

**IN THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS**

IN THE HIGH COURT OF JUSTICE

NEVHCV2016/0050

IN THE MATTER of a Request by Samuel Parris for a First Certificate of Title

AND IN THE MATTER of an Application for Removal of a Caveat

BETWEEN:

Samuel Parris Applicant / Caveatee

and

Muriel Williams Respondent /Caveator

Appearances:

**Ms Kurlyn D. V Merchant of Merchant Legal Chambers for the
Applicant/Caveatee**

Ms Joanne Flemming with Ms Marlene Uter for the Respondent/Caveator

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**2018: March 14th
 October 18th**
.....

JUDGEMENT

Introduction

- [1] **CHARLES-CLARKE, J:** This matter concerns a land dispute between Samuel Parris of Craddock Road, Parish of St Thomas, Nevis and Muriel Williams formerly of Craddock Road, St.Thomas, Nevis, who currently resides in New York, USA, over a parcel of land located at Craddock Road in the parish of St.Thomas in Nevis.

- [2] On 27th April 2016 the Applicant Samuel Parris applied for a First Certificate of Title of the disputed land. The Application was supported by the affidavits of the Applicant, David Dunrod and Othneil Daly.
- [3] On 17th June 2016 a caveat was entered by Muriel Williams the Caveator, pursuant to Section 16 of the Title by Registration Act Cap. 10.19 of the Laws of Saint Christopher and Nevis (TBR).
- [4] On 10th July 2017 an Application to Remove Caveat was filed by Samuel Parris pursuant to Section 119 of the TBR. The Application was supported by the Applicant's affidavit with Certificate of Exhibits namely; Copy of Vesting Deed, Copy of death certificates of George Parris and Hannah Parris, copy of receipt for payment of property tax.
- [5] The Respondent/Caveator Muriel Williams filed affidavits in response on 10th January and 28th February 2018 with exhibits namely: a vesting deed in the name of Melvina Williams dated the 3rd of April 1979; survey plan of Dave Simeon dated 11 May 2007 and letter to Samuel Parris dated 23rd May 2007. She also relied on the affidavit of Lavonne Parris-Ryan filed on 21st February 2018.
- [6] Samuel Parris subsequently filed affidavits dated 10th January, 21st February and 1st March 2018 in response to affidavits of Muriel Williams and her witness Lavonne Parris-Ryan.
- [7] I will deal with the Application for First Certificate of Title and Removal of the Caveat together.
- [8] The grounds presented by the Applicant/Caveatee, Samuel Parris are as follows:
- i) The Applicant is the owner of said land with buildings thereon by virtue of Vesting Deed #21424 registered in Liber CR.75 Folio 1297-1300 of the Register of Deeds, Nevis Circuit, dated 20th May 2015;

- ii) The land was previously owned and occupied by the Applicant's grandfather George Parris (GP) by purchase from one Ms Archer from as early as the 1940's until GP's death on 31st October 1968;
- iii) Subsequently the land was occupied by the Applicant's mother Hannah Parris (HP) with whom he lived until her death in 1970;
- iv) The Applicant remained cultivating the land and has been in open and uninterrupted possession of the disputed lands in excess of thirty years continuing from the open and uninterrupted possession by his grandfather and mother;
- v) The Applicant constructed a shop sometime in the 1980's and two dwelling houses between 1995 and 1997 on the disputed land for which he collects rent.
- vi) The Applicant caused the lands to be surveyed in June 2007 and began paying taxes for the land in 2015.

[9] Muriel Williams the Respondent/Caveator objected to the Application for First Certificate of Title on the following grounds:

- i) The land in dispute never belonged to the late George Parris but to his wife the late Florence Parris nee Wells who survived him.
- ii) The late Florence Parris nee Wells was the sister of Melvina Wells who possessed a vesting deed to the disputed land, dated 7th April 1979. Melvina Wells also collected rent from the persons occupying the land.
- iii) The Respondent's late uncle and aunt, William and Frederica Watts, purchased the property from the late Melvina Wells for the Respondent.

- iv) After the purchase her late uncle and aunt collected rent from the Applicant's family in particular his brother 'Atneal' or Othneil Daily and banked it for the respondent.
- v) The Respondent gave the Applicant permission to build a shop on the land. She invested \$5000 in the construction of the shop.
- vi) In 2001 the Respondent discovered the shop was moved and concrete structures were built (on the land) by the Applicant without her permission.
- vii) In 2007 the respondent commissioned Dave Simon a land surveyor to survey the land and obtained a survey plan dated 11th May 2007.
- viii) On or about the 23rd May 2007, the Respondent's Attorney-at-Law wrote to the Applicant demanding payment of rent for the concrete structures or to vacate the premises;
- ix) The Respondent applied for a vesting deed on 11 November 2015 which was not granted.

