

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHPT2017/0026

IN THE MATTER OF AN APPLICATION BY MARJORIE CUFFY, COLVILLE WILLIAMS, KENNETH WILLIAMS, STANLEY WILLIAMS, DOUGLAS WILLIAMS AND EMILLE WILLIAMS FOR A DECLARATION OF POSSESSORY TITLE OF LAND

BETWEEN:

MARJORIE CUFFY
COLVILLE WILLIAMS
KENNETH WILLIAMS
STANLEY WILLIAMS
DOUGLAS WILLIAMS
AND
EMILLE WILLIAMS

APPLICANTS

AND
EVERIL DELECIA

RESPONDENT

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

Appearances:

Ms. Ann-Marie Jack of counsel for the applicants.
Ms. Michelle Fife of counsel for the respondent.

2019: Jul. 4
Oct. 24
2020: Feb. 17 - 20
Mar. 23

JUDGMENT

- [1] **Henry, J.:** This case involves the vexing and perennial question of ownership to land within the context of opposing claims on the one hand, by an avowed absentee owner who claims that in his absence from the State he leased the disputed lands to someone; and on the other hand, by an occupier ('the would-be lessee') who maintains that her occupation was in her own right and without attornment to the other.
- [2] Mrs. Marjorie Cuffy and her siblings Dr. Colville Williams, Dr. Kenneth Williams, Mr. Stanley Williams, Mr. Douglas Williams and Mr. Emille Williams have made this application¹ for a declaration of possessory title to over 15 acres of land at Massey Estate in Saint Vincent and the Grenadines. At times, they will be referred to collectively as 'the applicants', in this judgment.
- [3] They claimed that their mother Emily Williams, deceased, bought the land from the Massey Estate in 1967 and did not obtain a Deed of Conveyance. They asserted that she transferred the land to them by Deed of Gift in 1999, and from then they have exercised acts of ownership over it including leasing portions of it to different individuals including Ms. Everil Delecia. They relied respectively on Letters of Agreement purportedly signed by Mrs. Durrant and Ms. Delecia and 'lease' agreements executed by Mr. Beresford Williams and purportedly signed by Ms. Delecia.
- [4] Ms. Delecia opposed the application. She acknowledged signing a document but claimed that she never really understood what she was signing. She averred that she has been a farmer all of her life and does not read that well. She asserted that she, her extended family and her parents before her have been farming approximately 15 acres of land at Massey Estate for almost 40 years starting around 1978. She claimed that those 15 acres comprise the disputed lands. She contended that the disputed lands were owned by Mrs. Inez Dasent and the Dasent family of Mount Grenan.
- [5] She averred that in the seventies and even before then, her father worked lands at Massey Estate on behalf of Mrs. Inez Dasent and was supervised by Mr. Carden Williams, the applicants' the late father. According to Ms. Delecia, Mr. Carden Williams and his family left Saint Vincent and the

¹ Filed on 27th May 2017.

Grenadines after the eruption of the Soufriere Hills volcano in 1979. She claimed that she and her family continued to farm the land without interruption by Mrs. Dasent and even after she passed away on December 21st 1989. She averred that Inez Dasent's son, Basil Dasent, used to 'overlook' the lands after his mother's death but never 'formally interrupted in writing or anything'. Presumably, this means that he took no steps to prevent them from working the lands. Ms. Delecia contended that the court should reject the Williams' application. She sought a declaration that she is entitled to claim them by adverse possession.

- [6] Mrs. Cuffy and her siblings have established that they have enjoyed continuous, exclusive and uninterrupted possession of the disputed lands for a period in excess of 12 years with the requisite intention to own it. A declaration of possessory title is made in their favour.

ISSUE

- [7] The issue is whether Marjorie Cuffy, Colville Williams, Kenneth Williams, Stanley Williams, Douglas Williams and Emille Williams are entitled to a declaration of possessory title of the disputed lands?

ANALYSIS

Issue – Are Marjorie Cuffy, Colville Williams, Kenneth Williams, Stanley Williams, Douglas Williams and Emille Williams entitled to a declaration of possessory title of the disputed lands?

- [8] The law surrounding the grant of a declaration of possessory title is settled. The governing legislation is the Possessory Titles Act² ('the Act'). It makes provision allowing a person to acquire title to land by virtue of possession continuously for a period in excess of 12 years, if by such possession he intended to own it. The possession must be for an uninterrupted period and be exclusive. This constitutes 'adverse possession' under the Act.
- [9] The Act 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'³.

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

³ Section 2 of the Act.

The principles have been articulated by the courts repeatedly, including in the case of **J. A. Pye (Oxford Ltd & Ors) v Graham et al.**⁴

- [10] One of the most noted pronouncements on this subject was made by Slade J. in the case of **Powell v McFarlane and Another**, where he opined:

‘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...’⁵

- [11] The Court of Appeal of the Eastern Caribbean Supreme Court has also provided guidance in how such matters are to be determined. Sir Vincent Floissac C.J. in **Charles v Gittens and Hutchinson**⁶ described adverse possession as:

‘... continuous, uninterrupted, peaceable, public and unequivocal possession of the land as owner thereof and to the exclusion of the proprietor for at least 12 years whether the adverse possession or prescriptive possession was as a result of dispossession or discontinuous possession by the proprietor.’³

- [12] The foregoing are the guiding principles which will be applied in resolving the dispute between the Williamses and Ms. Delecia. The court will also consider whether the applicants have complied with the procedural requirements outlined in the Act.

- [13] The Act provides that an applicant must utilize the prescribed form. Mrs. Cuffy and her siblings have done so. They stated in the application that the lands were held by their mother Emily Williams immediately before the application was made. This complies partially with the legal

⁴ [2002] UKHL 30.

⁵ (1977) 38 P & CR 452 Ch D at 470 – 471.

