

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 508 OF 2003

BETWEEN:

GRACE MUNROE - OKOYA

Claimant

v

DOUGLAS BROWNE

Defendant

AND

CLAIM NO. 509 OF 2003

BETWEEN:

GRACE MUNROE - OKOYA

Claimant

v

JOSEPH SCOTT

Defendant

Appearances: Mr. Stephen Williams for the Claimant.
Mr. Olin Dennie for the Defendant Douglas Browne
Mrs. R. Browne - Matthias for the Defendant Joseph Scott.

2010: March 12

2010: June 30

JUDGMENT

[1] **THOM, J:** The Claimant claims the area of land occupied by both defendants hence both claims were heard together.

- [2] The Defendants Douglas Browne and Joseph Scott reside on a parcel of land at Frenches. This land was originally owned by Wilmoth Woodley (the disputed land). Reginald Woodley was the agent of Wilmoth Woodley.
- [3] By a Deed of Gift dated December 31, 1998 Wilmoth Woodley purported to transfer the disputed land to the Claimant. This Deed is registered as Deed No. 27 of 1999. In August 2000 the Claimant requested the Defendants to deliver up possession of the disputed land to her. In 2000 Joseph Scott registered Deed No. 3031 of 2000 a deed of possessory title of the disputed land in his name. The Defendants having refused to deliver up possession the Claimant instituted these proceedings in which she seeks inter-alia, a declaration that she is the fee simple owner of the disputed land and possession of the said land.
- [4] Both defendants in their defence allege that they have been in uninterrupted possession of the land for over twelve years before the purported transfer to the Claimant thus any title which the Claimant's predecessor had was extinguished by virtue of the provisions of the Limitation Act Cap. 90 of the Laws of Saint Vincent and the Grenadines.
- [5] The Defendant Joseph Scott also alleges that Wilfred Vanloo the purported agent of Grace Munroe-Okoya had no authority to institute the claim.
- [6] The Defendant Joseph Scott in his counterclaim sought inter-alia a declaration that he is entitled to possession of the land described in the schedule of Deed No. 3031 of 2000 which is the disputed land.

ISSUE

- [7] The issue to be determined is who is the legal owner of the disputed land.

EVIDENCE

- [8] Grace Munroe-Okoya who resides in the United States of America did not testify. Wilfred Vanloo was the sole witness called on behalf of the Claimant.

CLAIMANT'S EVIDENCE

- [9] The evidence on behalf of the Claimant is that the disputed land was formally owned by Wilmoth Woodley. By a Deed of Gift dated 31st December, 1998 Wilmoth Woodley transferred the disputed land to the Claimant. The Defendants were tenants of the Claimant's predecessor in title and paid rent to Reginald Woodley, Sister Yvonne Hagley and to Mr. Arleigh Douglas who collected the rent on behalf of Sister Hagley. The Claimant paid the house and land taxes to the Kingstown Town Board for the years 1983 to 1997 in the name of Wilmoth Woodley and in her own name from the year 2000. Receipts from the Kingstown Town Board were exhibited. The Claimant never authorized the Defendants to renovate their houses. Notice for possession was given to both Defendants and they have failed and refused to deliver up vacant possession of the disputed land.
- [10] Under cross-examination by Learned Counsel Mr. Olin Dennie, Wilfred Vanloo testified that Grace Munroe-Okoya resides in the USA. She has been resident there since 1987. The Power of Attorney in his favor was executed after these proceedings were instituted. The house that Douglas Browne occupied on the disputed land is a wooden house with a concrete base. He became aware that the house was renovated in 1999. He agreed that Douglas Browne never paid any rent to him. He agreed that he had no receipts to show that Douglas Browne paid rent to Reginald Woodley or to Sister Hagley. Wilfred Vanloo admitted that prior to the year 2000 he had nothing to do with the disputed land. He is familiar with the disputed land, he lives in the same area.
- [11] Under cross-examination by Mrs. Browne-Matthias, Wilfred Vanloo testified that he was not aware that Joseph Scott had a Deed for the disputed land. He maintained that Joseph Scott rented the land from Reginald Woodley and paid rent to Reginald Woodley. He agreed that he did not have any receipts for rent. He also agreed that Joseph Scott was living on the land for a long time. He was not aware that Joseph Scott paid taxes for the disputed land because he (Wilfred Vanloo) paid taxes for the disputed land.

