

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SUIT NO.: 322 OF 1998

BETWEEN:

EDWARD HALL

Claimant

v

CHARLIE GRECIA
ARTIS GRECIA

Defendants

Appearances:

Ms. Nicole Sylvester for the Claimant

Mr. Stephen Huggins for the First-named Defendant

Mr. Ronald Jack for the Second-named Defendant

2002: March 5 & 11
2003: September 25

JUDGMENT

- [1] **BRUCE-LYLE, J:** When this matter came up for trial on the 5th March 2002, the Claimant was absent and said to be residing in the United States of America. Certain reasons were advanced for his absence by his counsel Miss Nicole Sylvester, the most important of which was that having been informed by staff at the Registry that this matter was not slated for the March 2002 Civil List, they did not inform their client to be present for trial, only to be subsequently informed by counsel for the second defendant Mr. Ronald Jack that the matter was slated for the 5th March 2002 and that his client had flown in from Canada ready for trial.

- [2] Despite this turn of events counsel for the Claimant indicated her willingness to go ahead with the trial as having reviewed the case file, the case really turned purely on a question of law.
- [3] Counsel for the second defendant replied by saying that the matter was clearly slated for the 5th March 2002 as indicated on the March 2002 Civil List which was circulated to all legal practitioners, and that he found it strange that the claimant's counsel was not aware of the trial being down for the 5th March 2002. Without ruling on these submissions the court proceeded to trial, as counsel for the claimant had indicated her willingness to proceed with the trial of the matter.
- [4] The claimant's case turned on the sole witness Mr. Othniel Sylvester, one of Her Majesty's counsel, and who has been practicing before the courts in St. Vincent since 1959. His evidence was to the effect that he knew the claimant Edward Hall, having done work for him as a client before the instant case, in the seventies. His next contact with him again was in the eighties when Hall came to his chambers with one Herod Grecia, the father of the two defendants, and husband of Amelia Grecia.

THE FACTS:

- [5] Simply put, the facts of the case are that the Claimant Edward Hall purchased certain lands from Amelia Grecia in 1968. He then left for the United States of America. Sometime later between the early seventies and early eighties, the second defendant took possession of these same lands by claiming adverse possession, fenced off the lands and swore to a statutory declaration, declaring himself the owner of the lands in 1995. It is here the dispute arises.

THE EVIDENCE:

- [6] At the time Edward Hall purchased those lands he purported to obtain title to those lands by way of Deed Number 1489 of 1968 which was exhibited as part of the claimant's case – Exhibit O.S. 1.

- [7] The claimant's case further contends that Hall had always been the owner of those lands as title had passed to him from Amelia Grecia as per the said deed 1489 of 1968; and that at various times, Herod Grecia and then Percival Buntyn, both now deceased, were put in charge of overseeing the lands by witness Mr. Othniel Sylvester, on instructions from Edward Hall. Mr. Sylvester contended that at no time, except in 1998, was any portion of the lands fenced. He stated to the Court that he had visited the lands once with Mr. Herod Grecia and Mr. Edward Hall in the eighties, where Mr. Hall had put Herod Grecia in charge of those lands.
- [8] Mr. Sylvester further contended that as a result of the death of Herod Grecia in 1995, he had communication from Edward Hall, and as a result he put Mr. Percival Buntyn in charge of those lands, and to supervise the lands on behalf of Edward Hall. He further stated that Buntyn had built a storeroom on the lands, and kept animals on the land for grazing, and also cleaned the lands and planted produce on the said lands.
- [9] In 1998 Buntyn made a report to Mr. Sylvester and consequent upon that report Mr. Sylvester visited the lands, where he observed that a quantity of holes had been dug and planted and a portion of the land enclosed with a wire fence. He stated that a hedge that he had seen there in the 1980's when he first visited the land had been cut down.
- [10] Mr. Sylvester went on to say that some time after this observation, Mr. Buntyn came to him with a letter from Mr. Joel Pitt, an attorney, purporting to have been instructed by the defendants. This letter was also exhibited as part of the claimant's case – Ex. O.S. 2. This letter in effect was a warning to Mr. Buntyn to cease and desist from the use of the said land in issue as they were owned and had been occupied by the second defendant from his mother's occupation, and which lands had some time earlier been sold to two United States citizens some thirty years ago and who had never taken possession of the land, paid any rates and taxes and never returned to St. Vincent.
- [11] Mr. Sylvester said the law firm of Sylvester and Williams, replied to Mr. Pitt's letter which incidentally was dated the 24th October 1995. The reply was dated the 3rd November

