

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHPT2017/0051

IN THE MATTER OF THE POSSESSORY TITLES ACT 2004

AND

IN THE MATTER OF ALL THAT LOT PIECE OR PARCEL OF LAND SITUATE BELMONT IN THE
STATE OF SAINT VINCENT AND THE GRENADINES ADMEASURING 2,716 SQUARE FEET SHOWN
ON SURVEY PLAN G62/141 LODGED AT THE LANDS AND SURVEY DEPARTMENT ON THE 13TH
DAY OF OCTOBER 2017

AND

IN THE MATTER OF AN APPLICATION BY THERESA OLLIVIERRE FOR A DECLARATION OF
POSSESSORY TITLE

APPLICATION FOR DECLARATION OF POSSESSORY TITLE

Appearances:

Mr. Stephen Huggins of counsel for the applicant.

2018: Apr. 16
Jun. 4

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Ms. Theresa Ollivierre has applied¹ for a declaration of possessory title to a parcel of

¹ By Application file don 10th November 2017.

land situated at Belmont in the Parish of Saint George in the State of Saint Vincent and the Grenadines. It is approximately 2,717 sq. ft. The application was unopposed.

- [2] Ms. Ollivierre provided affidavit testimony as did her witnesses Agnes Samuel and Cassandra Mc Donald. Ms. Mc Donald claimed to be Frank Ollivierre's niece. Ms. Ollivierre explained that she has enjoyed possession for the past 5 years while her godmother Eileen Ollivierre did so for many years immediately before her. She claimed that by virtue of their aggregate periods of possession, that she has enjoyed exclusive and undisturbed possession of the land for the period of over 20 years, and is entitled to a declaration of possessory title of the subject land.

ISSUE

- [3] The sole issue is whether a declaration of possessory title should be granted to Theresa Ollivierre.

ANALYSIS

Issue – Should a declaration of possessory title be issued to Theresa Ollivierre?

- [4] Ms. Ollivierre explained that the subject land contains a house which was built by her uncle Frank Ollivierre and his wife Eileen Ollivierre who was her godmother. She produced a survey plan depicting the land. Ms. Ollivierre deposed that Mr. and Mrs. Ollivierre are deceased, the husband having preceded his wife in death. She produced two death certificates. The first reflected that Frank Ollivierre died on 22nd July 1996. The second registered the death of one 'Adina Ollivierre', the sad event having transpired on 25th August 2012.
- [5] Ms. Ollivierre claimed² that Eileen Ollivierre is also known as Adina Ollivierre. She exhibited an affidavit sworn to this effect by Agnes Leozone Samuel, on 23rd March 2018. The affidavit was not headed as one of the pleadings in this cause and it was not filed as such³. In it, Ms. Samuel averred that she is 76 years old and was friends with Eileen Ollivierre since around 1950. She indicated too that Eileen Ollivierre is the godmother of her fifth son. She deposed that Mrs.

² By supplemental affidavit filed on 4th April, 2018.

³ As stipulated by Rule 3.6 (3) (a) of the Civil Procedure Rules 2000, ('the CPR').

Ollivierre's name was registered in the Register of Births and Deaths as Adina Ollivierre. No official birth record was produced. Ms. Samuel explained however that her friend was always known as Eileen Ollivierre throughout her lifetime and that was the name she was called in her neighbourhood.

