

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHPT2011/0079

BETWEEN

IN THE MATTER OF THE POSSESSORY TITLES ACT CAP 328 OF THE LAWS OF ST. VINCENT AND
THE GRENADINES REVISED EDITION 2009

IN THE MATTER OF AN APPLICATION BY MILAD SASSINE FOR A DECLARATION OF
POSSESSORY TITLE TO LAND

MILAD SASSINE

APPLICANT

AND

LADY ANTROBUS
SUZANNE FORDE RANGER

FIRST RESPONDENT
SECOND RESPONDENT

Appearances:

Mr. Jomo Thomas for Applicant

Mr. Joseph Delves for Respondent

Mr. Milad Sassine, present

Mrs. Suzanne Forde-Ranger representative for the Respondents, present

2022: 10th May
11th May
17th June

JUDGMENT

Byer, J.:

- [1] On 15 November 2011, Milad Sassine (herein after referred to as “the Applicant”) filed a declaration for possessory title to a parcel of land located in Cane Garden, St. Vincent and the Grenadines.

The land was shown on the applicant's plan G51/63, as measuring 6813 square feet. (The respondent says that according to Plan G614 it measures 6836 square feet¹). It was valued at **EC\$170,000.00**, or about \$25.00 per square foot, as at 10 September 2011.

[2] In his application, the applicant stated:

- a. that he bought a parcel of land next to the disputed land in 1995;
- b. that he was not shown his boundaries;
- c. that he took possession of the disputed land, lot 27, *"to be the full extent of the land he purchased"*;
- d. that he treated the land as his own;
- e. that he *"exercised ownership of the land by giving permission to James Calvert to tether or graze his cows"*;
- f. that he *"constructed a small wooden chattel house for a man who attended to crops for sale of which the applicant kept the proceeds"*;
- g. that he *"paid one Robert Baptiste to clean and maintain the land and to keep others from using the land or occupying same"*;
- h. that he *"now intends to construct his family home on the land"*; and
- i. that he *"has made diligent inquires with the Land Tax Department and is unable to determine whom if any the paper title owner is"*.

[3] Subsequent to a trial and then a successful appeal by the Applicant, the matter was remitted in July 2018 by the Court of Appeal for full Case Management of the proceedings subject to the CPR under section 18 of the Possessory Titles Act (herein after referred to as "the Act"), and for the High Court to treat with the matters raised in the claim on the trial of the claim. The applicant thus filed the requisite certificate under section 7 (b) of the Act, and the respondent filed the claim of the Trustee of Walter Briggs deceased and an entry of appearance opposing the application.

[4] The respondent's position in response is that the land is owed by the Estate of Walter Briggs, deceased, which now acts by one of its Trustees, Suzanne Forde-Ranger, the other Trustee Lady Antrobus being sick and unable to give evidence; that the Estate has not been dispossessed and that the applicant has not been in adverse possession at any time or alternatively has not been in adverse possession for the requisite period.

[5] The sole issue for the court was therefore whether on a balance of probabilities this court can find that the applicant has established the requisite factual possession and *animus possidendi* for the twelve years as required under the provisions of the Act².

¹ Witness Statement of Suzanne Forde-Ranger, par 13

- [6] Therefore as recognized by the respondent, to come to this finding, it requires the court to make an assessment of the evidence led and to consider whether it has met the requisite threshold in favour of the applicant.
- [7] The applicant brought two witnesses including himself and the respondent relied on herself as trustee and five others, all of whom were neighbours of the applicant save and except one witness whose evidence was not accepted in that he was unable to authenticate the same.

The Applicant - Milad Sassine

- [8] The applicant's evidence was contained in a ten paragraph Witness Statement³ in which he made claim to having possession of the said parcel of land, the subject matter of the application 6,813 square feet of land⁴ (the disputed land). At paragraphs 5 and 8 thereof he had this to say about his possession and acts of possession:

"5. I took possession of the subject parcel of land on the same day that I purchased the parcel I have paper title to. I have always treated the said land as my own. In my mind, I believed that the entire parcel including the parcel that I now make this application for, was what I bought.

8. In about the year 1997, I built a small wooden chattel house for a man who was known to me as "Carib" whom I put to plant Dasheen, Sweet Potatoes and Eddoes on it for sale and I kept the proceeds. I also gave permission to an old gentleman, James Calvin Prescott, to graze his cows on it up to the year 2013. I also paid one Rodney Baptiste to clean and maintain the parcel of land. No one has ever stopped me from doing what I want to the parcel of land."

