

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 37 OF 2010

IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF POSSESSORY TITLE

BETWEEN:

ULRIC CHARLES

and

SONIA CHARLES

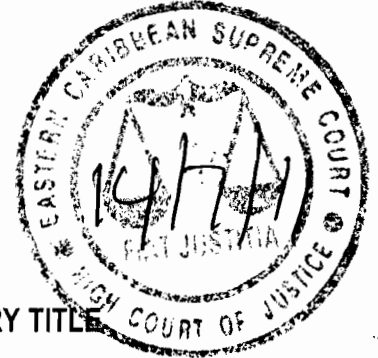
v

KRISTY ANTOINE

and

RIDLEY ANTOINE

AMENDED



Applicants

Respondents

Appearances: Mr. Ronald Marks and Ms. Elizabeth Ryan, for the Applicants
Mr. P.R. Campbell, Q.C., and Ms. Raemona Frederick for the Respondents

2011: 31st May
14th July

DECISION

- [1] **JOSEPH, Monica J:** Claim; on 12th July 2010, the Applicants filed an application for a declaration of possessory title under Section 3 of the Possessory Titles Act No. 38 of 2004

(now Cap. 328 (Act) in respect of 3,733 sq ft of land described: On or towards the North by the Leeward Highway on or towards the South by a stream on or towards the East by lands of a drain and on or towards the West by lands of one Antoine as shown on Survey Plan A5/69 lodged at the Surveys Department on 9th October 1995 (the disputed land).

- [2] Affidavits were filed by the Applicants, First Applicant's aunt Leitha Charles, and Second Applicant's mother Virginia Braide; and the Respondents in accordance with Section 5.
- [3] Following publication of the application in accordance with section 7 of the Act, an entry of appearance opposing the claim was filed by the Respondents on 8th October 2010 and a detailed claim on 22nd December 2010.

WRITTEN SUBMISSIONS - 15th JUNE 2011

CASE FOR APPLICANTS

- [4] The disputed land previously belonged to Jack Punnett. The First Applicant took possession in 1983, treated the land as his own and cultivated crops. He built a board house on the disputed land and occupied it with the Second Applicant from 1st October 1988.
- [5] The Applicants deny that the Second Respondent is the owner of the disputed land and that the Respondents consented to the occupation of the land by the Applicants.
- [6] The evidence of the witnesses for the Applicants was that the Applicants occupied the disputed land from 1988 and have been in exclusive physical control for a period exceeding twelve years.

CASE FOR RESPONDENTS

- [7] The Respondents opposed the application of the Applicants. The Second Respondent's evidence was that he purchased the disputed land from Jack Punnett. He produced a receipt dated 1st September 1985 for a parcel of land.

[8] The evidence was that the disputed land is a narrow strip of land sloping from the public road at the top and down towards a stream at the bottom: the Applicants house is at the bottom of the land and is fenced around. The top portion of the land housed a "parlour" which was demolished a few years ago. In between the two buildings there are a number of fruit trees owned by the Respondents.

[9] The Applicants were therefore never in possession of the entire parcel of land as delineated on the survey plan. The Applicants were therefore not in exclusive possession of the whole parcel of the disputed land.

APPROACH

[10] I think that all the witnesses were not totally truthful. It is for the Applicants to lead a sufficiency of evidence to satisfy the Court, on a balance of probabilities, that a declaration of possessory title should be issued to them.

THE DISPUTED LAND

[11] Counsel for the Applicants' submission was that the Respondents' led no evidence of title of ownership or possession of the disputed land. The following documents were presented:

1. A survey plan is endorsed: Plan of 2 portions of land containing eight thousand two hundred and fifty square feet. Surveyed by me with due authority in September 1995 at the instance of Mr. R. Antoine. The Respondents have produced a receipt for land dated 1st September 1985, from Jack Punnett.
2. Also produced is an Indenture 2979/1991 between Mark Punnett (the Mortgagee), Cane Grove Estates Ltd., (the Mortgagor) and the Respondents, (the transferees), that is not signed by the transferees.

I acknowledge the existence of both documents but not the texts of the documents. The first was not registered, the second is unsigned by the transferees, one of the parties

named in the document. The Registration of Documents Act (Cap 132), Sections 3, 5 and 22 enact:

Section 3: Documents requiring registration

- (1) The following documents shall be registered under this Act-
 - (a) documents relating to the title to, transfer of or encumbrance on, any real estate;
 - (b)

Section 5: (2) Every such document (relating to real estate required to be registered under this Act) that shall not be registered shall be deemed fraudulent and void as to the real estate affected by such document against any subsequent purchaser or mortgagee for valuable consideration without notice whose document shall be first registered.....

Section 22: No document required to be registered under this Act and not registeredshall be admitted in evidence in any civil legal proceeding as proof of its contents, but such document may be admitted in such proceedings as evidence of its existence.

- [12] The First Respondent's affidavit describes the disputed land as being adjacent to another parcel the Respondents bought around 1981, thus: All that lot piece or parcel of land situate at Buccament Bay in the parish of Saint Andrew in the State of Saint Vincent and the Grenadines and bounded on the North by the Leeward Highway on or towards the South by a stream on or towards the East by a drain and on or towards the West partly by lands belonging to one Antoine and partly by a parcel of land measuring 4,517 sq ft as the same is shown on survey plan A/69 approved ... on 9th October 1995.

OTHER SUBMISSIONS

- [13] **Counsel for the Applicants submissions:** The question of what constitutes a sufficient degree of exclusive physical control must depend on the circumstances, in particular, the

nature of the land and the manner in which land of that nature is commonly used or enjoyed. The requirement of openness means that the possession of the Claimant must be notorious and unconcealed, so that the paper title owner would be made aware of the need to challenge the adverse possession before the expiry of the limitation period.

[14] Counsel argued that it was not necessary for the Applicants to have knowledge of the true ownership of the property. It was sufficient if the Applicants performed acts that are inconsistent with the paper owner's enjoyment of the soil for the purposes which he intends to use it.

[15] The Respondents, Counsel submitted, placed emphasis on the fact that they protested the occupation by the Applicants and that their son intervened on their behalf in the protestation, but protestations are insufficient. Counsel cited authorities including Florence Louise Belfon v Lester McIntosh Civil Appeal No. 13 of 1994.

[16] **Learned Counsel's submissions for the Respondents:** the application is fatally flawed as the evidence disclosed that the Applicants were not in exclusive possession of the entire disputed land and were not in possession of the whole of the parcel of land. They have failed to establish that their possession of the land was of an undisturbed nature and that they had the requisite intention of possession of the entire area of land as owner.

[17] It was Learned Counsel's submission that, from the evidence of the topographical features, it is manifestly evident that the First Applicant was never in possession of the entire parcel of land as shown on the survey plan, which forms the basis of his application. The Applicants, Learned Counsel submitted, were emphatic that they never interfered with the fruits from those trees planted on the land as they considered those to be owned by the Respondents.

[18] Learned Counsel submitted further that the Act does not confer upon the Court any jurisdiction to grant a possessory title to only a portion of lands described in the claim. An applicant cannot succeed if he establishes possession of only a part of land as delineated

in the survey plan. He must prove factual possession of the entire land described, in accordance with Section 4(a) of the Act.

[19] Leaned Counsel differentiated between a case where a squatter resists a claim by a landowner to evict him and relies on adverse possession of only a small parcel which he has occupied for the requisite period and fulfilling the requisite criteria. In such a case, the Court has jurisdiction to hold that the squatter is entitled to possession of the specified area of the claimant's land he had occupied adversely. However, under the Act Applications must be confined to specific parcels of land as delineated on the mandatory survey plan; Section 4(a) of the Act.

[20] The Applicants claim that they are entitled to a declaration in respect of 3,733 sq ft and must discharge that burden (which they have failed to do) of proving exclusive possession of that entire area. The Applicants are to satisfy the Court that they occupied the disputed land as owners.

