

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT VINCENT AND THE GRENADINES

SVGHCVAP2016/0013

BETWEEN:

GIDEON BILLINGY

Appellant

and

JOEL WOODLEY

Respondent

Before:

The Hon. Mde. Louise Esther Blenman

Justice of Appeal

The Hon. Mr. Mario Michel

Justice of Appeal

The Hon. Mde. Margaret Price-Findlay

Justice of Appeal [Ag.]

Appearances:

The Appellant in person

The Respondent in person

2022: January 27;
July 29.

Civil appeal – Land law – No case submission – Locus standi – Section 7(2) of the Possessory Titles Act, 2004 – Whether the entry of an appearance by the respondent was sufficient to afford him locus standi – Adverse possession - Application for declaration of possessory title – Whether the judge erred in finding that the appellant had not established adverse possession by his father - Relativity of title – Whether transmission of possessory rights is permitted under the laws of Saint Vincent and the Grenadines – Interruption of possession – Whether the judge erred in finding that the appellant's eight-month absence from the country interrupted his possession of the land – Whether section 8(1) of the Possessory Titles Act, 2004 is a mandatory provision – Whether the judge erred in finding that the failure to comply with section 8(1) was fatal to the application

On 3rd February 2010, the appellant made an application under section 3 of the Possessory Titles Act, 2004 for a declaration of possessory title to a parcel of land. The appellant claimed that he or he and his father before him had been in exclusive and undisturbed possession of the land for at least twelve years. He averred that his father had occupied the land for over 30 years before his death in 2005, planting plantain and other crops, and that he worked with his father on the land since 1980. He averred that after his father's death he continued to work the land by planting plantain and other crops. When the appellant's father died in 2005, the appellant was not in Saint Vincent and the Grenadines but was sailing on a cruise ship for about eight months. He contended that he retained physical control of the land during this period as he had plantains growing on the land. It was the appellant's contention that he inherited 25 years of adverse possession from his father, and added 5 years of adverse possession by him after his father's death.

The respondent entered an appearance through his legal practitioner and made a no case submission in response to the application. He advanced the following arguments: (i) no evidence was put forward by the appellant that when he entered on the land for the first time, he had the intention to own the land; (ii) there was no evidence that the appellant ever had exclusive possession of the land - his evidence was that his father was in occupation of the land for over 30 years; (iii) the appellant only had exclusive possession of the land for 5 years – from 2005 to 2010; (iv) it was not clear from the evidence when the appellant became an adult so as to be able to claim possession of the land in his own right; (v) any possession of the land by the appellant was interrupted by his absence from the country for eight months in 2005; and (vi) the application for the declaration of possessory title was not in compliance with the Possessory Titles Act as the appellant failed to serve one of the owners of land adjoining the disputed land with notice of the application, as required by section 8 of the Act.

The learned judge found that the appellant had not satisfied the court to the requisite standard of proof that he had enjoyed exclusive and undisturbed factual possession of the disputed land with the intention to possess it as owner for twelve or more years. She accepted the respondent's submission that the appellant's possession of the land was interrupted in 2005 when he left the country for about eight months, during which period his father had died. Therefore, only five years would have elapsed between the appellant's return to Saint Vincent and the Grenadines in 2005 and his application for the declaration in 2010. The learned judge also noted that no evidence was led by the appellant as to when he became an adult and therefore capable of being in possession of the land with the requisite intention. Accordingly, the no case submission was upheld and the application for a declaration of possessory title was dismissed.

Being dissatisfied with the judgment of the court below, the appellant has appealed to this Court. The main issues that arise for determination are: (i) whether the respondent had locus standi in the proceedings before the court below; (ii) whether the appellant and/or his father was or were in adverse possession of the disputed land; (iii) whether any possession by the appellant was interrupted by his absence from Saint Vincent and the Grenadines for approximately eight months in 2005; and (iv) whether the appellant's non-compliance with section 8(1) of the Possessory Titles Act invalidated his application for a declaration of possessory title to the land.

Held: dismissing the appeal; affirming the order of the trial judge upholding the no case submission; and making the orders set out at paragraph 81 of the judgment, that:

1. The entry of an appearance through a legal practitioner pursuant to section 7(2) of the **Possessory Titles Act** is sufficient to give a party the requisite locus standi to oppose an application for a declaration of possessory title. Thus, the appellant's contention that the respondent needed a grant of letters of administration to represent his deceased grandparents and to participate in these proceedings was without merit. The respondent never sought to institute proceedings or make an application to this Court; he simply entered an appearance pursuant to section 7(2) of the Act, as he was required to do, as a person claiming an interest in the disputed land.

Section 7(2) of the **Possessory Titles Act, 2004** Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009 applied; **Delcine Thomas v Victor Wilkins** ANUHCv2007/0530 (delivered October 29th 2009, unreported) distinguished; **Millburn-Snell v Evans** [2011] EWCA Civ 577 distinguished; **Patricia Bedminster v Marianna Cuffy** DOMHCv2016/0132 (delivered 15th August 2017, unreported) distinguished.

2. In order to establish at least a prima facie case of adverse possession, the elements of adverse possession must be established, or at the very least, alleged. The appellant did not allege, at any stage of the proceedings, that his father was in possession of the land, that his father's occupation of the land was exclusive and undisturbed, or that his father ever had the intention to possess the land as the owner thereof. He also offered no evidence as to when his father commenced his occupation of the land or the circumstances under which he came into occupation of the land – whether by lease or license, or as a squatter. Therefore, the learned judge was entitled to find that the appellant had not established adverse possession of the land by his father.

