

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

IN THE HIGH COURT OF JUSTICE

SVGHPT2010/0007

**IN THE MATTER OF AN APPLICATION BY GIDEON BILLINGY OR A DECLARATION OF POSSESSORY
TITLE TO LAND**

APPLICATION FOR DECLARATION OF POSSESSORY TITLE

BETWEEN:

GIDEON BILLINGY

APPLICANT

and

JOEL WOODLEY

and

THE OTHER HEIRS REBECCA ADINA WOODLEY AND JACOB WOODLEY

RESPONDENT

Appearances:

Mr. Joseph Delves for the Applicant

Mr. Carlyle Dougan Q.C. for the Respondent

2016: Mar. 1

Mar. 23

JUDGMENT

BACKGROUND

[1] **Henry, J.:** This is an application¹ by Gideon Billiny for a declaration of possessory title to a parcel of land situated at Yambou in the State of Saint Vincent and the Grenadines. Mr. Billiny claims the declaration based on 12 year's adverse possession. He alleges that he and his father Benjamin Billiny have been in exclusive and undisturbed possession of the subject land for 12 years. He also claims in the alternative that he has done so on his own. He alleges that since 1985 he has treated the property as his own. He asserts that he continued cultivating it after his father died in 2005. Joel Woodley opposes the application. He claims that Gideon Billiny never occupied the disputed land. Instead, he alleges that his grandparents Jacob and Rebecca Woodley, their heirs and successors are the true owners.

[2] On the trial date, after Gideon Billiny and his only witness Marva Findlay testified, learned Queens Counsel Mr. Dougan made a no case submission arguing that Mr. Billiny has failed to comply with certain mandatory requirements of the Possessory Titles Act ('the Act').² He contends further that Mr. Billiny's evidence fell short of establishing adverse possession. Mr. Billiny elected to stand by his submission and tender no evidence.

ISSUE

[3] The issue is whether Gideon Billiny has made out a *prima facie* case that he has enjoyed adverse possession of the disputed land?

ANALYSIS

Issue – Has Gideon Billiny made out a *prima facie* case that he has enjoyed adverse possession of the disputed land?

[4] When considering a no case submission, the court is concerned with determining whether the applicant has "*established his claim on the balance of probabilities.*"³ The court must remain

¹ Filed on 3rd February, 2010.

² Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

³ *Miller (t/a Waterloo Plant) v Cawley* [2002] All ER (D) 452

cognizant that the claimant may achieve this by establishing only “a *weak prima facie case*”⁴ which may be “*strengthened to the necessary standard of proof by adverse inferences*”⁵ from the defendant’s silence. If the defendant remains inexplicably silent in circumstances which normally would elicit a response, the court may quite reasonably draw adverse inferences from his silence. However, if he gives an acceptable reason for his silence the court may draw no such inference.⁵

[5] In evaluating evidence, the court is required to apply “common sense” principles and attach such weight to it accordingly. It must also bear in mind that “*the weight of the aggregate of many such pieces of evidence taken together is very much greater than the sum of the weight of each such piece of evidence taken separately.*”⁶ This no case submission will be assessed against these established legal principles.

[6] To establish a *prima facie* case, Mr. Billingsy must present evidence which goes to establish on a balance of probabilities that he has been in adverse possession of the subject land for 12 years. Adverse possession is defined in the Act⁷ as:

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

This definition corresponds with dicta from decided cases in which the concept of adverse possession was examined and pronounced on. It is now accepted that an applicant for a

⁴ Calvin Todman v Marguerite Hodge, Territory of the British Virgin Islands High Court Civil Appeal BVIHCVAP2012/002 (Baptiste JA)

⁵ Elena Collongues v Andrew Lynch et al, Territory of the British Virgin Islands High Court Civil Appeal BVIHCVAP2007/001.

⁶ Lord Advocate and the Trustees of the Clyde Navigation v Lord Blantyre and Another (1879) 4 App Cas 770 at 792, per Lord Blackburn; cited with approval by Baptiste JA in Todman v Hodge.

⁷ Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 2.

possessory title declaration must prove that he has enjoyed exclusive and undisturbed factual possession of the subject land, accompanied by the requisite intention to possess it as owner.⁸

- [7] Factual possession 'signifies an appropriate degree of physical control.'⁹ It is characterized by a single, continuous and exclusive act of possession which must coincide in time with the intention to possess. As articulated by Slade J.:

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...'⁹

- [8] I now consider whether Gideon Billiny has established a prima facie case of adverse possession. Mr. Billiny and Ms. Findlay testified and were cross-examined. Their affidavits were admitted as their evidence in chief. Mr. Billiny deposed that his father Benjamin Billiny aka Samuel "Birdie" Billiny occupied the subject land for over 30 years up to his death in 2005. He added that his father planted plantains and other crops on it with his assistance from 1980. Mr. Billiny testified that after his father's death, he continued to work the land cultivating the same crops.

- [9] Ms. Findlay corroborated the material parts of his testimony. She acknowledged that in 2010 she had known Mr. Gideon Billiny for about 19 years. She recalled seeing him as a young boy, accompanying his father to the subject land, where they grew potatoes, peanuts, yams, plantains, tomatoes, cabbage and other crops. She describes the subject land as comprising approximately 27,000 sq. ft. Ms. Findlay did not indicate during which part of the 19 year period she considered Mr. Billiny to be a young boy. Nevertheless, she testified that Mr. Billiny has continued to cultivate the land up to 3rd February, 2010 when she swore her affidavit.

⁸ 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.

⁹ Ibid. at pg 470 – 471.

[10] Under cross-examination, she admitted that Gideon Billingsy was away from Saint Vincent and the Grenadines sailing, around the time that his father died. She indicated that he was at sea for eight months. She explained that when he left to go sailing his father was alive and working the land. She testified that at one time she was Gideon Billingsy's girlfriend and that she accompanied him to the subject land from time to time. She said that the land is now overgrown by vegetation and has been in that state since the application was filed after they understood 'that a counterclaim was made'.

[11] On Mr Woodley's behalf, learned Queen's Counsel Mr. Carlyle Dougan contends that the period on which Mr. Billingsy relies to establish adverse possession, was interrupted by Mr. Billingsy's absence from the state. He argues further that it was not clear if Mr. Billingsy was an adult in 2005 or prior to 2005 when his father died. He submits that if he was not an adult, he was incapable of being in possession in respect of that period when he was a minor.

[12] It is the law that if a squatter interrupts his possession of the disputed land before the 12 year period has elapsed, the owner is deemed to have abandoned possession during that lapse.¹⁰ In the instant case, Gideon Billingsy asserts that the joint possession by him and his father equates to adverse possession of 12 years. He alleges that his father's possession lasted for over 30 years ending in 2005. It follows that his father began occupying the land around 1975 or before then. The application was made in 2005. In order to accumulate the qualifying 12 year period before he sailed away, Mr. Billingsy must prove that he possessed the land jointly with his father from around 1993 until he left for his sea voyage.

[13] He dates his involvement with the cultivation of the land from as early as 1980. Ms. Findlay's evidence is that she knew him when he was a young boy assisting his father with the cultivation some 19 years before, which would be around 1991. She testified that he first went to the land as an adolescent. As a minor at that time, Mr. Billingsy would by law be incapable of possessing

¹⁰ Megarry & Wade: The Law of Real Property (5th edn., Stevens & Sons Limited 1984), pg. 1036.

the subject land and based on the evidence would not have been able to do so in 1991. If he did not attain his majority by 3rd February 1993, he cannot rely on his possession of the land either jointly with his father or on his own, to establish adverse possession. When did he become an adult? There is no evidence of this. By failing to provide proof of his age, Mr. Billingsy has failed to establish a critical element of his case. As the applicant, he has a duty to prove his case and he has not done so on this score.

[14] I accept learned Queen's counsel Mr. Dougan's submission that the period of possession was interrupted by Mr. Billingsy's absence from the country when he set sail in 2005 and stayed abroad for 8 months. In the premises, in the event that the 12 year period had not completely run when he left, he cannot claim adverse possession as of 2010 when his application was filed. For these reasons, I find that Mr. Billingsy has failed to establish a prima facie case that he had the capacity to possess the land in 1993, and consequently he has failed to prove adverse possession for the 12 year period preceding his application.

[15] For the sake of completeness, I shall examine Mr Woodley's other submissions. He submits further that Mr. Billingsy's father had been dead for only 5 years when the application for possessory title was made. He argues that from then to 2010 would not amount to 12 years. Therefore the intervening period is insufficient to satisfy the 'time' requirement for adverse possession. I agree with that submission. Having already found that the possession was interrupted in 2005 when Mr Billingsy took to the seas, any reliance on possession after his return in 2005 constitutes commencement of a new period.

[16] Mr. Woodley contends also that Mr. Billingsy failed to comply with the mandatory requirement to serve the statutory notification of his application on all adjoining landowners. Mr. Billingsy conceded that he served it on one of the owners only on the morning of the trial. He submits that he has complied with all of the procedural requirements including service on the other land owners. He argues that the 'timed' provisions in the Act are not mandatory. He cites **Herbert**

Charles v The Judicial and Legal Service Commission and The Disciplinary Tribunal¹¹
and **Wilfred Miller v Gregory Miller et al**¹² in support.

[17] Both cases re-affirmed the principle that in considering 'mandatory' statutory provisions the court is obliged to determine what the legislature intended to achieve. The court should accordingly consider first of all, whether substantial compliance of the requirement has been attained and if not whether it could be waived. Secondly, if waiver is not an option, what consequence flows from it? In the instant case, the Act mandates that an applicant notifies all adjoining landowners of his application for a declaration of possessory title.¹³ This is done by serving them with a copy of the notice published in the newspaper containing the details of the land claimed including the boundaries. To satisfy strict compliance a written notice must be prepared and issued within 21 days of filing of the application.

[18] Mr. Billings provided proof of service of the notice on Philmore Thompson belatedly on the morning¹⁴ of the trial. Mr. Philmore's property shares a common boundary with the disputed land. was served the previous afternoon at 2.00 pm. The late service fell outside of the 21 day window prescribed by the Act. Further six weeks had not elapsed between the service and the trial date as stipulated in section 8 (2) of the Act. It provides:

'(2) An order containing a declaration of possessory title shall not be granted unless-

¹¹ [2002] UKPC 34

¹² Saint Vincent and the Grenadines High Court Possessory Title claim SVGHPT2012/0041 (delivered 8th April, 2013).

¹³ Section 8(1) which provides:

'8 (1) The applicant shall, within twenty-one days after filing the application, cause a copy of the notice referred to in section 7 to be –
(a) served on all landowners or occupiers of property adjoining the piece or parcel of land to which the application relates; or
(b) posted in a conspicuous place on the piece or parcel of land if the owner or occupier of land adjoining the piece or parcel of land to which the notice relates is unknown or cannot be found.'

¹⁴ 29th February, 2016.

- (a) The provisions of section 7 and this section are complied with; and
- (b) Six weeks have expired since the service or posting of that notice.'

[19] In summary, the Act provides a statutory framework under which an applicant may secure title to property. It contemplates that notification be provided to the general public by publication in the newspaper; and very importantly that owners of land adjacent to the subject property be notified formally and personally. The obvious objective of such notification is to afford affected persons a reasonable period within which to object before the title is vested in the applicant. After a declaration is made, opportunities for objection are restricted to appeals and applications to set aside on the ground of mistake or fraud. An appeal or application to set aside must be made respectively within 3 months or as soon as reasonably practicable.

[20] Mr. Billingsy has not complied with the strict letter of section 8 or with its substance in respect of service of the notification on affected landowners. His notice to Mr. Philmore came too late to avoid him adequate time to formulate and file any objection he might have had. Mr. Billingsy urges the court to enlarge time for compliance and to make an order to put things right. He advances no explanation for his failure to comply with the statutory timeline although his application was made 6 years ago and allowed him sufficient time to file all necessary documentation. Neither the letter nor spirit of the law was complied with. The Act prohibits the grant of possessory title for failure to comply with the notification provisions.

[21] While deviation from the timelines for notification might be permissible where they fall short by a few days, it cannot be overlooked where the recipient of the notice is denied adequate time to respond. Mr. Philmore could not conceivably or reasonably be expected to act on a notice served on him the day before the trial, even if he wanted to challenge the boundary he shares with the subject land. To accede to Mr Billingsy's request to enlarge time would be to reward him for his carelessness and punish Mr. Philmore for his misfortune. Mr. Billingsy had ample time to comply with the requirement. The court cannot risk making an order which could potentially affect another person's rights to property without affording them an opportunity to be heard.

[22] The court cannot ignore or water down the clear and simple requirements and thereby risk causing injustice to others. To do so would defeat the legislative objective which underpins these provisions. I find that Mr. Billingy has not satisfied the legislative mandate contained in section 8. His failure attracts the sanction prescribed by section 8 (2) of the Act. For the foregoing reasons, he has failed to establish a prima facie case of adverse possession for 12 years. Joel Woodley's no case submission is upheld.

ORDER

[23] It is accordingly ordered:

- (1) Joel Woodley's no case submission is upheld.
- (2) Gideon Billingy's application for a declaration of possessory title is dismissed.
- (3) Gideon Billingy shall pay agreed costs of \$2500.00 to Joel Woodley.

[24] The court thanks both counsel for their helpful submissions.

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Esco L. Henry
HIGH COURT JUDGE