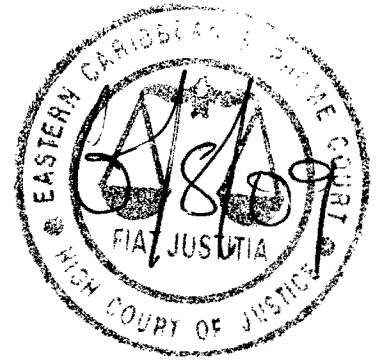


SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 1 OF 2009



BETWEEN:

NIGEL JOSLYN

Applicant

V

EDWARD JOSLYN

Respondent

Appearances:

Ms. N. Fraser for the Applicant

Mr. S. Williams for the Respondent

2009: June 2nd
August 6th

JUDGMENT

- [1] **JOSEPH, Monica (Ag.):** On the 15th January 2009 applicant Nigel Joslyn filed an application, supported by an affidavit, for a declaration of possessory title for a parcel of land measuring 74,314 sq ft at Cartes, (the land) under section 3 of the Possessory Titles Act 2004 (No. 38 of 2004) (The Act).
- [2] In accordance with section 5 of the Act, affidavits were filed in support of the applicant by Felix Richards and Pamela Williams. Pamela Williams did not attend court, and an application made by Counsel for the applicant for leave to have the affidavits of Louise Williams and Paskett Cyrus entered into evidence, was granted.

- [3] Notice of the applicant's application for possessory title was published in newspapers as required by section 7 of the Act. Respondent Edward Joslyn opposed Nigel Joslyn's application and filed an affidavit on 27th March 2009. Nichola Evans (who had a power of attorney from Edward Joslyn) filed an affidavit supporting Edward Joslyn's opposition.
- [4] Family tree: Ruth Constance was the mother of respondent Edward Joslyn, Gwendolyn Joslyn and Edna Joslyn. Gwendolyn Joslyn was the mother of Nichola, Nerissa and applicant Nigel.

WRITTEN SUBMISSIONS; 17TH June 2009.

Issues by Counsel for Applicant:

- [5] (1) Whether the applicant had factual possession of the disputed land for a continuous period of twelve years or more.
- (2) Whether the applicant had the requisite intention to possess the land as owner.

CASE FOR APPLICANT

- [6] The applicant's evidence was that the land was under the care of his grandmother Ruth Constance who died in 1967. After her death he and his mother Gwendolyn Joslyn cultivated the land. His mother died in 1996 and he continued to cultivate the land and to rear animals on the land.
- [7] In his affidavit filed on 15th January 2009, he deposed that he had been in possession of the land for a period exceeding twelve years, the only period he was absent for a short period was in the 1980s when he was in Trinidad. During that time no one cultivated the land and he still considered it to be his land.
- [8] In his oral evidence he said that he began working the land around 1974/1975 and was absent for a period of six years when he traveled to Trinidad. The only time money was being paid was in 1975 to his mother. He was not working the land for anybody including Edna Joslyn. The applicant denies that he took produce of the land to Edna Joslyn. He admitted that his sister Nerissa Bradshaw did cultivate the land for a short time.

[9] In cross examination, he said that he never knew it was his uncle's land. Then he said that "from ever since" he heard it is his uncle's land. That was followed by a statement that it was Nichola and Nerissa who said that it was his uncle's land. In cross examination he said when his uncle Edward came for his aunt's funeral:

"My uncle spoke to me. He didn't ask me how I could claim possessory title for the land. He asked me what is going on with the land at Cartes. I said, "What is going on with the lands uncle, nothing is going on with the lands. I stated to him and told him if it is because I am trying to get possessory title to land if that is what he is talking about. I didn't tell him I apply as the land is in nobody's name. He didn't ask me, "If you want to get title why you didn't speak to aunt Edna." What he told me that Tantie Edna call him and tell him that I am trying to get possessory title for the land."

[10] Felix Richards' evidence was that he assisted the applicant with cultivation of crops on the land a couple of times. In cross examination he said that he started assisting the applicant when he (Felix) was about fourteen years. The last time he did so was when he was twenty five years. He said that nineteen years ago (about 1990) he did not assist him as they had all grown up.

[11] In cross examination he stated that he had known only the applicant and his mother to be in control of the land: presently the applicant had cattle on the land. He had never seen Edward Joslyn on the land. He went pass the land four weeks ago, at which time he did not see the applicant there but he saw cattle that the applicant said was his cattle. The applicant had told him he was cultivating the land.

[12] Louise Williams' evidence was that the applicant cultivated the land with his mother from the time he left school, and he is presently cultivating it. She said that "years ago", the applicant's sister Nerissa and her husband cultivated the land. In cross examination, she stated that other persons cultivated the land: Lastus Neverson, Alexis, Nigel and men working with him. She never enquired as to ownership of the land, neither did she enquire for whom he was working the land. She did not know what he did with the proceeds from the land.

- [13] Paskett Cyrus' evidence was that he saw the applicant cultivating crops on the land, at one time bananas, potatoes and fruit trees. The applicant also reared animals on the land. He said the applicant was cultivating the land before he (Cyrus) commenced working at the Prisons, and he retired two years ago. He saw Richards together with the applicant and his mother Gwendolyn cultivating the land. He did not see Nerissa cultivate the land, neither did he see Laskess Neverson or Alexis Woods on the land. The applicant, he said, is cultivating the land for his grandmother. (Grandmother Ruth died in 1967).

CASE FOR RESPONDENT:

- [14] In oral evidence, Nichola, the applicant's sister, said that now her relationship with her brother is not good. She stated that the land was owned by Webster and Selena Constance and there were two pieces of land. One parcel was given to Lucille Constance, the other to Ruth Constance, her grandmother, who gave the land to her last child, Edward Joslyn. Edward migrated to the United States of America and left Edna Joslyn, her aunt, as agent for everything he owns.
- [15] She said that the applicant and siblings grew up in the same house on the land and they all worked with their mother on the land. At some point in time, her sister Nerissa, Nigel, Alexis Woods and Lastus cultivated the land.
- [16] Nichola said there had been a dispute between the applicant and their mother and he moved out having built a house at Enham where he now lives. She stated that when the applicant returned from Trinidad (she could not recall exact date) he visited her, informed her that he was having problems obtaining employment, and would like to work the land. He asked her to obtain permission from their mother to cultivate the land. She spoke to their mother who discussed with their aunt Edna Joslyn, who paid taxes for Edward, and who had access to their uncle Edward Joslyn.
- [17] After consulting Edward, Edna spoke with the applicant directly and gave him permission to cultivate the land with a condition that he give produce to their mother. The applicant commenced cultivating the land after 1987. Although she did not see it with her own eyes,

she was in contact with her aunt and so had information that he gave produce and money to their mother Gwendolyn who accounted to Edna Joslyn.

[18] After their mother Gwendolyn's death, the applicant continued to cultivate the land and dealt directly with Edna Joslyn, with whom he had a close relationship. She did not visit the land but was in contact with Edna. Through that contact she knew that the applicant had not planted at some time, as in December 2008, he took Edna a bottle of wine claiming that he had nothing planted on the land. The applicant admitted that he did take Edna a bottle of wine.

[19] She is objecting to the applicant's application because she knows that the applicant knows that the land belongs to Edward. She said that Edward occupied the land and explained what she meant by that: that he told her he visited the land whenever he visited St. Vincent.

[20] When she saw the publication for possessory title declaration in the newspaper (January/February 2009), she was shocked and contacted her aunt Edna Joslyn who contacted a lawyer. She did not speak with the applicant. When their uncle Edward came for Edna's funeral on 10th March 2009, he spoke to the applicant. The evidence that a conversation took place between Edward and the applicant was admitted by the applicant, the account of which appears earlier. Edward gave her a power of attorney to deal with the matter.

FINDING: OCCUPATION - POSSESSION OF LAND

[21] I consider the evidence presented and I make findings on a balance of probabilities identifying pieces of evidence that support evidence I rely on to make findings, or that tend to establish that a witness is speaking the truth, and may be relied on as a credible witness.

[22] In establishing exclusive possession, the applicant in his affidavit deposed that after his grandmother Ruth Constantine's death, he and his mother (Gwendolyn) were the only ones who cultivated the land. That statement is untrue as he admitted in oral evidence

that his sister Nerissa also cultivated the land. The applicant's witness Louise Williams, saw these persons cultivating the land: Alexis, Lastus Neverson and Nerissa.

[23] The applicant's affidavit evidence:

"I have been in possession of the lands for a period exceeding 12 years. The only time I was absent from the land was for a short period in the 1980s when I was in Trinidad, during which time no one moved into possession of it nor did anyone cultivate it. I still considered it to be mine during that time."

[24] In his oral evidence he said that his mother cultivated the land from the time his grandmother (Ruth) died. He began cultivating the land in 1974/1974 (seemingly with Gwendolyn): that while he was away in Trinidad in 1980s for about six years, returning in 1985 (1980 to 1985) and his mother cultivated the land.

[25] He was saying that, except for a short period in the 1980s, he was in possession of the land: no other person cultivated the land and that he considered the land to be his during that time. It could not be true that the applicant considered the land to be his in 1980s, as at that time his mother Gwendolyn Joslyn was in occupation of the land.

[26] His application filed on 15th January 2009, for declaration for possessory title claimed exclusive possession for a period of twelve years as appears from the following facts:

- "(a) the applicant took possession of the land from or about the year 1996
- (b) from on or about the year 1996 the applicant cultivated a variety of crops upon the land
- (c)
- (d) the applicant has around the year 1996 demonstrated his ownership to all nearby landowners and community members."

[27] Nichola stated that brother and sisters grew up on the land and that over the years the land was cultivated by a number of persons including family members. Ruth Constance, who died in 1967, cultivated the land and gave the land to Edward. There is no document evidencing Edward's ownership of the land. Edward personally did not occupy the land.

[28] I accept Nichola's evidence that her mother Gwendolyn occupied with Edward's permission and accounted to Edward. I accept her evidence that when the applicant returned from Trinidad he sought her help in obtaining permission from Edward, through

Edna (now deceased) to cultivate the land. He commenced cultivating the land sometime after 1987.

[29] There is no direct evidence that the applicant provided Edna Joslyn with produce but I believe Nichola's evidence that she kept in contact with Edna and obtained that information from her. Nichola testified that in December 2008 the applicant, not having produce to give Edna Joslyn, brought her a bottle of wine. The applicant admitted that he did bring Edna Joslyn a bottle of wine, so Nichola was speaking the truth about the bottle of wine.

[30] I accept her evidence that permission was given to the applicant to cultivate the land with the applicant accounting to Edna Joslyn.

[31] Ms. Fraser put to Nichola that she would have obtained some of the information she has given in evidence from other persons and not from personal knowledge. I accept that Nichola and the applicant would have obtained family history of the land. I accept that the family history as recounted by both differs in one relevant area: whether the land was given to Edward by Ruth.

[32] I am to decide who occupied the land and if the applicant has been in possession for twelve years as adverse possessor. I pose questions: One, did the applicant form the requisite intention to take possession of the land? At some point in time, the applicant formed the intention to take possession of the land. Two, was the applicant in factual possession and was the possession sufficiently exclusive for twelve years? I do not think so.

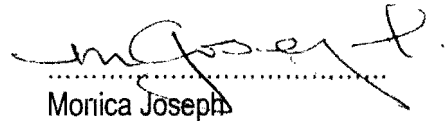
[33] It is for the Applicant to show that he was in exclusive possession for twelve years. He made contradictory statements. In his affidavit, he deposed that, after his grandmother's death, he and his mother were the only ones who cultivated the land. Evidence of witnesses (including Louise Williams a witness called on the applicant's behalf) was that other persons cultivated the land. He also said that when he went to Trinidad Gwendolyn was in occupation of the land, yet he considered the land to be his while he was in Trinidad. During that time he said no one cultivated the land.

- [34] Looking at those contradictory statements, I cannot accept him as a credible witness. I accept the evidence that Gwendolyn occupied the land, accounting to Edward Joslyn. The factual position (I have accepted) is that the applicant obtained Edward's permission through Edna to occupy the land. I find that he was not in exclusive possession of the land for twelve years.
- [35] The factual situation is that Edward granted permission to Gwendolyn and then to the applicant, through Edna Joslyn, following the version of the family history that I accepted. Edward through Gwendolyn and the applicant, has been in possession of the land until the applicant formed the intent to acquire by adverse possession which is 1996 (according to his application). I think he was still accounting to Edward through Edna in December 2008 when he brought her the bottle of wine. At that time, though he must have been preparing to file the application for a declaration of possessory title, which he did on 15th January 2009.
- [36] Edward Joslyn has produced a sufficiency of evidence to show that the applicant did not have sole and exclusive possession of the land for twelve years. Edward does not hold a paper title. In the absence of a paper title, Edward has no legal authority to require the applicant to seek his permission to cultivate the land, and he has no legal authority to grant permission to the applicant for the cultivation of the land. It may be that Edward has a hurdle to overcome but I do not deal with this at this point.
- [37] For adverse possession the applicant is to establish actual possession with the intention to possess. "Adverse possession" is defined in section 2 of the Act "as 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."
- [38] Halsbury's Laws of England 4th ed. Vol. 28 paragraphs 977-981, para 977 reads:
- "What constitutes adverse possession is a question of fact and degree and depends on all the circumstances of each case, in particular the nature of the land and the manner in which land of that nature is continually used;However, for the claimant's possession of the land to be adverse, so as to start time running

against the owner, the factual possession should be sufficiently exclusive and the claimant should have intended to take possession. Where the occupier's possession of the land is by permission of the owner, that possession cannot be adverse..."

ORDER

- [39] 1. Edward Joslyn has produced a sufficiency of evidence to show that the applicant did not have possession of the land for twelve years.
2. I make no order as to costs.


.....
Monica Joseph
High Court Judge (Acting)
21st July 2009