

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

IN THE HIGH COURT OF JUSTICE

SVGHPT2017/0001

**IN THE MATTER OF AN APPLICATION FOR DECLARATION OF POSSESSORY TITLE TO LAND IN
ACCORDANCE WITH THE POSSESSORY TITLE ACT 2004**

AND

**IN THE MATTER OF AN APPLICATION FOR DECLARATION OF POSSESSORY TITLE TO LAND BY
SARAN CHRISTOPHER**

APPLICATION

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

Appearances:

Mr. Sylvester Raymond Cadette of counsel for the applicant.

2020: Sept. 28
Oct. 5

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** This is an application for a declaration to possessory title of land. The applicant Ms. Saran Christopher averred that she has been in exclusive and undisturbed possession of the subject land situated at Edinborough in the Parish of Saint George, since 1995. Her witnesses Diarra Christopher and Sylma Haywood support her claim.

- [2] No one opposes Ms. Christopher's claim. The evidence must be evaluated to determine whether it establishes Ms. Christopher's claim that she has been in adverse possession of the land. I have found that it does not.

ISSUE

- [3] The issue is whether Saran Christopher is entitled to the grant of a declaration of possessory title of the subject land.

ANALYSIS

Issue – Is Saran Christopher entitled to a declaration of possessory title of the subject land?

- [4] The Possessory Titles Act (the Act)¹ outlines the procedure to be followed by applicants who seek a declaration of possessory title to land. It defines 'adverse possession as:

'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.'².

(Underlining added)

- [5] In the UK case of **Powell v McFarlane and Another** Slade J. explained that adverse possession is characterized by (a) physical control of a sufficient degree; and (b) an intention to own the land. He stated:

'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...'³ (Underlining added)

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

² Section 2 of the Act.

³ (1977) 38 P & CR 452 Ch D at 470 – 471; J A Pye (Oxford Ltd & Ors v Graham and Another [2002] UKHL 30.

Acts of factual possession

[6] Based on the foregoing, Ms. Christopher's application will succeed if she establishes that she has exercised exclusive and continuous factual possession over the subject land, for at least 12 years and that during that period she intended to own it. She and her witnesses provided affidavit testimony. She stated that the land was previously in the possession of a number of her relatives and is adequately described in registration title No. 3110/1997. She testified that she went into possession of the land in 1995 immediately after the death of her late relative Mildred Burke.

[7] Ms. Christopher exhibited a photocopy of a Statutory Declaration No. 3110/1997, signed Mildred Burke. In it, Ms. Burke rehearsed that she had been in possession of a parcel of land at Edinboro for the past 25 years. The land is described in the Schedule as follows:

'All that lot piece or parcel of land situate at Edinboro ... being butted and bounded on the North where it admeasures fifty four (54) feet by the Fort Road on the South where it admeasures eighty (80) feet by lands in the possession of Sonny Davis on the East where it admeasures one hundred and four (104) feet by lands in the possession of Clifford Providence and on the West where it admeasures one hundred and sixteen (116) feet by lands in the possession of on St. Hillaire ...'.

[8] Ms. Burke declared further that the premises previously belonged to her grandmother Amelia Hamilton who gave it to her (Burke's) mother Albertha Hamilton without preparing a Deed of Gift. She added that her mother Albertha Hamilton gave her the land after which she entered into possession. She asserted that she has never paid rent, profits or charges to anyone in respect of the land. She averred that her mother died on 25th April 1966. Ms. Burke asserted further that since then she has enjoyed peaceful undisturbed and exclusive possession of the referenced land.

[9] Ms. Christopher asserted that the land described in the Statutory Declaration is the same as the land which is the subject of this application. She averred that it is by area 4,393 square feet and is illustrated in the accompanying plan G59/119. She submitted that it is also described in the application. She provided a photocopy of the plan. In the application, the land is described as being bound as follows:

‘North East by a road South West by lands of the heirs of Ben Williams North by lands of Venessa Ackee and South East by remaining lands of Maurice John’.

