

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES



IN THE HIGH COURT OF JUSTICE

SVGHPT2021/0031

IN THE MATTER OF THE POSSESSORY TITLES ACT CAP 328 OF THE REVISED LAWS OF SAINT
VINCENT AND THE GRENADINES 2009

IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF POSSESSORY TITLE TO LAND BY
VENDIE MC CAUL

BETWEEN

VENDIE MC CAUL

APPLICANT

AND

GAILON MATHEWS

RESPONDENT

Appearances:

Mr. Art Williams for the applicant.

Ms. Ann Marie Jack for the respondent.

2022: Sept. 26
Nov. 7

JUDGMENT

- [1] **Henry, J.:** This is an application¹ by Vendie Mc Caul for a declaration of possessory title to a parcel of land situated at Belair, Parish of Saint George, Saint Vincent and the Grenadines ('the subject land'). The subject land comprises 7,343 square feet. Ms. Mc Caul averred that she has enjoyed exclusive possession of the subject land for 24 years preceding her application. She claimed that

¹ Filed on 26th August 2021.

parcel of land was conveyed to her by her now deceased father Mr. Alpheus Mc Caul by Deed of Gift No. 358 of 1997. She asserted that he acquired title to it by Statutory Declaration No. 3625 of 1996 whereby he declared himself to be the owner of the subject land.

- [2] Ms. Gailon Mathews entered an appearance on 11th October 2021 opposing the application. She did not pursue her objection by filing a claim as required by law². She made no application for an extension of time to do so. Without more, her entry of appearance does not constitute a sufficient factual or legal basis for denying the declaration of possessory title to Ms. Mc Caul.
- [3] Ms. Mc Caul's application is made pursuant to the **Possessory Titles Act, Cap. 328 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009 ('the Act')**. The Act provides for the grant of a declaration of possessory title to an applicant who establishes that she has been in adverse possession of land. An applicant does so by proving on a balance of probabilities that she has exercised over the land, 'factual possession of an exclusive and undisturbed nature ... for a continuous period of twelve years or more accompanied by the requisite intention to possess (it) as owner.'³ The Act also requires that certain formalities be satisfied including wide publication by the applicant of notice of her intention to apply for such a declaration.

ISSUE

- [4] The only issue is whether Ms. Mc Caul has established that she is entitled to a declaration of possessory title of the subject land.

ANALYSIS

Issue – Is Vendie Mc Caul entitled to a declaration of possessory title of the subject land?

- [5] In satisfaction of the formal requirements of the Act, Ms. Mc Caul exhibited⁴ a survey plan of the subject land (plan G68/82) and surveyor's report; newspaper publications of notice of her application

² Specifically, section 9 of the Act.

³ See section 2 of the Act, for this definition of 'adverse possession.'

⁴ By Certificate of Exhibit filed on 26th August 2021 and referred to in her affidavit filed on 26th August 2021.

in two issues of two local newspapers circulating in Saint Vincent and the Grenadines⁵; proof of publication of similar notices at the High Court Registry⁶ and at the Magistrate's Court⁷ for the District where the subject land is situated; and service of same on all owners and occupiers⁸ of adjoining lands.⁹ She also produced a copy of a valuation of the subject land, the referenced Statutory Declaration and Deed of Gift.⁴

