

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2015/0046

IN THE MATTER OF DEED NO. 4147 of 2009

AND

**IN THE MATTER OF AN APPLICATION BY FITZMORE CODOGAN FOR
REPOSSESSION OF LAND SITUATE AT RICHMOND VALE ESTATE**

BETWEEN

FITZMORE CODOGAN

**by his duly constituted attorneys on record FITZ-ANN CODOGAN and ALMIDA
CHANCE**

CLAIMANT

and

DENA MURRAY

DEFENDANT

Appearances:

Mr. Duane Daniel for the claimant. Mr. Sten Sargeant for the defendant.

2017: May 30

Jul. 20

Jul. 24

JUDGMENT

BACKGROUND

[1] Henry, J.: The defendant Dena Murray is Fitzmore Codogan's sister-in-law. She was married to his brother, Maxim Murray deceased. Mrs. Murray and her children live at Richmond Vale in a house she shared with her husband. Mr. Codogan is the registered owner of the land on which the house was built. His mother Syltha Codogan gave it to him 5 years after Maxim Murray's death.

[2] Mr. Codogan alleged that he built the house and permitted his brother Maxim and family to occupy it. He claimed that Mrs. Murray refuses to leave the premises although he has given her notice to quit. He seeks recovery of possession of the property; an order that Mrs. Murray vacates the subject property; an injunction restraining her from remaining, entering or otherwise dealing with the property; damages for use and occupation; interest and costs.

[3] Mrs. Murray acknowledged that the land belonged to Mrs. Codogan when the house was being built. She alleged that she put an addition to the house after her husband's death. She averred that the construction started in 1990, 1991 and 1994 and that no one has questioned her family's occupation of the property since then. She filed an ancillary claim in which she pleaded that any rights of ownership to the property have been extinguished by virtue of the Limitation Act.

[4] She is seeking an order that she and her husband are the fee simple owners of the subject land; rectification of the schedule to Deed No. 4147 of 2009 to exclude the portion of land on which the house stands; an injunction restraining Mr. Codogan from interfering with her quiet possession of the dwelling house; damages; and costs. I have found that she and her husband's estate owns the beneficial interests in the house.

ISSUES

[5] The issues are:

(1) Who owns the legal and beneficial interests in the disputed property?

(2) Whether Fitzmore Codogan's title has been extinguished by virtue of the Limitation Act?

(3) To what remedies is Fitzmore Codogan or Dena Murray entitled?

ANALYSIS

Issue 1 - Who owns the legal and beneficial interests in the disputed property?

[6] Syltha Cadogan is also Maxim Murray's mother. In 1974, she purchased a plot of land at Richmond Vale Estate. It comprised 4,042 sq. ft. Her title was registered by Deed of Conveyance 1584 of 1974. A house was built on the land sometime between 1988 and 2003. Her son Maxim Murray, his common law wife Dena and one of their children moved into the house before construction was complete.^d

[7] Maxim Murray died on 16th December 2004, just one month after he legally wed Dena. Mrs. Murray obtained a loan in 2008 and added an extra room, a bath and toilet to the house. In 2009, Syltha Cadogan transferred the subject land to Fitzmore Codogan¹. Just over five years later², Mr. Cadogan brought this claim against Mrs. Murray for possession of the house and land.

[8] Mr. Cadogan said that in 1988 he was a police officer in the Royal Saint Vincent and the Grenadines Police Force. He testified that after his mother gave him permission to build his house on the land, he went to the credit union and obtained a loan for \$5000.00. He explained that when he filled out the application for the loan he stated that it was for an addition to a house, because the deed was still in his mother's name and he did not want to have to field questions about the title. He said that he began getting materials in early 1989 and started the construction between late 1989 and 1990. He explained that he did not begin early in 1989 because he did not have enough materials.

[9] When shown a copy of a letter headed 'Property Valuation Division' he indicated that he had not seen it before. He agreed that there was no building on the land between 16th June 1989 and 23rd June 1989 but said there was a partial foundation on the land at that time, and when he left the State in 1990. He said that it was a mistake when he previously indicated that he did not start construction until late 1989.

¹ By Deed of Gift 4147 of 2009.

² By Fixed Date Claim Form filed on 25th March, 2015.

[10] He testified that he expended about \$5,000.00 to buy materials such as blocks, cement, steel, stone and sand to start the house, but it was not enough so he had to take another loan for \$700.00. Mr. Cadogan produced two documents in respect of the loans. One showed the disbursement of a loan of \$700.00 on Sept. 1st 1989.

[11] The other was a voucher and receipt in respect of a loan from the Gov't Employees Co-op Credit Union ('GECCU') dated 1/11/88 for \$5,000.00. It reflected that \$2500.00 was disbursed leaving a balance of \$2500.00. Mr. Cadogan said that he applied for the loan on 5th August 1988 and it was approved in October that year. He explained that he received the loan in two tranches. He did not provide any documentation to reflect the disbursement of the second \$2500.00.

[12] He denied that the loan was obtained to fund an addition to his mother's house. He claimed that he made no such addition. For her part, Mrs. Murray testified that a toilet and bath were added to Syltha Codogan's house in 2003. It is unlikely that this is referable to the loan obtained in 2003 because of the time which transpired between the two occurrences. Mr. Cadogan said that Maxim helped him to do the manual construction work and also brought his friends along to assist out of brotherly love for him as they had a good relationship. He accepted that those friends were helping Maxim. He explained that Maxim was a builder who could do the work cheaply. He refuted Mrs. Murray's assertions that Maxim was the one who built the house.

[13] Mr. Cadogan testified that he migrated to the United States of America in 1990 after the house started. He has lived there from that time. He said that he sent money to his sister and agent Ruthlin, to fund the construction works and labour. He explained that he placed Ruthlin's name on his bank account as signatory so that she could withdraw funds to put towards the house. He could not say what periods or times his sister took money from the bank for this purpose and he provided no bank receipts or other bank records, or invoices or receipts for building materials or related expenses.

[14] He did not indicate what stage the house had reached before his departure. He testified that after he migrated, he sent monies to his sister in time to time and directed her how to disburse it in building the house and putting on the decking. He said that he would send between \$200.00 and \$300.00 each time and did so from 1990 up to the time Maxim died. He testified that he sent US\$10,000.00 on one occasion, \$5000.00 of which he put in a barrel that he shipped and another US\$5,000.00 which he brought in cash on his person.

[15] Mr. Cadogan claimed that he sent US\$5,000.00 on one occasion to Saint Vincent with one Spencer Stephens and other amounts when Mr. Stephens visited the State. Mr. Cadogan stated that he borrowed the sum of \$3000.00 to put a porch on the house in 2003. He produced a copy of a voucher from the GECCU credit union evidencing a loan of \$3000.00 on 16th December 2003. He alleged that in February 2004, the house had a total area of was 820 sq. ft. and 964 sq. ft. in May 2009.

[16] He claimed that Maxim asked him if he (Maxim) could live in the house while he was out of state. He alleged further that Maxim told him that he did not have a house for himself and his family and as a result he gave him permission to live in the house. He stated that the house was not completed yet but he nonetheless agreed for Maxim to stay there because they were brothers.

[17] He accepted that Maxim put a little money into the house too because it was not complete when he lived in it. He quantified Maxim's contribution as \$10,000.00. He testified that Maxim put some doors and windows on the house and contributed to its construction because he felt it was not being built fast enough. He estimated the total cost of construction to be about

\$80,000.00. He indicated that Maxim and his family have occupied the house from 1996 when it was completed.

[18] Mr. Cadogan said that whenever he visited Saint Vincent he would stay with Maxim and his family except when he returned for his brother's funeral. He explained that he stayed at his mother's house in order to give Maxim's family some space since there were a lot of visitors at that time. He claimed that he has been paying the land tax since Maxim's death and that his mother was doing this before then. He tendered no documentary proof.

[19] Ruthlin Cadogan testified via Skype. She claimed that she now lives in Trinidad with their mother who has suffered a stroke. She corroborated Mr. Codogan's testimony that their mother gave him permission to construct the house on he land. She also confirmed receiving monies from him through West n Union and by Spencer Stephens also known as 'Radix'. She explained that when she received monies from him she would deposit some to his Barclays Bank account and the rest to his credit union account at GECCU.

[20] Ms. Cadogan stated that she withdrew funds from the Barclays Bank account as necessary to buy materials for construction of the house. She explained that sometimes when she was too busy Maxim would pay for this from his own funds and she would eventually repay him.

[21] She recalled that at some point Dena Murray was having problems at her home, so Fitzmore Cadogan permitted Maxim to move into his house with her. Like Fitzmore, she claimed that the house was incomplete and consequently, Maxim 'chipped in to help because he felt it was not being completed fast enough'. She admitted that she had to fill out receipts for monies sent to her via Western Union but stated that she had kept none.

[22] Ms. Cadogan denied knowledge that Mrs. Murray added another room, bath and toilet to the house. She said the house already had a bath and toilet. However, she later recalled telling Mrs. Murray not to put any addition to the house but was ignored. She admitted that Mrs. Murray made the addition.

[23] Fitzmore Cadogan explained that since his brother has died he would like his property back. As a result, he caused his lawyer to send Mrs. Murray a notice to quit dated 30th November 2009, giving her until 1st January 2010 to vacate the premises. He admitted that he issued the notice to quit the property within 2 weeks of the conveyance to him. He said that Mrs. Murray has refused to leave and has responded to his lawyer's letter with one from her lawyer, in which she stated that her husband built the house with his mother's permission. She also claimed that she has enjoyed peaceful possession for thirteen years.

[24] Mr. Cadogan said that he did not give h notice to quit when her husband died because he had sympathy for her. He claimed that the house started out as a family house and became his when his mother turned it over to him

[25] He stated that Mrs. Murray has sent hi two 'lawyer' letters refusing to leave the house. He produced copies of the letters dated December 11, 2009 and 20th April 2011 respectively. It is instructive to reproduce portions of both letters.

[26] In the first letter, Mrs. Murray's lawyer wrote among other things:

'Our client has informed us that the house in question was built by her deceased husband, Maxim Murray, and the property upon which it stands belonged to Mr. Murray's mother who expressly gave him permission to construct the said house. Furthermore, our client and her family have been in peaceful possession of the property for over thirteen years.

In light of the aforementioned our client cannot accede to your request.'

[27] The second letter stated in part:

'We were told further that Ms Syltha Cadogan gave Mr Maxim Murray a house spot over her land at Chateaubelair to build his house and he started a concrete blocks house on the said land in 1990 and moved into the said house with his family in or about the year 1996 and lived in the said house with his family until his death on the 16th December, 2004, leaving his wife and children in the said house and they continued to live in the said house up to the present time.

Mr Maxim Murray paid house tax for his house as is evidence by the tax receipts exhibited herewith.

Your client has now gone to the Inland Revenue Department and requested that the tax for the property be put in his name.

We were shown Deed of Gift dated the 16th day of March, 2009, and registered as Deed Number 4147 of 2009. According to the said Deed Ms. Syltha Cadogan is purporting to convey all the land that she previously owned to your client, despite the fact that she had already given a house spot to her son Maxim Murray, put him in possession and allowed him to build a concrete structure on the said land.

If your client tries in any way to,interfere with Mrs Murrays' (sic) peaceful possession of the house in which she lives with her family, our client will be left with no option but to apply to the High Court for redress.'

[28] Mrs. Murray testified that her relationship with Maxim started in 1989 and produced two children. She said that he went to Montserrat between 1989 and 1991 and started to build a house on his mother's land when he returned in 1990. She explained that he did the masonry work. She claimed that she moved into the incomplete house with Maxim and their daughter in 1996. According to her, only one bedroom was complete. She testified that they completed the other bedroom, living room and kitchen after they moved in, with help from Maxim's friends. She said that she also 'drogued' bamboo and gravel to help build the house

[29] Mrs. Murray admitted that she made different allegations in her defence and counterclaim her witness statement and oral testimony regarding the date Maxim started to build. She acknowledged that while the defence stated that the construction started in 1994, her witness statement fixed it at 1991 and her oral testimony was that it took place in 1990.

[30] She sought to clarify the inconsistencies. She attested that Maxim returned from Montserrat in 1990 and she gave birth to her daughter. On that occasion Maxim started the structure. She returned with him to Montserrat and had her second child there. She explained that when they came back to Saint Vincent Maxim started to build the 'house wall'.

[31] If this explanation is accepted, it means that the family of four moved into the house because by then the second child was born. Earlier, Mrs. Murray had said that she, Maxim and one child moved into the incomplete house. She has not satisfactorily explained the inconsistency in her three accounts. In any event, the evidence of both parties is that the building started somewhere between 1989 and 1991. I accept that Maxim and his family lived in it from about 1993 or 1994 even before it was completed.

[32] Mrs. Murray alleged that when the construction started Mr. Cadogan was not in the State as he did not return until some years after he left in 1990. She did not say when. She stated that Elvis Nash, Kenneth Edwards and Bazil O'garro worked on the house while it was being constructed. She testified that in 2008 she obtained a loan from the Bank of Saint Vincent and the Grenadines to add an extra room. She produced a copy of the payment history to this effect. Mr. Cadogan did not dispute this.

[33] Mrs. Murray averred that the house was wired for electricity in 1997 and the water supply connected in 1999. She produced a copy of an account history from the St. Vincent Electricity Services Ltd. and bill from the Water Authority with Maxim's billing address. She stated that they arranged for the property to be put on the tax roll in 2004. Mr. CosJogan was unable to say when electricity and water were supplied to the property. He stated that he was not in the State. Mysteriously, he did not explain what arrangements he made with his agent Ruthlin Cadogan or anyone else for installation of utility supply. '

[34] Mrs. Murray acknowledged that Mr. Cadogan stayed at the house on one occasion while Maxim was alive, but denied ever living there with Fitzmore Cadogan and Maxim. She was asked if she ever heard Fitzmore Cadogan speak to her husband by phone, but said she did not.

[35] Mrs. Murray alleged that from 1991 no one questioned their occupation of the house until November 2009 when Mr. Codogan's lawyer wrote to her. She expressed shock on receiving the notice to quit. She denied going to pay back taxes on the land right after and claimed that she was paying them every year after Maxim died.

[36] When confronted with her tax receipts for 2004 - 2009, she accepted that the property taxes for those years were all paid on 7th December 2009. She then stated, that she paid at that time because that was when she received the money. She admitted that Maxim did not have a deed to the land and acknowledged that the land belonged to Syltha Cadogan when the house was being built. Under cross-examination, she responded that she is claiming the house. She contended that any right anyone had to the property was extinguished by virtue of the Limitation Act.

[37] Elvis Nash was her only witness. He said that Maxim started constructing the house when he came back from Montserrat around 1991. He recalled that Maxim went there about 2 times

but could not be certain about the dates. He claimed that Maxim struggled to build the house. He said that he helped him by using his hoe to clear the grass and by digging the foundation.

[38] He remembered that Fitzmore Codogan was abroad when Maxim was building the house. He stated that when Maxim and his family moved into the house, it did not have a toilet or bathroom and was not plastered. He confirmed that Mrs. Murray put on an extra room, bath and toilet in 2009.

