

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2006/0412

BETWEEN:

RAYMOND DUPRES

Claimant

and

MARY MAGDALINE REYNOLDS

Defendant

Appearances :

Mr. V. James for Claimant

Mrs. P. Nelson for Defendant

2008: April 22;
April 28.

JUDGMENT

- [1] **COTTLE, J.:** This claim is for possession of a parcel of land and for arrears of rent. The Claimant is the registered proprietor. He became registered in 2002. Prior to that, the property was part of a larger parcel owned by the heirs of Florent Jn Paul. The Claimant is a successor in title to Florent Jn Paul as one of the heirs.
- [2] The Defendant claims prescriptive title to the parcel in dispute. She says that she has been in possession since 1963. She has exercised rights of ownership without any objection for more than thirty years before the Claimant became the registered owner in 2002. On the land she has planted permanent crops and erected an incomplete concrete structure. In the alternative, she claims an overriding interest or compensation for the improvements she has made.

Prescription

- [3] Sometime in the 1950's the parcel was rented to Henson James. He is the uncle of the Defendant. He erected a small chattel house on the parcel. He resided there and paid rent to the Claimant's predecessors in title. In 1963 the Defendant's father bought the small wooden house and gave it to the Defendant as a wedding gift. She lived in the house until she moved to the United Kingdom. She says that from the time she entered into possession she paid no rents. Upon her departure from St. Lucia she left her brother (her lawful Attorney) in charge of the house. He rented it out for some period and at other times, permitted persons to reside there rent free.
- [4] After the hurricane of 1980 (Hurricane Allen), she repaired the house which had been substantially damaged. She erected a concrete kitchen. Later after the building was damaged in Tropical Storm Debbie, she began to reconstruct the wooden house – this time in concrete.
- [5] The Claimant objected. He reported the matter to the department of Physical Planning who issued a stop order. The building remains incomplete to this day.
- [6] The Defendant says that by her actions in repairing the wooden house over the years and renting it out, she demonstrated open peaceable and uninterrupted possession for the requisite period of more than thirty years.
- [7] There are several difficulties with the Defendant's position. The Defendant says she was put into possession by her father who bought the house from her uncle. There is no suggestion that she was thereby put into possession of the land. It is common ground that the initial small wooden house was not affixed to the land so as to form part of the land.

- [8] There is thus no clear evidence as to when, if ever the Defendant went into possession of the land as distinct from the house. For her to succeed, she must show that she was in possession of the land. She must perform acts which unequivocally demonstrate this. Her actions of renting out the house and permitting persons to live in the house are as capable of showing acts of ownership of the house as they are of showing acts of ownership of the land. And of course if her acts showing possession are equivocal they cannot found prescription.
- [9] Even the Defendants witness who he testified did not make any claim to the land. He was content that the land belonged to the registered proprietor. He, on behalf, of the Defendant testified that the Defendant was claiming the '**property**', which he defined as the house and the crops planted by the Defendant.
- [10] I find no evidence of any animus possedendi in the Defendant. The claim for title by prescription thus fails.

Overriding Interest

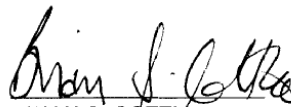
- [11] There was a suggestion on behalf of the Defendant that she was entitled to an overriding interest within the meaning of Section 28 of the Land Registration Act, more especially at sub paragraphs (g) and (f).
- [12] The evidence by the Defendant indicates that she was abroad throughout most of the past 40 years. Indeed she did not appear at the trial. She was represented by her Attorney in the person of her brother. She clearly could not be said to have been in '**actual occupation**' in 1987 when registered title to the land was first obtained.

- [13] Also, in light of my earlier finding that she did not seek to claim the land, she could not be said to have been in the course of acquiring prescriptive title to the land. I find that the Defendant did not have any overriding interest in the land in question.

Compensation for improvements

- [14] Article 372 of the St. Lucia Civil Code provides for compensation to be paid to a possessor, who makes improvements to an owner's immoveable property. The Defendant has made improvements. She has planted permanent crops. She has begun to construct a concrete building. Her right to be reimbursed for the cost of those improvements depends on whether she acted in good faith or bad faith.
- [15] Article 2066 of the Civil Code tells us that good faith is always presumed and it is for he who alleges bad faith to prove it. This issue received the attention of this Court in the case of **Gabriel Mathurin and Another Francisca Mathurin et al SLUHCV2006/0214**. Applying the Canadian case of **Gagnon v Loubier** [1925] 4 DLR 289 which considered the equivalent Canadian legislation, the Court held that good faith, for the purposes of Article 372, consists of the possessor's genuine belief that he is really the owner of the immovable property.
- [16] In the present case the Defendant has shown no such belief. She is clear that she owned the wooden house but there is no evidence of any belief that the land was hers. Her witness and lawful Attorney concurs. Under cross examination he says **"I know the land does not belong to my sister. Our claim is for the property. By property I mean the things I plant on it, the house and so on."** He goes on to express willingness to buy the land from the Claimant.
- [17] The Defendant is not entitled to reimbursement for improvements because the improvements were not made in good faith.

- [18] I therefore give judgment for the Claimant for possession of the parcel known as Block 1048C Parcel 42.
- [19] The Defendant says she has paid no rents at all. The Claimant says she has paid rent up to September 1997.
- [20] The Claimant is awarded damages for the trespass calculated at the annual rate of \$480.00 from September 1997 until possession is given up.
- [21] I award the Claimant prescribed costs in the sum of \$14,000.00.


BRIAN S. COTTLE
HIGH COURT JUDGE