Section 2 of the **Possessory Titles Act, 2004** Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009 applied.

3. The English property law principle of relativity of title which makes provision for the transmission of possessory rights between persons and which enables a claim to adverse possession to be based on successive adverse possessors, who may each be claiming title based on their occupation of the land, does not apply in Saint Vincent and the Grenadines. Therefore, the appellant's claim that he inherited 25 years of adverse possession from his father, to which he added 5 years of his own after his father's death in 2005, has no basis under the laws of Saint Vincent and the Grenadines. He would have had to establish adverse possession in his own right or by his father, or even by the 2 of them on a joint application for a declaration of possessory title.

Willis v Earle Howe [1893] 2 Ch. 545 distinguished; **Ellis v Lambeth London Borough Council** (1999) 32 HLR 596 distinguished; **Perry v Clissold** [1907] AC 73 distinguished.

4. No evidence was given by the appellant or his witness of physical control by him of the disputed land and, if there had been any physical control prior to the appellant's eight-month absence from the country, there was certainly none showing that it had continued during his absence and, especially during the period when his father had died and he was out of the country. Maintaining plantains on the disputed land during his absence did not unequivocally show an intention to possess and exclude the paper owners. Therefore, the learned judge did not err in finding that his departure from the country and his remaining out of the country for eight months in 2005 was an interruption of possession.

Bligh v Martin [1968] 1 WLR 804 distinguished; **Buckinghamshire CC v Moran** [1990] Ch. 623 distinguished.

5. Compliance with section 8(1) of the **Possessory Titles Act** is not merely a procedural requirement. It is a mandatory provision and subsection (2) clearly stipulates that non-compliance with subsection (1) means that a declaration of possessory title cannot be granted by the court. The appellant's failure to serve one of the adjoining landowners with notice of his claim to adverse possession of the land and his application for a declaration of possessory title pursuant to section 8(1) of the Act was fatal to his application.

Section 8(1) of the **Possessory Titles Act, 2004** Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009 applied.

JUDGMENT

- [1] **MICHEL JA:** One of the objectives of the land registration and titling project introduced into the land law of the Eastern Caribbean in the 1970s and 1980s was to map out and parcel all lands in the countries which enacted the relevant legislation and to give registered title to persons who satisfied the land adjudicators that they were the owners of the land. Although the project was very successful in mapping out and parceling lands and in giving registered title to the paper title owners who claimed their land during the land registration process, there were in most, if not all, of the countries numerous parcels of land which remained without registered owners or whose registered owners were paper title owners not in possession or occupation of the land. In some cases, the occupiers of the land were

descendants of persons who were in occupation of the lands in all different capacities – as lessees, licensees, squatters, persons planting and harvesting crops on lands of another, sometimes with and sometimes without the permission of the paper title owner or even sometimes with the permission of someone who may have been appointed or assumed the role of caretaker of the land. Forty to fifty years on, some of the children or grandchildren of these occupiers in their different capacities are claiming the lands by long possession, whilst some of the children or grandchildren of the paper title owners are seeking to dispossess or evict the current occupiers of the land. Thus has spawned in these islands numerous land disputes pitting paper title owners or their descendants against long-standing occupiers of the disputed lands, or their descendants, over the ultimate ownership of the lands. This is one such case.

Background

- [2] On 3rd February 2010 the appellant, Gideon Billiny, made an application under section 3 of the **Possessory Titles Act, 2004**¹ (hereafter “the Possessory Titles Act” or “the Act”) for a declaration of possessory title to a piece or parcel of land measuring 52,790 square feet (hereafter “the disputed land” or “the land”). In his application, the appellant claimed to be in possession of the land. He claimed that he or he and his father before him had been in exclusive and undisturbed possession of the land for twelve years, as appears by the following: (1) that he is the son of Benjamin Billiny who had occupied the disputed land; (2) that after the death of his father he (the appellant) continued to cultivate the land up to the time of his application for the declaration and that he had treated the land as his own since 1985; and (3) that during the time he occupied the land he paid no rent to anyone.
- [3] There were several affidavits filed by various persons in support of and in opposition to the appellant’s application for the declaration of possessory title to the land, but only two persons gave evidence at the trial of the matter – the appellant himself and

¹ Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

Marva Findlay, with whom he had an intimate relationship and who had borne him a child.

- [4] In his affidavit in support of his application, the appellant averred that he was the son of Benjamin Billiny, who for over 30 years before his death in 2005, had occupied the disputed land. He averred that his father planted plantains and other crops on the land and that he worked with his father on the land since 1980. He averred that after his father's death he continued to work the land by planting plantain and other crops on the land and that he was claiming possession of the disputed land.
- [5] The appellant's affidavit was admitted at the trial as his evidence in chief. Under cross-examination, he testified that his father had occupied the land prior to his death in 2005. He also testified that he was working the land with his father from the time he was 10 years old and that after his father's death he continued in possession of the land.
- [6] The appellant's witness, Marva Findlay, averred in her affidavit that she had known the appellant for about 19 years and that since about 1985 she used to see him going with his father to work the land - planting potatoes, peanuts, yams, plantains, tomatoes, cabbage, and other crops. She averred that after his father's death, the appellant continued to work the land. She averred too that she was aware of the appellant's application for a declaration of possessory title to the disputed land and that she fully supported it.
- [7] Ms. Findlay's affidavit was admitted at trial as her evidence in chief. Under cross-examination, she testified that when the appellant first went on the land with his father, she did not know how old he was then. She testified too that when the appellant's father died in 2005, the appellant was not in Saint Vincent and the Grenadines, but was sailing on a cruise ship. She testified that the appellant had only made one voyage on the cruise ship, which she said in re-examination was for

about 8 months. She testified that when the appellant was out sailing, his father continued to work the land.

[8] This was the evidence presented by the appellant in support of his application for a declaration of possessory title to the disputed land. Although there were 2 other affiants who swore to affidavits in support of the appellant's application for a declaration of possessory title, I do not refer to them or consider their contents, because neither of the affiants gave evidence at the trial to enable them to be cross-examined on the contents of their affidavits.

[9] Mr. Woodley, who at some stage of the proceedings was labelled "the respondent", declined to present any evidence in opposition to the appellant's application, although there were affidavits sworn to by him and 3 other persons in opposition to the application. Mr. Woodley opted instead, through his counsel, Mr. Carlyle Dougan QC, to make a no case submission.

No case submission

[10] In the no case submission, Mr. Dougan QC submitted that, in accordance with the **Possessory Titles Act**, an applicant for adverse possession of land must prove that when he entered on the land for the first time, he had the intention to own the land. He submitted that there was, however, no evidence of this from the appellant or his witness. Mr. Dougan submitted too that there was no evidence that the appellant ever had exclusive possession of the land. His evidence was that his father was in occupation of the land for over 30 years, that from since he was a boy he went on the land with his father, and that when his father died in 2005, he continued to work the land. This, Mr. Dougan submitted, means that the appellant only had exclusive possession of the land for 5 years – from 2005 to 2010 - when he made his application for a declaration of possessory title to the land. Mr. Dougan also submitted that it is not clear from the evidence when the appellant became an adult so as to be able to claim possession of the land in his own right, with the intention to possess it as owner to the exclusion of all else, including his father. He

also submitted that any possession of the land by the appellant would have been interrupted by his departure from the country and remaining out of the country for some 8 months in 2005. Mr. Dougan submitted too that the application for the declaration of possessory title was not in compliance with the **Possessory Titles Act** because the appellant had failed to serve one of the owners of land adjoining the disputed land with notice of the application for the declaration of possessory title, as required by section 8 (not 7) of the Act.

[11] Section 8(1) of the Act reads: 'The applicant shall, within twenty-one days after filing the application, cause a copy of the notice referred to in section 7 to be ... served on all owners or occupiers of property adjoining the piece or parcel of land to which the application relates'. Subsection (2) then states that: 'An order containing a declaration of possessory title shall not be granted unless – (a) the provisions of section 7 and this section are complied with; and (b) six weeks have expired since the service or posting of that notice'. The notice referred to in section 7 is a notice by the applicant that he is claiming to have acquired title by adverse possession of the disputed land and that he has applied to the court for a declaration of possessory title to the land.

[12] In answering Mr. Dougan's no case submission, counsel for the appellant, Mr. Joseph Delves, contended that an applicant for a declaration of possessory title does not need to establish that he had an intention to own the land, but only an intention to possess it and that the appellant had established that he had occupied the land and made full use of it in the way in which an owner would. He contended that 'in a normal case he would not have to adduce additional evidence to establish that he had intention to possess'.

[13] Still in response to the no case submission, Mr. Delves submitted that there need not be exclusivity in the possession of the land and that one squatter can transfer his title to another and can sell his years to another squatter. Mr. Delves submitted that adverse possession is a divisible interest; that the appellant was working on the

land with his father; that his father was in adverse possession of the land before his death in 2005; and that when his father died, he continued to work the land by planting plantains and other crops on the land. Mr. Delves submitted that the appellant simply continued the adverse possession that was begun by his father.

[14] On the issue of the non-compliance by the appellant with section 8 of the Act, Mr. Delves argued that the appellant was in substantial compliance with the requirements of the Act, that compliance with section 8 was just a procedural requirement, and that the court can look at the substance and justice of the matter whereupon it will be seen that Parliament's objective was merely to ensure that affected persons were aware of the application, which did happen in this case.

[15] Mr. Delves informed the court that the notice required by section 8(1) was served on the unserved adjoining landowner the day before the trial (which was over 6 years after the application was made for the declaration of possessory title). He then proceeded to make an oral application for an extension of time to serve the notice over 6 years after it was due to be served.

[16] In delivering judgment on the no case submission, the learned judge stated that the court must determine whether the appellant had established on a balance of probabilities that he had been in adverse possession of the disputed land for 12 or more years preceding his application for the declaration of possession. This, the judge held, meant that the appellant must prove that he had factual possession of the land of an exclusive and undisturbed nature for a continuous period of at least 12 years, accompanied by the requisite intention to possess it as owner.

[17] The learned judge found that, on the evidence presented by the appellant, he had not satisfied the court to the requisite standard of proof that he had enjoyed exclusive and undisturbed factual possession of the disputed land with the intention to possess it as owner for twelve or more years.

