

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. SVGHCV 2013/0038

IN THE MATTER OF AN APPLICATION BY MARIE-LAURENCE MERTZ FOR A
DECLARATION OF POSSESSORY TITLE OF LAND

AND

APPLICATION FOR DECLARATION OF POSSESSORY TITLE

Appearances:

Ms. Andrea James for the Applicant
Mr. Andreas Coombs for Thomas Gellizeau

2014: April 9th

JUDGMENT

- [1] **COMBIE MARTYR, J. (Ag.):** On 23rd July 2013, the Applicant filed an Application for a declaration of possessory title by twelve years adverse possession, in respect of a portion of land measuring 64,175 sq ft situate at Richmond, Union Island (the land), pursuant to the Possessory Titles Act Cap 328 Revised Edition of the Laws of Saint Vincent and the Grenadines (the Act).
- [2] The Application was supported by the Affidavit of the Applicant and Supplemental Affidavit filed therein on the 23rd July 2013 and 10th October 2013 respectively and Affidavit in response filed on the 4th April 2014. The Affidavits of Annie –Claude Cecile- Marie Tamiotti and Stephanie Browne both of Union Island, filed therein on the 23rd July 2013 and accompanying and other supporting documents were filed therein, in compliance with the Act and relevant Practice Directions.
- [3] On the 7th January 2014, Thomas Gellizeau (the Deponent) filed an affidavit pursuant to Section 15 of the Act, in which he attested to information in relation to the nature of the possession of the land claimed by the Applicant.

THE AFFIDAVIT EVIDENCE FOR THE APPLICANT

- [4] In her Affidavits in support, the Applicant stated that she has been in undisturbed and exclusive possession of the land, which is more particularly described in survey plan referenced as Gr 1274 prepared by Keith Francis Licensed Land Surveyor dated December 2012, for a period of 15 years.
- [5] The Applicant stated that the land was originally owned by John Danielson and his wife Jane Ruth Danielson (now both deceased) but who departed from Union Island in the 1970's, leaving the Deponent in charge of collecting rent from Francois Cheverry with whom the Applicant lived in a common law relationship. The rent was collected by the Deponent on behalf of Kate Danielson, daughter of John Danielson and his wife Jane Ruth Danielson.
- [6] The Applicant asserts that by Statutory Declaration for Possessory Title recorded at the Deeds Registry as Deed No. 456 of 1988, the Deponent acquired title to the land and that in June 1994 by Deed recorded at the Deeds Registry as No. 2117 of 1994, the Deponent sold the land to Francois Cheverry for which said land the Applicant alleges, both the Applicant **and** Francois Cheverry paid in excess of \$100,000.00 to the Deponent, for the said purchase.
- [7] The Applicant referred to and relied on a Judgment of the Court in Claim No. SVGHCV 27 of 2007, as evidence in support of the sale of the land to Francois Cheverry in June 1994.
- [8] The Applicant asserted that since her arrival on the island in 1997, she occupied the premises with her common law husband on the land, during which time they incorporated a company and operated a business jointly, known as "Marie's Restaurant Limited", until the disappearance of Francois Cheverry in 2005.
- [9] The Applicant and her common law husband continued the payment for the purchase of the land from both their joint personal funds and company funds and they jointly maintained the property from 1997. The Applicant further alleged that after the disappearance of Francois Cheverry, she alone continued to maintain the property by effecting structural renovations, landscape maintenance and payment of utility bills and taxes, after the disappearance of Mr. Cheverry, to date.
- [10] The Applicant posited that following the disappearance and/or presumed death of Francois Cheverry in June 2005, the Applicant took charge of the affairs of the land, took possession of the land and has lived and enjoyed peaceably, exclusive, quiet and undisturbed possession of the land from 1997-to date.
- [11] Annie- Claude Tamiotti in her Affidavit attested inter alia that she was the ex-wife of Francois Cheverry and that the Applicant moved into the house on the land which was her former matrimonial home about August 1997 and has been

living there up to present. She also stated that she knows of no one else making possessory claim to the land.

- [12] Stephanie Brown in her Affidavit attested inter alia, that she met the Applicant with her friend Francois Cheverry about 14 years ago living together as a common law couple on the land. Since the disappearance and presumed death of Francois Cheverry, the Applicant continued to live uninterrupted on the land to date.

THE AFFIDAVIT EVIDENCE FOR THE DEPONENT

- [13] The Deponent in his affidavit filed on the 7th January 2014 stated, that he was well acquainted with Francois Cheverry having known him between the period 1980 to 2005 and that he is also well acquainted with the Applicant.
- [14] He stated that the Applicant has been in undisturbed and continuous possession of the land for only **eight** years and **not twelve** years as required under the Act for a Declaration to be made in her favour. He further stated that although Francois Cheverry disappeared and has not been heard of since he went out to sea in June 2005, he has not been declared dead by a Court as required by law.

ORAL TESTIMONY

- [15] On cross examination the Applicant reiterated the contents of her Affidavits and maintained that she moved into the house to live with Francois Cheverry on the land, when she arrived in Saint Vincent and the Grenadines from Martinique in 1997. She conceded that the Deed of Sale by the Deponent to Francois Cheverry dated 1994 for the sum of \$21,000.00, but insisted that despite that, she still paid jointly with Francois Cheverry towards the balance of the purchase price of the land after 1997, from her personal funds and funds from the company's account.
- [16] According to the Applicant Francois Cheverry and herself, paid in total, over \$100,000.00 to the Deponent for the house and land, but conceded that despite that statement, all the receipts for payment of the purchase price presently before the Court are dated prior to her arrival in 1997 and in Mr. Francois Cheverry's name. The Applicant maintained that she was in possession of the land from 1997 and not 2005 as contended by the Deponent.
- [17] The Deponent reiterated the contents of his Affidavit and stated that he sold the property to Mr. Cheverry in 1994 for \$21,000.00. He added that Mr. Cheverry originally paid rent in the 1980's, but stopped paying rent in about 1988.

- [18] On cross examination, the Deponent stated that he was well acquainted with Mr. Chevery and that he and his brother did construction and repair works on the property for Mr. Chevery. The Deponent stated that the Applicant had no dealings with the property and did not contribute to its purchase.
- [19] The Deponent admitted that when the Applicant came to Saint Vincent from Martinique she had 'some change' and that Mr. Chevery had no money, and that he the Deponent gave Mr. Chevery money for alcohol and cigarette. He was adamant that he never received any money from the Applicant for rent, purchase price of the land or taxes and that all monies received by him were paid by Mr. Chevery.

ORAL SUBMISSIONS FOR THE PARTIES

- [20] Counsel for the parties in their oral submissions restated each party's case as set out in their respective affidavits and oral testimony.

THE APPLICANT

- [21] Counsel for the Applicant submitted that by virtue of twelve years adverse possession which commenced in 1997 when the Applicant moved in with Francois Chevery, and which continues to date, the Applicant is entitled to a Declaration of Possessory Title to be made in her favour.
- [22] Counsel asserted that the Applicant is not a licensee as she contributed towards the purchase price of the land and although the Applicant does not have a claim to legal title, she does have a claim to the land by virtue of adverse possession. Counsel also noted that Section 12 of the Act entitles the Applicant to an ex parte Judgment where no opposition to a Declaration of Possessory Title is made, as is the case currently before the Court.
- [23] In conclusion Counsel submitted that the Applicant has satisfied the requirements for adverse possession in that she has been in undisturbed quiet possession for over twelve years from 1997 up to present.

THE DEPONENT

- [24] Counsel for the Deponent submitted that the Applicant's claim relates to contribution towards the purchase price and maintenance of the property and is therefore a claim for title other than by adverse possession and not the claim currently before the court.
- [25] According to Counsel unfortunately for the Applicant, her cohabitation with Mr. Chevery whilst he was still legally married could only have given the Applicant rights as a licensee and that the Applicant could not, during that

period of cohabitation, have had the requisite intention for adverse possession: *animus possendi*.

- [26] According to Counsel, the Applicant's Affidavit dated 23rd July 2007 in which she stated "Mr. Cheverry and I lived together for sometime on the land as a common law couple before his disappearance.... Mr. Cheverry and I planned on raising a family of our own on the land....' evinced a clear intention to start their lives together and to occupy the property together, an intention which could not have been to exclude Mr. Cheverry from the land.
- [27] For Counsel, the only question for the Court is, whether the Applicant had the requisite intention and if so, when did it commence. According to Counsel the Applicant's intention to possess the land as owner, could only have commenced in 2005 after Mr. Cheverry went to sea and did not return. Therefore the period between the years 2005 to 2013 when the application was filed, does not satisfy the twelve years of adverse possession as required by law, it being only eight years.

