

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHPT2020/0013

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

AND

**IN THE MATTER OF AN APPLICATION BY GODWIN ROBERTS BY HIS ATTORNEY ON RECORD
LINCOLN WILLIAMS FOR A DECLARATION OF THE POSSESSORY TITLE TO LAND SITUATE AT
QUESTELLES IN THE STATE OF SAINT VINCENT AND THE GRENADINES**

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

Appearances:

Mrs. Ronnia Durham-Balcombe of counsel for the Applicant.

2020: Dec. 21
2021: Jan. 21

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Mr. Godwin Roberts has applied¹ for a declaration of possessory title to a parcel of land situated at Questelles in the State of Saint Vincent and the Grenadines ('the subject land'). He claimed that he purchased the land in 1976 and had his title registered by Deed of Conveyance 1788 of 1976. He now wishes to sell the land but has learnt that there is a defect in his title which needs to be cured. He averred that he has enjoyed adverse possession of the land in excess of 12 years. His application for a declaration of possessory title is denied for the reasons set out in this decision.

¹By application filed on 29th May 2020.

ISSUE

- [2] The issue is whether Godwin Roberts should be granted a declaration of possessory title of the subject land.

LAW AND ANALYSIS

Issue – Should Godwin Roberts be granted a declaration of possessory title of the subject land?

- [3] **The Possessory Titles Act² ('the Act')** governs the procedure and practice in respect of the grant of declarations of possessory title in this State. It prescribes the form of the application and specifies what documents must be filed in support. Mr. Roberts used the prescribed form. He omitted from the form the name of the registered owner of the subject land – which is a requirement³. He maintained throughout all of his filings that he is the owner. It is now perhaps universally accepted that an applicant seeking to establish adverse possession of land must show that the land is owned by another.⁴

- [4] The court is authorized to grant a declaration of possessory title to an applicant who provides evidence that he has enjoyed adverse possession of land for a continuous period of at least 12 years. The Act defines 'adverse possession' thus: -

'means 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 land as owner thereof;'⁵

- [5] It follows that an applicant must prove on a balance of probabilities that he:

1. he exercised factual possession of the subject land;
2. he did so for a period in excess of 12 years continuously;
3. his possession was exclusive and undisturbed; and
4. throughout that period he intended to own the land.

- [6] The Act lays out certain procedural requirements which must also be satisfied by the applicant. It mandates that an applicant files affidavit testimony from him and at least two persons⁶ who can

² Cap. 328 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

³ Section 4 of the Act.

⁴ *Powell v McFarlane and Another* (1977) 38 P & CR 452 Ch D at 470 – 471; see also *Arnold Celestine (Administrator of the Estate of O'Ferrill Celestine) v Carlton Baptiste*, GDAHC VAP2008/0011, per Pereira CJ, at para. 12.

⁵ In section 2.

attest to his adverse possession. It provides that such evidence must set out in detail facts known to the deponents that tend to prove the applicant's claim. The application must be accompanied by a survey plan of the subject land, authenticated by signature of the Chief Surveyor;⁷ proof of publication in at least two newspapers, at the Registry, at the relevant Magistrate's Court of a notice detailing the application.⁸ The applicant is also required to serve a copy of the referenced notice on all landowners and occupiers of land adjoining the subject land; and must post a copy on the said land.⁹

- [7] Mr. Roberts complied with those procedural requirements. In this regard, he filed affidavits¹⁰ sworn to by his attorney on record Lincoln Williams and his witnesses Anita Williams and Sylvia Charles. The requisite notices were published in the newspapers,¹¹ in the Kingstown Magistrate's Court¹² and at the Registry¹³. A photocopy of survey plan A14/150 dated 19th August 2016 was produced. It appeared to contain the signature of the Chief Surveyor. It was not certified a true copy in accordance with the Evidence Act¹⁴. It is therefore not probative of the contents.
- [8] The court accepts the testimony of Bailiff Rodwell Alexander¹⁵ as to service of the notice. He asserted that on June 26th 2020, he served a copy of the notice on the adjoining landowners and occupiers and posted on a conspicuous place on the subject land.
- [9] Mr. Lincoln Williams initiated this claim as Mr. Roberts' lawful attorney¹⁶. He averred that Mr. Godwin Roberts is a 70 year old businessman who resides in the United States of America. Mr. Williams testified that Mr. Roberts became the owner of the subject lands by Deed of Conveyance

⁶ Section 5.