EVIDENCE ON BEHALF OF THE DEFENDANT DOUGLAS BROWNE

- [12] The defendant Douglas Browne testified that around 1983 he rented the portion of the disputed land on which his house is situated from one Reginald Woodley of Town Hill at the yearly rent of \$65.00. With the permission of Reginald Woodley he built a substantial concrete and wooden house on the land which is valued at \$60,000.00. Reginald Woodley died in 1985. Sister Hagley then approached him and advised that she was in charge of the land. He never paid rent to her nor to the Claimant.
- [13] Under cross-examination by Mr. Stephen Williams, Douglas Browne testified that the discussion to rent a portion of the disputed land was conducted by his wife Noreen Browne, her sister Pamela Scott and Reginald Woodley. He took no part in the discussion. Reginald Woodley lived close by the disputed land. Sister Hagley never visited the disputed land since he has been in occupation thereof.
- [14] Noreen Browne testified that since about 1983 she had lived on a portion of the disputed land with her husband Douglas Browne. They rented the disputed land from Reginald Woodley for the yearly rent of \$65.00. With the permission of Reginald Woodley they built a house on a portion of the disputed land. After Reginald Woodley died in 1985 she and her husband were approached by Sister Hagley by telephone who advised them that she was in charge of the land. She and her husband never paid any rent to Sister Hagley or to the Claimant. She first became aware that the Claimant was claiming an interest in the disputed land in August 2000 when she received a letter from Attorney-at-Law, Mr. Arthur Williams in which he stated that the Claimant became the owner of the disputed land by virtue of Deed No. 27 of 1999. She and her husband made improvements to the dwelling house which is now valued \$60,000.00.
- [15] Under cross-examination by Mr. Stephen Williams, Noreen Browne testified that she paid rent to Reginald Woodley for about two years. About six months after Reginald Woodley died Sister Hagley called her on the telephone. She requested Sister Hagley to produce

documentation to show that she had the authority to collect rent. She never heard from Sister Hagley again. Sister Hagley never visited the disputed land.

EVIDENCE ON BEHALF OF THE DEFENDANT JOSEPH SCOTT

- [16] Joseph Scott testified that in 1977 while he was residing at Sion Hill he was walking through the village of Frenches and he saw a vacant piece of land with lots of bushes, two breadfruit trees and one coconut tree. From his enquiries he learnt no one lived there so he began clearing the land. He cultivated pigeon peas on the land. He harvested same also the breadfruit and he and his family used same. Between 1980 and 1981, he constructed a small wooden house with a concrete base on the disputed land. With the assistance of the Government he made repairs to the house. He did not seek permission from anyone to repair the house. He paid the taxes in his name. He never paid rent to anyone. A number of tax receipts were exhibited. He has since 1977 been in uninterrupted possession of the disputed land.
- [17] In 1984, his wife Pamela Scott gave her sister Noreen Browne permission to build a house on a portion of the disputed land. She has remained there ever since.
- [18] In 2000 he registered a Deed of Possessory Title for the disputed land by virtue of him being in uninterrupted possession of the land for over twenty-four years. He was never a tenant of Wilmoth Woodley. He never paid rent to Sister Hagley or Arleigh Douglas. He never had any discussion or dealing with them in relation to the disputed land.
- [19] Under cross-examination by Mr. Stephen Williams, Joseph Scott testified that he did not know Reginald Woodley, but he heard the name many years ago. He denied that Reginald Woodley gave him permission to occupy the land. Reginald Woodley had no conversation with him or his wife. His wife did not consult with him before she gave her sister Noreen Browne permission to construct a house on a portion of the disputed land. At the time when his wife gave Noreen Browne permission he was out of the State of Saint Vincent and the Grenadines.

- [20] Mr. Adolphus Pipe a retired builder testified that in 1980, he assisted Joseph Scott to construct a house on the disputed land. At no time during the construction period did anyone visit the disputed land and told him to cease construction. The Claimant declined to cross-examine Adolphus Pipe.

SUBMISSIONS

- [21] No Submissions were received on behalf of the Claimant or the Defendant Douglas Browne.
- [22] It was submitted on behalf of Joseph Scott that:
- (a) Wilfred Vanloo had no authority to institute the claim on behalf of Grace Munroe-Okoya.
 - (b) The Claimant failed to show that there was any tenancy between the Defendant Joseph Scott and the Claimant's predecessor in title.
 - (c) Any interest which the Claimant's predecessor had in the disputed land had been extinguished by the provisions of the Limitation Act.

