

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

PETITION NO. 475 OF 2002

IN THE MATTER of an application under
Section 2103A of the Civil Code Chapter
242 for a declaration of title to immovable
property

AND IN THE MATTER of the Supreme
Court - Prescription By Thirty Years
(Declaration of Title) Saint Lucia Rules
No. 7 of 1970

BETWEEN:

LAWRENCE WINSBERT MAXWELL

Petitioner

and

PATRICK JOSEPH

Respondent

Appearances:

Mrs. Esther Greene- Ernest for the Petitioner

Mr. Bryan Stephen for the Respondent

2003: May 20

2003: May 30

**PRESCRIPTION...PETITIONER CLAIMING PRESCRIPTION BY VIRTUE OF LONG AND
PEACEFUL POSSESSION BY HIS DECEASED PARENTS FOR 30 YEARS...ARTCILE 2047 OF
THE CIVIL CODE...WHETHER THE PETITIONER WAS IN "PEACEABLE OCCUPATION" AS
OWNER FOR 30 YEARS...RESPONDENT CLAIMS TO BE OWNER BY VIRTUE OF DEED OF
SALE...CASE FILED AGAINST PETITIONER IN 1973...NOT ADJUDICATED UPON...MISSING
FILE...WHETHER CLAIM INTERRUPTS PRESCRIPTION...EFFECT OF JUDICIAL DEMAND.**

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** On 23rd May 2002, Mr. Lawrence Winsbert Maxwell filed a petition with supporting affidavits of even date praying for a declaration of title in his favour pursuant to Article 2103A of the Civil Code. After due advertisement of the Summons for a Declaration of Title to Immovable Property, Mr. Patrick Joseph also known as Rocket Daniel entered an Appearance.
2. Mr. Maxwell's claim is based on the ground of continuous undisturbed and exclusive possession for more than thirty years by his deceased parents, Crafton John Maxwell also known as Lou Maxwell and Unita Maxwell who were owners in possession of a portion of land comprising 0.93 hectares at Vigier Estate in the Quarter of Micoud. (THE PROPERTY) from 1937 and that he has continued the possession of his deceased parents. In a nut-shell, Mr. Maxwell is claiming prescriptive rights. He alleges that his parents built their home on THE PROPERTY and cultivated the land with coconuts, breadfruits, bananas, mangoes, pears and sugar apples.
3. Mr. Patrick Joseph also claims to be owner of THE PROPERTY. He alleges that he bought THE PROPERTY from Polina James on 21st day of July 1972 (Deed of Sale by Polina James to Patrick Joseph dated 21st July 1972 and recorded on 1st August 1972 in the Office of Deed and Mortgages Vol. 111 No. 99298. He also alleges that over the years, he has known several people to occupy his land and as a result, he has always found himself in dispute with those occupants, Mr. Maxwell and his parents being no exception.
4. In 1973, Mr. Joseph bought an action in the High Court (Suit No. 26 of 1973) against Mr. Maxwell's parents to stop them from trespassing and occupying his land (THE PROPERTY). Pursuant to that action, THE PROPERTY is registered in the Land Registry with no-named Proprietor but with the restriction "No dealings awaiting on High Court decision Suit No. 26 of 1973. The Court Office cannot locate the file and as such, the matter has never been adjudicated upon. Thus the outcome of this matter is pending.
5. In 1977, Mr. Joseph borrowed monies from Barclays Bank International Limited in the sum of \$30,000.00 (Hypothecary Obligation exhibited as PJ 2). During the course of the repayment period, Mr. Joseph encountered difficulties in paying the monthly repayments. As a result, the

Bank secured judgment against him and moved to the seizure and sale of THE PROPERTY. Lou and Unita Maxwell, now deceased joined as opposants to the Bank's action claiming that THE PROPERTY belonged to them. Leave was granted to the opposants to withdraw from seizure and sale of the immovables in so far as the same affects THE PROPERTY (Exhibit PJ 3). As a result of the opposition, there was a subdivision to reflect two separate parcels. Claims 6H (the larger piece) and 6H 362(the smaller piece). The mortgages held by Barclays Bank were registered against the larger portion and the remainder (Parcel 1423 B 8) was marked with the restriction "no dealings awaiting the High Court decision in Suit No. 26 of 1973.This is evidenced by letter dated 11th August 1986 by the Recording Officer K.J. Maddock (Exhibit LM4).

6. On 13th January 2000, Mr. Joseph filed two applications for injunction against several respondents (workers of Mr. Maxwell) to restrain them from entering and remaining on THE PROPERTY. Mr. Ferguson John, Counsel for Mr. Joseph withdrew both applications.
7. The primary issue to decide is whether Crafton John Maxwell and his wife were in continuous and uninterrupted peaceable, public and unequivocal possession for a period of 30 years.
8. Article 2047 of the Civil Code defines prescription as a means of acquiring property, or of being discharged from an obligation by lapse of time, and subject to conditions established by law. Article 2064 states as follows:

"A successor by particular title may join to his possession that of him from whom his title was derived, in order to complete prescription.

Heirs and other successors by universal title continue the possession of him of whom they are the heirs or successors, except in the case of intervention of title."

9. In other words, Mr. Maxwell who has continued the possession of his deceased parents is entitled under Article 2064 to claim as an heir of his deceased parents. There is ample evidence to find that Mr. Maxwell's deceased parents have been living on THE PROPERTY since 1937. In his skeleton arguments filed yesterday, Mr. Bryan Stephen, Counsel for Mr. Joseph suggested that Mr. Maxwell and his parents lived on THE PROPERTY for a long time,

possibly from 1940's. In my opinion, he has no basis for saying so as there is uncontradicted evidence to show that Crafton John Maxwell and Unita Maxwell with their children were living on the land since 1937. First, there is the evidence of Anthony Nervais, a 68 years old farmer of Vigier. He stated that from the age of 8 years, he knew Crafton John Maxwell and his wife to be living on THE PROPERTY and he knew that Mr. Maxwell's deceased parents were in possession of THE PROPERTY for over 30 years. Then there is the evidence of Mr. Peter Prince, another sexagenarian who is a rural constable of Vigier. He also knew the Maxwells very well and deposed that he knew Mr. Maxwell's parents as a child growing up and they lived on THE PROPERTY for 60 to 70 years. He said that they had their house on the land and they planted mangoes, breadfruit, cashew nuts and many other things. Under cross-examination, he had this to say:

"I know Crafton and Unita Maxwell for 60 to 70 years. I did not know any other person to be living on the land. I had been living on the land for 69 years. I always hear people saying it is crown lands. I do not know Polina James."

10. Mr. Maxwell and his sister, Veronica Diane Smith also testified. Cumulatively, their testimony is that they were born on THE PROPERTY. Mr. Maxwell is now 61 years old and his sister is 9 years his junior. They were aware of problems with their deceased parents (both of whom died in 1995) and Mr. Joseph culminating in Suit No. 26 of 1973 which is still pending before the court.
11. The uncontradicted evidence as to the occupation and possession of THE PROPERTY since 1937 by Mr. Maxwell's parents seems to suggest that his parents were entitled by virtue of long possession to lay a claim to THE PROPERTY if the other requisites of prescription were satisfied. So, what are the other requisites?
12. Article 2057 stipulates the legal requirements for prescription. In effect, it states that for the purposes of prescription, the possession of a person must be "continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor."
13. Mr. Stephen is not denying that Mr. Maxwell's parents lived on THE PROPERTY for a very long time. His argument is that Mr. Maxwell's parents never enjoyed "peaceful" possession as

there existed and still exist “troubles” between the Maxwells and Mr. Joseph. It is patently clear that there were and continues to be problems with the Maxwells and Mr. Joseph over THE PROPERTY. As far as Mr. Joseph is concerned, he paid his hard-earned dollars for the PROPERTY since 1972 so it is his. The Maxwells have always maintained that they lived on THE PROPERTY peacefully and in excess of 30 years so they are the rightful and legal owners of THE PROPERTY. Both parties are adamant about their respective legal rights.

14. The question here is “ did the Maxwells enjoy ‘ peaceful possession’ as owners in title? The Maxwells are saying that they have been on THE PROPERTY since 1937 and that prescription set in since 1967. The Maxwells are also saying that all problems with Mr. Joseph surfaced when Mr. Joseph purchased THE PROPERTY in 1972 and not before that date. In his evidence, Mr. Joseph maintained that THE PROPERTY belongs to him. He presented his Deed of Sale to substantiate his assertion that he bought THE PROPERTY from Polina James in July 1972. In giving oral testimony, he stated as follows:

“Block and Parcel No. 1423B8 which is the subject matter of this claim is owned by and belongs to me. It was purchased from Polina James, as evidenced by the Deed of Sale ...Over the years, I have known several people to unlawfully occupy my land and as a result I have always found myself in dispute with those occupants, the Petitioner and his parents when they were alive being no exception. By virtue of Claim No. 26 of 1973, I bought an action against Lou Maxwell and Uline Maxwell to stop them from trespassing and occupying my land. Lou Maxwell and Uline Maxwell are the parents of the Petitioner who are both deceased. I am not sure what happened to that suit. It was set down for hearing but was never heard. I am advised by my solicitor that the file cannot be located at the Registry.”

