

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0134

BETWEEN

JOAN JACK
(EXECUTRIX IN THE ESTATE OF HUNTLEY JACK DECEASED)

CLAIMANT

AND

JOEL JACK
of Rillan Hill

DEFENDANT

Appearances:

Mr. Richard Williams and Ms. Danielle France for the claimant.
Mrs. Kay Bacchus-Baptiste for the defendant.

2020: May 20

ORAL DECISION

BACKGROUND

[1] **Henry, J.:** Mrs. Joan Jack is Mr. Joel Jack's stepmother. Mrs. Jack's late husband was Huntley Jack. He passed away in 2013¹. Mrs. Jack claimed that Joel Jack has trespassed on land and remains as trespasser in a house at Rillan Hill ('disputed property') which her deceased husband purportedly left to her by Will. She brought this claim as executrix of her husband's estate, seeking recovery of possession of the disputed property, damages for trespass, an injunction to restrain Mr.

¹ On 1st November.

Jack from further trespass and costs. She contended that her claim for possession of the property is justiciable on the strength of her late husband's possession of the disputed property.

- [2] Mr. Jack resisted the claim. He countered that the subject land is owned by his sister Venita Gibson from whom he is in the process of purchasing it. She testified to like effect. Mr. Jack averred further that he and his son have lived on the subject land for years prior to his father's demise. He submitted that Mrs. Jack cannot provide proof of ownership of the subject land. He argued that his father never owned the disputed property and did not enjoy exclusive possession. Mrs. Jack has failed to establish that her stepson is a trespasser as alleged. Her claim is therefore dismissed.

ISSUES

- [3] The issues are:
- (1) Whether Joel Jack is a trespasser on the disputed property?
 - (2) To what remedies if any, is Joan Jack entitled?

ANALYSIS

Issue 1 – Is Joel Jack a trespasser?

- [4] It is now recognized and accepted as trite law that a person trespasses on land belonging to or under the physical control of another, by entering on the land without his consent and interfering with his possession by carrying out a physical act on it.² Trespass constitutes '... the interference of one's possession'³ of land. Mrs. Jack submitted that a person can bring an action to recover possession without proving that he has title to the property. She cited **Megarry & Wade**⁴ as authority. She is correct on this score.
- [5] Mrs. Jack submitted further that a trespasser cannot set up a defence of *jus tertii* whereby he

² Southport Corporation v Esso Petroleum Co. [1954] 2 Q.B. 182.

³ Lorenze A.D. Williams et al v Hestina Edwards SVGHCVP2000/0020, at para. 7, per Byron, C.J.

⁴ 3rd Edition, pg. 997.

denies a claim for recovery of possession, by relying on a third person's superior title. She argued that he must instead be able to rely on his superior interest in the lands. She stressed that Mr. Jack cannot advance a defence which rests on the weakness of her claim. She relied once more on **Megarry & Wade**⁵. These propositions are also correct statements of a relevant legal principle. They will be considered in arriving at the decision in this matter. In this regard, I will assess whether Mrs. Jack's claim is anchored either by proof that her late husband's estate owns the disputed land; or whether he or she (as executrix and sole beneficiary of his Will) exercised exclusive physical control over the disputed property by virtue of which the claim can be made out.

Ownership of the disputed property

- [6] The facts in this case are not complicated. They were rehearsed in the testimonies of the three persons who gave evidence - Mrs. Jack, Mr. Jack and Ms. Gibson. Mrs. Jack produced the Grant of Probate⁶ issued in respect of her husband's Will. In the attached Will, the testator Huntley Jack appointed her sole executrix and gave, devised and bequeathed to her all his 'estate both real and personal whatsoever and wheresoever situate and of which (he) may die seised and possessed or to which (he) may be entitled to (sic) at the time of (his) death ...'.
- [7] The Will contained no description of the referenced property or properties. Mrs. Jack accepted that it did not refer to 'house or land'. She was adamant that about an acre of land was left for her at Rillan Hill in Big Bush. She insisted that she has a Deed of Gift for the property which her husband left her. She claimed that a Mr. Huggins has it. It was not presented to the court.
- [8] Mrs. Jack pleaded that the properties include the disputed land and the concrete house that her late husband built on it. She supplied no details of the subject property in her evidence. The Probate Grant contains the description of a single parcel of real estate which fell to be administered under the grant. It stated simply: 'All that lot piece of (sic) parcel of land situate at Rillan Hill in the State of Saint Vincent and the Grenadines being one lot more or less together with all buildings and erections thereon'. (underlining added) A value of \$120,000.00 is ascribed to that property. Mrs.