1995. The essence of the reply from the firm of Sylvester and Williams was to explain Mr. Buntyn's possession of the lands in issue, by way of instructions from Mr. Sylvester, acting on behalf of the claimant, who he contended was the owner of the lands. This reply was also tendered as part of the claimant's case and marked Exhibit O.S. 3.

[12] As a result of these two letters, Mr. Sylvester said he communicated with Edward Hall and this led to this action being commenced in the High Court, after the whole of the lands were fenced in by the defendants. He further stated that it was around the same time he had had instructions for the sale of the property.

[13] The first defendant Charlie Grecia gave evidence. He said the second defendant was his brother, and that he had met Edward Hall once in 1968 in St. Vincent and at Villa. He stated that his mother owned a parcel of land at Villa and that this action was brought against him in respect of that same parcel of land at Villa, for trespass. He said the trespass purported to be in relation to his fencing of the said lands in 1998, but contended that the lands were fenced before that, but he re-fenced it in 1998. He stated that the said parcel of land belonged to his brother from since 1967.

[14] He further stated that the fence broke down and he was asked to re-fence the land, which he did with three other persons, who assisted him. He said his brother Artis Grecia had requested him to re-fence the land, and that he knew that Artis Grecia owned the lands.

[15] The second defendant Artis Grecia also gave evidence. He stated that he lived in Canada. He further said that he knew the claimant Edward Hall, who had purchased a portion of land at Villa from his mother, Amelia Grecia in 1968, and that he was in St. Vincent at the time those lands were purchased. He said after the purchase, Hall went to the USA and never came back. In the meantime himself and his father Herod Grecia worked those lands and cultivated sweet potatoes and corn. He went further to say that at the time of the purchase of those lands by Hall, they were planted with produce, the sale of which was used for their upkeep at their home. None of the money realized from the sale of the crops

went to Hall, he said. He categorically stated that at no time did his father ever work those lands on behalf of Mr. Hall.

[16] Artis Grecia went on to say that his father and mother both died in 1995, but that prior to their death, in 1976, he took possession of the lands in issue because Mr. Hall had not returned to pay the rest of the purchase price, which amounted to some \$1,000.00 United States dollars. His mother Amelia instructed him to take over the lands since Mr. Hall had somehow reneged on the deal. He stated that one lawyer Nanton did all the paperwork for his mother Amelia since she was illiterate and could not read or write. Lawyer Nanton he said, had told his mother that Mr. Hall would return to pay the balance of the purchase price. This did not happen.

[17] Artis Grecia said further, that in taking charge of the property he fenced it with the help of his father and then planted it, with all the proceeds from the crops going to him. He described the fencing as a chain link fence on the western and northern sides, and on the side to where Mr. Percival Buntyn lived he used three strands of barbed wire with wooden posts. He stated categorically that no-one claimed those lands while he was in occupation.

[18] In 1995 on his return home when his father had died, he met the fence down in the area close to where Mr. Buntyn lived, with a lot of debris, like blocks and bricks on the land. Consequent upon this he said, he had Mr. Joel Pitt an attorney, write to Mr. Buntyn concerning the trespass to his land. He said he then gave his brother Charlie Grecia instructions to re-fence the property completely around the damaged area. He said this was done.

[19] Artis Grecia also told the Court that in 1994 he gave Mr. Joel Pitt instructions to prepare title deed to the said property on his mother's advice. That Deed No. 3258 of 1995 was exhibited in court as Exhibit A.G. 1. Artis further stated that even though he had seen Mr. Othniel Sylvester around, he did not know him nor had he ever seen him at his home at Villa. He stated that he lived in Canada by and large, but comes home to St. Vincent twice

every year and that until 1995 when he received the letter from Sylvester and Williams law firm, no-one had made any adverse claims on the land in issue.

- [20] As a result of the circumstances raised on the evidence narrated above the claimant commenced proceedings by virtue of a Writ of Summons filed on the 23rd July 1998 in which he claimed for a declaratory order, an injunction, damages and the consequential order for the cancellation of possessory deed bearing registration number 3258 of 1995. The second defendant by his defence claimed adverse possession. Nowhere in his defence has the second defendant claimed adverse possession through his mother Amelia Grecia.

ISSUES:

- [21] The issues from the pleadings can be summarized succinctly as follows:
- (1) Can a grantor derogate from his grant?
 - (2) Can the defendants maintain a claim for adverse possession in these circumstances?
 - (3) Was there in fact adverse possession by the second defendant in these circumstances?

- [22] Dealing with the first issue relating to the derogation principle, I agree entirely with the law as stated by this principle – the 5th Edition of the “Law of Real Property” by Megarry and Wade at page 848 under the Rubric “Derogation” states:-

“A person who sells or lets land, knowing that the purchaser intends to use it for a particular purpose, may not do anything which hampers the use of the purchaser’s land for the purpose which both parties contemplated at the time of the transaction. A grantor may not derogate from his grant. This is “a principle which merely embodies in a legal maxim a rule of common honesty”. A grantor having given a thing with one hand is not to take away the means of enjoying it with the other”. If A lets a plot to B, he may not act so as to ... the purpose for which in the contemplation of both parties the land was lived” –

But does this legal principle bear any effect on the instant case? I have read all the authorities on the point as submitted by learned counsel for the claimant, and I am afraid I am not persuaded as to their relevance to the facts before hand. I therefore conclude that

this principle has no bearing at all to the matter before hand. The authorities referred to, deal with completely different scenarios and facts which have no bearing on the instant case. I completely reject the argument posited by learned counsel for the claimant on this score – the authorities cited by counsel for the claimant are as follows:-

- (a) Harmer v Jumbil (Nigeria) Tin Areas Ltd [1921] 1 ch 200 at 225 per Younger, J
- (b) Birmingham Dudley and District Banking Co v Ross [1888] 38 ch. 295 at 313 per Lord Bowen
- (c) Aldin v Latimer Clark, Muirhead & Co. [1894] 2 ch 437, 444, 447.

[23] Turning to the second issue of whether the defendants can maintain a claim for adverse possession, learned counsel for the claimant asserts that for there to be adverse possession that possession must be “nec vi nec clam nec precario”; and that the second defendant at paragraph four of his defence, was seeking to claim adverse possession by permission and that this plea negates the concept of adverse possession, as adverse possession excludes persons who have the owner’s permission or by reason of some family relationship. Learned counsel also asserted that adverse possession is a matter of fact, depending on the peculiar circumstances of the case, and that it depends on the state of mind of the squatter, that is, the squatter must have the necessary “animus possidendi”. She went further to say that in order to acquire by the Statute of Limitation, a title to land, which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or having discontinued his possession of it.

[24] I do not disagree with these assertions as made by learned Counsel for the claimant in relation to law. But do the facts of this case, especially the claimant’s case as posited by their evidence, really turn against the defendants’ claim?

[25] The burden of proving adverse possession in this case lies on the second defendant. He to my mind, has to prove:

- (a) that the claimant was dispossessed or
- (b) the claimant discontinued possession.

