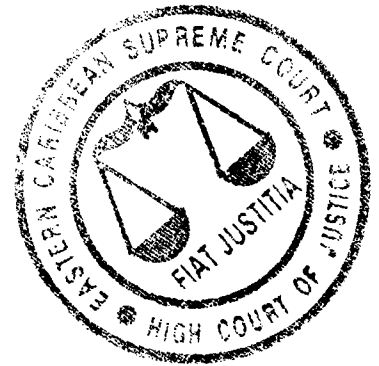




THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 237 OF 2006

BETWEEN:

EILEEN SNAGG
(Acting by her lawful Attorney on record Olivia Gibbs)

Claimant

V

URCELLA KING

Defendant

Appearances:

Mr. Olin Dennie for the Claimant

Ms. Nicole Sylvester and Ms Patina Knights for the Defendant

2008: May 27
July 17
2009: September 18

JUDGMENT

BACKGROUND

[1] **BRUCE-LYLE, J.:** On the 31st May 2006, the Claimant Eileen Snagg acting by her lawful attorney on record Olivia Gibbs, filed a claim for a Declaration that by virtue of deed number 843 of 1980, she is the fee simple owner of the parcel of land described in the schedule to the said deed which is stated to be situated at Canouan and is by extent one and a half acres more or less. The Claimant also sought an injunction to restrain the

defendant Urcella King from trespassing on the said parcel of land and damages for trespass and costs

- [2] In her defence, filed on the 12th October 2006, the defendant Urcella King contends that for over 35 years she has been in possession of the disputed parcel of land which is by admeasurement 5,863 sq ft in accordance with a survey plan which was prepared at her instance as recent as 23rd June 2006, some three weeks after the claimant filed her claim, and some nine days after she was served with the claimants claim, she the defendant having stated in her acknowledgement of Service filed in this matter on the 20th June 2006 that she received the claimants Claim Forms on the 14th June. 2006
- [3] Further, the defendant contends that she has been in possession of the said parcel of land for a period in excess of about 40 years; and further contends also that the claimant may have obtained a Deed of Gift for the said parcel of land but at no time did she occupy same.
- [4] On the 8th November 2006, the claimant in her reply to the defendants defence contends that the defendant never entered into possession of the said lands described in Plan GR11/18 until February 2006 when she placed concrete Blocks on the said lands after she received a letter from her solicitors warning her not to trespass on the said parcel of land
- [5] The claimant further contended in her reply that the defendant attempted to exercise further acts of ownership only in June 2006 when she retained a surveyor to survey the disputed parcel of land which said parcel of land was already surveyed by the claimant since 1991.
- [6] At the trial of this matter the claimant called three witnesses including herself to testify. The defendant called two witnesses including herself. From that evidence as a whole I found the following facts to be not in dispute – it is not disputed that the claimant Eileen Snagg and Olivia Gibbs her lawful Attorney on record are sisters and also the aunts of the defendant Urcella King; it is also not in dispute that Roy Snagg (deceased) was the father

of the defendant Urcella King and was the brother of the claimant Eileen Snagg and Olivia Gibbs; it is also not in dispute that when Roy Snagg died in 1947 the defendant was about one year old and therefore cannot say that her father Roy Snagg built a house on the said land; nor is it in dispute that the parcel of land in question was originally owned by Godwin Snagg the father of the claimant and the grandfather of the defendant, and that Roy Snagg and Anita Snagg and their children occupied the house on the said land; nor is it also in dispute that Godwin Snagg died intestate on the 30th August 1962.

[7] It is also not in dispute that there was no survey of the disputed parcel of land until June 2006 after the claimant filed this claim against the defendant and the defendant then retained the services of an authorized Land Surveyor to survey the said parcel of land; nor is it also disputed that survey plan GR11/18 described that said parcel of land as being 5,863 sq ft and that the said survey plan indicated that it supersedes plan number GR422 which was prepared at the instance of the claimant since December 1991; nor is it also disputed that the claimant Eileen Snagg exercised acts of ownership in respect of the entire parcel of land when she in 1991 some 17 years ago retained the services of a Surveyor to survey the said parcel of land which was found to measure 1 acre and 16 poles. It is of interest to note that Anita Snagg was aware of this survey done by Eileen Snagg as she referred to the size of the land being 1 acre and 16 pole at paragraph 9 of the witness summary given or prepared by her lawyer on the 28th March 2007; it is also not in dispute that land taxes for the entire parcel of land have been paid over the years by the claimant Eileen Snagg as evidenced by the several receipts exhibited in this matter and finally it is also not disputed that the defendant had purchased lands in Canouan together with her husband and built substantial houses on the said parcels of land at a time when she contends that she was in possession of the disputed parcel of land which she treated as her own.

[8] From the evidence I found the following facts to be in dispute- it is in dispute whether Roy Snagg the claimants brother and the defendants father built a house on the disputed parcel of land or whether the said house was built by his father; it is also disputed whether Roy Snagg was given permission to live on the said parcels of land by his father Godwin

Snagg; it is also in dispute whether Anita Snagg ever treated the land as her own, she having left the land in 1966 and gone to live elsewhere in Canouan; it is also disputed whether the house was a wattle and Daub house as stated by Eileen Snagg the claimant and her witness Olivia Gibbs and confirmed by the defendant's witness Norman Sergeant in his witness Summary filed on the 28th March 2007, which he sought to amend before he commenced testifying at the trial; it is also disputed based on the contradictory nature of the witnesses for the defendant, whether Anita Snagg became the sole owner of the disputed property after her husband Roy Snagg died in 1947 according to witness/defendant Urcella King at paragraph 6 of her witness statement or whether Anita Snagg began to occupy the disputed parcel of land in or about 1944 according to the defence witness Norman Sergeant at paragraph 6 of his witness statement; and it is also in dispute whether the defendant ever gave permission to anyone to live in the house on the disputed land as the evidence by the defence in this regard is rather uncertain. The Court recalls that the witness Norman Sergeant at the trial changed the statement given in his witness summary as it relates to the person who lived in the house in an attempt to marry same with the evidence given by the defendant Urcella King. This witness also attempted to change his statement as regards the small wattle and daub house which he gave in his witness summary.

- [9] From these disputed facts, it is clear that the issues for the Court to determine can be encapsulated in three broad areas – (1) whether the claimant's claim for ownership of the said lands against the defendant is statute barred; (2) whether the defendant was in an interrupted and unmolested possession of the said land for at least twelve years and accrued title to the disputed land; (3) whether it is reasonable that the defendant who for a period in excess of 35 yrs or 40 years treated a parcel of land as her own would buy lands and build houses elsewhere in Canouan and not develop a parcel of land which she claimed as her own since 1966

THE EVIDENCE

- [10] The claimants evidence as adduced by herself and her two witnesses was to the effect that the disputed parcel of land was part of a larger parcel of land which is by measurement 1 acre and 16 poles. The claimant and her sister who gave evidence on his behalf are both Senior citizens over the age of 75 years. They both testified that Roy Snagg, who was their brother, was given permission by their father to occupy a wattle and daub house which their father had built on the land.
- [11] The claimant testified that over the years she paid land taxes in respect of the said parcel of land and that she had caused the said parcel of the land to be surveyed in December 1991 as survey Plan GR422. Most importantly she testified that the said parcel of land was owned by her father Godwin Snagg who died in 1992 and after his death her mother Annie Snagg became the owner of the said parcel of land which was given to her by Deed of Gift number 7843 of 1981 dated 19th May 1980.
- [12] It is interesting to note that the claimant testified that she left St. Vincent in 1962 for England but that she returned home every year. Her evidence goes further to state that when she returned home in 1962 she discovered that Anita Snagg who was married to her brother Roy Snagg was no longer living in the said wattle and daub house, but had relocated to Grand Bay to live with another man, most importantly she testified that by this time the wattle and daub house had deteriorated and fallen to the ground.
- [13] In November 2005, after discovering that people were throwing garbage on the land at Bachelor Hill, the claimant gave instructions to her sister Olivia Gibbs to erect a "No trespassing" sign on the said land. She testified that this sign was destroyed by the Defendant who then placed concrete blocks on the said parcel of land giving her intention to start construction work on the said parcel of land. This was when she instructed her sister Olivia Gibbs to take legal action against the Defendant. According to the Claimant she has over the years been paying taxes for her land at Bachelor Hall and that in 1995

she came home to build her house and had to pay two men, Nixon Sergeant and Franklyn George the sum of \$500 to clear the said land which was overgrown with bush.

[14] Olivia Gibbs also testified in Court and in her witness statement. She supported the Claimants evidence that she acted as her sisters agent over the years until she returned home from England in 1970. She evidenced as the person who erected the "No trespassing" sign on the land in 2005 and also paid the Surveyor Mr. Colin Alexander his fee for surveying the land in 1991. She exhibited receipts to the effect in the matter. Counsel for the defendant has described the evidence of the claimant and this witness Olivia Gibbs as unreliable and not forthright and that Olivia Gibbs answered what she wanted to answer.

[15] I am afraid I do not agree with Counsel for the Defendant. I found the evidence of both the Claimant and Olivia Gibbs as very cogent, reliable and supporting one another in every material particular and I so hold as a fact.

[16] The third witness for the Claimant was his nephew Cordon Gibbs, 48 years old. In his evidence-in-Chief by way of his witness statement, he stated that having attended school in St. Vincent from 1970 until 1979, he left for the United Kingdom. But that during the period 1970 to 1979 when he resided in St. Vincent he would visit the parcel of land in issue and discovered there was an abandoned wattle and daub house on the said land which was unoccupied; there was nobody in physical occupation of the house on the said land. Mr. Gibbs further testified that even though he lives and works in the United Kingdom currently, he visits Canouan every three years since 1979 and always visits the said parcel of land in issue with his mother Olivia Gibbs; and that over those years he had never seen anyone in occupation of the said parcel of land.

[17] The defendant Urcella King also gave evidence by way of her witness statement and viva voce evidence. Her evidence was to the effect that her Grandmother, Annie Snagg, gave her father Roy Snagg the disputed property and he built a house on the land where he lived with his wife and children until he died. She further testified that after Roy Snagg

died, her mother Anita Snagg occupied the land solely and treated the land as her own, uninterrupted and unmolested by anyone. She further said that after her mother moved to Grand Bay in 1966, the Defendant took possession of the land and treated it as her own in that, she resided there for a period and subsequently gave permission for several members of her family to stay in the house and further gave permission for the Government to construct a road through the property. Most importantly she said the house on the disputed land was not a wattle and daub house, but that it was made from white lime, wood and concrete, and that she has exercised all rights of ownership over the land in planting peas and corn on the land and in giving permission for family members to stay on the property and also permission for the road to be cut after the Claimant said that she did not want the road cut through her land.

[18] Mr. Norman Sergeant, who unable to sign a witness statement in the prescribed time as set by the Court and, a witness summary was thus filed on his behalf by Counsel for the defendant was the other witness for the Defendant. Prior to having the witness summary stand as his evidence in chief, the witness requested amendments to paragraphs 3 and 7 as they were incorrect, in that, the house on the disputed property was a "nuggings" house and not wattle and daub and further, after Anita left the property, Miles DeRoche resided there until he drowned, and then Lucina Telemaque and then Flora Durham also resided there.

[19] In his evidence, the Witness said he had no knowledge of who owned the land prior to Annie Snagg's ownership, but he knows that it was owned by Annie Sangg and he was born in 1949. He further said that since he knew the land, it has now a road separating the piece on which the Claimant has built upon and the piece of land in dispute. He described the road as formerly an unpaved pathway before it was widened and concreted by the Government with the permission of the defendant. Most importantly this Witness stated that he saw the Defendant at the house in Bachelor Hall after her mother left in 1966 and that she was back and forth the property, and that he saw her there even after she remarried

- [20] The Court is now being asked by Counsel for the Defendant to infer that the Defendant visited her family whilst they were residing at the house; and that the defendant herself had stated in her evidence that she planted peas and corn on the disputed property and also visited the premises to check on the premises and last visited the house to nail the windows and doors shut before the hurricane that subsequently destroyed the house in 2002.
- [21] The Defendant after her evidence in chief was cross-examined at length. From that grueling cross-examination it is clear that the Defendant was just about one year old when her father Roy Snagg died in 1947, she having been born in 1946. This is at variance with her witness statement at Paragraph 4, that her father Roy Snagg occupied the disputed parcel of land in or about 1944 with no interruption and unmolested by no one. Again at Paragraph 5 and 6 of her witness statement the defendant again stated that her father who died within one year of her birth built a house on the land and that after her father died in 1947, her mother Anita Snagg became the sole owner of the property.
- [22] These two instances are clearly misleading! The defendant was not even born when her father went to live on the disputed parcel of land, let alone testify that her father built the house on the land. She could only have been told of these by someone else. This to me clearly amounts to evidence calculated to mislead the Court. I disregard this evidence with the disdain it deserves.
- [23] The Defendant would also like this Court to believe that she allowed Lucian Telemaque and Flora Durham to occupy the house that was on the land over the years. But then none of these persons, nor other occupants of the house came to testify on her behalf in support of her claim. Her witness Norman Sergeant did not help her case either, in my view. Sergeant having made certain statements in his witness statement given to his Lawyer, attempted to change his evidence as regards the occupants of the house to lend credence and support evidentially, with the evidence given earlier by the Defendant. This was another rather peunile attempt to mislead the Court. But he corroborated the evidence of the Claimant that the house was a Wattle and Daub house.

- [24] Counsel for the defendant cited Section 17(1) of the Limitation Act Chapter 90 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990 in answer to the first issue for the Court's consideration; whether the claimant's claim for ownership of the said lands against the defendant is statute barred. Section 17 provides that no action shall be brought to recover any land after the expiration of the Limitation period of twelve years.

Section 19 of the said Act further provides –

“.....at the expiration of the period prescribed by this Act for any person to bring an action to uncover land The title of that person to the land shall be extinguished.”

Counsel for the defendant further cited the case of **Buckinghamshire County Council V Moran** [1989] 2 All E.R.225 per Mourse LJ at page 238 para (g) where he states:-

“ Limitation.... extinguishes the right of the true owner to recover the land, so that squatter's possession become impregnable, giving him a title superior to all others”.

Counsel further advanced from reported cases a definition of adverse or prescriptive possession of land as:-

“ Continuous, uninterrupted, peaceable, public and unequivocal possession of the land as owner thereof and to the exclusion of the proprietor for at least 12 years whether the adverse or prescriptive possession was as a result of dispossession or discontinuation of possession by the proprietor.”

- [25] In as much as I agree with the statement of the law as posited by sections 17 and 19 of the Limitation Act, Cap 90 of the Laws of St. Vincent and the Grenadines, and also by the case law cited by counsel for the defendant, I cannot juxtapose the case law and authorities cited to the facts of the case with a view to marrying them. Having found the defendant and her witness to be unreliable and calculatedly trying to mislead the Court, I also find that the defendant only attempted to exercise acts of ownership in February 2006 and June 2006 when she placed concrete blocks on the disputed parcel of land and then had them surveyed. She did not and has not demonstrated by her action over the years that she had the necessary animus possidendi in relation to the land in dispute.

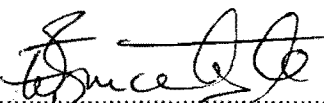
- [26] I therefore hold as a matter of law that Section 17 of the Limitation Act, chapter 90 of the Laws of Saint Vincent and the Grenadine cannot be relied on by the defence as the defendants first attempt to exercise acts of ownership in respect of the disputed parcel of land was in 2006.
- [27] Flowing from this premise, I also answer the second issue as to whether the defendant has been in interrupted and unmolested possession of the disputed land since 1996 (or for at least 12 years) and accrued title to the disputed land in the negative. I am not convinced from the defendants evidence that she had (1) a sufficient defence of physical custody and control of the said land (2) an intention to exercise such custody on her own behalf and for own benefit; I do not agree or believe from the evidence that the defendant has been in occupation of the disputed land since 1966, nor has she proven to the satisfaction of this Court that she had the intention to dispossess the claimant of these lands. She has not been in peaceful, exclusive and uninterrupted possession of the property from 1966 until February 2006. I see no such in the evidence adduced before this Court.
- [28] I reiterate that all the authorities cited by counsel for the defendant even though sound in law are not applicable to the facts adduced in this case. I find it highly unreasonable that the defendant who for a period in excess of 25 years of 40 years would treat a parcel of land as her own, would rather buy lands and build houses else where in Canouan and not develop this parcel of land which she claimed as her own since 1966.
- [29] I also find as a fact that the house on the disputed parcel of land was a Wattle and Daub house and not as described by the defendant. I also find it passing strange that Anita Snagg left this house in 1966 and relocated elsewhere instead of making improvements to the said house yet would want this court to believe occupied and treated the land as her own. Flowing from this I am more inclined to accept the claimant's version that the house lay abandoned and fell apart since 1966 or soon thereafter and not by the passing of the Hurricane in 2006.

[30] Significantly, there is no independent evidence to indicate that any Government department sought the permission of the defendant to construct a road through the disputed land. If the defendant did give such permission for the road to be constructed, that does not confer any title to the land or support her claim. As I said before there is no independent evidence to support that assertion and I disregard it outright.

CONCLUSION

[31] Having regard to the preponderance of the evidence led by the claimant, which I find to be credible as against that of the defendant and her witness which I found to be misleading and on a balance of probabilities, I find for the claimant and order as follows –

- (1) A declaration that the claimant by virtue of Deed Number 843 of 1980 dated the 19th May 1980 became the free simple owner of the parcel of land described in the schedule to the said Deed.
- (2) An injunction to restrain the Defendant whether by herself, her servants and or agents from trespassing on the said parcel of land or from building any structure thereon.
- (3) Damages for trespass in the sum of \$5,000.00 and costs in the sum of \$8,000.00.


.....
Frederick Bruce-Lyle
HIGH COURT JUDGE