

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2005/0202

BETWEEN

BEATRIX GUMBS

CLAIMANT

AND

GASNEL SAMUEL Substituted in place of COLLYMORE  
SAMUEL pursuant to order of Court dated 21<sup>st</sup> October 2015

DEFENDANT

**Before:** The Hon. Mde. Justice Esco L. Henry High Court Judge

**Appearances:**

Mr. Duane Daniel and Ms. Jenell Gibson for the claimant.

Ms. Samantha Robertson for the defendant.

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2021:Feb.23&25  
Jul. 14  
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**JUDGMENT**

**BACKGROUND**

[1] **Henry, J.:** The dispute which gave rise to this case is one which occurs often in communities throughout Saint Vincent and the Grenadines. It involves opposing claims to ownership over and trespass to land. Mrs. Beatrix Gumbs filed this claim<sup>1</sup> against Mr. Collymore Samuel over 16 years ago. A first trial was conducted in 2008 and judgment rendered by another judicial officer. On appeal, the case was remitted to the High Court for trial before another judicial officer.<sup>2</sup>

[2] In her claim, Mrs. Gumbs alleged that Collymore Samuel trespassed onto property at Queensbury, Saint Vincent and the Grenadines ('the disputed property'), which she claimed that her husband

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<sup>1</sup> By Fixed Date Claim Form filed on 22<sup>nd</sup> April 2005.

<sup>2</sup> By order dated 27<sup>th</sup> January 2009.

John Gumbs gave to her in 2001 by deed. It comprised 1 ½ acres. She accused Collymore Samuel of unlawfully entering the disputed land and destroying crops which she was cultivating. She seeks damages for trespass, a declaration that she owns the disputed property and costs.

[3] Mr. Collymore Samuel denied that he was a trespasser. He countered that the disputed property was part of a piece of land that belonged to Mr. Grenville Ballah by virtue of Deed No. 893 of 1990. He pleaded that in 2005 Mr. Ballah authorized him to cultivate the property by letter dated 21<sup>st</sup> April. He pleaded further that in another civil suit in the High Court, Grenville Ballah had been declared owner the 3 acres of land. He claimed that the deed on which Mrs. Gumbs relied to claim ownership of the disputed property is illegal and invalid. He contended that Mrs. Gumbs was the trespasser. Mrs. Gumbs refuted this. Mr. Samuel counterclaimed<sup>3</sup> for damages for trespass; a declaration that Grenville Ballah is the owner of the property; an injunction restraining Mrs. Gumbs from trespassing on the disputed land and costs.

[4] Mr. Collymore Samuel has since died. Mr. Gasnel Samuel was substituted as defendant in his place, pursuant to Civil Procedure Rules 19.2, by order of court<sup>4</sup>. He filed no amended statement of case. At trial, Mr. Samuel and some of his witnesses diverted from the pleaded defence filed by Collymore Samuel. They asserted that his father Daswell Gumbs owns the disputed property. The parties' respective claim and counterclaim are dismissed for the reasons outlined in the judgment.

## ISSUES

[5] The issues are:

- 1) Whether Collymore Samuel or Beatrix Gumbs trespassed on the disputed property?
- 2) To what remedies are Beatrix Gumbs or Gasnel Samuel entitled?

## LAW AND ANALYSIS

### Issue 1 – Did Collymore Samuel or Beatrix Gumbs trespass on the disputed property?

[6] Mrs. Beatrix Gumbs testified that her husband John Gumbs gave her the disputed parcel of land at in December 2000. The following year Deed of Gift No. 2031 of 2001 was registered in the Register of Deeds as evidence of that gift. Mrs. Gumbs produced a copy of the Deed. It describes

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<sup>3</sup>In Defence and Counterclaim filed on 25<sup>th</sup> May 2005.

<sup>4</sup>Dated 21<sup>st</sup> October 2015.

the disputed land as comprising 1 ½ acres more or less. The Schedule to the Deed delineates the boundaries as:-

‘On one side by lands of one Gould, on another side by lands of the Donor on another side by a road and on the other side by lands of Randolph Ballah.’