⁶ SVGHCVAP1991/0006.

requirement to include the name of the registered owner in the application. They have conceded by this application that their mother is not registered as the owner in fee simple by deed, as required by the law. Notwithstanding, there is common ground between them and Ms. Delecia that the registered owner is Inez Dasent, deceased. I accept that this is so.

[14] The Williamses averred that no other person claims to be owner of the land. This is another element that must be addressed in the prescribed form.⁷ The applicants complied with the other procedural requirements by:

1. filing a certified copy of a survey plan of the disputed lands, authenticated by the Chief Surveyor;⁸
2. publishing⁹ notification of the application in two local newspapers,¹⁰ at the Registrar's office¹¹ and at the Baibou Magistrate's Court (the District where the land is situated);¹² and
3. by serving copies of the notices on adjoining owners of the subject lands,¹³ and posting a copy on an electricity pole at Massey Estate¹⁴.

[15] Mrs. Cuffy and her brothers Dr. Colville Williams, Dr. Kenneth Williams, their witnesses Beresford Williams and Artis Davis gave similar accounts about how they came to be associated with the disputed lands and the bases of their claim to be the owners. Mr. Artis Davis claimed that he witnessed the signing of a lease between Dr. Colville Williams and Ms. Delecia.

[16] Mrs. Cuffy and her brothers testified that their mother was a teacher while their father Carden

⁷ As stipulated as section 4 (c) and (d) of the Act.

⁸ Pursuant to section 6 (1) of the Act. The copy of survey plan was filed on 5th July 2017.

⁹ Pursuant to sections 7 and 8 of the Act.

¹⁰ 28th July, 2017 and 1st September 2017 respectively, in the Searchlight and the News newspapers.

¹¹ 22nd February, 2018.

¹² 12th February, 2018.

¹³ On 3rd August 2017, 7th August 2017 and 8th August 2018 respectively as attested to by Rodwell Alexander in Affidavit filed on 12th February 2018.

¹⁴ On 3rd August 2017, pursuant to section 8 of the Act.

Williams was a peasant proprietor. They attested that after their mother took possession of the disputed lands in 1967, their father with the help of some employees, actively worked it by cultivating bananas and other root crops. They explained that this continued until their parents migrated to the United States of America in 1979 with 4 of their sons. Mrs. Cuffy had already left for England. She stated that her father was working as an overseer for Mrs. Dasent from the 50s and until she left the country in 1968. She claimed that he was doing so and at that time he was also cultivating the disputed lands. She explained that in the years leading up to her father's departure, he farmed lands at Lowpar, New Prospect, and also the lands at Massey.

- [17] She and her brothers averred that their mother paid Mrs. Inez Dasent for the disputed lands and 'took possession' of it in 1967. They produced a copy of a receipt dated September 7th 1967 purportedly signed by Inez Dasent. It stated:

'Mount Grenan
Sept 7th 1967

Received of Mrs. Emily Williams One Thousand Dollars
(\$1000^{00/xx}) in advance on purchasing land at Massey Estate
Inez Dasent'

- [18] The Williamses contended that this receipt proves that their mother made a down payment of \$1000.00 for the disputed lands. Mrs. Cuffy accepted that the receipt does not specify 'in full and final payment'. She admitted that she did not know if there was a complete purchase of the land from Inez Dasent by her family. She acknowledged that they have not exhibited any further proof of payment. She indicated that they exhibited what they could find at the time. She said that they seek to rely on the receipt to show that there is a connection between the family and the land, because they began to cultivate the land following the down payment as this was the established practice at the time. In response to a question by learned counsel Ms. Fife, she responded that she did not know if her mother ever owned the land. She pointed out that her mother knew that.

- [19] Her brothers were adamant that their mother had purchased the disputed lands. Dr. Colville Williams also agreed that the receipt does not say 'in full and final payment'. However, he disagreed with the suggestion that their mother made only an advance payment and did not make

full payment to Inez Dasent for the land. He insisted that it was the only receipt they could find to state that their mother paid for the land. Dr. Kenneth Williams testified that their mother made more than a down payment on the land. He claimed that there were many other receipts which could not be found.

[20] Mr. Marks-Dasent was one of Ms. Delecia's witnesses. His father Basil Dasent was Inez Dasent's biological nephew and adopted son. Mr. Marks-Dasent referred to Mrs. Dasent as his 'grandmother figure'. He averred that Mrs. Dasent and his father were very close and that his father moved from town to Mount Grenan in his younger years to be near her. He recalled that his father was eventually put in charge of his aunt Inez's affairs and would place people on the land at Massey Estate to work for her.

[21] He was shown the receipt of the \$1000.00 advance payment. He conceded that it was issued in respect of a deposit paid by Mrs. Emily Williams on Sept. 7th 1967, towards purchasing land at Massey Estate. He acknowledged that Mrs. Emily Williams began controlling the disputed lands at Massey Estate in 1967. He explained that he accepted this to be the case, because he saw Mrs. Dasent's signature on the receipt. However, he did not accept that the applicants have been in control of the lands from 1967 up to present.

[22] He indicated that after his aunt died his father was responsible for overseeing the estate. He testified that he (Marks-Dasent) was not actively involved in the business of administering the estate when his father passed. However, he averred that his family was able to preserve records of the business of the estate from the 70s, 80s and 90s. He produced a number of pages of records in respect of persons who he said bought lands at the Massey Estate during those decades. He stated that as far as he is aware there are no records for the 60s. He had none.

[23] Ms. Delecia asserted that the applicants' claim that their mother purchased several acres of land in 1967 for just one thousand dollars but never received a deed cannot be correct. She stated that in those days if you wanted to purchase some lands, you paid a deposit and the deed was never issued until you finished paying for the land, unless you went to a private lawyer 'without Ms. Dasent and the Dasent family knowing.' She averred that you did not own land and get a deed

from the Dasents until you finished paying for it. She opined that it looks as if the Williams' family went to a different lawyer and got the deed done.