- [18] In arriving at this conclusion, the learned judge accepted the submission of Mr. Dougan that the appellant's possession of the land was interrupted in 2005 when he left the country and went sailing to an undisclosed location for about 8 months, during which period his father, who had allegedly been in occupation of the land for over 30 years, had died. This meant that any adverse possession of the land by the appellant would have to have been for 12 years preceding or twelve years following the interruption of his possession in 2005. Since, therefore, only 5 years would have elapsed between the appellant's return to Saint Vincent and the Grenadines in 2005 and his application for the declaration in 2010, the appellant would not qualify for the grant of a declaration of possession for any period after 2005.
- [19] The learned judge also found that, based on the evidence of the appellant and his witness, the appellant had accompanied his father to the land from since he was a child, at which stage he could not legally have been in possession of the land with the intention to possess it as owner. The judge found too that no evidence was led by the appellant to establish when he became an adult and therefore capable of being in possession of the land with the requisite intention. The learned judge found that the appellant would have had to attain adulthood by 1993 for him to have crossed that bar, because his possession would have been interrupted in 2005 and would not be continuous with any period after its interruption in 2005. But there was no evidence by the appellant or his witness as to what his age was in 1993 so as to determine whether he could even have had any intention to possess the land as owner. The judge found therefore that the appellant had failed to establish a critical element of his case and that the no case submission had to be upheld. The application for a declaration of possessory title was accordingly dismissed, with costs of \$2,500.00 to be paid by the appellant to the respondent, Mr. Joel Woodley, who had opposed the application throughout, from his first affidavit in April 2010 to his last one in December 2021.

The appeal

[20] Being dissatisfied with the judgment and orders of the learned judge, on 4th May 2016 the appellant filed a notice of appeal wherein he appealed the decision of the learned judge on the following 4 grounds:

- “(a) The learned trial judge erred in holding that the Appellant failed to establish adverse possession by himself and or his father. This essentially was a wrong finding that neither the Appellant nor his father was in adverse possession for 12 years.
- (b) The learned trial judge erred in holding that the Appellant’s possession was interrupted when he was at sea for eight months.
- (c) The learned trial judge erred in law in finding that lack of personal service on one adjoining landowner was fatal to the application. The application was advertised twice in two national newspapers, posted in a prominent place in the police station in the area where the subject land is situated, and posted in a prominent place in High Court Registry. This was notice to the world and was of such a nature that it came to the attention of the Respondent who does not even reside in the area.
- (d) The learned judge failed to consider or to properly consider that the Possessory Title Act itself allows procedural errors to be corrected.”

[21] Nearly 5 years after filing the notice of appeal, on 4th March 2021 the appellant filed an amended notice of appeal which added a fifth ground of appeal, as follows:

“The learned judge failed to consider or to properly consider the preliminary point that as the Respondent’s position was that the paper holders and true owners of the subject land were his grandparents, Jacob and Rebecca Woodley, he, the Respondent, could not maintain his standing in the matter as he was neither a paper owner of the subject land nor the personal representatives of either of his grandparents.”

[22] On 12th May 2021, the appellant filed written submissions in support of his appeal. No submissions were filed in response, but on 20th December 2021, Mr. Joel Woodley swore to and filed an affidavit in which he said that the appellant failed to comply with rule 62 of the Civil Procedure Rules 2000 in that he failed to file the required documents to prosecute his appeal, such as skeleton arguments. He also said in his affidavit that there is no merit in the appeal, because the appellant has

failed to disclose any reasonable ground upon which the learned judge's decision could reasonably be set aside.

[23] The contents of Mr. Woodley's December 2021 affidavit cannot be regarded as evidence in the case. It was filed well over 5 years after the trial had been completed and the notice of appeal filed by the appellant and there was no request for it to be admitted as fresh evidence upon the appeal. Mr. Woodley was also not called as a witness in the case, and in fact, Mr. Dougan opted to call no witnesses and to make a no case submission. In response to a question by the court, Mr. Dougan said that he would stand by his submission, meaning that he would offer no evidence if the submission was not upheld.

[24] The December 2021 affidavit of Mr. Woodley is not therefore evidence in the case but was treated as a submission in opposition to the appeal against the judgment of the learned judge declining to grant the declaration of possessory title. Indeed, Mr. Dougan's oral submissions in opposition to the appeal appear to have been based, at least in part, on the contents of the affidavit.

[25] I will now address each of the 5 grounds of appeal.

Ground 1

[26] With respect to the appellant's first ground of appeal, the appellant challenged the factual finding by the learned judge that the appellant had failed to establish adverse possession of the disputed land either by his father or by him.

[27] In his submissions in support of his appeal, the appellant submitted that his father was in adverse possession of the disputed land for over 30 years until his death in 2005. No evidence was given as to when his father's possession of the land commenced or the circumstances under which his father came to be in possession of the land. The appellant offered no more than a bald assertion to the court of his father's occupation of the disputed land, with nothing at all to back it up.

- [28] The appellant then founded his own claim to adverse possession of the disputed land on the basis that he 'inherited twenty-five (25) plus years from his father in 2005 along with five years after his death' which he says means that 'the time requirement for adverse possession was met quite easily'.
- [29] It is apparent from this submission that the basis on which the appellant grounded his claim for adverse possession of the disputed land is that his father had occupied the land for more than 25 years and that he inherited his father's adverse possession, to which he added his 5 years of adverse possession of the land after his father's death in 2005.
- [30] The appellant referred to 2 English cases to support his argument that he could inherit his father's adverse possession of the land by continuing to occupy the land after his father's death.
- [31] The first of the cases relied on by the appellant is the case of **Willis v Earl Howe**² where Kay LJ stated that '[a] continuous adverse possession for the statutory period, though by a succession of persons not claiming under one another, does, in my opinion, bar the true owner'.
- [32] The second case relied on by the appellant is the case of **Ellis v Lambeth London Borough Council**³, where the court of appeal appeared to accept the principle that, so long as the period of adverse possession is continuous, the adverse possession of successive trespassers may be lumped together to defeat the paper title to the property.

Ground 2

- [33] With respect to the appellant's second ground of appeal, the appellant challenged the finding by the learned judge that the appellant's possession of the disputed land

² [1893] 2 Ch. 545 at 553.

³ (1999) 32 HLR 596.

was interrupted when he was at sea for 8 months. His submission on this ground was, in essence, that he maintained a sufficient degree of physical control of the land whilst he was out at sea. He contended that his plantains were maintained on the land and that plantains take 9 months from planting to harvest. He contended that this unequivocally showed an intention to possess and to exclude the paper owners. The appellant submitted too that the learned judge wrongly concluded that possession was abandoned when he went sailing in 2005, when during that time his father was working the land up to his death in 2005 and that he (the appellant) continued possession when his father died. This, he submitted, means that possession was not interrupted.

- [34] The appellant referenced 2 English cases in support of his argument on the non-interruption of possession. The first of these cases is **Bligh v Martin**,⁴ where the court held that in very many cases possession cannot, in the nature of things, be continuous from day to day, and it is well established that possession may continue to subsist notwithstanding that there are intervals, and sometimes long intervals between the acts of the user. The second case is **Buckinghamshire CC v Moran**⁵ where Slade LJ opined that possession signifies physical control and intention and need not be physical possession.

Ground 3

- [35] With respect to his third ground of appeal, the appellant submitted that the judge erred in law in finding that the lack of personal service on 1 out of 4 adjoining landowners was fatal to the appellant's application for the declaration. He contended that the application was advertised twice in 2 national newspapers, posted in a prominent place in the police station in the area where the land is situated and was posted in a prominent place at the High Court Registry. This, he contended, was notice to the world and was of such a nature that it came to the attention of the respondent who does not even reside in the area, and that the lack of personal

⁴ [1968] 1 WLR 804.

⁵ [1990] Ch. 623.

service on the adjoining landowner did not give any unfair advantage to the appellant. He contended too that the lack of personal service constituted a procedural irregularity which should have been corrected by the trial judge.

[36] Counsel for the appellant referenced the case of **Theodora Williams v Daron Andrew**⁶ where Henry J, in giving judgment in the High Court in Saint Vincent and the Grenadines on an application for a declaration of possessory title, held that non-compliance with a particular provision of the **Possessory Titles Act** did not invalidate the application. Counsel, however, neglected to say that the validity of the application notwithstanding non-compliance with the relevant provision (contained in section 5(1) of the Act) is as a result of a provision in the very Act, in section 5(4), which specifically states that non-compliance with section 5(1) does not invalidate the application for a declaration and that the court can proceed to hear the application and make an order.

[37] Mr. Delves also referenced the case of **In the Matter of an Application for a Declaration of Possessory Title To Land by George Byron**⁷ where Henry J, in giving judgment in the High Court in Saint Vincent and the Grenadines on a similar application, held that several minor instances of non-compliance with the Act did not affect the validity of the application and the learned judge proceeded to grant the declaration for possessory title to the applicant. It is to be noted though that none of the instances of non-compliance were in respect of a provision in the Act which specifically states that a declaration of possessory title shall not be granted unless the particular provision has been complied with.

[38] Mr. Dougan, in response, submitted that quite apart from the failure of the appellant to prove adverse possession of the disputed land, the appellant's claim to a declaration of possessory title to the land would fail in any event because it was not

⁶ SVGHPT2012/0034 (delivered 23rd September 2015, unreported).

⁷ SVGHPT2013/0036 (delivered 1st February 2016, unreported).

in compliance with section 8(1) of the Act and so, by virtue of section 8(2), the application could not have been granted.

Ground 4

- [39] The fourth ground of appeal states that the learned judge failed to consider or to properly consider that the **Possessory Titles Act** itself allows procedural errors to be corrected. This ground appears not to have been elaborated by the appellant and was largely subsumed within ground 3, which has already been addressed.

Ground 5

- [40] The fifth ground of appeal was added almost 5 years after the notice of appeal was filed containing the 4 other grounds of appeal and it appeared to be the major thrust of the submissions of counsel for the appellant.
- [41] The appellant submitted that before a case is disposed of in the courts, the judge has to make certain preliminary findings; he must determine whether the applicant fulfilled the requirements of the relevant law; and whether the applicant and the respondent have legal standing before the court. The appellant submitted that the judge in the court below erred in law and in fact by not finding that the respondent, Joel Woodley, had no legal standing in this case. He submitted that Mr. Woodley could not act as the personal representative of his deceased grandparents (whom he alleged were the rightful owners of the land) without first obtaining a grant of probate, and that there was no evidence of a grant of probate. He submitted therefore that Mr. Woodley had no locus standi in the case and could not maintain a case on behalf of his grandparents. This, the appellant submitted, was an incurable nullity which the court cannot correct and which invalidates the respondent's no case submission.
- [42] The appellant referred to 3 cases which he stated that he was relying on to support his position. The first of these is the Antiguan case of **Delcine Thomas v Victor**

Wilkins⁸ where Blenman J (as she then was) held that a claimant who had not obtained a grant of letters of administration for an estate could not properly maintain her case on behalf of the estate. The second case is **Millburn-Snell v Evans**⁹ where the putative claimant died shortly before the commencement of proceedings and his relatives, purportedly acting as personal representatives, but without any grant of probate, instituted proceedings. The Court of Appeal of England & Wales held that, because the claimants had commenced proceedings purportedly on behalf of an intestate's estate without a grant of letters of administration, the proceedings were an incurable nullity and were struck out. The third case, out of Dominica, is the case of **Patricia Bedminster v Marianna Cuffy**,¹⁰ where a claimant sought to apply for letters of administration after she had commenced proceedings. Stephenson J held that the proceedings were commenced improperly and that it was an incurable defect which, in the circumstances of the case, rendered the claim a nullity and had to be struck out.