- [6] The evidence as to the acts of factual possession which ground Ms. Mc Caul's application was supplied in the affidavit testimony of her witnesses Michael Providence, Wendy Ambris and her¹⁰. Ms. Mc Caul asserted that prior 1997 when her possession of the land began, her father Alpheus Mc Caul was in possession of it from 1936, after it was passed to him by his aunt Agatha Morris who passed away that year. According to Ms. Mc Caul, her father built a wooden dwelling house on the subject land in 1940, which served as the family's dwelling house for several decades.
- [7] By Statutory Declaration dated 2nd October 1996 and registered as number 3625 of 1996, Mr. Mc Caul purported to confer title of the subject land to himself. In it, he asserted that Agatha Morris died in or about 1936 seised of the subject land, prior to which he had lived with her for the preceding 6 years; he continued to live in her house after she passed away before building his own house in 1940 in which he lived up to the present; that he has paid the taxes in respect of the subject land since his aunt died and has paid rent to no one; that he has thereby acquired an interest in the subject land and is entitled to title of same.
- [8] The Schedules to the Statutory Declaration and Deed of Gift 358 of 1997 describe the land as 'being one lot more or less ... bounded on the North by land in the possession of Banfield John on the South by land in the possession of Gerald Caddle on the East by a ravine and on the West by a

⁵ In the Vincentian and Searchlight newspapers as averred by Jodi Marshall by affidavit filed on 29th November 2021 and exhibited to Certificate of Exhibit filed on even date.

⁶ Filed on 29th December 2021.

⁷ Filed on 30th November 2021.

⁸ See affidavit of Rodwell Alexander filed on 13th October 2021.

⁹ Pursuant to sections 6, 7 and 8 of the Act respectively.

¹⁰ By affidavits filed on 26th August 2021.

road.' This mirrors the description of the subject land in Ms. Mc Caul's application except that the area is specified by a definite measurement. Another difference is that the adjoining lands on the north and south respectively are said to belong to St. Clair Conliffe and Stella Mathews.

- [9] Neither Ms. Mc Caul nor her witnesses attempt to provided any particulars to explain any connection between Caddle and John who are identified in the Statutory Declaration and Conliffe and Mathews now referenced in the application. In this regard, the Court is unable to ascertain and/or conclude that the southern and northern boundaries in the Statutory Declaration and the application are the same.
- [10] In Deed of Gift No. 358 of 1997, Mr. Mc Caul stated that by the Statutory Declaration he is seised of the referenced land in fee simple in possession. He purported to transfer that interest to Ms. Mc Caul by the Deed of Gift. She averred that since 1997 she has maintained the building as her home and conducted significant repairs until it was damaged by a tree which fell on a part of it, rendering it uninhabitable. She did not say when this happened. She asserted that her brother Godfred Mathews (deceased) lived in the property until 2007 when he moved into his own home. He died in 2016.
- [11] Her father acted as her agent and maintained the land by planting fruit trees and other agricultural crops until he passed away in 2020. Ms. Mc Caul who lives abroad produced one property tax receipt to prove that she has paid the taxes in respect of the subject land. The receipt is for assessment year 2021 and contains no details linking the payment to the subject land.
- [12] Ms. Mc Caul averred that she demolished the old family home in October 2020 and started constructing a new residential property. She stated that it is near completion and she intends that it will become her family home. She stated that in this regard she acts through her agents Ms. Maurita Charles and Ms. Kelia Ambris. She claims that she has been 'in possession of the said parcel of land' for the past 24 years. She concluded that she has disclosed to the court the person who is likely to be affected by the application.¹¹ She said that he is deceased. It is not clear if she thereby refers to her father, her brother or some other person. She did not say.

¹¹ Paragraph 16 of her affidavit filed on 26th August 2021.