LAW AND COURT'S ANALYSIS

Lack of Authority

- [23] By a letter dated July 20, 2000 addressed to Attorney-at-Law Arthur Williams, Grace Munroe-Okoya purported to grant Wilfred Vanloo authority to act on her behalf in connection with her property at Frenches.
- [24] Learned Counsel for Joseph Scott submitted that this letter was not a Power of Attorney registered under the Registration of Documents Act. Therefore, Wilfred Vanloo had no authority to institute the proceedings.
- Section 3(1) (b) of the Registration of Documents Act Cap. 93 provides as follows:
- "(1) The following documents shall be registered under this Act -
 - (a) ...

(b) Powers of attorney and deeds of substitution there under empowering any person to represent and act for any other person in Saint Vincent and the Grenadines."

- [25] These Claims were instituted on the 27th day of November 2003 by Grace Munroe-Okoya acting by her agent Wilfred Vanloo.
- [26] On December 5, 2003 Grace Munroe-Okoya executed a Power of Attorney in favour of Wilfred Vanloo. The Power of Attorney was duly registered in the Registry of the High Court of Saint Vincent and the Grenadines as Deed No. 313 of 2003.
- [27] The Claimant does not deny that the original authority to act by Grace Munroe-Okoya was not registered under Section 3 of the Registration of Documents Act. The Claimant relies in her reply on the Power of Attorney which it is not disputed was registered under Section 3 of the Registration of Documents Act. However the Power of Attorney was executed after the claims were instituted thus it cannot be relied on as authority to institute the claims.

Tenancy

- [28] The sole witness for the Claimant Wilfred Vanloo testified that he had no dealings with the disputed land prior to the year 2000. After the Deed of Gift was made in favour of the Claimant Grace Munroe-Okoya he had dealings with the land. While he claimed there was a tenancy between Joseph Scott and Wilmoth Woodley acting through his agent Reginald Woodley, he gave no details whether it was a monthly or yearly tenancy or what was the quantum of the rent. In fact his only knowledge of a tenancy was based on conversations he had with Reginald Woodley who died in 1985.
- [29] In the case of Douglas Browne, the evidence shows that there was a yearly tenancy. The amount of rent was \$65.00 per annum. However the evidence of Douglas and Noreen Browne which was not contradicted is that after Reginald Woodley died in 1985 they paid no further rent. The tenancy being an annual tenancy would have ended at the expiration of the year. There is no evidence of the tenancy continuing after the death of Reginald Woodley.

LIMITATION ACT

[30] The issues to be determined are:

- (a) Whether the Defendants were in continuous exclusive and uninterrupted possession of the disputed land for a period of at least twelve years prior to the institution of these proceedings.
- (b) Whether the Claimant's predecessor in title in the disputed land has been extinguished and thus any right of recovery has been statute barred.

[31] The relevant provisions are Sections 17 and Schedule 1 of the Limitation Act Cap. 90. Section 17 of the Limitation Act reads as follows:

- "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.
- 2.
- 3.
- 4.
- 5. Part 1 of the schedule contains provisions for determining the date of accrual of rights of action to recover land in the cases mentioned."

[32] Paragraphs 1, 2 and 8 (1) and (2) of Schedule 1 read as follows:

- "1. Where the person brings an action to recover land or some person through whom he claims has been in possession of the land, and has while entitled to the land been dispossessed or has discontinued his possession, the right of action shall be treated as having accrued on the date of dispossession or discontinuance.
- 2. Where any person brings an action to recover any land of a deceased person (whether under a will or on intestacy) and the deceased person:
 - (a) was on his death in possession of the land or in the case of a rent charge created by will on taking effect upon his death, in possession of the land charged; and

(b) was the last person entitled to the land to be in possession of it, the right of action shall be treated as having accrued on the date of his death.

8. (1) No right of action to recover land shall be treated as accruing unless the land is in possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as "adverse possession") and where the preceding provisions of this schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.

(2) Where a right of action to recover land has accrued and after its accrual, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be treated as accruing unless and until the land is again taken into adverse possession.

[33] The effect of the above mentioned provisions is that the right of action to recover land is barred whenever twelve (12) years have elapsed from the time when a right of action accrued. The right of action is accrued only when the land is in adverse possession of a person other than the true owner. Time begins to run at the time when adverse possession is taken of the land.

