

THE EASTERN CARIBBEAN SUPREME COURT AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

GRENADA

CLAIM NO: GDAHCV 2011/0454

BETWEEN

Don- Lee Clarke

Claimant

And

**Desmond Alexander
Glenroy Alexander
(by his Administratrix, Christine Lendore)**

Defendants

BEFORE:

**Her Ladyship, the Honourable Agnes Actie
(High Court Judge)**

APPEARANCES:

Claudette Joseph with Ian Sandy for the claimant

Afi Ventour de Vega for the defendants

2020 March 3
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RULING

1. **ACTIE J:** On 10th January 2011, the claimant filed a claim form with a statement of claim seeking the following reliefs:
 - (i) a declaration that the defendants are not entitled to occupy all or any part of that lot piece or parcel of land and which they occupy more particularly described in an indenture of Conveyance dated the 16th day of August 2004 between George Clarke on one part and the claimant on the order part and recorded in the Deeds and Land Registry of Grenada in Liber 30-2004 at page 375.
 - (ii) an injunction restraining the defendants and each of them whether by themselves, their servants and/or agents from erecting any concrete structure on any part of the said land.
 - (iii) an order that the Defendants do quit and deliver up possession of the portion of the Claimants land that they now occupy.

2. The claimant claims to be the fee simple owner of a parcel of land comprising 25,970 sq. ft of land situate at Salisbury Road in St. Andrew. The claimant claims to have obtained title by virtue of a Deed of Gift dated the 16th August 2004 from his father George Clarke (Jnr) and recorded in the Deeds and Land Registry of Grenada in Liber 30-2004 at page 375. The claimant states that his grand-father George Clarke Sr. sold the parcel of land to his father George Clarke Jr. in 1970.
3. The defendants in this case are the claimant's uncle, being siblings of the claimant's deceased father, George Clarke Jr. The defendants filed a defence and state that they have been in continuous, undisturbed and exclusive possession of the land in excess of twelve years. The defendants deny that their father George Clarke Snr. ever sold the land to their brother George Clarke Jr. The defendants state that they had never acknowledged George Clarke Jr as owner of the said parcel.

Analysis

4. The claimant asserts that his George Clarke Jr purchased the land from George Clarke Snr pursuant to a receipt dated 16th July 1970. It is the evidence that George Clarke Snr. remained in occupation of the said land until his death in 1994, some 24 years after the purported sale to his son George Clarke Jr. However, a deed of conveyance in favour of George Clarke Jr to give effect to the receipt was never executed. I find it peculiar that George Clarke Jr would not have insisted in obtaining a deed to give effect to the transaction between the parties. It is also the evidence that the receipt has to date not been registered in the Deeds and Land Registry. The registration of the receipt would have at least given constructive notice to all persons dealing with the said land.
5. It is even more curious to note that the Deed of Sale to George Clarke Snr dated 14th June 1960 is the root of title referred to in the Deed of Gift by George Clarke Jr made on the 16th August 2004 to the claimant and no reference was made to the purported receipt dated 16th June 1970. In my view that claimant is seeking to rely on a defective title in his attempt to disposes the defendants.
6. I accept the defendants' evidence that they have been in open, continuous and undisturbed possession of the land in excess of twelve years. I also accept the evidence that the defendants were unaware of the purported sale to their brother George Clarke Jr. until the claimant issued the

notice to quit in 2009 and a letter dated 21st January 2010 informing of the purported sale by the receipt dated 16th July 1970.

7. I also accept the defendants' evidence that they performed acts of ownership and remained in possession without the permission of their brother. Even if the court were to accept that the defendants' occupation as potential beneficiaries of George Clarke Sr. was severed by the 1970 purchase by George Clarke Jr., it is still the evidence that they had already remained in possession as owners before the notice to quit was served in 2009, after 39 years in excess of the adverse limitation period. The defendants after becoming aware of the purported receipt have since surveyed the land to delineate the part that they have been occupying.

8. Kevin Gray in the text **Elements of Land Law**¹ under the rubric "**Unwitting adverse possession**" states:

"It is quite possible that adverse possession may occur through ignorance or mistake, without any knowledge or awareness on the part of *either* the paper owner *or* the adverse possessor.² A title may be acquired by adverse possession even though the claimant (**in this case defendants**) was unaware of the true ownership of the property or believed that it was already his.³ Indeed the *animus* required of the adverse possessor relates not to ownership of the land at all but rather to the assertion of a factual degree of 'complete and exclusive physical control' over the land⁴ - an assertion which is wholly consistent with an erroneous assumption of entitlement. A plea of adverse possession can therefore succeed even though both parties⁵ mistakenly but genuinely believed that the claimant was the true

¹ 3rd Edition at page 267

² *Rains v Buxton* (1880) 14 Ch D 537 AT 540-541; *Wilson v Martin's Executors* [1993] 1 EGLR 178 AT 180L; *Prudential Assurance Co Ltd v Waterloo Real Estate Inc.* (1998) Times, 13 May, per Park J; *Murphy v Murphy* [1980] IR 183 at 202.

³ Any other approach would reward the willful trespasser whilst penalizing the innocent occupier of land (*Hughes v Cork* [1994] EGCS 25 per Saville LJ0. See similarly *McGugan and McNeil v Turner* [1948] 2 DLR 338 at 344-346; *Beaudoin v Aubin* (1981) 125 DLR (3D) 277 AT 292; *Guild v Mallory* (1983) 144 DLR (3d) 603 at 319; but compare *Bladder v Phillips* [1991] EGCS 109, Where Mustill LJ deliberately left open the question whether adverse possession maybe claimed by one who believes that he already owns the land. In the law of prescription (post, p 514), it has been said that to disallow user based on a mistaken belief effectively confines prescription to someone who 'is aware that he is a wrongdoer' (*Bridle v Ruby* [1998] QB 169 at 177D-E per Parker LJ)

⁴ *Buckinghamshire CC v Moran* [1990] Ch 623 at 63 1B per Slade LJ (post, p 274).

⁵ For possibly the ultimate demonstration of adverse possession, see *McGuinness v Registrar-General* (1998) 44 NSWLR 61, where, after a conveyancing muddle, two neighbours in Broken Hill mistakenly occupied each other's house for some 50 years.

owner of the land and that his entry on that land was therefore 'as of right'.⁶ Time likewise runs under the Limitation Act even as against a paper owner who is entirely unaware that title to the land was conveyed to him long ago and that, in reality, he has been dispossessed.⁷"

9. The **Text** further states;-

" The *factum* of possession depends ultimately on evidence that the claimant of adverse possession has asserted a 'complete and exclusive physical control' over the land.⁸ Although the intensity of this control will vary with different kinds of terrain and with the circumstances of each case. it must be shown that 'the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so'.⁹ The acts relied upon as evidencing 'possession' need not have been uninterrupted, ¹⁰ but the duration of the squatter's occupation, its exclusivity and the acts of user relied upon must normally be verifiable by a physical survey of the land. ¹¹

⁶ Pulleyn v Hall Aggregates (Thomas Valley) Ltd (1993) 65 P & DR 276 at 282; Bristow v Mathers (1991) 74 DLR (4th) 445 at 448. Entry 'as of right' is nothing to the point in the law of adverse possession, most cases of adverse possession comprising, at least objectively, possession 'as of wrong' (see Buckinghamshire CC v Moran [1990] Ch 623 at 644D per Nourse LJ (ante, p 250))

⁷ Palfrey v Palfrey (1974) 229 EG 1593 at 1595; Powell v McFarlane (1977) 38 P and CR 452 at 480; Wilson v Martin's Executors [1993] 1 EGLR 178 at 180; Burns v Anthony (1997) 74 p & CR D41 and D42; Prudential Assurance Co Ltd v Waterloo Real Estate Inc (1998) Times, 13 May ('unwitting paper owner')

⁸ Buckinghamshire CC v Moran [1990] Ch 623 at 64 1 B per Slade LJ.

⁹ Powell v McFarlane (1977) 38 P & CR 452 at 371 per Slade J. See also J.A. Pye (Oxford) Ltd [1974] 2 NSWLR 464 at 479E per Bowen CJ in Eq (the adverse possessor 'may be expected to act like a real owner would act'). The negative part of Slade J's formula in Powell v McFarlane may be extremely important in reinforcing a claim of adverse possession (see eg Prudential Assurance Co Ltd v Waterloo Real Estate Inc. [1999] 2 EGLR 85 at 88H). See also Brackenbank Lodge Ltd v Peart (1993) 67 P & CR 249 at 261.

¹⁰ Bligh v Martin [1968] 1 WLR 804 at 811F-G; Mulcahy v Curramore Pty Ltd [1974] 2 NSWLR 464 at 475F. In Re Taylor and Willigar (1980) 99 DLR (3d) 118 at 125-126, it was held sufficient that the disputed property was used only in summer months and not at other times 'when the snow and ice of winter preclude their use in any practicable sense'. See also Hamson v Jones (1989) 52 DLR (4th) 143 at 156.

¹¹ When a squatter applies to register a title based on adverse possession (post, pp 312, 398), it is the practice of the Land Registry to instruct a surveyor to inspect the land in question. The surveyor records the exact position on site of physical boundary features such as fences and hedges; he estimates the age of these features; he reports on the way in which access to the land is obtained and controlled and on the person who appears to be in actual occupation; and he describes the use being made of the land by the squatter. Prior to inspection of the land the squatter will have been required to establish by statutory declaration the facts on which his claim is based and his intention in taking control of and making use of the land.

10. These quotations from the text are apposite to the defendants' case and I fully adopt them. It is a well-established principle that a person seeking adverse possession must prove his/her possession Nec vi, Nec clam, Nec precario, that is, 'not by force, nor stealth, nor the licence of the owner'. I am of the view that the defendants' entitlement for possessory title by adverse possession has crystallized. Accordingly, upon reading the claim, hearing the parties and reviewing the evidence in support, this court is of the view that the claimant has failed to satisfy his claim on a balance of probabilities. For the reasons advanced, the claim is dismissed with costs to the defendants. The court notes that the defendants did not make a counter claim for possessory title and it is left for the defendants to pursue their claim under the relevant legislation.

ORDER

11. In summary it is ordered:

(1) The claimant's claim for

- i. a declaration that the defendants are not entitled to occupy all or any part of that lot piece or parcel of land and which they occupy more particularly described in an indenture of Conveyance dated the 16th day of August 2004 between George Clarke on one part and the claimant on the other part and recorded in the Deeds and Land Registry of Grenada in Liber 30-2004 at page 375.
- ii. an injunction restraining the defendants and each of them whether by themselves, their servants and/or agents from erecting any concrete structure on any part of the said land.
- iii. an order that the Defendants do quit and deliver up possession of the portion of the Claimants land that they now occupy.

stands dismissed with costs to the defendants agreed in the sum of \$5000.00.

Agnes Actie
High Court Judge

BY THE COURT

REGISTRAR