- [13] Mr. Providence and Ms. Ambris both attested that Ms. Mc Caul is the person who has been in possession of the subject land. Mr. Providence stated that she is his neighbour. He explained that the property has been in her family for over 40 years. Both witnesses said that they have knowledge of the Statutory Declaration and Deed of Gift. For his part, Mr. Providence indicated that he is aware that Ms. Mc Caul has expended significant resources to maintain the property over the years and it is now being converted to a larger concrete dwelling house. He noted that Ms. Mc Caul had consented to her brother Godfred living at the property until 2007. He stated that he knew that her father acted as her agent and he saw him planting fruit trees and for agricultural cultivation until he passed in 2020. He did not say how he became aware of such matters. He explained that he has observed Maurita Charles monitoring the construction of Ms. Mc Caul's new property and that she is sometimes assisted by Ms. Wendy-Ann Ambris aka Keila Ambris.
- [14] Ms. Ambris gave a similar account. She added that she is aware that in Ms. Mc Cauls' absence from the State, Ms. Charles appeared to be the person in charge of the subject land. She did not explain what led her to so conclude. She stated further that Ms. Mc Caul's father and brother looked after the subject lands for her.
- [15] Significantly, the survey plan delineating the subject land depicts two structures. They are identified in the legend as 'houses under construction'. Neither Ms. Mc Caul nor her witnesses address the fact of the existence of any structure other than her house which is under construction
- [16] By order dated June 27th 2022, the Court noted that in the absence of proof of service it was not clear whether a Notice of Hearing was served on the respondent. The court observed that the supporting affidavits did not expressly account for the second house under construction on the subject land and that it had concerns in relation to the issue of administration of an intestate's estate and the legal implications associated with the Statutory Declaration on which the applicant partially relies to ground her application. Ms. Mc Caul was directed to file skeleton arguments addressing the legal implications which flow from the provisions of the **Administration of Estates Act, Cap 386** of the Laws of Saint Vincent and the Grenadines. The case was adjourned. Ms. Mc Caul filed skeleton arguments. Ms. Mathews filed none.
- [17] Ms. Mc Caul submitted that her father became the owner of the subject and by virtue of the Statutory

Declaration; and that by the Deed of Gift he made an *inter vivos* gift of his beneficial interest and rights in the subject land to her. Citing **Adolphus John Sitney v Benedict Noel et al.**¹², she submitted that she has no valid legal title to the subject land because the statutory declaration is not a good root of title. She contended that it was however evidence of possession. In this regard, she quoted Actie J. who opined:

'It is trite law that a statutory declaration does not confer title, however it provides evidence of possession.'¹³

- [18] Ms. Mc Caul submitted that the beneficial interests embodied in the statutory declaration do not devolve to her father's estate under section 4(1) or the **Administration of Estates Act** but was acquired by her through her exclusive possession of the subject land. She argued that the applicable principles were outlined in the **Law of Real Property**¹⁴ where the learned authors stated:

'As already explained, a squatter has a title based on his or her own possession, and this title is good against everyone except the dispossessed owner. Accordingly, if S who has not barred that owner sells the land, S can give the purchaser a right to the land which is as good as S's own. The same applies to devises, gifts or other dispositions by S, and to devolution on S's intestacy; in each case the person, S2, taking S's interest, can add S's period of possession to their own. Thus if S, who has occupied O's land for eight years, sells the land to S2, O will be barred after S2 has held the land for a further four years.'¹⁵

- [19] It was contended by learned counsel for Ms. Mc Caul that accordingly, a squatter is at liberty to dispose of his interest in a property which he possesses by giving it to another person by way of a devise, gifts or some other form of disposition. This effectively transfers to the donee a right to the land which is as good as the squatter's. For this legal proposition, Ms. Mc Caul relied further on

¹² GDAHCV2016/0402.

¹³ Ibid., at para. 36.

¹⁴ Megarry and Wade 9th (edn) 2019.

¹⁵ Ibid. at para 7-035.

Halsbury's Laws of England where the authors explain:

'While a person who is in possession of unregistered land without title continues in possession, then, before the statutory period has elapsed, he has a transmissible interest in the property which is good against all the world except the rightful owner, but an interest which is liable at any moment to be defeated by the entry of the rightful owner; and, if that person is succeeded in possession by one claiming through him who holds until the expiration of the statutory period, the successor has then as good a right to the possession as if he himself had occupied for the whole period.'¹⁶

[20] On the strength of those legal authorities, Ms. Mc Caul submitted that her father went into possession of the subject land in 1936, constructed a small dwelling house on it in or about 1940 which he continuously occupied. She argued that although he did not have a good legal root of title to the subject land, his exclusive possession gave him good title against the world, and that he subsequently disposed of that beneficial interest to her by Deed of Gift. She reasoned that the *inter vivos* gift to her left no interest which was capable of devolving to another person pursuant to the **Administration of Estates Act**.

[21] Ms. Mc Caul appears to hinge her application for a declaration of possessory title partly on the referenced Deed of Gift and underlying Statutory Declaration and partly on adverse possession pursuant to the Act. It is now well-established and trite law that proof of adverse possession rests on the factual underpinnings of actual occupation of the subject land, coupled with the requisite intention to own. As explained by Slade J. in **Powell v McFarlane and Another**:

'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

¹⁶ Vol. 68 (2021) at paragraph 1191.

nature is commonly used or enjoyed...'.¹⁷

[22] It is clear from the evidence that Mr. Mc Caul occupied some part of the subject land from around 1936 when he remained in the house which his aunt Ms. Morris owned. He later left that house and constructed his own on another part of the subject land. His statutory declaration establishes that he intended to own the house that he constructed. It is silent about the other house. In similar fashion, the Deed of Gift to Ms. Mc Caul makes no reference to that first house belonging to his aunt.

[23] The statutory declaration states in part:

- '1. That I am the nephew of Agatha Morris ... who died in or about the year 1936 seised of a parcel of land at Belair more particularly described in the Schedule hereto (hereinafter referred to as the said hereditaments).
2. That I lived with my aunt Agatha Morris for the last 6 years of her life on the said hereditaments.
3. That after the death of my aunt Agatha Morris I continued to live in her house and in or about the year 1940 I built my own house on the said hereditament and lived in the said house up to the present time.
4. That since the death of my aunt I remained on the said hereditament up to the present time. ...
7. That to the best of my knowledge, information and belief I have the right in the title of the said hereditament.'

[24] Inferentially, the use of the expression 'said hereditament' in the statutory declaration suggests that Mr. Mc Caul seems thereby to have purported to lay claim to the entire parcel of land which his aunt occupied. Further, it appears that Ms. Mc Caul purported to make that entire parcel of land the subject of this application. However, such implied nexus with the subject land must be examined against Ms. Mc Caul's failure to provide an explanation regarding the differences between on the one hand, the description of the southern and northern boundaries in the Statutory Declaration and Deed of Gift, and on the other hand, the corresponding descriptors in the application. This evidentiary gap is

¹⁷ (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.

compounded by Ms. Mc Caul's and her witnesses' silence regarding the existence of another building under construction on the subject land (depicted on the survey plan). Ms. Mc Caul has a clear duty to the court to provide an explanation. Although invited to address this aspect of the case, she failed to do so. The court cannot ignore this detail.

- [25] Significantly, Ms. Mc Caul alludes to a deceased person having an interest in the subject land without identifying that person.¹⁸ In this regard, the court notes that it is logical to conclude that she was not referring to her father as she claimed that he conveyed his entire interest to her. If the reference is to her father, it belies her claim to adverse possession as alleged. This vagueness raises questions as to whether the deceased person to whom she refers is her brother or another person and whether such interest relates to the other house under construction. In either case, the law of succession places the court on notice that a statutory trust might conceivably arise in respect of that unfinished house, pursuant to the provisions of sections 31 and 47 of the **Administration of Estates Act**, if that portion of the subject land devolves on an intestacy.
- [26] Those legislative provisions provide respectively that until Letters of Administration are extracted, an intestate's estate remains vested in the Honourable Chief Justice.¹⁹ Until then, the property is deemed to be presumptively held on a statutory trust for sale for the benefit of the beneficiaries.²⁰ Once appointed, an administrator holds the property on statutory trust for sale. Ms. Mc Caul was invited to address those issues and failed to do so. Other considerations apply if any part of the subject land was devised by Will.
- [27] I hasten to add that there is no evidence before the court that any part of the subject land devolves on intestacy or by will. However, the Court cannot disregard the gaps in Ms. Mc Caul's case in relation to a) the un-named deceased person whom she refers to as having an interest in the subject land; b) the absence of testimony regarding the second house under construction on the survey plan; and c) lack of evidence explaining the referenced differences between the descriptions of the northern and southern boundaries in the supporting documents. Even if the court were to allow for a finding

¹⁸ Paragraph 16 of her affidavit filed on 26th August 2021.