[34] In Halsbury Laws of England Vol. 28 4th Edition at paragraph 268, the Learned Authors explained adverse possession in the following manner:

"Meaning and Effect of 'Adverse Possession'" - No right of action to recover land accrues unless the land is in possession of some person in whose favour the period of limitation can run. Such possession is called adverse possession. What constitutes such possession is a question of fact and degree; there is no general principle that to establish possession of an area of land, the claimant must show that he made physical use of the whole of it. On the other hand a claim to prescriptive rights to easements may be so extensive as to amount practically to a claim to the whole beneficial user of the servient tenement in which case it can only succeed as a claim to adverse possession."

[35] The principles to be applied by the Court in determining whether a person was in adverse possession were outlined in the case of Powell v McFarlane. These principles were

approved by the House of Lords in JA Pye (Oxford) Ltd. and Another v Graham and Another.

[36] In JA Pye the Court at page 866 explained adverse possession as follows:

“The legal possession required is:

(i) a sufficient degree of physical custody and control (factual possession) and
(ii) an intention to exercise such custody and control on one's own behalf and for one's own benefit (intention to possess). As regards factual possession, everything depended on the circumstances, but broadly such possession was constituted where the alleged possessor had been dealing with the land as an occupying owner might have been expected to deal with it and nobody else had done so. The necessary intent was one to possess not to own and an intention to exclude the proper owner only so far as reasonably possible.”

[37] Applying the above principles to this case the question is did the defendants Douglas Browne and Joseph Scott dispossess the true owner of the disputed land. The onus of proving that the owner has been dispossessed is on the party who alleges it. In this case it is the Defendants Douglas Browne and Joseph Scott.

[38] The evidence on behalf of Douglas Browne that he and his wife Noreen Browne rented a portion of the disputed land from Reginald Woodley at an annual rent of \$65.00, that they stopped paying rent after Reginald Woodley died in 1985, they refused to pay rent to Sister Hagley when she sought to collect rent from them about six months after Reginald Woodley died, since then they have continued in uninterrupted possession of a portion of the disputed property, they have renovated their house without permission from anyone, this evidence has not been contradicted by the Claimant. I found Noreen Browne to be a very credible witness. She was forthright in her answers under cross-examination. Even though the Claimant did not produce any evidence of the tenancy Noreen Browne readily admitted that she did rent the property from Reginald Woodley and paid an annual rent.

[39] The evidence on behalf of Joseph Scott that he went into possession of the disputed land in 1977, that he paid no rent to anyone, he built his house on the disputed land between 1980 - 1981, he paid taxes for the disputed land at the Kingstown Town Board, tax receipts were exhibited, he renovated his house without permission from anyone and he has been

in uninterrupted possession since 1977, this evidence has not been contradicted by the Claimant. I note the tax receipts were for the period after Reginald Woodley died.

[40] The Claimant's sole witness Wilfred Vanloo who I found to be a credible witness readily agreed that even though he lived in Town Hill very close to the disputed land and he was a very good friend of Reginald Woodley he did not have any dealings with the property until 2000 after the Deed of Gift was made in favour of Grace Munroe-Okoya. He never visited the disputed land. He never spoke to the Defendants in relation to the disputed land. The original owner of the disputed land Wilmoth Woodley resided outside of Saint Vincent and the Grenadines. After the death of his agent Reginald Woodley in 1985, neither Wilmoth Woodley, Grace Munroe-Okoya or anyone acting on behalf of Wilmoth Woodley ever visited the disputed land, or sought to exercise any powers of ownership over the disputed land. Wilfred Vanloo did testify that the Claimant paid taxes for the disputed land and several receipts were exhibited, however the mere payment of taxes without more would not prevent the land from being in adverse possession.

[41] The Claimant raised in her pleadings the issue of acknowledgment. The Claimant sought to rely on a document purportedly signed by the Comptroller of the Inland Revenue Department which reads as follow:

"To whom it may concern

This is to certify that records at this Department show that there were two timber houses on the subject parcel of land since May 1984. Map reference 9/9/1a and 9/9/1b at Richmond Hill, listed in the names of Joseph Scott and Douglas and Noreen Browne respectively.

At that time, this office was informed by the occupants that the landowner was Reginald Woodley and that a rent of \$200.00 per annum was payable for the use and occupation of the land.

Please be guided accordingly.
Sincerely,
Comptroller of Inland Revenue."

[42] This document was not admitted into evidence. In any event the document does not constitute acknowledgment on the part of the defendants within the meaning of the

Limitation Act. The relevant provisions are sections 29 (1) (2) and 30 (1) and (2). These sections read as follows:

"29 (1) Subsection (2) and (3) apply where any right of action (including a foreclosure action) to recover land or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property has accrued.