⁵ Op cit. at pg. 1000.

⁶ Number 200 of 2016.

Jack incorporated this description in her statement of claim as, being the property described in the Will. She pleaded and averred that her husband left her that property by his Will.

- [9] She asserted that Mr. Huntley Jack's estate owns the referenced property by virtue of the Grant of Probate. She made no submissions as to the principle of law by which a Probate Grant without more, confers title to property described in it. Mr. Jack submitted that the referenced Probate Grant cannot pass title to Mrs. Jack. I make the observation that the Probate Grant does not establish proof of ownership of any property described in it. To the extent that Mrs. Jack is relying on the Grant of Probate to establish ownership of the disputed property, that is a baseless contention.
- [10] Mrs. Jack testified that after her husband's death, Mr. Joel Jack, his servants and agents wrongfully and unlawfully entered and occupied the referenced property without her licence and consent. She indicated that her step daughter cursed her as a result of which she left the house. She complained that due to Joel Jack's agents' and/or servants' continuous verbal abuse towards her, she was unable to remain there. She accepted that Joel Jack did not put her out of the house.
- [11] Mrs. Jack admitted that Joel Jack Jr. has been living on the land from 2012 to present and that Joel Jack Jr. and his cousin Andrew Jack lived there with her and her late husband from 2012. She accepted that Andrew Jack was currently living in the downstairs section of the house. While she acknowledged that Joel Jack, his son Joel Jack Jr. and his nephew Andrew Jack were born at that property, she did not agree that Andrew Jack and Joel Jack Jr. have always lived there from the time of their birth until present. She pointed out that Joel Jack was at one time living elsewhere with his wife.
- [12] It was not clear from Mrs. Jack's testimony whether Joel Jack Jr. or Andrew Jack were some of the persons whom she claimed had abused her, causing her to flee from the premises. She denied the suggestion that she left the house before her husband died. She explained that on occasion she stayed at her mother's house instead of returning home from work in the evenings.

- [13] Mrs. Jack testified that she caused a letter to be sent to Joel Jack on 5th April 2017 demanding that he relinquish possession of the property. In it, she included a copy of the Probate Grant. Mr. Jack has remained in occupation of the property. Mrs. Jack accused him of trespassing. She averred that she has thereby been deprived of the use and enjoyment of the land and has suffered loss and damage.
- [14] When cross-examined, Mrs. Jack asserted that her husband built the house that she is claiming. It emerged from the evidence that Mr. Huntley Jack was married to Joel Jack's and Venita Gibson's mother (now deceased) before marrying Joan Jack. That union produced 6 children. Mrs. Jack accepted that he was married before and lived with his first wife and children in a property at Rillan Hill. She agreed that the property belonged to Mr. and Mrs. Jack because they were husband and wife.
- [15] It is common ground between the parties that Mr. Jack constructed the subject house on land at Rillan Hill during the currency of his earlier marriage. Mrs. Jack accepted this. Mr. Jack and his sister both testified that they contributed towards the construction and upkeep of the house. This was uncontroverted and is accepted as factual. It is also a matter of record and evidence that Mr. Huntley Jack did not purchase the land on which he built the house. His daughter Venita Gibson bought it and she remains the registered owner.
- [16] Mr. Joel Jack produced a certified copy of Deed No. 855 of 2015 which reflects that in 2015⁷ the mortgagee Bank of Nova Scotia re-conveyed to Venita Gibson a parcel of land at Big Rillan comprising 1 acre, 3 roods and 32 poles. The parties and Ms. Gibson accept that this land is the subject of the instant claim where Mr. Huntley Jack built the house he occupied first with the late Mrs. Jack and their family, and later with Mrs. Joan Jack.
- [17] Mrs. Jack asserted that her husband was found to be the owner of the dwelling house on the subject land, by a judgment of the High Court. She averred that this determination was made by Matthew J., arising from an application for possessory title that her husband filed. The judgment

⁷ On 7th April.

reveals that Mr. Huntley Jack's application to the High Court in 2007 for a declaration of possessory title of the disputed lands was opposed by Ms. Gibson. It was dismissed⁸.

[18] Significantly, as submitted by Mr. Joel Jack, the referenced judgment contained no description of the property under consideration by Matthew J.. Moreover, Mrs. Jack did not adduce evidence which made the connection between both parcels of land. However, Ms. Gibson accepted that the subject matter of that case was the land on which Mr. Huntley Jack built the house which is partially the subject of this claim. I accept that it is.

[19] The learned trial judge ruled:

‘... mere occupation of land does not amount to adverse possession. ... Huntley Jack recognized her (Venita Gibson's) ownership. ... the Applicant (Huntley Jack) has not been in exclusive and undisturbed possession of the portion of land for over 12 years.’⁹

[20] He remarked:

‘In my judgment the first time that the land passed from the ownership of Mr. Punnett was by deed 2345 of 1978 when Venita Gibson became owner and she has been in control since then.’¹⁰

[21] The foregoing excerpts from the judgment of Matthew J. do not contain a finding that Huntley Jack was the fee simple owner of the subject land. In fact, he observed that it was clear that Ms. Gibson was the owner. Mrs. Jack does not dispute that Venita Gibson is registered as owner of the disputed lands. Indeed, she accepted that Venita Gibson is the fee simple owner of the land in her submissions at the end of the trial. The paper title owner is deemed by law to own the legal interest, right and title to any concrete or fixed structure attached to the land such as a wall house.

[22] Mr. Jack submitted that Mrs. Jack did not file a Deed of Assent or provide proof that her late

⁸ See Judgment in Possessory Title Claim 10 of 2007 (unreported); delivered on November 16 2007.

⁹ Paragraphs 17, 22, 26

¹⁰ At para. 20 of the Judgment in Claim No. 2007.

husband owned the disputed property. He submitted further that Mrs. Jack supplied no plan or property description of the land to which she claims she is entitled; and included no pleading by which the land was identified. This is all factually and legally correct.

[23] It is worth noting that the subject house and land are considered to be inseparable parts of property registered by Deed No. 855 of 2015. The law makes no distinction between a concrete structure and the land on which it is built. No evidence has been presented from which a finding can be made that Ms. Gibson has parted with legal ownership of the subject property. I therefore make no finding that she has.

[24] Moreover, Mrs. Jack submitted that she had no interest in the court considering any issue as to any equitable interest in the house, land or both, to which she or the deceased Huntley Jack might be entitled. Conceivably, this might have been an element of her claim in view of her prayer for 'such further or other relief the Court thinks fit'; depending on the view taken by the Court of the evidence regarding her late husband's contributions to the construction of the house. Her insistence that this is not to be taken into account removes it from consideration. I make no finding that Mr. Huntley Jack's estate or Mrs. Joan Jack (as sole beneficiary named in the referenced Will) owns or is entitled to any equitable interest, right or title to the disputed property.

Exclusive Physical Control

[25] Mrs. Jack submitted that she also seeks possession of the building. The owner of real property is deemed by law to be the person in possession or physical control of it, unless someone else can establish a better title.¹¹ I have already found that neither Huntley Jack nor his estate owned or owns the disputed property. Therefore, in order to succeed in her claim, Mrs. Jack must prove on a balance of probabilities that her late husband's estate (including her as executrix) was in physical control or possession of it, as owner exclusively, while Joel Jack has been occupying it.