⁷ Section 6 of the Act.

⁸ Section 7 of the Act.

⁹ Section 8 of the Act.

¹⁰ On 29th May 2020 and October 16th 2020.

¹¹ In the News and Searchlight newspapers respectively on June 19th 2020, July 17th 2020 and July 24th 2020.

¹² On 25th June 2020 as certified by the Magistrate in notice of compliance filed on 21st August 2020.

¹³ On 29th June 2020 as certified by the Registrar in notice of compliance filed on 26th August 2020.

¹⁴ Cap. 220 of the Revised Laws of Saint Vincent and the Grenadines 2009, section 34(1)(d).

¹⁵ By affidavit filed on 21st August 2020.

¹⁶ He produced a Power of Attorney (No. 204/2019) to this effect.

number 1788 of 1976, having purchased it. He added that the land measures 6,042 sq. ft. as depicted on survey plan A14/150. The Schedule to the deed describes the land as:

‘All that lot piece or parcel of land situate at Questelles in the State of Saint Vincent being one (1) lot and being abutted and bounded on the north partly by land of Annie Edwards and by land of Della Gordon and by land of Mahalia Dyer and by land of Henry Hunte on the South by the public road on the east by land of Walter Peters and on the west partly by land of Alice Black and land of Nathaniel Williams and lands of Jesslyn Coram deceased and land of Jennie Quow or howsoever otherwise the same may be butted bounded known distinguished or described together with ...’

[10] In the application, the land is described in identical terms and alternatively as:

‘bounded on the north lands of heirs of Walter Peters, on the South by lands on survey plans A5/1 and A11/92, on the east by the Leeward Highway and on the west by lands on survey plan A6/9 shown on a survey done by Corliss Murray authorized land surveyor and approved and lodged at the surveys department and bearing registration number A14/150.’

[11] The boundary descriptions in the preceding paragraph match the depiction on of the land the copy of the survey plan which was produced in support of the application. None of the witnesses provided an account of the changes to the boundary descriptions from those in the deed to those outlined immediately above. Notably, at the time of the execution of the deed the lands on the eastern boundary were in private ownership. The alternate description suggests that those lands have been converted in to a roadway. If the court is to make a connection between the two, there must be evidence to support such a finding. This is missing.

[12] Mr. Williams explained that there is no house on the subject land but that taxes have been paid in Mr. Roberts’ name since he purchased it. He exhibited copies of receipts in respect of payments for property tax of land situated at Questelles for assessment years 2017, 2018, 2019 and 2021. He added that Mr. Roberts permitted his family members to maintain and keep the land from becoming overgrown. He did not state for what period this was done.

[13] Mr. Williams averred that no other person has asserted or tried to assert ownership over the land since it was bought by Mr. Roberts. He produced a valuation report in which the value is assessed

at \$63,441.00. Mr. Williams asserted that Mr. Roberts wishes to sell the land and has discovered a defect in the 'chain in title', by reason that one of the previous owners had obtained title by a statutory declaration. He testified that Mr. Roberts has owned the land without paying any rent or acknowledging any superior or other title. He stated that there has never been any dispute over the land or any challenge to his ownership of the same. He averred that the land has remained vacant since 1976 as Mr. Roberts has allowed trees and other vegetation to grow there.

[14] Ms. Anita Williams and Ms. Sylvia Charles testified that they are 70 years of age. Ms. Williams claimed to be Mr. William's sister-in-law. Both ladies averred that they know Mr. Roberts to be the owner of the subject land by virtue of Deed 1788 of 1976 and further that he has cared for it and treated it as his own. Ms. Charles stated that Mr. Roberts has paid taxes for it for over 44 years and has cleaned it during that period. Like Mr. Williams, they asserted that they have never known anyone to dispute his ownership of or to occupy the land.