¹⁹ Section 31.

²⁰ Section 47. See also *Earnshaw and others v Hartley* [2000] Ch. D. 155.

that Ms. Mc Caul has established adverse possession over part of the subject land, the imprecision in delineation and demarcation of that portion undermines such a case.

- [28] These lacunae are problematic for Ms. Mc Caul for two reasons. Firstly, they introduce substantial doubt that she has in her own right, enjoyed exclusive and undisturbed possession of the whole of the subject land for the 12 years preceding her application. Secondly, if during any part of that period she occupied any part of the subject land as executor de son tort, she was required to disclose this and make her application in the capacity of executor de son tort for the benefit of any relevant beneficiaries in accordance with section 3(3) of the **Act**. If those provisions or considerations are inapplicable, Ms. Mc Caul needed to be transparent about this. She was not.
- [29] Another troubling aspect of Ms. Mc Caul's case is that she produced only one tax receipt to support her assertion that she has been paying property tax for at least 12 years. One would expect her to have records of her other recent payments or state why they are not exhibited. This does not assist her. Further, of note is that Ms. Mc Caul attests to the death of her father being in 2020 without specifying a date or exhibiting a death certificate. It is the law that he who asserts must prove. I make no finding that her father passed away in 2020.
- [30] An interesting aspect of Ms. Mc Caul's case relates to the fact all of the acts of factual possession on which she relies to establish adverse possession for a period of 24 years, were undertaken by someone else as her agent. For example, she stated that she maintained a dwelling house on the subject property between 1997 and 2020. Presumably, she was thereby referring to the house built by her father. Curiously, neither she nor her witnesses claimed that she personally undertook any specific acts of ownership of the subject land during those 24 years. She appears not to have visited the subject lands in all of that time or to have personally taken any actions over it during that time. Apart from paying the tax for one year, her real control over the subject land emerged for the first time in 2020 when she demolished a house on the subject land and began construction of her own. All of the other acts of possession on which she relies were undertaken by her father. I find that to be very strange. However, such peculiarity does not negate her application, without more. I mention it merely *en passant*.
- [31] Suffice it to say that Ms. Mc Caul has provided adequate testimony to support her assertions that

through the acts of her agent, she occupied a portion of land at Belair as described in the Schedule to the Statutory Declaration and Deed of Gift. However, she has failed to make a link between the description of that land in those Schedules and the land depicted on survey plan G63/113. The Court is therefore unable to find that she is entitled to a declaration of possessory title in respect of the subject land.

- [32] Furthermore, no satisfactory explanation has been advanced regarding the use or occupation of the other 'house under construction' on the subject land. Specifically, the Court is unable to conclude that the said house falls within the boundaries of the subject land; and if so, that it is not subject to a statutory trust under the **Administration of Estates Act** or other legal restraints on disposition by virtue of the law of succession. For all of the foregoing reasons, I reject Ms. Mc Caul's assertions that she has been in adverse possession of the subject land for the period of 12 years or more. She has failed to establish that she has enjoyed exclusive and undisturbed possession of the subject land for the relevant period with the intention of owning it.

DISPOSITION

- [33] It is accordingly ordered:

1. Vendie Mc Caul's application for a declaration of possessory title of the subject land located at Belair in the Parish of St. George and delineated in survey plan G63/113 that was approved and lodged at the Survey Department on 5th February 2021, is refused.
2. No order as to costs.



Esco L. Henry
HIGH COURT JUDGE

By the Court

