

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

POSSESSORY TITLE APPLICATION NO. 27 OF 2007

BETWEEN:

BETHAMOUS HUTCHINSON

Applicant

V

THOMAS GELLIZEAU

Respondent

Appearances:

Mr. C. Dougan Q.C. for the Applicant

Miss V. Frederick for the Respondent

2008: March 7;
April 15;
May 6.

JUDGMENT

- [1] **MATTHEW J (Ag.) In Chambers:** On June 22, 2007 the Applicant applied for a declaration of possessory title in respect of a portion of land situated at Richmond, Union Island, containing 3 acres, 3 roods and 33 poles.
- [2] In that application she stated that she had been in exclusive and undisturbed possession of the land for over 12 years and immediately before adverse possession began to run in her favour the land was registered in the name of her father, the late Isaac Hutchinson.
- [3] The Applicant also stated that in 1968 her father, Isaac Hutchinson, had leased the land to one John Danielson and his wife Jane who are foreigners to Saint Vincent and the Grenadines, in the amount of \$7,500.00.

AFFIDAVIT EVIDENCE:

- [4] The Applicant filed an affidavit in support of her application on the same day where she stated she is the daughter of Isaac Hutchinson who died in 1982.
- [5] She stated that the Danielsons left Union Island in the late 1970's and her father retained ownership and possession of the land and after her father's death she took sole possession of the land.
- [6] She said that for over 25 years she remained in sole, continuous, undisturbed and unmolested possession of the land in question save and except sometime in the early 1980's one Thomas Gellizeau, the Respondent, claiming to be the watchman for the Danielsons threatened her with a gun and telling her the Danielsons were coming back.
- [7] It is to be noted that if the Applicant took possession after her father's death in 1982, which time is in the early 1980's, Thomas Gellizeau must have interacted with her about that time. So the earlier statement that she was in possession for over 25 years save and except the time Gellizeau threatened her has to be read in that context.
- [8] The Applicant said she resisted Gellizeau's challenge and continued to occupy the land by planting potatoes, corn and peas on various parts of the land and she employed people to work, including Dexter Alexander.
- [9] Dexter Alexander filed an affidavit in support of the Applicant's application. Alexander stated that since the death of Isaac Hutchinson the Applicant has been in undisturbed and unmolested possession of the land save and except once Mr. Gellizeau threatened the Applicant and himself while he was working on the land for the Applicant.
- [10] Veronica Haynes, the daughter of the Applicant, also filed a short affidavit in support of the Applicant's application. The substantive portion of the affidavit is as follows:
- "That to the best of my knowledge my mother has been in possession of 3 acres, 3 roods and 33 poles of land formerly owned and possessed by my grandfather and

has remained to my knowledge undisturbed and unmolested of same for a period in excess of 25 years.”

- [11] The application was later amended on June 27, 2007 to state that the extent of the land is 3.8040 acres. The affidavits were similarly amended.
- [12] On July 24, 2007 an appearance to oppose the application was entered on behalf of the Respondent.
- [13] On October 17, 2007 Thomas Gellizeau filed an affidavit to state that he went into occupation of the said lands since January, 1974 and has remained in possession up to the date of his affidavit. He said he erected a house and planted fruits, peas and corn on the land.
- [14] He stated that by deed No. 250 of 1968 Isaac Hutchinson sold the said lands to Jane Ruth Danielson and J.G. Danielson and he exhibited a copy of the deed of sale.
- [15] He said he initially lived and worked on the lands with the Danielsons and in the 1970's, about 1971 or 1972, Jane Ruth left her husband and her husband vacated the property soon afterwards leaving him in possession.
- [16] Everard Gellizeau filed an affidavit on November 28, 2007 in which he stated that he knew that Isaac Hutchinson sold the lands in question to John and Jane Danielson in the 1960's, and his brother, the Respondent, began working with the Danielsons some time in 1969.
- [17] He said he had assisted his brother with the construction of the one storey wall dwelling house which he built on the said lands in which he lives at present.
- [18] He further stated that at no time has he ever seen Belthamous on the lands in question nor at any time before September 2007 did he ever hear that Belthamous was claiming the land.

- [19] He stated a belief that Belthamous had left Union Island sometime in the year 2000.
- [20] Stanford Coy also filed an affidavit on November 28, 2007 stating that in the mid-1970's Thomas Gellizeau went into possession of the said lands and has remained there uninterrupted up to the time of filing his affidavit.
- [21] On February 14, 2008 Sydney Alexander filed an affidavit in which he stated that after Isaac Hutchinson's death in or about 1981 he had been to the land on more than one occasion and had heard the Applicant say to the Respondent to quit her lands.
- [22] Besides the affidavit evidence the Parties gave oral testimony on the first two dates of the hearing and were cross-examined on their affidavits. There were some preliminary submissions by Counsel which need not be gone into here since the matter was thoroughly ventilated later.

ORAL TESTIMONY:

- [23] When she was cross-examined the Applicant stated that she now lived in Lodge Village, St. Vincent with her daughter, but could not remember when she made the move from Union Island. She said the Respondent gave her pressure and she became unwell and therefore moved to Saint Vincent.
- [24] She said she sold the properties in Union Island in which she had an interest. She denied that it is since the year 2000 she left Union Island. She stated that although the Respondent threatened her with a gun she did not make any report to the police.
- [25] The Applicant emphasized the fact that the Danielsons did not buy the land from her father, but that he only leased it for \$7,500.00. She became hysterical on each occasion it was stated that her father sold the land to the Danielsons. She would stand up from the chair on which she was seated and exhibit much emotion.

- [26] Veronica Haynes stated that her mother had been living with her for a few years but did not give any approximate dates.
- [27] When Dexter Alexander was cross-examined in relation to the threats he spoke about in his affidavit, he stated that the Respondent did not speak to him. He said Gellizeau had his gun and the Applicant is always afraid of him. He did not specifically say that the Respondent threatened the Applicant with a gun. At any rate the Respondent did not threaten him with a gun.
- [28] Sydney Alexander when cross-examined stated that when he went to the lands with the Applicant he met Mr. Gellizeau there. He said further:
- “I know Gellizeau to be living on the land. For quite a long time Gellizeau was a watchman there. I knew the man Danielson personally. I cannot remember the exact date he left but I know when he disappeared, and from that time Gellizeau was on the land still a watchman. The person who put him there disappeared.”
- [29] That evidence coming from the Applicant’s witness surely does not support the fact of her “sole, continuous, undisturbed and unmolested possession of the land in question for over twenty five years.”
- [30] When he was cross-examined Gellizeau stated that he gave a piece of the land, about 1 ½ acres, to his wife on June 28, 1994; and sold another piece to a Frenchman, Francois Cheverie, also about 1 ½ acres. He said he has remaining now less than one acre.
- [31] He said he was a licensed gun owner but he had never threatened the Applicant with a gun at any time.
- [32] On at least two occasions he was asked whether he was prepared to divide the land between himself and the Applicant and he answered in the negative.
- [33] Everard Gellizeau stated that after Isaac Hutchinson sold the land he never went on the land. He said when the land was first sold it was in bushes and it is the new owner who developed the land.

[34] He said he knew the Applicant very well for a long time from the time she came from Trinidad in 1960. He said she was the daughter of Isaac Hutchinson and left Union Island soon after she sold her property in 2000.

[35] Stanford Coy also knows the Applicant for a long time. He said when she was in Union Island she lived about one mile away from the disputed property. He said Everard and himself were on the disputed property almost every day as together with the Respondent, they were engaged in joint agriculture and fishing at the time. He said he had never seen anyone but Gellizeau on the land and in particular never saw Sydney Alexander on those lands.

CONCLUSIONS:

[36] There is no doubt whatsoever in my mind that this Applicant is not personally in possession of the land in question to be able to mount a claim for adverse possession under the Possessory Title Act, No. 38 of 2004.

[37] She does not live on Union Island and has not been living there for a few years now according to her daughter with whom she lives at Lodge Village; and since 2000 according to Everard Gellizeau.

[38] I have seen the Applicant in the witness stand and Thomas Gellizeau does not need a gun to threaten that Applicant. Her story that she was so threatened was not supported by Dexter Alexander. I do not believe her. Neither do I believe that she resisted or was able to resist Thomas Gellizeau.

[39] The Applicant has been suffering from a misconception that her father did not sell the land to the Danielsons in spite of deed No. 250 of 1968 which clearly states that the land was an absolute sale for \$7,500.00. Learned Queen's Counsel for the Applicant accepted the validity of deed No. 250 of 1968 in his final submission. On that false premise she

maintains the fact that after the Danielsons left the Union Island the land should have reverted to her father.

[40] Her statement in her affidavit that “after my father died in 1982 acting on instructions I obtained from him, I took possession of that land,” could not be true, because long before her father died the land had been passed from his ownership and possession to the Danielsons.

[41] I believe the testimony of the Respondent and his supporting witnesses that neither the Applicant nor her father was ever in possession of the land in question after the sale to John and Jane Danielson in 1968.

[42] The application is dismissed with costs to the Respondent in the amount of \$3,000.00.

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Albert N. J. Matthew
HIGH COURT JUDGE (Ag.)