- [43] The appellant also referred to section 19 of the **Possessory Titles Act**, which applies the **Civil Procedure Rules 2000** to proceedings under the Act, and to Part 19 and 21 of the **Civil Procedure Rules**.

Questions to be answered

- [44] Having regard to the appellant's grounds of appeal and to his submissions in support of these grounds, the determination of this appeal will be contingent on a response to 4 questions which will be responded to in the following order: firstly, whether the respondent, Joel Woodley, had locus standi in the proceedings before the court below; secondly, whether the appellant and/or his father was or were in adverse possession of the disputed land; thirdly, whether any possession by the appellant was interrupted by his absence from Saint Vincent and the Grenadines for approximately 8 months in the course of 2005; and fourthly, whether the appellant's

⁸ ANUHCv2007/0530 (delivered October 29th 2009, unreported).

⁹ [2011] EWCA Civ 577.

¹⁰ DOMHCv2016/0132 (delivered 15th August 2017, unreported).

non-compliance with section 8(1) of the **Possessory Titles Act** invalidates his application for a declaration of possessory title to the disputed land.

Locus standi

- [45] On the issue of locus standi, all 3 of the cases to which the appellant referred were cases where someone instituted proceedings on behalf of the estate of an intestate without first obtaining letters of administration of the estate. The law on this is clear, that no one can institute proceedings on behalf of a deceased without first having been appointed as the personal representative of the deceased, whether by being named as the executor of the will of the deceased or by obtaining letters of administration of the estate of the deceased.
- [46] In this case, Mr. Woodley did not institute proceedings but became a party to the proceedings by virtue of an appearance entered by him pursuant to the notice issued by the appellant and in accordance with section 7 of the Act. The notice provided that 'all persons claiming an interest in the said land are required to enter an appearance in person or by his legal practitioner, within two (2) months from the date of the last publication of this Notice which is being published twice in the newspapers'. Unless there was an amendment of section 7 of the Act, section 7(2) provides that '[a] person who claims to have an interest in a piece or parcel of land to which an application relates may, within one month from the date of the last publication of the notice under subsection (1), enter an appearance at the Registry.' In accordance with an affidavit filed by the appellant on 5th April 2021, the last publication of the Notice was on 12th March 2010, and Mr. Woodley entered an appearance on 22nd March 2010. So whether the appearance was to be entered within 1 month or 2 months of the last publication of the notice, Mr. Woodley – as a person who claims to have an interest in the disputed land - had filed his appearance in time. As provided for in the appellant's notice, the appearance was entered by the legal practitioner for Mr. Woodley, Mr. Carlyle Dougan QC.

- [47] It is to be noted that the appearance entered by Mr. Dougan QC is stated to have been entered by 'Joel Woodley and the other heirs of Rebecca Adina Woodley and Jacob Woodley, both deceased ... to oppose the application of Gideon Billings of Yambou for the Declaration of Title to [the] Land'. It is to be noted as well that Mr. Woodley and 3 other persons filed affidavits disputing the claim of the appellant to adverse possession of the land by him and/or his father.
- [48] Significantly, neither Mr. Joel Woodley nor any of the other persons opposing the appellant's application for a declaration of possessory title to the disputed land applied for any declaration or any other order from the court in relation to the disputed land. They did no more than that which they were permitted, indeed required, to do by virtue of the notice issued by the appellant and the provision contained in section 7(2) of the Act.
- [49] In the circumstances, Mr. Woodley, who participated in the proceedings from his initial appearance in March 2010 to his presence at the trial in March 2016, and whose participation was not challenged by the appellant until the filing of a new ground of appeal in March 2021 – 11 years after his entry of an appearance – had the locus standi to dispute the appellant's claim of adverse possession of the land and to oppose his application for a declaration of possessory title to the land.

Adverse possession

- [50] The second question which I asked myself to guide my disposition of this appeal is whether the appellant and/or his father was or were in adverse possession of the disputed land. The answer to this question must begin with the definition of adverse possession.
- [51] Adverse possession is defined in the **Possessory Titles Act** as follows:
- “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".¹¹

[52] In his submissions in support of his appeal, the appellant contended that his father was in occupation of the disputed land for over 30 years, planting plantain and other crops on it. He contended too that he worked with his father on the land since 1980 and that after the death of his father he continued to work the land by planting plantain and other crops on it. He also contended that he treated the land as his own since 1985. He submitted that he or he and his father has or have been in exclusive and undisturbed possession of the land for 12 years. On this basis, the appellant claimed possession of the disputed land.

[53] Whatever claims were made or submissions advanced by the appellant, in order to establish at least a prima facie case of adverse possession, the elements of adverse possession must be established or, at the very least, alleged. The appellant did not however even allege in his affidavit or viva voce evidence, or that of his witness, that his father was in possession of the land, as opposed to occupying it 'for over 30 years planting plantain and other crops on the said land'. He did not establish, or even allege, that his father's occupation of the land was exclusive and undisturbed. He also did not establish, or even allege, that his father ever had the intention to possess the land as the owner thereof. The appellant also offered no evidence as to when his father commenced his occupation of the land or the circumstances under which he came into occupation of the land – whether by lease or license of anyone, or as a squatter.

[54] On this state of the evidence, the learned judge was entitled to find as she did that the appellant had not established adverse possession of the land by his father.

[55] The next question then was whether the appellant had established (even a prima facie case) that he (the appellant) had adverse possession of the land, in

¹¹ Section 2 of the Act.

accordance with the elements of adverse possession set out in the definition contained in section 2 of the Act.

[56] In his affidavit in support of his application for a declaration of possessory title, the appellant alleged that he worked with his father on the disputed land since 1980 and that after his father's death in 2005 he (the appellant) 'continued to work the land by planting plantains and other crops on the said land'.

[57] In his testimony in court (under cross-examination by Mr. Dougan) the appellant testified that his father occupied the land prior to his death in 2005, that he was working the land with his father from since he was 10 years old and that after his father's death he continued in possession of the land.

[58] In his application for the declaration, it is stated that the appellant treated the land as his own since 1985. The appellant did not say so either in his affidavit evidence or in his viva voce evidence, nor did he offer any evidence whatsoever as to how or why he treated the land as his own since 1985 when his evidence was that his father occupied the land prior to his death in 2005 and that he (the appellant) continued to work the land (as per his affidavit evidence) or that he continued in possession of the land (as per his testimony) after his father's death. Moreover, in his affidavit evidence he averred that he worked with his father on the land since 1980 and in his testimony in court he said that he was working the land with his father since he was 10 years old. This would make him 15 years old in 1985 and so he could not legally have had the requisite intention to possess the land as the owner thereof. This does not, however, establish that he was 18 years old in 1988 and could then have formed an intention to possess the land as owner, only that, based on his own evidence, he could not legally have formed the requisite intent at the time that he claimed to have treated the land as his own.

[59] Before returning to the question of whether the appellant had adverse possession of the land by the time he applied for the declaration, I want to address one of the

determinations made by the trial judge. The learned judge stated (at paragraph 13 of her judgment) that there was no evidence as to when the appellant had become an adult, and that by failing to prove his age he had failed to establish a critical element of the case and that he therefore failed in his duty to prove his case.

[60] I am of the view that in making this finding the learned judge had failed to give consideration to a factor which she ought to have considered, that is, that if – according to his evidence – the appellant was 10 years old in 1980 he had to have been 18 years old in 1988 (though not in 1985) and so the judge was plainly wrong in finding that he had failed to prove that he was an adult so as to be able to make a claim for adverse possession of the disputed land in 2010, or even by 2005. That the appellant must have been 18 years old by 2005 or 2010 can properly be inferred from the evidence and the learned judge erred in her finding on this issue. But this is not determinative of the issue. The appellant's challenge is to establish that he had adverse possession of the disputed land for at least 12 years before 2010 or 2005. His bald statement, made for the first time under cross-examination by Mr. Dougan, that he treated the land as his own since 1985, does not stand up to his own evidence from which it can be inferred that he was 15 years old in 1985 and could not then have formed the animus possidendi required for adverse possession.

[61] In the face of what I regard as the insurmountable difficulty the appellant has in trying to prove that he had adverse possession of the land whilst his father, who brought him to work on the land with him and was alive and still working the land in 2005 (planting his plantain and other crops), the appellant adjusted his claim of adverse possession of the land by basing it not on his possession of the land for 12 or more years, but on his continuing his father's long possession of the land after the death of his father in 2005.

[62] The appellant's claim that he inherited 25 years of adverse possession from his father in 2005 to which he added 5 years of his own after his father's death in 2005, has no basis under the laws of Saint Vincent and the Grenadines.

- [63] The appellant's attempt to rely on English cases like **Willis v Earl Howe**, **Ellis v Lambeth London Borough Council** and **Perry v Clissold**¹² in support of his argument is unhelpful, because these cases are based on English legislation which is not replicated in Saint Vincent and the Grenadines.
- [64] There is in English property law the principle of relativity of title which enables the transmission of possessory rights between persons. This enables a claim to adverse possession to be based on successive adverse possessors who may each be claiming title based on their occupation of the land.
- [65] These cases and the principle of relativity which they address do not apply in Saint Vincent and the Grenadines and the appellant would have had to establish adverse possession of the land by him, or by his father, or even by the 2 of them on a joint application for a declaration of possessory title. The appellant's application for a declaration of possessory title to the disputed land was not an application made on behalf of his father's estate or on behalf of him and the estate of his father; it is specifically stated in his application that – 'The applicant claims to be the owner of the said land in his own right'.
- [66] Mr. Dougan was therefore correct in his submission that, based on the evidence which was before the court, the appellant failed to establish that either he, or his father, was in adverse possession of the land for the requisite period with the requisite intention. The learned judge did not err therefore when she accepted Mr. Dougan's submission that there was no case for his client to answer and dismissed the appellant's case.

Interruption of possession

- [67] The learned judge found that, to the extent that the appellant was in possession of the disputed land prior to his father's death in 2005, his possession would have been interrupted by his absence from Saint Vincent and the Grenadines for approximately

¹² [1907] AC 73.

8 months in 2005. Although the appellant submitted that he maintained a sufficient degree of control of the land whilst he was out at sea for these 8 months in 2005, he gave no evidence of this, whether in his affidavit or in his testimony. There was also no evidence in the affidavit or viva voce evidence of his witness, Ms. Findlay, and of course no evidence from the respondent.

[68] The 2 cases referenced by the appellant in support of his argument that he had possession of the land even when he was not in Saint Vincent and the Grenadines do not assist him.

[69] **Bligh v Martin** is an authority for the proposition that possession may continue to subsist notwithstanding that there are intervals between the acts of the user. But the court found that the appellant had not established that he had possession of the land during the lifetime of his father who, according to the appellant's evidence, was in occupation of the land until his death in 2005. So if he did not have possession during the lifetime of his father, and he was not in the country when his father died to take possession of the land, there was no possession of the land by him which would have continued after the death of his father.

[70] In **Buckinghamshire CC v Moran**, Slade LJ opined that possession signifies physical control and intention and need not be physical possession. Again, there was no evidence given by the appellant or his witness of physical control by him of the disputed land and, if there had been any physical control prior to the appellant's eight-month absence from the country, there was certainly none showing that it had continued during his absence and, especially during the period when his father had died and he was out of the country. His statement in his affidavit that after his father's death he continued to work the land by planting plantain and other crops on the land is of no assistance to him in countering the argument that any possession which he had of the land prior to 2005 was interrupted by his departure from the country for a period of approximately 8 months in the course of 2005. The appellant is not assisted either by the gestation period of a plantain, when he says in his

submissions in support of his appeal that plantains take 9 months between planting and harvesting and that maintaining plantains unequivocally shows an intention to possess and exclude the paper owners.

- [71] The learned judge did not err therefore when she found that the appellant's possession of the land prior to 2005 was interrupted by his departure from the country and his remaining out of the country for 8 months in 2005.

Non-compliance with section 8(1)

- [72] An appreciation of the significance of section 8(1) of the Act must commence with an examination of the provisions of 2 preceding sections - 3(1) and 7(1).

- [73] Section 3(1) of the Act reads:

“A person who claims to be in adverse possession of a piece or parcel of land in Saint Vincent and the Grenadines shall be entitled to make an application to the Court for a declaration of possessory title to the said land.”

- [74] Section 7(1)(a) reads:

“Upon filing of an application, the applicant shall ... publish a notice in Form 2 of the First Schedule in two issues of at least two newspapers circulating in Saint Vincent and the Grenadines and the second issue shall be published not less than one month after the first issue”.

- [75] Then section 8(1)(a) reads:

“The applicant shall, within twenty-one days after filing the application, cause a copy of the notice referred to in section 7 to be ... served on all owners or occupiers of property adjoining the piece or parcel of land to which the application relates”.

- [76] Then subsection (2) of section 8 reads:

“An order containing a declaration of possessory title shall not be granted unless –
(a) the provisions of section 7 and this section are complied with; and
(b) six weeks have expired since the service or posting of that notice”.

- [77] On the evidence which was before the court, at the date of the application for the declaration of possessory title, Philmore Thompson was the owner of a property adjoining the disputed land, but the appellant failed to cause him to be served with a copy of the notice within 21 days after the filing of the application on 3rd February 2010. In fact, the notice was served on Mr. Philmore Thompson on 29th February 2016, over 6 years after the filing of the application, and one day before the trial of the application. Moreover, when the application came before the court for the grant of a declaratory order on 1st March 2016, and even when the court made its order on 23rd March 2016 dismissing the application, 6 weeks had not elapsed since the service of the notice on Mr. Thompson, indeed, only 1 day had elapsed.
- [78] Having regard therefore to the clear wording of these sections of the Act, which: in section 3(1) enables a person claiming adverse possession of a piece or parcel of land to make an application to the court for a declaration of possessory title to the land, in section 7(1)(a) requires the applicant to publish a notice in accordance with Form 2 of the Act giving notice of his claim of adverse possession of the land and his application to the court for a declaration of possessory title to the land, in section 8(1) requires the applicant to serve a copy of the notice on all owners or occupiers of adjoining land, and in section 8(2) virtually strips the court of the jurisdiction to grant a declaration unless the provisions of sections 7 and 8 are complied with, the learned judge did not err when she reasoned that section 8(1) of the Act is mandatory.
- [79] If it was the case, as submitted by Mr. Delves in responding to the no case submission, that compliance with section 8 was just a procedural requirement and that the court can look at the substance and justice of the matter whereupon it will be seen that Parliament's objective was merely to ensure that affected persons were aware of the application, then Parliament would not have used the language that it did. Section 8(1) was clearly expressed in mandatory terms and subsection (2) clearly stipulated that non-compliance with subsection (1) means that the declaration cannot be granted by the court.

Conclusion

[80] Based on all of the foregoing, I answer the questions which I posed in paragraph [44] of this judgment as follows:

- (a) The respondent, Joel Woodley, had locus standi in these proceedings as a person claiming an interest in the disputed land;
- (b) The appellant and/or his father was or were not in adverse possession of the disputed land, it not having been established in fact or in law that either had factual possession of an exclusive and undisturbed nature of the land for a continuous period of 12 or more years with the intention to possess it as owner;
- (c) If the appellant had possession of the disputed land prior to 2005, his possession was interrupted by his absence from the country for approximately 8 months in the course of 2005;
- (d) The appellant's non-compliance with section 8(1) of the **Possessory Titles Act** by failing to serve one of the adjoining landowners with notice of his claim to adverse possession of the land and his application for a declaration was fatal to his application.

[81] I accordingly make the following order:

- (1) The appeal is dismissed.
- (2) The order of the trial judge upholding the no case submission and dismissing the claim is upheld.
- (3) The trial judge's award of costs to the respondent, agreed by both counsel in the amount of \$2,500.00, is affirmed.

- (4) The appellant shall pay the respondent's costs on this appeal in the amount of \$1,666.66, being two thirds of the amount awarded as costs in the court below.

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Margaret Price-Findlay
Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar