

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2006/0237

BETWEEN

EILEEN SNAGG

of Canouan

(Acting by her lawful attorney on record **Olivia Gibbs**)

CLAIMANT

and

URCELLA KING

of Villa Fountain Road

DEFENDANT

Appearances:

Ms. Moureeze Franklyn for the claimant.

Ms. Samantha Robertson for the defendant.

2016: Oct. 4
Oct. 31

JUDGMENT

BACKGROUND

[1] **Henry, J.:** The claimant Eileen Snagg brought this claim against her niece Urcella King to recover possession of 2 ½ acres of land situated on the island of Canouan, in the State of Saint Vincent and the Grenadines. Ms. Snagg claims that she is the owner of the subject land. She alleged that Ms. King trespassed on it and has continued her acts of trespass despite warnings from her to desist. Ms.

Snagg has sought a declaration that she is the fee simple owner of the property, an injunction to restrain Ms. King from trespassing on it, damages and costs.

- [2] Ms. King has alleged that she and her mother before her, have occupied 5,863 sq. ft of the disputed property for an aggregate period in excess of 40 years, without interruption. She contended that Ms. Snagg has neither occupied nor been in possession of the land. Ms. King claimed title by adverse possession. She submitted that Ms. Snagg's interest in the disputed property has been extinguished. and that the claim should be dismissed. This matter was tried in 2008. In 2010, the trial judge's ruling was overturned by the Court of Appeal and the case was remitted to the high court for re-trial. This court has found that Ms. Snagg's title has not been extinguished by Ms. King's occupation of the subject property.

ISSUES

- [3] The issues are:

1. Whether Eileen Snagg's claim is statute-barred?
2. To what remedy is Eileen Snagg or Urcella King entitled?

ANALYSIS

Issue 1 – Is Eileen Snagg's claim statute-barred?

- [4] Eileen Snagg initiated this claim through her lawful attorney and sister Olivia Gibbs. Five witnesses testified at the trial including Eileen Snagg and Urcella King. Ms. Snagg's witnesses were Olivia Gibbs and Cordon Gibbs. Mr. Norman Sargeant was Ms. King's sole witness. Witness statements and summaries were accepted as evidence, along with documentary exhibits. The witnesses were also cross-examined.
- [5] Eileen Snagg, Roy Snagg (deceased) and Olivia Gibbs are siblings and children of Godwin and Annie Snagg. Godwin Snagg (deceased) owned 1 ½ acres of land which is the subject matter of this case. Many years ago, Godwin Snagg gave Roy permission to live on the property, which he did along with his wife Anita and infant daughter Urcella (Urcella King), until his demise in 1947. Ms. King testified that her father received permission from her grandmother Annie Snagg to build a house on

the property. Eileen Snagg, her witnesses and Mr. Sergeant described it as a wattle and daub house while Urcella King referred to it as a 'noggins' house. Ms. King denied that there was ever a wattle and daub house. I accept that it was in fact a wattle and daub house.

- [6] After Roy Snagg's death, Anita Snagg remained in occupation of the house with her daughter. She lived there until 1965 or 1966. Eileen Snagg deposed that Roy Snagg occupied the land with his wife and daughter. Under cross-examination, she described Anita Snagg as Roy's girlfriend who she insisted never lived at the house with Roy. She claimed that Anita would spend time with Roy and then go home. She subsequently admitted that Anita Snagg did live in the house but left sometime before 1966. Olivia Gibbs testified that Roy, his wife Anita and daughter Urcella lived there for a long time. She recalled that Urcella was a small child at the time, having been born in 1946. She was adamant that while Urcella lived there for some time it was not for as long as 40 years.
- [7] Urcella King's testimony for the most part was firm and unhesitating. However, I found her to be evasive in relation to facts in contention. Cordon Gibbs and Norman Sergeant struck the court as witnesses of truth who endeavoured to be frank in their testimony. They testified in a matter-of-fact and forthright manner.
- [8] Eileen Snagg appeared at times to have trouble recollecting details. She struck the court as someone whose memory was defective in some respects. At other times, she was wavering, combative and just not credible. I found it difficult to comprehend why she would refer to her sister-in-law as her brother's girlfriend, particularly in view that she had described her as his wife in her witness statement. Within minutes of saying she was his girlfriend she admitted that they were married. It could not be that she had not forgotten that they were married. She did not impress the court as a witness of truth. Her sister Olivia on the other hand was not only credible, she was forthright, very alert and overall an impressive witness. Her account had the ring of truth and conviction. I prefer her testimony to Eileen Snagg's. The preponderance of the credible evidence is that Roy Snagg and his wife Anita lived on the disputed land until his death in 1947.
- [9] Urcella King testified that after Roy Snagg's death, her grandmother gave her mother permission to stay on the land which she did until 1966, uninterrupted and unmolested by anyone. Her cousin Norman Sergeant testified to like effect. They alleged that Anita Snagg treated the land as her own,

lived there with her children and cultivated peas and corn on it until she relocated. Although he stated in his witness statement that Anita Snagg farmed the land, Mr. Sergeant acknowledged under cross-examination that he never saw her doing so. Ms. King explained that her mother also paid land taxes in respect of the land in an effort to help out her grandmother. Ms. King did not provide any receipts evidencing such payments. She contended that her mother became the sole owner of the land by exercising control in those ways.

- [10] Ms. King attested that after her mother left in 1966, she took over occupation of the land and enjoyed uninterrupted and exclusive possession of it from then. She would have been only 15 or 16 at the time. I do not believe her. She testified that although she was living on the mainland in Saint Vincent when her grandmother died in 1984, she remained in possession of the subject parcel of land. In this regard, she explained that through the family's generosity, the wattle and daub house was occupied by one Niles De Roche at that time. She testified that she subsequently permitted her cousin Lucina Telemaque to live there, and sometime later she gave permission for Flora Durham to stay there until 1989. Ms. King and Mr. Sergeant also claimed that Ms. King gave the government permission to construct a road through the land. They alleged that Eileen Snagg never exercised any acts of possession over the property.
- [11] Eileen Snagg testified that she migrated to England in 1962 and at that time no one was occupying the wattle and daub house. She deposed that she returned home every other year. She indicated that when she returned to Canouan in 1965, she learnt that Anita Snagg had moved to Grand Bay to live. Mrs. Gibbs recalled migrating to the UK in the 1950s and returning to Saint Vincent to live in 1970. She corroborated Ms. Snagg's account that Anita Snagg lived on the subject property for some years after her husband's death, then relocated to Grand Bay around 1965, where she built her home and has lived ever since.
- [12] Ms. Snagg averred that her mother 'Annie Estelle Snagg' gave her the land in 1980. Mrs. Gibbs attested that Ms. Snagg inherited it from her father Godwin Snagg while Mr. Gibbs deposed that she inherited it from her mother. Deed of Gift No. 843 of 1980¹ was produced. It reflects that the subject land was transferred from Annie Estella Snagg to Eileen Snagg in consideration of natural love and

¹ Registered on 20th May, 1980.

affection and the payment of \$25.00. Ms. King did not refute that Ms. Snagg held title to the land by the said deed. She did remark however that she only became aware of this lately. She produced survey plan Gr11/18 which she alleged delineates the portion of land she claimed to have acquired by adverse possession.

[13] The Schedule to the 1980 deed described the land as:

‘ALL THAT piece or parcel of land situate at Canouan in the State of Saint Vincent and the Grenadines being in extent ONE AND A HALF ACRES (1¹/₂ acres) more or less and butted and bounded on one side by Joseph Garraway on a second side by land of Amy Alexander on a third side by land of Clementina Baptiste and on a fourth side by land of Exelley Alexander or howsoever other the same may be butted and bounded known distinguished or described together with all ways waters watercourses rights lights liberties privileges and easements thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto.’

[14] Notwithstanding the divergent accounts provided by Ms. Snagg and her witnesses regarding the manner by which she acquired title, I have no difficulty in finding and I do find that she obtained it by *inter vivos* gift from her mother Annie Estella Snagg as rehearsed in the deed.

[15] Ms. Snagg stated that she did not put anyone in charge of the land when she received it, but at some point she asked her sister to look after it. She could not recall when this was done. Mrs. Gibbs explained that after her return to Saint Vincent and the Grenadines, she usually went to Canouan to look at the land. She could not remember the specifics. Ms. Snagg alleged that she has paid land taxes in respect of the property. She produced a number of receipts for assessment years 1991 – 2007 in proof.

[16] Ms. Snagg testified further that she worked the lands all the days of her life while she is in Saint Vincent. Mrs. Gibbs said that while she, her brothers and sisters had cultivated corn, peas and cotton on the land before Roy started living there, there has been no cultivation on the land after Anita Snagg left. I believe her.

[17] By 1989, Mrs. Gibbs had returned to Saint Vincent to live. She testified that she visited Canouan regularly and never saw anyone living on the subject property. She did not say how often she went to Canouan in the late 1980s or if she went there during that period. She, Eileen Snagg and Cordon Gibbs denied knowledge of anyone living there during that period. They described the property as having been abandoned and overgrown since about 1965 after Anita Snagg moved away. Mrs. Gibbs said that the wattle and daub house fell down after the 1970s. Ms. Snagg indicated that it fell down of its own accord at some point because of its age, but she could not remember when. Mr. Gibbs recalled that the house was still standing in 1979 but had been destroyed by the elements by 2006. Ms. King attested that it remained standing until 2002. It is quite possible that some part of the house was standing in 2002. I rather doubt that it was in any habitable condition by then having regard to its age and Ms. King's evidence that it was last occupied around 1989. In this regard, I believe Mr. and Mrs. Gibbs account that the property had become overgrown and the house was abandoned.

[18] I accept Mr. Sergeant's testimony that Niles De Roche, Lucina Telemaque and Flora Durham lived on the land after Anita and Urcella King left. He did not indicate how long any of those persons stayed there. Neither Urcella King nor Norman Sergeant provided the timelines when the house was occupied by Ms. Durham, Mr. De Roche or Ms. Durham. Ms. King testified that Lucina Telemaque lived there until 1990. Mention was also made of 1989 and a period of 2 years in respect of Ms. Telemaque's occupation but that does not assist the court in determining the length of time that the house was occupied. Very importantly, there is absolutely no evidence that the dates ran consecutively and for over 12 years. It is conceivable that Eileen Snagg, Olivia Gibbs and Cordon Gibbs might not have observed any such activity because it did not coincide with their visits to Canouan. While I accept that Ms. King permitted relatives to have use of the house, there is insufficient evidence on which to conclude that their occupation spanned more than two or three years in total. I make no such finding.

[19] Ms. King acknowledged that Eileen Snagg built a house on the property in 1995. Cordon Gibbs ascribed a value of \$300,000.00 to it. It is therefore not an insignificant building and in my opinion would be quite conspicuous. Ms. King said she was aware of the construction but stated that the

house was built on the lower section of the land in which she has no interest. She accepted however that the 1 ½ acre portion of land and the 5,863 sq. ft. comprises one undivided parcel.

[20] Ms. Snagg alleged that Ms. King placed concrete blocks on the subject property around 2006. Ms. King did not deny this. She also admitted that she carried out the referenced survey in June 2006. Eileen Snagg submitted that it was only in February and June 2006 respectively that Ms. King attempted to exercise acts of ownership over the subject lands when she placed concrete blocks on it and had it surveyed. She invited the court to find that Ms. King's first acts of possession took place in 2006 and do not qualify as adverse possession.

[21] The parties relied on skeleton arguments and written submissions filed in 2008. Ms. Snagg submitted that Ms. King did not have the necessary *animus possidendi*² to succeed in her defence of adverse possession. She contended further that no independent evidence was produced signifying that the government sought permission from Ms. King to construct a road. She argued that even if they had, this would not be a sufficient basis to support her case. In this regard, she invited the court to take judicial notice of government's arbitrary behavior in relation to use of private land. This court is unable to take judicial notice of any such alleged propensity.

[22] Urcella King countered that she has been in uninterrupted and unmolested possession of the disputed property since 1966. She alleged that Ms. Snagg only sought to exercise ownership over the property from February 2006, some 40 years after she herself had assumed possession. She argued that by her occupation and based on the principle of limitation that she has acquired a 'superior' title to Ms. Snagg's by adverse possession or prescription. She relied on the definition of Sir Vincent Floissac C.J. in **Charles v Gittens and Huchinson**³. There Floissac C.J. described adverse possession as:

' ... continuous, uninterrupted, peaceable, public and unequivocal possession of the land as owner thereof and to the exclusion of the proprietor for at least 12 years whether the adverse possession or prescriptive possession

² Intention to own the land.

³ SVGHCVAP1991/0006.

was as a result of dispossession or discontinuous possession by the proprietor.’³

[23] Ms. King contended that Ms. Snagg’s title has been extinguished by operation of law, pursuant to sections 17 and 19 of the Act. She cited the case of **Buckinghamshire County County v Moran**⁴ in which Nourse LJ stated:

‘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.’⁴

Ms. Snagg submitted in response that Ms. King cannot rely on section 17 of the Limitation Act (‘the Act’).⁵

[24] Sections 17 and 19 of the Act effectively:

- (1) prohibit a party from bringing an action to recover land beyond 12 years after the cause of action accrued; and
- (2) provides that by that date the title of the previous owner is extinguished, if during the intervening period the property has been occupied continuously and exclusively by the defendant who intended to own it and if his occupation was without interference by the paper title owner.

[25] The correct legal principles were rehearsed by Urcella King. It is established law that adverse possession affords a defence to a party accused of being a trespasser, if the latter can demonstrate that she has enjoyed exclusive and undisturbed factual possession of the land for over 12 years, and during that time intended to possess it as owner.⁶ In such a case, the legal owner’s title is extinguished by operation of law. Factual possession ‘signifies an appropriate degree of physical control.’⁷ It is evidenced by a single, continuous and exclusive act of possession which lasts for the entire period and co-exists with the intention to own. As articulated by Slade J.:

⁴ [1989] 2 All ER 225 at page 238.

⁵ Cap. 90 of the Laws of Saint Vincent and the Grenadines.

⁶ *Powell v McFarlane et al* (1977) 38 P & CR 452 Ch. D at 470; *J A Pye (Oxford Ltd & Ors v Graham et al* [2002] UKHL 30.

⁷ *Ibid.* *Powell v McFarlane* at pg. 470 – 471.

'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...'.⁶

[26] It is not disputed that the subject property was cultivated for years by the Snagg family. When Roy Snagg and his family moved into the wattle and daub house they occupied the premises pursuant to a licence from his father. Urcella King has acknowledged that her mother Anita Snagg remained there as a licensee, until around 1965 when she moved permanently into her own property. By then, Mr. Godwin Snagg had died and his wife Annie Snagg succeeded him as owner.⁸ There is little evidence regarding the circumstances under which Anita Snagg remained on the property between the date her husband died and the date of Godwin Snagg's death on 30th August, 1962. Presumably, she did so with Godwin Snagg's consent or acquiescence. If she did so as a squatter, she would have acquired prescriptive title by the time her father-in-law passed away. Ms. King was only 15 at the time and did not have the legal capacity to claim adverse possession in her own right or based on her mother's occupation as she was a minor. The law does not permit her to do so retrospectively when she attained the age of majority.

[27] Interestingly, Urcella Snagg admitted that her mother Anita lived on the property with permission from her grandmother Annie Snagg. Annie Snagg became the legal owner only in 1971, the same year she extracted Letters of Administration in Godwin Snagg's estate. By then Anita Snagg no longer occupied the premises. I infer from those circumstances that Annie Snagg purported to grant Anita Snagg permission to remain on the property after Godwin Snagg's death in 1962 and before she was appointed as administratrix of his estate. She would have done so as *executor de son tort* because she had no legal authority to so act until she had extracted Letters of Administration.

[28] It seems however that Annie Snagg subsequently affirmed the licence by implication after she was duly constituted as administratrix. I infer from the surrounding circumstances that she did. It follows that Anita Snagg occupied the land as licensee up to the time she left in 1965 or 1966. She

⁸ By virtue of Deed of Assent No. 652 of 1971 from herself as duly appointed administratrix of her late husband's estate.

therefore could not and did not gain any interest in the property as owner while Godwin Snagg and Annie Snagg owned the property, neither did her daughter Urcella Snagg. They (Anita Snagg and Urcella King) both recognized and deferred to the superior title of the legal owners. Anita Snagg took no steps to exert any rights of ownership at that time. Urcella King exerted no acts of ownership over the property until years later. Although Ms. King alleged that her mother continued to cultivate the property, there is no credible evidence of this and I reject that assertion. Anita Snagg's possession was therefore interrupted in 1966 when she moved away.

[29] Urcella Snagg claimed she continued her adverse possession after her grandmother Annie Snagg died in 1984. She provided no credible evidence that she or her agents occupied the property or exercised other acts of possession over it until sometime around 1980 when she purportedly granted permission to Lucina Telemaque and Flora Durham to occupy the wattle and daub house. In this regard, she relied on the occupation of the house by Niles De Roche, Misses Telemaque and Durham, payment of taxes by her mother and the assertion that she gave the government permission to cut a road through the property. She did not present any receipts to support her assertions that her mother paid taxes. In any event she attributed such payment to the then owner Annie Snagg. It therefore could not and does not support her claim of adverse possession.

[30] The court notes that the house occupied by Ms. King's guests was a wattle and daub house - a chattel, which never became a fixture on the land. Although owned theoretically by Anita Snagg and/or Urcella Snagg and/or Roy Snagg's estate, its presence on the land afforded none of them any claim to an interest in the property. Furthermore, even if Ms. King did occupy the land as a squatter after her grandmother died, only 11 years had passed by the time Eileen Snagg built her house. The construction of that house was notice to the world that Ms. Snagg had an interest in it. Eileen Snagg was effectively in possession of the land from that time. Eleven years possession is inadequate to ground adverse possession.

[31] In 2000 when Ms. King purported to give the government permission to construct a road through the property, she had no authority to do so as owner. The legal owner Eileen Snagg had by then been in occupation for at least 5 years. Ms. King presented no documentary exhibits evidencing the

authority on which she purportedly relied to do so or on which the government acted. The court will not act on Ms. King's 'say so' to infer that she had authority to give such consent. I am not convinced of the nature of the arrangement between Ms. King and the government. Even if such an agreement existed, it did not without more, vest Ms. King with authority to so act. Such an agreement would also not vest her with title to the subject land. I make no such finding. I find that Ms. King did not occupy the premises personally or through her agents for a continuous period of 12 years.

- [32] Likewise, although Ms. King testified that Ms. Snagg's house does not sit on any part of the land to which she claims title to by adverse possession, her pleadings and testimony reflect otherwise as evidenced by survey plan Gr11/18 which she commissioned a month after the instant claim was initiated and 11 years after Eileen Snagg built her house.⁹ That plan depicts a concrete road bisecting the remaining portion of land described in Eileen Snagg's deed. The road runs along the eastern, northern and western boundaries of the 5,863 sq. ft. area depicted in the Gr11/18 survey. This demonstrates graphically that Ms. King 'granted permission' to the government to cut a road through Ms. Snagg's property and not through the area she now claims.
- [33] On the one hand, Ms. King at that time purported to be the owner of the entire lot or more than the 5,863 sq. ft. portion. In her oral testimony on the other hand, she alleged that the top piece of the property was given to her father. This was never part of her case until then. Her pleadings are based entirely on adverse possession, as were her witness statement and Norman Sergeant's. She has now seemingly retreated from those positions. This is contradictory and incredible. Those disparate accounts are incompatible and are not believed.
- [34] Similarly, in her defence, Ms. King acknowledged the existence of the deed by which Ms. Snagg is registered as owner. She mentioned it in her witness statement and indicated she did not know of it. They were filed ten years ago, on 12th October, 2006 and 29th March 2007 respectively. Her testimony that she became aware of this only lately is not factual.

⁹ Approved and lodged at the Survey Department on 23rd June, 2006.

[35] Ms. King's case is riddled with inconsistencies and untruths. She has failed to establish adverse possession. I find that Eileen Snagg is the legal owner of the property described in Deed No. 843 of 1980 and that Urcella King has trespassed on it. Ms. King became a trespasser in respect of any acts she took on the land and particularly in relation to placing blocks on it and conducting a survey. Eileen Snagg's claim has not been extinguished under section 17 or 19 of the Act.

Issue 2 – To what remedy is Eileen Snagg or Urcella King entitled?

[36] Declaration is a discretionary remedy which the court may grant upon considering all the surrounding circumstances, the claimant's conduct and its effect. Having regard to the factual findings in this case I am satisfied that this is a proper case in which to grant declaratory relief to Ms. Snagg. This long-standing dispute and the consequences have affected Ms. Snagg's ability to fully enjoy her property. It is accordingly declared that Eileen Snagg is the legal owner of and entitled to all beneficial interests in the subject property registered by Deed No. 843 of 1980.

[37] Trespass to land is actionable *per se* and attracts damages. Ms. Snagg is entitled to recover damages from Urcella King for her acts of trespass on the subject property. Ms. Snagg is to file an application for assessment of damages within 3 months of today's date (i.e. on or before 31st January, 2017). She is also entitled to recover costs.

[38] Ms. Snagg may be granted a permanent injunction restraining further trespass if the court is satisfied that there is a significant probability that she will suffer grave damage for which an award of damages would not be adequate compensation and if it appears just and equitable in the circumstances.¹⁰ Eileen Snagg has not established any facts from which the court may conclude that she is likely to suffer substantial damage through Ms. King's future actions. I therefore make no order for a permanent injunction.

ORDER

[39] It is accordingly ordered and declared:

¹⁰ *Aslatt v Corporation of South Hampton* (1881) 16 Ch. D. 143.

1. Eileen Snagg is the legal owner and entitled to all beneficial interests in the subject property registered by Deed No. 843 of 1980.
2. Urcella King shall pay damages to Eileen Snagg for trespass, to be assessed on application to be filed by on or before 31st January, 2017.
3. Urcella King shall pay to Eileen Snagg agreed costs of \$3000.00.

.....
Esco L. Henry
HIGH COURT JUDGE