[15] The court must be satisfied on the evidence that Mr. Roberts exercised physical control over the subject land for over 12 years. This idea is captured in the definition of 'adverse possession' in the Act. Slade J. summarized the concept of 'adverse possession' in **Powell v McFarlane and Another** where he said:

'If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have **both factual possession** and the requisite intention to possess ("animus possidendi").... Factual possession **signifies an appropriate degree of physical control**. It must be a single and conclusive possession, ... The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed...'.¹⁷ (bold added)

[16] Case law has shed light on what is contemplated by the expression 'factual possession'. Such precedents signal that 'factual possession' refers to physical acts undertaken on the subject land by the person claiming adverse possession, or by his servants or agents. For example, the Privy Council opined:

¹⁷(1977) 38 P & CR 452 Ch D at p. 470 – 471.

‘It is clearly settled that acts of possession done on parts of a tract of land to which a possessory title is sought may be evidence of possession of the whole.’¹⁸

While the Board in that case did not define or pointedly describe what amounts to ‘factual possession’ it is clear from a reading of the entire judgment that they accepted that it involves physical acts done on the subject land. Similarly, the Court of Appeal in **Marlon Mills v Stacey McKie (executrix of the Will of Hughson McKie, deceased)**¹⁹ made implicit but pointed reference to what constitutes factual possession.

- [17] Mr. Roberts submitted that although his Deed is invalidated, the case of **Powell v Mc Farlane** assists him in establishing adverse possession. He contended that he purchased the land, has a deed of conveyance and has treated the land as his. He argued ‘an intricate act and intention of ownership is to obtain a registered title to the subject property, and for 44 years his registration of title was notice to the world that he is owner of the subject property and to exclude others’. He contended that this is borne out by a statement from the **Powell v Mc Farlane** case where Slade J. stated:

‘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.’

- [18] The court accepts that the referenced statement by Slade J. is legally correct. I hasten to add however, that within the context of this case, Mr. Roberts does not have paper title to the subject land. What he registered as a deed was invalid and impotent to confer legal ownership on him. For this reason, he is unable to rely on the foregoing dictum to ground his claim for possessory title. Moreover, the regime prescribed in the Act stipulates that certain elements must be satisfied. They do not include presentation of an imperfect deed. The court is bound by the provisions in the Act and must apply them when evaluating an application for possessory title.

¹⁸ Higgs and Another v Nassauvian Ltd. [1975] 1 All ER 75 at page 101.

¹⁹ SVGHCVAP2016/0001.

- [19] In the case at bar, Mr. Williams, Mrs. Williams and Sylvia Charles described activity conducted by Mr. Roberts' relatives on the land. This was limited to them maintaining and keeping the land from becoming overgrown. None of them provided particulars as to the period during which this was done. Those acts are therefore inadequate to establish physical control for 12 years or more. Other testimony related to Mr. Roberts allowing trees and other vegetation to grow there. This does not qualify as an act of control and therefore does not advance his case.
- [20] Payment of property taxes takes this claim no further since it does not involve physical occupation of the subject land. In any event, the period covered by the documentary exhibits does not amount to 12 years. Factual possession is established by proof that the applicant continuously exercised acts of ownership over the property for the relevant period.²⁰ Mr. Roberts has not satisfied this evidential requirement.
- [21] The applicant has provided credible and substantive evidence that he intended to own the subject land. There can be no doubt that this was his intention. He has linked this with a claim that he is the rightful owner. An application for a declaration of possessory title is inconsistent with an assertion that the applicant owns the subject land. While the court accepts that Mr. Roberts always intended to own the land, it is unable to find that he has been in adverse possession of it for the requisite period of over 12 years. His claim is not made out and must be dismissed. It is unnecessary to make a costs order.

²⁰Halsbury's Laws of England Vol 68 (2016), para. 1076.

ORDER

[22] It is ordered:

1. Godwin Roberts' application for a declaration of possessory title of the subject lands situated at Questelles, depicted in the survey plan A14/150 that was approved and lodged at the surveys department on 19th August 2016 is dismissed.
2. No order as to costs.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar