

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

GRENADA

CLAIM NO. GDAHCV2007/0581

BETWEEN:

[1] GABRIEL DUBISSETTE

[2] MARGARET DUBISSETTE

(Legal Personal Representatives of the Estate of Anna Theresa Dubisette)

Claimants

and

[1] JOYCE MC INTYRE

**(Legal Personal Representative of the Estate of Eugene Phillip also known as
Eugene Mc Intyre)**

[2] DENNOT MC INTYRE

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Darshan Ramdhani QC with Mrs. Sabrita Khan Ramdhani for the Claimants
Ms. Sandina Date for the First Defendant
Mr. Dickon Mitchell with Ms Skeeta Chitan, Mrs. Crystal Braveboy Chetram and
Mr. Kadeem Strachan for the Second Defendant

2022: March 16, 30.

JUDGMENT

[1] **ACTIE, J.:** This is an antiquated claim filed over fourteen years ago on the 13th December 2007 concerning the possession of a lot of land on the popular Grand Anse Beach area in the parish of St. George. The second claimant has since passed

away and the first named defendant is incoherent and was of no assistance to the court as a result of the endemic long delays in the system leading to evidential difficulties.

- [2] This case is typical of the numerous acrimonious family lands disputes in this jurisdiction. Chief Justice Field in a judgment delivered on 1st October 1965 involving the predecessors of the parties in this extant suit stated, "Litigation is too expensive for poor people" and urged the parties to get together and make a division of the lands on a good Christian basis. A dispute concerning ownership of the said land between the parties has raised its ugly head once again. This case further highlights the need to regularize family lands ownership and possession through a modernize Land Registration System.

Claimant's case

- [3] By fixed date claim form filed on 13th December 2007 and amended on 3rd December 2008, the claimants as legal representatives of the estate of Anna Theresa Dubisette claim, inter alia:

- (1) Possession of a piece of land measuring approximately Six Thousand Square Feet (6,000 sq. ft.) (hereafter "the disputed land") which allegedly forms part of the Estate of Anna Theresa Dubisette;
- (2) A declaration that the lease dated 3rd June 1996 between Eugene McIntyre of the One Part and the second defendant of the Other Part is null and void;
- (3) An injunction ordering the second defendant to pull down and remove the concrete structure which he has constructed on the disputed land;
- (4) An injunction restraining the defendants by themselves, their agents or servants from trespassing on the claimants' land; and

(5) Costs.

- [4] The claimants' pleaded case is that Anna Theresa Dubisette was the owner of the disputed land by virtue of an Indenture of Conveyance dated 2nd May 1969 made between Anna Theresa Dubisette as Administratrix of the One Part and the said Anna Theresa Dubisette as Beneficiary of the Other Part (hereafter "the said deed"). The said deed alleges that, Frederick Dubisette, (Anna Theresa Dubisette's father) had been in occupation of lands in Grand Anse prior to his death in 1914, and that by virtue of his occupation of same, Anna Theresa Dubisette being the sole legitimate child became entitled to the lands.
- [5] The first defendant, Joyce Mc Intyre, is the personal representative of Estate of Eugene Mc Intyre (deceased) through a grant of probate dated 25th February 2003. On 3rd January 1996, the said Eugene Mc Intyre entered into a lease agreement with the second defendant, Dennot Mc Intyre, for a piece of land measuring approximately 6,000 sq. ft. for a term of ninety (99) years.
- [6] The claimants contend that Eugene Mc Intyre never owned neither had any legal interest in the disputed land and therefore could not in law lease the land to the second defendant. The claimants rely on the decision in the judgment of Justice Field in Suit No. 81 of 1959 delivered on 1st October 1965.
- [7] The claimants aver that they have been deprived of the use and enjoyment of the disputed land as the second defendant has wrongfully remained in possession of the said land by virtue of the lease.

First Defendant's case

- [8] The first defendant, Joyce McIntyre, in her filed defence pleaded that the said Eugene McIntyre was the fee simple owner in possession of the disputed land and prior to his death leased the said property to the second defendant.