The Issues

[10] The issues which the court has to determine are:

- i. Who is the legal owner of the disputed land?
- ii. Whether the Applicant has been in sole and undisturbed possession for a period of thirty years and is therefore entitled to a First Certificate of Title.
- iii. Whether the Respondent is entitled to the disputed land as beneficial owner.
- iv. Whether the caveat entered by the Respondent should be removed.

The Evidence

[11] The land in question is described as a parcel of land containing by admeasurement 10,960.931 square feet in area situate at Craddock Road, in the

parish of St. Thomas, in the island of Nevis bounded and measuring as follows, that is to say :- On or towards the North East by lands of Samuel Parris 39.15 feet, 114.62 feet and 159.45 feet; On or towards the South West by Craddock Road 31.70 feet; On or towards the South West by Craddock Road 31.70 feet and On or towards the North West by lands of Muriel Williams 311.60 or howsoever otherwise the said lot of land may be abutted or bounded known or described.

[12] According to the Applicant the said land was purchased by his grandfather, George Parris (GP) from one Mrs Archer in 1940. GP exercised ownership by cultivation of crops, sold oil, cigarettes and burnt charcoal on the land. GP died in 1968 without obtaining proper documentation from Mrs Archer. The Applicant lived on the land during the lifetime of GP and continued living on the land with his mother Hannah Parris (HP). HP harvested crops from the land and sold them in St. Kitts. HP died on the sinking of MV Christina on Aug. 1, 1970. The Applicant continued to live on the land. The Applicant constructed a shop on or about 1986 and two dwelling houses between 1996 and 2001 on the said land. He caused the land to be surveyed by a licensed land surveyor Simeon Hill in June 2007 and exhibited a Survey plan. He obtained a vesting deed dated 20th May 2015 in his name filed on June 1st 2015. He maintains the disputed land which he registered with the Inland Revenue Department and he pays taxes each year. He produced a tax receipt as exhibit.

[13] Sixty-five year old David Dunrod, of Ramsbury Site, Charlestown, Nevis in his affidavit deposed that he knows the Applicant to be in occupation of the land for about thirty (30) years and knows the land was previously occupied by GP the Applicant's grandfather in excess of 10 years before his death. He corroborates what the Applicant stated about the occupation of the land.

[14] Othneil Daly 58 years, who is the Applicant's brother deposed that he lived on the land with his grandfather GP, the Applicant, his other siblings and his mother HP until her death in 1970. He heard his grandfather say that he bought land from

one Mrs Archer. He also confirmed what the Applicant stated about the use of the land by his grandfather, his mother and the Applicant.

- [15] The Respondent Muriel Williams deposed that she lived with her aunt Albertha Frederica Watts and her husband William Watts on a piece of land on Craddock Road next to the disputed land. She claims that the Watts bought the disputed land for her from one Melvina Wells. She was in St Marten at the time but came home to witness the transaction. At that time the Applicant and his siblings lived on the land and both he and his brother Othniel Daly paid rent which was collected by her son Slim Williams and given to her aunt Mrs Watts to bank for her.
- [16] She asserts that in October 1982 she came to Nevis for her aunt's funeral. She told the Applicant and his family that because they were so close and they were all poor they did not have to pay rent but she would give them a piece of land at the back of her property. She stated that she continuously told the Applicant and his siblings that while they could live on the land at the back, the land at the front belonged to her.
- [17] She stated that she later gave the applicant permission to build a shop at the back of the land which he would operate and share the proceeds with her. Upon her return to Nevis in 2001 she noticed the Applicant had built a shop and a house on the front piece of the land. She told him he would have to pay rent, to which he agreed but never did. She also had the land surveyed by licensed surveyor Dave Simon and exhibited a plan of survey dated 11 May 2007.
- [18] She had her solicitors write a letter dated 23rd May 2007 to the Applicant and also sent to the Registrar of Lands. In that letter she asked that he remove his house from the land, pay her rent or she would institute legal action against him. The Respondent stated that the Applicant failed to do so but instead he surveyed the land with a view to claiming it as his own.

