

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 130 OF 2008



BETWEEN:

ALAN FITZGERALD STRAKER

Claimant

AND

MARCIA STEPHENS

Defendant

Appearances: Mr. Olin Dennie for the Claimant
Mr. Duane Daniel for the Defendant

2010: November 17, December 8
2011: August 15

JUDGMENT

- [1] **THOM, J:** The Claimant on the 9th day of May 2007 made application for a Declaration of Possessory Title in relation to a plot of land at Buccament ("the disputed land"). The Declaration of Possessory Title was granted to the Claimant on the 22nd day of June 2008.
- [2] On the 31st day of May 2007 the Claimant gave notice to the Defendant who he alleges is a Tenant at will to deliver up possession of the disputed land. The Defendant having failed to vacate the disputed land these proceedings were instituted in which the Claimant claims inter alia recovery of possession of the disputed land and damages for trespass.

[3] In her defence the Defendant alleged that the Claimant is not the owner of the entire portion of the disputed land. The portion of land which she occupies belongs to one Pearl Bowen and she is a tenant of Pearl Bowen.

[4] The Defendant in her counterclaim alleges that the Claimant made false or fraudulent representations to the Court in his application for the Order of Declaration of Possessory Title being:

- (i) paragraph 3 "There are no claims affecting the land."
- (ii) paragraph 4 "There are no other persons claiming to be owner of the land;"
- (iii) paragraph 5 "The applicant has been in exclusive and undisturbed possession of the land for over thirty-four years."
- (iv) paragraph 8 "The [Claimant] has not knowingly withheld any fact concerning the said land which ought to be disclosed in the application and has truly and honestly, to the best of her (sic) knowledge and belief represented the truth concerning the title of the land."

In his affidavit dated May 9, 2007 in support of the application at:

- (i) paragraph 4 "Since the death of my grandmother I have been in uninterrupted and undisturbed possession of the said parcel of land."
- (ii) paragraph 7 "The facts set out herein are true and correct to the best of my knowledge and belief."

Also in his affidavit dated January 14 2008 at paragraph 4:

"... there are no adjoining land owners to give notice pursuant to the provisions of Possessory Titles Act No. 38 of 2004."

[5] Further no notice was given to any adjoining land owner as required by the Possessory Title Act 2004.

[6] In his reply to the Defence and counterclaim the Claimant denied that he made false and or fraudulent statements in his application and or affidavits and alleged that he was not

aware that Pearl Bowen was laying claim to the disputed land. He was also not aware that the Defendant was paying rent to Pearl Bowen in relation to the disputed land. Having regard to the location of the disputed land there were no adjoining land owners except the Claimant himself to which notice could have been given.

EVIDENCE

- [7] The evidence of the Claimant is that the disputed land was previously owned by his grandmother Clara Barker who had inherited it when her brother Joseph Antoine died. By her Will dated March 16, 1954 Clara Barker devised the said parcel of land to her brother and sister William and Georgina Antoine should they return and establish their identity and thereafter to her grandchildren Percival, Edward, Wilton, Veline, Norma, Lela, Sylvina, and the Claimant Fitzgerald. After the death of his grandmother Clara Barker in 1973 he took possession of the parcel of land with the knowledge and consent of his other siblings. He has since that time been in uninterrupted possession of the parcel of land. Although he lived in the United Kingdom for many years he returned every year to Saint Vincent and the Grenadines to visit relatives and to look after the disputed land. He has exercised ownership over the land, he has paid the land taxes in the name of Joseph Antoine. Receipts for the years 1994 - 1998 were exhibited.

- [8] In the year 2000 the Claimant gave permission to the Defendant's father Robert Simmons to occupy a small wooden house that is situate on the disputed land. Robert Simmons subsequently permitted the Defendant and her boyfriend to occupy the house.

- [9] On May 9 2007 he applied for a Declaration of Possessory Title. At the time when he made the application he was not aware that the Defendant was claiming that she was a tenant of Pearl Bowen or that Pearl Bowen was making any claim to the disputed land. Based on the Survey Plan there are no adjoining land owners as contemplated by the Possessory Titles Act Chapter 328 of the 2009 Revised Edition. The Defendant was not entitled to notice. Further the Defendant had always indicated that she was looking for alternative accommodation. The Defendant vacated the disputed land after the notice to quit was served on her, then she subsequently returned to the disputed land.