[24] Ms. Delecia submitted that the absence of other receipts, Mrs. Cuffy's concession that the receipt did not state 'in full and final payment', the fact that the advance was a down payment and that she did not know if there was a complete purchase of the land is a crucial part of her (Ms. Delecia's) case. She contended that Mrs. Williams had not finished paying for the land and therefore could not have been in physical control of it from 1967. These submissions ignore Kenneth Williams' testimony that there were other receipts which could not be found.

[25] Ms. Delecia's comments regarding the practice in the 60s of withholding transfer of title until full payment was made for land, is conjecture and speculation, especially since she did not outline her own experiences in purchasing land from the Dasents or anyone else at that time. The transaction for the sale of the land purportedly took place in the 1960s, over 50 years ago. Not only are the alleged vendor and purchaser deceased, but it is not improbable that such receipts would be unavailable after such a long time. Indeed, Mr. Marks-Dasent was unable to produce any records from that period (the 60s). In any event, I found Dr. Kenneth Williams to be a credible witness. I accept his assertions that there were other receipts which were not found. This is reasonable and credible. He was not impeached and presented his testimony in a forthright and frank manner.

[26] Mrs. Cuffy and her brothers testified that their mother transferred the disputed lands to them as tenants in common, by Deed of Gift 136 of 1999 ('the 1999 Deed'). That Deed rehearsed that Mrs. Williams became seised of the land for an estate 'in fee simple absolute in possession' by virtue of her 'continuous and unmolested possession since ... 1967'. It described her as beneficial owner of the lands. It made no mention of a purchase from Inez Dasent and did not set out any particulars as to root of title.

[27] The Schedule contained a brief description of the lands purportedly being transferred. It referred to the area of land as:

'ALL THAT LOT piece or parcel of land situate at Massey Estate in the Parish of Charlotte in the State of Saint Vincent and the Grenadines and being in extent FIFTEEN ACRES ONE ROOD and SIX POLES (15a 1 r 6p) all as the same is shown on a plan dated the 10th February 1998 and approved and lodged at the Lands and Survey Department of the

State of Saint Vincent and the Grenadines or howsoever otherwise the same may be butted bounded known distinguished or described TOGETHER WITH ALL ...'

- [28] The survey plan referred to in the Schedule was not attached to the deed and was not produced in evidence. Notwithstanding, the parties gave evidence in respect of 15 acres of lands at Massey Estate and made no distinction between the 15 acres mentioned in the Schedule to the 1999 deed and the 15 acres delimited in survey plan C1670. It is noteworthy that survey plan C1670 contains a notation that states that it supersedes plan C1130. It was not exhibited. None of the parties or witnesses addressed this in their submissions to the court. It appears that the parties have accepted that the disputed lands are those described in the Schedule to the 1999 deed and demarcated in survey plan C1670 and partially or wholly in plan C1130. I accept that it is.
- [29] Mr. Brian Marks-Dasent did not enter an appearance to the applicants' application. He filed no claim asserting an interest in the subject property. In his affidavit in support of Ms. Delecia's claim, he averred that the disputed lands are 'likely the ... lands left in a will by Aunt Inez (Dasent) to the relatives in Trinidad who never returned and to my Father.' He did not produce the Will. He exhibited a copy of Deed of Assent No. 222 of 1993, executed by his father Basil Dasent, in respect of 14 acres of land. He implied that the 14 acres comprised those lands or part of them.
- [30] The Deed of Assent purportedly transferred 14 acres of land to the devisee Adina Dasent 'residing in Trinidad'. The Schedule to the Deed of Assent described it as: 'all that undivided one quarter ($\frac{1}{4}$) share in 14 acres 2 roods and 33 poles of land situate at Massey Estate in the Parish of Charlotte in the State of Saint Vincent and the Grenadines being the rest and residue of the plantation or estate known as 'MASSEY' and butted and bounded on all sides by lands formerly of the said Massey Estate together with all roads paths passages ...'. No adjoining land owners were named and no survey plan was referenced in it.
- [31] This description is not specific enough to supply identifying marks in respect of the subject lands. The court has not been assisted by any supporting documentation, to enable it to conclude that the subject land is the same as the disputed lands or part of the disputed lands. It was not suggested to Mrs. Cuffy or her brothers that it was.

- [32] The only named transferee in the Deed of Assent is Adina Dasent, even though Mr. Marks-Dasent seemed to suggest that the 14 acres were left to her and his father. It is also noteworthy that the Deed of Assent was made in 1993, some 24 years before the applicants filed their application. In this regard, Mr. Marks-Dasent did not assert that Adina Dasent exercised any acts of ownership over those lands during that 24 year period. I therefore make no finding that Adina Dasent went into possession of the disputed lands at any time. Moreover, this part of Mr. Marks-Dasent's testimony regarding such a gift, left in his aunt's Will does not appear to be relevant to this case. I make no finding that the 14 acre 'gift' constitutes any part of the disputed lands.
- [33] Mrs. Cuffy and her brothers attested that after they received the disputed lands from their mother, they occupied the entire parcel through their agent Mrs. Catherine Durrant, who cultivated it on their behalf under the terms of a Letter of Agreement she signed in 1999 after which new arrangements were entered into with Ms. Delecia and Mr. Beresford Williams. The applicants averred that they have treated the lands as theirs during that time and paid all related taxes and rates. They exhibited a series of receipts¹⁵ for payment of land taxes for the years 1999, 2000 and 2007 through 2017.
- [34] Under cross-examination Mrs. Cuffy accepted that they produced no tax receipts for the period 1967 to 1999. She denied that this was because her family was not in possession of the disputed lands from 1967 as alleged. She and Dr. Colville Williams accepted that the payment of taxes did nothing to stop Evril Delecia from farming the land. Dr. Colville Williams denied that the reason why there are no tax receipts for 1979 and 1998 is because the Ms. Delecia and her family have been working the lands for themselves and not for the applicants. He and his sister maintained that they had lease arrangements with the persons who were cultivating the disputed lands.
- [35] The applicants were asked whether the tax receipts identified the owner of the lands. Dr. Colville Williams averred that a careful reading of the tax receipts reflects that the number on the receipt regarding the roll, corresponds with the owner of the land – 'Marjorie Cuffy et al'. He explained that the property taxes were not physically paid for by the applicants but by others. He added that the