15. In my opinion, “troubles” started brewing around July 1972 when Mr. Joseph purportedly bought THE PROPERTY. It could not have been before because he had no prior interest. He is not claiming THE PROPERTY by prescription. His claim is based on a Deed of Sale executed on 21st July 1972. It is also consistent with the court action which was filed in 1973.
16. That being so, in my judgment, prescription had already set in since 1967 and the subsequent claim in 1973 cannot disturb or interrupt an apparent prescriptive possession of land. Articles 2083 to 2092 of the Civil Code outlines the causes which interrupt prescription. Article 2083

states that prescription may be interrupted either naturally or civilly. Natural prescription takes place when the possessor is deprived, during more than a year, of the enjoyment of the thing, either by the former proprietor or by any one else (Article 2084).

17. A judicial demand in its proper form, served upon the person whose prescription it is sought to hinder, creates a civil interruption (Article 2085). Article 2087 sets out the circumstances in which prescription is not interrupted namely:

- (a) If the service or the procedure be null from informality;
- (b) If the plaintiff abandon his suit;
- (c) If he allow peremption of his suit;
- (d) If the suit be dismissed.

18. Mrs. Ernest fought hard to show that the civil action filed by Mr. Joseph in 1973 could not interrupt prescription civilly as is being alleged by Mr. Daniel. She submitted that the filing of a claim is not a judicial demand. An order of the Court is. It is unfortunate that Mr. Joseph has taken a laid back attitude to prosecute a matter which he filed in 1973. He knew that the file was missing. Another record of proceedings could have been reconstructed. I have seen a statement of claim as well as a defence. What else was necessary for this matter to be ripe for hearing is difficult to comprehend. The Maxwells could have assisted in the prosecution of this matter. They themselves sat back. Under CPR 2000, both parties would have been at fault in not furthering the overriding objective of the Rules. Be that as it may, Mr. Joseph had the greater responsibility to ensure that his case is diligently prosecuted. It is a lame excuse to complain about the missing case 30 years later. Then as recent as 2 years ago, he filed 2 applications for injunctions in the High Court. against Mr. Maxwell's workers. Again, Mr. Joseph comes to the court to say that he has not heard anything from his lawyer about the outcome of these applications when both applications have been withdrawn.

19. If I had my own way, notwithstanding that Claim No. 26 of 1973 is not before the court, I would have dismissed it for failure to prosecute. But, I think I would be wrong to take such a drastic step since the problem of missing records is also an administrative one. For all intent and purposes, Claim No. 26 of 1973 is still pending before the court as it has not been adjudicated upon. Thus, on a literal interpretation of the Code, it seems to me that the filing of the claim in

1973 created a civil interruption. However, this argument is merely academic in view of my finding that Mr. Maxwell's deceased parents were in possession as owners on THE PROPERTY since 1937 and cumulatively and collectively, these acts of ownership and possession were sufficient to create a presumption of fact that Mr. Maxwell' parents were the owner of THE PROPERTY by virtue of prescriptive possession. Prima facie, these acts indicate that Mr. Crafton John Maxwell and his wife were in actual, continuous, uninterrupted, peaceable, public, unequivocal and sole and exclusive possession of THE PROPERTY as owners thereof for more than 30 years. See Sir Vincent Floissac in *Burton v Elvin* 46 WIR117 at page 121.

20. In his submissions, Mr. Stephen relied on Articles 2112 and 2116 of the Civil Code. These articles are of no assistance to the court since I found as a fact that Mr. Maxwell's deceased parents were in possession of THE PROPERTY since 1937. They enjoyed peaceful possession since 1937 and troubles started shortly after Mr. Joseph bought the land in 1972.
21. Accordingly, I would issue a Declaration of Title in favour of Mr. Lawrence Winsbert Maxwell the heir of Crafton John Maxwell and Unita Maxwell. I will award costs of \$3,000.00 to Mr. Maxwell.

Indra Hariprashad-Charles
High Court Judge