- [10] Deed of Gift No. 1345 of 1974 in the name of Pearl Bowen relates to 2000 square feet of land, while the disputed land measures 5944 square feet of land. Pearl Bowen never lived on the disputed land.
- [11] Under cross-examination the Claimant agreed that he migrated to the United Kingdom in 1960 and he lived there until 18th March 2007. He also agreed that when he applied for Declaration of Possessory Title the Defendant was living on the disputed land. Prior to making the application, he requested the Defendant in the presence of her father to vacate the disputed land. The Defendant protested about the house not about the land.
- [12] Selma Cambridge the sister of the Claimant testified that she knows Pearl Bowen. Pearl Bowen left Saint Vincent and the Grenadines about forty-eight years ago. She has never known Pearl Bowen to exercise any acts of ownership on the disputed land.
- [13] Under cross-examination she agreed that Pearl Bowen's father operated a tailor shop on the disputed land some years ago with the permission of Clara Barker. About forty years ago they stopped operating the shop. Several persons at various times lived in the wooden house on the disputed property, many of them without permission. On several occasions she tried to get them to vacate the disputed property.
- [14] Melvin Bowen of Buccament also testified on behalf of the Claimant. He had a common law relationship with the Defendant's mother and that relationship bore two children both of whom are older than the Defendant. He testified that the Defendant never lived on the disputed land with her mother as her mother never lived on the disputed land. The Defendant and her mother lived with her grandmother next to the Buccament Primary School. The Defendant's mother migrated to Trinidad and Tobago and subsequently the Defendant went to live at Arnos Vale. The Defendant then moved to Quetelles. When he left Saint Vincent and the Grenadines in 2002 for the United States the Defendant's father was living in the wooden house on the disputed land. When he returned in 2007, he saw the Defendant living in the said house.

- [15] He knew Pearl Bowen was living with her parents next to his home at Buccament. He never saw Pearl Bowen in occupation of the disputed land. Pearl Bowen left Saint Vincent and the Grenadines about forty years ago and he has never seen her since. He has never seen her exercise any acts of ownership over the disputed land.
- [16] Under cross-examination he agreed that a tailor shop was once situated on the land. That shop was operated by Amelia Bowen. Several persons lived in the wooden house, one such person was Eva Gabriel who was a relative of Mrs. Bowen. The Defendant's father and Eva Gabriel lived in a common law relationship in the wooden house.
- [17] The evidence of the Defendant is that since she was a child she lived "on and off" with her parents on the disputed land. From 1999 she has been living there permanently. Three of her children were born there in the years 2001, 2003 and 2007. Her father continued to live in the house until 2005 when he moved to his mother's house to take care of his mother. The land she occupies belongs to Pearl Bowen and she is a tenant of Pearl Bowen. She pays rent of \$100.00 per month to Mrs. Francis for the land. She never knew the Claimant had any interest in the land. It is only within the last few years that she has seen the Claimant in the area.
- [18] Under cross-examination the Defendant testified that she could not recall when her mother left for Trinidad and Tobago because she was of tender years. When she went to live at the disputed land her father was not living there.
- [19] Three witnesses filed witness statement in support of the Defendant but they did not attend Court on the date of trial nor on the adjourned date.