¹⁵ Receipt numbers 295102, 335295, 598957, 598958, 637927, 637928, 688608, 725968, 744683, 38637, 64293 and 50196993 respectively.

way to identify the owner of the land is to give the district number, which would correspond to the land. His brother Dr. Kenneth Williams acknowledged that the tax receipts do not expressly say who is the landowner.

[36] The receipts all contain similar information. The name 'Cuffy Marjorie et al' appears on all of them. Other common details on each receipt include the land identification number 441586 or No. on Roll 100/3/44/L; and the year of assessment. They all contain the year of assessment year in respect of which the taxes are paid. The court takes judicial notice that this is the format of receipts used by the Inland Revenue Department, as reflected on receipts generally submitted in court proceedings, particularly in matters involving applications for possessory title. The court takes the point that apart from the applicants' say so, there is nothing irrefutably connecting the receipts to the disputed lands.

[37] Dr. Colville Williams testified that in 2009 when taxes were paid, Ms. Delecia and her predecessors had been farming the disputed lands for 30 years. He maintained however that they had been there during that period based on the lease agreement and on a system which was in place before that.

[38] Mrs. Cuffy and her brothers testified that before the family migrated, their mother arranged with Mrs. Catherine Durrant to cultivate the disputed lands on the family's behalf, on a sharecropping rental agreement basis. They recalled that the arrangement with Mrs. Durrant was that she would pay for the use of the land from the profits she earned from the sale of the crops. They claimed that their mother was very keen on keeping records of her everyday transactions, in a journal, and that she would note in it, the date a payment was made and the amount received. Mrs. Cuffy testified that her parents returned to the island around 1992 and her mother then began to document things in that journal. She produced pages allegedly from that journal which she claimed recorded payments made by Mrs. Durrant to Mrs. Williams between 1992 and 1998. They were attached to the applicants' supplemental affidavit¹⁶.

¹⁶ Filed on 11th May 2018.

[39] In response to a question posed by Ms. Delecia's lawyer, Mrs. Cuffy accepted that while those records are handwritten, there was nothing on them such as a signature that would verify the identity of the author. This pointedly attacks the authenticity of the journal and the entries relied on. The parties did not address this in their written or oral submissions. The record reflects that the applicants' list of documents¹⁷ does not include the journal entries. No supplemental list of documents was filed listing those journal entries. Having been served with the applicants' supplemental affidavit, Ms. Delecia was entitled to inspect them¹⁸ and if she questioned their authenticity, serve notice that they must be proved at the trial¹⁹. No such notice was served. Ms. Delecia is therefore taken to have admitted their authenticity. I accept therefore that the entries were made by Mrs. Emily Williams in her own hand as stated by Mrs. Cuffy.

[40] She was asked about some of the entries. In respect of an entry which read: '19/9/92 – received from Mrs. Durrant \$300.00', she agreed that it does not say what the monies were for and that no explanation is provided in the journal for why payments were received from Mrs. Durrant. She accepted that a number of entries in the journal stated "started", "ordered" or "received" new gas or gas bottle'. She testified that there is evidence in the journal of monies received from the Durrant family in 1995. The court notes that the 13 payments attributed to Mrs. Durrant reportedly spanned a period starting 21st Sept. 1991 and ending on 15/4/98 and were for sums ranging from \$100.00 to \$500.00.

[41] Dr. Kenneth Williams stated that even though there is no record of receipt of money from Ms. Delecia this was because they were bundled together. He explained that he did not migrate with his other family members in 1979 and that he managed all of his family's affairs during the time he remained in the State and between his travels to Trinidad and Tobago. He recalled that he went to Trinidad and Tobago to study and was back in Saint Vincent and the Grenadines in December 1979. He explained that he happened to be in Saint Vincent intermittently in 1979, and full time

¹⁷ Filed on 10th May 2018.

¹⁸ Pursuant to CPR 28.16 (1).

¹⁹ Pursuant to CPR 28.18 (1).

from 1980 and 1981. He recalled being in the State at Easter 1980 and returning full time in January 1980, after finishing his studies in Trinidad. He worked for the Ministry of Agriculture between 1980 and August 1981.

[42] He explained that when Mrs. Durrant brought the monies, it was from both people. He acknowledged that no receipts were issued. However, he disagreed that receipts were not issued because monies were not paid. He claimed that while he was in Saint Vincent and the Grenadines from 1980 to 1981, monies were paid to him for which he issued no receipts. He averred that that is normally the way a lot of business is conducted in the countryside.

[43] Mrs. Cuffy testified that her mother executed two Letters of Agreement on 27th July 1999 regarding the cultivation of the disputed lands. She stated that one was signed by Mrs. Catherine Durrant and the other one was signed by Ms. Delecia. Both Letters of Agreement were admitted into evidence. They each related to 7 ½ acres of land and provided that Mrs. Durrant and Ms. Delecia would cultivate the lands on a sharecropper basis, and divide the profits between them and Mrs. Williams, with 1/3 going to Mrs. Williams, and two thirds being retained by Mrs. Durrant and Ms. Delecia. The agreements provided that all payments were to be made to Rudolph Daniel as the designated representative of Mrs. Emily Williams. They provide that they would go into effect from the date of signing and continue until the parties agreed on any changes.

