

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

GRENADA

CLAIM NO: GDAHCV2016/0411

BETWEEN

VERA BARRITEAU

(Administratrix in the estate of Sislyn, also spelt as Cislyn Burris deceased)

Claimant

and

DENIS THOMAS

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms Lawrence Griffith for the claimant

Ms Sandina Date for the defendant

2022: March 1

ORAL RULING

- [1] **ACTIE, J.:** The claimant, Vera Barriteau, as Administratrix of the estate of the late Sislyn, also spelt as Cislyn Burris, filed a fixed date claim on 29th November 2016 against the defendant, Dennis Thomas, seeking (i) a declaration that the claimant is entitled to possession of the lot of land situate at Paradise in the parish of Saint Andrew measuring 21,780.00 square feet (ii) an order that the defendant forthwith quit and deliver possession of the said land (iii) an injunction restraining the defendant's entry or exercising any acts of ownership thereon, among other reliefs.

Background facts

- [2] The deceased, Cislyn Burris, was in an intimate common law relationship with Allan Trotman, the defendant's father. Cislyn Burris made a final payment to the Government of Grenada for the purchase of the lot of land in dispute in 1972 and had an equitable interest in the land as title had not been vested. The title was conveyed to the claimant as Administratrix of Cislyn on 14th April 2015.
- [3] It is the evidence that Allan Trotman had paper title to a contiguous parcel of land adjoining the land in dispute. The claimant, defendant and defendant's witnesses all asserted that Allan Trotman was in dominant control and possession of both his lot and the contiguous lot paid for by Cislyn. He cultivated crops as owner until 1987 when he migrated to Trinidad.
- [4] The claimant alleges that Allan Trotman was in occupation as a licensee having obtained permission from Cislyn. The defendant denies that a licence existed and pleaded that his father provided Cislyn with the proceeds of sale since it was a policy of the government that persons were not permitted to buy more than ½ acre of land.
- [5] The court does not accept either the claimant's or the defendant's evidence in relation to the nature of Allan Trotman's occupation. The claimant admitted that she left Grenada at the age of 19 to pursue studies and worked in United Kingdom all her life. She admits not to have known the terms of Allan Trotman's occupation. All she knew was that Allan Trotman had full control of the said lot. The defendant on the other hand was a minor at the time and was not in a position to state the nature of his father's arrangement with Cislyn with regard to the purchase of the land.
- [6] What is constant in the evidence is that Allan Trotman was in exclusive possession and control of the disputed lot. If there was a license as contended by the claimant, then the licence would have terminated on the death of Cislyn in 1982. The Court of Appeal in **Winter v Richardson**¹ held that a gratuitous or bare licence is revoked

¹ ANUHCVP 2006/025

by the death of the licensor/licensee or by an assignment of the land over which the licence is granted².

[7] It is the evidence that Allan Trotman left the property in 1987. The defendant remained in possession of the land and continued farming until present. It is also the evidence that one Veda obtained letters of administration for the estate of the deceased Cislyn in 1988 and took no action to remove the defendant from the disputed lot. The defendant remained in uninterrupted open possession of the land without paying rent or accounting to anyone. The defendant's possession remained uninterrupted for twenty-seven (27) years until the claim was filed in 2016.

[8] **Sections 4 and 27 of the Limitation of Actions Act** provide that a claim for possession or right of action dealing with land must be commenced within twelve years of the date of the accrual of the cause of action.

[9] The House of Lords in **JA Pye (Oxford) Ltd and others V Graham**³ citing Slade J **Powell v Mc Farlane** at pp 470-471, defined factual possession as follows:

"(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. *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. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the*

³ 2002] 3 AER 865

land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."

[10] It is the evidence that the defendant has been in sole and continuous possession of the lot of land since 1987 without paying rent or acknowledging the now paper title owner. He has over the years cultivated the land planting both short- and long-term crops. He has established an irrigation system for his farm and has always been dealing with the land as an occupying owner would have been expected without accounting to anyone for the said parcel of land.

[11] The court, applying the legal principles to the facts, is of the view that the claimant has failed to prove her case on a balance of probabilities and accordingly the claim stands dismissed.

ORDER

[12] It is ordered and directed as follows

- (1) The claimant's claim stands dismissed.
- (2) Prescribed Costs pursuant to CPR 65.5 (2) (b) unless otherwise agreed by the parties.

Agnes Actie

High Court Judge

By the Court

Registrar