

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

SVGHPT2019/0018

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

AND

**IN THE MATTER OF AN APPLICATION BY HILDA CHARLES BY HER ATTORNEY ON RECORD
SHAYMALYN ROBERTS FOR A DECLARATION OF POSSESSORY TITLE OF LAND**

Appearances:

Mr. Roderick Jones for the Applicant (Mr. Duane Daniel held for the purposes of taking the decision of the court)

Mrs. Ronnia Durham-Balcombe for the Respondent

Respondent present

2021: 20th May

ORAL DECISION

Byer, J.:

- [1] Having heard the evidence and considering the application before the court, this court is satisfied that the sole issue for determination must be whether the applicant Ms. Hilda Charles has satisfied the court on a balance of probabilities, that she is entitled to the declaration of possessory title in her favour pursuant to the provisions of the Possessory Titles Act CAP 328 (hereinafter referred to as “the Act”).
- [2] I have also considered the submissions made by counsels for the applicant and the daughter of the applicant (the interested party). This interested party provided evidence to the court under the provisions of section 15 of the Act which allows for the filing of an affidavit by an individual who has information about an application that is before the court.

- [3] However before I delve into the merits of the application I wish to address an issue raised by the interested party that spoke to a concern that the applicant may not have been entitled to the declaration as sought, in that it was alleged that she had not adhered to the requirements under the Act, in particular section 7 (1) (b) and Section 8. Section 7 (1) (b) considers the provisions for the posting of the notice of the application at the Magistrate's Court in the district where the piece of land is situate while section 8 (1) controls the timelines for the service of the application on the adjoining neighbours.
- [4] The allegations of the interested party in this regard were that the applicant had not produced as required a certificate of compliance filed in relation to the publication that was to be undertaken at Magistrate's Court and also that the service on the adjacent neighbours had been effected outside of the time limits set within the Act, that is 21 days.
- [5] However when this court perused the file, this court was able to discover that the certificate of compliance of the Magistrate's Court had in fact been filed on 26 January 2021 (outside of the period required under Section 7 (1) (b)) and further that the service on the adjacent neighbours had indeed been effected outside of the period of 21 days as required by section 8 (1).
- [6] It is without a doubt that section 8 (2) of the Act makes it mandatory that a declaration of possessory title **shall** not be made if sections 7 and 8 have not been complied with but the court must read that section with the clear provisions of section 20 which clearly provide inter alia that *"no petition, order...or other proceedings under this Act shall be invalid by reason of any informality or technical irregularity or mistake not affecting the substantial justice of the proceedings."*
- [7] Section 7 is clearly the provision that relates to the requirement that the world at large is given notice of the application and section 8 relates to the requirement that the persons in boundary with the land are given notice as to the person claiming to be entitled to the same.
- [8] Thus although the timelines have not been met, the main purpose has been fulfilled in that notice would have been given long before this matter came to trial and like my sister in the case of **In the matter of an Application by George Bryson**¹, I find that this is a proper case to make things right there being no substantial injustice caused and the notice at the Magistrate's Court is deemed properly published and the service on the adjacent neighbours is deemed properly effected.
- [9] That being said, this court must now examine the application itself.
- [10] The nub and gravamen of the application by the applicant is that since the year 1957 she has been in occupation of the said property having built her home on the said land, has been paying land taxes and that no one has interfered with her possession of the same.

¹ SVGHPT2013/0036

- [11] The interested party's information was however that the applicant, who is her mother, did not do so without the assistance of her deceased father and that both of her parents acquired the land and that the interest of her father's estate had to be taken into consideration.
- [12] When this court considered the evidence that was offered on behalf of the applicant, it was more than passing strange that not one of her witnesses who gave evidence on her behalf mentioned the fact that the applicant was in occupation of this parcel of land not only through the auspices of the mother of her husband (that is her mother in law) but that additionally the husband of the applicant was integral in the possession, occupation and development of the said property up to his death in 1989.
- [13] In this court's mind, both of those facts are extremely material to the applicant's claim as not only does the question arise as to the way the possession commenced but additionally that the estate of the applicant's husband (even though there was no claim on its behalf there being no appointed personal representative) had to be considered.
- [14] In considering the first issue of the entry of ownership and the commencement of possession, all parties agreed that the mother-in-law of the applicant gave her son the property, the inference being that she was the one who owned the same. The applicant and her husband therefore came onto the land as of right and as the Court of Appeal in the **Arnold Celestine v Carlton Baptiste**² case has clearly stated, an individual cannot claim the land in his own right **and** as an adverse possessor.
- [15] However this court has also had sight of several cases from the Privy Council which seem to suggest otherwise these being **-Pottinger v Raffone**³, **Anthony Armbrister and anr v Marion Lightbourn and anr**⁴ and **Sze To Chun Keung v Kung Kowk Wai David**⁵.
- [16] However what is clear is that the circumstances that led to the commencement of occupation of each applicant must be taken on a case by case basis. In the case at bar, this court was however not provided any information of any depth save and except in the baldest manner. This court is therefore not in a position to come to a determination on that issue, that is, whether the way commencement of occupation came about counts against the application of the applicant. All that can be said and what this court accepts, is that the applicant and her husband, not the applicant alone, were in occupation of the said property since 1957. Thus, the criteria of the factual possession have been met in this court's mind, however as all parties are patently aware, it is not just the mere fact that there is factual possession but there must also be a clear intention to

²GDAHCVAP2008/011

³[2007] UKPC

⁴[2012] UKPC 40

⁵[1997] 1 WLR 1232

possess the land to the exclusion of all others as owner. As the case of **Powell v McFarlane**⁶ stated which principles were approved in the seminal case **Pye v Graham**⁷, the requisite intention must be shown to have been on one's own behalf and for one's own benefit.

- [17] It is this issue that the court has unfortunately not been provided with the extent of evidence to satisfy itself whether this applicant has in fact proven that aspect of the prerequisites for a declaration under the Act.
- [18] The applicant relied on evidence that since the death of the husband of the applicant, the applicant has occupied the property that she has made improvements to the property and she pays taxes. But when this court perused those very tax receipts as exhibited, the name that was on them was in fact Benjamin Charles the deceased husband of the applicant. It is abundantly clear that this court must therefore address its mind as to whether that fact makes any difference to the application.
- [19] It was indeed concerning that the first time that the reliance on the fact that the applicant occupied/possessed the property in her own right after the death of her husband in 1989 was in the submissions of counsel⁸ for the applicant and **not** in evidence led before this court.
- [20] This court has scoured the evidence that was placed before this court and all of the witnesses for the applicant rather than speak to the occupation of the applicant after her husband's death, they all seemed to be caught up in disparaging any claim that the interested party had in the property which in this court's mind seemed to have failed to recognize that the interested party had withdrawn any initial claim to the same in her own right or in any capacity.
- [21] It was also with some consternation that it had been suggested to the court by counsel for the applicant that the interest of the estate of the applicant's deceased husband should be disregarded based on the failure of the interested party to have been the court appointed personal representative of his estate. This is a proposition that unfortunately I cannot agree with.
- [22] I am therefore in agreement with the findings of my sister in similar circumstances in the case of **In the Matter of a Possessory Title application by Theresa Ollivierre**⁹ where the applicant sought to disregard the estate of the person who would have commenced possession together with the applicant's purported predecessor in title. The court had this to say:

⁶(1977) 38 P & CR 452

⁷[2002] UKHL 30

⁸ Para 17 of the submissions of the applicant

⁹ SVGHPT2017/0051

- [45] *In any event, having seemingly abandoned her stated reliance on the gift in the Will, Ms. Ollivierre's claim to adverse possession in her own right poses some difficulties. Firstly, it ignores the reality that Mr. and Mrs. Frank Ollivierre's beneficial interest in the house passes on intestacy to their respective heirs. Accordingly, if Frank Ollivierre died intestate, his beneficial interest in the house would have passed to his wife and perhaps other beneficiaries in accordance with the law.*
- [46] *In this regard, Ms. Ollivierre has omitted from her application any reference to persons who might be capable of claiming to be owner of the land, or at the very least beneficial owners of Frank Ollivierre's interest in it, as required by the Act. Secondly, the law creates a statutory trust for sale on behalf of beneficiaries to intestates, whereby those interests are held by the Honourable Chief Justice under a presumptive trust for sale until Letters of Administration are extracted on behalf of the beneficiaries.*
- [47] *Her contention that Eileen Ollivierre was in adverse possession of the land for fifteen years invites a finding that Eileen Ollivierre's possession was adverse to Frank Ollivierre's interests, he having been dead for 15 years. The alternative deduction is that Theresa Ollivierre seeks to register a claim not only in reliance on Eileen Ollivierre's possession but on behalf of Frank Ollivierre's estate. This latter construction is the only one which is sustainable in law, since adverse possession is maintainable only against the registered owner of the legal interests, which Frank was not. Ms. Ollivierre did not formulate her application in that manner. She appears to have overlooked any interest to which Frank Ollivierre's estate would be entitled. The Court cannot do likewise.*
- [23] In this court's mind, the applicant in the case at bar by submitting that the applicant was in occupation from 1989 to present seeks to make a similar claim that the applicant's possession is in fact adverse to that of her husband and that his estate is not entitled to any claim.
- [24] This court cannot countenance such a proposition.
- [25] Therefore having looked at this application, the court is satisfied on a balance of probabilities that the applicant has not made out her case within the parameters of the law.
- [26] The basis of this finding is firstly that there has been no evidence advanced as to the nature of the commencement of the possession by the applicant and her husband. The court relies on the text Elements of Land Law¹⁰ in which the learned author had this to say at page 257: "there is a tendency to find that any possession exercised by one family member against another within the context of a loosely organized family arrangement is not in any sense adverse but is more realistically attributed to some form of licence whether expressed or implied."

¹⁰ Gray, K. (2018). Elements of Land Law

- [27] Secondly, there was no evidence as to the nature of the permission granted. In this regard the court relies on the text Elements of Land Law¹¹ in which the learned author had this to say at page 257: *“there is a tendency to find that any possession exercised by one family member against another within the context of a loosely organized family arrangement is not in any sense adverse but is more realistically attributed to some form of licence whether expressed or implied.”*
- [28] This court accepts this proposition of law but also accepts that the original user of land may change to afford the running of time in favour of the possessor¹². However, the determination on either proposition can only be made from cogent evidence of the applicant, which was definitively missing in this application.
- [29] What the court does accept from the uncontroverted evidence is that the applicant has been in occupation of a parcel of land, a parcel which it is clearly also part of her husband's estate and to which his heirs would also be entitled. There therefore cannot be a claim for adverse possession as against an unadministered estate even without the need to have a personal representative appointed¹³.
- [30] In the round there having been material non-disclosure, lack of cogent and persuasive evidence this court is constrained to dismiss the application and make no order as to costs on the following basis:
The applicant and the interested party are mother and daughter. This court will not continue to add to the already growing acrimony that exists between these parties in making an order for costs to be payable by the mother in favour of her daughter.
- [31] Carriage of the order to the applicant.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar

¹¹ Gray, K. (2018). Elements of Land Law

¹² **Iri Anthony Francis v Raphael and Daphne Frederick** GDAHCV2001/0100

¹³ **Earnshaw v Hartley** 2000 Ch 155 and **Reginald Penny v Estelle Penny** GDAHCV2018/0489