SUBMISSIONS

- [20] Learned Counsel for the Claimant urged the Court to accept the testimony of the Claimant and his witnesses who resided in the area and were familiar with the disputed land. Learned Counsel urged the Court not to believe the testimony of the Defendant that she pays rent of \$100.00 per month for the land as the sum is exorbitant and no receipts were exhibited. Mrs. Francis to whom rent is paid was not called as a witness nor did she file a witness statement. Although the Defendant alleged that Pearl Bowen was the owner of the land, she did not join Pearl Bowen as a party to the proceedings.
- [21] Learned Counsel also submitted that the facts stated by the Claimant when he made application to the Court for Declaration of Possessory Title are true. The Defendant has not met the standard of proof of fraud as required by law. Learned Counsel referred the Court to the case of **Derry v Peak** [1889] 14 App. Cases 337 at 376 where Lord Herschell laid down the essentials of fraud as follows:
- “First, in order to sustain an action of deceit, there must be proof of fraud and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (i) knowingly, (ii) without belief in its truth; or (iii) recklessly, careless whether it be true or false. Although I have treated the second and third, as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement from being fraudulent there must, I think, always be an honest belief in its truth.”
- [22] Further the Defendant failed in her pleadings to state in what respect the statements of the Claimant to which she referred were false and or fraudulent.
- [23] Learned Counsel for the Defendant in his submission urged the Court to accept the testimony of the Defendant that she is the tenant of Pearl Bowen, who is the lawful owner of part of the disputed land. The Deed of Pearl Bowen was exhibited and its validity was not challenged. Rather the Claimant alleged that Pearl Bowen was disposed by the Claimant. This was not supported by the evidence which show that several persons lived on the disputed land. The Claimant admitted that he and his family lived in the United Kingdom from 1960 until 2007 when he returned to Saint Vincent and the Grenadines, he was therefore not in possession of the disputed property as he alleged.

ISSUE

[24] The issue is whether the Claimant is entitled to possession of the disputed land.

FINDINGS

[25] The Claimant based his claim for possession of the disputed land on the Order of Court dated January 22, 2008 granting him Declaratory Possessory Title over the disputed land in accordance with the Possessory Titles Act Chapter 328 of the 2009 Revised Edition.

[26] The Defendant contends firstly that the order was obtained by fraud, and secondly that the land on which the wooden house is situate belongs to Pearl Bowen and she is a tenant to Pearl Bowen.

[27] I will deal first with the second submission. Deed No. 1345 of 1974 in favour of Pearl Bowen was exhibited by the Claimant. A survey plan was not exhibited. The land in Deed No. 1345 of 1974 measures approximately 2000 square feet, while the disputed land measures approximately 5,944 square feet. Having examined the said Deed and the Declaration of Possessory Title it is not clear whether the land described in the said Deed is part of the disputed land. In any event in my opinion the applicable legal provision is Section 25 of the Possessory Titles Act. The section reads:

“25. The person named in an order containing a declaration of possessory title is entitled to an indefeasible title:

- (a) three months after the date of publishing particulars of the Order pursuant to Section 22 where there is no appeal;
- (b) upon the determination of the appeal where there is an appeal and the appeal is made within the time prescribed in Section 24.”

[28] It is not disputed that particulars of the Order granting Declaratory Possessory Title to the disputed land in favour of the Claimant was published. It is also not contended that there was an appeal against this Order.

[29] By virtue of the provisions of Section 25 the Claimant has an indefeasible title to the disputed land. Any title or interest which Pearl Bowen may have had in any part of the

disputed land extinguished three months after the Order was published. The Order could only be declared void if the Court finds that it was obtained by fraud or if on an application by a person claiming an adverse interest in the disputed land the Court finds that the Order was obtained by mistake. There is no evidence of an application by Pearl Bowen alleging that the Order was obtained by mistake.

[30] I turn now to the submission that the Order was obtained by fraud. The applicable provision is Section 26(1) of the Possessory Titles Act. This section reads:

“26.(1) 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 mortgagee in respect of that piece or parcel of land.”

[31] The statements referred to by the Defendants can be put into four groups.

(i) “There are no claims affecting the land”; “There are no persons claiming to be owner of the land.”

[32] Having seen and heard the Claimant and having reviewed his evidence, I find the Claimant to be a credible witness. He was not contradicted, and the witnesses who testified on his behalf supported his testimony and they too were not contradicted. Indeed the Defendant has not adduced any evidence to show that the Claimant was aware at the time of the application of any claim that was made to the disputed land by any one. There is no evidence to show that the Claimant was aware of Deed No. 1345 of 1974 in favour of Pearl Bowen and that the land described in the said Deed was part of the disputed land.

[33] In the second group the Defendant referred to the following statements as being fraudulent:

“The applicant has been in exclusive and undisturbed possession of the land for thirty-four years”; “Since the death of my grandmother I have been in uninterrupted and undisturbed possession of the said parcel of land.”

