

THE EASTERN CARIBBEAN SUPREME COURT
 IN THE HIGH COURT OF JUSTICE
 SAINT VINCENT AND THE GRENADINES
 HIGH COURT POSSESSORY TITLES CLAIM NO. 71 OF 2009
 BETWEEN:



ALFRED ST. CLAIR NEVERSON

Applicant

AND

BRENDA NEVERSON

Respondent

Appearances: Mr. Moet Malcolm for the Applicant.
 Mrs. Kay Bacchus-Browne for the Respondent.

 2013: May 7
 June 10

JUDGMENT

[1] **THOM, J:** On 16th December, 2009 Alfred Neverson made an application for a declaration of Possessory Title of a parcel of land situate at New Grounds. The Application was made pursuant to the Possessory Title Act Chapter 328 of the Laws of St. Vincent and the Grenadines ("The Act").

- [2] The application was duly published in The Vincentian and News newspaper on the 17th September, 2010 and 22nd October, 2010 in accordance with Section 7 of the Act.
- [3] On 18th October, 2010 Brenda Neverson filed an Entry of Appearance Pursuant to Section 7(2) of the Act objecting to the application of Alfred Neverson.
- [4] On the 7th December 2010 Brenda Neverson filed a defence. By Order of the Court this defence was deemed to be a claim for the purposes of Section 9 of the Act. Brenda Neverson alleges that a portion of the land, the subject of the application of Alfred Neverson and measuring 3,725 sq.ft. (the disputed property) forms part of the estate of her deceased father Albert Neverson.
- [5] At the hearing, Alfred Neverson testified and he called two witnesses being Bethel Mathias and Lennox Mathias. Brenda Neverson gave evidence and she called one witness Reynold Neverson.
- [6] Alfred Neverson's case is that the land, the subject of this application belonged to his grandfather Ralph Neverson. Ralph Neverson had a small wooden house on the land. His mother Esty Neverson lived with his grandfather and took care of him until he died. He and some of his siblings also lived there. After Ralph Neverson died he continued to live there with his mother. His other siblings eventually moved leaving himself and his mother. He built a concrete basement where the wooden house was situate and he and his mother lived there. His mother died in 1981. He continued to reside on the land and built the upper floor in the 1980's. He planted orange and mango trees on the land. Since the death of his mother in 1981 he has been in absolute control of the land.
- [7] Alfred Neverson also testified that Albert Neverson also lived in New Grounds. Almost daily he passed by the land and went to another portion of land near by. Albert Neverson never objected to him constructing a concrete house on the disputed property. After Albert Neverson fell ill he visited him every Sunday at his home. During his life time Albert Neverson never instituted any proceedings against him for trespass or possession of the

disputed property. Brenda Neverson, her mother and her siblings stopped living in New Grounds since in the 1970's.

- [8] The evidence on behalf of Brenda Neverson is that the disputed property belonged to her father Alfred Neverson. In 1986 he made a Statutory Declaration of Possession of the disputed property. When Albert Neverson died in 2000 the disputed property formed part of his estate. Albert Neverson had permitted the mother of Alfred Neverson who was his sister and her children to reside on the disputed property rent free. The water bill is still being paid in the name of Albert Neverson even though it is paid by Alfred Neverson. A copy of the water bill was exhibited. Alfred Neverson commenced construction of a concrete structure around the existing chattel house when he returned to live at the property in 1981 after his mother's death. Construction of the upper floor did not commence until the late 1990's. Around late 2000, her brother Reynold Neverson warned Alfred Neverson not to construction the upper floor. In 2001 Reynold Neverson offered to sell Alfred Neverson the disputed Property but he declined due to financial difficulties.

ISSUES

- [9] The sole issue is whether Alfred Neverson has been in adverse possession of the disputed property for a continuing period of twelve years.

SUBMISSIONS

- [10] Learned Counsel Mr. Moet Malcolm urged the Court to accept the evidence on behalf of Alfred Neverson. Mr. Macolm stressed that Brenda Neverson and her witness, her brother Reynold Neverson removed from New Grounds while they were still children and after their parents separated in the 1970's they lived in Calliaqua some twenty(20) miles away from New Grounds. They never returned to live in New Grounds. They are not familiar with what happened at the disputed property. No challenge was ever made to the possession

of the disputed property by Esty Neverson after Ralph Neverson's possession after his mother Esty Neverson died in 1981. The first challenge was made when the entry of appearance was filed on the 18th October 2010, long after Alfred Neverson had acquired the disputed property by adverse possession.

- [11] Mr. Malcolm submitted that the fact that the water rates were paid in Albert Neverson's name was not an acknowledgement that the land was being held for Albert Neverson. See **Vincent Prescott v Irmin Yorke and Ena Baptiste**. Mr. Malcolm also submitted that Alberton Neverson and his descendants were never in possession of the disputed land.
- [12] Mr. Malcolm further submitted that Alfred Neverson was in factual possession of the disputed property in excess of twelve years and he had the intention to possess the land as owner. His intention was demonstrated in his construction of a concrete house on the disputed property commencing from 1981. He resides in the said house to this day.
- [13] Mrs. Kay Bacchus-Browne submitted that Alfred Neverson lied regarding the fact that Albert Neverson had laid claim to the land. He did not accept that the water bill was in the name of Alfred Neverson. Accordingly, pursuant to Section 26 of the Act his application should be dismissed. Alfred Neverson admitted that to get the water connected to the land he had to get the permission of Albert Neverson.
- [14] Ms. Kay Bacchus-Browne further submitted that Alfred Neverson did not have exclusive possession of the disputed property. His siblings also lived at the disputed property. Also Alfred Neverson occupied the disputed property as a tenant at the will of Albert Neverson.

After Albert Neverson's death his beneficiaries stopped Alfred Neverson from continuing with the construction of the house and offered to sell him the disputed property. Alfred Neverson paid no taxes for the disputed property.

FINDINGS

[15] Section 3 of the Possessory Titles Act reads as follows:

"3(1) A person who claims to be in adverse possession of a piece or parcel of land in St. Vincent and the Grenadines shall be entitled to make an application to the Court for a declaration of Possessory Title to the said land."

[16] 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 St. 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."

[17] The onus is on the applicant to prove on a balance of probabilities that he has been in adverse possession of the land for a period of twelve years.

[18] Both sides agree that the disputed property was originally owned by Ralph Neverson the grandfather of both Alfred and Brenda Neverson. It is also not disputed that Alfred Neverson, his mother Esty Neverson and some of her children resided on the disputed

property with Ralph Neverson who died in 1956. It is further not disputed that Esty Neverson continued to reside at the disputed property until her death in 1981.

[19] Having seen and heard the witnesses, I believe the evidence on behalf of Alfred Neverson. He lived at the disputed property all his life. While some of his siblings also lived there, I believe his evidence that by 1981 they had all moved and were living elsewhere. I find by 1981 they were all adults since the evidence shows they were all children when they lived with their mother and grandfather at the disputed property and the grandfather died in 1956. There is no evidence that any of his siblings exercised any acts of ownership over the disputed property.

[20] The uncontradicted evidence is that Alfred Neverson resided at the disputed property after his mother died in 1981 and he built a concrete house on the disputed property which commenced in the 1980's. Alfred Neverson's testimony that throughout the period of construction indeed throughout the period that he resided on the disputed property Albert Neverson never sought to interrupt his possession of the disputed property. Albert Neverson never made any objection to him constructing a concrete house on the land.

[21] I also find that there is no evidence that Albert Neverson permitted Alfred Neverson to reside on the disputed property or to construct the concrete house. In the 1980's when Alfred Neverson commenced construction of the concrete house Brenda Neverson and Reynold Neverson had long ceased to reside at New Grounds. They had no knowledge of what was happening in relation to the disputed property. I agree that possession would not be adverse if it is enjoyed with the permission of the owner or a person who has legal

authority to do so - see Hughes v Griffin 1967/WRL p.23. Likewise permission granted by a person other than the owner who has no legal authority to do so is of no effect in relation to adverse possession - see Riley v Braithwaite and Another (1979) 37 WIR p.66. In 1981 when Alfred Neverson commenced construction of the house Albert Neverson was not the lawful owner of the disputed property.

[22] In relation to the water bill being paid in the name of Albert Neverson, I agree with Mr. Moet Malcolm, that the payment of water bill and taxes in the name of the legal owner does not prevent time from running for the purpose of adverse possession. What is critical is whether the person claiming adverse possession is in factual possession with the intent to possess as owner.

[23] Albert Neverson on 21st November 1986 made a Statutory Declaration that he was in uninterrupted possession of the land since 1956. His father Ralph Neverson died in 1956. There is no evidence that Albert Neverson ever exercised any acts of ownership over the disputed property at any time. At the time of the death of Ralph Neverson, Esty Neverson and her children occupied the disputed property from 1956 to the time of her death in 1981 and the Applicant continued to occupy the property even after Albert Neverson's death in 2000. It is a well established principle of law that a Statutory Declaration of exclusive, uninterrupted possession of land for a period of twelve years does not vest legal title to the land in the person making the declaration - see Gordon Charles (Also known as Agustus James Alexis, Administrator-in the Estate of Lorna Alexis deceased, by his Attorney Raymond Scott), v Clarie Holes.

[24] Since their parents separated in 1970's, Brenda and Reynold Neverson and their other sibling rarely visited New Grounds. The evidence of Reynold Neverson is that he visited when his brother 'Busta' who resides outside of St. Vincent visits St. Vincent. The evidence on behalf of Brenda Neverson is that Reynold and 'Busta' Neverson visited New Grounds and told Alfred Neverson to cease construction of the concrete house. I do not believe this testimony, I believe the testimony of Alfred Neverson that when they visited in 2000 the house was completed. In any event it is a settled law that extra judicial acts do not constitute acts of interruption of adverse possession. The principle is outlined by Sir Vincent Floissac in the case of **Florence Louise Belfon v Lester McIntosh** Civ Ap. No. 13 of 1944 as follows:

"The Respondents extra-judicial protests, objections and demands do not in law constitute acts of ownership (i.e. acts which evince an intention to assert ownership) or acts of possession (i.e. acts which evince an intention to assume, retain or regain possession) or acts which legally interrupt, disturb or otherwise affect the quality of adverse possession."

[25] While Brenda Neverson testified that Albert Neverson paid taxes for the disputed property, no tax receipts were exhibited. In any event merely paying taxes without more does not constitute possession.

[26] In relation to Section 26(1) of the Act to which Ms. Kay Bacchus-Browne refers, I respectfully disagree with Counsel's submission. Section 26(1) reads as follows:

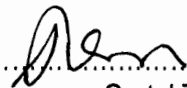
- (l) If in the course of any proceedings under this Act any person fraudulently knowingly or with intent to deceive, makes, assists, joins in or is privy to the making of any material false statement or representation, or suppresses, withholds or conceals or assists or joins in or is privy to the suppression, withholding or concealing from the court any material document, fact or matter of information, any declaration of title obtained by means of such fraud or falsehood, shall be null and void except as against a bona fide purchaser for valuable consideration without notice and a second or subsequent mortgage in respect of that piece or parcel of land."

- [27] Section 26(1) deals with situations where the court has already granted a declaration of possessory title and the grant was obtained on false statements or suppression of material facts. In such a case the declaration is null and void except against a bona fide purchaser and a subsequent mortgage.
- [28] Alfred Neverson by his evidence has proved that he resided on the disputed property all of his life. Brenda Neverson acknowledged that she does not know from what period he resided on the disputed property. She does not know Ralph Neverson. She was about four(4) years old when he died. Reynold Neverson also could not contradict the testimony of Alfred Neverson. He testified that he does not know when Alfred Neverson went to live at the disputed property. When the basement was constructed he was living in Canada.
- [29] I find that Alfred Neverson demonstrated that he had the intention to occupy the disputed property as his own by constructing a concrete building on the disputed property and by residing there and planting trees on the disputed property. There is no evidence to contradict Alfred Neverson's testimony that he has been residing in the concrete house ever since he constructed it, the construction having commenced in 1981. Indeed Brenda Neverson in her examination in-chief testified that construction of the lower floor commenced in 1981 and by 1984 it had a roof.

[30] In conclusion I find that Alfred Neverson has proved on a balance of probabilities that he was in adverse possession of the disputed property. I find that he has satisfied the requirement of the Act for the grant of a declaration of possessory title of the land described in his application.

[31] It is Ordered as follows:

- (1) Judgment is entered for the Applicant.
- (2) A declaration is hereby granted of Possessory Title in favour of Alfred Neverson of one parcel of land situate at New Grounds and measuring 7,465 sq. ft and shown on Survey Plan C15/139.
- (3) The claim of Brenda Neverson is dismissed.
- (4) Brenda Neverson shall pay Alfred Neverson costs in the sum of \$7,000.00



Gertel Thom
High Court Judge