[7] The recital regarding Mr. John Gumbs’ interest in the land states simply: -

‘Whereas the Donor is seised for an estate in fee simple absolute in possession free from encumbrances of the hereditaments and premises as are more particularly described in the Schedule ...’.

[8] Mrs. Gumbs testified that her husband told her that he was in undisputed possession of the disputed land for approximately 26 years up to the time that he conveyed it to her. She asserted that during that time he continuously farmed the disputed lands by planting bananas, plantains, tannias, eddoes, potatoes and green vegetables. She added that he sold the produce and personally used the moneys realized from the sale. She averred that he did not share the proceeds with anyone and paid no rent to anyone for the disputed lands. She recalled that she assisted him with the cultivation and nobody ever interfered with him until Collymore Samuel ventured onto the land with his workmen.

[9] She recalled being home on April 18<sup>th</sup> 2005 when her husband came to her complaining that Collymore Samuel was spraying her land with gramaxone. He telephoned their lawyers and also made a complaint to the police. They accompanied the police to the disputed land where they met Mr. Collymore Samuel, Callis Samuel, McLeish Anthony and Keithlon Malcolm with spray cans filled with gramaxone. She noticed that some of the crops had been burnt. She said that the police told the men to stop burning the crops which they did. She indicated that after the police left they resumed burning of the crops.

[10] Mrs. Gumbs testified that she and her employee Princess Gould aka Mrs. Cottle were at the disputed land the following day. She recalled that Mrs. Cottle was planting sweet potato vines. She indicated that two men were assisting them with planting of the crops. The two men were digging trenches to plant carrots. According to her, Mr. Collymore Samuel returned with the same men from

the previous day and another man by the name of Garvin. Mrs. Gumbs testified that George Hazelwood was also present having arrived there earlier at Mr. Samuel's behest.

[11] She explained that Collymore Samuel directed Hazelwood to another part of the land and he (Collymore) told Mrs. Gould and the other workers to remove themselves from his land. He then proceeded to pull up the rows of vines that Mrs. Gould had just planted and the mature eddoes which were in their final stage of development, prior to reaping. She observed him emptying a bag of potato vines and cassava sticks into the road. He also chopped the lines that the men were using to measure out the beds for planting carrots and he cut the sticks that they were using to hold the lines in place. Mrs. Gumbs explained that Collymore Samuel had his men spray the carrots and plough the lands where the carrots were planted. She averred that he continued his acts of trespass the following weekend by having his men cut up the remaining crops that she, her husband and their employees had planted.

[12] Mr. John Gumbs testified to like effect. He explained that from about 1979 he had seen a vacant piece of land and occupied it with the intention of keeping it for himself. He claimed that he cultivated it continuously and intensively for 26 years before making the gift to his wife. He averred that he had been in undisputed and undisturbed possession of the lands for all of that time. He recalled that on April 18<sup>th</sup> 2005 he was sitting on his porch when he saw two cattle running across the disputed land as if they had been loosed by someone. He then saw Callis Samuel and his assistants. He approached them and asked why they had loosed his cattle, whereupon Callis Samuel responded that he was going to burn the place. When asked who gave him that authority he replied that he was employed by Collymore Samuel.

[13] Mr. Gumbs testified that an injunction was granted on May 5<sup>th</sup>, 2005, to restrain Collymore Samuel from entering or remaining on the said lands or exercising any acts of ownership over it. He asserted that Mr. Collymore Samuel had not sought previously to challenge ownership of the said lands. Under cross-examination he denied that Newton Samuel was cultivating that parcel of land or was in control of it in 1976. He testified that he saw Newton Samuel planting on land next to it but that he left after a short time. He denied seeing Calvert Samuel occupy any land at any time at Queensbury. He insisted that he was not a trespasser on the lands in 2005 but rather that

Collymore Samuel was the trespasser. He insisted that before then nobody disturbed him in his occupation of the land. He acknowledged that Mr. Ballah may have bought the land in 1990 but was adamant that he was in occupation when Mr. Ballah bought it.

- [14] Mr. Cyril Samuel supported Mrs. Gumbs' case. He testified that he was employed by the Gumbses from 1990 to 2015 as a farmer. He asserted that while he was working there no one ever interfered with the Gumbses, their crops or animals; tried to get them off the land or claimed that the lands belonged to them. He said that one morning he was on the land when he saw Collymore Samuel pulling up some plants, chopping them and saying that the land belongs to him. He explained that Mr. Gumbs came down and prevented him. On this point, his witness statement contained contradictory testimony. He stated that that part of his witness statement was incorrect.
- [15] Mr. Romel Jack also testified that he worked the subject lands for Mr. and Mrs. Gumbs. He indicated that he worked there part-time as school-boy when he was 12 years old. He gave no testimony about the period during which he worked on the land. I gather from his account that he was employed during afternoons after school and on weekend to do weeding as a means of earning pocket change. He was not cross-examined. Mrs. Gumbs submitted correctly that by not cross-examining him Mr. Gasnel Samuel signified that he accepts the truth of Mr. Jack's testimony. Mrs. Gumbs noted in her submissions that he signed his witness statement at 27 years old. He did not aver and I make no finding that he was employed by Mr. and/or Mrs. Gumbs beyond an indeterminate period while he was attending the Buccament Government School.
- [16] Mr. Gasnel Samuel averred that he is the eldest son of Doswell Gumbs aka Daswell Gumbs and the nephew of Lloyd Collymore Samuel. He asserted that his father's estate comprised 3 acres of land at Queensbury, Vermont which he purchased from Eileen Stephanie Punnett on 3<sup>rd</sup> August 1977 for the price of \$30,000.00. He produced Deed No. 1476 of 1977 as proof. He asserted that he never knew that his father sold his estate. The land conveyed by the 1977 Deed is described in the Schedule as:-

'ALL THAT Lot Piece or Parcel of land being a part of the Queensbury Estate in the Parish of Saint Andrew in the State of Saint Vincent admeasuring Three (3) Acres and butted and bounded on or towards the North and West by remaining lands of the Queensbury

Estate and on or towards the East and South by an Estate Road or howsoever otherwise the same may be butted bounded known distinguished or described or as the same is more particularly shown and described on a Plan A2/133 drawn by C.E.R. Williams Licensed Land Surveyor and approved and lodged at the Lands and Survey Office in the State of Saint Vincent on 22<sup>nd</sup> day of July 1977.'

- [17] In the Defence and Counterclaim filed by Mr. Collymore Samuel, he pleaded that John Ballah is the owner of the 3 acres evidenced by Deed No. 893 of 1990. Licensed land surveyor Mr. C. Mc Arthur Robertson testified that the land described in Deed of Gift 2031 of 2001 is part of the land mentioned in Deed No. 893 of 1990 and is shown and demarcated in survey plan A2/133. He produced a survey report and the referenced plan. Mrs. Gumbs accepted (in her submissions) that the disputed land was part of the 3 acres.
- [18] Mr. Gasnel Samuel insisted that his father would never have sold his land and he never knew him to have done so. He said that as far as he is aware his father did not sell the land to Grenville Ballah. He was adamant that any documents naming Grenville Ballah as owner are false. He added that in any event his father would not have sold the land for the \$11,200.00 mentioned in that deed, it being a sum far less than what he paid for it. He maintained that as far as he knew, Daswell Gumbs is still the owner of the disputed property and the additional 1.5 acres. He added that he was in court to protect his father's land.
- [19] Mr. Samuel recalled that after his father bought the lands, his grandfather Newton Samuel cultivated the lands right up to his death in 1998. His aunt Christa Gumbs was one of his witnesses. She corroborated Mr. Samuel's claim that his father bought 3 acres of land at Queensbury evidenced by Deed No 1476 of 1977. She denied that he sold the said lands. She declared to be fraudulent any document stating that Grenville Ballah bought the lands from Daswell Gumbs.
- [20] Mr. Calvert Samuel was the other witness. He stated that Lloyd Collymore Samuel, Grenville Ballah and Daswell Gumbs were his brothers. He asserted that when he returned to Saint Vincent in 1976, he met his father Newton Samuel cultivating the lands for Daswell Gumbs. He averred that Daswell Gumbs sold the lands to Grenville Ballah in July 1990. He said that he was appointed lawful attorney for Grenville Ballah<sup>5</sup> that year and under that authority he exercised control over the

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<sup>5</sup>By Power of Attorney No. 102 of 1990.

land until 2008 when the Power of Attorney was revoked. He indicated that after his father's death, he took over and proceeded to work the disputed lands for over 10 years.

- [21] He testified that in 2003 as lawful attorney for Grenville Ballah he authorized Collymore Samuel to work the land, which he began doing in 2005. He stated that Mr. Ballah confirmed that authority to Collymore Samuel by letter dated 21<sup>st</sup> April 2005. He testified further that in all of his dealings with the land, Mr. Gumbs had nothing to do with it. He was subjected to cross-examination. He accepted that his statement<sup>6</sup> that in all of his dealings with the lands, John Gumbs never had anything to do with the land, was not correct.
- [22] He explained that he started working the lands from around 1980, long before his father's death and that he continued to do so until about 1990. He said that apart from Collymore Samuel he gave no one permission to cultivate the land. He stated that he was aware that Mr. John Gumbs was working the lands and rearing his animals on the lands for a short period from around or before 1995. He was unable to say for what period Mr. Gumbs worked the land. He said that he did not see him for himself because after 1990 he stopped visiting the lands regularly because he was not involved in the management at that time.
- [23] Mr. Calvert Samuel explained that he gave instructions to the law firm of Hughes and Cummings to write to Mr. Gumbs to warn him to stop coming onto the lands. Mr. Gumbs denied receiving any such letter. Mr. Samuel stated that between 1990 and 1993, he severed all connection with the land and had nothing more to do with it. In light of his other testimony, I interpret that to mean that he physically did not have anything to do with the land.
- [24] Mrs. Gumbs submitted that Gasnel Samuel's evidence demonstrates his marked lack of familiarity with the subject lands. She contended that since he was then living in the United States she was unaware that his father had sold the lands to Grenville Ballah and did not know who was cultivating it from 1986. She argued that he was unable to say that she and her husband were not in possession of the lands in excess of 12 years prior to the institution of the claim. Similarly, she submitted that Christa Gumbs was unable to contradict the cogent evidence presented by her witnesses. Mrs. Gumbs argued that of Gasnel Samuel's witnesses, Calvert Samuel displayed the greatest familiarity

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<sup>6</sup> At para. 10 of his witness statement.

with the subject lands, but she described it as limited.

- [25] She submitted that in light of his testimony that he cultivated the subject lands between 1980 and 1990 and stopped visiting the lands in 1993, 12 years would have elapsed between 1993 and May 23<sup>rd</sup>, 2005, when the counterclaim was filed, thus stopping time from running. She submitted further that Calvert Samuel's admission that he was aware of her husband's occupation of the disputed lands in 1995 makes her version of events more credible. She submitted that the evidence presented by her and her witnesses should be preferred. She argued that they presented cogent and consistent testimony that her husband was in undisturbed, continuous and exclusive possession of the disputed land since 1979.
- [26] Mrs. Gumbs submitted further that trespass to land consists of any justifiable intrusion by one person upon land in the possession of another and further that the slightest crossing of the boundary is sufficient. She cited **Ellis v Loftus Iron Co**<sup>7</sup>. Relying on the textbook **The Law of Tort**<sup>8</sup> she contended that while it is generally unnecessary for a claimant to prove that she owns the subject lands, factual possession is insufficient to maintain an action in trespass against the person with a right to immediate possession or someone claiming under that person. She argued that she has adduced proof of good paper title by Deed of Gift No. 2031 of 2001.
- [27] She contended further that she has established convincingly that she and her husband have been in exclusive occupation of the disputed lands in excess of 12 years immediately before filing the claim. She reasoned that even if her title was doubtful she has established a sufficient degree of possession over the lands to maintain an action in trespass against Collymore Samuel who in his Defence admitted entering and clearing the land. Mrs. Gumbs submitted that Collymore Samuel is therefore prima facie liable to her for damages for trespass to her lands on April 18<sup>th</sup> and 19<sup>th</sup> 2005.
- [28] Mr. Gasnel Samuel submitted that trespass involves an unlawful entry by one person on land in the possession of another. He relied on **Halsbury's Laws of England**<sup>9</sup>. He contended further that the owner may not sue in trespass if any other person was lawfully in possession at the time of the trespass. Placing reliance on the referenced text, he argued that 'actual possession is good against

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<sup>7</sup>(1874) L.R. 10 C & P 10.

<sup>8</sup>Common Law Series, para 10.11 -10.12.

<sup>9</sup> 4<sup>th</sup> Ed. Vol 45(2), para. 505.

all except those who can show a better right to possession in themselves.’<sup>10</sup> He submitted that where the land is vacant the owner may sue in trespass as his title provides proof of possession; and further ‘where possession is doubtful or equivocal the law attaches it to the title.’<sup>11</sup> He submitted that Collymore Samuel was in possession of the disputed lands and entitled to be on it on the dates of the alleged trespass. He argued further that Deed No. 893 of 1990 takes priority over Deed No. 2031 of 2001 because it was registered first.

[29] The question of whether Mrs. Gumbs or Mr. Samuel is a trespasser must be determined based on who was in lawful possession of the disputed lands in April 2005. Mrs. Gumbs and her witnesses were forceful and their testimony consistent in material respects. I therefore accept that they were in occupation and actual possession of the subject lands in 2005 when Mr. Collymore Samuel went there with his men and disrupted their cultivation. At the same time, the testimony of Mr. Calvert Samuel is compelling. I found him to be forthright and convincing. I accept his account as being credible.

[30] Mr. Gasnel Samuel’s case was disjointed because he sought to claim that his father and not Grenville Ballah owned the disputed lands. Notwithstanding the dissonance in his defence regarding who owns the disputed lands, I found that his witness Calvert Samuel was truthful. I prefer it to Mrs. Gumbs and her witnesses. In relation to ownership of the subject lands his account is supported by the documentary evidence. I also accept his testimony that he cultivated the land from 1980 until about 1990 and then around 2003 authorized Collymore Samuel to cultivate it. It appears that Mr. Collymore Samuel was slow to commence operations pursuant to the authority given to him. By then, Mrs. Gumbs and her husband had already cultivated a crop of tannias which was almost ready for harvesting. Deed No. 893 of 1990 identifies Grenville Ballah as the owner of the subject land. As owner, he has a superior right to possession and is deemed to have been in possession at that time unless proven to the contrary.

[31] I accept that Mr. Gumbs farmed the disputed land around 1995 as stated by Mr. Calvert Samuel. I am also satisfied that Mrs. Gumbs had commenced her own cultivation by the time Collymore Samuel entered the land in 2005 based on her belief and her husband’s belief that she owned the land. Significantly, her claim to be in possession of the land at the material time is grounded in her

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<sup>10</sup> At para 517 of the referenced Volume of Halsbury’s Laws of England.

<sup>11</sup> At para 518 of the referenced Volume of Halsbury’s Laws of England.

avowed ownership of the subject land through the Deed of Gift No. 2031 of 2001. She stated at paragraph 5 of her Statement of Claim that she owns the land by virtue of that Deed. She added that her husband had been in undisputed occupation of the land for at least 12 years immediately preceding the date of initiation of the proceedings. These averments taken together would mean that her husband remained in occupation of the disputed land even after he purported to give her the land. This is problematic for her claim because Mr. Gumbs was not joined as a claimant.

[32] Furthermore, this reported occupation of the land by him from 2001 after he had purportedly conveyed the land to her is inconsistent with her assertion that she owned the land from 2001. In face of his purported gift to her and in the absence of any alleged agency on his part (on her behalf) this contention compromises her claim. Moreover, the period from 2001 and 2005 when Mrs. Gumbs assumed occupation of the disputed land in her own right, is insufficient to establish adverse possession for purposes of title by prescription.

[33] It must be noted that the Deed of Gift recites no root of title on the strength of which Mr. Gumbs became seised of the subject lands. Any interest, right and title which was purportedly conveyed to Mrs. Gumbs by that Deed would pursuant to the **Registration of Documents Act**<sup>12</sup> be whatever interest, right and title was vested in Mr. Gumbs. The reality is that Mr. Grenville Ballah was at that time registered as the legal owner of the subject land by dint of his purchase from Daswell Gumbs. Therefore, Mr. Gumbs could not pass legal title of any part of the disputed property to Mrs. Gumbs by the Deed of Gift.