(2) If the person in possession of the land or personal property in question acknowledges the title of the person to whom the right of action has accrued, the right shall be treated as having accrued on and not before the date of the acknowledgment.

30. (1) To be effective for the purpose of Section 29, an acknowledgement must be in writing and signed by the person making it.

(2) For the purpose of Section 29, any acknowledgment or payment
(a) may be made by the legal practitioner or agent of the person by whom it is required to be made under that section; and

(b) shall be made to the person or to the legal practitioner or an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made."

[43] The document was not made by the Defendants or their legal practitioner and it was not made to the Claimant, her predecessor in title or their legal representative as is required by Section 30.

[44] I find that when Wilmoth Woodley sought to transfer legal title in the disputed land to Grace Munroe-Okoya by way of Deed No. 27 of 1999 dated 31st December 1998 his title to the disputed land had already been extinguished by virtue of the provisions of the Limitation Act. Wilmoth Woodley could therefore not transfer any title or interest in the disputed land to Grace Munroe-Okoya.

[45] The Defendant Joseph Scott in his counter claim sought a declaration that he is entitled to possession of the land described in the schedule of Deed No. 3031 of 2000 which is the disputed land.

- [46] Deed No. 3031 of 2000 is a Deed which grants possessory title to Joseph Scott. The schedule of the Deed includes the portion of the disputed land on which Douglas Browne and Noreen Browne constructed a house.
- [47] Joseph Scott in his witness statement at paragraph 9 stated as follows:
 "In 1984 my wife's sister Noreen Browne, had no place to live. She advised her to build a small house on our land and that she could live there until she can find somewhere of her own. She never moved."
- [48] Pamela Scott in her witness statement at paragraph 6 stated as follows:
 "In 1984 my sister Noreen Browne had no place to live and I told her that she could build a small house on the land and live there until she can found [sic] some place to go. I gave her the permission to live on our land. She has since that time not moved."
- [49] Under cross-examination Joseph Scott testified that when his wife gave Noreen Browne permission to build on the disputed land he was outside the State of Saint Vincent and the Grenadines. His wife did not consult with him. Pamela Scott testified under cross-examination that she never took her sister Noreen Browne to Reginald Woodley to rent a portion of the disputed land.
- [50] The effect of the testimony of Joseph and Pamela Scott is that they granted Noreen Browne a license to occupy a portion of the disputed land.
- [51] In order for there to be adverse possession the person claiming to be in adverse possession except in the case of joint possession must be in exclusive possession.
- [52] The issue to be considered is whether Joseph Scott was in exclusive possession of the entire area of the disputed land.
- [53] Possession by a licensee cannot constitute adverse possession. However the person who has given the license must have had legal authority to do so, see the case of Riley v Braithwaite and Another [1979] 37 WIR p.66. The evidence of both Joseph Scott and Pamela Scott is that Douglas Browne and Noreen Browne went to live on a portion of the

disputed land in 1984. Joseph Scott and Pamela Scott testified that they went into occupation of the disputed land in 1977. While there is no evidence to contradict their testimony that they went into occupation of the disputed land in 1977, in 1984 they were not the legal owners of the disputed land, the twelve year limitation period had not expired. There is no evidence that Joseph Scott or Pamela Scott had any legal authority to give Douglas and Noreen Browne a license to occupy the disputed property.

[54] I find that Joseph Scott was not in exclusive possession of the entire area of the disputed land for a period of twelve years.

[55] In conclusion I find that both Douglas Browne and Joseph Scott have proved on a balance of probabilities that they have each been in exclusive possession of a portion of the disputed land.

[56] It is ordered:

- (i) The Claimant's claim in each case is dismissed.
- (ii) Deed No. 27 of 1999 dated 31st December 1998 is hereby declared to be null and void.
- (iii) It is hereby declared that the Defendant Joseph Scott is entitled to possession of the land described in the Schedule of Deed No. 3031 of 2000 save and except that portion of the land that is occupied by Douglas and Noreen Browne.
- (iv) Deed No. 3031 of 2000 is hereby cancelled and is declared to be null and void in so far as it relates to the portion of land occupied by Douglas and Noreen Browne.
- (v) The Claimant shall pay each defendant cost in the sum of \$4,000.00 as agreed.


.....
Gertel Thom
HIGH COURT JUDGE