

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2016/0022

BETWEEN

STEPHANIE LEWIS

of Richmond Hill

CLAIMANT

and

LYNETTE QUAMMIE

of Belmont

DEFENDANT

Appearances:

Mr. Sten Sargeant for the claimant. Ms. Ashelle Morgan for the defendant.

2017: Jul. 18

Jul. 20

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Ms. Stephanie Lewis is the paper title owner of a parcel of land situated at Fairhall. She bought it in 2003 from Lorna John. At the date of purchase, Mrs. Lynette Quammie-Hannaway was living in a house on a part of the land (the disputed land'). Ms. Lewis gave her notice to leave the property but she refused. Ms. Lewis seeks an order compelling Mrs. Quammie-Hannaway to vacate the disputed land; an injunction restraining her from remaining on the property; damages for trespass and costs.

[2] Mrs. Quammie.;Hannaway alleged that in the 1970s her mother Estelle Quammie was involved in a common la relationship with Mr. Alvi 'Cutter' John. At that time, he and his wife Amelia John owned the entire parcel as joint tenants. Mrs. Quammie-Hannaway claimed that Mr. John verbally gifted a portion of the land to her mother but never gave her a deed evidencing ownership: She alleged further that Mr. John subsequently gave her {Mrs. Quammie-Hannaway), permission to build a house on the land that he had given to her mother.

[3] Mrs. Quammie-Hannaway claimed that she proceeded to build a chattel house which she subsequently converted into a wall house. She contended that he is the owner of the disputed land having occupied it without interruption since 1999. She asserted that Ms. Lewis' claim has been extinguished by virtue of the Limitation Act1 {'the Act').

[4] She contended alternatively, that even if Ms. Lewis' claim is not statute-barred, she should be estopped from recovering vacant possession of the disputed property, as such an order would be inequitable because it would permit Ms. Lewis to receive a windfall. She filed an ancillary claim seeking a declaration that she has acquired title to and is the owner of the disputed land; an injunction restraining Ms. Lewis from trespassing on or interfering with her enjoyment of the land and costs. I have found that Ms. Lewis is the owner of the disputed land.

ISSUES

[5] The issues are whether:

- (1) Ms. Lewis' claim is statute-barred?
- (2) Who owns the disputed land?
- (3) To what remedies is Ms. Lewis or Mrs. Quammie-Hannaway entitled?

ANALYSIS

Issue 1 - Is Ms. Lewis' claim statute-barred?

[6] Ms. Lewis' claim is founded in the law of trespass and includes a claim for recovery of her property. Mrs. Quammie-Hannaway's counterclaim involves consideration of the concept of adverse

1 Cap. 129 of the Revised Edition of the Laws of Saint Vincent and the Grenadines, 2009.

possession which is intricately interwoven with her limitation defence. For this reason, the relevant statutory provisions and aspects of the related submissions are addressed in this section. The parties restricted their submissions to the limitation period for recovery of land and did not address the time period fixed for lodging trespass claims.

[7] Ms. Lewis bought the parcel of land from Lorna John at a price of \$70,000.00. It comprised 1 acre, 2 rods and 4 poles of land. Her title is evidenced by Deed of Conveyance Number 1493 of 2004. She produced a copy of the deed. She testified that when she purchased the land she noticed a chattel house on it but was not aware that someone was living there.

[8] She and Mrs. Quammie-Hannaway were the only witnesses at the trial. Mrs. Quammie-Hannaway's uncontroverted testimony is that she was living in a chattel house on the land in 1999. It is common ground between the parties that the chattel house was converted into a concrete residence to which substantial improvements were made between 2003 and 2010. It now consists of a concrete 2 storey 5 bedroom house. It has also been enclosed by a galvanize fence.

[9] Although Ms. Lewis denied knowledge that Mrs. Quammie-Hannaway was living there in 2003, she had constructive notice of this fact. I accept that Mrs. Quammie-Hannaway has lived on the disputed land since 1999.

[10] Most of the surrounding factual background is not contested. Mr. Alvin 'Cutter' John and his wife Mrs. Amelia John had owned the property as joint tenants. It appears that Mr. John's marriage broke down because at some point in the late 1970's he entered into a common law relationship with Lynette Quammie's mother, Estelle Quammie.

[11] Mrs. Quammie-Hannaway testified that Mr. John gave the disputed land to her mother. She alleged that in or about the late 1980's or early 1990's, Mr. John marked out a piece of land at the edge of the land which he verbally gifted to her mother but never executed a deed to effect the transfer.

2 By Deed of Conveyance Number 184 of 1976.

She said that he told her (Lynette Quammie-Hannaway) subsequently that she could build her house on the land and showed her where to build, which she did.

[12] In answer to a question from learned counsel Mr. Sergeant, she said that she would not have gone to build on the land if he had not told her to do so. She explained that she constructed the chattel house at Mr. Alvin John's insistence and with his permission. She claimed that since then, she and her family have lived on the disputed land continuously and without interruption from anyone.

[13] Mr. John died on the 6th March, 1998. The surviving joint tenant, Mrs. Amelia John became the sole owner of the subject lands by operation of law. She gave the property to her daughter Lorna John³ who sold it to Stephanie Lewis in 2003. Ms. Lewis caused her lawyer to write to Mrs. Quammie Hannaway several times⁴ demanding that she leave the property, but to no avail. Ms. Lewis produced copies of the letters which passed between her lawyer and Mrs. Quammie-Hadaway and her lawyer. Through letters from her lawyer⁵ Mrs. Quammie-Hannaway resolutely refused to move. At first, she appealed to Ms. Lewis' compassion and in 2015, about six months before Ms. Lewis' claim was filed she hinted that she considered the land to be hers.

[14] Mrs. Quammie-Hannaway submitted that Ms. Lewis' claim is statute-barred by virtue of the provisions of sections 17 and 19 and paragraph 8 (1) of Part 1 of the Schedule to the Act. She argued that she has exercised a sufficient degree of custody and control over the disputed land, has dealt with it as owner and acquired adverse possession to it. She submitted further that Ms. Lewis' claim accrued in 1999 (through her predecessors in title) and she has made her claim more than 12 years after that date and consequently it is statute barred and has been extinguished by her adverse possession.

[15] Mrs. Quammie-Hannaway contended that under the Act, time begins to run only when there is adverse possession. She added that sections 17 and 19 and paragraph 1 of Part 1 of the

³ By Deed of Gift 3429 of 1999.

⁴ By letters dated 1st September, 2003; 30th September, 2003; 10th March 2011; 13th February 2013 and 25th June, 2015.

⁵ Dated 24th September 2003 and 14th August 2015.

Schedule to the Act must be read in conjunction with paragraph 8 (1) of Part 1 of the Schedule of the Act which states:

'8 (1). No right of action to recover land shall be treated as accruing unless the land is in possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as adverse possession); and where the preceding provisions of this schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.'

[16] Citing the decisions in **JA Pye (Oxford) Ltd and Another v Graham and Another**¹ and **Powell v McFarlane**², Mrs. Quammie-Hadaway argued that the court in those cases outlined the guiding principles underpinning a finding of adverse possession. She submitted that two elements are necessary for legal possession, namely a sufficient degree of physical custody and control ('factual possession'); and an intention to exercise such custody and control on one's own behalf and for one's own benefit ('intention to possess').

[17] Mrs. Quammie-Hadaway argued that factual possession was defined and described in **Powell v McFarlane** as signifying:

'...an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly.'B

[18] She submitted that the learning from that case demonstrates that:

'The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed..... Everything must depend on

6 [2002] UKHL 30.

7 (1977) 38 P & CR 452.

s Powell v. Mc Farlane at page 471.

the particular circumstances, but broadly, 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.'B

[19] Mrs. Quammie-Hadaway contended that she has exercised a sufficient degree of custody and control over the disputed land as an owner by:

1. constructing a chattel house and fencing the surrounding land with galvanize;
2. refusing to acknowledge Ms. Lewis' legal title by ignoring the notices to quit as well as the her entreaties to settle the matter;
3. constructing a 5 bedroom concrete dwelling house despite Ms. Lewis' notices; and
4. having her lawyer write to Ms. Lewis by letter dated the 14th August, 2015, asking her to stop harassing her.

[20] She argued further that she had the necessary intention to own the disputed land as owner. In this regard, she claimed that initially she entered into possession in 1999 believing that the land had been promised to her mother. She contended that her intention at that point in time was to possess the land on her mother's behalf. However, she submitted that after her mother's death in 2002 the way she dealt with the land shows an intention to possess the land on her own behalf.

[21] She argued that her act of constructing a five bedroom house, is *prima facie* evidence that she ad the relevant intention to possess the land on her own behalf. Howeve,r she did not express such an intention in her testimony but merely implied that its existence. She argued further that Ms. Lewis has not produced any evidence to establish that there was a contrary intention.

[22] Ms. Lewis countered that, by admitting that she occupied the disputed land 'through the gift to her mother' and would not have done so if Mr. John had not given her permission, Mrs.

Quammie Hannaway acknowledged that she did not have the requisite intention to own the land as owner. Ms. Lewis contended further that one 'cannot give land by word of mouth.'

[23] Mrs. Quammie-Hannaway submitted that the court in **Powell v Mc Farlane** explained the concept of the intention to own land for the purpose of adverse possession as follows:

'... the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.'

[24] She did not expressly testify that this was her intention. Her exact words regarding the basis for her occupation of the disputed land were set out in her witness statement. She said:

'Mr. John told me that instead of having to travel every day I could build on the land that he gave to my mother. ... Mr. John had given my mother this land and I had been living on it since 1999 without anybody telling me to move. ... I have always acknowledged the lands as belonging to my mother and which she left to me before she died.'

[25] When asked how her mother left her the land she said that Mr. John told her that she could have the land when her mother passed on. Her evidence is that her mother died in 2002. On one possible interpretation of her testimony, it is possible to infer that she formed the intention to own the land from 2002 when her mother died. Such an inference would necessarily import an acceptance of her testimony that Mr. John gave her mother the land and subsequently acted as her mother's agent to communicate her mother's intention for her to succeed her mother as owner. This all pre-supposes that the verbal gift of the land to her mother was effective.

[26] An alternative interpretation and finding is that Mrs. Quammie-Hannaway occupied the property as her mother's agent and with permission from Mr. John. her mother's agent, assuming that the gift to her was legally effected. The third possibility is a finding of adverse possession in her favour.

[27] Mrs. Quammie-Hannaway submitted that while it might be argued that there was no adverse possession because she entered the land and put down the frame for the board house with Mr. John's permission, this argument would fail because such permission would have expired when Mr. John died in 1998. She contended that the combined effect of Section 17 and 19 of and paragraphs 1 and 8 (1) of Part 1 of the Schedule to the Act, is that the right of action to recover possession of land is barred when 12 years have elapsed from the time when the right accrued. She added that it does not matter that the legal title was transferred to Ms. Lewis only in 2004.

[28] She contended that the right accrues from the time the land is in adverse possession by someone other than the owner with the legal title. She cited the case of **Winston Molyneux v Hugh Smith**⁹ in support. It was decided by the court in the Virgin Islands. In that case, Molyneux cohabited with his wife on Smith's land. The wife died on 16th August 1992. Molyneux continued in exclusive occupation of the disputed land without permission until Smith filed a Claim on the 5th April, 2007. The court held that while Smith had a right of action against Molyneux as a trespasser, that right existed from the date of his wife's death and became statute

barred at the end of 12 years (i.e. in 2004). Smith's claim was therefore out of time since he brought it more than 12 years after Mrs. Molyneux died. It was defeated by application of the provisions of the Limitation Act.

[29] Mrs. Quammie-Hannaway argued that the provisions of the Limitation Act considered in the **Molyneux case** are identical to the provisions of the Limitation Act of St Vincent. She submitted that the reasoning in that case can therefore be extrapolated and applied to the case at bar. She reasoned that she was a trespasser when the legal title passed to Mr. John's wife because she was in possession without Mrs. John's permission. She argued that time would have begun to run from that point.

[30] She contended that similarly, she would have been in occupation as a trespasser when the land was conveyed to Lorna John who would have been entitled to but did not exercise her right to recover possession at that stage. She concluded that Ms. Lewis' claim is therefore statute barred by virtue of the intervening period since she commenced adverse possession more than 12 years before the filing date of the instant claim.

[31] Mrs. Quammie-Hannaway submitted that she has supplied sufficient evidence to establish adverse possession by way of her assertions of factual possession and the intention to possess the disputed land. She argued that if her account of the date of dispossession is accepted, she would have been

9 BVIHCVAP2009/002. 2

in possession adverse to the paper title owner at the very latest by 1999 when the legal title was transferred to Lorna John.

[32] She argued that she had by then already constructed her chattel house and fenced the land with galvanize. She submitted that since she received no permission from Lorna John to do so in 1999, time would have begun to run at that point. She submitted further that in the absence of an action to recover possession by Ms. Lewis or her predecessors in title prior to 8th of February 2016 when the present action was filed, it is out of time and should be dismissed.

[33] Mrs. Quammie-Hannaway contended that even if the claim is taken at its highest, she would have been in possession of the land by September, 2003 and the right to recover possession would have accrued at the very latest by then. She contended that she would have been a person in whose favour the period of limitation could run since she was on the land without Ms. Lewis' permission. She observed that Ms. Lewis' lawyer had written her at that time demanding vacant possession of the land. She contended that notwithstanding, the claim was approximately thirteen (13) years and five (5) months after the right accrued. She submitted that this was too late, Ms. Lewis' claim had been extinguished and she therefore has no right to the reliefs she claimed.

[34] She submitted that even if Ms. Lewis is able to surpass the limitation hurdle, she would be unjustly enriched by receiving a property of substantial value because she (Mrs. Quammie-Hannaway) has constructed a 5 bedroom concrete structure on the land which has significantly increased the value of the land. She argued that if Ms. Lewis is allowed to recover possession of the land she would receive a windfall that would be inequitable and unjust.

[35] Ms. Lewis argued that Mrs. Quammie-Hannaway has not specifically pleaded a particular provision of the Act but appears to rely on section 17 (1). She submitted that this is an attempt by Mrs. Quammie-Hannaway to defile the equitable principle that 'equity will not permit a statute to be used as an instrument of fraud'. She submitted further that this rule was illustrated in the case of **Bannister v. Bannister**¹⁰. In that case, Ms. Bannister inherited two cottages (including the one in which she lived) when her husband died. She transferred them to her brother-in-law for below

¹⁰ [1948]2 All ER 133.

market value consideration. They orally agreed that she would live in the cottage rent free for life. However, he later tried to evict her.

[36] Ms. Lewis submitted that Lord Justice Scott's judgment is instructive as he explained that Ms. Bannister's brother-in-law was not entitled to do so because he was seeking to deny Mrs. Bannister her beneficial interest in the property by his insistence on seeking to give effect to the strict language or character of the conveyance. Scott L. J. held that this could not be entertained by law.

[37] Ms. Lewis quoted an extract from the judgment where he said:

'It is, we think, clearly a mistake to suppose that the equitable principle on which a constructive trust is raised against a person who insists on the absolute character of a conveyance to himself for the purpose of defeating a beneficial interest, which, according to the true bargain, was belonging to another, is confined to cases in which the conveyance itself was fraudulently obtained. The fraud which brings the principle into play arises as soon as the absolute character of the conveyance is set up for the purposes of defeating the beneficial interest, and that is fraud to cover which the Statute of Frauds or the corresponding provisions of the Law of Property Act 1925, cannot be called in aid in cases where no written evidence of the real bargain is available.'

[38] Ms. Lewis contended that Mrs. Quammie-Hannaway's insistence that she acquired an interest in the property by adverse possession is similar, since she is inviting the Court to use the Act to extinguish Ms. Lewis' title. She reasoned that if Mrs. Quammie-Hannaway is successful, she would be entitled only to a declaratory relief in equity and that quite possibly she may use another statute¹², to create legal title and completely deprive her of the monetary value to her land. She submitted that this cannot be allowed to happen.

[39] Mrs. Quammie-Hannaway has given different accounts regarding how she came to build her house on the disputed land and by which she claimed to have acquired an interest in it. · She pleaded and

¹¹ Bannister v. Bannister at p. 136 C- D.

¹² The Possessory Titles Act Cap. 328.

testified that Mr. John gave her mother the land and subsequently gave her permission to build on it. She gave evidence that she has always, acknowledged the lands to belong to her mother

'which she left to her before she died'. She also claimed to have acquired an interest in it by adverse possession by virtue of having been in possession continuously in excess of 12 years without interruption by the owner.

[40] Her pleadings included no mention of conveyance from her mother to her, whether directly or through Mr. John. These assertions differ from her pleaded case, were not expressed in the alternative and introduce inconsistencies which are not reconcilable with her pleadings or her claim to adverse possession. They also undermine her credibility. A litigant is prohibited from relying on assertions which are not pleaded unless the court gives leave¹³ Mrs. Quammie-Hannaway's belated assertions fall into this category. They are therefore disregarded as a part of her claim, but were considered in assessing her credibility.

[41] In her defence she pleaded:

'Furthermore, the Defendant asserts that if the Claimant had at any time any cause of action against the Defendant in respect of matters pleaded in the Statement of Claim, such cause of action would have been extinguished by the Limitations of Actions Act, Chapter 129 of the Revised Laws of Saint Vincent and the Grenadines, 2009. Consequently, the Claimant's Claim is now statute-barred and cannot now be entertained by the court.'

[42] A party who wishes to rely on the Act as a bar to a claim, must expressly plead the statute by distinctly raising the particular statutory provision relied on¹⁴. Mrs. Quammie-Hannaway did not specifically refer in her defence to the relevant section of the Act on which she relied to defeat Ms. Lewis' claim. This was irregular. However, Ms. Lewis in her reply rebutted that assertion and claimed that section 17 of the Act is not applicable.

13 CPR 8.7A and 10.7 and East Caribbean Flour Mills Ltd. v Ormiston Boyea SVGHC VAP2006/0012.

[43] By doing so, she signified an acknowledgement that Mrs. Quammie-Hannaway had invoked section 17 of the Act. This issue between the parties was therefore joined on that basis. It is therefore accepted that section 17 was one basis of this aspect of Mrs. Quammie-Hannaway's defence.

[44] In **Buckinghamshire County v Moran** ¹⁵ Nourse L. J. described the effect of a limitation defence. He said:

'Limitation ... extinguishes the right of the true owner to recover the land, so that squatter's possession becomes impregnable, giving him a title superior to all others.'

[45] Sections 17 and 19 of the Act provide a statutory limitation period in respect of claims for recovery of possession of land. They:

(1) prohibit a party from bringing an action to recover land more than 12 years after the cause of action accrued; and

(2) provide that the previous owner's title is extinguished after that time, if during the intervening period the property was occupied continuously and exclusively by the defendant, with the intention to own it, where his occupation was without interference by the paper title owner.

Mrs. Quammie-Hannaway accurately elucidated the leading authorities on this issue.

[46] Ms. Lewis claimed damages for trespass. Her claim is partly founded in trespass. She pleaded and testified that Mrs. Quammie-Hannaway has carried out unlawful acts on her property as a consequence of which she gave her notice to quit. In her letter of 10th March 2011 she complained about Mrs. Quammie-Hannaway's acts of trespass.

[47] It is trite law that continuous trespass creates a fresh cause of action each day that it continues. Continuing trespass exists when a trespasser remains on land as a trespasser thereby committing a fresh trespass everyday as in the instant case. In such circumstances, a new cause of action arises each day, (i.e. time begins to run again) and successive actions may be brought in respect of each act of trespass¹⁶.

[48] The limitation period is fixed at 6 years¹⁷. Although Mrs. Quammie-Hannaway did not invoke this legislative defence, it is addressed for completeness. The six year anniversary of Mrs. Quammie Hannaway's initial occupation of the disputed land was 2005. On that anniversary, the limitation clock was reset The cause of action which accrued on that date expired in 2011. Ms. Lewis' claim was brought after that period. Accordingly, the limitation defence if raised would have provided a defence to Mrs. Quammie-Hannaway against the trespass aspect of the claim. However, Mrs. Quammie-Hannaway did not rely on it. Ms. Lewis' claim in trespass is undefended and has been made out against Mrs. Quammie-Hannaway.

[49] Moreover, by her own admission, albeit in her submissions, Mrs. Quammie-Hannaway acknowledged that she was a trespasser when Ms. Lewis bought the land in 2003. By that time, Mr. John had been dead 4 years. She had lived on the land as a trespasser for that period. By her September 17th 2003 letter Ms. Lewis put her on notice that she wanted her to leave the property and that she did not have her permission to stay there.

[50] Mrs. Quammie-Hannaway defied the reasonable request of the owner and proceeded to cement her self-confessed unlawful claim to the land, by constructing a concrete house. This did not annul her status as a trespasser. Neither did her failure to acknowledge Ms. Lewis' title as owner.

[51] Furthermore, through the ensuing years, Ms. Lewis maintained her entreaties to Mrs. Quammie- Hannaway to leave. She thereby demonstrating that she had not abando"ned her claim to the land. It provided notice to Mrs. Quammie-Hannaway that M_s. Lewis regarded her as a trespasser and wanted her to vacate the property. This is clear evidence that she was pursuing her legitimate interests albeit in a rather passive manner.

¹⁶ Halsbury's laws of England VOLUME 97 (2015), para. 569.

[52] Trespass to land is characterized as an unlawful interference with the owner's enjoyment of the property. It occurs where a person performs a physical act on land without the owner's

consent, thereby interfering with the latter's possession¹⁸ An entry on land which was originally lawful, becomes a trespass when the owner's permission is withdrawn. Mrs. Quammie-Hannaway never had Ms. Lewis' permission to be on the disputed land. While she might have initially occupied the land with the then owner's consent, she became an unwelcome intruder from September 2003 when she received the letter from Ms. Lewis' lawyer.

[53] I am satisfied that Ms. Lewis has proved that Mrs. Quammie-Hannaway trespassed on her property and did so intentionally and unrepentantly from the date she purchased of the subject property. Ms. Lewis' claim in trespass although made thirteen years after she bought the land and outside the 6 year limitation period for claims in trespass, was not contested by Mrs. Quammie-Hannaway on the ground that it is statute-barred. Ms. Lewis has made out her claim in trespass.

[54] Mrs. Quammie-Hannaway claims the disputed land by virtue of:

1. inheritance from her mother; and
2. adverse possession.

It must be noted that adverse possession does not create a cause of action, but is rather a shield to a claim by a paper title owner of land.

[55] Mrs. Quammie-Hannaway relied on adverse possession against Ms. Lewis' claim for recovery. She pleaded:

'... that she is the owner of the disputed land, having been in possession of that portion of land since 1999. ... that her actions are lawful, having been in exclusive occupation and control of the disputed land since 1999.'

[56] It is clear to me that the circumstances taken as a whole point to Mrs. Quammie-Hannaway forming an intention at some point, to claim the land by adverse possession. The problem is deciding when this happened. Her testimony is riddled with conflicting statements on this issue. If reliance is placed on the letters exhibited by Ms. Lewis, it appears that Mrs. Quammie-Hannaway first formed that intention around 2015. She communicated as much in her defence referenced immediately above and hinted this to Ms. Lewis in a letter from her lawyer dated 14th August 2015 which stated in part:

'Our client has never been the tenant of your client. In fact she does not know your client Stephanie Lewis. Our client built and lives in a wall house which she erected over fifteen (15) years ago on the said land.

The allegations in your letter are totally false and have no bearing and relevance whatsoever to our client who is a hardworking and honest young lady with profound respect for the proprietary rights of others.'

[57] Prior to that, her lawyer wrote¹⁹ on her behalf that the land was given to her mother who had enjoyed exclusive possession over it in excess of 15 years. He appealed to Ms. Lewis' lawyer

for compassion and urged that Cutter John's beneficiaries should execute a deed for the homeless and landless children of the deceased (Estelle Quammie).

[58] I am led to the irresistible conclusion that Mrs. Quammie-Hannaway did form the intention to own the land but not much before 2015. Based on her testimony, her earlier acts of constructing a wall house were all predicated on her belief that the land was given to her mother by Mr. John and that it belonged to her mother. Accordingly, although she enjoyed factual possession of the disputed: land from 1999, it was not around 2015 that her intention to own it coincided with her acts of possession. I therefore find that her adverse possession defence is predicated on shaky ground.

[59] Likewise, her recent assertion of inheritance from her mother was not pleaded. Ms. Lewis submitted that Mrs. Quammie-Hannaway is seeking a declaration of title. She is not entitled to raise it without the court's leave. Such leave has not been obtained. Those allegations provided no basis for her to ground her claim to the land by adverse possession.

[60] Ms. Lewis submitted that in order to make an *inter vivos* disposition of the land, Mr. John needed to either sever the joint tenancy between Amelia John and him to create a tenancy in common and thereafter effect the transfer by deed or bequeath it by Will. She argued that it is trite law that anything less would run afoul of the Statute of Frauds Act 1677 which has been imported into the law of St. Vincent and the Grenadines by the Application of English Law Act.²⁰

[61] Ms. Lewis' has articulated aspects of the applicable law on the legal capacity of a joint tenant to dispose of land during the currency of the joint tenancy. This may be achieved on execution of the transfer or a memorandum in writing by all the joint tenants failing which the joint tenancy must be severed first. On severance of the joint tenancy, the former joint tenant may dispose of his severed parcel of land by deed or wm.²¹

[62] It would have been necessary for Mr. and Mrs. John to jointly execute a transfer to Ms. Quammie to complete Mr. John's alleged 'gift' to her. Mr. John did neither. Accordingly, his purported gift was irregular and null and void in the absence of such execution or conclusion of the *inter vivos* gift. Ms. Quammie and her daughter had at best only a licence to occupy the disputed land. Mrs. Quammie Hannaway became a trespasser after Mr. John's death. She continued in occupation on the false notion that the gift was perfected, that she was living on her mother's land with consent through her deceased agent Cutter John. Her intention up until around 2015 was to remain there pursuant to that permission.

[63] It is worth noting that even if the gift to Estelle Quammie was perfected Mrs. Quammie-Hannaway would not automatically succeed her on her death. Certain administrative and legal processes had to be completed such as extraction of probate. Mrs. Quammie-Hannaway's defence of adverse possession fails for those reasons. Her reliance on the referenced provisions of the Act does not assist her. I find therefore that Ms. Lewis' claim is not statute-barred.

Issue 2 - Who owns the disputed land?

[64] For the reasons outlined, Mr. John's purported gift of the disputed land to Estelle Quammie was ineffective. The disputed land remained vested in Amelia John and him until his death when it reverted to Mrs. John absolutely. In the circumstances, the sale from Lorna John to Stephanie

20 Part 1 of the Schedule to section 5 Cap. 12 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

21 Statute of Frauds 1677 and *Burgess v. Rawnsley* [1975] 3 All E. R. 155.

Lewis resulted in Ms. Lewis being the new owner. Ms. Lewis' title has not been extinguished by adverse possession. She remains and is the legal owner of the disputed land with absolute entitlement to the beneficial interests, rights and title to it including the fixtures attached to it. Adverse does not create a cause of action. For this and the other reasons outline before, Mrs. Quammie-Hannaway's claim fails and is accordingly dismissed.

Issue 3- To what remedies is Ms. Lewis or Mrs. Quammie-Hannaway entitled?

[65] Proof of trespass gives rise to a continuing action for damages for as long as the trespass persists. A successful claimant is entitled to recover possession of his property and damages from the trespasser. If she establishes that there is a strong likelihood that she will suffer grave damage in the future for which an award of damages will be an inadequate remedy, she may be granted a permanent injunction restraining further trespass.

[66] Ms. Lewis has established that Mrs. Quammie-Hannaway is a trespasser. She is therefore entitled to receive damages from Mrs. Quammie-Hannaway for the continued trespass from the date of her purchase of the land until the date the trespass ends. She is required to file and serve on or before 23rd September, 2017, an application for assessment of damages for trespass.

[67] Ms. Lewis has abandoned her claim for vacant possession of the subject property. She has submitted instead that an order should be made requiring Mrs. Quammie-Hannaway to pay her for the value of the disputed land at current market value. In this regard, she submitted that Mrs. Quammie-Hannaway should be required to meet the expenses associated with surveying the disputed property. I am of the considered opinion that this would meet the justice of the case.

[68] Having regard to Mrs. Quammie-Hannaway's recalcitrance over the years, it is prudent to incorporate specific timelines in the order to incentivize her to comply. Accordingly, Mrs. Quammie Hannaway shall arrange for a licensed land surveyor to survey the area of land on which her house stands, the boundaries to be agreed in advance with Stephanie Lewis, or her duly authorized servant or agent. The survey is to be conducted in Stephanie Lewis' or her servant's or agent's presence.

[69] Lynette Quammie-Hannaway shall on or before the 31st day of August, 2017, pay the expenses associated with obtaining and registering the resultant survey plan; arrange for a licensed valuator agreed by the parties to prepare a valuation of the portion of the disputed property demarcated by the survey plan and pay the expenses associated with preparation of the valuation. Lynette Quammie-Hannaway shall pay to Stephanie Lewis on or before 29th December 2017, the value of the disputed land ascribed in the valuation report prepared by the agreed valuator.

[70] Lynette Quammie-Hannaway shall on or before the 29th September, 2017 submit the approved survey plan to the Registrar of Deeds. Stephanie Lewis shall on or before 29th September, 2017 submit the original Deed of Conveyance No. 1493 of 2004 to the Registrar of Deeds for correction.

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

- (a) adjust the schedule in Deed of Conveyance No. 1493 of 2004 to correctly reflect the
 - (i) reduced area; and
 - (ii) new boundaries of the subject parcel; and
- (b) issue a new deed to Stephanie Lewis reflecting those adjustments; and
- (c) on payment of the applicable fees, taxes and charges, execute and issue a Deed to Lynette Quammie-Hannaway as owner of the disputed land based on the demarcation depicted on the referenced survey plan.

[72] Stephanie Lewis is entitled to recover her costs. Lynette Quammie-Hannaway shall pay to Stephanie Lewis prescribed costs pursuant to CPR 65.5 (2) (b).

ORDER

[73] It is declared and ordered:

1. Lynette Quammie-Hannaway's counterclaim is dismissed.
2. Judgment is entered for Stephanie Lewis.
3. Stephanie Lewis is the legal owner of the disputed land and entitled to the beneficial interests in the land registered by Deed of Conveyance No. 1493 of 2004.
4. Lynette Quammie-Hannaway shall pay damages for trespass, to Ms. Lewis to be assessed on application to be filed and served on or before 23rd September, 2017.
5. Lynette Quammie-Hannaway and Stephanie Lewis shall on or before the 11th day of August, 2017 agree the boundaries of the disputed land and agree the name of a qualified valuator of land.
6. Lynette Quammie-Hannaway shall on or before the 31st day of August, 2017:
 - (a) arrange for a licensed land surveyor to survey the disputed land based on the agreed boundaries; such survey to be conducted in Stephanie Lewis' or her servant's or agent's presence;

(b) pay the expenses associated with obtaining and registering the resultant survey plan;

(c) arrange for the agreed valuator to prepare a valuation report of the disputed property demarcated by the approved survey plan, referred to in sub-paragraph (a); and

(d) pay the expenses associated with preparation of the valuation.

7. Lynette Quammie-Hannaway shall pay to Stephanie Lewis on or before 29th December 2017, the value of the disputed land, ascribed in the valuation report prepared under paragraph 6 (c).

8. Lynette Quammie-Hannaway shall submit the approved survey plan to the Registrar of Deeds on

or before the 29th September, 2017.

9. Stephanie Lewis shall submit the original Deed of Conveyance No. 1 93 of 2004 to the Registrar of Deeds on or before 29th September, 2017.

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

(a) adjust the schedule in Deed of Conveyance No. 1493 of 2004 to correctly reflect the

(i) reduced area; and

(ii) new boundaries of the subject parcel; and

(b) issue a new Deed to Stephanie Lewis as owner of the reduced portion of land based on the demarcation on the referenced survey plan; and

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

11. Lynette Quammie-Hannaway shall pay to Stephanie Lewis prescribed costs pursuant. to CPR 65.5 (2) (b).

[74] I wish to thank counsel for their written submissions.

Esco L. Henry

HIGH COURT JUDGE

By the Court

Registrar