[34] The Deed of Gift is nothing more than a statement by Mr. Gumbs of his desire to constitute Mrs. Gumbs as owner of the disputed property. It is not unlike a Statutory Declaration routinely used in this State by persons wishing to record that they have occupied a piece of land for a specific period with the intention to own it. Mr. Gumbs made no declaration in the Deed of Gift that he had so occupied the land or as to the period for which he had occupied the disputed land, nor did he record in it what was his intention while doing so.

[35] The pronouncement of the Court of Appeal regarding such Statutory Declarations is apt in the instant case. In the case of **Lorenze A.D. Williams Executor of the Estate of Egerton Richards (deceased) et al v Hestina Edwards Administratrix of the Estate of Clara Edwards (deceased)** Byron CJ remarked:

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<sup>12</sup>Cap. 132 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 5.

'The effect of the statutory declaration is to evidence in a permanent form, the possession claimed by the declarant. It does not constitute a deed of title or proof of ownership.'<sup>13</sup>

[36] Likewise, the Court of Appeal affirmed the statement of Alleyne J. in the case of **Gordon Charles v Claire Holas** that:

'A statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in form of law. It may have certain limited evidential value, but it is not an alternative method of conveying title to land.'<sup>14</sup>(underlining supplied)

In that case the Court held that the evidential value of the Statutory Declaration was high because it 'provided clear evidence that it was the intention of the declarant to be in possession as owner.'<sup>15</sup>

[37] By placing reliance on the Deed of Gift 2031 of 2001 Mrs. Gumbs invites this Court to elevate it to the level of a Title Deed by which her ownership of the subject land is established. This Court cannot do that because this is not how ownership to land is created. That Deed of Gift in my estimation has even less value than a Statutory Declaration that details the author's connection with the subject land. It is nothing more than a note that Mr. Gumbs wished for Mrs. Gumbs to own the disputed land. Unlike the Court in **Gordon Charles v Claire Holas**, this Court makes no finding that the Deed of Gift 2031 of 2001 provides clear evidence of Mr. Gumbs' intention to possess the disputed land as owner at the relevant time.

[38] If Mr. Gumbs had acquired rights by virtue of occupation of the disputed land prior to 2001, there is nothing demonstrating that they were recognized by any Court or other relevant authority as having crystallized into a legal or beneficial interest in the disputed land which he conveyed to Mrs. Gumbs by the Deed of Gift. I therefore make no finding that he had. Even more glaring is the omission of such claim in the Deed of Gift. I am not satisfied on the evidence that either he or Mrs. Gumbs had occupied and been in actual possession of the disputed land for a continuous period in excess of 12 years before Mrs. Gumbs filed her claim.

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<sup>13</sup> SVGHCVAP2000/0020 at para. 6.

<sup>14</sup> Grenada Civil Suit No. 151 of 1996.

<sup>15</sup> Para. 7 of the *Lorenze A. D. Williams* case.

[39] As articulated by the parties, the law recognizes and protects the rights of possession of a paper title owner to land unless they have been extinguished or overridden by another's. The authorities advanced by both sides reflect that a legal owner of land is deemed in law to be in legal possession of such land. In the case of **Oliver Adams et al v Pamela Adams**<sup>16</sup> the Court referred to a passage from **Clerk & Lindsell on Torts**<sup>17</sup> where the learned authors remarked:

'Possession means generally the occupation or physical control of land... proof of ownership is prima facie proof of possession.' (Underlining added)

[40] In similar fashion Slade J opined in **Powell v McFarlane**:

'In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land as being the person with the prima facie right to possession.

The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.'<sup>18</sup>

[41] Applying those principles to the case at bar, it is clear that Mrs. Gumbs' 'title' under Deed No. 2031 of 2001 is faulty since Mr. Gumbs did not acquire any beneficial or legal interest, title or right to the subject land by purchase from the legal or beneficial owner, by virtue of registration by order of court or statutory or other authority by which title to land is constituted, or interest in land created. The Deed is merely a self-serving document not unlike Statutory Declarations referred to earlier.

[42] On the other hand, Mr. Ballah's Deed traces the route through which he obtained title and identifies the previous legal owners of the subject land. I have no hesitation in finding that in 2005 when the alleged trespass by Collymore Samuel took place Grenville Ballah was the registered legal owner and was the person deemed to be in possession of the land. Mrs. Gumbs could not in the circumstances rely on Deed No. 2031 of 2001 as the basis on which she had a superior right to enjoy lawful possession of the subject lands. Similarly, she could not rely on actual possession by her for a period in excess of 12 years, since she had been in actual possession for no more than 4 years by then.

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<sup>16</sup> **ANUHCv0666/2006 at paras. 53 and 54.**

<sup>17</sup> 20<sup>th</sup> ed. paragraph 19-10.

<sup>18</sup> (1977) 38 P & CR 470.

- [43] It follows that Mr. Calvert Samuel having been appointed as Mr. Ballah's lawful attorney had a superior right to possession of the subject property over Mr. Gumbs between 1980 and 1990. This continued in 2003 when he authorized Collymore Samuel to occupy the subject lands. This authority overrides any actual occupation undertaken by Mrs. Beatrix Gumbs between 2001 and 2005 through the dubious cover of her Deed of Gift.
- [44] I am satisfied that Mrs. Gumbs' occupation and cultivation of the land did not displace Grenville Ballah as possessor of the land. By virtue of his Deed, he had a superior right to possession. I accept Mr. Calvert Samuel's account and find that as Grenville Ballah's lawful attorney in 2005 he authorized Collymore Samuel to cultivate the disputed lands. I find too on a balance of probabilities that when Collymore Samuel entered the disputed land on April 18<sup>th</sup> and 19<sup>th</sup> 2005 and thereafter he was operating under that lawful authority. I make no finding that he was trespasser.
- [45] At that date, Mrs. Gumbs was on her own evidence in actual possession of the subject land for a period of about 4 years and would not have acquired any interest under the **Limitation Act**<sup>19</sup> sufficient to convert her actual possession of the land to any beneficial title, interest or right in the subject land. She was merely a squatter.
- [46] Mrs. Gumbs submitted that Mr. Collymore Samuel has no locus standi to bring a counterclaim against her for damages for trespass or for any of the reliefs claimed by him. She is correct. Mr. Ballah may have pursued a claim against her in trespass. Neither Mr. Collymore Samuel nor Gasnel Samuel has or had the *locus standi* to do so.<sup>20</sup> For this reason Gasnel Samuel's claim against Mrs. Gumbs in trespass fails.

## **Issue 2 - To what remedies is Beatrix Gumbs or Gasnel Samuel entitled?**

- [47] Mrs. Gumbs seeks a declaration that she is owner of the subject lands. She relies on the doctrine of adverse possession to support her claim. The Law of Saint Vincent and the Grenadines provides for the court to grant a declaration of possessory title under the provisions of the **Possessory Titles Act**<sup>21</sup> if certain conditions are satisfied and if the facts relied on fulfil the evidentiary

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<sup>19</sup>Cap. 129 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

<sup>20</sup> See Megarry and Wade's *The Law of Real Property* 5<sup>th</sup> ed. at pages 103 and 1159. See also ANUHC V 2006/326 *Clarabell Investments Limited et al v Antigua Isle Company Limited et al*, at para. 42.

<sup>21</sup> Cap. 328 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

requirements of the **Possessory Titles Act**. It requires among other things that Notice of the Application be advertised in newspapers circulating in the State and provided to adjoining landowners; and that a publication of the Notice be made in the Registrar's Office and the Magistrate's Court in the District closest to the subject land. Mrs. Gumbs has not fulfilled those requirements. Her application for a declaration cannot be approved under that Act.

[48] Title may also be acquired by prescription under the **Limitation Act** where a squatter's occupation and possession of land exceeds 12 continuous and unbroken years. Mrs. Gumbs has not relied on the provisions of the **Limitation Act** which must be expressly pleaded. In any case, as stated earlier adverse possession under the **Limitation Act** operates as a defence or shield to a claim in trespass or for recovery of possession of land. Adverse possession may not be used as a 'sword' to mount a claim for title by prescription, as Mrs. Gumbs is seeking to do. It affords a defence<sup>22</sup> by someone who with the intention to own land has exclusively occupied it for the requisite period without the permission, acquiescence or interference of the owner.

