

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHPT2010/0044

IN THE MATTER OF AN APPLICATION BY FOR A DECLARATION OF POSSESSORY TITLE TO LAND BY
ELIZABETH LEWIS AND MARGARET SPENCE NÉE LEWIS

Appearances:

Mr Parnel R. Campbell Q.C. for the Applicant

2016: Mar. 17

Mar. 21

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** This is an application¹ by sisters Elizabeth Lewis and Margaret Spence née Lewis for a declaration of possessory title to 3 lots of land at Cane Hall, St. George in the State of Saint Vincent and the Grenadines. Ms. Lewis and Mrs. Spence assert that the land was gifted to them in 2001 by their mother Pearline Crosby. They claim that since then they have been in adverse possession of the property and they seek a declaration of possessory title on this basis. No objections have been filed to the application.

ISSUE

- [2] The sole issue is whether Elizabeth Lewis and Margaret Spence are entitled to the grant of a declaration of possessory title to the 3 lots.

¹ On 2nd July, 2013.

ANALYSIS

Issue – Are Elizabeth Lewis and Margaret Spence entitled to a declaration of possessory title to the 3 lots?

- [3] The Possessory Titles Act (“the Act”)² sets out the requirements for grant of a declaration of possessory title. The application will therefore be assessed against the provisions in the Act. The 3 lots claimed by Ms. Lewis and Mrs. Spence adjoin each other and are purportedly depicted on survey plan G2770. The plan was lodged and approved at the Lands and Surveys Department in 2009 and is exhibited to the application as required by the Act³. It is worth noting that the plan exhibited does not bear the registration number G2770 or other such identifier. It is therefore impossible to confirm that the attached plan carried that official number. The court may reject it if it does not contain sufficient detailed information.⁴ I consider this missing data to be critical. For the purposes of this application I will refer to it simply as the “survey plan”. The total combined area of the lots depicted on the survey plan is 51,088 sq. ft.⁵

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

³ It was approved on October 19th 2009 by Chief Surveyor Adolphus Ollivierre. Section 6 (1) of the Act states:

“The application shall also be accompanied by a plan of the piece or parcel of land authenticated by the signature of the Chief Surveyor.”

⁴ Section 6 (2) of the Act provides:

“The Court may reject a plan that, in its opinion, does not contain sufficient detailed information relating to the piece or parcel of land.”

⁵ Lot 1 admeasuring 12,661 sq. ft.; lot 2 admeasuring 12,768 sq. ft. and lot 3 admeasuring 25,659 sq. ft.

[4] The application was made in the prescribed form.⁶ In accordance with the law,⁷ it contained a full description of the subject land and an estimated value of \$117,280.00. Ms. Lewis and Mrs. Spence allege in the application that their mother was put into possession of the land in 1972, by her father. They claim that she cultivated the lands, made a declaration of possessory title in 1999 and subsequently gave it to them. They allege further that they have continued to cultivate the lands from that time. They assert that no one else claims to be owner, that there are no claims affecting the land and that it was registered in the name of Alfred Cosby. Those are the statement of facts outlined in their application. By providing these particulars, Ms. Lewis and Mrs. Spence have complied with the applicable legislative provisions which mandate provision of such details in the application.⁸

⁶ See section 4 of the Act which provides:

"4. Content of application

An application shall be made in accordance with Form 1 of the First Schedule..."

⁷ Ibid. at section 4 (a) which states:

4. Content of application

An application ... shall state-

- (a) the description of the land, giving its extent, its boundaries and its estimated value;

⁸ Ibid. at section 4 (b), (c) & (d) of the Act which states:

4. Content of application

An application ... shall state-

- (b) the facts upon which the applicant relies to establish adverse possession;
- (c) whether to the applicant's knowledge, any other person claims or is capable of claiming to be the owner of the land for which the declaration is being sought; and
- (d) the name, if any, of any person recorded in the Registry and entitled to ownership of the land immediately before the period of adverse possession began to run."

[5] In support of their application and in accordance with the Act,⁹ Ms. Lewis and Mrs. Spence filed affidavits¹⁰ sworn to by them and by Anthony Crosby and Merton Lewis. Ms. Lewis and Mrs. Spence depose that the subject property was owned by their grandfather Alfred Cosby who died in 1972. Mrs. Spence added that Alfred Crosby put their mother Pearline Cosby in possession of the lands. The sisters recount that their mother occupied the land and grew potatoes, yams, cassava and other crops on it following her father's death. Ms. Lewis testified that her mother was responsible to no superior landlord. They depose further that she made a Statutory Declaration of Possessory Title for the lands in 1999,¹¹ and transferred it to them in 2001 by Deed of Gift.¹² From that time, they claim they have been in possession of the subject property. Ms. Lewis deposed that she has given Mrs. Spence permission to cultivate the land. Mrs. Spence testified that one Judy Gibson cultivated the lands on their behalf on a share crop basis but that she has since died. Mrs. Spence deposed that consequent on Ms. Gibson's death they continue to plant root crops there, and her uncle Anthony Crosby assists them with cultivation.

