

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

IN THE HIGH COURT OF JUSTICE

SVGHPT2019/0003

**IN THE MATTER OF AN APPLICATION BY SAMUEL GEORGE GILKES FOR A DECLARATION OF
POSSESSORY TITLE TO LAND**

APPLICATION FOR DECLARATION OF POSSESSORY TITLE

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

Appearances:

Mr. Jadric Cummings of counsel for the applicant.

2020: Sept. 28
Oct. 5

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** Mr. Samuel George Gilkes has applied for a declaration to possessory title of land situated at Sion Hill in the Parish of Saint George in the State of Saint Vincent and the Grenadines. His application is supported by affidavit testimony provide by him and his witnesses Timothy Creese, Glenford Ralph and Paula Harry. It is unopposed. If his application is to be successful, the court must be satisfied that it satisfies the statutory and evidentiary requirements. His application is dismissed for the reasons outlined in this judgment.

ISSUE

- [2] The issue is whether Samuel George Gilkes is entitled to the grant of a declaration of possessory title

of the subject land.

ANALYSIS

Issue – Is Samuel George Gilkes entitled to a declaration of possessory title of the subject land?

- [3] The Possessory Titles Act (“the Act”)¹ provides the legal framework under which a declaration of possessory title is considered and determined. It defines the expression ‘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)

- [4] It is now established that adverse possession is made out by an applicant who proves that he has enjoyed exclusive and undisturbed factual possession of the subject land accompanied by the requisite intention to possess it as owner. As articulated by Slade J. in **Powell v McFarlane and Another**:

‘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)

Essential Components of Adverse Possession

- [5] The foregoing legal definition and judicial pronouncement highlight three distinct components which must be proven:

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.

1. factual possession that is exclusive and continuous, evidenced by physical control;
2. for at least 12 years; and
3. with the requisite intention.

In determining whether Mr. Gilkes has established his claim, I propose to examine the evidence against each of these elements. For efficiency and effectiveness, I will deal with the first and second limbs together.

Acts of factual possession and date

- [6] The subject land comprises 1,752 sq. ft.⁴ and is valued at \$EC17,520.00. Mr. Gilkes exhibited a survey plan and valuation to such effect. On the matter of factual possession, he and his witnesses averred that he had been in exclusive possession of the subject land for over 40 years. He rehearsed that his first cousin Conrad Gilkes was in possession of the subject land for some time until his death in or about 1977. Mr. Gilkes did not indicate for how long his cousin occupied the land. He stated that he took possession of the land in or about 1977 and continues to do so until present. His use of the term 'in possession' was not qualified by the types of acts he undertook which amount to possession.
- [7] He averred that he lived on the land for a number of years in a wooden structure and subsequently moved to the adjoining lot on the western boundary where he currently resides. He provided no testimony of the period he lived there. Neither did his witnesses. He claimed that he has maintained the subject land as his own and has trimmed it once or twice a month. He nor his witnesses stated when he started trimming it or over what period he has done so. He asserted that he has paid the land taxes in the name on the tax roll. He exhibited receipts for payment of taxes in the name of Conrad B Gilkes. They reflect payment of the taxes in arrears for 1998 – 2001⁵, 2001⁶, 2002⁸, 2003⁸, 2004⁸, 2005⁸, 2006⁸, 2012⁷, 2007-2011⁹, and for 2013-2018⁸.

⁴ See survey plan G3218.

⁵ Receipt #39290 dated 29th April 2002.

⁶ Receipts #9837, #9838, #9839, #9840, #9841 and #9843 respectively dated 3rd November 2009.

⁷ Receipts #10139 and #10138, respectively dated 28th September 2012.

