

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2012/18

IN THE MATTER OF AN APPLICATION BY ULRIC MIGUEL FOR A DECLARATION OF POSSESSORY
TITLE OF LAND

BETWEEN:

ULRIC MIGUEL

Applicant

AND

NATALIE MIGUEL NEE SARDINE

JASON SARDINE

NOEL SARDINE

MAGDALINE SARDINE

Respondents

Appearances: Mr. Grant Connell for the Applicant
Mr. Duane Daniel for the Respondents

2013: November 4 and 22

2014: August 20

JUDGMENT

THOM J.: On February 21, 2012, Mr. Ulric Miguel (Mr. Miguel) made application for a declaration of possessory title to a parcel of land situate at Clare Valley and measuring approximately 32,809 sq. ft. (the disputed land).

[2] In his affidavit in support of his application Mr. Miguel deposed that the disputed land had belonged to his grandmother who died in 1976. His grandmother left his mother in possession of the disputed land and his mother gave it to him. He immediately went into possession and he has been in exclusive uninterrupted possession of the land ever since.

[3] Mr. Earl Cooke and Ms. Cleopatra Miguel of Clare Valley filed affidavits in support of Mr. Miguel's application.



[4] The application was advertised in accordance with the Possessory Titles Act¹. The Defendants entered an opposition to the application. The First Defendant Mrs. Natalie Miguel nee Sardine is the mother of Mr. Miguel. The other Defendants are her siblings.

[5] The Defendants contended that at no time was Mr. Miguel in continuous occupation of the land for 12 years without acknowledging or attorning to the superior title of the beneficiaries. Mr. Miguel was a licensee.

EVIDENCE

[6] Mr. Miguel testified and he called one witness Ms Cleopatra Miguel. Mr. Noel Sardine, Mrs. Natalie Miguel and Mr. Jason Sardine testified on behalf of the defendants.

[7] Mr. Miguel relied on his affidavit dated 3rd June 2011 and which was filed on 21st February 2012. In his affidavit Mr. Miguel deposed that the land was originally possessed by Mrs. Dorothy Sardine who died in 1976 leaving his mother Mrs. Natalie Miguel in possession of the disputed land. His mother gave him the land and he immediately went into possession of it and has remained in possession of it for over thirty (30) years including his mother's period of possession. His possession was never disturbed by a person claiming a superior title. He cultivated crops such as corn, ground provisions and bananas on the disputed land. He is also building a home on the disputed land.

[8] Under cross-examination, Mr. Miguel testified that his grandmother owned other lands and that she died intestate. At the time of her death himself and his brother Augustine lived with her. Mr. Miguel agreed that his mother and her siblings were the beneficiaries of his grandmother's estate but he testified that they went away to the United States of America (USA) and they showed no interest in the property. He had no contact with his mother. Once per year his mother sent him a letter on his birthday.

[9] Mr. Miguel testified further that there is a house on the disputed land and he is claiming the house. He agreed that his cousin Anthony also called Cliff commenced construction of the house but Anthony subsequently went to live in the USA between 1991-1992 and he completed the house and resided there from 1993.

[10] Mr. Miguel further testified that from the time his grandmother died himself and Augustine were in control of the Grandmother's property. Mr. Augustine Miguel was in charge. He paid the taxes. They worked the entire five acres of land. He did not ask anyone permission to occupy the disputed land. His mother always told him he could get a piece of land from her share of the estate. He clarified that while he went to reside on the land in 1993 his mother had given it to him in 1976. After the laws changed, about four to five years ago he decided to do something about the disputed land.

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[11] Mrs. Cleopatra Miguel testified that she is the niece of Mr. Miguel. Mr. Miguel cultivated the disputed land and lived on it. She visited her Uncle on the disputed land from since she was a child. She is now thirty-nine (39) years old. Ms Natalie Miguel visited a few times and on two occasions she stayed with her parents. At no time did Mrs. Natalie Miguel state that she wanted Mr. Miguel to give up possession of the land.

[12] Under cross-examination, Ms Miguel testified that she is the daughter of Mr. Augustine Miguel who is Mr. Miguel's brother. She does not know the extent of Mrs. Dorothy Sardine's estate. She had lived in the house on the disputed land with her children from 2000-2010. Mr. Augustine Miguel was in charge of the land. He gave her permission to go on the land. He also permitted Mr. Miguel to go on a part of the land which he is now claiming.

[13] Mr. Miguel further testified that Mr. Noel Sardine visited St Vincent on a number of occasions she could not recall the number of times but it was more than four times. He stayed at her parents Guest House in Kingstown Park.

DEFENDANT'S EVIDENCE

[14] Mr. Noel Sardine testified that he is the son of Mrs. Dorothy Sardine who died intestate. Her estate comprised (a) 1 acre of land at Clare Valley (b) four (4) acres of land at Clare Valley and (c) two rods and 11 poles at Clare Valley. Himself and his siblings the defendants are the beneficiaries of the estate of Mrs. Dorothy Sardine. They assumed control of the property upon the death of their mother. He was to a large extent responsible for managing and making decisions in relation to the estate.

[15] Mr. Miguel and his brother Augustine Miguel and his sister Magdaline's son all lived with Dorothy Sardine before she died. They were all permitted to continue to reside there after she died. Mr. Augustine was made the caretaker and he answered to him.

[16] There was a breakdown in the relationship between Mr. Augustine Miguel and Mr. Anthony Miguel. Mr. Anthony Miguel moved over to the disputed land where he commenced construction of the house that is claimed by Mr. Miguel. Mr. Augustine Miguel contacted them and tried to stop Mr. Anthony Miguel from building but they permitted him to build. Mr. Anthony Miguel subsequently moved to the United States and Mr. Miguel sought their permission to occupy the house and they granted him permission.

[17] The land in dispute was not left solely to Mrs. Natalie Miguel since Mrs. Dorothy Sardine died intestate. In 1995 their brother Mr. Stanley Griffin made application on behalf of the beneficiaries to administer the estate but he died before the administration could be completed.

[18] Mr. Miguel has always recognized him as the person who held sway with respect to what decisions should be made in relation to the estate.

[19] Under cross-examination Mr. Noel Sardine testified that the family is a very close knit family. The last time he visited the disputed land was in 2005. Whenever he visited St Vincent he would visit the estate. Mr. Miguel and his siblings lived with Mrs. Dorothy Sardine on the beach land not on the disputed land. After Mrs. Dorothy Sardine died they made no repairs to the house and the house was damaged by a hurricane. At that time they moved across to another portion of land where there was a small building that was built by the Government when the Government leased the land from Mrs. Dorothy Sardine.

NATATLIE MIGUEL AND JASON SARDINE

[20] The evidence of Mrs. Natalie Miguel and Mr. Jason Sardine supported the testimony of Mr. Noel Sardine. Mrs. Natalie Sardine further testified that she did not give any land to Mr. Miguel. She said she would give her share of the estate to her son Mr. Augustine Miguel.

[21] Under cross-examination Mrs. Natalie Miguel testified that she left St. Vincent in 1975. She returned in 1980, 1992, and in the 1990's. The last time she visited before the trial was five years ago.

[22] Mr. Jason Sardine testified under cross-examination that he left St. Vincent in 1968 and he returned twenty-five (25) years later. He does not know how long Mr. Miguel was in occupation of the disputed land.

SUBMISSIONS

[23] Mr. Connell urged the Court to accept the evidence of Mr. Miguel and submitted that the Defendants were never in physical possession of the property. Mr. Connell further submitted that they had no legal authority to grant permission to Mr. Miguel to occupy the disputed land or to remove him from the disputed land. None of the Defendants sought to get Letters of Administration for the estate of Mrs. Dorothy Sardine. There is an application before the Court for Letters of Administration and it was not made by the Defendants.

[24] Mr. Daniel submitted that Mr. Miguel failed to comply with Practice Direction No.2 of the Possessory Titles Act in that the survey plan was more than three (3) years old.

[25] Mr. Daniel next submitted that Mr. Miguel's evidence in relation to his occupation of the disputed land is conflicting and should be rejected. The Court should accept the evidence of Mr. Noel Sardine. Mr. Miguel occupied the disputed land as a licensee. Mr. Miguel's witness Ms. Cleopatra Miguel's testimony supports this contention. She testified that her father Mr. Augustine Miguel gave Mr. Miguel permission to live on the disputed land.

[26] Mr. Daniel further submitted that Mr. Miguel's testimony that it was only four to five years ago that he decided to do something about the disputed land shows that he did not have the intention to possess the disputed land required for adverse possession. He was living with the hope of getting his mother's share of the estate. He did not have the intention to possess for a continuous period of twelve years.

COURT'S ANALYSIS

[27] Section 3 of the Possessory Titles Act makes provision for a person who claims to be in adverse possession of land to make an application to the Court for a declaration of possessory title to the land. Adverse possession is defined in Section 2 of the Act 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.”

[28] The issue to be decided is whether Mr. Miguel was in adverse possession of the disputed land for a continuous period of 12 years.

[29] In order for the Court to make a declaration of possessory title over the disputed land in favour of Mr. Miguel, the onus was on Mr. Miguel to show that he was in adverse possession of the disputed land for a continuous period of twelve years. To prove adverse possession pursuant to Section 2 of the Act, Mr Miguel had to show that he was in both factual possession of the disputed land and also that he had the intention to possess the disputed land as owner.

[30] It is not disputed by the parties that Mr. Miguel was in factual possession of the disputed property for over twelve (12) years. Rather what is in contention is whether Mr. Miguel's possession was permissive and whether Mr. Miguel had the requisite intention to possess.

[31] It is a settled principle of law that if a person is in possession of land with the permission of the true owner his possession would not be adverse. This principle has been stated in a number of cases including **Moses v Lovegrove** [1952] 1 AER 1279; **Hughes v Griffin** [1969] 1AER 460 and more recently in the case of **Zarb v Parry** [2011] EWCA 1306 where the English Court of Appeal approved the following passage from Megarry and Wade **The Law of Real Property** Seventh edition (editors Harpum Bridge and Dixon) at page 1417, as a correct statement of the law:

“If a person is in possession of land with the permission of the true owner, his possession cannot be adverse. The permission may be expressly given or it may be implied. It will be implied where there has been some overt act by the land owner or some demonstrable circumstances from which it can be inferred that permission was given. It is immaterial whether the squatter was aware of the matters but they must be probative of and not merely consistent with the giving of permission. They must be such that a reasonable person would have appreciated that the user was with the permission of the land owner. Possession with permission which can never be adverse is quite different from the possession in which the land owner acquiescence may be adverse.”

[32] The onus was on the Defendants to show that Mr. Miguel's possession was permissive.

[33] The Defendants gave similar evidence. The evidence is contained in the affidavit of Mr. Noel Sardine at paragraphs 7, 10, 12 and 18. They read as follows:

"7. I acknowledge that upon the death of my mother, AJM (Augustine J. C. Miguel) UM (Ulric Miguel) and AS (Anthony Sardine) were all allowed to stay on the premises whilst acknowledging and respecting the fact that title was to pass to my siblings and I, the generation immediately above them. AJM was asked to be the caretaker of said premises; at all material times he answered to Noel Sardine, who acted as a representative for all the beneficiaries for their interest in the estate.

10. I can also attest that as far as my siblings and I are concerned UM was allowed by us to continue living on the land subject to our permission and graces.

12. Some years after, AS moved to the United States and left his shack. Some time thereafter, UM and AJM had a falling out and UM asked for our permission to move into the shack that AS had built. We then granted permission to UM to live in AS shack.

18. At no time for a continuous period of 12 years or greater did UM occupy any part of the estate of Dorothy Sardine (deceased) without acknowledging or attorning to the superior title of the beneficiaries. UM has always recognized me in particular as the person who held sway with respect to what decisions could be taken with the estate."

[34] Mr. Noel Sardine did not give contradictory testimony on cross-examination, nor did the other witnesses Mrs. Natalie Sardine and Mr. Jason Sardine.

[35] Mr. Miguel in his application at paragraph 4 stated as follows:

"The applicant has been in exclusive and uninterrupted possession of the parcel of land since 1976 after the death of his grandmother Dorothy Sardine who on her death in around 1976 left it to his mother Natalie Sardine who granted him the said parcel and put him in possession immediately."

[36] In his affidavit at paragraph 1 Mr. Miguel deposed:

"1. That my grandmother Dorothy Sardine possessed a parcel of land situated at Clare Valley aforesaid. She died in 1976 leaving my mother in possession of the said parcel of land. I was granted the said parcel by my mother. I therefore went into possession immediately and have been in possession up to the present time."

[37] On this issue under cross-examination Mr. Miguel testified that his mother and her siblings went away, they did nothing in relation to the land. He had no contact with his mother who went away in 1975 except once per year she wrote him a letter on his birthday. Himself and his brother Augustine were in charge of the whole five (5) acres. They were in control of the land for themselves. His mother said her

portion belonged to them. She said he could live on the land. She gave him the disputed land in 1976 but he went on the disputed land in 1993. He did not have permission from anyone to go on the disputed land.

[38] Mr. Miguel's testimony was contradicted in part by his witness Ms. Cleopatra Miguel who testified that the disputed land belonged to her father Mr. Augustine Miguel. Her father was the caretaker of all the lands. He permitted Mr. Miguel to go onto the disputed land.

[39] Having seen and heard the witnesses I prefer the evidence on behalf of the Defendants. I believe the testimony of Mr. Noel Sardine. He was not contradicted. He was forthright in his answers under cross-examination. His account of matters in relation to the estate of Mrs. Dorothy Sardine was straight forward and was supported to some extent by Mr. Miguel's witness Mrs. Cleopatra Miguel. Mr. Miguel gave conflicting testimony. In his application and affidavit he stated that his mother gave him the disputed land in 1976 but he subsequently testified that he got permission from no one to occupy the disputed land. Mr. Miguel's witness Ms. Cleopatra Miguel contradicted his testimony when she testified that her father Mr. Augustine Miguel gave Mr. Miguel permission to occupy the disputed land.

[40] I believe the evidence of Mr. Noel Sardine that their family is a very closely knit family. This is borne out in the evidence which is not disputed that Mr. Miguel, Mr. Augustine Miguel and Mr. Anthony Sardine lived together in Mrs. Dorothy Sardine's house before and after her death. Subsequently they lived together with their family on the other portion of the land. After Anthony left for the United States of America Mr. Miguel went to live in his house, and Ms. Cleopatra Miguel who is Mr. Augustine Miguel's daughter joined him later with her three children and they lived together on the disputed land for ten years being 2000-2010. Mr. Noel Sardine can be described as the "Patriarch". The one who takes the lead in making decisions in relation to the estate of Mrs. Dorothy Sardine. His testimony that it was not until 1993 that Mr. Miguel moved to the disputed land with their permission although at first Mr. Augustine Miguel was not agreeing for him to occupy the house until he was instructed to do so, was supported to some extent by Mrs. Cleopatra Miguel's testimony that her father Augustine who was the caretaker of all the lands permitted Mr. Miguel to live in the house on the disputed land.

[41] Having regard to the evidence I am of the view that Mr. Miguel occupied the disputed with the permission of the Defendants. Mr. Connell's submission was focused not on whether Mr. Miguel had the permission of the Defendants to occupy the disputed land but on whether they had the legal authority to give permission since Letters of Administration was not granted to them, and an application for Letters of Administration was made by someone else.

[42] It is not disputed that Mr. Stanley Griffin now deceased a sibling of the Defendants applied in 1995 for Letters of Administration for the estate of Mrs. Dorothy Sardine and the process has not been completed. This issue was dealt with by the Barbados Court of Appeal in Riley v Braithwaite¹ where the

Court held only the heir-at-law could have given or withheld permission to occupy land forming part of the estate of the deceased.

[43] In the case at bar it is not disputed that Letters of Administration in relation to Mrs. Dorothy Sardine's estate has not been obtained and the Defendants are the beneficiaries of the estate of Mrs. Dorothy Sardine and heirs-at-law and therefore had the legal authority to grant permission to Mr. Miguel to occupy land forming part thereof of the estate of Mrs. Dorothy Sardine.

[44] I also agree with the submission of Mr. Daniel that the evidence shows that Mr. Miguel did not have the intention to possess the disputed land as owner for a period of twelve years. Mr. Miguel acknowledged that the land belonged to the Defendants but that he expected to get a portion of his mother's share. He also testified that Mr. Augustine Miguel was in charge, he paid the taxes. Further Ms. Cleopatra Miguel's evidence is that she and her three children moved into the same house on the disputed land and lived there for ten years not with Mr. Miguel's permission but with Mr. Augustine Miguel's permission who was in charge of the lands including the disputed lands. This further shows that Mr. Miguel did not possess the land as owner.

[45] In conclusion I find that Mr. Miguel has failed to prove that he was in adverse possession of the disputed land for a continuous period of twelve years. I find that he was in possession of the disputed land with the permission of the Defendants and further he did not have the intention to possess the disputed land as owner for a period of twelve years.

[46] **IT IS ORDERED:**

1. The application for possessory title is hereby dismissed.
2. The Applicant shall pay the Defendants cost in the sum of \$5000.00


Gertel Thom
High Court Judge