- [9] On cross examination, the applicant's evidence as to the commencement of possession was even more imprecise.
- [10] The applicant stated that when he bought the parcel of land for which he has a title deed, it was a real estate agent who showed him the land but that he never showed him the boundaries. That he got a vague indication that the parcel of land, ran from "here to there". He also went on to say that he never asked to see the boundary markers.

² Cap 328 by interpretation section "adverse possession" means 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."

³ Filed 28/4/2021

⁴ Exhibit MS 1 to the Witness Statement of the Applicant

- [11] In a further attempt to satisfy his claim the applicant then stated that he built a wooden chattel house on the land for which he did not get planning permission since it was a wooden house. The applicant had no idea how big it was, but he knew that it had no running water or electricity.
- [12] The applicant further contended that he allowed persons to plant crops on the land and that he enjoyed the proceeds of these crops and that he also allowed persons to graze their animals on the land.
- [13] This was the sum total of the evidence of the applicant. Not one of his witnesses was a person from the community nor was there a witness who was one of the persons he allegedly allowed to plant crops or graze animals. Instead, the applicant brought the ex-girlfriend of someone whom the applicant did not even mention as being one of his agents. In this court's mind the utility of the evidence of Amrel Glasgow was extremely limited and largely irrelevant.

Amrel Glasgow

- [14] Ms. Glasgow stated that she came to the land as the girlfriend of one Cyrano Henry. This individual Mr. Henry was never linked in the evidence of the applicant to having been any person whom he gave permission to do anything on the land.
- [15] Ms. Glasgow however spoke of coming to the land in Cane Garden, living in a one room building with her young baby, with no windows, no electricity and with a pit latrine located on the outside for a period of three years, with a clothesline being utilized during that period but no other activity being carried out on the land by her then boyfriend that showed any utilization of the land on the behalf of the applicant.
- [16] In this court's mind this evidence had no evidential value and did not advance the case for the applicant in any way and this court discounts this evidence in its entirety.
- [17] This was the totality of the evidence of the applicant. In this court's mind, if this matter had proceeded as an uncontested application, it is clear to this court that the necessary threshold by the applicant to prove both his factual possession and his intention to possess were completely and totally absent and this court is of the considered view that the application would have been dismissed.
- [18] That being said, this matter proceeded as highly contested and I have to agree with counsel for the respondents that despite the applicant's attempt to question the presence of the respondent by way of the trustee Ms. Suzanne Forde-Ranger at the trial, the applicant never made any attempt to impugn the title deed to the said lot of land, (although he did say that he did not know who was the owner even though he had had sight of the witness statement of the respondent as trustee) the

right of the trustee by way of the will of the late Walter Briggs or the court order appointing the said Ms. Suzanne Forde-Ranger as an additional trustee of the lands of the estate of Walter Briggs.

- [19] The respondent had nothing to prove to the court, so it was a bit alarming that the questioning that was directed at the respondent Ms. Forde-Ranger seemed to suggest that because the trust had not taken steps in relation to the land that was being claimed by the applicant, that was almost a tantamount acceptance that they were aware that in fact the land did not belong to the estate at all.
- [20] If this court has never before seen a red herring thrown into the fray, by that line of reasoning, that was certainly one, and this court soundly rejects any such contention on the part of the applicant.
- [21] At all times this court is satisfied that the onus lay on the applicant to show that he had exercised an appropriate degree of physical control taking into account the nature of the land and the manner in which the land was commonly used and that there was the intention in one's own name and one's own behalf to exclude the world at large including the owner, the paper title holder⁵. To do so, it is also accepted that the evidence must be clear, affirmative, and unequivocal.
- [22] In assessing this case at bar, it is clear in this court's mind on a balance of probabilities that the evidence led by the applicant was far below what would be required.
- [23] Indeed the respondent's case significantly aided the court in coming to that determination.

The Respondents

- [24] The respondents led evidence not only by the trustee Ms. Forde-Ranger whose personal dealings with the land, the subject matter of this action, may have been considered less than hands on, and the information she conveyed being by and large hearsay evidence of her mother the other trustee for the land Lady Antrobus, but the same could not be said for the four neighbours to the said parcel of land and the person who had assisted Lady Antrobus to oversee the land and its usage in the entire development, Mr. Woodley.
- [25] This court accepts the unequivocal unimpeached evidence of the four persons who reside in the vicinity of the land in question.