- [8] Mr. Gilkes filed his affidavit on January 9th 2019. He averred that 3 years before then he erected a small wall on the northern boundary of the subject land to prevent land slippage. In a supplementary affidavit filed on 16th July 2020 he asserted that he has since erected concrete walls on all remaining boundaries and cleared the subject land of grass and bush as he anticipates construction. The court notes that the timelines of the referenced construction do not satisfy the statutory 12 year period to qualify as adverse possession. He added that he has enjoyed peaceful, undisturbed and exclusive possession of the land for over 40 years.
- [9] The only acts of factual possession on which he relies are trimming the land and living there for a period of time. The absence of timelines regarding those acts undermines Mr. Gilkes' case. The court notes that the receipts for the payment of taxes contain no indicia which link the property mentioned in them to the subject land. Apart from his say so, there is no evidence from which the court can make a link between them. Moreover, payment of taxes is not by itself probative of exercise of physical control over the subject land. Furthermore, the receipts reveal that the payments were made in 2002, 2009 and 2012, indicative of only a sporadic connection with the land referenced in them.
- [10] Mr. Timothy Creese and Mr. Glenford Ralph supplied accounts similar to Mr. Gilkes'. They asserted that they have known him for many years. They averred that they are aware that he has been in possession of the subject land for over 40 years. They testified that he lived on the land for many years before moving on to the adjoining land where he resides at present. They stated that Mr. Gilkes keeps the land clear. They provided no details about when he started cleaning it and for how long this has continued.
- [11] They averred that the entire community 'knows' that the subject land belongs to Mr. Gilkes. This is not a statement on which this court can act as it proves nothing other than their belief of that assertion. Mr. Ralph added that no one else uses the subject land. He attested further that Mr. Gilkes built a little wall two or three years before (January 2019) to prevent land slippage.

⁸ Date of payment illegible.

[12] Mr. Gilkes has provided no coherent testimony of the period during which he exercised acts of ownership over the subject land. Payment of taxes in arrears in 2009 for 6 previous years and again in 2012 for 6 years do not qualify as acts of possession. Neither does trimming the land for unspecified periods satisfy this requirement. He has therefore failed to prove on a balance of probabilities that he has enjoyed factual possession of the land for a continuous period of at least 12 years.

Intention

[13] Messrs. Gilkes, Creese and Ralph use the expression 'took possession' loosely without supplying the relevant details to establish that legal finding. It is for the court to determine whether possession is proven; not by merely accepting a bald statement, but by specific evidence of the factual acts undertaken by an applicant by which he seeks to establish that he exercised physical ownership over the land. Mr. Gilkes' testimony and that of his witnesses fall woefully short of the standard. I find that Mr. Gilkes evinced the intention to own the subject land at some point. The evidence fails to show on a balance of probabilities that such intention was matched by concurrent acts of factual possession by him or anyone acting on his behalf. I find that it does not.

Formal requirements

[14] Mr. Gilkes' application was made in the prescribed form and supplied most of the details specified in it.⁹ He did not include the name of the registered owner of the subject land. He produced a certified copy of the survey plan on which the application is based.¹⁰ Mr. Gilkes exhibited an appraisal and valuation report⁹ which ascribed a value of \$17,520.00 to the land.

[15] He provided copies of the stipulated newspaper publications;¹¹ and copies notices of compliance that the Act mandates must be posted respectively at the Registrar's Office and the Magistrate's Court in the relevant district.¹² He provided proof that adjoining landowners were served¹³ with notices of

⁹ In accordance with section 4 of the Act.

¹⁰ Pursuant to section 6 (1) of the Act.

¹¹ In accordance with section 7 of the Act. The notices were published on 25th January, 2019, 1st and 22nd February, 2019, and 1st March 2019 respectively in the Searchlight and the News newspapers.

¹² In accordance with section 7 of the Act.

his application, by High Court Bailiff Rodwell Alexander. Mr. Alexander provided a sworn affidavit to this effect. He averred further that he posted a copy of the notice on an electricity pole at the entrance of the subject land.

[16] I am satisfied that Mr. Gilkes has fulfilled the formal procedural requirements outlined in the Act. However, in view of my earlier finding that he has not established the requisite acts of factual possession, he has not satisfactorily proven that he has for a continuous period in excess of twelve years, enjoyed factual possession of the subject parcel of land with the intention to possess it. His application must be dismissed.

[17] It therefore ordered:

1. Samuel George Gilkes' application for a declaration of possessory title of the subject land at Sion Hill, in the Parish of St. George, in the State of Saint Vincent and the Grenadines, delineated in survey plan G3218 is dismissed.
2. No order as to costs.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar

¹³ Pursuant to section 8 of the Act.