- [10] The court observes that the description in the application bears little resemblance to that in the Schedule to the Statutory Declaration. In this regard, the names of adjoining landowners are different. Similarly, the distances outlined in the Statutory declaration differ from those on the survey plan G59/119. For example, the length of the eastern boundary is depicted as 38.69 feet on the plan, whereas in the Statutory Declaration the distance of is stated to be 104 feet.
- [11] Neither Ms. Christopher nor her witnesses attempted to explain the discrepancies to satisfy the court that the land in the Statutory Declaration is that which is the subject of this application. I find that there is no correlation between the description in the Statutory Declaration and that in the application as depicted on the referenced survey plan. I make no finding that they are the same. The content of Statutory Declaration does not support Ms. Christopher’s claim. Likewise, it is not probative of factual possession by her of the subject land. Furthermore, it is now accepted that a Statutory Declaration is nothing more than a self-serving Deed of Settlement which does not constitute valid legal title.⁴
- [12] Ms. Christopher testified that from 1995 she ‘... used the said parcel for agricultural purposes and (to) plant crops such as ground provisions and (to) reap fresh fruits found from the abundant (sic) of fruit bearing trees found’ there. She explained that since she has occupied it she has never been disturbed by anyone nor has anyone made adverse claims of the land. She provided no details about whether her farming of the land was unbroken and if so for what period.
- [13] Diarra Christopher is her sister and Sylma Haywood is her mother. Ms. Haywood attested that Saran Christopher is in possession of the subject land. She stated that it was formerly used by other relatives ‘who passed it on until it became in possession of (Ms. Christopher) who received it from Mildred Burke who died in 1995. Ms. Haywood did not indicate how Ms. Christopher received it from Ms. Burke. Her account on this score differs from Ms. Christopher’s. She said that she knows the land quite well and knows that Ms. Christopher planted ground provisions on it and

⁴ Per Benjamin JA. in *Connell v Connell* SVGHCVP2004/25 (unreported), at para 9.

reaped fruits from the numerous fruit trees growing on it. She did not offer any information about when Ms. Christopher went into possession or when and for what period she cultivated the land. In another affidavit Ms. Haywood attested that Ms. Christopher migrated to the United States of America and now lives there, but did not say when this took place.

- [14] Diarra Christopher said that the land has been in their family for a long time and even before she was born. She recalled that as children they visited the land and picked fruits from the fruit trees. She asserted that her sister and their family usually plant provisions and other annual crops there for home use. She added that it is used mainly for agriculture but is also suitable for building purposes. Like her sister and Ms. Haywood, she proffered no details of the dates and periods when such cultivation took place. Conspicuously absent from the accounts provided by Ms. Christopher and her witnesses are adequate specifics which would assist the court in finding that she has occupied and exercised exclusive control over the subject land for 12 or more years. I find that she has not.

Intention

- [15] It appears that Ms. Christopher has evinced an intention to own the subject land. However, that intention was not matched by a corresponding period of at least 12 years continuous factual possession of the land. I so conclude in light of all the evidence.

Formal requirements

- [16] Ms. Christopher used the prescribed form in making her application.⁵ She omitted the name of the registered owner, mandated by the Act. The photocopy of the survey plan does not satisfy the evidential requirements, because the law stipulates that either an original or certified copy be produced.⁶

- [17] An estimated value of \$43,930.00 was affixed to the land in the report exhibited to the application. This complies with another requirement in the Act.⁵ Ms. Christopher exhibited newspaper

⁵ In accordance with section 4 of the Act.

⁶ Pursuant to section 6 (1) of the Act; and section ... of the Evidence Act, Cap. 220 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

publications of the requisites notices to the public of her intention to make this application;⁷ and copies of notices of compliance that were posted respectively at the Registrar's Office and the Magistrate's Court in Kingstown.⁷ High Court Bailiff Rodwell Alexander supplied an affidavit⁸ in which he asserted that he served notice of the application on adjoining landowners⁹, and that he posted a copy on a partly ruined house facing the public road. Ms. Christopher has fulfilled the statutory procedural formalities outlined in the Act. Notwithstanding, her failure to prove that she has had factual possession of the land for the minimum 12 year period, renders her application deficient. It is dismissed for this reason.

[15] It ordered:

1. Saran Christopher's application for a declaration of possessory title of the subject land at Edinborough, in the Parish of St. George, in the State of Saint Vincent and the Grenadines, delineated in survey plan G59/119 is dismissed.
2. No order as to costs.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar

⁷ In accordance with section 7 of the Act. The notices were published on 12th May, 2017, 16th June, 2017, and 25th July 2017 respectively in the Vincentian and the Searchlight newspapers.

⁸ Filed on 30th March 2017.

⁹ Pursuant to section 8 of the Act.