Jeanne Horne

- [26] Mrs. Horne lives opposite to the disputed land, a fact accepted by both the applicant and his witness. Her length of occupation of her parcel of land for the last 42 years was never questioned or doubted. Rather her cross examination was aimed at her inability to differentiate the applicant's

⁵ Powell v McFarlane and anr [1979] 38 P. & CR 452

lot of land for which he has the paper title from the lot of land that he is claiming in what appeared to have been an attempt to show that the applicant would not have known either where his land ended and where the other lot began. This is also a contention that this court soundly rejects. In this court's mind a businessman of some 25 years of experience in conducting his own business would not have been so lax as to not have had his boundaries established on purchase to ensure that he had not been given less land than he had in fact paid for to the vendor.

[27] This attempt by the applicant in this court's mind must also fail.

[28] Additionally this witness stated that after the passage of Hurricane Tomas in 2010 she was the one responsible for hiring an individual to go on to the lot of land opposite to her, of which a portion is the disputed land, to "help down" some trees that had been damaged by the passing of the hurricane force winds. This was also not a fact that was disputed by the applicant by way of cross examination and in this court's mind the exclusive nature of the possession purportedly exercised by the applicant is completely undermined by this unimpeached and undisputed fact.

Karl John

[29] Mr. John, also a resident of the immediate area of the land, stated clearly that he never saw any one exercising any acts of ownership that were consistent or inconsistent with another owner, like fencing or growing crops. In fact, Mr. John said the only thing he had noticed was that animals grazed on the parcel of land, but he also mentioned that that is the normal pattern of behaviour in the Cane Garden area, in that persons with animals would graze their animals on any vacant lot of land they could possibly find.

[30] On cross examination the observations of Mr. John in relation to the disputed lot of land remained largely unchallenged. In fact, he made it clear that by and large the land was always under heavy bush and remained so for many years and it was only in the last 6 months or so that he saw any clearing of the land and the land is now clear.

[31] He told the court that he never saw any planting of crops but there were always animals grazing there. He did not recall seeing a shed or a pit latrine. His admission that a portion of the land may have been planted and he did not know was, in this court's mind, no victory to the applicant as his evidence in chief that he never saw human activity on the land remained unshaken.

Nicole Herbert

[32] Ms. Herbert stated that she had lived in Cane Garden since the early 1980s. It was her evidence that the land was always under heavy bush just as Mr. John had noted.

[33] Additionally, her recollection was that animals grazed on the land but that no crops were grown there.

[34] On cross examination she maintained her position that she had never seen any activity there in the manner of an agricultural nature. In fact, she told the court in direct examination that sometimes she or others in the neighbourhood would trim the edge of the lots of land from the high bush so as not to obstruct their vision when driving. They did this without challenge from anyone. This evidence and the entirety of her evidence remained unimpeached when she left the witness stand.

Ronald Herbert

[35] Mr. Herbert like his neighbours also characterized the land as being under heavy bush and that the only activity he ever saw there was the grazing of animals.

[36] In fact he told the court, a point he reiterated on cross examination that it would have been difficult to have had crops on the land with the number of animals that grazed there – the two would have been wholly inconsistent.

[37] He therefore could not agree that although he could not see every square inch of land, that the land could have been placed under cultivation for as he said the “cows would have eat down everything.”

Conclusion

[38] When this court considers the relative sides of this dispute, this court is satisfied that on a balance of probability the applicant has not made out his case for a declaration of possessory title in his favour.

[39] Having not led cogent, clear and unequivocal evidence as to the factual possession of the lot of land, this court is not even required to consider whether he had the requisite intention to possess as required by law.

[40] “The authorities clearly establish that a person seeking to dispossess the owner of the land by adverse possession must identify with precision the land being claimed and must establish a sufficient degree of factual possession and *animus possidendi* to prove his or her clear and unequivocal possession of the land to the exclusion of all others including the paper owner”⁶.

⁶**Marlon Mills v Stacy McKie** SVGHCVAP2016/0001 per Michel JA at paragraph 37

[41] This court therefore finds that the applicant has failed in his application and dismisses his claim with prescribed costs to the respondents on the value ascribed to the disputed land as claimed by the applicant in the sum of \$170,000.00 pursuant to Part 65.5 CPR 2000.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar