

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HCVHPT2011/0079

**IN THE MATTER OF AN APPLICATION BY MILAD SASSINE FOR A DECLARATION
OF POSSESSORY TITLE TO LAND**

APPLICATION FOR POSSESSORY TITLE

BETWEEN:

MILAD SASSINE

APPLICANT

-AND-

LADY GLORIA ANTROBUS

RESPONDENT

Appearances: Mr Richard Williams for the Applicant, Mr Joseph Delves and Ms Heidi Badenock for the Respondent.

2015: Jan. 20
Feb. 12
Apr. 1

JUDGMENT

BACKGROUND

[1] **Henry, J. (Ag.):** The issues in this case concern a subject matter which remains a vexed problem for many Vincentians. It is an intractable reality for which the only panacea is perhaps legislative reform. It involves situations under which an

owner of real property is dispossessed of land by someone who obtains a declaration of possessory title of that land on the basis of twelve or more years' adverse possession. The usual scenario arises where the paper owner moves overseas for an extended period. On his return he discovers that in his absence another individual has occupied his property and after 12 years, on application to the court is granted a declaration that he is the true owner. In other instances, the owner learns that someone else is claiming his land when made aware by notice to that effect in a newspaper or through other means. The instant case fits into the second scenario.

- [2] The applicant Mr Milad Sassine is a businessman who bought property in Cane Garden 20 years ago.ⁱ That property, lot 27 had a common boundary with the disputed land.ⁱⁱ Mr Sassine seeks a declaration of possessory title of the disputed land on the basis of over twelve years adverse possession. Without making any concessions regarding Lady Antrobus' claim as owner, he contends that action by the true owner to recover possession from him is statute barred.ⁱⁱⁱ Lady Gloria Antrobus opposes his application firstly, as the executrix of the Will of Walter Beverly Briggs deceased, secondly as trustee of his estate and thirdly, as one of his heirs.^{iv} She asserts that her claims as trustee and heir are not statute barred.

ISSUES

- [3] The issues are two-fold:-

1. Whether Lady Antrobus' claim (as executrix, trustee or heir) opposing Mr Sassine's application for declaration of possessory title is statute barred?
2. Whether Mr Milad Sassine is entitled to a grant of declaration of possessory title of the disputed land?

ANALYSIS

Issue 1 – Is Lady Antrobus’ claim statute barred?

- [4] Mr Sassine submits that he has occupied the disputed land for over 12 years without consent or interference from anyone. He contends that no one can seek to recover the land from him based on their prior possession, or that of their predecessor in title, as after 12 years, such action would be statute barred under the Limitation Act^v. On the other hand, Lady Antrobus submits that her cause of action as sole surviving trustee of Walter Briggs’ estate, against Mr Sassine has neither accrued nor become statute barred.^{vi} She claims that the disputed lot is the subject matter of a trust for sale under the Will of Walter Beverly Briggs deceased who devised it to her and other beneficiaries under a trust for sale. Further, she argues that the disputed land has never been sold and the beneficiaries of the trust have not received the proceeds of sale. She asserts that consequently, the beneficiaries own a beneficial interest in the property for which a cause of action has not accrued or become statute barred. She argues therefore that her claims as trustee on behalf of the other beneficiaries and as co-beneficiary (i.e. as “heir”) have not accrued nor become barred.^{vii}

Accrual of Claim as Executrix

- [5] The Will of the late Walter Briggs names three persons as executors: Gloria Janet Vera, Edward Alexander Clavier Hughes and Gordon Alexander Marcus Allen.^{viii} Lady Antrobus has averred that she is also known as “Gloria Janet Vena Briggs and Gloria Janet Vera Briggs.”^{ix} This is not refuted by the Applicant. Probate of the Will was granted to Gloria Janet Vera Briggs in 1982.^x The court therefore accepts that Lady Antrobus and Gloria Janet Vera Briggs is one and the same person and that she is the executrix.
- [6] An executrix stands in the shoes of a testator from the date of his death and is authorized to institute actions on behalf of his estate from that date,^{xi} including

claims to recover possession of land devised under his Will. In her capacity as executrix, Lady Antrobus would have 12 years from the late Walter Briggs' death within which to bring an action to recover possession of land devised under the Will.^{xii} Accordingly, her claim as executrix against Mr Sassine would have accrued on the date that he took possession of the disputed land, if he in fact assumed such possession. Her claim would accordingly be statute barred 12 years after continuous possession by Mr Sassine.

Accrual of Claim as Trustee and Heir

- [7] The testator by his will disposed of his property under two main clauses. Firstly, he devised his property known as "Hillcrest" to his wife Gloria Janet Vera^{xiii} and secondly:

*"3. All the rest residue remainder of my property real and personal wherever situate of which I may die possessed I give devise and bequeath **unto my Trustees upon trust to sell** call in and convert into money such parts thereof as shall not consist of money and I declare that **my Trustees shall hold the proceeds of such sale** calling in and conversion and my ready moneys (hereinafter referred to as "my trust fund") **upon the following trusts:...**"^{xiv} (bold mine).*

The succeeding sub-paragraphs make provision for payment of debts, funeral and other expenses and then list the persons to whom the rest of the proceeds of sale are to be distributed. The testator constituted the three named executors as trustees of the trust. Lady Antrobus has deposed that the other two trustees have since died,^{xv} leaving her as the sole trustee.

- [8] A trust may be created by will. Such a trust must contain a declaration of the trust being created.^{xvi} The declaration must be made by a person who has the legal capacity to do so.^{xvii} Likewise, the trust must be referable to property which can be the subject of a trust;^{xviii} the property and objects of the trust must be certain and administratively workable;^{xix} and comply with the applicable statutory requirements.^{xx} The trust purportedly created by the testator complies with those requirements as:

1. he was an adult and competent to create the trust;
2. the property under the trust is real property against which there are ostensibly no liens or other encumbrances;
3. there is no ambiguity or uncertainty regarding the said property or the beneficiaries under the trust, nor incapacity of the beneficiaries to benefit from the trust; and
4. the trust is also workable.

[9] Lady Antrobus has provided details of the trust property which includes the disputed land.^{xxi} I find therefore that the text of clause 3 of the will creates a trust for sale of those lands, of which Lady Antrobus is not only the sole trustee but a beneficiary. The will names 19 beneficiaries. Lady Antrobus has deposed that all except one of them are alive.^{xxii} This means that she is not the only beneficiary under the will. Those provisions of the Limitation Act which deal with trustees and beneficiaries under trusts are therefore applicable to her.^{xxiii} The law clearly is that time will not run against a trustee of a trust for sale who is in possession of the subject land if he is not the only person entitled to the land or the proceeds. Similarly, no right of action will accrue to any of the beneficiaries of such a trust.^{xxiv} This means that while she has possession of the disputed land as trustee under the will and one of several beneficiaries, Lady Antrobus' cause of action as trustee and heir does not arise and is not barred against any person seeking to establish title to the land by adverse possession. Her claim is therefore valid as her rights as trustee have not been extinguished. I find therefore that Lady Antrobus' claim as trustee and heir under the will of Walter Briggs has neither accrued nor become statute barred.

Issue 1 – Is Milad Sassine entitled to a declaration of possessory title?

[10] An applicant for a declaration of possessory title must file an application in the prescribed form.^{xxv} He must also file at least 3 affidavits in support of the

application, one deposed to by him and the others by persons who know of his adverse possession.^{xxvi} In addition, he is required to submit a copy of a survey plan of the subject land authenticated by the Chief Surveyor.^{xxvii} Likewise, an applicant is mandated to publish a notice of his application in two local newspapers,^{xxviii} on properties adjoining the subject property, at the Registrar's office and at the Magistrate's court in the district in which the land is located. It is also imperative that he serve notices on persons who own lands adjoining the property.^{xxix} Publication and service of the notice must be effected within the mandatory timelines.^{xxx} Non-compliance with any of these mandatory requirements would result in the applicant being denied a declaration of possessory title.^{xxxi}

- [11] Mr Sassine brought his claim under the Possessory Titles Act.^{xxxii} He has complied with only some of the statutory requirements. He has filed affidavits^{xxxiii} in support and exhibited the requisite survey plan.^{xxxiv} He also arranged for the publication of notices at the Registrar's office and the Magistrate's court in the district in which the land is located.^{xxxv} However, he has produced no evidence that he has complied with the mandatory statutory requirements to publish notices of his application in the newspaper, on adjoining properties and to serve notices on adjoining land owners. His multiple failures in this regard, are fatal to his application for a declaration of possessory title. I am mindful that proceedings under the Possessory Titles Act^{xxxvi} are not invalidated for informality or irregularity of form or process or for any mistake not affecting the substantial justice of the proceedings. I find that these defaults are not procedural irregularities, formalities, or mistakes which can be corrected, but rather mandatory substantive steps which affect the substantial justice in this case. Because of these failures, notification of the application has not been provided to persons whom Parliament determined must be notified in every case. Accordingly, the application must be dismissed and I so find.

ORDERS

[12] It is accordingly ordered:

1. Mr Milad Sassine's application for a declaration of possessory title of property situated at Cane Garden in the state of Saint Vincent and the Grenadines, measuring 6,813 sq.ft and delineated and described in survey plan G51/63, approved and lodged at the Lands and Survey Department on July 18th, 2011 by Chief Surveyor Keith Francis is dismissed.
2. Mr Milad Sassine is to pay Lady Gloria Antrobus' costs of \$7500.00.

[13] I am grateful to counsel for their very helpful submissions.

.....
Esco L. Henry
HIGH COURT JUDGE (Ag.)

ⁱ Shown as lot 27 on survey plan G51/63 approved and lodged at the Survey Department on July 18, 2011.

ⁱⁱ Shown as lot 16 on a survey plan of Cane Garden Estate exhibited to Affidavit of Lady Gloria Antrobus.

ⁱⁱⁱ See page 4 of Submissions filed on March 3, 2015 on behalf of Mr Sassine. He relies in support of this submission on section 17 and paragraph 1 of Part I of the Schedule to the Limitation Act Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines 2009 which provide:

“17 (1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

(2) Subject to the following provisions of this section where -

(a) the estate or interest claimed was an estate or interest in reversion or remainder or any future estate or interest and the right of action to recover the land accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest; and

(b) the person entitled to the preceding estate or interest (not being a term of years absolute) was not in possession of the land on that date,
no action shall be brought by the person entitled to the succeeding estate or interest after the expiration of twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest or six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.

(1) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.

(2) Where any person is entitled to any estate or interest in land in possession and, while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred under this Act, no action shall be brought by that person, or by any person claiming through him, in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

(3) Part I of the Schedule contains provisions for determining the date of accrual of rights of action to recover land in the cases therein mentioned.

(4) Part II of the Schedule contains provision modifying the provision of this section in their application to actions brought by, or by a person claiming through, the Crown.”

“PART I

1. Where the person bringing an action to recover land, or some person through whom he claims, has been in possession of the land, and has while entitled to the land has been dispossessed or has discontinued his possession, the right of action shall be treated as having accrued on the date of dispossession or discontinuance.”

^{iv} See Entry of Appearance filed on December 22, 2011 and paragraphs 4 and 18 of Affidavit of Lady Antrobus filed on March 8, 2012.

^v Ibid. at note iii.

^{vi} Lady Antrobus invokes sections 17 and 20 of and Part I paragraph 9 of the Schedule to the Limitation Act. Section 20 and Part 1, paragraph 9 of the Schedule provide respectively:

“20 (1) Subject to section 23 (1) and (2), the provisions of this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, as they apply to legal estates. Accordingly a right of action to recover the land shall for the purposes of this Act but not otherwise, be treated as accruing to a person entitled in possession to such an equitable interest in the like manner and circumstances, and on the same date, as it would accrue if his interest were a legal estate in the land (and any relevant provision of Part I of the Schedule shall apply in any such case accordingly).

(2) Where the period prescribed by this Act has expired for the bringing of an action to recover land by a tenant for life or a statutory owner of settled land –

- (a) his legal estate shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred by this Act; and
- (b) the legal estate shall remain vested in the tenant for life or statutory owner and shall devolve in accordance with any enactment which makes provision for such devolution,

but if and when every such right of action has been barred by this Act, his legal estate shall be extinguished.

(3) Where any land is held upon trust (including a trust for sale) and the period prescribed by this Act has expired for the bringing of an action to recover the land by the trustees, the estate of the trustees shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has been barred by this Act: but if and when every such right of action has been so barred the estate of the trustees shall be extinguished.

(4) Where –

(a) any settled land is vested in any statutory owner; or

(b) any land is held upon trust (including a trust for sale),

an action to recover the land may be brought by the statutory owner or trustees on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Act, notwithstanding that the right of action of the statutory owner or trustees would apart from this provision have been barred by this Act.”

“PART I

9. Where any settled land or any land held on trust for sale is in possession of a person entitled to a beneficial interest in the land or in the proceeds of sale (not being a person solely or absolutely entitled to the land or the proceeds), no right of action to recover land shall be treated for the purposes of this Act as accruing during that possession to any person in whom the land is vested as tenant for life, statutory owner or trustee, or to any other person entitled to a beneficial interest in the land to the proceeds of sale.”

Section 23 (1) and (2) provide:

“23 (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action –

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee any trust property, or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Where a trustee who is also a beneficiary under the trust receives or retains trust property or its proceeds as his share on a distribution of trust property under the trust, his liability in any action brought by virtue of subsection (1) (b) to recover that property, or its proceeds, after the expiration of the period of limitation prescribed by this Act for bringing an action to recover trust property shall be limited to the excess over his proper share:

Provided that this subsection only applies if the trustee acted honestly and reasonably in making the distribution.”

^{vii} Ibid.

^{viii} See Will in the Grant of Probate, exhibited as “L.A. 5” to Affidavit of Lady Antrobus filed on March 8, 2012.

^{ix} See Lady Antrobus’ Affidavit filed on March 8, 2012 at paragraph 3.

^x See Grant of Probate No. 54 of 1982 exhibited as “L.A. 5” to Affidavit of Lady Antrobus filed on March 8, 2012.

^{xi} See section 2 (1) of the Administration of Estates Act Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines which defines “personal representative” as follows:

“personal representative’ means the executor, original or by representation, or administrator for the time being of a deceased person,...”.

See also **Meyappa Chetty v. Supramanian Chetty [1916] 1 A.C. 603 at 608.**

^{xii} Pursuant to section 17 (1) and paragraphs 1 and 2 of Part I of the Schedule to the Limitation Act. Paragraph 2 states:

“Where any person brings an action to recover any land of a deceased person (whether under a will or on intestacy) and the deceased person –

(a) was on the date of his death in possession of the land or, in the case of a rentcharge..

(b) was the last person entitled to the land to be in possession of it,

the right of action shall be treated as having accrued on the date of his death.”

^{xiii} See clause 2 of the Will.

^{xiv} See clause 3 of the Will.

^{xv} See paragraphs 4 - 12 of Affidavit of Lady Antrobus filed on March 8, 2012 and paragraph 1 of Affidavit of Lady Antrobus filed on December 30, 2014.

^{xvi} See Halsbury’s Laws of England Fourth Edition, Reissue Volume 48, at paras. 504 and 543.

^{xvii} Ibid.

^{xviii} Ibid. at para. 504.

^{xix} Ibid.

^{xx} Ibid.

^{xxi} See paragraph 10 of Affidavit of Lady Antrobus filed on March 8, 2012 and paragraphs 5 and 6 of Affidavit of Lady Antrobus filed on December 30, 2014.

^{xxii} Ibid. at paragraph 4 of Affidavit filed on December 30, 2012.

^{xxiii} Ibid. Limitation Act, at section 20 and paragraph 9 of Part I of the Schedule.

^{xxiv} Ibid. See also **Earnshaw et al v. Hartley [1999] EWCA Civ 1141; The Law of Limitation by Terrance Prime And Gary Scanlan Second Edition at para.10.13.2** where the learned authors state:

“Parallel provisions apply in the case of land held on trust (including land held on trust for sale), again to preserve the integrity of the underlying legal structure. Where, in the case of such land, the period for the bringing of a claim to recover the land by the trustees has

expired, the estate of the trustees will not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or the proceeds of sale either has not accrued, or has not become barred. However, if and when every such right of action has been so barred, the estate of the trustees is extinguished... Thus the legal estate of the trustees is preserved even though their right of action to recover the land is extinguished.”

See also **Halsbury’s Laws of England Fourth Edition Volume ...** which states:

^{xxv} Form 1 of the First Schedule to the Possessory Titles Act Cap 328 of the Revised Laws of Saint Vincent and the Grenadines 2009 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)

“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.”

^{xxvi} 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.

^{xxvii} Ibid at section 6 (1) 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.”

^{xxviii} In two issues at least one month apart. See section 7 (1) (a) of the Possessory Titles Act.

^{xxix} Ibid. at section 7 and which 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.”

“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.”

^{xxx} Ibid. at section 7 (1) (a) and (b) and 8 (1) (a) and (b). The newspaper publications are to be made at least one month apart; the publications in the Registry and the magistrate's court building are to be made between the date of the first and last publications in the newspapers and service and publication on adjoining landowners and properties are to be made within 21 days after the application is filed.

^{xxx} In accordance with 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.”

^{xxxii} By Application filed on November 15, 2011.

^{xxxiii} Affidavits of Milad Sassine, Rodney Baptiste and James Calvin Prescott filed on November 15, 2011, of Kevin Ward filed on January 1, 2012, and of Verrol Bowman and Keith Francis filed on January 30, 2013.

^{xxxiv} At paragraph 3 of Affidavit of Milad Sassine filed on November 15, 2011.

^{xxxv} See Notice published at the Registrar’s office dated November 24, 2011 and signed by the Deputy Registrar; and Certificate of Compliance signed by the learned Magistrate for District 1 Kingstown filed on November 7, 2011 pursuant to section 7 (1) (b) of the Possessory Titles Act.

^{xxxvi} Supra. at note xxv.