstances and incidents which impact the determination of the date of accrual of the paper title owner's right to recover land under section 17. The *ratio decidendi* of the **Celestine** case is just as applicable to the instant claim. Accordingly, Mr. Stewart's reliance on the **Limitation Act** to vest title of the disputed land in him through adverse possession is misplaced. Paragraphs 5, 6 and 8 of the Schedule to the **Limitation Act** have no such force. His claim to ownership by virtue of adverse possession is therefore entirely undermined.

[33] It is a trite principle of law that he who asserts must prove. As regards, the description and extent of the disputed land over which Mr. Stewart and the Crown claim ownership, they have failed to establish that aspect of their respective case on a balance of probabilities. This failure is fatal to their cases. I find therefore that Mr. Stewart's and the Crown's respective claims to ownership of the disputed property is not made out. It follows that Mr. Stewart's claim against Mr. Joseph in trespass fails.

[34] Accordingly, I make no finding that either Mr. Evral Stewart or the Crown owns the disputed land. Mr. Stewart's claim to ownership of the disputed land by adverse possession; and in trespass against Mr. Joseph are dismissed.

Issue 2 – Remedies

[35] Having failed to establish either claim, Mr. Stewart is not entitled to any of the remedies sought. Accordingly, his prayer for damages for trespass or mesne profits, exemplary damages, injunctive and declaratory relief is refused.

Costs

[36] CPR 64.6(1) sets out the general rule that the unsuccessful party is required to pay the successful party's costs. The dust having settled, Mr. Joseph has emerged as the successful party and is

entitled to his costs on the prescribed costs scale under CPR rule 65.5. The Honourable Attorney General having been added as a party on his application and in light of the outcome, is not entitled to any costs. Mr. Stewart shall pay to Mr. Joseph prescribed costs of \$7,500.00 pursuant to CPR65.5(2)(b).

DISPOSITION

[37] It is ordered:

1. Evral Phil Stewart's claim is wholly dismissed.
2. Evral Phil Stewart shall pay Floyd Joseph prescribed costs of \$7,500.00 pursuant to CPR 65.5(2)(b).
3. The Attorney General shall bear his own costs.

Miscellaneous

[38] Mr. Stewart made comprehensive arguments regarding the standard of proof that the Crown has to meet to establish a claim to land by relying on the presumption that the land forms part of the sea or foreshore. He noted that this issue was ventilated and resolved by the Court of Appeal in **Carriacou Development Corporation and the Attorney General v Margaret Coron and Nellie Adams**¹⁹ in which Webster JA opined 'There must be evidence of the technical issues relating to high water mark and the foreshore in the area and how they relate to the disputed land.' Suffice it to say that there was no such technical evidence in this case. In any case, the Crown did not file a counterclaim for ownership of the disputed land.

[39] In conclusion, I wish to express gratitude to the legal practitioners for their assistance.



Esco L. Henry
HIGH COURT JUDGE



¹⁹GDAHCVAP2018/0014.