

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHPT2012/0034

**IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF POSSESSORY
TITLE TO LAND BY THEODORA WILLIAMS**

BETWEEN:

THEODORA WILLIAMS

APPLICANT

-AND-

DARON ANDREW

RESPONDENT

Appearances: Mr Sylvester Raymond Cadette, Counsel for the Applicant, Mr Stephen Williams, Counsel for the Respondent.

2015: Jul. 23
Sept.23

JUDGMENT

BACKGROUND

[1] **Henry, J.:** This case involves conflicting claims by Theodora Williams and Daron Andrews for possessory title to a parcel of land situated at Riley in the State of Saint Vincent and the Grenadines. Ms Williams has filed¹ an application for a declaration of possessory title of 41, 382 sq. ft of land. Mr Andrews opposes this application and subsequently filed² his own claim for a declaration of possessory

¹ On May 22, 2012.

² On October 18, 2012.

title of 5, 222 sq. ft of land, a portion (“the disputed land”) of which seems to overlap with a section of the lands claimed by Ms Williams.

ISSUES

[2] The issues are:

1. Whether Theodora Williams is entitled to a declaration of possessory title of the disputed land; and
2. Whether Daron Andrew is entitled to a declaration of possessory title of the disputed land?

ANALYSIS

Issue No. 1 - Is Theodora Williams entitled to a declaration of possessory title of the disputed land?

[3] The legislative framework which governs the grant of a declaration of possessory title to land is contained in the Possessory Titles Act³ (“the Act”). In order to obtain such a declaration, an applicant must establish on a balance of probabilities that he or she has exercised factual possession of an exclusive and undisturbed nature over the subject property for a continuous period of at least 12 years. He or she must prove also that during that time, he or she had the requisite intention to possess the land as owner.⁴ Factual possession “signifies

³ Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

⁴ Ibid. at section 2 of the Act which defines “adverse possession” as follows:

“adverse possession” means 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;”

See also the *locus classicus*, **Powell v McFarlane and Another (1977) 38 P & CR 452 Ch D at 470 – 471 per Slade J** where he said:

“In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner. ... If the law is to attribute possession of land to a person who can establish no paper title to possession, he must

an appropriate degree of physical control ... of a “single and conclusive” nature.⁵ In other words, the elements of “factual possession” and “intention to possess” must coincide in time.⁶ A successful applicant must also comply with the procedural statutory requirements outlined in the Act.

- [4] An applicant must state the name of the registered owner in the application and indicate whether he or she is aware of any other person who claims or is capable of claiming to be owner of the subject land.⁷ Ms Williams has not named a registered owner in her application. In addition, she states that there are no other persons claiming to be owner. In this regard, her application is non-compliant with the Act. Ms Williams has lodged her application in the form stipulated by law.⁸ She has also included a value of the land in accordance with

be shown to have both factual possession and the requisite intention to possess (“animus possidendi”)...”.

See also **J. A. Pye (Oxford) Ltd & Ors v Graham and Another [2002] 3 All E.R. 865 at para. [36]** where Lord Browne-Wilkinson stated:

“[36] The question is simply whether the defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner.”

See also **Winston Molyneux v Hugh Smith et al BVIHCVAP2009/0022**.

⁵ **Michael Findlay (duly appointed attorney on record for Muriel Findlay Small) v Elroy Arthur SVGHCAP2010/0017**.

⁶ Ibid. **Michael Findlay case**.

⁷ Ibid at section 4 (c) and (d) of the Act which provides:

“An application shall state:

- (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.”

⁸ Ibid. see Form 1 of the First Schedule to the Act referenced in sections 3(1) and 4(a) which provide respectively:

“3. Application for declaration of possessory title

- (1) A person who claims to be in adverse possession of a piece or land in Saint Vincent and the Grenadines shall be entitled to make an application to the Court for a declaration of possessory title to the

the statutory provisions.⁹ Ms Williams' application describes the disputed land, is accompanied by a survey plan¹⁰ and quotes an estimated value of \$50,000.00. The valuation report filed in support gives a valuation of \$76,000.00 for the land, exclusive of buildings. Although the valuations conflict, these filings satisfy the legal requirements on those three counts.

[5] In further compliance with the statutory procedures,¹¹ Ms Williams published notices of her application in the Searchlight and Vincentian newspapers, at the Magistrate's Court in Mesopotamia and at the High Court Registry Office.¹² She also served copies of the notice on owners and occupiers of land adjacent to the subject property, but does not indicate when service was effected. In this regard, the law requires that service take place within 21 days of filing the application¹³.

said land.

4. Content of application

An application shall be made in accordance with Form 1 of the First Schedule and shall state-

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

⁹ Ibid. at section 4(a) of the Act. See note 8 above.

¹⁰ Plan G53/26 dated May 7, 2012.

¹¹ Ibid. as sections 7 (1) of the Act which provides:

"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."

¹² On June 29, 2012, August 3, 2012, July 11, 2012 and June 22, 2012 respectively.

¹³ Ibid. at section 8 of the Act which states:

"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

The affidavit of service signifies that the bailiff received those notices on June 28, 2012, 37 days after the application was filed. Service would therefore have been effected after that date. However, while Ms Williams did not comply with the letter of the law, she has satisfied the spirit with respect to service of the notice. Her application is not thereby invalidated and I so find.

[6] Ms Williams swore an affidavit as required by law, in which she chronicles the factual basis on which her application is premised.¹⁴ Likewise, she filed two affidavits of supporting witnesses; her grandsons Danrick Williams and Renwick Williams. Only Danrick Williams testified at the trial. Renwick Williams' testimony was not tested by cross-examination and will not be taken into account. The Act expressly provides for affidavits to be made by at least two supporting witnesses.¹⁵ However, failure to supply two additional affidavits does not invalidate an application and the court may consider it.¹⁶ I now consider the

(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 Ibid at section 4(b) of the Act which states:

“4 (b) An application shall state:

(b) the facts upon which the applicant relies to establish adverse possession;”

¹⁵ See section 5(1), (2) and (3) 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.”

¹⁶ Ibid. at section 5 (4) of the Act which states:

“5 (4) Where an application is not accompanied by affidavits of at least two other persons having knowledge of the applicant's adverse possession of the piece or parcel of land, then, notwithstanding subsection (1)-

(a) the Registrar may proceed in accordance with section 10;

(b) the Court may hear the application and make an order or a decision as it sees fit.”

merits of Ms Williams' application based on the factual matrix on which she relies to establish that she has enjoyed factual possession of the disputed land with the intention to own it.

[7] Ms Williams claims that she and "*her predecessors have been in exclusive and undisturbed possession of this parcel since 1913.*" In support of this claim she has exhibited a document described as "title deed 2133 of 1973". That document is a declaration of possessory title made by Ms Williams¹⁷ and is neither a Deed of Gift nor Deed of Conveyance. A statutory declaration does not vest legal property in real property and is only declaratory of the maker's intention.¹⁸ While the court will consider the contents of a statutory declaration, it is not determinative of the issue of ownership to property, but serves merely as an aid in assessing the conduct of parties and other pertinent considerations which flow from its existence. Ms Williams asserts¹⁹ that she went into possession of the disputed land in 1953 after her relatives who previously occupied it had died or abandoned it, leaving her the only person entitled. She deposed²⁰ that she has paid taxes on it since then. Her statutory declaration states that she went into possession of the land in 1956. She did not explain the obvious difference in the dates she claims to have started occupying the disputed land. Conceivably, she might have forgotten, be mistaken or be simply less than truthful. Her grandson did not assist in clarifying that issue. In any event, if her testimony is accepted, she would have been in occupation of the disputed land for between 56 and 59 years.

[8] Danrick Williams testified that he is 32 years and was born on the disputed land which was then occupied by his grandmother and her relatives. He asserts

¹⁷ Dated September 28, 1973.

¹⁸

¹⁹ In her application and in her affidavit.

²⁰ In her affidavit filed on May 22, 2012.

further that the land passed to his grandmother after the older relatives died. He did not indicate when this took place. By his reckoning, his grandmother would have lived on the disputed land for at least 32 years. Although Mr Williams did not corroborate Ms Williams' account of when she went into occupation of the disputed land, if either account is accepted, the respective periods exceed the statutory 12 years required to prove factual possession under the Act if coupled with relevant acts of possession.

[9] Ms Williams asserts that after going into occupation, she "*tenanted the property...*" and currently uses it for agriculture and dwelling purposes. She deposed that she has always maintained the disputed land and planted crops such as peas, corn and ground provisions on it. She avers further that she has never been disturbed by anyone. Under cross-examination, Ms Williams testified that one Carol Thomas moved onto the disputed land in 2001 and lived there in a house. She stated that Ms Thomas never paid rent to her and she did not know to whom she paid rent. Ms Williams denied knowledge that Ms Thomas paid a yearly rent of \$300.00 to Daron Andrews. She explained that Ms Thomas subsequently left the disputed land, after which Daron Andrews' grandmother removed the galvanize roof from the house. Ms Williams could not recall when this happened but admitted that she allowed Daron Andrews' grandmother to remove those materials because 'they' had built the house. She admitted further that she did not rent 'them' the land or the house. She testified that a Mr Dominic rented the disputed land from the owner who lived in Trinidad and then built the house on it.

[10] Ms Williams later contradicted herself and said that Mr Dominic asked her grandmother to rent him the disputed land which he then built on. At first, Mr Williams insisted that no one else occupied the land during the period that his grandmother did. He maintained also that Ms Williams' enjoyment of the land has never been disrupted or disturbed by anyone. However, under cross-examination he agreed that Carol Thomas lived in an old shop on the disputed land. He

explained that Ms Thomas sought permission from his grandmother to repair the structure but never paid rent to her. The disparities in Ms Williams' and Mr Williams' account of the circumstances under which Ms Thomas occupied the disputed land are glaring. In fact, they conflict with Daron Andrews' and Carol Thomas' account.

[11] Daron Andrews and Carol Thomas testified that Ms Thomas rented the disputed land and the 'old house' on it from Daron Andrews. Ms Thomas indicated that this happened sometime after 1998. She denied vociferously that Ms Williams put her on the land. She stated further that she paid Mr Andrews a yearly rent of \$300.00 until 2011 when she left the property. She also testified that when she left the property, she removed the galvanize sheets from the roof and sold them to Danrick Williams. While Ms Thomas' and Mr Andrews' version of events were consistent, Ms Williams and Mr Williams could not keep theirs straight. The Williamses credited several persons with renting to or allowing Ms Thomas to occupy the disputed land. Those divergent accounts cannot all be true. Further, Ms Williams indicated that she owns and occupies land which is adjacent to the disputed land. In such a case, she and Danrick Williams (who lived with her at the relevant times) could not have been unaware or mistaken about Ms Thomas' presence on the disputed land. Indeed, if Ms Williams had entered into possession and was occupying the disputed land at that time, she would have been aware of this, and as *de facto* owner would have been put on inquiry, and in all probability would have been aware on what basis Ms Thomas did so. Ms Thomas' testimony was compelling. It had the ring of truth to it and I believe her.

[12] I reject the Williamses' account entirely. They had too many conflicts for their testimony to be truthful. In the premises, the entire factual basis on which Ms Williams has made her application is eroded by these untruths. I find therefore that Ms Williams did not enjoy factual possession of the disputed land for the 12 years immediately prior to the date on which she made her application. For those reasons, it must fail and I so find.

Issue No. 2 - Is Daron Andrews entitled to a declaration of possessory title of the disputed land?

[13] Mr Andrews' claim to the disputed land is based on Deed of Settlement No. 2996 of 1990 whereby Amanelda Dominique purportedly created a trust in favour of herself and him. Mr Andrews traced²¹ the root of title to a Deed of Conveyance between Leofrida Campbell and Esau Dominique.²² The property in the Deed of Conveyance is described as consisting of 2 acres more or less at Kilbourney and bounded as follows:

*"...on the East by the public road West by One Glasgow North
by lands of one Findlay and South by lands of Ellen Campbell..."*

[14] Under the terms of the Deed of Settlement, Ms Dominique is granted a life interest in the property with the remainder to Mr Andrews absolutely. The Deeds of Conveyance and Settlement are registered under the Registration of Documents Act²³ and are therefore deemed to accurately reflect the interests and rights recorded in them. In other words, both instruments respectively create and vest in the donees or beneficiaries, the interests and rights described in them. Accordingly, on Ms Dominique's death, Mr Andrews becomes entitled to absolute ownership of the land which is the subject of the Deed of Settlement, if the settlor was vested with legal interest to that property.

[15] The Schedule to the Deed of Settlement describes the property as follows:

*"ALL THAT LOT PIECE OR PARCEL of land situate at Riley in the State
of Saint Vincent and the Grenadines being ONE LOT admeasuring
TWENTY (20) POLES and butted and bounded on One Side by lands
of Caruth on a Second Side by lands of George Dowers on a Third Side*

²¹ See paragraphs 1 and 2 of his Affidavit filed on October 26, 2012.

²² No. 2 of 1944 dated January 8, 1943.

²³ Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

by lands in Feath Mc. Fee and on the Fourth Side by a Public Road or howsoever otherwise the same may be butted 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."

This Deed does not contain a survey plan or other depiction of the subject area. However, Mr Andrews exhibited survey plan G37/6 to his affidavit and deposed that it depicts the land which he is claiming.

- [16] The descriptions in both Deeds and in survey plan G37/6 differ substantially from each other and from the description provided by Ms Williams in her application and survey plan. The area of land in the Deed of Conveyance is 2 acres, in the Deed of Settlement 20 poles and in the survey plan just over 5,000 sq ft. Likewise, the boundaries on the 2 survey plans are dis-similar in some respects. Mr Andrews has provided no explanation why survey plan G37/6 is of a smaller plot than described in the Deeds. Furthermore, a visual examination of the plans reflects that the areas are not identical. It is not possible to ascertain if any part of either is a mirror image of the other.

- [17] Ms Williams delineated the boundaries of her survey plan G53/26 as follows:

"North East by the heirs of David Dowers South West by the main road to Evesham South East by lands David Dowers and James John and West by the lands of Barbara Charles as described in plan G53/26 of 2012..."

They do not correspond to the description in the Deeds of Settlement or Conveyance.

- [18] Neither Mr Andrews nor Ms Williams provided expert technical testimony to explain any similarities or differences in the plans. Mr Andrews sought to elicit

such evidence from Ms Williams who in my opinion does not possess the requisite expertise to do so. Without such evidence, the court is unable to determine what if any section of plan G37/6²⁴ is captured in plan G53/26,²⁵ or what part if any of the land described in the Deeds is contained in survey plan G37/6. In addition, plan G53/26 is declared to have superseded plan G37/6. Suffice it to say that Mr Andrews has demonstrated that he has an interest in the property described in the Deed of Settlement. If that property comprises the disputed land or any part of it he would be entitled to a declaration regarding his interest. However, too many questions remain unanswered and in view of these uncertainties it would ill-advised and contrary to evidence and the interest of justice to grant a declaration of possessory title to Daron Andrews in respect of the disputed land or the portion he claims. I therefore make no such order.

ORDERS

[19] It is accordingly ordered:

1. Ms Theodora Williams' application for a declaration of possessory title of property situated at Riley in the State of Saint Vincent and the Grenadines, delineated and described in survey plan G53/26, approved and lodged at the Lands and Survey Department on May 7th, 2012 by Chief Surveyor Adolphus Ollivierre is dismissed.
2. Mr Daron Andrews' application for a declaration of possessory title of property situated at Riley in the State of Saint Vincent and the Grenadines, delineated and described in survey plan G37/6, approved and lodged at the Lands and Survey Department on September 9th, 2003 by Chief Surveyor Adolphus Ollivierre is dismissed.

²⁴ Approved and lodged at the Survey Department on September 9, 2003.

²⁵ Approved and lodged at the Survey Department on May 7, 2012.

3. Each party shall bear his or her own costs.

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Esco L. Henry
HIGH COURT JUDGE