

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 165 OF 2006



30

BETWEEN:

JOZEYL MORRIS

Claimant

v

PEGGY HUGGINS
ASHLEY HUGGINS
ABDUL FERGUSSON

Defendants

Appearances: Mr. Jaundy Martin for the Claimant
Mr. Olin Dennie for the Defendants

2008: February 26
April 30

JUDGMENT

- [1] **THOM, J:** This is a claim for possession of land.
- [2] The Claimant alleged that she became the owner of a parcel of land situate at Upper Edinboro in the State of Saint Vincent and the Grenadines by virtue of Deed of Gift No. 4204 of 2003.
- [3] The First and Third Defendants are the children of Catherine Fergusson deceased who had occupied the said parcel of land as a tenant. The Second Defendant is the husband of the First Defendant. All three of the Defendants reside on the said parcel of land.

- [4] By letter dated 13th January 2005 issued by the Claimant's Attorney notice to quit and deliver up possession was given to the First Defendant. The Defendants having failed to deliver up possession, the Claimant instituted these proceedings in which she claims inter alia possession, mesne profit and an injunction restraining the Defendants from trespassing on the said property.
- [5] The Defendants in their defence alleged that they were not the tenants of the Claimant but the tenants of Bertie Wilson and that Bertie Wilson was the owner of the said premises. Bertie Wilson was added as a Defendant by Order of Court dated 12th June 2006. In his defence Bertie Wilson alleged that he is the owner of the said parcel of land. The land had originally belonged to his parents, David and Martha Wilson. After their death he went into possession of the land and he subsequently rented it to Catherine Fergusson. In his counterclaim he sought inter alia a declaration that he is the lawful owner of the property.
- [6] The Claimant in her reply and defence to the counterclaim alleged that Bertie Wilson was an agent of Clara Sutherland and collected rent on her behalf.
- [7] The Claimant gave evidence on her own behalf and called four witnesses. The Defendants gave evidence on their own behalf and called one witness. Apart from filing a defence and counterclaim the Added Defendant Bertie Wilson took no further part in these proceedings.
- [8] The evidence on behalf of the Claimant is that the said property was originally owned by David and Martha Wilson (both deceased) who had several children including Bertie Wilson and Estelle Sutherland (deceased) who was the mother of Clara Sutherland and grandmother of the Claimant. On the death of David and Martha Wilson Estelle Sutherland became in possession of the property and remained in possession until her death in 1989, a period of more than fifty (50) years. During the 1970's the said Estelle Sutherland rented the parcel of land to one Ms. Almina and to Catherine Fergusson. The rent for the land to Catherine Fergusson was \$20.00 per annum. Shortly before her death

Estelle Sutherland migrated to the United States of America to live with Clara Sutherland and Clara Sutherland permitted the Added Defendant Bertie Wilson to collect the rent.

[9] After her death Clara Sutherland took control of the land. She permitted the Added Defendant to collect and keep the rent from Catherine Sutherland since he was retired and had no source of income. She increased the rent to \$40.00 per annum and then to \$100.00 per annum. Clara Sutherland paid the taxes for the property. In 2001 she requested Bertie Wilson to have the land surveyed but only part was surveyed. In 2003 she had the entire parcel of land surveyed. Clara Sutherland made a declaration of possessory title on July 11, 2003 claiming the land as her own. The said land was transferred to the Claimant by Deed of Gift No. 4204 of 2003. By letter dated January 13, 2005 notice to quit was given to the First Defendant to deliver up possession of the land by the 31st day of March 2005. The Defendants failed to deliver up possession of the property and the Claimant instituted these proceedings.

[10] The evidence led on behalf of the Defendants is that Catherine Fergusson rented the said land from 1975 and she resided there until her death in October 2004. She rented the land from the owner Bertie Wilson. She paid the rent to Estelle Sutherland who was the agent of Bertie Wilson. After the death of Estelle Sutherland, Bertie Wilson began to collect the rent from Catherine Fergusson. The rent was \$40.00 per year and it was increased in 1996 to \$100.00 per year. Catherine Fergusson also paid house and land taxes for the property from 1986. In 1993 Bertie Wilson gave permission to Catherine Fergusson to construct a one-room concrete house on the land. This house is occupied by the First and Second Defendants. By letter dated 17th May 2004 Bertie Wilson gave permission to Catherine Fergusson to renovate the wooden house to a concrete structure and stated that she intended to purchase the land. After the death of Catherine Fergusson in October 2004, the Defendants continued to occupy the land paying the yearly rent to Bertie Wilson through his agent Georgina Victory who had been collecting the rent since 2001. The Defendants never paid rent to the Claimant or to Clara Sutherland who has been living in the United Kingdom of America for over twenty (20) years. The rent for the land was never in arrears. The last rent was paid in January 2008. When the Defendants received the

Claimant's claim form the First Defendant spoke with Bertie Wilson and he was added as a Defendant and he filed a defence and counterclaim in which he claimed to be the owner of the land by virtue of adverse possession.

[11] The issue to be determined by the Court is whether the Claimant is entitled to possession of the land.

[12] Learned Counsel for the Claimant submitted that the Claimant being the owner of the land by virtue of Deed No. 4204 of 2003 is entitled to possession of the land. Learned Counsel also submitted that the sole defence of the Defendants is that the owner of the land is Bertie Wilson and not the Claimant. This defence fails since Bertie Wilson only filed a defence and counterclaim, he took no further part in these proceedings. The Defendants did not contend that there is a tenancy between them and the Claimant or her predecessors in title.

[13] Learned Counsel for the Defendants submitted that the evidence showed that Bertie Wilson exercised acts of ownership over the land. He collected the rent and did not account for it, he surveyed the parcel of land, he gave permission to Catherine Fergusson to build a one bedroom concrete house on the land, and he signed the letter dated May 17, 2004 in the presence of J.P. Errol Hazell in which he gave permission to Catherine Fergusson to renovate her wooden house to a concrete house. Learned Counsel also submitted that the notice to quit dated January 13, 2005 was invalid in that it required the Defendants to deliver up possession by March 31, 2005. The tenancy was a yearly tenancy. Learned Counsel further submitted that the evidence on behalf of the Claimant was not credible.

[14] Having seen the witnesses and having reviewed the evidence, I found the Claimant and the witness Clara Sutherland to be credible witnesses. They were not contradicted in any material way. I do not agree with Learned Counsel for the Defendants that Clara Sutherland was seeking to mislead the Court when she stated that she permitted Bertie Wilson to keep the rent because he was getting old and he being retired had no source of

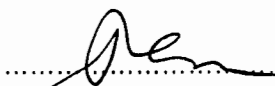
income, since Bertie Wilson's daughter Georgina Victory stated that he has a house from which he collects rent of \$300.00. The evidence shows that in 2005 Bertie Wilson removed from his home and went to live with his daughter Georgina Victory and his house was rented for \$300.00 per month.

- [15] As stated earlier I believe the evidence of Clara Sutherland that she permitted Bertie Wilson to keep the rent after her mother Estelle Sutherland died since he had retired, and she paid the property taxes.
- [16] In relation to the letter of 17th May 2004 the letter stated that Bertie Wilson gave permission to Catherine Fergusson to renovate her house with concrete and acknowledged that she intended to purchase the land at a later date. The letter does not show that Bertie Wilson agreed or offered to sell the land to Catherine Fergusson or any of the Defendants. It recognized that Catherine Fergusson intended to purchase the land and gave her permission to renovate her house. The evidence on behalf of the Claimant shows that offers to purchase the land by the Defendants were rejected by Clara Sutherland.
- [17] As stated earlier Bertie Wilson did not take any part in the trial of this matter. The only step taken in this matter by Bertie Wilson was the filing of the defence and counterclaim. Bertie Wilson therefore did not pursue his claim that he was the owner of the land by virtue of adverse possession. I find that the defence of the Defendants that Bertie Wilson is the owner of the property fails.
- [18] I agree that the notice of January 13, 2005 cannot be construed as a notice issued by the Claimant. Also unless there is agreement to the contrary a period of notice of approximately two and one half (2 ½) months cannot determine a tenancy from year to year. I agree with the submission of Learned Counsel for the Claimant that the Defendants did not contend that they were tenants of the Claimant or her predecessors in title.

[19] I find that the Claimant has proved on a balance of probabilities that she is the owner of the land by virtue of Deed No. 4204 of 2003 and is entitled to possession of the land.

[20] Judgment is entered for the Claimant. It is ordered that:

- (a) An injunction is hereby granted restraining the Defendants by themselves or their agents from constructing any building on the land described in Deed No. 4204 of 2003.
- (b) The Defendants shall deliver up possession of the said property to the Claimant on or before December 31, 2008.
- (c) The Defendants shall pay the Claimant costs in the sum of \$14,000.00.


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Gretel Thom
HIGH COURT JUDGE