- [19] On November 11, 2015 she applied for a vesting deed in her own name and was surprised to discover the Applicant had written a letter to the Registrar indicating he had a vesting deed registered in his name for the said land. Accordingly she placed a caveat on his Application for First Title.
- [20] To support her case the Respondent relies on the affidavit of Lavonne Parris-Ryan of Bath Village, St.John's Nevis, who is the sister of the Applicant. Lavonne Parris-Ryan deposed that she lived in the same house with the Applicant at Craddock Road as a child with her mother HP and the same yard as her grandfather GP. She was adopted at age two when her mother died. She stated that she is aware that Muriel Williams' uncle bought the land in dispute from Melvina Wells. She referred to a Vesting Deed Dated 7 April 1979 recorded as Liber C.R. Vol.39 Fol 249-252 in the name of Melvina Wells which she said was given to her by Bernard Clarke the uncle of the Respondent. She indicated that she is aware that because Muriel Williams was very good friends with her late mother and grandfather she gave them the piece of land at the back of her property. She stated that the Respondent has all the documents which she had seen, evidencing that she owns the land. She deposed that the respondent always told her and her siblings that the land belonged to the Respondent and they could use the back portion but she never gave them the piece of land that is in dispute.
- [21] Lavonne Parris-Ryan deposed that she returned on the land at about age 19 and constructed a small wooden and concrete house there, after the respondent gave her permission to do so. When it became infested with termites she bought materials to repair it. The Applicant made a 'big noise' with her telling her not to put things on the people land although she told him that the Respondent and Bernard Clarke gave her permission. However in order to avoid confusion she left and went to construct her house at Bath village. She stated that the Applicant and the Respondent have had disputes over the land for many years. She stated she was a little girl when her grandfather died but she was never told by any of her siblings that he gave them the land

- [22] The Respondent indicated that she had all the documents pertaining to the sale of the land but these were destroyed by hurricane Hugo in 1989. She denied that the Applicant has been in undisturbed continuous possession of the land in excess of twelve (12) years.
- [23] In response Samuel Parris denied that the Respondent/Caveator's aunt Ms Watts ever owned or bought the land. He denied ever paying rent to anyone as he was not in a financial position to do so. He admits that on one of her visits to Nevis he and the Respondent discussed setting up a shop on the land. It was agreed the Respondent would purchase snacks in St Maarten for the shop and send them to him for sale. The shop lasted only a few months since part of the agreement was for the Respondent to supply the shop with water but the water supply was cut off by the Respondent's children. After the shop closed he moved it closer to the road where it remained as a storeroom. He denied receiving any monies from the Respondent for the shop. He asserted that he constructed the houses during the time he was employed at Four Seasons from 1995-1997. He never had any discussions with the Respondent about construction of two dwelling homes nor did he ever pay the Respondent rent. When he constructed the two houses there was never any dispute from the Respondent that she was owner of the lands. He never took any items or materials for building from the Respondent. He asserted that he has always been in occupation of the said land for the last 58 years. He also denied the claim that the land belonged to Melvina Wells and asserted that in 1979 when the Vesting Deed was created he and his family were in uninterrupted possession of said lands.
- [24] He also stated that when they were younger they briefly moved to Government Road but returned to Craddock Road after 2-3 years. When his grandfather, step grandmother and mother died he and his siblings were very young and the respondent's aunt and uncle sought to take advantage of them by claiming they

had purchased the land from Melvina Watts. They then moved GP's house from the front portion of the land. He however continued to live on the back portion.

[25] In response to the affidavit of his sister, Lavonne Parris-Ryan, he stated that she was only 8 months old at time of GP's death. When his mother died in 1970 she left eight children. His sister Lavonne Parris was 2 years old and she went to live with Ms Clare Maynard with another sister of his. All the other siblings eventually left the land and he remained in continuous occupation. In cross examination he stated that Lavonne Parris-Ryan moved back on the property in the late 90's when she constructed a house on the far back portion of the said land. However a part was built on separate lands owned by him. She asked him whether she could repair the house and build a bigger house. He indicated to her that he would prefer if she would remove the portion of her house that was encroaching on his land as this would create an issue if he had to sell the land or leave it to his children. She became upset and decided to purchase a property at Bath Village and she abandoned the previous structure. He does not know what documents his sister refers to when she says the Respondent has all the documents for the land showing she is owner. He stated that the shop which is presently on the property is a different one to the one which was originally constructed and that his sister never worked in any shop.

[26] He deposed that he is aware of the Respondent's Application for a vesting Deed and that by letter dated 22nd December 2015 his solicitors wrote to the Registrar objecting to the granting of a vesting deed to the Respondent. He disputes that the Respondent is the beneficial owner of the land. He denies any claims by the Respondent that she is legal owner or holds any interest in the land. He therefore prays that the Respondent's caveat be removed.

The Law Relating To Application For First Certificate of Title

[27] Section 12 (1) of the Title By Registration Act Cap 10.19 (TBR) provides:
"12 Right to first certificate defined and application thereof.

- 1) Land not registered under this Act may be so registered
 - a) If the applicant can show a good documentary title thereto in himself or herself and his or her predecessors in ownership for at least thirty years next before the presentation of the request under this Act;
 - b) If, notwithstanding that such documentary title thereto can be shown, the court is satisfied from the deeds or other documents accompanying the request that the applicant has the right to claim the land as owner and that he or she and himself or herself has been in undisturbed possession of the same continuously during the period of twelve years next before the date of the presentation of the request under this Act;
 - c) If the applicant has, by descent or by will or deed, acquired a title to the land from a person who would have been entitled himself or herself to have the land registered in accordance with the provisions of paragraph (b) of this subsection;
 - d) If the land has been in sole and undisturbed possession of the applicant alone in his or her own right or executor, or as executor, administrator or trustee, or partly in the sole and undisturbed possession of the applicant in any such right and partly in the sole and undisturbed possession of any person through whom he or she claims, continuously for a period of thirty years next before the date of the presentation of the request under this Act."

[28] Section 14 of the TBR provides that:

- (1) Possession for the purpose of section 12 shall be as owner by a person, his or her heirs, executors, administrators or assigns and not as an encumbrancer holding a life interest or interest or a term of years or other less estate...
- (2)
- (3) The judge shall take such evidence of possession by affidavit, or payment of taxes, or common repute, or otherwise, as shall be satisfactory to his or her own mind.

[29] Section 9 of TBR states:

"9. Where the application for the first certificate is in any respect based on possession of land, the request shall be accompanied by affidavits of the applicant and of two other persons at least and such affidavits shall set out in detail the facts establishing that the applicant has been in sole and

undisturbed possession of the land continuously for the period of time required by this section as well as the acts of ownership exercised over the land and shall prove that the rents, fruits and profits accruing out of the land have been taken and appropriated by the applicant as owner during that period.

[30] The Applicant grounds his Application under section 12(1)(d) and 14 of the TBR and claims he has been in open and undisturbed possession by virtue of occupation by his grandfather, mother and himself for over thirty years. He has detailed their occupation in his affidavits in support. He also relies on the affidavits by David Dunrod and Othneil Daly in support of the request for First Certificate of Title, in which they detail his possession and occupation of the said lands.

[31] The Applicant also claims that he possesses documentary title by virtue of the vesting deed to himself dated 20th May 2015 and filed on 1st June 2015. He relies on section 4(1) and section 25(3) of **the Conveyancing and Law of Property Act** Cap 10.04 which provides:

‘4(1).No action may be brought upon any contract for the sale or other disposition of or any interest in land, unless the agreement upon which such action is brought or some memorandum or note thereof is in writing and signed by the party to be charged or by some other party thereunto by him or her lawfully authorized.’

‘25(3).After the commencement of this Act a person may convey land or vest land in himself or herself.’

[32] The Applicant submits that his ownership is based on paper or documentary title and factual possession. He relied on the definition of possession in the cases of **Orton King v Randy Gibbs**¹, **JA Pye Oxford and another v Graham**² and **Powell v Mc Farlane**³. He therefore submits that his documentary title by way of vesting deed and the evidence of his occupation of the land establishes ownership of the disputed land.

¹ SVGHCV2016/007 delivered 19th October 2017, (unreported)

² 2002 All ER (D) 67 (Jul)

³ 1977 38 P & CR 452 at 470

- [33] He contended that the Respondent has not provided any documentary evidence of ownership and has never occupied the disputed land. He argues that while the Respondent has purported to exhibit a Vesting Deed in the name of Melvina Wells, she has failed to show any documentation or evidence connecting her to Ms Wells and has not shown any claim of ownership by that route. He further argued that the respondent has not shown the appropriate degree of control or factual possession and the requisite intention to possess the disputed land.
- [34] He refers to the evidence of the Respondent that she never lived on the disputed land but that she knew the Applicant and his family lived there since she was young. The Applicant further submitted that the evidence of his sister Laverne Parris-Ryan confirmed that he lived on the land in their family home since they were small and he continued to reside there after their mother's death in 1970.
- [35] The Applicant/Caveatee submitted that he has exhibited physical custody and control and hence factual possession as well an intention to exercise control over the land for himself and to occupy and use as his own.

The Caveator's Objection to the Grant of First Certificate of Title

- [36] The Respondent has entered a caveat and she is asking that the Applicant's Request For First Certificate of Title be dismissed as he has failed to satisfy the requirements of Section 12(1) (d) of the TBR.
- [37] The following sections of the TBR relate to a caveat.

Section 16:

'Any person who claims to be the proprietor of any land, or to be interested in any mortgage or encumbrance, may enter a caveat in the office of the Registrar of Titles either forbidding the issue of any certificate of title for any land to any specified person, or claiming that a note may be made upon any certificate of title in regard of any mortgage or encumbrance, or in any other manner stating an interest in any land and such caveat shall be in Form 2 set out in the second schedule and the caveator shall be heard before the certificate of title is issued , or the mortgage or encumbrance noted or rejected.'

Section 112 - Who may present caveat

'Any person claiming to be entitled to stay the registration of any dealing in land until his or her rights therein shall be recognised and registered, may present a caveat to the Registrar of titles.'

Section 115 - Effect of registration of caveat

'After the registration of a caveat, and so long as it remains in force, the Registrar of Titles shall not register any dealing with the land embraced therein, until the caveat is removed.'

Section 118 - Caveator may apply to court to remove caveat

'The caveator may at any time and without any notice from the Registrar of the receipt of an order of removal from the caveatee apply to the Court to sustain such caveat and to order its continuance on the register, either until some question of right has been determined between the caveator and the caveatee, or till such time and such manner as may be ordered by the Court, and the Court after such notice to the caveatee or service upon him or her as may appear sufficient, may proceed to hear the parties, or, in the absence of the caveatee if he or she does not appear, to deal with the case as may appear just.'

Section 119 - Application to Court to remove caveat

'The caveatee may, in like manner and without sending any other removal to the Registrar of Titles, apply to the Court to have the caveat removed by order of the Court.'

Section 120

Caveator liable in damages

'Any person lodging any caveat with the Registrar without reasonable cause shall be liable to make any person who may have sustained damage thereby such compensation as may be just, and such compensation shall be recoverable in an action at law by the person who sustained damage from the person who lodged the caveat.'

- [38] The Respondent has filed a caveat in accordance with section 16 of the TBR. She further submitted that she possesses the land as beneficial owner. She referred to Section 12 of the TBR and argued that the statute does not require one to prove possession through occupation but rather through ownership.
- [39] According to her the Applicant cannot provide proof that the land was sold to his grandfather (GP) by one Ms Archer. Moreover the applicant cannot inherit from his grandfather as the land did not belong to GP but to GP's wife who was Melvina Wells' sister. Therefore he cannot benefit from her estate. Further she argued that

the Applicant would have been a minor when Florence Parris died and so he was not capable of inheriting. She relied on the case of **Winston Quamina et al v Philson King**⁴.

[40] The Respondent claimed that her ownership of the land was never interrupted and she was never dispossessed of the land by persons including the applicant. She relied on the case of **Andre Winter et al v Charles Richardson**⁵ citing Ld Oliver in **National Abbey** who stated *"It is not the actual occupation which gives rise to the right or determines its existence. Actual occupation merely operates as the trigger as it were for the treatment of the right of an overriding interest"*.

[41] She argued that the Applicant's mere occupation of the disputed land does not ascribe to him an interest or title in the land and therefore he cannot be in possession. She submitted that she gave him permission to operate a shop on the disputed land but did not give him exclusive possession of the land and that he was at best a mere licensee. See **Andre Winter et al v Charles Robinson** at paras 14 and 24;

[42] She further argued that she revoked the Applicant's permission because of his unauthorised use of the land. He therefore became a trespasser of the land and not an adverse possessor when he refused to vacate the land as demanded by the respondent's letter dated 23rd May 2007. She relied on the case of **Ann Boriel v Harold Marcellin**⁶ to argue that trespass is an injury to a possessory right and not to ownership of the title.

[43] The Respondent contended that the Applicant's position as a trespasser is reinforced by the fact that his actions were not sufficient to satisfy the test of adverse possession in that he did not have factual possession or an intention to

⁴ Claim No.2012/0166

⁵ HCVAP2006/025

⁶ SLUHCV2016/0525

possess the disputed land as posited by Slade J. in **Powell v McFarlane**⁷ and approved by Lord Wilkinson–Browne in **JA Pye (Oxford) Ltd and others v Graham and Another**⁸.

[44] She submitted that the Applicant took no action against the continuing presence of Lavonne Parris-Ryan on the land, nor did he demand that she pay rent. Therefore the Applicant has not been in sole and undisturbed possession of the disputed land for a period of thirty years continuously before the date of the presentation of the request. According to her the period of time required by the statute for the Applicant to be in continuous, sole and undisturbed possession of the disputed land would be from April 2016 to April 1986 (30 years) and that is not so based on the events described in her affidavit which indicate the acts of control which she exercised over the disputed land.

[45] The Respondent further submitted that obtaining a defeasible vesting deed in 2015 and the resultant payment of taxes from 2015 by the Applicant does not support his claim under the Act as he would have been paying taxes for less than a year. Moreover she argued that the Applicant's vesting deed dated 20th May 2016 is not valid as he has failed to establish that he has been in continuous, sole and undisturbed possession of the disputed land for thirty years as claimed in his vesting deed. And that the vesting deed of the late Melvina Wells filed on 7th April 2015 should take precedence.

Discussion and Analysis

[46] The primary issue to be determined by the court is the legal ownership of the disputed land. In other words who can establish ownership of the disputed lands in accordance with Section 12 of the TBR. Section 12 allows for the registration of land if there is; a) good documentary title by the Applicant or his or her predecessors; b) documentary title accompanied by twelve years undisturbed possession; c) if the title to the land is acquired by descent or by will or deed; d) if

⁷ 1977 38 P & CR 470

⁸

the land has been in sole and undisturbed possession of the applicant in his own right or as executor, administrator or trustee, or partly in the sole and undisturbed possession of any person through whom he or she claims continuously for a period of thirty years.

[47] The Application is made under section 12(1)(d) of TBR on the basis of the Applicant's sole and undisturbed possession for a period of thirty years. On the other hand the respondent submitted that she possesses the land as beneficial owner of the land which she claims her aunt and uncle purchased for her.

[48] Under Section 12 of the TBR reference to 'possession' indicates ownership of land. Several cases have equated ownership to possession. In Clerk & Lindsell on Torts⁹ it was stated that "*Proof of ownership is prima facie proof of possession; but if there is dispute as to which of two persons is in possession, the presumption is that the person having title to land is in possession*". It further states that "*A person claiming as against the true owner cannot be said to have possession unless the true owner has been dispossessed*".

[49] Both counsel for the Applicant and the Respondent have referred the court to the seminal case of **JE Pye (Oxford) Ltd and Others v Graham and Another** in which Lord Browne-Wilkinson adopted Slade J's definition of possession and stated at para 40:

"(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land as being the person with prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title claiming through the paper owner. (2) 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*)".

[50] At para 41 Browne-Wilkinson also agreed with Slade J that:

"Factual possession signifies an appropriate degree of physical control. It must be single and [exclusive] possession ... The question what acts

⁹ 20th Ed. Paragraph 19-20 p. 1309

constitute a sufficient degree of exclusive physical control must depend on the circumstances... I think what must be shown as constituting factual possession is 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.”

Who Has Paper Title?

- [51] I first have to decide who has documentary or paper title. The evidence is that the applicant registered a vesting deed in accordance with Section 25(3) of **the Conveyancing and Law of Property Act** on 20th May 2015 which he submits establishes his documentary title as a result of thirty years undisturbed occupation. The respondent challenges the authenticity of the applicant’s vesting deed stating he has not been able to establish his sole and undisturbed possession for thirty years. Therefore she submits the vesting deed in the name of Melvina Wells in 1979 should take precedence.
- [52] In deciding whether to award possession by way of paper title to the Applicant I am mindful of the fact that the vesting deed is dependent on his thirty years undisturbed possession which this court first has to resolve in deciding ownership of the disputed land. This is the basis of the Applicant’s claim and which the Respondent is challenging. I am therefore reluctant at this stage to hold that the vesting deed registered by the Applicant in his name establishes his ownership of or title to the land without more. Neither can I accept the Applicant’s evidence that his grandfather GP bought the land from one Ms Archer in the 1940’s. In the absence of documentary evidence that evidence is hearsay. I therefore cannot hold that the Applicant has established ownership by way of paper title. However the vesting deed was registered and as such it is prima facie valid unless it is challenged on the basis of error or fraud. Therefore the Respondent’s submission that the vesting deed be held invalid by the court is rejected.
- [53] The Respondent on the other hand relies on the vesting deed of Melvina Wells whom she claims sold the land to her aunt and uncle who purchased on her

behalf. However she does not say to whom the land was sold or whether the documents were in her name or in the name of the Watts. The Respondent has not been able to produce any documentary or paper title by way of deed of sale, conveyance or succession in her name. She claims that the documents were destroyed by hurricane Hugo in 1989. It is unclear which documents she refers to. Neither has she been able to produce any documents showing that she received any rental payments for the land which she said her aunt and uncle banked for her. Accordingly in the absence of any documentation in accordance with section 4(1) of **the Conveyancing Act** she cannot rely on the vesting deed of Melvina Wells to establish her documentary or paper title to the disputed land. In the circumstances I cannot hold that the respondent has established ownership by way of paper title.

- [54] With regards to the plans of survey presented by both sides I note that the Respondent commissioned a survey by licensed land surveyor Dave Simon on May 11, 2007 and the Applicant commissioned a plan of survey by Simeon Hill dated June 2007. Both plans seem to refer to the same lot of land which is in dispute but it is unclear whether either of these was lodged. I asked this question at the hearing of this matter but neither party could say whether the plan they exhibited was lodged at the relevant government department. It is not unusual for both sides in a land dispute to survey the land. In any event I do not find any of these documents assist in establishing paper title.

Who has Factual Possession and *animus possedendi*

- [55] It is therefore left for me to determine who has factual possession and the requisite intention to possess the disputed land. This means that the court has to determine who has the appropriate degree of exclusive physical control by looking at the acts of the applicant and respondent in relation to the land.
- [56] The Applicant/Caveatee submitted that he has exhibited physical custody and control and hence factual possession as well as an intention to exercise control over the land for himself and to occupy and use as his own to the exclusion of any

other person. He has lived on the land from childhood. His grandfather first lived on the land from 1940 until his death in 1968 and his mother until her death in 1970 and they cultivated the land. He has physically occupied the land, cultivating it and constructed two houses and a shop on the said land for which he collects rent. He has followed up his physical and factual possession of the disputed land by preparing and recording a vesting deed to the said land. He has paid taxes and the receipts are in his own name and he has further taken steps to file an Application for First Certificate of Title.

[57] The Respondent averred that the disputed land was purchased for her by her late uncle and aunt from Melvina Wells. The Respondent stated that the late Mr and Mrs Watts when they purchased the land had moved the house occupied by George Parris from the front to the back of the land. She also stated that they had a house on the land which was occupied by one 'Jack'. Accordingly she argued that this was an act of ownership by the Watts. The respondent averred that she repeatedly told the applicant that the land was bought for her by her late aunt and uncle who collected the rent on her behalf. She submitted that as owner of the land she granted the applicant permission to build a shop on the land. When the applicant constructed a house on the land she demanded rent from him. In 2007 she sent him a letter from her lawyer asking him to pay rent or to vacate the property. She also permitted Lavonne Parris-Ryan permission to use the land to put her house on the land. The Respondent submitted that she also commissioned a survey of the land in 2007 in preparation for applying for a Request for First Certificate of Title. She relied on the evidence of Lavonne Parris-Ryan that she personally saw the documents evidencing the sale of the disputed land by Melvina Wells. She submitted that she dealt with the disputed land like an occupying owner would have. Therefore she exercised physical control of the land and was in exclusive possession of the land in dispute.

[58] I am of the view that in the absence of documentary evidence the Respondent has not established that the Watts purchased the land for her or at all and therefore the acts of possession which she refers to by the Watts cannot be attributed to her as

she has not shown any conveyance or inheritance of the land from the Watts. She has never lived on the land and therefore cannot show occupation in that way.

[59] The Respondent relies on the evidence of Lavonne Parris–Ryan who deposed that she constructed a small wooden and concrete house on the land after the Respondent gave her permission. However in cross-examination Lavonne Parris–Ryan said that her mother HP lived on that same land with her grandfather GP. They lived in separate houses. She stated that the respondent never lived on the land in dispute but lived in a house where her aunt and uncle lived near the disputed land. She said the Applicant lived on the land in dispute at the relevant time. Lavonne Parris-Ryan said in evidence that she lived on the land for about 12 to 13 years but never paid rent. She indicted that there is the family house on the land owned by the Applicant which is being rented by a lady which is in the middle of the land. She said the Applicant owns a shop on the land which is at the front of the house. She has a wooden house which is broken down at the back. She says that none of the houses on the land are owned by the Respondent.

[60] This testimony by Lavonne Parris-Ryan confirms the Applicant's claim that his grandfather and mother lived on the disputed land and that the shop and two houses on the land belongs to the Applicant and this goes towards supporting his claim for exclusive possession. I therefore question the part of the affidavit of Lavonne Parris-Ryan that the Respondent allowed her and her siblings to live on the land because of the relationship with her grandfather and mother. It should be noted that Lavonne-Parris-Ryan would have been a mere 8 months at the time of the death of her grandfather and 2 years on her mother's death. It therefore begs the question how Lavonne Parris-Ryan would have known these things unless she was told so thereby making that evidence hearsay. While she may speak of the permission given to her by the Respondent she cannot speak of the permission given by the Respondent to her siblings or for that matter what her siblings knew. Accordingly little weight will be attached to that bit of evidence by Lavonne Parris-Ryan.

[61] The Respondent argued that the Applicant did not exercise physical control over the land in that he did not give Lavonne Parris-Ryan permission to be on the land, he did not collect rent from her nor did he take any action against her continuing presence on the land. I do not accept this line of argument. It must be borne in mind that Lavonne Parris-Ryan was the Applicant's sister and they had both lived in the family house on the disputed land so it is unlikely that he would seek to collect rent from her or take steps to evict her from the land. The Applicant said in evidence that when Lavonne Parris-Ryan returned on the land she began constructing a house partly on the disputed land and partly on another piece of land which he owned. When he told her not to build on his other piece of land she became annoyed and left. It is passing strange that Lavonne Parris-Ryan would leave the land at the behest of the Applicant if indeed the Respondent gave her permission to be on the land. Therefore I am more inclined to believe the evidence of the Applicant of how Lavonne Parris-Ryan came back on the land and left it.

[62] I also accept the Applicant's evidence that neither him nor his family paid rent to the Respondent. This was also indicated by Othniel Daly in his affidavit. Moreover the fact that the Respondent herself acknowledged that the Applicant's family was poor and she allowed them to occupy the land rent free makes it difficult to accept her evidence that she sent her minor children to collect rent from them. This has not been corroborated. In light of this I find no evidence of rent being paid by the applicant's family, or the applicant himself or anyone else to the respondent.

[62] In **Powell's case** Slade J in considering the term 'possession' and 'dispossession' under the Limitation Act 1939 stated at page 469:

"I would for my own part have regarded the word 'possession' in the 1939 Act as bearing the traditional sense of that degree of occupation or physical control coupled with the requisite intention commonly referred to as *animus possedendi*. That would entitle a person to maintain an action of trespass in relation to the relevant land; likewise I would have regarded the word 'dispossession' in the act in denoting simply the taking of possession in such sense from another without the other's license or consent; likewise I would regard a person who has '*dispossessed*' another in the sense just stated as being in 'adverse possession' for the purpose of the Act".

[63] In **J A Pye** at paragraph 43 Lord Wilkinson-Browne discussing the right of a squatter versus the paper owner cited the statement by Lindley MR in **Littledale v Liverpool College**¹⁰ that the paper owner 'could not be dispossessed unless the plaintiffs obtained possession themselves; and possession by the plaintiffs involve an *animus possidendi* – that is possession with the intention of excluding the owner as well as other people'. He however accepted as correct the reformulation of the requirement by Slade JA in **Powell and Mc Farlane** that is "*intention, in one's own name and on one's own behalf as is reasonably practicable and so far as the processes of law will allow*".

[64] In **J A Pye** the Defendants were able to establish factual possession based on fifteen years physical occupation even if the Claimants had paper title. The House of Lords upheld the judge's decision at first instance and found that the Defendants had been in occupation of the disputed lands which was within their exclusive physical control, and the claimants had been physically excluded from the land. The Defendants had been in factual possession and by remaining in physical possession after expiration of a licence granted in 1986 until 1999 they had manifestly intended to assert their possession against the claimants, and had accordingly established title by adverse possession.

[65] In the instant case while there are competing claims for the ownership of the disputed land, I do not find that either party has established paper title and the applicant is not claiming by way of adverse possession. Therefore in considering whether the person claiming ownership had the *animus possidendi* 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.

[66] With respect to the Respondent there was no physical occupation of the land by her, nor did she undertake any activities on the land except in 1986 when she

¹⁰ [1900] 1 Ch 19, p 23

claimed she gave the Applicant permission to build a shop (which was denied by the applicant); 2007 when she had the land surveyed and sent the letter to the Applicant asking him to pay rent or vacate the land; 2016 when she filed the caveat. The periods of inaction between 1970 and 1986 – (16 years); 1986 to 2007 – (21 years); and 2007 to 2016 – (9 years) go contrary to her claim that she had factual possession. I find her failure to follow up with any legal action after writing the Applicant the letter to vacate the land in 2007 and her delay in obtaining a vesting deed or otherwise making a claim for the land after the death of her aunt and uncle demonstrates a lack of *animus possedendi*. The letter dated May 23rd 2007 and the survey of the land did not interrupt the Applicant's possession of the land. I am therefore more inclined to find that the Applicant has established physical possession and the intention to possess.

[67] I do not accept that the Respondent gave the Applicant permission to stay on the land after his mother died or that she gave him permission to build a shop on the land. She has produced no documentation to substantiate any agreement in that regard. Even if I were to accept there was a business arrangement between the Respondent and the Applicant for her to supply goods for the shop this does not amount to factual possession. I therefore reject the argument that the Applicant was a licensee whose license terminated when the shop ceased to operate and thereby became a trespasser.

[68] I accept that the Applicant resided on the land from childhood, with his mother and his grandfather who lived there before him and they cultivated the land for a period of over thirty years. This has been corroborated by the affidavits of David Dunrod and Othneil Daly and in some respects by the Respondent and Lavonne Parris-Ryan. However I find the Applicant's factual possession of the disputed land began when he attained the eighteen years in 1977. Therefore the period of sole occupation from that time to the present is forty-two years. During that time the Applicant lived on the land and cultivated crops. He constructed a shop on the land on or about 1986/1987 and residential buildings between 1996 and 1998, and collected rent. He caused the land to be surveyed in 2007. He obtained a vesting

deed in his name and paid taxes in 2015. This satisfies the requirements of Section 12(1)(d) of the TBR. It also satisfies the definition of possession established in the cases of **Powell and McFarlane; and J A Pye (Oxford) Ltd.**

[69] While I am not satisfied that the Applicant can rely on paper title to establish ownership I am satisfied that he has exercised physical control of the land and has shown an intention to possess the land. I do not find the activities of the Respondent interrupted the Applicant's factual possession of the land. I therefore find that the Applicant has met the requirements of sections 9 and 12(1) (d) to be issued a First Certificate of title.

[70] I do not find the Applicant/Caveatee has supplied any evidence to support the claim for damages nor has this claim been quantified. Therefore the claim for damages is dismissed.

[71] Accordingly it is hereby ordered that:

1. The caveat filed July 15, 2016 by Muriel Williams is hereby discharged.
2. The Application for First Certificate of Title is granted to the Applicant.
3. The Respondent shall pay costs to the Applicant in the sum of \$2000.00 within 21 days of this order.

Victoria Charles-Clarke
High Court Judge

By The Court
Registrar