[21] Inasmuch as the First Applicant's evidence was that he offered to purchase the disputed land from Mr. Punnett, the Applicants did not regard themselves as owners of the disputed land. The onus was on the Applicants to establish that during the period of alleged adverse possession, the Applicants had retreated from the belief in Jack Punnett's ownership of Cane Grove Estates and had ceased to regard Jack Punnett as owner of the disputed land.

[22] The Applicants have not given evidence of intention to occupy as owner, and there is no clear evidence from the Applicants of the mental element tending to establish that they no longer believed that Jack Punnett owned the disputed land is absent.

[23] The Applicants' case must stand or fall on the Applicants success in discharging the onus or proof which the law places on any person seeking to invoke the purely statutory jurisdiction conferred on the Court by the Act, which they have failed to do.

FINDING

OCCUPATION - POSSESSION

- [24] Was permission given to the Applicants to occupy the disputed land? The Applicants deny the claim that they sought permission of the Respondents to occupy the disputed land. I accept the Second Respondent's evidence that he purchased the disputed land around 1985.
- [25] In 1985, having sought permission of the Respondents, the Second Applicant moved unto the disputed land. I conclude that permission was given to the Applicants after the September 1985 receipt. The Second Applicant lived in a wooden structure which was used as a storeroom by the Respondents, and which they had given to her. That arrangement was intended to provide the Second Applicant with temporary shelter.
- [26] The First Applicant was then living in the downstairs section of his aunt Leitha's house nearby, to which the Second Applicant had 'visitation rights'. It seems that the aunt did not take too kindly to that arrangement which resulted in an altercation between the Second Applicant and the aunt.
- [27] In 1988 the First Applicant replaced the wooden structure (given to the Second Applicant by the Respondents), with a new wooden house. In October 1988, the Applicants moved into that wooden house. From late 1988 (exact date was not given), the Respondents made repeated requests of the Applicants to vacate the disputed land, but to no avail. That failure to vacate the disputed land signaled the end of any permission given by the Respondents to the Applicants to occupy the disputed property.
- [28] To protect interest in relation to possession of land, a paper title owner is required to take legal action against an adverse possessor before the expiration of the statutory period of twelve years. Similarly, a person claiming that his possessory title is interfered with must take action before the expiration of the twelve year period. From late 1988 the Applicants

challenged the Respondents grant of permission when they failed to vacate the disputed land. The Applicants filed an application for possessory title on 12th July 2010.

- [29] The Second Respondent's evidence was that the Respondents have no deed for the land. With no deed, the Respondents may rely on possession from the date they were actually in possession. I accept that the Second Respondent purchased the disputed land and planted trees on it. The earliest possible date the Respondents can claim possession is the date of the receipt, 1st September 1985.

THE LAW APPLIED

Adverse Possession

- [30] The components in the definition of adverse possession to be satisfied are: During twelve years occupation: exclusive physical control and intention to possess...

Physical Control

- [31] The Respondents possession ran from 1985 but ended when the Applicants in late 1988 occupied a new wooden house on the disputed land and failed to vacate the disputed land when so requested by the Respondents. The Respondents were dispossessed by the Applicants. The Applicants have been in possession of the disputed land in excess of twelve years, (late 1988 to 2010 date of filing of this suit).
- [32] The component of a sufficient degree of physical control is satisfied in that the Applicants have lived in a house they built on the disputed land. Whether the physical control extends to the whole of the disputed land or only to part will be dealt with later.

Requisite Intention:

- [33] I find that the Applicants refusal to vacate the disputed land in late 1988 was a manifestation of the intention they had formed, to treat the disputed land as their own. I find that the Applicants had the requisite intention to acquire the disputed land by adverse possession. In DOMHCV 2001/0161 **Hector Caesar Luke v Bernard Alexander**: Rawlins J. (as he then was) at para.15 had this to say:

"The Court will, prima facie, ascribe possession to the paper owner of land or a person who can establish title through the paper owner. The court can only ascribe possession to a person who does not have paper title if that person has factual possession and animus possidendi, the requisite intention to possess the land. Factual or physical possession means a single and conclusive possession, or exclusive physical control of the land. The acts that constitute a sufficient degree of exclusive physical control will depend upon the circumstances, particularly the nature of the land and the manner in which land of that nature is commonly used and enjoyed. The animus possidendi, has been described as the intention to possess the land to the exclusion of all other persons, including the owner with the paper title ..."

- [34] Slade J in **Powell v McFarlane** [1977] 38 P&CR 452 pp. 471, 472 expressed animus possidendi this way:

"The intention, in one's own name and on one's behalf, to exclude the world at large, including the owner with the paper title in so far as is reasonably practicable and so far as the process of the law will allow."

Possession of the whole parcel

- [35] Learned Counsel submitted that the Applicants had failed to show that they are in possession of the whole parcel of the disputed land described as "a narrow strip of land sloping from the public road at the top, and down towards a stream at the bottom. The Applicants' house is at the bottom of the land and is fenced around. The top portion of the land housed a "parlour" which was demolished a few years ago: in between the two buildings there are a number of fruit trees owned by the Respondents.'
- [36] Counsel argued that those topographical features of the land evidenced that the first Applicant was never in possession of the entire parcel of land as shown on the survey plan which is the basis of his application. The Second Respondent's affidavit: "I observe that the Applicants are claiming the entire lot of land, measuring over 3000 square feet. The Applicants have not informed the Court that the building that they currently live in is about 20 x 24, which is not even quarter of the lot. The Applicants have never grown any crops on the land. Rather my family and I have a variety of trees growing on the disputed property above the building in which the Applicants live including avocado, plum, orange, bananas and peas.

- [37] About three years ago, the Applicants were having problems with a fierce dog that they owned. They fenced around the house. I approached Ulric and asked him what he was doing. He acknowledged to me that the land belonged to us but he was simply doing that to avoid trouble with the dog." My wife spoke to Sonia on the matter and she indicated to me that Sonia admitted to her that she knew the land to belong to me but that they were fencing because of the dog."
- [38] The Applicants admitted in cross examination that they did not pick the fruits from certain trees which were not theirs. That bit of evidence is open to two interpretations: that their intention was not to possess the area of land where the fruit trees are planted, or to possess the disputed land but not to invite confrontation by picking those fruits. I think it is the latter. The first applicant also admitted that he fenced around the house about two years ago because the dog "was getting bad".
- [39] Why erect a fence when the disputed land is owned by another person? Why did the Applicants not mention to the Respondents that they were erecting a fence (at the time they were so doing) and the reason for so doing? Why not tie the dog? About two years ago would be 2009. I think the applicants staked out that portion of land they had been occupying from 1985 with one intention: possessing the disputed land. The act of staking out, against the background of their failure to vacate the disputed land, points in the direction of claiming possession of the disputed land.
- [40] The Applicants' behaviour and what I call the excuses for that behaviour, made to the Respondents, were to lull the Respondents. I think the Applicants were acting in furtherance of their prospective application for possessory title which was filed on 12th July 2010.

Can an adverse possessor obtain a declaration in respect of portion of the land claimed?

- [41] Learned Counsel submitted that the Court has no authority under Section 4 (a) of the Act to specify a different area of land than that described by the Applicants. I think depending

on the circumstances of the case, a Court can specify, not a different area of land but a smaller area of land, within a larger portion.

[42] An example is where a Court finds that a person has been in occupation of a small defined area of land that is part of a larger area. In that circumstance, it is open for the Court to find possession of that small portion is possession only of that small area. I keep in mind what happens in our small communities, that persons occupy small areas of land with the intention of possessing small areas of larger areas and without intending to acquire the larger area.

[43] In the filed application the Applicants have claimed some 3733 sq ft. The Applicants built their house on a portion of land which they fenced. By so doing, the Applicants have indicated that that is the portion of land that they have been in possession of for more than twelve years, and intend to possess. There could be no clearer intention. The Applicants have satisfied the components of possession: actual possession of the fenced portion to the exclusion of all persons, for twelve years, with the intention to possess the portion fenced. I find that the Applicants have established possession of a defined but unmeasured area of the disputed land, on which their house stands.