[49] If successfully mounted that defence has the effect of extinguishing the lawful owner's title to the subject land.<sup>23</sup> The defence may not be employed as a frontal attack or 'sword' in a claim initiated by the squatter. Mrs. Gumbs has sought to rely in adverse possession in this way to assert prescriptive title to the subject lands. The law does not enable her to do so. Her occupation and possession of the disputed lands did not exceed 12 years. Accordingly, her claim to ownership by adverse possession fails.

[50] Mr. Gasnel Samuel has not pursued the remedies set out in his counterclaim except for the declarations that the subject parcel of land described in Deed No. 893 of 1990 is owned by Grenville Ballah and that the Deed 2031 of 2001 is illegal and void. By his testimony, he appears to have abandoned his claim for damages for trespass. In any event, not being the owner or possessor of the subject land, he is neither entitled to recover damages for trespass nor an injunction to restrain

Mrs. Gumbs, her servants or agents from trespassing on the disputed lands.

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<sup>22</sup> Under the Limitation Act, Cap. 139 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

<sup>23</sup> GDAHCVAP2008/0011 -Arnold Celestine (Administrator of the Estate of O'Ferrel Celestine) and Carlton Baptiste.

[51] The Court's attention was directed to the order of Mr. Justice Satrohan Singh in Claim No. 90 of 1990 (referred to in the Defence and Counterclaim<sup>24</sup>) by which the Registrar was directed to convey the 3 acres of land to Mr. Grenville Ballah. The Court takes note that it has not been set aside. It remains in force. It is therefore unnecessary for this court to make a declaration in this claim as to ownership of the subject lands.

[52] However, being mindful of its duty to grant orders as necessary to avoid the multiplicity of legal proceedings,<sup>25</sup> the Court considers it just and equitable to grant one aspect of the declaratory relief sought Mr. Samuel. This is permissible and desirable to provide guidance and certainty to the respective parties in relation to the validity of the Deed of Gift No. 2031 of 2001. It is accordingly declared that Deed No. 2031 of 2001 is invalid and of no effect. Mrs. Gumbs is required to surrender it to the Registrar of Deeds for cancellation.

#### Miscellaneous

[53] Mrs. Gumbs made additional submissions. It is not necessary for the court to consider them to make a disposition in this matter. It is for this reason that they are not addressed. No offence is intended to counsel.

[54] This matter has been in the system for over 12 years. It is prudent to include an explanation as to some of the reasons for this protracted period to resolution. When this claim was remitted to the High Court, learned counsel Mr. Samuel Commissiong represented Mrs. Gumbs. Mr. Commissiong took ill around April 2017 and missed a number of hearings due to his illness. He passed away subsequently and was replaced. Meanwhile, the respective parties were unable to attend court at various times. The trial date was vacated several times for different reasons. The parties' forbearance and understanding are appreciated.

#### **Costs**

[55] These proceedings have ended in a draw with neither party securing an outright victory. In the circumstances, it is just that each party be directed to bear his or her own costs.

#### **ORDER**

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<sup>24</sup>At paragraph 5 and inferentially at paragraph 4.

<sup>25</sup>The Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act Cap. 24 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

[56] It is ordered: -

1. Beatrix Gumbs' claim is dismissed.
2. Gasnel Samuel's counterclaim is dismissed.
3. It is declared that Deed No. 2031 of 2001 is invalid and of no effect.
4. Beatrix Gumbs is directed to surrender to the Registrar of Deeds the original and every copy of the said Deed No. 2031 of 2001 in her possession and under her control.
5. The Registrar of Deeds is directed to cancel the entry in the Deed Registry in respect of Deed No. 2031 of 2001.
6. Each party shall bear his or her own costs.

[57] Preparation and delivery of this judgment took a little longer than normal. Any inconvenience caused to the parties for the delay is regretted. I am grateful to counsel for their submissions.

**Esco L. Henry**  
**HIGH COURT JUDGE**

By the Court

Registrar