- [9] The first defendant further pleaded that the claimants' predecessor in title, Anna Theresa Dubisette, and the claimants have not asserted any claim to the property apart from the filing of this claim on 13th December 2007.
- [10] The first defendant avers that Loman Mc Intyre, Eugene Mc Intyre's father who was also the second defendant's grandfather, lived on the land until his death on 2nd November 1956. After his death, Eugene McIntyre lived on the land until his death. The first defendant contends that, since her husband's death, she has been exercising physical control and collects rents and profits from the land without accounting to anyone.

Second Defendant's case

- [11] The second defendant, Dennot Mc Intyre, in his defence filed on 7th May 2008, contends that the claimants' right to bring and maintain the claim is statute barred. Further, the second defendant denies that Anna Theresa Dubisette was or is the owner of the leased land as the purported title document of the claimants is not a valid document and could not convey ownership of the land to her. The second defendant pleads that the judgment of Field J shows that there has been no fee simple owner of the land since 1959.
- [12] The second defendant states that he has been in possession of the property since February 1991 where he operates a restaurant by the name of "Coconut Beach French Creole Restaurant". He avers that he purchased the restaurant from Irene and Jack Glover, and thereafter entered into a lease with the said Eugene Mc Intyre. He denies that he is the purported lessee of the claimants' land, and also denies that the claimants have ever protested his possession.

Evidence at trial

The claimants' case

- [13] The first claimant, Gabriel Dubisette, in his witness statement filed on 24th March 2015 states that his mother Anna Theresa Dubisette died in 1975 and was the owner of the disputed land which she inherited as the only lawful child from her father Frederick Dubisette who died in 1914. He states further that his mother started a survey in 1955 to give part of the land to the other three children of her father who were born out of wedlock. He avers that his mother Anna Dubisette maintained for herself the land which included the disputed land upon which the French restaurant was erected. The claimant states that he leased part of the land to tenants to operate a water sport business and part to a gentleman to operate a chair rental business. He also permitted one Beryl Mitchell to live on part of the land and to construct a house where she lived until her death in 2014.
- [14] Gabriel Dubisette further states that when he first came to know the land there was a two-storey building chattel house owned by the Otway's. The Otway's left the chattel house in the late 1970's and then a gentleman by the name of Tom Delves occupied the said chattel house. Tom Delves left the property around 1983/84 and thereafter a Frenchman occupied the said chattel house named as "the French restaurant".
- [15] Gabriel Dubisette states in relation to the French Restaurant "*I don't know whether the Frenchman was paying any rent to anyone. When the Frenchman left, Eugene Mc Intyre took over the chattel house and remained there until he leased to the second defendant, Dennot Mc Intyre*". He avers that the building was knocked down by hurricane Ivan in 2004 and the second defendant reconstructed the building partly in concrete". He avers that he prevented the first defendant from surveying the disputed land in 2006 and then produced the title deed to assert his mother's title.

Lewis Charles

- [16] Mr. Lewis Charles, 95 years old, a witness for the claimant was very impressive and lucid during cross examination. He stated both in his witness statement and in cross examination that he is familiar with the disputed land as he lives approximately 200 yards away. He states that he knew one Vivian Henry, a businessman, who owned a small bathing house on the disputed land that he leased from Angelo Dubisette and Francis Dubisette, which is the same area currently occupied by the second defendant. Mr. Charles said he was about twelve years old when he became familiar with the bathing house which remained there until 1950's. The Otway's built a new wooden two-story guest house with permission from Vivian Henry. The Otway's left the guest house in the 1970's and one Tom Delves took charge over the guest house and rented it to a French man. The French man remained in the guest house until Eugene Williams also known as Eugene Mc Intyre came to Grenada in the mid 1980's and occupied the guest house from 1986. He states that Anna Theresa Dubisette, prior to her death, told him that the disputed land belonged to Dubisette family. He states that the second defendant, Dennot Mc Intyre, is Eugene's Mc Intyre nephew and worked with Eugene Mc Intyre on the disputed land. The chattel house was destroyed by hurricane Ivan and a building was reconstructed by Dennot Mc Intyre sometime in 2005.

The defendants' case

Joyce Mc Intyre

- [17] The first defendant, Joyce Mc Intyre, as Administratrix and widow of her husband, Eugene Mc Intyre, in her witness statement filed on 27th February 2016, states that Lowman Mc Intyre lived on that portion of land until his death on the 2nd November 1956 and thereafter her husband who was Lowman's son continued to live on the said land until his death on 2nd December 2002. Following her husband's death, she remained in open, continuous and exclusive possession exercising physical control and collecting rents without accounting to anyone.

- [18] At trial, the first defendant was noticeably impaired in her capacity to comprehend and respond to the questions asked in cross examination. The general gist of her evidence was not grasped as her responses were no better than chance guessing.

Dennot Mc Intyre

- [19] The second defendant, Dennot Mc Intyre, in his witness statement filed on 27th February 2015, states that he had been operating and managing the restaurant known as “Coconut Beach French Creole Restaurant” since 1991.

- [20] He said that the land was leased to Lionel Vivien Henry. After Vivien Henry’s death, Denis Henry took over the land and leased it to the Otway’s. The Otway’s built a guest house known as “Almond Inn”. After the Otway’s left, the property was abandoned for a while and then taken possession of by Mr. Thomas Delves, an auctioneer. He states that his uncle Eugene Mc Intyre moved back to Grenada from England and subsequently took possession of the property from Mr. Delves. Eugene Mc Intyre operated a bar for some time and later leased it to Michael Carvajenie. Michael Carvajenie subsequently sold the restaurant known as Coconut Beach French Creole Restaurant to Irene and Jack Glover. Mr. Dennot Mc Intyre operated and managed the said restaurant on behalf of the Glovers from 1991. He purchased the restaurant from the Glovers and became owner sometime in 1996. He states that he was aware that prior to him purchasing from the Glovers there existed a tenancy arrangement between Eugene Mc Intyre and Michael Carvajenie and thereafter the tenancy arrangement was carried over to the Glovers. The lease arrangement expired before he purchased the restaurant and he subsequently entered into the lease with his uncle, Eugene Mc Intyre.

- [21] Dennot Mc Intyre states that Lowman Mc Intyre referred to in the judgment of Field J dated 1st October 1965 was his grandfather being the father to his mother Lillia Mc Intyre and Eugene Mc Intyre, his uncle. The land mentioned in Justice Field’s

judgment is the same land leased by Angelo and Francis Dubisette to Vivian Henry for thirty years which would have expired in 1959. He states that there is no evidence that Anna Dubisette was ever in possession of the disputed land or ever asserted ownership or possession.

[22] Dennot Mc Intyre states that he notes the evidence that Anna Dubisette died on the 16th July 1975 at the age of 62 and that her father Frederick Dubisette died in 1914 which suggests that Anna could only have been one year old. He states that having regard to Anna's age at the time of her father death, she has failed to give the source of the information that her father had acquired a statutory title.

[23] Dennot Mc Intyre states that he is familiar with the history of the land and can say with absolute certainty that since Anna's death in 1975, none of the claimants have ever been in possession of the disputed land upon which the restaurant is located.

Legal Analysis

Whether the Estate of Anna Theresa Dubisette has title to the disputed land

[24] The disputed land has had a chequered history starting with the judgment of Field J delivered on 10 October 1965 in a claim for trespass by the executor and beneficiary of Lowman Mc Intyre against Edwin Dubisette.

[25] It is pertinent to examine the judgment and the construct of the claimants' deed. The area in dispute then and now formed part of the estate of John Dubisette. John Dubisette died leaving his three children namely Cedric (Frederick), Francis and Angello Dubisette. Field J noted that Cedric and Angello died in 1945 and 1936 respectively but there was no evidence of Cedric Dubisette's death. However, it is the evidence that Cedric (aka Frederick) Dubisette, who was the father of Anna Dubisette, died in 1914 prior to Francis and Angello Dubisette.

[26] Angello and Francis both had illegitimate children living on the said property. It is the evidence that Angello and Francis Dubisette entered into a lease with Lionel

Vivien Henry for a period of thirty years from 1929 which would have been after the death of Frederick in 1914.

- [27] The illegitimate children of Angello and Francis were not entitled under the law of intestacy. Lowman Mc Intyre was one of the illegitimate children of Francis Dubisette. Field J in his judgment stated that Lowman Mc Intyre exercised control and was generally in charge of the entire land. Lowman died in 1956 leaving a will devising the three acres of land to his children. Field J found that Lowman Mc Intyre had no legitimate interest in the land that he could purportedly convey to his children.

- [28] Field J stated that the defendant Edwin Dubisette, illegitimate son of Angello Dubisette, obtained permission from Elizabeth Hyacinth (daughter of Francis Dubisette and sister to Lowman) to build a house on the spot where Angello's house, which was destroyed by hurricane, was previously built.

- [29] With respect to the lease entered into by Angello and Francis Dubisette with Lionel Vivien Henry, Field J found that lease payments were made to Elizabeth Hyacinth and thereafter to the executor of Lowman, Theodore.

- [30] The judgment of Field J is clear that although Angello and Francis Dubisette and their illegitimate children were not legally entitled to succeed under the estate of the late John and Frederick Dubisette, they remained in actual possession of the lands.

- [31] The judgement of Field J acknowledged that Cedric, also known as Frederick, was the person entitled to the land under the law of intestacy. Frederick Dubisette died on 26th October 1914 leaving Anna Theresa Dubisette, his only lawful child and heir to his estate. On 20th August 1968, Anna Theresa Dubisette obtained a Grant of Letters of Administration in the Estate of Frederick Dubisette, and one year later in 1969, executed the said deed of assent.

- [32] Mr. Dickon Mitchell, counsel for the second defendant, posits that Anna could not have asserted her father's long occupation of the land as she could not identify the source of her information having regard to her age at the date of her father's death.
- [33] The judgment of Field J clearly stated that Cedric (Frederick) was entitled to the estate of his deceased father. The court is of the view that the Anna as Administratrix and beneficiary of her father's estate could not have claimed title on long possession. The deed of assent dated 13th May 1969 based on long occupation and obtaining statutory right is inconsistent to Frederick Dubisette's right of ownership as beneficial owner under his father's estate.
- [34] According to **J T Farrand in Contract & Conveyance**¹, a good root of title is an instrument of disposition which must deal with or prove on the face of it, without the aid of extrinsic evidence, the ownership of the whole legal and equitable estate in the property sold; contain a description by which the property can be identified; and show nothing to cast any doubt on the title of the disposing parties.
- [35] A root of title such as a mortgage, transfer or conveyance is a secure title document to commence the chain of ownership which will end with the current owner. The deed on which the claimants rely is not a conveyance. It is, at best, a vesting deed, purportedly transferring property from the Estate of Frederick Dubisette to Anna Theresa Dubisette. No reference is made in the deed to any title document but only to Frederick Dubisette's possession of the property by, the very party executing and benefitting from the deed, Anna Theresa Dubisette.
- [36] Mr. Darshan Ramdhani QC for the claimants relies on the following quotation from Halsbury Laws to buttress his argument that the claimants' deed of assent is a proper root of title. It reads:

“A conveyance on sale or legal mortgage which satisfies the above requirements is the best root of title because it effectively offers a double

¹ 4th Edn, Oyez Longman.

guarantee on the title as the buyer or lender under the root document would also have investigated title over a period of at least 15 years which therefore provides the present buyer with the certainty of the soundness of the title over a period of at least 30 years. In the absence of a conveyance on sale or a legal mortgage, the root of title may be either a voluntary conveyance or an assent dated after 1925 both of which give effect to gifts of the land. Investigation of title may not have been carried out at the time of those transactions, and they therefore do not give the double guarantee on the title which is given by a conveyance on sale or legal mortgage.”²

- [37] The starting point is that a good root of title is a document which deals with or shows the ownership of the whole and equitable interest in the land with adequate description of the property. The root of title must not contain anything to cast any doubt on the title. In Grenada, a root of title must be at least thirty years or less than thirty years in cases of land in respect of which title was registered under the Possessory Titles Act, 2016.
- [38] Mr. Ramdhani QC is of the view that the court should consider the English Provision making reference to the reliance on voluntary conveyance or an assent dated after 1925 both of which give effect to gifts of the land as a good root of title. The UK provisions although recognising either a voluntary conveyance or an assent dated after 1925 both of which give effect to gifts of the land, went further to state that investigation of such title may not have been carried out at the time of those transactions, and they therefore do not give the double guarantee on the title which is given by a conveyance on sale or legal mortgage.
- [39] The court notes the amendment to the Grenada Conveyancing Act did not incorporate the provisions in the UK Act which acknowledged a deed of assent as a good root of title. Further, even if the court were to accept that the vesting assent is capable of proving a good root of title, it is of the view that there are doubts raised in the vesting assent on which the claimants rely to assert title which leads the court to conclude that it is not a proper document rooting the claimants’ title.

² Halsbury’s Laws of England, (5th edn., 2008) vol. 23, para 114

[40] Firstly, there is no legal document evidenced in the said deed which grounds the root of title of the property. Secondly, other than the bare assertions made in the deed, there is nothing before the court to substantiate the claimant's assertion of her father's title through long possession giving rise to a statutory right giving the fact that he died in 1914.

[41] As indicated before, the judgment of Field J acknowledged Frederick Dubisette as the beneficiary of his father's estate. The assertion of Anna Dubisette as Administratrix of Frederick Dubisette vesting into herself as beneficiary does not refer to her father's entitlement as beneficiary of his father, John Dubisette's estate. As indicated earlier, the deed asserts that Frederick Dubisette became owner by virtue of long possession and obtained a statutory right which is inconsistent with ownership as a beneficiary. Accordingly, the vesting assent cannot be considered as a good root of title. The claimants have therefore failed to prove that the Estate of Anna Theresa Dubisette is the paper title owner of the property.

Whether Anna Theresa Dubisette or the claimant were in possession of the disputed land

[42] Slade J in **Powell v McFarlane**³: held:

“If the law is to attribute possession of land to a person who can establish no proper title to possession, he must be shown to have both factual possession and the requisite intention to possess...”

[43] The claimants, in demonstration of factual possession, state that people occupied land, purportedly within the Estate of Anna Theresa Dubisette, as tenants, and were paying rents. For instance, as stated in paragraph 13 hereof, the claimant avers that he leased part of the land to “Roberts” to operate a chair rental business, as well as to Charles Viechweg and Yvonne Ferguson to operate a water sports business, and that he has also permitted Hayley Mitchell, son of Beryl Mitchell, to reside on the land within the Estate of Anna Theresa Dubisette.

³ (1977) 38 P & CR 452.

[44] Despite the claimants' contentions, they do not demonstrate how they have exercised control over the disputed land which the defendants now assert legal rights over, nor have they proffered any proof of its rental.

[45] Through the witness testimonies before the court, the agreed history of the occupation of the property among the parties is as follows:

- (1) Vivien Henry
- (2) Otways
- (3) Tom/Thomas Delves
- (4) Michael Carvajenie (Frenchman)
- (5) Eugene Mc Intyre
- (6) Dennot Mc Intyre through Eugene Mc Intyre

[46] There is nothing before the court to demonstrate that any of the above occupancies were with the permission, license or authority of the claimants, or Anna Theresa Dubisette, or her predecessors. Accordingly, there is no evidence before the court that suggests that the claimants, Anna Theresa Dubisette and Frederick Dubisette were in actual physical possession of the disputed land.. evidence that Frederick Dubisette died in 1914 even before the decision of Field J made in 1965.

[47] It is the evidence that Frederick Dubisette's surviving brothers and their illegitimate children took full possession and exercised control of the property and leased the building on the said land to various tenants. It is the claimants evidence that Anna Theresa Dubisette started a survey in 1955 to allocate land to her illegitimate siblings. This the court may view as efforts made in light of the urging of Field J to make arrangements on a Christian basis. At the trial, the first claimant was asked whether his mother or himself ever collected rent and he said one Wayne Dubisette collected the rent after the Otway's left but failed to provide any evidence to buttress his assertion.

[48] The first claimant further stated that he returned to the State of Grenada in 1986. He admits that Eugene was in possession and operated the business after the French man left. The claimants obtained a Grant of Letters of Administration in 2003 but did not take any action against the defendants until the filing of this claim in 2007.

[49] It is the evidence, and the court accepts that Eugene Mc Intyre had been in open possession and performing acts of ownership without accounting to the claimants. There is no evidence before the court that Anna Dubisette took any action to dispossess the previous occupiers of the disputed lot. Thus, the claimants in the instant case have failed to prove the factual possession of the disputed land.

Whether the claimants' claim is barred by virtue of sections 4 and 27 of the Limitation of Actions Act

[50] **Section 4 of the Limitations of Actions Act CAP 173** provides that:

“No person shall make an entry or distress, or bring an action to recover any land, but within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to some person through whom he claims, or, if the right has not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to the person making or bringing it.”

[51] Further, **Section 27 of the Limitation of Actions Act CAP 173** states:

“At the determination of the period limited by this Act to any person for making an entry of distress or bringing an action, the right and title of that person to the land for the recovery whereof the entry, distress, or action, might have been made or brought within that period shall be extinguished.”

- [52] The right of action to recover land is barred whenever twelve years have elapsed from the time when any right of action accrues⁴. Time begins to run against an owner entitled in possession only when he/she has been dispossessed or has discontinued possession and adverse possession of the land has been taken by someone else⁵.
- [53] In **Powell v Mc Farlane**⁶ Slade J defined factual possession as follows:
- "(3)
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., but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."
- [54] The case for the defendants reveals that there was no assertion of ownership by the claimant against the defendants prior to the filing of this 2007 action. The claimant, by his own witness statement and that of his witness Lewis Charles confirms that Eugene Mc Intyre was in possession of the property during the 1980s. The form of conveyance to the claimants' predecessor and the failure to establish possession of the disputed land goes contrary to the claimants' claim.
- [55] It is clear on the evidence that Eugene Mc Intyre had acquired complete and exclusive control of the lot in dispute. He leased the lot to Dennot Mc Intyre, the second defendant. Dennot Mc Intyre converted the existing building in part concrete in 2005 after hurricane Ivan and has been operating a popular restaurant from 1991.
- [56] The deceased Eugene McIntyre has been in open, continuous, exclusive and peaceful possession of the disputed land in excess of twelve years. It is clear from the facts and history of this case that it can be established that the claimants are barred from pursuing this claim through the operation of Sections 4 and 27 of the Limitation of Actions Act.

⁴ JA Pye (Oxford) Ltd & Ors v Graham and Another [2002] 3 WLR 221, 229.

⁵ Gordon Charles v Clarie Holas GDAHCV1996/0151.

⁶ (1977) 38 P & CR 452.at pp 470-471

[57] Dennot McIntyre occupation of the disputed lot is consistent with his leasehold interest in the valid registered lease entered into between himself and Eugene McIntyre, deceased.

[58] For the foregoing reasons, the claimants have failed to satisfy their claim on a balance of probabilities and the claim accordingly stands dismissed.

ORDER

[59] It is ordered and directed as follows:

- (1) The claimants' claim against the first and second defendants for possession of the lot of land situate at Grand Anse comprising of approximately 6,000 square feet stands dismissed.
- (2) The claimants' claim that the lease dated 3rd June 1996 between Eugene McIntyre of the one part and the second defendant, Denoit McIntyre of the other part is null and void, stands dismissed.
- (3) Prescribed Costs in the sum of \$7,500.00 to be paid to the defendants respectively within sixty (60) days.

Agnes Actie
High Court Judge

By the Court

Registrar