

**EASTERN CARIBBEAN SUPREME COURT
ST VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2015/0024

**IN THE MATTER OF THE POSSESSORY TITLES ACT CAP 328 OF THE REVISED
LAWS OF SAINT VINCENT AND THE GRENADINES 2009**

AND

**IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF POSSESSORY
TITLE BY MARCELLE WILSON**

BETWEEN:

MARCELLE WILSON

APPLICANT/CLAIMANT

AND

JANET MILLINGTON

IRVIN MILLINGTON

BANCROFT MILLINGTON

EVERTON MILLINGTON

KENWYN MILLINGTON

SYLMA MILLINGTON

ELLIOT MILLINGTON

OSBORNE MILLINGTON

CARLOS MILLINGTON

MARVA MILLINGTON

GARFIELD MILLINGTON

RESPONDENTS/DEFENDANTS

Appearances:

Mr. Sylvester Raymond-Cadette of counsel for the Applicant

Mr. Andreas Coombs of counsel for the Respondents

2017: January 26th,
February 1st, 9

JUDGMENT

- [1] **ROBERTS, J. [Ag.]:** On the 1st June 2015 the Applicant filed an application for a declaration of possessory title to a parcel of land at Sion Hill in Saint Vincent and the Grenadines. The application was made pursuant to the Possessory Title Act, Cap 328 of the Laws of St Vincent and the Grenadines 2009. The land was described as being bounded -

"North by lands on Plan G30/122 South by lands of Rupert Cupid East by lands of the heirs of Irvin Millington and a Right of Way and East by lands of Plan G19/61 as is shown on Plan G58/66 drawn by Corliss Murray Licensed Surveyor and filed with this application. This parcel is in the extent of Two thousand four hundred and six (2,406) square feet and with appurtenances in so far as the applicant can estimate, is of the value of Twenty Thousand (20,000) dollars".

- [2] In her application she stated that there were no other claims affecting the land and that there were no other persons claiming to be owner of this parcel. The application for possessory title was accompanied by supporting affidavits by the applicant, her daughter and her father. The application was also accompanied by a plan of the parcel of land duly authenticated by the signature of the Chief Surveyor. The applicant furnished documentary evidence that the application was published in two issues of "The Vincentian" on 27th May 2016 and 8th July 2016 and in "The Searchlight" on 6th May 2016 and 8th July 2016.

- [3] On 21st October 2016 the respondents opposed the application by filing entry of appearance and a Written Claim and Statements of Facts pursuant to sections 7 and 9 of the Possessory Title Act. The respondents claimed that since 4th June 2004, they were the fee simple owners of the land by virtue of Deed of Assent No 2109 of 2004. They stated that the parcel of land was first owned by Sydney Millington who 'in the 1950's' gave his sister Agatha Millington permission to live on the land. Agatha Millington subsequently constructed a chattel house on the

parcel of land and her son Sydney Herbert later moved in to live with her in the chattel house.

- [4] The respondents stated that Agatha Millington later passed away and Sydney Herbert who was the claimant's father "was allowed to continue living on the said parcel of land". Sydney Millington died in 1977 and left the parcel of land to his wife, Janet Millington, and his children who all constituted the respondents in this matter. Janet Millington applied for and obtained a grant of letters of administration in the estate of Sydney Millington and the parcel of land was transferred to the respondents by Deed of Assent no 2109 of 2004.
- [5] The respondents asserted that the claimant had not been in possession of the land for twelve years to ground her application for a possessory title to it. The respondent's case is that at no point did the claimant exercise the requisite possession for the requisite period to ground her application before the court. The only person who possessed the parcel of land was the applicant's father, and as he was occupying with permission.

THE HEARING

- [6] At the hearing of the application the applicant, her father and daughter were cross examined on their affidavits. I found them to be witnesses of truth. Of the respondents Janet Millington and her son Irvin Millicent had their witness statements admitted in evidence and were cross examined. I also formed a favourable impression of respondents' witnesses.

THE LAW

- [7] The Possessory Title Act provides the following definition of "adverse possession"

"factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Saint Vincent and Grenadines for a continuous period of twelve years or more accompanied by the requisite intention to possess the said land as owner thereof."

- [8] Counsel for the respondents drew the court's attention to the case of **Powell v McFarlane**¹ where Slade J pronounced -

"Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land cannot both be in possession of the land at the same time. 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 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 no one else has done so."

- [9] On the question of "the requisite intention to possess the said land as owner thereof", the *animus possidendi*, Slade, J, had this to say -

"The animus possidendi, which is also necessary to constitute possession ... what is really meant in my judgment is that the animus possidendi involves 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 law will allow."

EVIDENCE AND ANALYSIS

- (10) The applicant and her father, in giving oral evidence, made it clear that the applicant was not in exclusive possession of the land. Whereas in her affidavit the applicant asserted that "about twenty years ago, I occupied a parcel of land ...I exercised possession twenty years ago when my father Sydney Millington with whom I was living since the age of 13 years offered me the right to this parcel." Her father built a house on the land "and gave me the house with the land. She indicated that her father "now lives with me on the said parcel own which I intend to make further improvement to the **family home** (my emphasis.) There was no evidence however relating to the conveyance of the land from father to daughter. We have only the bald assertion that "My father gave the land to me".

¹ (1977] 38 P & CR452]. [1977, LS Gaz R 417

- [11] In cross examination, the applicant stated that her grandmother and father "allowed me to live there with them. I was taking care of my father." The applicant stated in no uncertain terms that the application was made not in her own right but on behalf of her father. "I am the beneficiary of my father - to get the land for my father so he can have some where." At the end of his examination in chief the applicant's father, Sydney Millington, declared, "I did not give land to anybody". In cross examination Mr. Millington reinforced this testimony. He said that his daughter was his caretaker and that it "was not really so that I gave her the land", on being shown paragraph 3 of his affidavit which stated, "I gave my daughter this parcel of land over twenty years ago..." The witness also commented, "word of mouth does not pass land". He ended his cross examination by saying, "I gave permission for my daughter to live with me".
- [12] The applicant tendered tax receipts as part of her proof that she was in possession of the land. However, she gave evidence that the taxes were paid by her in her grandmother's name and that before that her father paid the taxes. In cross examination she admitted, "my father paid the taxes for the land". Her father was in no doubt about the payment of taxes for the land. He said in examination in chief, "I paid the taxes in my mother's name, Agatha Millington - from the '60's I paid the taxes. My daughter pays it for me as I cannot move about".
- [13] It is easy then for the court to find that Sydney Millington did not give his interest in the land to his daughter, the applicant. This finding is supported by the oral evidence of both the applicant and her father.
- [14] The applicant, in my view, failed to prove that she had the appropriate physical control of the land to constitute adverse possession. From the evidence produced I find that the applicant has not been "dealing with the land in question as an occupying owner might have been expected to deal with it and no one else has done so". The evidence being that she was on the land to take care of her father and she stated that she intended to fix her father's house. It is noticeable that her father did not

support this claim.

- [15] The applicant has also failed to satisfy the other limb of the law for the grant of a declaration for possessory title, that of *animus possidendi*. Here again the applicant by her own testimony did not have the intention in her own name and on her own behalf, "to exclude the world at large". In her own oral testimony, her intention was to apply for the land for her father "so that he could have some where". It would appear that the wrong applicant was before the court.

FINDINGS OF FACT

- [16] To sum up my findings of fact

- (1) The applicant lived with her father, Sydney Millington, and grandmother, Agatha Millington, and had been living there up to the trial of this matter except for the periods when she lived at Layou in 1983 for 6 months and Belle air in 1985 for one year.
- (2) There is not sufficient evidence that the applicant was in exclusive possession of the disputed land. I find that that the applicant did not have exclusive physical control of the land she was claiming.
- (3) The applicant's grandmother and later her father may have had exclusive possession of the land but it is hard to see how the evidence of being the caretaker of her father could be construed as exclusive possession by the applicant.
- (4) I find that the father Sydney Millington, who is still alive, did not pass whatever interest he may have had in the land to his daughter the applicant, Marcelle Wilson.
- (5) On the question of the tax receipts which were tendered by the applicant to ground her application, I find that property tax was paid on behalf of the applicant's grandmother and later her father but never for her.

CONCLUSION

[17] The applicant has failed to fulfill the requirements of the Possessory Title Act namely necessary factual possession and the required *animus possidendi*. Therefore, the application of the applicant for a declaration of possessory title to the land described in her application fails.

ORDER

[18] I therefore order as follows -

1. The application for possessory title is denied.
2. Costs in the sum of \$1,500.00 to be paid by the applicant to the respondents.

Sir Clare K. Roberts, QC
High Court Judge (Ag)