

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 558 OF 2001



BETWEEN:

BEDFORD THOMAS

Claimant

v

ANNE McPHY
And
ROY McPHY

Defendants

Appearances:

Mr .P.R. Campbell, Q.C., and Ms. R. Frederick for the Claimant
Mr. S. Williams for the Defendants

2009: March 11
April 23

JUDGMENT

CLAIMS:

- [1] **Monica Joseph J (Ag.):** This is a claim by Claimant Bedford Thomas for a declaration to assert ownership as an adverse possessor of a parcel of land (8000 sq ft) situate in the village of Collins in the Marriaqua Valley (the disputed land): cancellation of the registration deed No. 1035/2002 conveying the disputed land to the defendants, and an injunction restraining defendants Anne McPhy and Roy McPhy, their servants and agents from adversely affecting his occupation of the land.
- [2] Defendants Anne McPhy and Roy McPhy claim that they purchased the disputed land from owner Alma Mapp and the disputed land is rightfully in their names. Alma Mapp had

permitted Thomas to remain in the house on the disputed land and he now refuses to move from the disputed land.

BACKGROUND:

- [3] Claimant Thomas, who is now forty years, went to live with a married couple Cyril Webb and Olive Webb in a dwelling house on the disputed land when he was about 5 years old. Thomas (working very hard) assisted Cyril Webb with land cultivation and the rearing of animals. Then Cyril Webb went to live with his daughter in Trinidad, sometime before 1984 as he died there on 29th July 1984.
- [4] Olive Webb in late October 1985 went to Trinidad to live with her daughter Alma Mapp, born to her before her marriage to Cyril Webb, who had emigrated to Trinidad in 1958. In October 1985 Olive Webb made a gift to Mapp of the disputed land. Olive Webb died in Trinidad on 13th July 1986. Thomas continued to live in the dwelling house. Alma Mapp has died.
- [5] A Deed of Assent No. 75/1997 dated 23rd December 1996 - Allington Gilbert, Executor of the estate of Sarah Finch indicates a vesting in Alma London Mapp as a beneficiary under Sarah Finch's will - Two acres three roods and thirty poles (127,880 sq. ft).
- [6] There are two deeds conveying land from vendor Alma Mapp to purchasers/defendants Anne McPhy and Roy Mcphy as joint tenants with right of survivorship Deed No. 3842/2001 dated 11th September 2001 land measuring two acres three roods thirty poles (127880 sq ft) and Deed 1035/2002 dated 27th March 2002 – eight thousand sq ft. (This last deed was prepared after the case was filed).

WRITTEN SUBMISSIONS ON 12TH AND 30TH MARCH 2009:

ISSUES - by the Claimant:

- [7] Was the claimant in actual possession of the disputed property during the period of at least twelve years immediately preceding the date of judgment in this case?

- [8] If the answer is that the claimant was in actual possession – the defendants have never asserted that the claimant was not in actual possession - did the claimant's possession amount to adverse possession?

ISSUES - by the Respondent:

- [9] Whether the Claimant had the necessary animus possidendi, i.e., the intention to possess the land to the exclusion of all other persons including the owner thereby acquiring the land by adverse possession.
- [10] Whether the defendants validly purchased the land from the Alma London Mapp and by extension whether Deed No.1035 of 2002 is valid.

WITNESSES:

- [11] For the Claimant, Claimant Thomas gave a witness statement and oral evidence: so also did Jean Small. Maud Joseph, Alexander Cuffy and Roy Toney gave witness statements and were put up for cross examination. For the Defendants, Defendant Anne McPhy and Hugh Stewart gave witness statements and oral evidence.

CLAIMANTS CASE:

- [12] Claimant's case was that there are two areas of land: one area - the house and kitchen garden, the other, the back garden area, both areas owned by Sarah Finch, then by Olive Webb.
- [13] Thomas witness statement: after he heard of Olive Webb's death on 13th July 1986, he told himself that the disputed land was his. I do not think that he meant that at that date the disputed land belonged to him as Olive Webb had left for Trinidad in October 1985, only a year earlier. I believe he meant that as the Webbs had died he thought the way was open to him to own the disputed land.
- [14] From the evidence of some of the witnesses in addition to their manner, they considered that Thomas did not receive a fair deal from the Webbs. So does Thomas who in re-examination said:

"Am claiming house and land around it because from where I could understand they took me from my mother five/ six and they Ms. Webb and she husband and they brought me rear me from that time. I work for them attend no schooling. Just going to mountain. They told me they adopt me from my mother in Owia. I don't know if adopt me by mouth or paper. I dey until I come to know myself. I feel just by right the way they mistreat me I feel I should get something a spot of land I could build myself a home..... Alma and she husband leave me in charge of the house. If you leave me in charge of a house I could say that the house belong to me."

DEFENDANT'S CASE:

- [15] Defendants' case was that the disputed land on which stood the house, was one area of land. Jean Black on Olive Webb's request had taken charge of and cultivated the disputed land from 1985 when Webb left for Trinidad. Mapp (Olive's daughter) was in actual physical possession of the disputed land having asked Jean Black to continue to be in charge of the disputed land after Olive Webb's death. Mapp had allowed Thomas to remain in the house, occupying one room. Mapp visited and stayed in the house from time to time until the disputed land was sold to the defendants.

ONE, TWO OR THREE AREAS OF LAND

- [16] Is the large area of land one area or divided into two or into three undefined areas? Black's evidence was that she was in charge of and cultivated the back garden area (undefined). That piece, Thomas said, was a different piece from the kitchen garden area (undefined) that he cultivated.
- [17] From putting all the pieces of evidence together, I conclude that the large area was really divided, for practical purposes, not into two but into three open ended or undefined areas: the kitchen garden area, the back garden area and the house spot.

EVIDENCE OF OCCUPATION:

- [18] I consider the evidence of the witnesses and attempt to get the entire picture. In a witness statement, Hugh Stewart stated that from 1986 he operated a farm that is in boundary with the disputed land. Thomas worked with him in the 1990s. He saw the defendants cleaning up the land in preparation for cultivating but they left without planting crops and he learnt that there was a land dispute. His account in a witness statement:

“The house stands on a parcel of land which is approximately three acres and from the time I started to cultivate my farm. I saw one Jean Black cultivating the land..... When the McPhy’s abandoned their cultivation, I saw Bedford Thomas for the first time cultivating a piece of the land which was separate and distinct from the portion cleared by McPhy’s. Jean Black was no longer cultivating the lands. Apart from the time when Bedford Thomas cultivated a part of the land when the McPhy’s abandoned their cultivation. Mr. Bedford Thomas did not work any of the land while Jean Black was working the land it was only after the McPhy’s came on the land that Bedford Thomas started to work a portion of the land. At present Bedford Thomas is now working a substantial portion of the land that the McPhy’s bought.....”

- [19] I accept Stewart’s evidence that Bedford Thomas did not cultivate any land (this would include the kitchen garden area) while Jean Black was cultivating the land. Some support for that statement came from Black, who stated at the trial that nobody ever planted on land around the house, it was just bush. (Although she went on to state that Thomas planted that area).
- [20] Thomas witness statement: I have been in sole, peaceful and undisturbed possession of the said dwelling house and the one and one half lot on which it stands including the yard and garden thereof which I have cultivated continuously since the Webbs died, intending to claim the same as my own.
- [21] By that bit of evidence Thomas claims the whole area, including the back garden area that Black was in charge of, on behalf of Alma Mapp after Olive Webb’s death in 1986, and to whom Black said she paid money collected in respect of the back garden area. Under cross examination Thomas admitted that between 1985 and 2001 when Mapp sold the property, she visited several times, went into the house, sat down, looked around the house and enquired of him “how things were going.”

- [22] Jean Black's witness statement: "Bedford continued to live in the house on the land. He used to go in the mountain and he also cultivated the kitchen garden around the house..... During cross examination: Land I used to cultivate for Olive I used to work the garden part not the house part".
- [23] Alexander Cuffy's witness statement: Thomas lived in the house all the years he has known him and when Olive Webb went to Trinidad she left Thomas in the house. When he was put up for cross examination he made sotto voce comments and it was obvious he was very annoyed with Cyril Webb. Maude Joseph's witness statement: Thomas cultivated a kitchen garden around the house.
- [24] Defendant Anne McPhy witness statement: In 2001 when she visited the disputed land no one was working the entire land. There was a wooden house and at that time no one was living in the house.
- [25] At the trial McPhy said: The house was leaking and in a terrible state: you could see through it. Under cross examination she admitted that because the house was in a terrible condition from the roof down, that is why she could not believe that anybody lived there. She did not observe cultivation around the house. "Just pure grass."
- [26] I accept Stewart's evidence as accurate and that he was speaking about what he noticed from 1986. I attempt to put the evidence in perspective and, on a balance of probabilities, make findings. Witnesses' evidence was that Cyril Webb mistreated Thomas and it was obvious that there was a great measure of sympathy for Thomas, who worked hard for the Webbs and was beaten by Cyril Webb.
- [27] Witnesses referred to two areas of land: the kitchen garden area around the house, and the back garden area, both areas undefined. I have earlier mentioned that I concluded from the evidence given that the large area was practically divided into three open ended or undefined areas: the kitchen garden area, the back garden area and the house spot.

- [28] From late 1985 when Olive Webb went to Trinidad, Black, who was in factual possession of the back garden area, continued to be in possession, on behalf of Alma Webb, until 2001 when Black ceased cultivating the back garden area.
- [29] I find: Thomas continued to occupy the house with Olive Webb's permission, after she left for Trinidad in 1985, Does occupation of the house spot constitute occupation of the kitchen garden area or the back garden area? I do not think so in the circumstances of this case.
- [30] Witnesses referred to certain areas of land of the large parcel of land being cultivated by different persons. In fact the areas they referred to are not distinctly separated one from the other, but are undefined areas within that large area. I find that 2001 (when defendants McPhy entered) is the time Thomas commenced cultivation and factual possession of the kitchen garden area and the back garden area with the intention of claiming by adverse possession.

THE LAW - APPLICATION

- [31] Mr. Williams' submission was that Thomas has not satisfied the requirements of section 17 of the Limitation Act (Cap 90) (the Act) to successfully claim adverse possession. He also cited Halsbury's Laws of England 4th Ed. Volume 28 Paragraphs 977-981. He submitted that Thomas acknowledged ownership of the disputed land by Olive Webb and Alma Mapp, and did not have the intention to possess the disputed land to the exclusion of all persons including the owner. Paragraph 977 reads:

"Meaning and effect of 'adverse possession'. No right of action to recover land accrues unless the land is in the possession of some person in whose favour the period of limitation can run (adverse possession) ... Time therefore cannot begin to run unless and until the true owner ceases to be in possession of his land.

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; 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. 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..."

[32] The Limitation Act (Cap 90) (the Act) Section 17 provides:

- (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."

This section refers to Part I of the Schedule to the Act which identifies the date of accrual of rights of action to recover land, paragraph 1 of which provides:

"Where the person bringing an action to recover the 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."

Paragraph 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.")

[33] A person claiming adverse possession must be in exclusive factual possession for twelve years, with an intent to possess. After the passage of twelve years the title of the paper owner is extinguished. Section 19 of the Act provides:

"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."

[34] Mr. Campbell's submission was that occasional visits to property are not sufficient to support and maintain the title of a paper owner. He cited *Wills v Wills* (2003) 64 WIR 176, where a wife left her husband, leaving no personal possessions in a house in Jamaica and lived abroad, visiting occasionally, the Privy Council held the husband had obtained by adverse possession. At p. 189 Lord Walker of Gessingthorpe had this to say:

"She (wife) consulted lawyers in 1984 but she never seems to have taken action either to have the properties sold, or to rearrange their ownership by an exchange of beneficial interests, or even to obtain a proper written acknowledgment of title."

- [35] Thomas has been in factual possession of the house and house spot (undefined) with the intent to possess from 7th July 1986 (date of Olive Webb's death) upwards of twelve years. The title of the then paper owner Alma Webb was extinguished on 7th July 1998. Periodic visits by Alma Webb to the house from 1986, with casual enquiries made of Thomas did not disturb the exclusive possession of Thomas nor did it interrupt the running of time in favour of Thomas.
- [36] After Olive Webb's death in July 1986, on Alma Mapp's request, Black continued to be in charge of the back garden area of land. Black cultivated that area until around 2001 when Mapp informed her that she was about to sell the land, which at the time she took to mean the whole area of land. I find that from 1986 to 2001 Thomas did not cultivate the back garden area and was therefore not in factual possession of that area. The back garden area of land is owned by the paper owner
- [37] I find, from Stewart's evidence, that Thomas did not cultivate the undefined kitchen garden area from 1986 to 2001. Thomas was therefore not in factual possession of the undefined kitchen garden area. There can be no intention to possess if there is no factual possession. In 1986 the back garden area and the kitchen garden area were owned by the paper owner.
- [38] Thomas has been in factual possession of the kitchen garden area and the back garden area (both undefined) from 2001 to 2009, a period of eight years. His refusal to vacate those areas of land points to an intention to acquire by adverse possession.
- [39] There was evidence that Defendants Mcphy's solicitor served Thomas with a notice to vacate the disputed land after he failed to heed a verbal request to vacate. The authorities show that service of a notice to quit is not effective to stop time running in favour of the adverse possessor. In *Mt. Carmal Ltd v Peter Thurlow Ltd*. (1988) WLR 1078 at p 1084 Nicholls L.J. said:
- "We confess to being unable to see how the sending and receipt of that letter can have the effect of making the property cease to be in adverse possession, viz., cease to be in the possession of the defendant as a person in whose favour the period of limitation was running. By the letter the plaintiff asserted a claim. That is all. We do not accept that, in a case where one person is in possession of

property, and another is not, the mere sending and receipt of a letter by which delivery up of possession is demanded, can have the effect in law for limitation purposes that the recipient of the letter ceases to be in possession and the sender of the letter acquires possession."

Ramnarace v Lutchman (2001) 1 WLR 1651 at p 1657, Lord Millett:

"Service of the notices to quit by the defendant thereafter without more was insufficient to stop time running in favour of the plaintiff, and accordingly the defendant's title was extinguished after a further 16 years in July 1991, that is to say, before the defendant brought his action (by counterclaim) to recover the land."

- [40] Mr. Campbell made a submission (with which I agree) that time continues to run against a paper owner who does nothing to stop time running. He argued that the defendants have done nothing to stop time running: that in the absence of a counterclaim by the defendants, time for the limitation purpose continues to run in favour of the claimant until he relinquishes possession or until the court makes a ruling against him that his claim is dismissed and his possession terminated. He cited *Ramnarace* (above) at p 1654 para. 6. Lord Millett said:

.....The defendant did nothing to stop time running until he served his counterclaim for possession on 24 December 1991. "

CONCLUSION:

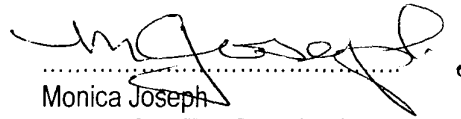
- [41] The claimant seeks a declaration to assert ownership as an adverse possessor and the defendants seek to be named the rightful owners.
- [42] With the intent to possess, the claimant has lived in the house on an undefined area of the disputed land for upwards of twelve years and is therefore an adverse possessor of the house and undefined house spot.
- [43] The remainder of the disputed land (other than the (undefined) house spot) was not in the factual possession of the claimant from 1986 to 2000. The defendants are the owners of the remainder of the disputed land.

[44] The claimant commenced factual possession of the kitchen garden area and the back garden area from 2001 with the intention of acquiring by adverse possession. Twelve years have not yet run.

[45] I make no order as to costs as, on the conclusion of the trial, counsel for the parties indicated to the Court that the parties would agree on costs.

ORDER:

- [46] (1) The claimant is in adverse possession of the house and a house spot (undefined) on the disputed land;
- (2) The defendants are the owners of the remainder of the disputed land
- (3) No order as to costs
- (4) Parties are at liberty to apply on or before 9th June 2009.


Monica Joseph
HIGH COURT JUDGE (Ag.)
Date: 13th April 2009