[44] Mrs. Cuffy stated that after the Letters of Agreement were signed, payments were collected on her mother's behalf, first by Rudolph Daniel before he migrated to the USA, by her on one occasion and by her brother Colville on many occasions. She indicated that Mrs. Durrant and Ms. Delecia signed those agreements in Kenneth Williams' presence. He was not cross-examined about this and it was not suggested to him that this was not the case.

[45] Dr. Colville Williams was cross-examined on this issue. He averred that he did not agree that neither the Ms. Delecia nor her mother signed the Letter of Agreements. He insisted that within the context of the lease, Mrs. Durrant and Ms. Delecia were working the lands for themselves and not for the applicants. He maintained that rents were collected from them pursuant to the lease.

[46] Dr. Colville Williams recalled that the Durrants were employees of theirs. He stated that because they were employees, the family did not want to abandon them. He claimed that they had other

offers from other people to cultivate the lands. He averred that the sharecropping agreement went into effect between Ms. Delecia's family and the Williamses in 1999 and was based on the honour system. He testified that by the time the Letters of Agreement dated 27th July 1999 were put in place, Ms. Delecia was possibly on the land for 20 years with the Williams' permission.

[47] Mrs. Cuffy said that their mother returned to Saint Vincent in 2006 and remained there until 2009. She testified that Colville Williams was then tasked with responsibility for making decisions regarding the disputed lands. She indicated that in January 2016, as agent for her and her siblings, he prepared and presented a new lease to Catherine Durrant for 2 acres of the land.

[48] Dr. Colville Williams attested that he was physically present when Ms. Delecia signed the lease agreement. He indicated that this was done in the presence of her sister Irene John and retired Superintendent of Police Artis Davis. The lease was admitted into evidence²⁰. It is expressed to have been made between Colville Williams in his personal capacity and as agent for the other applicants. It is dated 16th January 2016. It is typewritten except for deletions of the name 'Catherine Durrant' and insertion in its place of the name 'Evril Delecia' in the signature clause, on the backing and as the tenant in the introductory paragraph; and the replacement of two acres by three acres. The deletions are apparently initialed by one person. It contains signatures above the name 'Dr. Colville T. Williams' and above the handwritten name 'Evril Delecia'.

[49] Two signatures appear in each of the three spaces provided for the witnesses signifying that it was witnessed by two persons. One is the name Irene John. The other is not easily decipherable. Dr. Colville Williams accepted that he altered the lease. He explained that he made the alterations because Ms. Delecia's mother, Catherine Durrant who originally leased the lands and had been cultivating them over a period of time, indicated in Ms. Delecia's presence that she was getting old and would not be working the lands anymore. He said that she suggested that they should lease the lands to Evril Delecia instead.

[50] Mr. Artis Davis stated that he is 'a longtime friend of the Williams' family'. He recalled that Mrs. Emily Williams was 'in possession' of the disputed lands from the 1960s and that she leased the lands to Mrs. Durrant before she migrated. He testified that the applicants terminated the lease with

²⁰ At pages 120 to 121 of the trial bundle.

Mrs. Durrant in 2016 and leased a 3 acre portion to Ms. Delecia. He averred that the remaining 12 acres were leased to Mr. Beresford Williams.

[51] Mr. Davis testified that in 2016, he journeyed to Cedars with Colville Williams who was in possession of a lease prepared by a lawyer. He indicated that when they arrived, Dr. Williams spoke with Mrs. Catherine Durrant, and she told him that because she was advanced in age, she could no longer work the lands and he should give it to Evril. Mr. Davis stated that he, Ms. Evril Delecia's and Irene Durrant²¹ were present during the conversation. He recalled that Dr. Williams asked Evril how much of the lands she would like and whether she preferred 2 or 3 acres. He said that Ms. Delecia replied '3 acres'. He added that Dr. Williams 'gave the other 12 acres to Beresford Williams'.

[52] Ms. Delecia asserted that over the years members of the Williams' family began to surface and tried to approach her mother and her on different occasions. She stated that they would come the night before going back to America, saying that she needed to sign a document to make her interest clear or something like that. Under cross-examination she said it was Marjorie Cuffy and Colville Williams who came to her and told her this. She stated that her mother never signed anything they brought but one night they scared her (Ms. Delecia) . She averred that 'they showed her a document where she could see that they scratched out her mother's name and put hers on it. She remembered signing something but said she never really understood what she was signing because she has been a farmer all of her life and does not read well. She indicated that she showed it to her nephew Dexter John who took it to a lawyer to explain what it was.

[53] Ms. Delecia testified further that none of her family members or she has ever consciously entered into any agreement with any of the Williams' family to work the lands at Massey Estate on their behalf. She explained that her mother could not read that well either and if she signed anything she never acted as if she had to report to anyone; and further that she worked the lands for herself. She averred that her mother never paid any money to Rudolph Daniel or anyone at all on behalf of Emily Williams. It is inconceivable that she would know this unless she was with her mother all day long, every day, which is improbable.

²¹ Presumably Irene John.

