



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COLONY OF MONTSERRAT
(CIVIL)
A.D 2014

CLAIM NO: MNIHCV2008/0015

BETWEEN:

DONALD LOCKER

Claimant

and

[1] CHARLES WEEKES
[2] WILLIAM WEEKES
[3] JOSEPH WEEKES
[4] REGISTRAR OF LANDS
[5] HON. ATTORNEY GENERAL

Defendants

Appearances:

Mr. David Brandt for the Claimant

Mr. Hogarth Sergeant for the 1st, 2nd, and 3rd Defendants

Ms Amelia Daley for 4th and 5th Defendants

2013: September 19
2014: January 13
2014: January 30

Judgment

- [1] **Redhead, J. (Ag):** The Claimant Donald Locker in this action filed a Fixed Date Claim against the Defendants seeking the following Orders:
- i. An Order that the proprietorship in the register of parcel 14 Block 14/97 be rectified by removing the names of the 1st, 2nd and 3rd Defendants there-from and by replacing the Claimant as Sole Proprietor on the ground that the registration was obtained by fraud or mistake.
 - ii. That the cost of application may be met by the 1st, 2nd and 3rd Defendants.

- [2] The Claimant Donald Locker left Montserrat for England in or about the year 1959. He was then about 19 years old. He left England and went to New York. It appears that the Claimant first returned for a brief period, in or about 1974 to Montserrat. The Claimant by my calculation would by then have been away from Montserrat for at least 15 years.
- [3] The Claimant in his statement of claim alleges that at all times he, through his predecessors in title owned the Land in question absolutely, be peaceful open and uninterrupted possession without permission of any person lawfully entitled to such possession for over 50 years.
- [4] The Claimant also claims that after the death of his mother, he continued to occupy the house structure there until he migrated abroad.
- [5] In my opinion, this allegation cannot be maintained for the reason that by the evidence he left his mother in the house and migrated to England. Moreover the Claimant's witness Sylvia Warner in cross examination said Donald Locker left Montserrat in 1959. Since 1959 Donald Locker has not occupied the house.
- [6] In fact, the Claimant himself says in cross examination **"In 1959 my mother was the owner of the land; I have never lived on the land since my mother died about a year ago."**
- [7] Donald Locker also says that he gave permission to Ellen to work the land in 1974. There was an old house on the land. There is every indication that in 1974 when the Claimant returned to Montserrat his mother was no longer living on the land but had moved to New York.
- [8] The Claimant is laying claim to Parcel 97 Block 14/4 through his predecessor in title who owned the land absolutely through uninterrupted possession for over 50 years.

- [9] In his Statement of Claim he alleges that in or about the year 1974 Ellen Weekes, the daughter of Mary Weekes, the mother of 1st, 2nd and 3rd Defendants through whom they claim, sought permission from the Claimant to cultivate Block 14/4 Parcel 97. The Claimant gave permission to the said Ellen Weekes to occupy the land and cultivate it. There-upon the said Ellen Weekes took possession of the said land and cultivated it for many years until her death.
- [10] The Claimant also alleges that the 1st, 2nd and 3rd Defendants and their predecessors occupied the land with the permission of the Claimant.
- [11] The 1st and 2nd Defendants in their defence deny that the Claimant through his predecessors in title owned the land absolutely or at all but allege that the land was owned by Charles Weekes who gave each of his children a parcel of land to include James Daniel Weekes.
- [12] James Daniel Weekes had a child by the name of Diana Weekes who migrated to United States of America in the 1950's where she later died. She left the property to Mary Jane Weekes and Ellen Weekes.
- [13] The Defendants allege that Mary Jane Weekes lived on the said property and the first and second Defendants were all born on the said lands.
- [14] The said Ellen Weekes was the mother of the first and second Defendants. The second Defendant in his defence states that in or around April 1998 the lands were duly advertised and the Claimant through his Solicitor wrote to the second Defendant's Solicitor but never pursued the matter.
- [15] The Claimant said in cross examination **"I was last in Montserrat years ago, I am not sure of the year it was in the 70's. In the 70's I made effort to claim the land."**

- [16] Later in cross examination he said **"I don't remember making a claim to the land in 2008. I remember I went to a Lawyer I don't remember his name. The Lawyer I went to was applying for some job, he dropped my case."**
- [17] This evidence in my opinion supports the second Defendant's assertion that the Claimant through his Solicitor wrote his Lawyer a letter but never pursued the matter.
- [18] I ask the question: Why would the Claimant make an attempt to claim the property if he knows that he owned it?
- [19] The Claimant asserts that he was given the property by his mother; when he was asked by the Court when he was given this property? His response was **"when he was 4 or 5 years old, this land was handed over to him."**
- [20] In my judgment there are two fundamental legal problems here as the Claimant's claim to ownership of the land is concerned.
- i. An infant cannot legally own land. If an infant is to have the benefit of the ownership of land, the land must be transferred to trustees who would hold the land for the benefit of the infant until he attains the age of 21 years.
 - ii. Title to land cannot pass to anyone by word of mouth.
- [21] The Claimant alleges that when he visited Montserrat in 1974 he gave permission to Ellen to work the land.
- [22] The Claimant had no title to the land. He did not own the land, therefore he cannot legitimately give anyone permission to occupy the land. His so-called permission was of no effect, in Law null and void.

- [23] Mr. David Brandt Learned Counsel for the Claimant in his written submissions contends that in or about the year 1974 Ellen Weekes the daughter of Mary Weekes who is the mother of the 1st, 2nd and 3rd Defendants and through whom they claim, sought permission from the Claimant to cultivate Block 14/4 Parcel 97 and the Claimant gave permission to Ellen Weekes to occupy the land and cultivate it. There upon the said Ellen Weekes took possession of the said land and cultivated it for many years until her death.
- [24] Mr. Brandt in his statement contends that the said lands were occupied by 1st, 2nd and 3rd Defendants and their predecessors with the permission of the Claimant.
- [25] The second Defendant in his defence alleges that Mary Jane Weekes lived on the land and the 1st, 2nd and 3rd Defendants were all born on the land. The second Defendant in particular says that he had been in occupation of the lands for upwards of twelve (12) years.
- [26] There can be no doubt therefore that the Defendants have been in occupation and possession of the lands in question. The Claimant contends that the occupation was with his consent. I have ruled that he could not in Law give consent because he did not have title to the land. The Defendants would therefore have been in uninterrupted possession of the land for more than twelve (12) years without the consent of the owner.
- [27] The Claimant is seeking an order for rectification of the Land Register by removing the Defendant's name and inserting that of the Claimant on the ground of fraud or mistake.
- [28] Ms Daley, Learned Counsel submitted on behalf of the fourth and fifth Defendants that the Court has the jurisdiction to rectify the register where it is satisfied that the registration was obtained by fraud or mistake Section 140(1)¹

¹ Registered Land Act

- [29] Learned Counsel Ms Daley argues that there are no allegations of fraud against the fourth and fifth Defendants and there is no evidence of fraud. She refers to **Derry v Peek**² in which Lord Herschell explained the meaning of fraud.
- [30] Ms Daley contends that the fourth Defendant did not register the 1st and 2nd Defendants as absolute owners of the parcel of land under any mistake. Learned Counsel refers to **Nolder Martin v The Hon. Attorney General of Antigua and Barbuda**³.
- [31] In that case Thomas J adopted the definition of mistake as defined in Oxford Dictionary of Law which defines mistake as “**Misunderstanding or erroneous belief about a matter of fact.**”
- [32] Learned Counsel submitted that the error made in this circumstance is not an error of fact.
- [33] Learned Counsel Mr. David Brandt on behalf of the Claimant in his written submissions argues that at all material time the Claimant through his predecessors in title to include his mother owned the land absolutely by peaceful open and uninterrupted possession without permission of any person lawfully entitled to such possession for over fifty (50) years.
- [34] Mr. Brandt contends that after the death of his (the Claimant's) mother Sarah L. Locker on September 10, 1993, the Claimant continued to occupy the land and chattel house structure thereon until he migrated abroad. The land was never abandoned.
- [35] I dealt with this issue at the beginning and reiterate that this allegation cannot be sustained by the evidence that the Claimant left Montserrat in 1959.

² [1886-90] All EReports P1 ATP22

³ ANUHCV2003/474

- [40] Mr. Brandt then contends as it is quite clear **"In or about the year 1974 the Claimant came back to Montserrat. The land was not cultivated at the time and no one occupied the land."**
- [41] On a strict chronological interpretation and analysis of what Mr. Brandt has said, it means that the Claimant would have come back to Montserrat before he had left.
- [42] Mr. Brandt argues that in or about the said year 1974, Ellen Weekes the daughter of Mary Weekes who is the mother of the 1st, 2nd and 3rd Defendants and through whom they claim, sought permission from the Claimant to cultivate Block 14/4 Parcel 97. The Claimant gave permission to the said Ellen Weekes to occupy the said land and to cultivate it for many years until her death.
- [43] During her lifetime, the Defendants who were her children lived with her and continued to occupy the land after her death.
- [44] Mr. Brandt argues that the land was occupied by the 1st, 2nd and 3rd Defendants and their predecessors with the permission of the Claimant.
- [45] The Defendants made application to be registered as proprietors of the land. Mr. Brandt contends that the application which was supported by Affidavits was obtained by fraud or mistake in that the land was never owned by their grandmother.
- [46] In my Judgment the Defendants were not claiming the land through their grandmother. They were claiming a prescriptive title by being in open and uninterrupted, undisturbed occupation without the consent of the owner whoever he may be.
- [47] Mr. Brandt, Learned Counsel argues that the 4th Defendant erred in registering the names of the 1st, 2nd and 3rd Defendants with absolute title in that the Affidavits do not satisfy the

requirements of the Registered Land Act. They do not show that the 1st, 2nd and 3rd Defendants and the persons through whom they claimed, acquired the land by peaceable open and uninterrupted without permission of any person.

- [48] Finally Mr. Brandt submits that the Defendants in their defence never denied that the Claimant gave their mother, through whom they claim, permission to cultivate the land. Therefore she became a tenant at will having sought and obtained permission from the landlord.
- [49] Even if the Claimant owned the land and was authorized by Law to give the Defendants' mother permission to occupy the land and the Claimant did give permission without more then she would have become a Licensee.
- [50] Mr. Sergeant Learned Counsel for the Defendant in his Skeleton Argument says that the Claimant claimed that he was given the land by his mother. However, the Claimant never produced any documents to establish his mother's ownership of the land, no evidence to this effect that Sarah Locker had a deed to the land. He argued that rectification by the Court may be achieved if the Court is satisfied that the registration was obtained by fraud or mistake.
- [51] Mr. Sergeant contends that there was no false representation by the Defendants, neither was there any mistake by the fourth Defendant. He refers to **Ruff and Roper** at page 883 where the learned authors outlined the conditions whereby the Court would rectify a register.
- [52] Having regard to the forgoing I hold that the Claimant never owned Block 14/4 Parcel 97. His purported permission to give consent to occupy the land was of no effect.

- [53] The Defendants were in peaceful uninterrupted possession of the land for more than 12 years without permission from anyone.
- [54] Their application to claim the land was advertised. The Registrar of Lands with knowledge of those facts properly in my view granted the Defendants' Application and registered the land in their names.
- [55] The Application of the Claimant to rectify the Register of Lands is denied.
- [56] Costs to the 1st and 2nd Defendants to be paid by the Claimant to be agreed, if not agreed to be assessed on a Prescribed Cost basis.



Albert J. Redhead
High Court Judge