From the evidence, and the preponderance of it, when one juxtaposes the evidence of the claimant's sole witness as against that of the defendants, I find as a fact that the claimant Edward Hall from since his alleged "purchase" of the said lands in issue never returned to St. Vincent to assert his actual possession of those lands. I also find it hard to accept the evidence from the claimant that Herod Grecia, whose wife Amelia was purported to have sold the said lands to the claimant, would act as caretaker or overseer of the lands, on behalf of the claimant, when the preponderance of the evidence suggests that the claimant had only made part-payment for the said lands.

[26] My difficulty in accepting the claimant's story is not in any way based on a finding of incredibility on the part of the sole witness for the claimant Mr. Othniel Sylvester Q.C., but rather for the lack of any independent support for his evidence, and for the fact that he was not really actively involved in the overseeing of the said lands. He testified to having visited the said lands on two or three occasions since the early 1980's when he claimed the claimant Edward Hall took him to the said lands and put in charge Herod Grecia to oversee those lands.

[27] The defendants on the other hand have put forward a consistent, frank and forthright story. The first defendant said that at all material times he knew the land to be owned by the second defendant and that he fenced the land on his instructions. The second defendant goes further and explains how he came into possession of the said lands. I need not rehash the whole of his evidence, but suffice it to say that the fact of the second defendant being "given permission to occupy the lands" by his mother, is of no moment in this case.

[28] I find as a fact that the second defendant entered into possession of the land from the late seventies when it became obvious that the claimant had reneged on his promise to pay the balance of the purchase price. It is trite law that successive squatters periods of occupation continues adverse possession, so that Amelia Grecia's occupation continued as adverse possession until when the second defendant took possession with time continuing to run – see the case of *Mount Carmel Investments Ltd v Peter Thurlow Ltd* (1998) 1 WLR 1078 C.A. –

[29] There is also the fact as I have found, that the second defendant worked the lands and retained the proceeds for himself through others, who were his agents; this clearly shows the necessary animus possidendi to ground adverse possession. There is also the fact that the second defendant fenced the land since 1978, and that it was only in 1998 that he was challenged in a court of law – this clearly showing that he had actual physical possession and also the necessary animus possidendi.

[30] I agree with learned counsel for the first defendant that the question of “permission” therefore becomes irrelevant to the legal issues, in the absence of any evidence to the contrary as specified above in this judgment. Cross-examination of the claimant would have been crucial to his case, especially in regard to how he got Herod Grecia to agree to oversee the land for him, for the reasons also which I have specified earlier in this judgment.

[31] There is also the uncontroverted fact in evidence that the second defendant took possessory title to the said lands in 1995 – Ex. A.G. 1. Flowing from this I find that the evidence given at this trial by the second defendant and his statement made in the possessory title are supportive in all material particulars.

[32] Section 17 of the Limitation Act, Chapter 90 of the Revised Laws of St. Vincent and the Grenadines 1990 provides:-

“No action shall be brought by any person to recover any land after the expiration of 12 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.”

Part 1 of the Schedule to the said Act contains provisions for determining the date of accrual of the right of action. Section 3 provides:-

“When any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to himthat right of action shall be treated as having accrued on the date when the assurance took place.”

Section 8(1) of the Schedule (Part 1) further provides:-

“No right of action shall be treated as accruing unless the land is in possession of someone in whose favour the period of limitation can run (referred to as adverse possession).”

[33] It is clear that time begins to run against an owner who is entitled to possession as soon as he has been dispossessed, or he has discontinued his possession of the lands and adverse possession of the land has been taken by some other person. Adverse possession is substantially a matter of fact implying both possession of lands by a stranger coupled with the animus possidendi or intention to exclude the previous owner so far as it is practicable.

[34] From the facts of this case coupled with my findings of fact, it is clear that the second defendant was clearly in adverse possession of the lands in issue. Taking all the facts into consideration, the preponderance of the evidence led by both sides, and on a balance of probabilities, I find for the defendants; the claimant's claim against the defendants is hereby dismissed. The claimant is to pay each defendant's costs in the sum of \$7000.00.

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Frederick Bruce-Lyle
HIGH COURT JUDGE