[26] Mrs. Jack relies on her husband's occupation of the subject house to establish a superior right to

¹¹ Clerk & Lindsell on Torts, 20th ed. paragraph 19-10.

her stepson. She, Mr. Jack and Ms. Gibson were forthright in their testimony. Their accounts had little variation. Where they differ, I prefer Mr. Jack's and Ms. Gibson's over Mrs. Jack's especially since they supplied a more credible, comprehensive and consistent narrative. Mr. Jack and Ms. Gibson recalled that the house was occupied as a family house from 1962 and even after their mother died in 2010 and up to their father's death in 2013. Mrs. Jack acknowledged that Mr. Joel Jack Jr. and Mr. Andrew Jack lived in the house with her husband and her. She did not indicate how long she resided in the house with Mr. Huntley Jack.

[27] Mr. Jack asserted that Mrs. Jack was his father's wife for only 2 years before he passed away. Mrs. Jack did not refute this. It seems to fit within the known timelines, since his first wife passed away three years before his own death in 2013. I therefore accept Mr. Jack's account. He averred that his son Joel Jack Jr. is now about 23 years old and has lived there since birth as has Andrew Jack. Mrs. Jack offered no credible contrary testimony. I believe Mr. Jack.

[28] Mr. Jack accepted that he left the house for a period after he married. He explained that during that brief period, he lived with his wife in Chauncey. He testified that he resumed occupancy permanently in 2015. Mrs. Jack did not dispute this. Neither party gave an account of the circumstances under which Mr. Jack returned. Mrs. Jack stated simply 'Following the death of Huntley Jack, the Defendant moved into the subject matter ...'.¹²

[29] Mrs. Jack did not claim that Mr. Jack was permitted to occupy the property by her or her servant or agent. Her husband was already dead. To the extent that she is claiming to have a superior entitlement to possession above Mr. Joel Jack, one would expect that she would have asserted that superior entitlement by protesting to his alleged unlawful ingress and occupation of the house soon after his return in 2015; and not two years later in 2017 (when the letter was sent). Mrs. Jack's testimony was very scant and did not indicate under what circumstances Mr. Jack returned. She simply averred that he is a trespasser. Her assertions that he is a trespasser do not accord with her acquiescence in him remaining there for that extended period without objection, particularly since she was aware of it.

¹² Paragraph 8 of her witness statement filed on 17th January 2018.

[30] Having acknowledged that her husband and his former wife built the house and occupied it with their children as a family, Mrs. Joan Jack has effectively conceded that the property is a family house as alleged and occupied by Mr. Jack on that basis. Interestingly, Mrs. Jack in her letter demanded that Joel Jack deliver vacant possession to her. She made no mention of Andrew Jack or Joel Jack Jr. being trespassers, either in her pleadings, witness statement, testimony or that letter. She did not describe them as Mr. Joel Jack's servants or agents. She provided no explanation for this differential treatment of them.

[31] I infer that Mrs. Jack is aware of and by her conduct has acknowledged that Joel Jack is lawfully occupying the subject house, be it as licensee of the lawful owner or otherwise. What is abundantly clear is that Mrs. Jack has no superior entitlement to occupation of the premises, above Joel Jack. She has not established that she or her late husband enjoyed exclusive control of or superior right to occupy it even while they lived there as husband and wife.

[32] I find that Huntley Jack up to his death occupied the subject house as Venita Gibson's licensee, just as Joel Jack, Joel Jack Jr. and Andrew Jack. He therefore had no interest in the property that he could pass to Mrs. Jack, as basis for her claim to superior physical control of the residence. I find therefore that Joel Jack is not a trespasser as alleged or at all. Mrs. Jack's claim is accordingly dismissed.

Issue 2 - To what is Joan Jack entitled?

[33] Mrs. Jack has not made out her case. She is not entitled to the reliefs claimed. Her prayer for damages, an injunction, possession of the subject property and other relief is refused.

Costs

[34] Costs usually follow the event. This means that a successful party generally recovers his costs from the losing party. In the premises, Mrs. Jack shall pay \$7,500.00 to Mr. Jack being costs on the prescribed scale pursuant to CPR 65.5 (2) (b).

ORDER

[35] It is declared and ordered:

(1) Mrs. Joan Jack's claim is dismissed.

(2) Mrs. Joan Jack shall pay to Mr. Joel Jack prescribed costs of \$7,500.00 pursuant to CPR 65.5(2)(b).

[36] I am grateful to counsel for their submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar