

COMMONWEALTH OF DOMINICA
DOMHCV2009/0388

BETWEEN:

GILBERT GUYE

Claimants

SHIRLEY GUYE

and

CLARENTON ANDREW

Defendant

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Mary Roberts for Claimants

Mr. Steven Isidore and Mr. Rene Butcher for the Defendant

[2013: February 19th, 28th]

[March 8th]

[May 1st]

JUDGMENT

[1] **COTTLE J:** The claimants are the registered proprietors of a parcel of land at Eggleston measuring 2.125 acres. They purchased the parcel in 2009 from the personal representatives of the former registered proprietors. The claimants say that during negotiations for the purchase they had the land surveyed by Mr. C. Fingal. On his visit in September 2008 Mr. Fingal says that he found the land unoccupied. On a second visit in January 2009 he was confronted by the defendant who claimed ownership.

[2] The defendant says he entered the land in 1995 and remained in continuous occupation until 2010 when the claimants obtained an interim order restraining him from entry unto the disputed parcel. The claimants have brought the present action seeking a declaration that they are the owners of the parcel and a permanent injunction restraining the defendant from trespassing. They also seek damages for trespass.

[3] The defendant's case is that he has been in occupation for more than 12 years before the filing of the claim and is entitled to rely on the Real Property Limitation Act CHAP 54:07 for protection.

[4] Section 2 of that Act reads:

“ After the commencement of this Act, no person shall make an entry for distress, or bring an action or suit, to recover any land or rent, but within twelve years next after the

time at which the right to make the entry or distress, or to bring the action or suit, has first accrued to some person through whom he claims; or, if the right has not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make the entry or distress, or to bring the action or suit, has first accrued to the person making or bringing the same”.

[5] Of interest is also section 8 of the Titles By Registration Act chap 56:50 which reads :

“All certificates of title granted under this Act, and all notings of mortgages and incumbrances on the same, shall be indefeasible”

[6] There is also section 33 of the Titles By Registration Act which is in the following terms

“Where any person has acquired, or claims to have acquired under the Real Property Limitation Act, the ownership of land brought upon the operation of this Act, he shall present a request to the Registrar of Titles to have a certificate of title issued to him in lieu of the registered proprietor in the original certificate of Title, and the person who has acquired, or claims to have acquired, the ownership shall not be entitled to maintain any suit in regard to the land until he has obtained a certificate of title thereto. When a request for such a certificate of title is presented to the Registrar of Titles, he shall state a case to the Court, and shall not issue a certificate of title on the request until he has received the direction of the Court thereupon.”

[7] The sole issue which falls for determination in this matter is whether the defendant has been in adverse possession of the lands for more than twelve years and what would the effect of such a period of occupation on the title of the claimants.

The Evidence

[8] Mrs. Shirley Guye in her witness statement swears that she has been living at Eggleston since 1983. She has known the defendant since he was a young boy. She says she learned that the defendant was building a house in 2003 and in 2005, at his invitation, she visited the structure. It was a wooden structure consisting of one room. It had no doors or windows. It was on stilts and the defendant would access it by means of a wooden ladder. This structure was destroyed by high winds in 2006. In 2008 when she decided to buy the property with her husband the land was not occupied. After the purchase in 2009, she says the defendant started trespassing. It was in November 2009 that he began the construction of an 8 x 10 foot concrete structure.

[9] The second claimant, Gilbert Guye, in his witness statement, swears that he has lived in Eggleston all his life. He knows the land in question belonged to the late Agnes George. The parcel is visible from his home. The first claimant says that Jean Claude Guye and another neighbor Harris Myers cultivated the land with short term crops up to the early 2000's, during which period the defendant was not on the land. He says that the defendant did have a small wooden structure on the land between 2003 and 2006. He adds that he visited the property in 2008, September with Mr. Fingal, to re-establish the boundaries. The land was then uncultivated and covered in mulch. It was in January 2009, according to Mr. Guye that the defendant entered the land and dug holes and erected signs. Later during the Independence weekend in 2009 he began to build the small concrete structure.

[10] Mr. Clement Fingal also gave a witness statement. He swears that on his visit to the land in September 2008, the land appeared to be abandoned. There was no evidence of cultivation or habitation. Mr. Ashworth Williams also gave a witness statement. He lives in Eggleston and has been a member of the Village Council since 2004. He too, says the defendant was not on the land up to the early 2000's. He agrees that the defendant had a structure on the land from 2003 until 2006 when high winds blew it down. He says that he did not know the defendant to be in occupation of the lands after 2006. He says that the village council gave the defendant a letter to allow him to apply to the local water company for a water supply for the home of his maternal grandparents which he was occupying in late 2008. He noticed that there was a water connection to the land in question in January 2009. He brought this to the attention of the village council who wrote to the water authorities and had the supply disconnected. His evidence was that it was in November 2009 that the defendant embarked on the construction of a small concrete structure on the land.

[11] Anora Samuel gave a witness statement. She lived opposite the land with Jean Claude Guye, the uncle of the defendant. She did not see the defendant occupy the land. Jean Claude Guye, with the permission of the registered proprietors' agent, cultivated a part of the land with short term crops. She left the area in 2001 and it was only after this that the defendant entered and built a small wooden structure on the land. That structure was blown down in 2006.

[12] The evidence of the defendant is that he entered the land in 1995. At the time the villagers used to dump garbage on the land. He cleared the garbage and removed derelict vehicles. He built a house of bamboo and round wood in a lower part of the land near a ravine. He says he occupied this house where his common law wife and their children would visit him. He cultivated cucumbers, coconut, peas, guava, and yams. His occupation and cultivation were to the exclusion of all other persons. He says as well that Mr. Fingal came to survey in 2008 and he prevented the survey, telling Mr. Fingal that he was in occupation and had been in occupation for many years.

[13] The defendant also had a witness on his behalf, Nathaniel Andrew. He testified that the defendant entered the land in 1995. He cleared away the garbage dumped there and erected signs prohibiting dumping. He erected a fence along part of the roadside. He erected three houses on the land. The first was a bamboo and round wood house which the defendant occupied from 1995 for five to six years. He thereafter built a plywood house on the upper part of the land. Utilities were connected to this house. He says it was destroyed in 2008 by hurricane Omar. After the destruction of that home, the defendant began a third, this time in concrete. The witness is the brother of the defendant. He was cross-examined. He agreed that the uncle of the defendant cultivated a part of the land for some time.

[14] The defendant also called Mathew Samuel as a witness. He is the brother of Anora Samuel. He resides at Eggleston. He has known the parcel of land in dispute all his life. He says it was used as the village dumping ground until 1995 when the defendant cleared it and occupied it. He cultivated it and built first a bamboo and round wood house in the lower part of the land by the ravine area. In 2000 he built another house on the upper part of the land. This was out of plywood. Electricity was connected to this house. He lived in it till it was destroyed by hurricane Omar. This witness says that only the defendant was in possession of the land from 1995. On cross examination he agreed that Jean Claude Guye cultivated a part of the land at some point but he says that this was before 1995.

[15] The claimants have a certificate of title. It is indefeasible. Only if the defendant can establish that he can rely on the protection of section 2 of the Real Property Limitation Act can he resist the claimants' right to possession. He must establish that he has been in adverse possession for at least 12 years. Adverse possession requires two elements. There must be factual possession along with the requisite animus possidendi. Factual possession requires open, exclusive possession. The evidence of the defendant is that he occupied in 1995 and evidenced his occupation by the construction of the bamboo and round wood house. The parcel is just over 2 acres in size. The defendant says the area he built in was in a concealed area where even villagers who would collect water from a nearby spring could not see the house.

[16] In his cross-examination the defendant says that only his friends who visited him could see his house. No neighbours were in the area. This appears to be insufficient to show open exclusive possession of the entire 2 acre parcel. The defendant says he moved to the upper portion of the land in or around 2005. He built another house. He adduced into evidence a transaction history report from the electricity company which shows consumption of electricity from 2003 to 2006. This suggests that the claimants and their witnesses are correct when they say that the defendant utilized the land during that period only.

[17] I also accept the evidence of Anora Samuel that Jean Claude Guye, the uncle of the defendant, occupied a part of the land and cultivated it up to shortly before his death in or about 2001. This goes to show that the defendant did not have exclusive possession of the disputed parcel. I prefer the evidence of the claimants and their witnesses to that of the defendant and his witnesses. I was especially impressed by Mr. Clement Fingal, a surveyor of many years experience who testified that on his initial visit in 2008, the land was not occupied or cultivated.

[18] Fortifying me in my view is the testimony of the defendant. He says that he was aware of the legal position which would permit him to make a claim for ownership of the land on the basis of adverse possession. It is telling that he never made any application on his own behalf under section 33 of the Title by Registration Act.

[19] Having considered all of the evidence in this matter, I conclude that the defendant has failed to establish that he has been in adverse possession of the land comprised in the claimants' certificate of title for at least 12 years before this claim was filed. In the circumstances, the certificate of title remains indefeasible and the claimants are entitled to rely on it.

The Order

[20] A declaration is granted that the claimants as the registered proprietors are entitled to possession of the lands contained in the certificate of title at A18 Folio 74. A permanent injunction is granted restraining the defendant from entering or remaining on the said lands. Nominal damages for trespass in the amount of \$100.00 are awarded to the claimants. The defendant will pay to the claimants prescribed costs in the sum of \$7,500.00

Brian Cottle
High Court Judge

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA**

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Before the Hon. Justice Brian Cottle

Dated the day of April, 2013

Entered the day of April, 2013

Appearances:

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Mrs. Mary Roberts for Defendant

ORDER

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BY THE COURT

REGISTRAR –HIGH COURT