ANALYSIS OF THE FACTS AND EVIDENCE AND APPLICATION OF THE LAW ON ADVERSE POSSESSION

- [28] Section 2 of the Act (Interpretation) provides that in this Act: "**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.

Section 3 (1) of the Act provides that:

A person who claims to be in adverse possession of a piece or parcel of 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.

Section 15 (1) of the Act provides that:

A person who has information in relation to the nature of possession of the piece or parcel of land by the Applicant, may file an affidavit with the Registrar whether or not he has an interest in the said piece or parcel of land or whether or not he intends to file an opposing claim with the Registrar.

- [29] On review of the above provisions of the Act and on application to the facts and evidence in this case, I note that the Applicant by her own evidence admits that from August 1997, she lived with Francois Cheverry who became the owner under written title of the land in 1994, by Deed recorded at the Deeds Registry as No. 2117 of 1994, three years before the Applicant first arrived in Saint Vincent and the Grenadines. The Applicant further admits that she lived with

Francois Cheverry in a common law relationship from August 1997 before his disappearance in June 2005.

[30] It is not in dispute that the Applicant lived with Francois Cheverry in a common law relationship for eight years from 1997-2005. The question is whether during that time, the Applicant could have had *factual possession of an exclusive and undisturbed nature for a continuous period of that period of eight years, of the requisite twelve years, accompanied by the requisite intention to possess the said land as owner thereof, during that said period, as required by law.*

[31] The issue of what constitutes '**possession**' has been defined by Slade J in the case of *Powell v McFarlane* (1977) 38 P & CR 452 and adopted by Lord Browne-Wilkinson in the House of Lords case of **J A PYE (OXFORD) LTD & ORS v GRAHAM AND ANOTHER [2002] UKHL 30** as follows:

“(1) *In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land as being the person with the prime facie right to 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.*

(2) *If the law is to attribute possession of land to a person who can establish no paper possession, he must be shown to have both factual possession and the requisite intention to possess (animus possidendi)”*

(3) *Factual possession signifies an appropriate degree of physical control. It must be single and exclusive possession..... but broadly I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question, as an occupying owner might have been expected to deal with it, that no one else has done so”*

[32] On the matter of what constitutes '**Intention to possess**' Lord Browne-Wilkinson adopted the requirement of Slade J as follows: as requiring an *“intention in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title, if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow”.*

[33] In a Court of Appeal case from Saint Vincent and the Grenadines- Civil Appeal No. 17 of 2010: **MICHAEL FINLAY (duly appointed Attorney on record for Muriel Findlay Small) v ELROY ARTHUR**, the Court stated that Section 2 of the Act requires a '*coincidence of factual possession and intention to possess*'. In other words without the requisite intention, in law there can be no adverse possession or expressed another way, without the requisite intention, possession alone for the 12 year period will not suffice”.

CONCLUSION

- [34] On the facts and evidence in this case, Francois Cheverry was the registered title owner of the land from 1994 and as such, he is prime facie entitled to and had the right to possession of the land from that date.
- [35] The Applicant having lived with Mr. Cheverry as his common law wife, at his invitation and with his consent from 1997, the Court finds not only that there was no *'factual exclusive (single) and undisturbed possession'* by the Applicant during the eight year period 1997-2005 before the disappearance of Francois Cheverry, but also, there could not have been *'the requisite intention to possess the said land as owner'* which said coincidence must be established for a period of twelve years or more, before a Declaration of Possessory Title under this Act, can be made in favour of the Applicant.
- [36] The alleged 'possession' of the Applicant, enjoyed with the consent of the title owner is not adverse. As such this Court finds that the Applicant has not satisfied the provisions and criteria set down in the Act for a Declaration of Possessory Title to the land to be made in her favour, in that the twelve year period for adverse possession by the Applicant of the land of Francois Cheverry, could only commence, after his disappearance in June 2005.
- [37] The adverse possession of the Applicant can therefore only commence after June 2005 and crystallize on or about July 2017. Accordingly twelve years adverse possession in accordance with the Act, have not passed.

ORDER

1. The Applicant's application for Declaration of Possessory Title fails.
2. As agreed between the parties, I make no order as to costs

Cynthia Combie Martyr
High Court Judge (Ag)