[39] Mr. Codogan submitted that he relies on his deed to prove ownership while Mrs. Murray relies on the Limitation Act. He contended that Mrs. Murray has provided no receipts to prove the alleged input in labour and materials, by her husband and her, and only a loan application for an extension. He argued that she gave three different years for the commencement of the construction of the house -1990, 1991 and 1994 and that she should not be believed.

[40] He contended that Dena Murray was at best, only Maxim's common law wife and had no personal knowledge of any promise made by Maxim's mother to allow him to occupy the premises. He submitted that she made no reference to such promise in her witness statement. He argued that even if a promise was made, it would have been to Maxim, who is now deceased. He argued further that she is not in a position to challenge his statements that money went from him to Ruthlin to Maxim. He contended that Mrs. Murray's witness did little to undermine his claim that he gave Maxim money. I note however that this was not part of his pleaded case and it was never suggested to Mrs. Murray. It would not be open to him to rely on that testimony.

[41] Mr. Codogan argued that Mrs. Murray made no challenge to the ownership of the land and seemed to be claiming only an interest in the house. He submitted that she did not challenge the validity of the conveyance of the land to him. He accused **Mrs.** Murray of lying when she claimed that she had been paying land taxes all along. The evidence bears this out.

[42] Mrs. Murray submitted that Mr. Codogan's and his witness' evidence did not withstand cross examination, was far from compelling, questionable or in most cases non-existent. She argued that Mr. Codogan's evidence had too many unexplained gaps that would require a 'quantum leap' to make findings of fact in his favour. She submitted that her evidence in contrast had a clear and consistent ring of truth to it.

[43] She contended that Mr. Cadogan concealed the real reason for borrowing the \$5000.00 and argued that providing GECCU with the real reason would have been a stronger basis for the loan than withholding that information. Mrs. Murray reasoned that if Mr. Cadogan concealed the true facts from the Credit Union to obtain the monies, the Court must have doubt whether those monies were ever spent on any property. She submitted that the only reasonable finding is that the money was obtained for the addition to his mother's house. There is no evidence that Mr. Cadogan obtained the loan to make an addition to his mother's house. I make no such finding.

[44] Mrs. Murray submitted that Mr. Cadogan contradicted himself when he was shown the letter from the valuation department. In this regard, she argued that his claim that he got the loan in 1988 and did not start building until late 1989, conflicted with his assertions that he did not start construction until later that year because he was collecting materials and that a foundation

was on the land in June. She contended that there was no suggestion or evidence that he was doing both.

[45] Mrs. Murray argued that Mr. Cadogan had no receipts for the sums he claimed he sent through Western Union and no corroborative testimony regarding the US\$10,000.00 that 'Spencer Stephens' allegedly transported to the State on his behalf. She argued that if Mr. Stephens exists, he has not come before the Court to give this evidence. She submitted that the only conclusion the court must find is that these statements are bald assertions with a cover story to excuse the best evidence that should be proffered. She submitted further that it was more than passing strange that he produced no bank records or bankers' book as evidence of the banking transactions he claimed Ruthlin made on his behalf, or from his bank in the U.S A. where he claimed to have maintained an account. She suggested further that the court should find it strange that he could give no timeline between 1990 and 2004 when he allegedly sent those funds.

[46] Mrs. Murray remarked that his inability to say when water and electricity were installed at the premises is inconsistent with a homeowner taking an interest in the completion of his property. She contended that in contrast, she was able to supply documentary evidence that Mr. Murray had the house wired whereupon they received an electricity connection in 1997 and a water connection from 1st June 1999.

[47] She submitted further that Mr. Codogan's response that he waited until he received his deed to seek to evict her because it was a family house which his mother turned over to him, was a notable departure from his case. She argued that he departed from his case once again when he said that Maxim contributed to the construction of the property. She argued that this is inconsistent with his testimony that Maxim did it out of brotherly love. Mr. Cadogan did state in his claim form that Maxim assisted him out of brotherly love. He continued that theme in his witness statement. His oral testimony on this score does not amount to a departure from his case.

[48] Mrs. Murray argued further that Maxim went to Montserrat to work between the periods 1989 to 1991 while Mr. Cadogan said he moved to the United States in 1990. She submitted that there is a wide unexplained gap in Mr. Codogan's evidence between 1990 (when he left the State) and 2003. She contended that the court cannot accept Mr. Codogan's ballpark figure of \$10,000.00 as being Maxim's contribution to the construction.

[49] Determination of the issues in this case rests heavily on the credibility of the witnesses. I formed the impression that both Fitzmore Cadogan and Mrs. Murray fudged the truth to a different degree, Mr. Codogan's being the most egregious. I concluded that Mr. Cadogan was less than truthful when he claimed that he built the house.

[50] His demeanour and general evasiveness about details such as the false documented basis for the \$5,000.00 loan; his inability to provide information about the persons who assisted in building the house, specifics about installation of utilities and names of persons to whom monies were disbursed for items like electrical wiring and plumbing were striking. Even if he relied on Ruthlin to make the necessary contacts one would have expected him to have and to supply more concrete information regarding those matters. In addition, no explanation was given for his

inability to produce such records, no allegations that they were lost or destroyed. They were just not available.

[51] Ruthlin Codogan's failure to fill in the blanks in circumstances where it was reasonable to expect her to do so, did not go unnoticed. She was the person on the ground. Surely, she would have been able to identify workmen who performed critical tasks and who she paid for those services. Mrs. Murray fared better in this regard, in that she identified workmen, tendered one of them as a witness and produced a record of her history of repayment for the addition to the house. She also produced the utility records. However, she too skimmed on the truth by claiming to have paid the taxes each year when she actually paid them all on the same day.

[52] She gave conflicting accounts in her pleadings, witness statement and oral testimony about the start date of the construction. This might have been deliberate or inadvertent. She struck me as a very simple person who was at times obviously overwhelmed by the court experience. She testified that she was in Form 3 when her relationship with Maxim started. Her conflicting statements regarding the construction start date could have been an attempt to deceive, an error in recollection or genuine mistake.

[53] When confronted with her witness statement, she denied saying that construction started in 1991 although that was recorded in paragraph 14. She admitted that the Defence and Counterclaim stated 1994 and that she said 1990 in her oral testimony. When asked to explain the discrepancy, she said that when her husband came from Montserrat, her first daughter was born in 1990. At that time he started the structure, after which she and Maxim went to Montserrat where she gave birth to a second child. She stated that when they came back they started the house wall. She explained that it was when Maxim came back that he started the house. Based on that account, her account is that Maxim did some preparatory work on the house when he came back to the State in 1990 but resumed construction of the building proper when he returned subsequently.

[54] This choppy explanation clarifies the apparent inconsistency and is supported by Mr. Codogan's assertion that there was a foundation on the land in 1990. That would have been around the time he left for the United States of America and before Maxim went to Montserrat for the first time. Taken together, those two accounts demonstrate that Maxim Murray made two 'starts' in the construction of his house, one before Mr. Godogan went away and then in earnest when the young family returned from Montserrat.

[55] Mr. Codogan implied that he returned to the State several times after 1990, including once when he brought \$10,000.00 cash partly on his person and partly in a shipment, which he used to finance work on the building. He did not indicate at what stage the construction was or for what that money was used.

[56] I take judicial notice that US\$10,000.00 equates to roughly EC\$270, 00.00. In the grand scheme of the construction, that figure would have amounted to almost 3/5 of the cost of the house, if Mr. Codogan's rough estimate is accepted. There is absolutely no way of knowing at what cost the house was built. No approximation of the size was supplied by either party.

Accordingly, Mr. Codogan's testimony of the cost of construction cannot be accepted without more.

[57] Mr. Nash was the most credible of the witnesses. His statement that Maxim struggled to get the building done speaks volumes. So too did his account that he used a hoe to clear grass to assist his friend. Mr. Cadogan gave no specifics about his involvement in this project apart from euphemistic statements about working with Maxim.

[58] Very significantly, Mr. Nash was not asked about being paid by Mr. Cadogan and it was not suggested to him that Maxim was just helping his brother Fitzmore to build the house. The uncontroverted evidence is that Maxim Murray and his friends contributed the labour. Furthermore, the addition of a room, bathroom and toilet was done by Mrs. Murray.

[59] I have difficulty understanding why Mr. Cadogan would have stood by and allowed her to do so without protest. He did not even mention it in his letters or his claim. That is remarkable. Significantly, he spoke of a loan in 2003. Surely, he would have bought materials and hired one or more workmen. He would have been in the State because he signed to receive the loan disbursement. He did not indicate who built the porch, what part he played. Nothing.

[60] Similarly, the court takes judicial notice that electricity supply to a newly built structure is usually approved only after inspection by the relevant regulatory authority and on satisfaction that the building is fit for habitation and has been properly wired as not to pose a fire hazard. The utility records are in Maxim Murray's name. Mr. Cadogan has no explanation why he took no steps to regularize this although he took such action in respect of the tax rolls.

[61] Neither Mr. Cadogan nor his sister stated a definite time when the construction was completed. This came from Mrs. Murray who indicated that electricity was installed and connected in 1997, 7 years before Maxim's death. As Mr. Codogan's agent on such a project, Ms. Cadogan would realistically have been expected to supply more specifics about the progress of works, merchants who provided materials and even basic information regarding the completion date of the different stages.

[62] Neither of them nor Mr. Cadogan considered it important to produce those records. It is almost as if they did not exist, which I am inclined to infer. Mr. Codogan's and his sister were vague and not forthcoming with details they would be expected to provide in support of Mr. Codogan's claim that he built the house. They provided only bare skeletal, unsubstantiated claims. I prefer Mrs. Murray's account on this aspect of the case. Unfortunately for Mr. Cadogan, those allegations do not surmount the evidentiary hurdle of proof on a balance of probabilities.

[63] Mrs. Murray to a certain extent would have been expected to know a bit more about her then boyfriend's undertaking but it cannot be presumed that Mr. Murray shared such information with her. To her credit, she was able to account for the addition which she personally undertook. Notably, the utilities were installed in Maxim Murray's name. The billing address for the water bill is Sylta Cadogan c/o Maxim Murray.

[64] The overall narrative fits with Mrs. Murray's testimony that the family moved in and lived in a one bedroom and later constructed another bedroom and made all other related arrangements for utilities to be supplied to the property. Based on those irrefutable circumstances, I am inclined to accept Mrs. Murray and her witness' testimony about the house construction. I reject Mr. Codogan's account. All these circumstances point to the irresistible conclusion that Maxim Murray was the one who built the house and I so infer.

[65] The subject house is a concrete structure which is permanently fixed to the land. I find that Mr. Maxim Murray built it. He would have gained a beneficial interest in the land. Mr. Cadogan holds title to the land by Deed of Gift. By virtue of the Registration of Documents Act³ (the Act) the legal title and interest which his mother purported to transfer to him are now vested in him subject to any overriding beneficial interest recognized by law.

[66] Mrs. Murray contended that the evidence points to two propositions of law, namely that there was either acquiescence on Ms. Codogan's part to encourage or allow her son Maxim to build on part of her land, or that an equity of license was granted to him with a right of occupation extending to his widow after his death. She submitted that in either event, monies have been expended by the Murrays and a proprietary estoppel arises. She cited the Barbadian case of **Greaves v Barnett**⁴ and the English case of **Inwards v Baker**⁵.

[67] She submitted that the principle applied in both cases is operational in the instant case. In this regard, she referred to and quoted pronouncements made by Denning M. R. in **Inwards v Baker** and adopted by Williams J. in **Greaves v Barnett**. In explaining how an equity arises in such circumstances, Lord Denning M. R. stated: '... even though there is no binding contract to grant any particular interest to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable so to do.'⁶

[68] He expounded further that the principle which is well recognised in the law established that any purchaser or successor in title who had notice of it would likewise 'be bound by the equity.' He said:

³ Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 5.

⁴ (1978) 31 WIR 88.

⁵ [1965] 1 All ER 446.

⁶ *Inwards v. Baker* at pg. 448 - 449.

'It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as the result of that expenditure, he will be allowed to remain there. It is for the court to say in what way the equity can be satisfied.'⁵

[69] Danckwerts L. J. agreed with him and characterized the concept as an estoppel otherwise known as equitable estoppel. He opined that it was not necessary to imply a promise. He explained that equity will step in to prevent an injustice if the person who carried out the works was induced to do so in reliance on an expectation of protection. In his words:

'It is not necessary, I think, to imply a promise. It seems to me that this is one of the cases of an equity created by estoppel, or equitable estoppel, as it is sometimes called, by which the person who has made the expenditure is induced by the expectation of obtaining protection, and equity protects him so that an injustice may not be perpetrated⁷.'

[70] Mrs. Murray submitted that this case falls squarely into the 4 corners of the principle. She reasoned that it is clear from the evidence that:

1. Syltha Cadogan allowed Maxim Murray to construct a house on her land to put his family; and
2. Maxim Murray and his wife expended monies to create a permanent home for their two children.

[71] Mrs. Murray contended that Mr. Cadogan cannot expect now to evict her and her children off his land. She argued that it is passing strange that he never made the request until he received his deed. She submitted that the inference should be drawn that he never had the *animus possidendi* to assert the rights to ownership of the house.

[72] Mr. Cadogan contended that **Inwards v. Baker** can be distinguished from the instant case. In this regard, he argued that there is no evidence of a promise and unlike with Baker, there is expenditure on both sides and he made most of the expenditure. He contended that it would be inequitable for him not to recoup his input and interest. The decision in **Inwards v. Baker** demonstrates that no promise is necessary. In any case, I infer and am satisfied that all of the expenditure in this case was made by Mr. Murray.

⁷ Inwards v. Baker pg. 449 - 450.

[73] Mr. Codogan indicated that another distinguishing feature is that there is no imperfect gift in this case which gives rise to proprietary estoppel. He contended that the son in the **Inwards case** acted to his detriment by 'giving up the building of the bungalow.' He cited the Jamaican case of **Raffington v. McIntosh** in which the court of appeal considered the concept of proprietary estoppel.

[74] Proprietary estoppel is a well-established equitable principle of law. It is proven where a defendant establishes on a balance of probabilities that she received certain assurances from the other party which caused her to expend monies or otherwise act to her detriment in reliance on the representations. In such cases, equity steps in to ensure that the defendant does not lose the benefit of her investment.

[75] Proprietary estoppel must be specifically pleaded if a party intends to rely on - Mrs. Murray did not plead proprietary estoppel or any type of estoppel in the instant case. She did not rely on a licence from Syltha Codogan to Maxim on the basis of which they occupied the land. Her sole claim was to title by extinguishment of the paper title owner's, pursuant to the Limitation Act. In the premises, I make no finding that proprietary estoppel arises in the case at bar.

[76] The factual matrix demonstrates clearly that Mr. Maxim Murray built a house on his mother's land apparently without objection from the mother. By this conduct, Mrs. Codogan clearly either acquiesced in or consented to the construction or turned a blind eye to it. Irrespective of her reaction, Mr. Murray would reasonably have been led to believe that all was well. He incurred expense in erecting that structure. Dena Murray added to this building from her own resources. The house is affixed to the land and cannot be moved.

[77] Mr. Codogan made no input in the construction, but his property now contains a structure that while theoretically it belongs to him, essentially constitutes someone else's investment. The court cannot ignore Mr. and Mrs. Murray's contributions to the building. Mr. Murray's estate has a very real interest in the house based on his substantial contributions. I am satisfied and find that Mr.

8 [2009] 4 JJC 2401.

Cadogan holds the legal title to the land while Mrs. Murray and Maxim Murray's estate are entitled to the entire beneficial interests in the house.

[78] I am bolstered in arriving at this conclusion by the fact that they did not merely build a chattel house, it was concrete and presumably visible to the successive owners who made no attempt to prevent its construction. It would be unjust to permit Mr. Cadogan to evict Mrs. Murray and disregard the investment that she and her husband expended in erecting a home for their family which they enjoyed for several years. While it is not an appropriate case in which to invoke the doctrine of proprietary estoppel in Mrs. Murray's favour, the court must seek to do justice by protecting the parties' respective interests.

[79] Accordingly, I hold that Mr. Fitzmore Cadogan owns the legal title, interests and rights to the disputed land subject to any beneficial interests that Mr. Maxim Murray's estate and Mrs. Dena Murray own in the house constructed on it.

Issue 2 - Has Fitzmore Codogan's title been extinguished by virtue of the Limitation Act?

[80] Mrs. Murray pleaded that she and her husband built their house and lived on the land unmolested for over 12 years from around 1994 to 2015. She pleaded further that Mr. Codogan's title to the land 'was extinguished by virtue of the provisions of the Limitation Act, chapter 129 of the Laws of Saint Vincent and the Grenadines Revised 2009.' No specific section of the Limitation Act ('the Act') was referenced. She mentioned the Limitation Act 1989, and the Limitation Act Cap. 128 in her submission.

[81] The relevant Act is the Limitations Act, Cap. 129 of the Revised Edition of the Laws of Saint Vincent and the Grenadines, 2009. Section 17 provides that an action for recovery of land is statute-barred 12 years from the date the cause of action arose.

[82] Based on her pleading, Mrs. Murray is asserting that 12 years had elapsed between 1994 and 2015. This is not so. Her testimony departed from her pleading on this point when she said that they started the construction in 1990 and 1991. This part of her testimony does not assist her because by her own admission that when Maxim returned to Montserrat after his 1990/1991 visit to Saint Vincent the house was not yet constructed. It was on their subsequent return that the construction resumed.

[83] Mrs. Murray's evidence does not provide proof of possession of the land by her and/or her husband for a continuous period of over 12 years prior to the filing of the instant claim. The limitation defence does not assist her. I therefore find that Fitzmore Codogan's claim is not statute-barred. His title to the property has not been extinguished.

Issue 3 - To what remedies is Fitzmore Codogan or Dena Murray entitled?

[84] Mrs. Murray contended that she included a prayer for 'Such further and or other relief in her counterclaim. She contended that this prayer for equitable relief is also captured by the rule 8.6 (2) of the Civil Procedure Rules 2000 ('CPR') which provides that the Court may grant any other remedy to which the Claimant may be entitled. The court may indeed grant such relief if the law and rules of court permit⁹.

[85] Mr. Cadogan has established his right to the land. Mrs. Murray has demonstrated that she and her husband financed the construction of the house. The court cannot ignore the realities of their interlocked interests in the property. In seeking to forge a resolution to this thorny problem, the court must act justly while balancing Mr. Codogan's right to the full enjoyment of his land against Mrs. Murray's and Mr. Murray's estate's 'proprietary' interests in the house.

[86] Based on all the surrounding circumstances and the evidence adduced at trial, I hold that Dena Murray's and Maxim Murray's construction of the house created a beneficial interest which must be recognized and protected. I find therefore that Maxim Murray's estate and Dena Murray's are the beneficial owners of the dwelling house which Dena Murray currently occupies on the disputed property. Fitzmore Codogan's legal interest is subject to those beneficial interests.

⁹ Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act 2009, sections 19 and 20.

[87] I remain mindful that the Murray family has occupied the land for 22 years. It would probably be very traumatic for them to have to move) Mr. Codogan likely has sentimental attachment to the land as it was in his family for some time. It does not escape my notice that the Murray children (now grown-ups) are related to Mr. Codogan.

[88] It seems to me that this impasse can be resolved, by granting one or the other party the house and so much of the land on which the house stands. If Mr. Codogan is to receive the house, he must compensate Mrs. Murray and Maxim Murray's estate the full market value of the

house. If on the other hand, Mrs. Murray and her husband's estate are granted a lasting right to occupy the house, Mr. Codogan must be compensated for his loss of use and enjoyment of the affected land.

[89] In either scenario, the property must be valued. The most expedient solution which commends itself is to require Mrs. Murray to compensate Mr. Codogan for the portion of the land on which the house stands. I recognize that the parcel of land is quite small. No photographs or other description was supplied to permit the court to gain an appreciation of the topography or features of the property. If it cannot readily accommodate partition, one party would be deprived of a permanent interest. In seeking to craft a solution which would not visit excessive prejudice or hardship on either party I have left the final determination to be crafted by them to some extent.

[90] In this regard, the parties will be required to on or before 11th August, 2017 agree the selection of a licensed valuator to:

1. prepare a valuation of the property registered by Deed of Gift 4147 of 2009 including the dwelling house occupied by Mrs. Dena Murray; and
2. advise on the feasibility of partitioning the said property to create two distinct and viable house plots.

Dena Murray is to bear the expenses and fees associated with preparing the valuation report.

[91] If the valuator's advice suggests that two house plots can be achieved by partition of the subject land, the parties shall: ,

1. on or before the 18th day of August, 2017 agree the selection of a licensed land surveyor to survey the subject land;
2. on or before the 31st day of August, 2017 arrange for a licensed land surveyor to survey the subject land and demarcate two distinct house plots based on boundaries agreed by them; such survey to be conducted in the parties' presence or in the presence of their respective servant or agent; and
3. equally pay the expenses associated with obtaining and registering the resultant survey plan.

[92] Mrs. Dena Murray shall pay to Mr. Fitzmore Cadogan on or before 29th September, 2017 either:

1. the value of the subject land (if the valuator indicates that it may not be conveniently subdivided into two discrete house plots); or
2. the value of the house plot on which the house is built, as demarcated by the survey plan; ascribed in the valuation report prepared by the agreed valuator.

[93] In the event of sub-division of the subject land, Dena Murray shall on or before the 15th September, 2017 submit the approved survey plan to the Registrar of Deeds. Fitzmore Cadogan shall on or before 15th September, 2017 submit the original Deed of Conveyance No. 4147 of 2009 to the Registrar of Deeds for correction.

[94] On receipt of the approved survey plan, the Registrar of Deeds is directed to:

(a) adjust the schedule in Deed of Conveyance No. 4147 of 2009 to correctly reflect the

(i) reduced area; and

(ii) new boundaries of the subject parcel; and

(b) issue a new deed to Fitzmore Cadogan reflecting those adjustments;

(c) on payment of the applicable fees, taxes and charges, execute and issue a Deed to Dena Murray as owner of the disputed land based on the demarcation depicted on the referenced survey plan.

[95] Both parties have been partially successful in making their case to protect some part of their respective interest in this matter. Neither party has prevailed as overall victor. Consequently, each party shall bear his or her own costs.

ORDER

[96] It is declared and ordered:

1. Fitzmore Cadogan is the legal owner of the subject property registered by Deed No. 4147 of 2009.

2. Dena Murray and Maxim Murray's estate are the beneficial owners of the dwelling house which Dena Murray currently occupies on the disputed property. Fitzmore Codogan's legal interest is subject to the beneficial interests of Dena Murray and Maxim Murray's estate.

3. Fitzmore Cadogan and Dena Murray shall on or before 11th August, 2017 agree the selection of a licensed valuator to:

(a) prepare a valuation of the property registered by Deed of Gift 4147 of 2009 including the dwelling house occupied by Mrs. Dena Murray; and

(b) advise on the feasibility of subdividing the said property to create two distinct and viable house plots.

Dena Murray is to bear the expenses and fees associated with preparing the valuation report.

4. If the parties decide to subdivide the subject property, Fitzmore Cadogan and Dena Murray shall:

(a) on or before the 18th day of August, 2017 agree the selection of a licensed land surveyor to survey the subject land;

(b) on or before the 31st day of August, 2017 arrange for a licensed land surveyor to survey the subject land and demarcate two distinct house plots based on boundaries agreed by them; such survey to be conducted in the parties' presence or in the presence of their respective servant or agent; and

(c) pay the expenses associated with obtaining and registering the resultant survey plan, equally.

5. Mrs. Dena Murray shall pay to Mr. Fitzmore Cadogan on or before 29th September, 2017 either:

(a) the value of the subject land (if a subdivision is undertaken); or

(b) the value of the house plot on which her house is built, as demarcated by the survey plan; such value as ascribed in the valuation report prepared by the agreed valuator.

6. In the event of sub-division of the subject land:

(a) Dena Murray shall on or before 15th September, 2017 submit the approved survey plan to the Registrar of Deeds;

(b) Fitzmore Cadogan shall on or before 15th September, 2017 submit the original Deed of Conveyance No. 4147 of 2009 to the Registrar of Deeds for correction.

7. On receipt of the approved survey plan, the Registrar of Deeds is directed to:

(a) adjust the schedule in Deed of Conveyance No. 4147 of 2009 to correctly reflect the

(i) reduced area; and

(ii) new boundaries of the subject parcel; and

(b) issue a new deed to Fitzmore Cadogan reflecting those adjustments; and

(c) on payment of the applicable fees, taxes and charges, execute and issue a Deed to Dena Murray as owner of the disputed land based on the demarcation depicted on the referenced survey plan.

8. Each party shall bear his or her own costs.

Esco L. Henry

HIGH COURT JUDGE

By the Court

Registrar