

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHPT2014/0050

**IN THE MATTER OF AN APPLICATION BY FOR A DECLARATION OF
POSSESSORY TITLE TO LAND BY LYNDON AND MURLIN PRIMUS**

Appearances: Mr Sylvester Raymond Cadette for the Applicant.

2015: Apr. 27
May 4

DECISION

BACKGROUND

- [1] **Henry, J.:** The Applicants Mr and Mrs Lyndon and Murlin Primus have made a joint application for a declaration of possessory title of a parcel of land situated at Biabou in the State of Saint Vincent and the Grenadines. They claim that the property was possessed by a Mr Whosley Jacobs for over 12 years, that he gave it to them three years before they filed this application, and that they have possessed it since then. They seek a declaration of possessory title based on his possession coupled with theirs.

ISSUE

- [2] The singular issue in this case is whether Mr and Mrs Primus are entitled to a declaration of possessory title of the said land.

ANALYSIS

Issue – Are Mr and Mrs Primus entitled to a declaration of possessory title of the said land?

- [3] The legislative framework governing the grant of a declaration of possessory title is outlined in the Possessory Titles Act (“the Act”).ⁱ The Act mandates that an application be made in the prescribed form and include a description of the subject land and an estimated value.ⁱⁱ The application must also rehearse the facts on which the applicants rely to establish adverse possession, indicate whether any other person claims to be owner or is capable of so claiming and name the registered owner.ⁱⁱⁱ Mr and Mrs Primus have utilized the prescribed form, set out a full description of the subject land and provided an estimated value. They have also summarized the facts by which they claim to be in adverse possession and have indicated that there are no other persons claiming to be owner. They have failed to state whether any other person is capable of claiming ownership and they have not included the name of the registered owner in the application. To this extent their application is non-compliant with the legal requirements.
- [4] The Act stipulates that an applicant must swear an affidavit in support his application and file at least 2 further affidavits sworn by persons who have knowledge of his adverse possession. Mr and Mr Primus have met these statutory requirements by filing a joint affidavit^{iv} and affidavits of two other persons - Whosley Jacobs and Helena Jacobs.^v The supporting affidavits by an applicant’s witnesses must outline in detail, facts that tend to prove that the applicant has been in adverse possession of the land continuously in excess of 12 years.^{vi} An applicant proves adverse possession by establishing that he has enjoyed exclusive and undisturbed factual possession of the subject land accompanied by the requisite intention to possess it as owner.^{vii}
- [5] Mr and Mrs Primus exhibited a copy of the survey plan of the subject land authenticated by the Chief Surveyor as mandated by the Act.^{viii} They also

arranged to publish notification of the application in two local newspapers,^{ix} at the Registrar's office^x and at the Magistrate's court in Biabou^{xi} in their bid to comply with other requirements under the Act. While the publications in the newspapers and at the Magistrate's court satisfied the provisions of the Act, the publication in the High Court Registry office was non-compliant as it pre-dated the first publication in the newspaper. The Primuses also served notices of their application on owners of property adjoining the subject land and posted a copy of the notice on the subject property as required by the Act.^{xii}

[6] The only statutory requirement which Mr and Mrs Primus did not strictly comply with was publication of the notice at the Registry. While the Act states that non-compliance with its mandatory provisions would result in refusal of a declaration of possessory title,^{xiii} in the circumstances of this case, I consider this default to be a mere procedural irregularity which I am permitted to disregard.^{xiv} Furthermore, I take judicial notice that publication of such notices at the Registrar's office cover an extended period lasting for weeks. I am satisfied that the notice although published before the statutory timeline would have remained on the notice board at and after the requisite time period. In the premises, I hold that this oversight would not affect the substantial justice of this matter and that it does not invalidate the application.

[7] In order to obtain a declaration of possessory title, Mr and Mrs Primus must prove on a balance of probabilities, that they enjoyed an "appropriate degree of physical control" over the subject land for 12 years, with the intention to own it to the exclusion of all others.^{xv} To do so, they must state in detail what acts of factual possession they have exercised over the land. The Primuses in their affidavit aver that they are "*in possession of a parcel of land in ... Biabou*"; which was "*once possessed by Whosley Jacobs who possessed it since 1957 and confirmed his possession by a statutory declaration*"^{xvi} and that Mr Jacobs used the land "*for agricultural purposes.*" They depose further that since they obtained

it from him they “*intend to use it for residential purposes.*” They assert a claim to the property through adverse possession “*having possessed it together with Mr Whosley Jacobs for over twelve (12) years without being disturbed.*”

[8] Mr and Mrs Primus have exhibited a copy of a Statutory Declaration by which Mr Jacobs claims to be owner of the land. He asserts in it that he purchased the property from “James Bramble’s family” on August 18, 1957 at a price of \$600.00 but did not get a deed and has been paying taxes and rates for it ever since. No proof of payment of the purchase price nor such rates and taxes has been provided, nor has the seller(s) name been provided. More fundamentally, neither Mr Jacobs nor the Primuses have indicated how Mr Jacobs transferred his interest to them. It appears to be a verbal conveyance not supported by documentary evidence. In order to be effective, an *inter vivos* gift of real property must be evidenced by a written note made by the person making the gift.^{xvii} Neither Mr Jacobs nor the Primuses have supplied such written proof. Mr Lyndon Primus’, Mrs Murlin Primus’ and Mr Jacobs’ reliance on that *inter vivos* transfer is accordingly ineffective to pass either a legal or beneficial interest by adverse possession to the Primuses. They cannot rely on such a transfer to vest in them any interest, right or property in the subject land even if Mr Jacobs owns such interest. The Primuses without more cannot succeed to any title Mr Jacobs claims or holds in the property. In order to sustain their claim for declaration of possessory title, they must therefore rely on their own acts of possession.

[9] Mr and Mrs Primus and their witnesses have not explained what acts of control they have exercised over the land. Mrs Helena Jacobs’ and Mr Whosley Jacobs’ affidavit testimony is equally brief. Mr Jacobs deposed:

“I was in possession of a parcel of land situate in Biabou... About three years ago, I transferred my rights to the said land to the applicants who are desirous of building their family home on it. I have personal

knowledge that they are now in possession of this parcel of land up to the present day.

I have been in possession of the said land since 1957 and at one time, used it for agricultural purposes and animal rearing. The applicants have hinted their intentions to use the land for residential purposes.”

Since I had that parcel and transferred it to the applicants, I have never seen nor heard of anyone making a claim as owner or possessor of the said land.”

[10] Ms Jacobs attested:

“Murlin is my daughter and Lyndon is my son-in-law. One Mr Whosley Jacobs ... had been in possession of the parcel of land... for over thirty years. We are both from the same area and I am positive that he was never disturbed from the possession of this parcel for the number of years that I knew him.

Mr Jacobs used that parcel for agriculture and animal rearing for a very long time, but due to his health, he abandoned those vocations and continued to clean the said land.

Mr Jacobs gave my daughter and her husband the said parcel as they were in search of a parcel on which they intend to built (sic) their family home. This happened about three years ago and the applicants continued to clean and maintain the said parcel from that time up to present day.”

[10] In none of the affidavits do the Primuses or their witnesses provide facts on which the court can find on a balance of probabilities that the Primuses exercised continuous exclusive and undisturbed possession over the land for the requisite 12 year period. Ms Jacobs’ assertion that the Primuses have cleaned the land is

made by her to the exclusion of the applicants and in any event seems to cover a period of only 3 years, well below the required 12 year period. The Primuses have failed therefore to satisfy the court that they have enjoyed exclusive and undisturbed possession of the subject land in excess of 12 years. Their application must therefore be refused.

[11] The Primuses contend also that they rely on Mr Jacobs' possession of the property coupled with theirs to ground their application for a declaration of adverse possession. Even if Mr Jacobs had legally effected the transfer of his interest in the property to them, the evidence of Mr Jacobs' factual possession is deficient. No evidence is supplied as to when Mr Jacobs farmed the land, what crops he cultivated and what if any other physical acts he undertook in furtherance of his possession of the land. Mr Jacobs' and Ms Jacobs' recollection of such agricultural activities not being circumscribed by dates falls short of providing such proof. Likewise, there is no evidence that Mr Jacobs farmed the land continuously for the 12 year period immediately preceding the date of the application or that he and the Primuses cleaned and cleared the property and exercised effective control of the property for that period. For those reasons I find that Mr and Mrs Lyndon Primus have failed to establish that they have enjoyed exclusive and undisturbed possession of the subject land in excess of twelve years. I therefore order that their application for a declaration of possessory title in respect of the property located at Biabou and described and delineated in survey plan C23/113 approved and lodged by the Chief Surveyor on August 29, 2014 be dismissed.

ORDERS

[12] It is accordingly ordered:

1. Mr Lyndon Primus' and Mrs Murlin Primus' application for a declaration of possessory title of property situated at Biabou in the

State of Saint Vincent and the Grenadines, delineated and described in survey plan C23/113, approved and lodged at the Lands and Survey Department on August 29th, 2014 by Acting Chief Surveyor K Francis is dismissed.

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

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

ⁱⁱ Ibid. at Form 1 of the First Schedule as stipulated in sections 3 and 4 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 said land.

(2) ...

(3) ...

(4) ...

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;
- (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.”
(bold mine)

ⁱⁱⁱ Ibid. at section 4.

^{iv} Filed on September 25, 2014.

^v Both filed on September 25, 2014.

^{vi} Ibid at section 5 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.

(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.

^{vii} 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.”

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

“...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...”.

^{viii} Survey plan C23/113 was filed and exhibited as part of the application on September 25, 2014, pursuant to section 6 (1) of the Act which states:

“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.”

^{ix} In the Searchlight and Vincentian newspapers on October 10, 2014 and November 14, 2014 respectively. Section 7 of the Act mandates that the publications be made in two issues at least one month apart. It states:

“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.”

^x Ibid. at section 7 (1) (b). The notice was published there on October 1, 2014.

^{xi} Ibid. at section 7 (1) (b). The notice was published on October 10, 2014.

^{xii} Those notices were served and posted on October 3, 2014, within the 21 day stipulated timeline.

Section 8 of the Act establishes these requirements and 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

(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.”

^{xiii} See section 8 (2) which provides:

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

(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.”

^{xiv} See section 20 of the Possessory Titles Act which provides:

“No petition, order, affidavit, certificate, recording 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.”

^{xv} Supra. at note vii for definition of “adverse possession” in the Possessory Titles Act. See also **Powell v McFarlane and Another (1977) 38 P & CR 452 Ch D at 470 – 471 per Slade J** where he said:

“...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...

“Though past or present declarations as to his intentions, made by a person claiming that he had possession of land on a particular date, may provide compelling evidence that he did not have the requisite *animus possidendi*, in my judgment statements made by such a person, on giving oral evidence in court, to the effect that at a particular time he intended to take exclusive possession of the land, are of very little evidential value because they are obviously easily capable of being merely self-serving, while at the same time they may be very difficult for the paper owner positively to refute. For the same reasons, even contemporary declarations made

by a person to the effect that he was intending to assert a claim to the land are of little evidential value for the purpose of supporting a claim that he had possession of the land at the relevant date unless they were specifically brought to the attention of the true owner.”

^{xvi} No. 601 of 1991.

^{xvii} Section 3 of the UK 1677 Statute of Frauds which applies in Saint Vincent and the Grenadines by virtue of section 5 (1) (a) and the Schedule of the Application of English Law Act Cap. 12 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

Section 3 of the Statute of Frauds and section 5 of the Application of English Law Act and the relevant paragraph of the Schedule provide respectively:

“3...No leases, estates or interest either of freehold or terms of years or any uncertain interest not being copyhold or customary interest of in to or out of any messuages manours lands tenements or hereditaments shall at any time ... be assigned, granted or surrendered unless it be by deed or note in writing signed by the party so assigning granting or surrendering the same or their agents thereunto lawfully authorized by writing or by act and operation of law.

5. (1) Subject to the provisions of this section, only the following Acts of Parliament of the United Kingdom shall apply in Saint Vincent and the Grenadines, that is to say-

(a) all such Acts as are specified in the Schedule, to the extent specified therein; and...

Schedule

PART I

29 Chas.2 c.3 Statute of Frauds s.1-3, 4 (as it applied before the repeal of certain words by the Law of Property Act, 1925), 7-9, 13, 14 and 24.”