[44] Section 4 of the Act sets out the information to be provided for the Court to make a determination, e.g., area of the land and the facts upon which the Applicant relies to establish his case. It is for the Court to determine what information it accepts from the facts the Applicant submits or what area of the land the Applicant has been in possession of. Section 4 provides:

“Content of application - An application shall be made in accordance with Form 1 of the First Schedule and shall state –

(a) the description of the land, giving its extent, its boundaries and its estimated value.

(b) the facts upon which the applicant relies to establish adverse possession.”

(c) to (d).....”

- [45] Sir Vincent Floissac CJ in Civil Appeal No. 13 of 1994 Florence Louise Belfon v Lester McIntosh at p.7 stated:

"To adjudicate on issues of ownership and right to possession of the smaller portion of land (of a larger and smaller portion) it would be necessary to decide various subsidiary and collateral questions of fact. (1) Whether during the prescribed period M.... and the appellant were successively in exclusive possession of the small portion or whether or to what extent they were in possession concurrently with E.... and the respondents (2) whether the buildings erected by M and her husband were erected on the larger or smaller portion, (3) if the buildings were erected on the smaller portion whether they were erected in circumstances which engender an estoppel by acquiescence or an implied resulting or constructive trust."

- [46] If this case is to have finality, it is necessary to ascertain the size of the defined fenced area. The Act does not deal with the ordering of a survey but the Boundaries Settlement Act (Cap 317) provides for the survey of boundaries of land. Bearing in mind that Part 1 of the CPR 2000 enacts that the overriding objective of the CPR is to enable the Court to deal with cases justly, the Court can order a survey of the defined area on which the Applicants house stands.

- [47] The Court will direct the parties to meet to discuss the appointment of a surveyor and the boundaries which boundaries are to follow the fence line erected by the Applicants. If the parties do not agree, the Court will appoint a surveyor and make ancillary orders to facilitate the survey.

- [48] Section 19 of the Act enacts:

"The Eastern Caribbean supreme Court Civil Procedure Rules 2000 except where expressly excluded shall apply to all proceedings made under this Act."

- [49] Section 15 of the Boundaries Settlement Act enacts:

"(1) Where, in any survey ordered by a judge, the owners of contiguous lands agree as to the boundaries of the said lands, but no boundary marks exist, the surveyor shall place boundary marks as provided in section 4.

(2) Where the owners of the contiguous lands do not agree as to the boundaries of the said lands, the judge may direct the surveyor to survey the said lands to determine the boundaries between them, in the same manner as if such survey had been ordered by the High Court.; and the cost of such survey and

determination of boundaries, and the placing of boundary marks,.....shall be borne by the party or parties whom the judge may order to pay the same."

Disturbance

[50] The possession of the adverse possessor must not have been disturbed during the statutory limitation period. A disturbance act must not be a mere warning to the adverse possessor in relation to the land but must be a legal interruption of the running of the statutory period. It is necessary for the person who considers that his rights are being infringed to assert those rights, by legal process, against the adverse possessor.

[51] The unsuccessful institution of an action in trespass against the Respondent's son Anthony; the Second Respondent preventing utility workers from making connections without his permission; the making of repeated oral requests by the Respondents for the Applicants to vacate the disputed land: do not constitute interruption in law.

[52] A paper title owner cannot rely on statements outside of the legal process to support a claim of disturbance of an adverse possessor. Similarly, the Respondents (who are claiming possession) cannot so rely. The law on this is outlined in the Belfon case at p.7 where Sir Vincent Floissac CJ stated:

"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."

Section 2 of the Act: "as owner thereof"

[53] Section 2 of The Act defines adverse possession and applicant:

"Adverse possession" means factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Saint Vincent and the Grenadines for a continuous period of 12 years or more accompanied by the requisite intention to possess the said land as owner thereof."

"Applicant" means a person who claims to have adverse possession of a piece or parcel of land in Saint Vincent and the Grenadines and who makes an application to the Court to be declared the true owner of that piece or parcel of land."

- [54] "As owner thereof" in the definition must be read in the context of the whole definition. That expression means that the adverse possessor, during the period of twelve years, must treat the disputed land as if he were the owner, that is, do acts on the disputed land that an owner would normally do. Those acts evidence actual possession of the land and the intention of the adverse possessor in relation to the disputed land. The Applicant's act of constructing a new wooden house on the disputed land is an act signifying ownership of the land.

Owner

- [55] Learned Counsel's submission was the fact that the Applicants offered to purchase the disputed land from Jack Punnett, is an acknowledgement that they did not regard themselves as owners. Some evidence was needed, Counsel argued, to show that they, had retreated from that mental belief that Jack Punnett is owner.

- [56] The fact that an adverse possessor indicates that he is willing to purchase the land does not diminish his intention to acquire the disputed land by adverse possession. In **Ocean Estates Ltd v Pinder** (1969) 2 AC 19 the Privy Council considered a squatter's evidence:

"I would have paid the rent on the land in dispute if anyone had come along. Nobody showed up. xxx. If somebody had come along I would either have taken a lease or got off the land."

- [57] At p.3 Lord Diplock said:

"Their Lordships do not consider that an admission of this kind which any candid squatter hoping in due course to acquire a possessory title would be almost bound to make indicates an absence of the animus possidendi necessary to constitute adverse possession".

The Limitation Act: (Cap. 129)

- [58] Where the adverse possessor satisfies the elements of adverse possession, (factual possession and the requisite intent), the legal consequence is that the rights of the paper title owner are extinguished after the passage of twelve years.

- [59] The Applicants and the Respondents cannot be in possession at the same time. The Respondents have not been in possession for twelve years. The Applicants took

possession of the disputed land from 1988 and have been in adverse possession for more than twelve years and any rights of the Respondents are extinguished. Sections 17 and 19 of The Limitation Act enact:

17:

(1) "No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person."

19:

"Subject to section 20, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished."

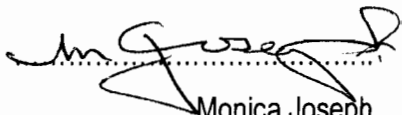
CONCLUSION

- [60] The Respondent's claim opposing the application for a declaration of title partially succeeds. The Applicants originally entered upon the disputed land with the permission of the Respondents around 1985.
- [61] The Applicants built a wooden house on the disputed land. Subsequently, they fenced the area on which their house stands. The permission given by the Respondents ceased to be operative in late 1988 when the Applicants failed to vacate the disputed land upon being requested by the Respondents to do so. Time began to run against the Respondents from 1989. The Applicants filed an application for possessory title on 12th July 2010, a passage of twenty years (1989 to 2010).
- [62] The Applicants have led a sufficiency of evidence to establish that they have been in possession of a defined but unmeasured portion of the disputed land for a period of over twelve years. The Court finds that the Applicants intention was to possess that portion of the disputed land.
- [63] The overriding objective of the CPR is to enable the Court to deal with cases justly. The Court will order a survey of the defined area on which the Applicants house stands to measure the defined area and lay out boundaries.

- [64] The parties are to meet to discuss the appointment of a surveyor to lay out boundaries and measure the defined area on which the Applicants house stands.
- [65] The boundaries to be laid by the surveyor are to follow the fence line erected by the Applicants. If the parties do not agree on the appointment of a surveyor, the Court will appoint a surveyor and make ancillary orders to facilitate the survey.
- [66] Declarations for possessory title will be made when the parties have complied with the order of the Court.

ORDER

1. The Applicants application for possessory title partially succeeds.
2. The Respondents' claim in opposition to the application for a declaration of title by the Applicants partially fails.
3. The parties are to meet to discuss, select and appoint a surveyor on or before 21st July 2011.
4. If they do not agree on the appointment of a surveyor, the Court will appoint a surveyor and make ancillary orders, including costs of survey, to facilitate the survey.
5. The surveyor is to lay down boundaries which are to follow the fence line erected by the Applicants around their house on the disputed land.
6. The surveyor is to measure the undefined fenced area.
7. Return date in Chambers on 27th July 2011 with liberty to apply.
8. There is no order as to costs.



Monica Joseph

HIGH COURT JUDGE (ACTING)

12th July 2011