- [54] Ms. Delecia stated that if she signed something she was tricked into signing it because the members of the Williams' family kept saying that they had bought the lands themselves. She said she was to find out that this was not true because she learnt that they were trying to claim the land in the newspaper last year. She insisted that 'they' never paid rent to the applicants directly or through Artis Davis because the applicants were never in possession of it.
- [55] Her nephew Dexter John testified that his entire family has been engaged in farming the lands beginning with his grandparents Edward and Catherine ('Mama') Durrant. He asserted that the Williams' family has always been trying to get their hands on the lands. He claimed that Dada always told him that they (the Williamses) never bought the lands and that they belong to the Dasents.
- [56] Mr. John remembered that the Williamses were always trying to get Mama to sign documents 'saying that she was only working the land'. He stated that they came late one night falsely stating that they had bought the land. He continued, 'they wanted her to go back with Mr. Artis Davis to Ronald Jack's Chambers for her to sign documents but she refused.' He said that his aunt informed him that when mama refused they came to her with the same document with mama's name scratched out and hers written in. He averred that his aunt gave him the documents and he took them to counsel. He was shown the 'lease agreement' which was purportedly signed by Ms. Delecia in 2016. He said it was not the same document that he had seen.
- [57] Ms. Delecia was shown the Letter of Agreement purportedly signed by her. She testified that she sees her signature on it but could not remember signing it. She also denied saying in her affidavit that members of the Williams' family came to her saying that she had to sign a document to make her interest clear. This is clearly state din her affidavit. She therefore contradicted herself without explanation regarding a central pillar of her case.
- [58] When asked if she would remember the document she saw that night with her mother's name scratched out and hers inserted, she replied that she would. She was shown the lease agreement and she accepted that it was the one she was shown. She maintained that she had not signed it. She insisted that she was scared that night when Colville Williams came to her. She acknowledged that he did not threaten her with violence, did not have a weapon on him and was not shouting aggressively at her. She was adamant that she did not write her name on it. She admitted that

Irene John is her sister. She stated that she had no knowledge of her sister signing the document either.

[59] Ms. Delecia testified that when she saw that the applicants were applying for a declaration of possessory title of the disputed lands, she decided to 'put in a claim too'. She denied that the applicants and their family have been in control of the disputed lands from 1967 to present. She asserted that she was defending the land because she and her family have been on it for 40 years. She explained that it is also because the Williamses told her that their mother had purchased the lands and has a title to it. She reasoned that if somebody purchased something and has a title to it, he or she does not need a possessory title again.

[60] Ms. Delecia's case hinges on among other things, a claim to an interest in the disputed lands by adverse possession as against Inez Dasent's estate; denial of lessor/lessee relationship with the applicants, *non est factum* and challenge to the validity or probative value of the lease agreement.

Denial of lessor/lessee relationship

[61] The applicants rely on the Letter of Agreement to establish the existence of a sharecropper agreement between their mother and Ms. Delecia from 27th July 1999 until the lease agreement was purportedly signed in 2016. Ms. Delecia did not deny signing it. Her written and oral testimony is that she could not recall doing so or that she did not consciously sign it. She did not explain under what circumstances she may have signed it while unconscious or mentally impaired. The applicants were clear that she signed it. I believe them and find that Ms. Delecia signed it.

Non est factum

[62] Ms. Delecia submitted that the Letter of Agreement of 1999 never amounted to a written acknowledgement of the applicants' title to the lands, because she never understood and did not have the capacity to understand what she was signing. To the extent that this defence arises on her statement of case, she is required to indicate what attempts she took to find out what the document was about before signing it. She gave no account of her recollection of what transpired at that time. This gap in her testimony is inexplicable and irreconcilable with her extensive recall of other details concerning events which took place many years before the 1999 Letter of Agreement.

[63] She has relied on the plea of *non est factum* which is loosely translated 'it is not her deed'.

However, that defence is not available in circumstances such as this where she admitted signing without first finding out the general nature of the document.²² Her claim that she was unconscious at the time of signing is just not credible and is rejected. I accept that she signed the Letter of Agreement as averred by the applicants, thereby acknowledging Mrs. Williams as the owner of the 7 ½ acres.

Lease valid or probative

- [64] Ms. Delecia claimed that she signed the lease agreement out of fear. She did not state why she was so afraid of Dr. Colville Williams that night. Based on her account, it appears that her mother remarkably did not experience such fear, and actually refused to sign the lease. Ms. Delecia's more recent statement that she did not sign it up-ends her claim, because she gave no explanation why she recanted her admission in her affidavit that she signed it. This hurts her credibility.
- [65] Ms. Delecia contended that the alterations do not invalidate the lease *per se*, but make it unreliable so that it should not be given any weight. She argued that the alterations juxtaposed against her denial of signing it, leaves an underlying implication that it could have been altered in her absence. This is so, but for her acknowledgement that it was changed in her presence²³. Here again Ms. Delecia damaged her credibility and undermined her case. I reject her claims that she did not sign it. I prefer and believe the credible and consistent testimony of Dr. Colville Williams and Mr. Artis Davis that she signed it in their and her sister's presence.
- [66] Ms. Delecia argued that the court must give little or no weight to the lease. She submitted that the court must have regard to Dr. Colville Williams' admission that he altered it and Dexter John's averment that it was not the same document he had seen. She reasoned that the court cannot rely on it even if the alterations have not changed the meaning. Ms. Delecia advanced no legal authority for these submissions.

- [67] The parties were asked to file submissions as to the validity of the document²⁴. They did not. The

²² Gallie v Lee [1971] AC 1004 (Lord Reid).

²³ Paragraph 8 of her affidavit.

²⁴ By order dated February 20th 2020, at the end of the trial.

court remains mindful that the alterations were not initialed by all of the signatories to the lease agreement. It would therefore not satisfy the requirements for registration or for a legally registrable lease. The deletions and insertions, having not been adopted by all signatories by initialing them, was an irregularity which invalidated or rendered the 'lease' incomplete. However, the maxim 'equity regards as done that which was to be done' is instructive. It was exemplified in the case of **Walsh v Lonsdale**²⁵ where an agreement for a lease was treated as a valid lease.