[6] Anthony Crosby deposed that he is the applicants' maternal uncle, while Merton Lewis attested that he is their father and also Pearline Cosby's common law husband. They both testified that Alfred Cosby who originally owned the land divided his property between his children (Pearline Cosby and Anthony Crosby) prior to 1972. They corroborated the sisters' assertions that Pearline Crosby cultivated her portion of the lands and gifted it to them. They indicate also that Mrs. Spence now cultivates the 3 lots.

⁹ See section 5 of the Act which provides:

"5 (1) The application shall be accompanied by affidavits of the applicant and at least two other persons having knowledge of the applicant's adverse possession of the piece or parcel of land.

(2) The affidavit of the applicant shall attest the truth of the facts set out in the application.

(3) The affidavits of the other deponents shall set out in detail any facts known to the deponents that tend to prove the matters mentioned under section 4 (b) and shall attest to the truth of those facts.

¹⁰ Filed respectively on 12th August, 2010, 24th August, 2010 and 2nd February, 2016.

¹¹ By Deed No. 2380 of 1999.

¹² Deed Nos. 1735 of 2001 and 1736 of 2001 respectively.

Mr. Lewis deposed that from the time that the subject lands were gifted to her and her sister, Mrs. Spence has cultivated them up to 12th August, 2010.¹³

[7] Based on the applicants' and their witnesses' testimony, they have been cultivating the 3 lots from 2001. However, there is some inconsistency in the testimonies of Merton Lewis, Elizabeth Spence and Anthony Crosby as to whether it was Elizabeth Spence or her agents doing the cultivation. Likewise, it is not clear how soon after Ms. Gibson's death, cultivation of the subject lands resumed. There is also no evidence of the date of Ms. Gibson's death.

[8] Adverse possession is established by proof that an applicant has enjoyed exclusive and undisturbed factual possession of the subject land accompanied by the requisite intention to possess it as owner.¹⁴

As explained by Slade J. in **Powell v McFarlane and Another**:

*'If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").... Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, ... 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...'*¹⁵

[9] Ms. Lewis does not claim to have personally gone into occupation of the subject lands. She contends that she did so through her sister Margaret Spence. They rely on cultivation of root crops on the subject

¹³ The date his affidavit was sworn.

¹⁴ See section 2 of the Act which provides:

"adverse possession" is defined in section 2 of the Act to mean "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."

¹⁵ (1977) 38 P & CR 452 Ch D at 470 – 471; J A Pye (Oxford Ltd & Ors v Graham and Another [2002] UKHL 30.

lands as their acts of possession. Mrs. Spence attributes the cultivation to her agents Judy Gibson and her uncle Anthony Crosby. Mr. Crosby and Mr. Lewis declare that Mrs. Spence personally carried out the cultivation. There is no explanation in their respective testimony to clarify or satisfactorily explain this divergence in their accounts. Mrs. Spence vaguely deposed:¹⁶ *“following the illness and death of Ms Gibson my uncle Anthony Crosby now assist (sic) us in the cultivation of the said lands.”* When did this assistance start? What was/is the nature of the assistance? Who is being assisted? Apart from Judy Gibson and Anthony Crosby, who are the ones cultivating the lands? The court is not at liberty to fill in the blanks.

[10] While it appears that Mrs. Spence might have undertaken some acts of possession in respect of the subject lands on her and Ms. Lewis’ behalves, the sisters have failed to prove on a balance of probabilities that she did so for a continuous period for 12 years. Their application was filed in 2010, less than 12 years after the alleged commencement of occupation of the said lands. All of the affidavits relied on, except one, (supplemental affidavit of Margaret Spence) were filed in 2010. The evidence in its totality falls short of establishing that either Elizabeth Lewis or Margaret Spence carried out acts of possession over the lots for 12 years.

[11] Ms. Lewis and Mrs. Spence contend that they are entitled to rely on the period of time during which their mother possessed the lands coupled with their subsequent possession to establish adverse possession.
¹⁷ While legally they are permitted to combine both periods in this fashion,¹⁸ in order to benefit from this principle, they must specify the period relied on and prove that the alleged acts of ownership relied on were conducted for an unbroken 12 year period. They have failed to do provide the necessary specifics and have accordingly failed to satisfy this requirement.

¹⁶ In her supplemental affidavit filed on 2nd February, 2016.

¹⁷ See paragraphs (12) and (14) of the applicants’ submissions filed on 26th February, 2016.

¹⁸ Megarry & Wade: The Law of Real Property (8th edn., Sweet & Maxwell 2012), para. 35-021 – 35-022. See also *Asher v Whitlock* (1865) L.R. 1 Q.B. 1; *Mount Carmel Investments Ltd v Peter Thurlow Ltd* [1988] 1 WLR 1078; and *Site Developments (Ferndown) Ltd v Cuthbury Ltd* [2010] EWHC 10 (Ch).

[12] Although I accept that Pearline Crosby purported to give the lands to her daughters, who both intended to possess it as owners, that “gift” without more, does not establish adverse possession in law. While no opposition has been made to the application, Ms. Lewis and Mrs. Spence still have a duty to supply evidence to establish on a balance of probabilities that they (and their mother) in fact enjoyed uninterrupted factual possession of the subject property for 12 years coupled with the requisite intention. They have failed to supply coherent and adequate evidence in proof of acts of possession. For the foregoing reasons I find that Elizabeth Lewis and Margaret Spence have both failed to establish that they enjoyed factual possession of any of the subject lots, of an exclusive and undisturbed nature for a continuous period of 12 years.

[13] Ms. Lewis and Mrs. Spence have complied with the other procedural requirements in the Act, by:

- (1) filing a copy of survey plan G31/117 authenticated by the Chief Surveyor;¹⁹
- (2) publishing notification of the application²⁰ in two local newspapers,²¹ at the Registrar’s office²² and at the Magistrate’s court in Kingstown.²³

¹⁹ Pursuant to section 6 (1) of the Act which provides:

“6 (1) The application shall also be accompanied by a plan of the piece or parcel of land authenticated by the signature of the Chief Surveyor.”

²⁰ Section 7 of the Act mandates:

“7 (1) Upon filing an application, the applicant shall –

- (a) publish a notice in Form 2 of the First Schedule in two issues of at least two newspapers circulating in Saint Vincent and the Grenadines and the second issue shall be published not less than one month after the first issue; ...”
- (b) between the dates of the first and last publications in the newspapers, post a copy of that notice in a conspicuous place in the Registry and in a conspicuous place in the court of the magistrate in the district in which the piece or parcel of land is situated.”

²¹ 10th January, 2014 and 14th February, 2014, in the Searchlight and the Vincentian newspapers.

²² 22nd October, 2010.

²³ 3rd November, 2010.

(3) serving copies of the notices on adjoining owners of the subject land,²⁴ and posting a copy on an electricity pole on one of the boundaries²⁵ as attested to by bailiff Rodwell Alexander.²⁶

[14] The publications at the High Court Registry office and at the Magistrate's Court pre-dated those in the newspapers. They therefore so not strictly meet the timelines. However, they are not thereby invalidated.²⁷ The court may make an order to put things right if doing so would not result in a miscarriage of justice. Having regard to the length of time which transpired between those publications and the hearing of the matter, in all probability they would have come to the public's attention long before the hearing. All things being equal, this would have been an appropriate case in which to make an order deeming them properly published as it is unlikely that anyone was prejudiced by the advance publications. In any event, observance of these formalities notwithstanding, the application is refused for the reasons provided above.

[15] It is accordingly ordered:

(1) Elizabeth Lewis' application for a declaration of possessory title of property situated at Cane Hall, St. George in the State of Saint Vincent and the Grenadines, is dismissed.

²⁴ 3rd November, 2014.

²⁵ Section 8 of the Act 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."

²⁶ See Affidavit of Rodwell Alexander filed on 12th November, 2015.

²⁷ See section 20 of the Act which provides:

"No petition, order,... or other proceedings under this Act shall be invalid by reason of any informality or technical irregularity therein, or any mistake not affecting the substantial justice of the proceedings."

See also CPR 26.9(3) which states:

"If there has been an error of procedure... the court may make an order to put matters right."

(2) Margaret Spence's application for a declaration of possessory title of property situated at Cane Hall, St. George in the State of Saint Vincent and the Grenadines, is dismissed.

(3) No order as to costs.

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Esco L. Henry
HIGH COURT JUDGE