[34] The Claimants' testimony is that he resided in the United Kingdom between 1960 and 2007, but that he returned to Saint Vincent regularly to visit friends and look after the disputed land, that he exercised acts of ownership over the disputed land was not contradicted. Indeed the Defendant testified that she only knew the Claimant within the last few years. The Claimant who is 38 years old had removed from the Buccament area when she was 15 years old and went to live first in Sion Hill and then at Quetelles. She only returned to reside in the Buccament area about 10 - 12 years ago. The Claimant admitted that persons other than the Defendant occupied the wooden house prior to the Defendant. He testified that such occupation was with his permission. Selma Cambridge who testified on behalf of the Claimant testified that on some occasions persons occupied the property without her permission. No evidence was led to show what length of time those persons occupied the property and in which year. There is also no evidence that the occupation of such persons were ever brought to the attention of the Claimant. The fact that the Defendant was in occupation of the wooden house at the time the Claimant made the application and three weeks after the application was made the Claimant gave the Defendant notice to quit does not mean that the Claimant was not in undisturbed possession of the disputed land. When a person is in possession of land with permission it does not amount to adverse possession. The evidence of the Claimant who I find to be a credible witness is that permission was granted to the Defendant's father to occupy the wooden house and her father permitted her to occupy the house. The Defendant is an unemployed single parent of seven children. Her occupation of the wooden house with permission therefore did not amount to a dispossession of the Claimant.

[35] In the third group the Defendant referred to the following statement as fraudulent:

“... there are no adjoining land owners to give notice pursuant to the provisions of the Possessory Titles Act No. 38 of 2004.”

[36] The applicable provision is Section 8(1) which reads as follows:

“8. (1) The applicant shall within twenty-one days after filing the application cause a copy of the notice referred to in Section 7 to be:

(a) served on all owners or occupiers of property adjoining the piece or parcel of land to which the application relates; or

(b) posted in a conspicuous place on the piece or parcel of land if the owner or occupier of land and joining the piece or parcel of land to which the notice relates is unknown or cannot be found.”

[37] The Claimant in his testimony does not deny that no notice was given but he explained that there were no owners or occupiers of property adjoining the disputed land. An examination of the survey plan of the disputed land shows that the disputed land is bounded on the North by a concrete drain, on the South by land belonging to the Claimant himself, on the East by the Leeward Highway, and on the West by a concrete drain. There is no evidence of any person who is an owner or occupier of property adjoining the disputed land who should have been given notice. The Defendant's contention is that part of the disputed land is Pearl Bowen's land. Pearl Bowen would therefore not be an owner or occupier of property adjoining the land to which the application relates. In any event as stated earlier there is no evidence to show that the Claimant was aware of Deed No. 1345 of 1974 or that the land described therein was part of the disputed land, or that Pearl Bowen owned any part of the disputed land.

[38] In the fourth group the Defendant referred to the following statements as fraudulent:

“The Claimant has not knowingly withheld any fact concerning the said land which ought to be disclosed in the application and has truly and honestly, to the best of her (sic) knowledge and belief, represented the truth concerning the title of the land”; “The facts set out herein are true and correct to the best of my knowledge and belief.”

[39] As stated earlier, I found the Claimant and his witnesses to be credible witnesses. The Defendant did not adduce any evidence to show that the statements were fraudulent.

[40] In view of the above I find that the Defendant has failed to prove on a balance of probability that the Claimant made fraudulent statements in his application or his affidavits. I find that the Claimant has proved that he is the owner of the disputed land by virtue of the Order of Declaration of Possessory Title issued by the Court dated January 22, 2008. I find that the Claimant is entitled to possession of the disputed land.

[41] It is ordered that:

- (i) The Claimant is entitled to possession of the land at Buccament described in the Order of Court dated January 22, 2008.
- (ii) The counter-claim is hereby dismissed.
- (iii) The Defendant shall vacate the said land on or before the 30th day of September 2011.
- (iv) By consent it is agreed that the Defendant shall pay the Claimant costs in the sum of \$9000.


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Gertel Thom
HIGH COURT JUDGE