[68] Moreover, the Statute of Frauds 1677²⁶ provides protection to the applicants. The decision in **Maddison v. Alderson**²⁷ illustrated the principle flowing from that legislation. The learning is that a memorandum in writing which is referable to a specific agreement between parties will be given effect by the court, where the memorandum sufficiently identifies the parties, the subject matter, the consideration and any other term considered material by the parties. The principle may be invoked if the agreement is signed by the party to be charged, and has been partially performed by the one relying on it and the acts of part performance must be necessarily referable to the agreement.

[69] Not only has Ms. Delecia signed the 'lease' but the Williams have relied on it and performed their obligations under it by permitting her to farm the disputed lands. Equity requires no less than that the memorandum in writing be given its full force and effect. Ms. Delecia submitted that if the court relies on the lease and gives considerable weight to it, it must consider that no evidence was exhibited to show that she operated under its terms and conditions, or that she could be held to be acknowledging the applicants as superior owners. This is not necessary for equity to intervene. In any event, Mrs. Cuffy's and her brothers' account offer material and credible testimony that she did function as a lessee.

[70] Ms. Delecia argued further that if held to be effective, the 'lease' came into effect 37 years after she had already been occupying the disputed lands and in such a case, it 'would only estop her' from

²⁵ (1882) 21 Ch D 9; see also *May v Belleville* [1905] 2 Ch. 605.

²⁶ Section 2 (imported into the domestic law of Saint Vincent and the Grenadines by section 5 of the Application of English Law Act, Cap. 12).

²⁷ [1883] 3 App. Cas 467.

applying for possessory title during the subsistence of the lease, if she adhered to it. She submitted that even if the lease is effectual and constitute an acknowledgement of the applicants' title, it was signed in 2016 after the expiration of the limitation period which would have extinguished the applicants' title to the disputed lands. She relied on the decision in **Sanders v Sanders**²⁸ Ms. Delecia did not plead this in her statement filed on 17th October 2017. It is not part of her case as set out in her affidavit²⁹. She may not rely on it. For this reason, her other submissions regarding limitation are likewise not considered.

[71] Ms. Delecia argued that her consistent and continuous presence on the disputed lands has long usurped the paper rights of the Dasents and has been adverse to their interests. She contended that even if the applicants at any point had succeeded in presenting themselves as landlords of the disputed lands, this right had long been disturbed by her thereby destroying such entitlement. She submitted that regardless of what she had been coerced into signing³⁰ she never acknowledged the applicants as superior owners. Ms. Delecia has produced no evidence that she was coerced into signing any document. In any event, I find that she freely and voluntarily signed the Letter of Agreement in 1999 and the incomplete lease in 2016, while fully appreciating what she was signing and thereby acknowledged the applicants to be the owners of the 7½ and 3 acres respectively of the disputed lands to which those respective documents relate.

[72] Ms. Delecia and Mr. John insisted that Mrs. Catherine Durrant never signed any lease. She did not testify in this case. Mr. John averred that she was 93 years old and unable to attend court. The court makes the observation that neither Ms. Delecia nor Mr. John can be certain that Mrs. Durrant never signed the Letter of Agreement because it is impossible for them to be with her at all times. I accept the testimony of Mrs. Cuffy and her brothers that Mrs. Durrant signed the referenced Letter of Agreement and thereby acknowledged Mrs. Williams to be the owner of the related 7 ½ acres of the disputed land. I find too that she and Ms. Delecia occupied their respective allotments from the date of execution of those Letters of Agreement until Mrs. Durrant declined to continue under any

²⁸ (1881-1882) LR 19 CH. D. 373.

²⁹ Filed on 26th April 2018.

³⁰ First paragraph of page 4 of her written submissions filed on 17th December 2018.

further occupation of her portion; and Ms. Delecia signed the incomplete lease agreement.

- [73] Ms. Delecia and Dexter John claimed that they and their parents and grandparents respectively have been cultivating all of the 15 acres of the disputed lands in their own right. They testified that Mr. John has been farming part of the subject lands from since he was a teenager. Mr. John averred that he started working his own portion of the lands when he was 12 years old. He stated that he built a shed on the land in 1994 in which a toilet was subsequently installed. He said that it was used to store fertilizer, farming supplies and tools and for resting during farming.
- [74] Mr. John stated that two other sheds were built on the lands which were destroyed by storms. He did not file a claim of his own. He asserted that the Williams' family is not now or ever entitled to the disputed lands. He opined that they are only interested in selling them for a quick buck and putting him and his aunt out even though they have farmed them for the 'last 40 odd years'. The applicants denied that Mr. John built a shed on the disputed lands. Dr. Colville Williams averred that there has always been a shed at the entrance to Massey Estate and to his knowledge it has not been modified by Dexter John. I accept his testimony and find that Mr. John did not build a shed on the disputed lands.
- [75] Mrs. Cuffy and her brothers attested that on the same day they leased 3 acres of the disputed lands to Ms. Delecia, they leased the remaining 12 acres of to their cousin Beresford Williams. They produced a copy of that lease. Mr. Beresford Williams testified to like effect. He asserted that he started raised pigs on that parcel of land but not anymore.
- [76] He accepted that he cannot 'speak to what happens day to day on the land'. Mrs. Cuffy, Dr. Colville Williams and Dr. Kenneth Williams also indicated that they could not say what happens on the disputed lands every day either. They relied on the occupation of the lands by their lessees to supply proof that they are in possession of it. They are entitled to do so. I found their account about the lease agreement with Mr. Beresford to be credible. It is preferred to Ms. Delecia's and Mr. John's assertions that they occupy the 15 acres of land. I therefore accept the applicants' version.
- [77] Ms. Delecia presents an account which suggests that she and her mother were able to continue farming the disputed lands as their own even while Mrs. Dasent and Mr. Basil Dasent were alive, without acknowledging them as the owner and executor of the owner's estate respectively. She

claimed that her parents and she continued to farm without interference from anyone. This is not likely.

[78] The court takes into account that Mr. Marks-Dasent produced records³¹ of sale of parts of Massey Estate which were kept in the 70s, 80s and 90s. They spanned a period from 1970 to 1990. He indicated that his great aunt Mrs. Dasent passed away in the eighties. Ms. Delecia recalled that it was in December 1989. It strikes me that an owner and executor who kept such detailed records about sales and payments would probably have been just as meticulous about their other land holdings. None of the witnesses presented evidence which supports a finding that the late Mrs. Dasent or Mr. Basil Dasent were giving away lands or allowing persons to occupy their lands without payment or other suitable arrangement. I therefore reject Ms. Delecia's assertions that for over 40 years she and her parents simply ignored the owner's and executor's attempts to prevent them from occupying and cultivating the lands under such circumstances.

[79] I am satisfied that Mrs. Emily Williams bought the disputed lands, allowed Mrs. Durrant and Ms. Delecia to farm on them from 1967 and later under the Letters of Agreement from 1999; that she purported to pass them to her children by Deed of Gift 136 of 1999, which fell short of divesting them. I am also satisfied that the children subsequently went into possession and leased portions to Ms. Delecia and Mr. Beresford Williams as claimed. They have established on a balance of probabilities that they did so fully intending to own the disputed lands after the 'transfer' to them by their mother. The objections raised by Ms. Delecia, Mr. Marks-Dasent and Mr. John are without merit.

[80] The applicants have also complied with the statutory requirements for the grant of a declaration of possessory title of the disputed lands. They are therefore entitled to a declaration of possessory title of the disputed lands. It is therefore declared that Marjorie Cuffy, Colville Williams, Kenneth Williams, Stanley Williams, Douglas Williams and Emille Williams are the true owners of the disputed lands. They are entitled to their costs on the prescribed scale. Ms. Delecia's claim for a declaration that she is entitled to claim the disputed lands by adverse possession is baseless. No declaration is made to this effect.

³¹ Pages 135, 136 and 141 of the trial bundle.

Miscellaneous

- [81] Ms. Delecia suggested that the applicants have not been able to monitor the goings-on at the disputed lands from abroad. Dr. Colville Williams admitted that this was so. He stated that because of the size of the lands they have been leased and so they had no reasons to monitor physically what is going on there. He added that even with the existence of the leases, they are unable to monitor what happens day to day because they live in America. He averred that there is no reason to be aware of what happens to the lands from day to day because they have been leased to other parties.
- [82] He explained that during his frequent trips to Saint Vincent, he has visited the lands, and also interacted with the parties to the lease agreement and to the Letters of Agreement. He stated that although he goes to the lands during his visits, there is no necessity to physically explore them in their entirety because they are leased. This is so in law.
- [83] Dr. Colville Williams noted that Beresford Williams had control over the lands leased to him and he could therefore determine to whom he gave access. He insisted that he has collected rent under the lease. I believe him. This was addressed earlier and finds factual basis in the pages from Mrs. Williams' journal which recorded a number of payments by Mrs. Durrant. I infer that Mrs. Durrant was making payments under the Letter of Agreement which she had executed with Mrs. Williams. I accept too the applicants' assertion that Mrs. Durrant made the payments in respect of her portion of land and also in respect of Ms. Delecia's.
- [84] The applicants had the disputed lands valued³² and surveyed in 2014. The valuation ascribed at that time was \$125,000.00. It is more than likely that the value has appreciated. The applicants will be required to pay stamp duty on the current value of the lands for purposes of obtaining the declaration of possessory title. They will need to file a new valuation report.

ORDER

- [85] It is accordingly ordered:

1. Marjorie Cuffy's, Colville Williams', Kenneth Williams', Stanley Williams', Douglas

³² On July 4th. See valuation report of Adolphus Ollivierre.

Williams' and Emille Williams' application for a declaration of possessory title of the disputed lands is granted.

2. Marjorie Cuffy, Colville Williams, Kenneth Williams, Stanley Williams, Douglas Williams and Emille Williams are the true owners of all that lot piece or parcel of land situate at Massey Estate in the Parish of Charlotte, in the State of Saint Vincent and the Grenadines, comprising approximately fifteen acres, one rood and thirty nine poles (15 acres, 1 rood, 39 poles) with appurtenances thereon; more particularly described and delineated in survey plan C1670 approved and lodged at the Lands and Survey Department on July 29th, 2014 by Acting Chief Surveyor Keith Francis bounded as follows:

On the north partly by a road to the Windward Highway and partly by lands of the heirs of Evans Dick; on the south by lands of Allan Dean and a river; on the east partly by lands of Anthony Jobe, partly by lands of Florence Gilchrist on plan C381, partly by lands of C. Homer on plan C6/99, partly by lands of D. Regisford on plan C381; and on the west partly by lands of the heirs of Evans Dick, partly by lands of Henrick Johnson on plan C377, partly by lands of Ricky Marks on plan C377 and partly by an existing road as the same is shown on a plan drawn by Adolphus Ollivierre (BSc. MSc.) licensed land surveyor.

3. Marjorie Cuffy, Colville Williams, Kenneth Williams, Stanley Williams, Douglas Williams and/or Emille Williams shall file at the court office on or before 22nd April 2020, an updated valuation of the subject property prepared by a registered and qualified land valuator.
4. Marjorie Cuffy, Colville Williams, Kenneth Williams, Stanley Williams, Douglas Williams and Emille Williams shall pay the applicable stamp duty pursuant to the Possessory Titles Act, based on the value ascribed in the valuation report filed in accordance with paragraph 3 of this order.

5. Everil Delecia shall pay to Marjorie Cuffy, Colville Williams, Kenneth Williams, Stanley Williams, Douglas Williams and Emille Williams prescribed costs of \$7,500.00 pursuant to CPR 65.5 (2) (b).

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

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar