

THE EASTERN CARIBBEAN SUPREME COURT
MONTSERRAT



IN THE HIGH COURT OF JUSTICE

SUIT NO: MNIHCV2007/0029

BETWEEN:

IRENE ROACH

CLAIMANT

AND

RAYMOND ALLEN

FRANCIS KIRWAN

DEFENDANTS

Appearances:

Mr. Jean Kelsick for the Claimant

Mr. Hogarth Sergeant for the Defendants

2012 JULY 2

2012: JULY 23

JUDGMENT

[1] Benjamin J. (Ag) In September 2007 The Claimant, Irene Roach of Carr's Bay Montserrat, claimed against the Defendants Raymond Allen and Francis Kirwan, both of Carr's Bay, Montserrat, for:-

(1)An order for the rectification of the Land Register by instating the Estate of John Henry

[1] **John Benjamin J (Ag)**. In September 2007 The claimant, Irene Roach of Carr's Bay Montserrat, claimed against the Defendants Raymond Allen and Francis Kirwan, both of Carr's Bay, Montserrat, for an

(1) An order the rectification of the Land Register by instating the Estate of John Henry Allen as the owner of Parcel 253, Block 14/4, St. John's Registration Section;

(2) A declaration that the Defendants are not entitled to demolish, after or deface a family house built on the said parcel of land by the said John Henry Allen;

(3) An injunction restraining the Defendants from demolishing, altering or defacing the said family house;

(4) The further relief sought in the Statement of Claim set out below;

(5) Costs.

[2] The Claim for rectification of the Land Register by installing the Estate of John Henry Allen as the owner of Parcel 253, Block 14/4, St. John's Registration Section. The Claims for it declaration and an injunction stand or fall by the wayside depending upon the decision of the Court.

[3] The Claimant is One of Seven (7 Children John Henry Allen and the first Defendant is also one of the seven children John Henry Allen (deceased) died intestate and at the point of his death there was no land registered in his name and neither since death up to this date.

[4] The matter was heard in the High Court of Montserrat on the 2nd day July 2012. The parties agreed and consented that the affidavit filed in this matter shall be deemed to be evidence in chief.

[5] By consent the parties agreed to visit the Locus in particular to see the house, that was called a shack by counsel for the 1st Defendant and to get an understanding of the location of the parcel of land and issue and the family house where John Henry Allen lived up to his death.

[6] The Relevant facts are set out in sections 7 to 12 of the Claim which state as follows:-

"(7) In 2003 Raymond, built a house on the family land, which is very close to the family house. On the completion of his house he occupied both his house and the family house and continues to do so, along with his girlfriend Francis Kirwan.

(8) On or about June 2006. Raymond made a claim to the Land Registry for the registration in his name of the land that both his house and the family house are situated on. In order to make the claim Raymond had the land surveys by one John Fife, a Land surveyor. When I saw John Fife surveying the land I warned him not to do so and assumed that this was the end of the matter.

(9) The Registrar of Lands subsequently published a notice in the 23rd and 30th June 2006 issues of a local newspaper called The Montserrat Reporter, advertising Raymond's claim to Parcel 253, Block 14/4, St. Johns Registration Section, which is the land that both Raymond's house and the family house are situated on.

(10) I do not read The Montserrat Reporter and was therefore unaware of the said notice, which was not drawn to my attention by anyone else. If I had been aware of it I would have immediately instructed my lawyers to oppose Raymond's claim.

(11) In August 2006 the Registrar of Lands granted Raymond Provisional title in his sole name to the said parcel of land and on the 12th January 2007 Raymond made his girlfriend Francis Kirwan a joint proprietor of the Land.

(12) In his application to the Registrar of Lands Raymond claimed title to the said parcel of land on the basis of adverse possession for upwards of 30years. This is a fraudulent claim as for part of his period both of my parents were alive and during my mother's lifetime and at all times thereafter, Raymond occupied the family land and house with the consent of the beneficial owners thereof, namely my surviving siblings and me and the said issue."

[7] In cross examination the Claimant said that her main grievance was against the 2nd Defendant, whom she dislike and that she is not a member of the family, "she is not Allen". The Claimant repeat that said statement at the Locus, and that she commences her claim soon after the second defendant was registered as feint proprietor.

[8] The court ought not to be use for the purpose of settling with family jealousies, passion or to be used to sanction the choice or dislike of one brother's lovers, unless there is a breach of the peace or for the reason the Claimant initiate there proceedings.

THE LAW

[9] The Claim is grounded on section 140 of the Registered Land Act Cap. 8.0.1. Which deals with the Rectification by the Court.

Section 140 (1) States:-

140.(1) Subject to the provisions of subsection (2) of this section, the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration

including a first registration has been obtained, made or mitted by fraud or mistake.

The Claimant appears to replying on oral evidence to defeats the Registration of the title to the Defendants.

In section 6 of the Claimants written submission filed on 10 July 2012, she stated:-

The uncontroverted evidence of the Claimant at paragraphs 3 and 4 of her affidavit is that her father occupied the land for about 80years. In cross examination, the 1st Defendant admitted that this was so. He cannot now resile from his pleadings admissions. It was not therefore open to Mr. Sergeant to canvass this point in his address. He is stopped by the defence and his client's own evidence from doing so.

However the Claimant also said in her affidavit filed on the 6th September 2007, section 4:

A cadastral survey of the Lands in Montserrat was conducted in the 1970 by the Government of Montserrat. Person who had a right to title to unclaimed Land on the basis of adverse possession were invited to do so. Due to inadvertence my father failed to claim title to the family land. I am of the view that the Claimant made the same error as her father did in the 1970s.

Section 135 (1) of the Registered Lands Act deals with Acquisition of Land by prescription that ownership of Land may be acquired by peaceable open and uninterrupted possession without permission of any person Lawfully entitled to such possession for the same period under the limitation Act which states:

135.(1) The owner ship of the land may be acquired by peaceable, open and uninterrupted possession without permission of any person lawfully entitled to such possession for the same period as that which under the Limitation Act would be required to bar an action for recovery of the same land in the same circumstances between the same parties . (Substituted by Act 7 of 1979 and amended by Act 8 of 1981)

The Claimant relied on the statement made by the First Defendant that he got permission from his broker to take possession of the land. I disagree with the Claimant on this point in that the brother was the registered owner of the Land and he made no claim to the said Land.

I adopt the reasoning of Lord Temple man in the Privy Counsel case Browne .v. Perry page 169 letter g to h of the West Indies Report #40 starting at line 3:-

If an oral acknowledgement were allowed to constitute on interruption litigation would be encourage and litigants would dispute what was said, by whom and to whom. A dispossessed owner has his remedy; adverse must be peaceable and open. The dispossessed owner has twelve years on which to discover the existence of adverse possession and twelve years in from the date of the first entry into adverse possession in which to bring an action. If the dispossessed owner obtains during the twelve-year period an oral acknowledgement of his tile,

he can insist on that acknowledgement being reduced to writing and, in default, can institute proceedings

The facts on this case are that the First Defendant in 2003 built a house very close to the family house. He occupied both house with his girl friend Francis Kirwan. In 2006 the First Defendant made a claim under section 135.1 of the Registered Land Act for Acquisition of the Land by presumption .The Registrar of Land published a notice in the 23rd and 30th issues of a local newspaper called The Montserrat Reporter, advertising the First Defendants claim. The facts before the Registrar were the Claim under on the said for 30 year un interrering and open and permission. The facts before the Registrar was that the 1st Defendant lived on the said parcel for 30 years peacefully, open and uninterrupted without permission. If the claim was incorrect action ought to be taken to oppose the claim while it was in the Newspaper and failing this to appeal against the decision of the Registrar.

There were no opposition to the claim by the First Defendant by her or any member of her family on August 2006, the Land was Registered in the name of the First Defendant on January 2007 the First Defendant added his girlfriend Francis Kirwan (The Second Defendant as joint proprietor of the Land). On November 2006 the Claimant stated in paragraph 13 of her affidavit that she learnt that the First Defendant intended to demolish the family house. However it was not suitable September 2007 that she said she made a search of The Land Registry where she discovered that the Lord was registered in the name of Raymond Allen.

I stated that facts against to show that the Claimant had knowledge that she write the First Defendant was delay with Property in an adverse manner. In her paragraph 8 of her affidavit she stated “when I saw John Fife Surveying the Land I warned him not to do so and assumed that this was the end of the matter. t was not until several months later that the Claimant took any action.

The Claimant failed to take action as it required by section 147 of the Registered Land Act. Section 147 (1) states:-

Appeals

147. (1) The Crown or any person aggrieved by a decision, direction, order, determination or award of the Registrar may within 30 days of the decision, direction, order, determination or award, give notice to the Registrar in the prescribed form of his intention to appeal to the court against the decision, direction, order, determination or award.

The court is of the view that the Claimant must first file an appeal against the decision of the Registrar within 30 days of her intention to appeal to the Court against the decision of the Registrar.

An application from Rectification is not an Appeal against the decision of the Registrar. This position was made clear on the case of Skelton v Skelton (1986) 37 WIR. This case came of the British Virgin Islands which had a familiar Land Adjudication Ordinance 1970 and a Land Registered system similar to that of Montserrat. I adopt the principal as asset and in that case where Robotham CJ where he state page 182

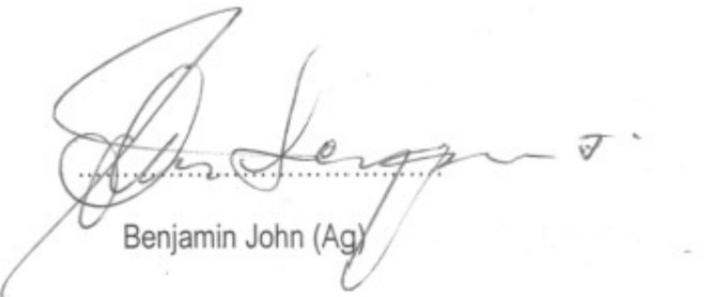
(1) “Counsel for the Respondent on the other had submitted that the right to seek rectification of the Land Register under Section 140 of the Registered Land Ordinance is an optional remedy which was open to the respondent and which he exercised on filing of the writ. If therefore the adjunction officer made a mistake in coming to his conclusion, the High Court invoke Section 140 to correct it (section 140 of the British Virgin Islands Land Adjudication Ordinance 1970.is similar to section 140 of the Registered Land Act of Montserrat)

Robotham CJ concluded on page 181 the last paragraph under the hearing conclusion:

“I would agree that if the expression of the final decision of the Adjudication officer was incorrectly serviced on the Land Register, section 140 could be resorted to. I cannot however accept, that it can be applied in the original jurisdiction of the High Court to alter in a material particular his individual findings of fact base upon his own inquiry, simply because the judge sitting in an original jurisdiction is of the opinion that his findings were erroneous.

I am of the view that the Claimant not having exercise her right to challenge the decision of the Registrar within the time specified in Section 147 and having delayed taking action for several years, to rule otherwise would defeat the purpose of Land Registered Act to bring certainly and finality to Land dispute which has plague our island for several decades.

- ❖ Accord I dismiss the claim
- ❖ And made no order as to cost



Benjamin John (Ag)