- [6] Agnes Samuel averred further that on the registration of Frank Ollivierre's death, Mrs. Ollivierre's name was recorded as 'Eileen Ollivierre' in the informant column of the Register. No photo identification documents as to the positive identity of the deceased Adina Ollivierre or the testatrix and informant 'Eileen Ollivierre' were produced. Ms. Samuel asserted that to the best of her recollection, her friend's name is Adina Ollivierre. She deposed that she is absolutely certain that the names 'Adina Ollivierre' and 'Theresa Ollivierre' refer to one and the same person. I shall return to this later.
- [7] Ms. Ollivierre testified that she used to be in the house owned by her godmother and uncle frequently as a child and until they passed. She deposed that she was very close to her uncle and godmother and became the latter's sole caretaker and breadwinner after her uncle's death. She indicated that she used to take her to the doctor and provide all she needed including food and medicine.
- [8] Ms. Ollivierre deposed that her godmother 'had been in possession of the land for a period of fifteen years before her passing in 2012'. She indicated that they (presumably her uncle and godmother) paid rent to no one and that no one ever claimed the land. She explained that her godmother executed a Will on 16th July 2003 in which she devised the subject land to her.
- [9] She exhibited 'as a copy', what appears to be an original of the Will. She did not indicate how the Will came into her possession or what had become of the original, if in fact the document produced was a copy. The testatrix is identified in the Will as 'Eileen Ollivierre'. The named attesting witnesses are Adrian Wilson and Agnes Samuel. It is not clear if that Agnes Samuel is the person providing the referenced affidavit(s), because she did not mention of a Will or having witnessed it. It is conceivable that it is the same person and that seems to be the case. In this regard, the two affidavits describe the affiant as being a resident of Calder; being friends with Eileen Ollivierre; and having a son who was Eileen Ollivierre's godchild.
- [10] The Court must decide whether Ms. Ollivierre has satisfactorily established that the testatrix of the

Will and her godmother is the same person; and if so, what weight to attach to the Will. She submitted that the standard of proof required is on a balance of probabilities. I agree.

[11] Ms. Ollivierre argued that identity can be evidenced by sworn testimony; and any certifiable documentary evidence on which a Court can rely 'to establish the truth of identity of the person carrying the two names.' She reasoned that in this case, the sworn affidavit of Agnes Samuel⁴ established that Eileen Ollivierre and Adina Ollivierre is one and the same person. She submitted that the affidavit is very specific. No legal authorities were advanced.

[12] It is an established principle of law that the standard of proof in civil proceedings is on a balance of probabilities. It is striking that Agnes Samuel did not provide a supplemental affidavit as to the identity of the deceased Adina Ollivierre. Rather, her sworn account of this, is exhibited to Theresa Ollivierre's affidavit. It was not suggested that she is the same Agnes Samuel who provided supporting testimony regarding the application for possessory title proper. However, I infer that she is. In considering her testimony, I remain mindful that proceedings under the Possessory Titles Act⁵ are not rendered invalid for informality or irregularity of form or process.

[13] She was not present in court to provide additional details to clarify aspects of her testimony. For example, Ms. Samuel averred that referred to a death certificate which was exhibited, however no birth certificate was attached. The production of a birth certificate could have shed light on whether the deceased had any other given names. Likewise, although Ms. Samuel deposed that she always knew that her friend's official name was 'Adina' because she was entrusted with duties which related to consulting official documents owned by her. She did not say what those official documents were and she provided no details about the nature of such consultations or the circumstances surrounding them.

[14] I am cognizant that the use of aliases is commonplace in the State of Saint Vincent and the Grenadines and that sometimes persons do not routinely use their proper names and might not even discover those names until later in life. I am also mindful of the prevailing domestic, regional and international concerns surrounding the propriety of and insistence on verification of identity in

⁴ Filed on the 4th day of April, 2018.

⁵ Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

legal transactions, particularly in courts of law. These requirements assume greater importance in matters relating to change of ownership to or ascertainment and proof of beneficial interest in property. The Court has to balance the applicant's interest against the imperative of satisfying itself regarding the testatrix's true identity.

[15] The Court did not have the benefit of observing Agnes Samuel's demeanour as she did not attend court. This must be borne in mind in evaluating her testimony. There is no rule of law or principle against a single witness providing evidence as to the proof of another's identity in civil proceedings.⁶ Generally, however such evidence will carry more weight if it is corroborated, especially if it involves claims in respect of a deceased person's estate⁷, as in the instant case.

[16] In evaluating the weight to be given to evidence generally, the Court must apply common sense and its impression of the witnesses.⁸ The Court is also obliged to take into account matters of motive, prejudice, partiality, accuracy, incentive and reliability⁹. It is established as a matter of law that the oral testimony of a witness in open court is preferable to evidence given by an out of court witness.¹⁰ Unlike the absent witness, the witness who is presented in Court can be observed by the judge and his or her demeanour and deportment observed.

Is Eileen Olliverre also Adina Ollivierre?

[17] In the instant case, there are unanswered questions regarding any relationship which exists between Agnes Samuel and Theresa Ollivierre. I hasten to add, that there is no reason to find that any such relationship exists; that Ms. Samuel is partial to Ms. Ollivierre; that her account is not reliable or accurate; or that any incentive exists for her to give favourable testimony on Ms. Ollivierre's behalf.

⁶ Halsbury's Laws of England, Vol. 11 (2015) para. 856.

⁷ Halsbury's Laws of England, Vol. 11 (2015) para. 857; *Cummins, Cummins v Thompson* [1972] Ch 62, [1971] 3 All ER 782, CA.

⁸ Halsbury's Laws of England, Vol. 11 (2015) para. 701.

⁹ Evidence Act, Cap. 220 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 51.

¹⁰ *Ridgway v Wharton* (1857) 6 HL Cas 238.

- [18] If accepted, Ms. Samuel's account benefits Ms. Ollivierre to the detriment of any person who might have an opposing beneficial interest¹¹ in the house on the subject land, in the capacity of a beneficiary of Mr. or Mrs. Frank Ollivierre's estate. Ms. Ollivierre and her witnesses did not indicate whether Mr. and Mrs. Ollivierre or either of them had any children or relatives (other than Ms. Ollivierre and Ms. Mc Donald) who would be entitled to share in their respective estates on intestacy.
- [19] The Court must be careful to take such matters into account in assessing the weight to be attached to Ms. Samuel's testimony. There is nothing before the Court which signals that Ms. Samuel is not related to Ms. Ollivierre; that Ms. Samuel is impartial towards Ms. Ollivierre; that Ms. Samuel's account is unreliable or inaccurate; or that she has not been incentivized to give such favourable testimony on Ms. Ollivierre's behalf.
- [20] The questions surrounding Mrs. Adina Ollivierre's *persona qua* Eileen Ollivierre impact the authenticity and efficacy of the purported Will. Those concerns introduce the real possibility that Adina Ollivierre died intestate. Furthermore, there is no evidence that her husband left a Will. In either scenario Mr. and Mrs. Ollivierre's respective estates would fall to be administered in accordance with the intestacy provisions of the Administration of Estates Act, unless Ms. Ollivierre's adverse possession claim is made out. Their respective interests in the house would in such eventuality be vested in the Honourable Chief Justice pending administration of the respective estates¹².
- [21] Ms. Ollivierre's and her witnesses' silence about existing relatives of Mr. and Mrs. Frank Ollivierre cannot be ignored. In seeking to advance the interests of justice, the Court must be alive to the possibility that one or more persons could have a better claim than Ms. Ollivierre to the house constructed on the subject property. Such beneficiary is permitted by law¹³ to pursue such interests up to 12 years after the claim accrues.

¹¹ Pursuant to the Administration of Estates Act, Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 47.

¹² Section 47 of the Administration of Estates Act, Cap. 486.

¹³ The Limitation Act Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

[22] In the circumstances, it would be unjust for this Court to close its eyes to the possibility that one or more persons may be so interested in the subject property. Ms. Ollivierre should reasonably have contemplated that it was in her interest and in the interest of justice to adduce evidence which addressed such matters. Her failure to do so must be taken into account in weighing Ms. Samuel's testimony regarding the identity of the person referred to as Eileen Ollivierre.

[23] In light of the paucity of details supplied by Ms. Samuel regarding the official documents she consulted in respect of Eileen Ollivierre's affairs and her absence from the Court, I am not satisfied that the documentary material or the affidavit testimony before the court establishes the testatrix's identity on a balance of probabilities, or makes a connection between that person and the deceased named 'Adina Ollivierre' in the death certificate. I therefore ascribe very little weight to it and make no finding that Eileen Ollivierre and Adina Ollivierre is one and the same person.

The Will

[24] On Ms. Ollivierre's behalf, learned counsel Mr. Stephen Huggins submitted that the Will was exhibited and relied on for two reasons. Firstly, he submitted that it showed the necessary animus by Eileen Ollivierre in devising the property to her godchild. In this regard, he argued that the deceased demonstrated clearly that she had claimed the land and 'considered for some material time that the property was hers to dispose of' as she pleased.' This ignores any beneficial interest which Mr. Ollivierre's estate would have had in the property which could have passed on intestacy. There is no evidence that the Will has been probated.

[25] Learned counsel Mr. Huggins argued that secondly, the Will highlights the train of events by which Theresa Ollivierre came into possession of the land. He submitted that added to this that all other neighbors and relatives accepted Theresa Ollivierre's possession as binding.

[26] Those submissions advance Theresa Ollivierre's position that the Court should accept that the Will is Eileen Ollivierre's and that the contents are intended to be dispositive of whatever interest Eileen Ollivierre perceived that she held in the property.

[27] Learned counsel Mr. Huggins submitted further that Ms. Ollivierre's claim is neither that of an executor de son tort nor as beneficiary of the Will of Eileen Ollivierre. In such a case, it would

appear that she does not rely on the contents of the Will to establish her alleged entitlement to the subject property. It follows that the Will is being adduced by way of evidence purportedly from beyond the grave. It was not purported to be authored by Ms. Theresa Ollivierre and therefore constitutes hearsay.

[28] The Evidence Act provides that in deciding whether a hearsay statement is admissible evidence, the Court may draw reasonable inferences from the circumstances in which the statement was made or came into being or other considerations including its form and content.

[29] The Court must decide what weight, if any, should be ascribed to the Will. On its face, it did not reflect that it had been verified on oath before a judge, justice of the peace, commissioner for oaths, diplomatic or consular representative pursuant to the provisions of the Evidence Act¹⁴. No such assertions were made by Ms. Ollivierre. I find therefore that it was not so verified. It is accordingly not admissible as to the truth of its contents.¹³

[30] Furthermore, it was not authenticated in accordance with section 51 of the Act, in any other manner approved by the Court. That provision stipulates among other things that hearsay evidential material be authenticated in accordance with rules of court or as ordered by the Court.

[31] Even if the Will is admitted into evidence, in deciding what weight to attach to it, the Court must have regard to all the circumstances from which inference may be drawn as to its accuracy or otherwise. Regrettably, Theresa Ollivierre has not supplied any details regarding the making of the Will, its storage and retrieval, attempts made to locate the attesting witnesses or otherwise. This is compounded by her failure to have it verified as mentioned previously. The identity of the author is also not established.

[32] In all the circumstances, I have concluded that there is insufficient background information regarding the execution of the Will from which to derive the desired comfort for the purpose of attributing any evidentiary weight to it. I refrain from doing so. Having regard to my earlier ruling to as to the weight attached to Ms. Samuel's testimony regarding Mrs. Ollivierre's identity, I make no finding that the purported Will was made by Adina Ollivierre as Eileen Ollivierre.

¹⁴ Cap. 220 of the Laws of Saint Vincent and the Grenadines, Revised Edition, 2009, section 32.

Adverse possession

[33] The subject property is delineated in Survey Order No. P536/2017 on survey plan G62/141 which was approved and lodged at the Lands and Survey Department on 13th October 2017 by Chief Surveyor Keith Francis. It is bounded as follows:

‘On the North partly by lands belonging to Bertram Wyllie shown on survey plan G2012 and partly by lands belonging to Augustus Mofford shown on survey plan G9/149, on the South by lands belonging to Joanne Samuel, on the East by a road separating the said lands from lands belonging to Bertram Wyllie shown on survey plan G2012 and on West by lands belonging to Augustus Mofford shown on the plan or diagram, prepared by Mc Arthur Robertson a Licensed Land Surveyor, approved and lodged at the Lands and Surveys Department and bearing Registration number G62/141.’

[34] Theresa Ollivierre testified that after her godmother passed away in 2012, she took possession and assumed ownership of the subject property. She contended that she holds the land in adverse possession to any other person who may have had a claim to it.

[35] She stated in her application:

‘There are no claims affecting the land. There are no other persons claiming to be owners of the land. The applicant has been in exclusive and undisturbed possession of the land for twenty years, as appears by the following facts: the facts set out in the sworn affidavits in the names of Theresa Ollivierre, Agnes Samuel and Cassandra Mc Donald. The applicant claims to be owner in her own right.

Immediately before adverse possession began to run in the applicant’s favour the said land was held by Frank Ollivierre and Eileen Ollivierre but there is no record in the land registry showing Frank Ollivierre and Eileen Ollivierre ownership of the land.

The applicant has not knowingly withheld any fact concerning the said land which ought to be disclosed in this application, and has truly and honestly, to the best of her knowledge and belief, represented the truth concerning the title of the land.’ (underlining added)

[36] Her testimony and that of her witnesses was very brief. Most of it has already been summarized. I now set out verbatim, the other material portions. Ms. Ollivierre deposed:

‘My godmother had been in possession of the said land for a period of fifteen years before her passing in 2012. They never paid rent to anyone to the best of my knowledge and no one ever claimed the said land.

My godmother passed away in 2012 and since then I have taken possession and assumed ownership of the property on which she lived. She never possessed a title deed and I have no knowledge of who owned the land before her. I have been in exclusive possession of the land for a period of five years and my godmother for fifteen years thus making a total of twenty years that the land has been held in adverse possession of any other person who may have had a claim to the said land. ...

I have been renting the property to tenants for about five years since the passing of my godmother. collect rents and I keep such rents as my own. I account to no one for the rents and no one has claimed the property.’ (underlining mine)

[37] Agnes Samuel deposed:

‘I knew Eileen Ollivierre. I knew her when she went to the land at Belmont to live. She was living at Belmont on another piece of land before that. I never heard her say she bought it or paid rent for it. She continued to live there until she died.

I never heard of or saw anyone else claim the land Eileen Ollivierre was living on. She and I remained friends up to the time she passed. I used to visit her home frequently. She died about five years ago.

Eileen Ollivierre moved onto the land not too long after my son, her Godson was born. I also knew her husband, whose name was Frank Ollivierre. He died about fifteen years before her. Together they built a home on the land at Belmont and lived there for the rest of their lives.

I knew Theresa Ollivierre. She used to be at the home very often after Frank Ollivierre died. She looked after Eileen and provided for her. She became the owner of the property after Eileen died.’

Theresa Ollivierre has rented the property to someone who is paying rent to her. Theresa keeps the rent for herself and to the best of my knowledge has never been challenged by anyone for ownership.' (Underlining added)

[38] Cassandra Mc Donald gave similar testimony. She averred:

'I knew Ms. Eileen Ollivierre. ... Her husband was my uncle. His name was Frank Ollivierre. As far back as I can remember I knew of them living there in Belmont on the said land. I used to be at their home all the time. ... I never knew them to be paying rent to anyone and I never heard anyone else claiming the land.

My uncle and his wife Eileen Ollivierre built a house on the land at Belmont. There was no house there before my uncle and Eileen Ollivierre went there to live. They built the house from scratch.

After Eileen died, Theresa Ollivierre took over the house and continued living there. No one has challenged Theresa Ollivierre for the land since she took it over. Theresa Ollivierre has rented the house to a tenant and is solely in charge of it, keeping the rents or disposing of it in whatever way she pleases.' (Underlining added)

[39] An applicant seeking a declaration of possessory title to land must establish that she has enjoyed factual possession of exclusive and undisturbed nature of the subject land for over 12 years, with the intention of owning it.¹⁵ Factual possession is established by proving that the applicant has continuously exercised acts of ownership over the property for the relevant period. The applicant must also comply with the legislative procedural requirements governing the grant of such declarations, by filing the requisite notices at the Registry and the relevant Magistrate's Court, effecting publication of the notices in the newspaper and notifying adjoining landowners.¹⁶

[40] A copy of the survey plan and a valuation must accompany the application.¹⁵ Ms. Ollivierre has filed the notices and publications and supplied a copy of the survey plan and valuation. The valuation describes the house as consisting of concrete block foundation walls with reinforced concrete slab,

¹⁵ See section 2 of the Possessory titles Act, Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009; see also *Powell v McFarlane and Another* (1977) 38 P & CR 452 Ch D at 470 – 471.

¹⁶ Possessory Tittles Act, Cap 328, sections 4, 6, 7 and 8.

of concrete block internal and external walls. The building would for present purposes be treated in law as part of the land and real property.

- [41] Ms. Ollivierre was invited to file submissions regarding the legal basis for her application, specifically whether it was in the capacity of executor de son tort, beneficiary or otherwise. She submitted that she applied in her own right as a person who takes possession and relies on the possession of the previous holder of the property.
- [42] She contended that in this case Eileen Ollivierre held the property for more than fifteen years on her own and then she, Theresa Ollivierre held the property exclusively for an additional period of five years. The evidence of possession of the property by Eileen Ollivierre for fifteen years is consistent and cohesive. Ms. Ollivierre and her witnesses give specific details of this. In the case of Theresa Ollivierre's occupation and possession, she relies on her acts as lessor.
- [43] She has produced no testimony about the lessee and limited details of the commencement of the rental agreement. Her best testimony on this score is her own assertion that she has been doing so for about five years. This could mean less than five years. Her relative Cassandra Mc Donald is the only witness who claimed that Ms. Ollivierre ever lived on the subject property. Not even Theresa Ollivierre made such an assertion.
- [44] While I accept that she has rented the subject property, I am not satisfied that she has done so continuously from the time Eileen Ollivierre died. There is no evidence regarding what if any, other acts of ownership she exercised over the property since then and I find that she has not engaged in any other acts of possession. Her testimony and that of her witnesses fall short of supplying the evidentiary basis to establish continuous factual possession by her, sufficient to underpin her claim of adverse possession for the statutory period. She has not established that her possession followed seamlessly after Eileen Ollivierre's demise.
- [45] In any event, having seemingly abandoned her stated reliance on the gift in the Will, Ms. Ollivierre's claim to adverse possession in her own right poses some difficulties. Firstly, it ignores the reality that Mr. and Mrs. Frank Ollivierre's beneficial interest in the house passes on intestacy to their

respective heirs. Accordingly, if Frank Ollivierre died intestate, his beneficial interest in the house would have passed to his wife and perhaps other beneficiaries in accordance with the law.¹⁷

[46] In this regard, Ms. Ollivierre has omitted from her application any reference to persons who might be capable of claiming to be owner of the land, or at the very least beneficial owners of Frank Ollivierre's interest in it, as required by the Act.¹⁸ Secondly, the law¹⁹ creates a statutory trust for sale on behalf of beneficiaries to intestates, whereby those interests are held by the Honourable Chief Justice under a presumptive trust for sale until Letters of Administration are extracted on behalf of the beneficiaries.²⁰

[47] Her contention that Eileen Ollivierre was in adverse possession of the land for fifteen years invites a finding that Eileen Ollivierre's²¹ possession was adverse to Frank Ollivierre's interests, he having been dead for 15 years. The alternative deduction is that Theresa Ollivierre seeks to register a claim not only in reliance on Eileen Ollivierre's possession but on behalf of Frank Ollivierre's estate. This latter construction is the only one which is sustainable in law, since adverse possession is maintainable only against the registered owner of the legal interests, which Frank was not. Ms. Ollivierre did not formulate her application in that manner. She appears to have overlooked any interest to which Frank Ollivierre's estate would be entitled. The Court cannot do likewise.

[48] Cassandra Mc Donald's testimony demonstrates that even if all other lawful beneficiaries are deceased, there are at least two persons entitled to share in Frank Ollivierre's estate – Theresa Ollivierre and Cassandra Mc Donald.¹⁶ There is no evidence of any such beneficiaries; or that Ms. Mc Donald is aware of this reality and has waived any interest she might have in the subject property. She might well be a beneficiary of Frank Ollivierre's estate, as might Ms. Ollivierre.

[49] If she is, she holds the rent monies and exercises control over Frank Ollivierre's interest in the

¹⁷ The Administration of Estates Act, Cap. 486, section 62.

¹⁸ Section 4 (c) of the Possessory Titles Act, Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

¹⁹ The Administration of Estates Act, Cap. 486, section 31.

²⁰ *Earnshaw and others v Hartley* [2000] ChD. 155.

²¹ Assuming that Eileen Ollivierre is Adina Ollivierre.

house as a constructive trustee for the other beneficiaries.²² In such case, the law provides that the Honourable Chief Justice's interest as statutory trustee of those interests is not extinguished. Equally, time could not run in Ms. Ollivierre's favour to support a claim by her to adverse possession of the subject land, in a manner which would ignore those interests.²³

[50] Her claim to adverse possession is made as against her uncle and godmother's predecessors in possession of the land. By linking her application to Eileen Ollivierre's²⁰ claim Ms. Ollivierre appears to be indicating that she makes no claim contrary to Mr. and Mrs. Frank Ollivierre's interests. Since they had no legal title or interest in the subject property, Ms. Ollivierre's adverse possession claim could only be launched against the true owner's title and would of necessity be merged not just with Mrs. Ollivierre's interests but also with her uncle Frank's. By omitting all reference to his estate and his beneficiaries in her claim, she has failed to bring all relevant matters to the Court's attention and this is fatal to her claim for the reasons set out before.

[51] Ms. Ollivierre cannot disregard these legal provisions or gloss over them. She has a duty to disclose to the Court the existence or non-existence of such persons; and positively and directly address those legal questions if she wishes to establish her claim on a balance of probabilities. She has failed to do so. The interests of justice would not be served by disregarding the legal realities.

[52] The Court has a duty to protect the interests of any such person. For the foregoing reasons, I am not satisfied on a balance of probabilities that Ms. Ollivierre has enjoyed exclusive and undisturbed possession of the subject property in excess of 12 years with the intention to own it.

[53] Ms. Ollivierre's account is disjointed and incoherent. Either she was left the property by Eileen Ollivierre or she and Eileen Ollivierre jointly and concurrently evinced an intention to own the subject property and exercised acts of ownership over it to this end. It cannot be both. By introducing the Will, Ms. Ollivierre has confused her account and rendered it not credible.

[54] I therefore reject her assertion that her use of the property amounted to possession sufficient to satisfy the requirements of the law for purposes of adverse possession under the Possessory Titles

²² James v Williams [1999] 3 All ER 309.

²³ The Limitation Act Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines, 2009, Part 1, paragraph 9 of the Schedule.

Act. She seems to have evinced an intention to own the property but that intention and the alleged acts of ownership are insufficient to ground her claim. Similarly, her description of her acts of factual possession were not detailed enough to establish continuous possession for the requisite period. Her disregard for Frank Ollivierre's interest and omission of pertinent details related to them leaves a void in her application which cannot be cured by the Court. I therefore find that she has not established the requisite adverse possession. Her application for a declaration of possessory title is accordingly dismissed.

ORDER

[55] It is ordered:-

1. The applicant **Theresa Ollivierre's** application for a grant of declaration of possessory title to the parcel of land situate at Belmont, in the Parish of St. George, in the State of Saint Vincent and the Grenadines more particularly described and delineated in Survey Order No. P536/2017 on survey plan G62/141 which was approved and lodged at the Lands and Survey Department on 13th October, 2017 by Chief Surveyor Keith Francis, is dismissed.
2. No order as to costs.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar