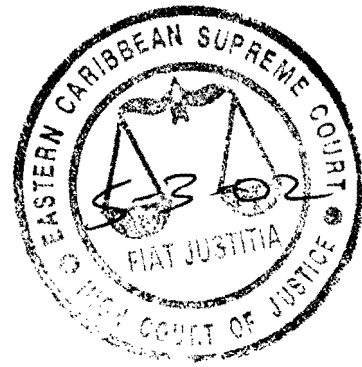




SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 464 OF 1993

BETWEEN:

JOYCE RYAN

Claimant

and

GLORIA GONSALVES
VANDYKE DICKSON

Defendant

Appearances:

A.F. Williams Esq. for the Plaintiff

M. Malcolm Esq. for the Defendants

.....
2002: January 16th, 18th, 22nd
March 5th
.....

JUDGEMENT

- [1] **BRUCE-LYLE, J.** This is a case where the Claimants claim is for Damages for Trespass to land; an injunction to restrain the Defendants from trespassing on the Claimants land, and an order that the Defendants demolish a building erected on the Claimants land. The Claimant and the First Defendant Gloria Gonsalves are Sisters, and the Second Defendant is the Claimants Nephew, being the Son of the First Defendant.

- [2] The Claimant in her Statement of Claim described the land in issue as two lots more or less and is abutted and bounded as follows; on the North by lands of George Dickson, on the South by a Road and on the East by lands of Gladys Hutchinson and on the West by a Road together with all erections thereon.
- [3] The Claimants case basically was that from birth, her Mother Marie Dickson who died in 1985, was in possession of the subject property along with other properties and that the First Defendant, a child of Marie Dickson and her other children including the Claimant, lived in a one bedroom chattel house on the said parcel of land. The Claimant further stated in her evidence that at one time, all of Marie Dickson's other children except the Claimant, went to live elsewhere. The Claimant herself had stated in her evidence that at one time she had left to live in Trinidad with an Aunt, returned to the said mothers property, and then subsequently left for Curacao, and then returned again to live permanently with her mother.
- [4] The Claimant went further to say in her evidence that her mother Marie Dickson gave the First Defendant a parcel of land elsewhere on which the First Defendant built her house, which was separated by an access road from a parcel of land which the mother gave to her daughter Eunice Thomas. The Claimant further said that herself and her children lived with her mother Marie Dickson up to the year 1977 when the mother gave the Claimant the chattel house and went to live in the house of Eunice Thomas.
- [5] The Claimant then went on to say that she has occupied the land with her children up to the present time. She said she had commenced the building of a concrete house on the said land next to the chattel house and on completion of the said concrete house she had given the chattel house to her sister's daughter, and lived in her house on the land up to the present time.
- [6] Throughout this Case it was clear, that the Claimant was the only person in actual possession of the parcel of land in issue. This was borne out by the evidence of the Claimant herself, and her son Keith Ryan, and also by both Defendants and their witness.

The other piece of evidence not in contention was the fact that the Defendants and others were allowed to pick breadfruit and other produce from the land.

- [7] The Claimant further told the Court that the Second Defendant returned from abroad, Canada that is, where he had earned some money and the First Defendant was the one who encouraged him to build a house on the land occupied by the Claimant. The Claimant said she told the Defendants not to trespass on the land which she claimed as her land, and which had been in her possession from 1977.
- [8] The Claimant further contended that the Defendants entered the land, destroyed the Claimants peas and bananas and cut down three coconut trees and a large golden apple tree for which she could not give any estimated value, and started to construct a building on the said land. On the 3rd day of December 1993 the Claimant filed this Suit and obtained an injunction against the Defendants.
- [9] It is interesting however that there is no Deed for the land for which the Claimant alleges that she paid taxes over the period of years; and the fact that, all the witnesses at this trial stated that since 1977 the Claimant has been in sole occupation of the Land. The First Defendant however alleged in her evidence that her brother paid the taxes for the land and that the last time he paid such tax was in 1986, something which I found to be unsubstantiated by the evidence of Patrick Dickson, the brother of the First Defendant and also the Claimant.
- [10] Mr. Keith Ryan, son of the Claimant basically supported the Claimants evidence when she says she was the sole occupier of the land since 1977. He said in his evidence "My mother remained in control of my grandmothers house while she resided with Eunice. I know the boundaries of the land my mother lives on now. Since my grandmother died, no one has interfered with my mother's occupation of the land. I know of someone interfering with my mother's occupation of that land now. It is my Aunt Mrs. Gloria Gonsalves and her son Vandyke". This witness then went on to tell the Court as to the nature of the interference from the Defendants to her mothers land. He mentioned that the Defendants

cut down three coconut trees at \$150.00 per tree, 18 holes of peas trees valued at \$10.00 per tree, 50 holes of banana trees at about \$5.00 per tree, and started to put down a foundation for a house, in the area where his mother had planted her produce, and that that area formed part of her mothers land which was bounded in part by a Government road, and by lands belonging to his Uncle King Dickson, also known as George Dickson, and by lands belonging to the Hutchinson family. This witness firmly told the Court that he was born and grew up on the lands his mother now occupies.

[11] Under Cross-examination by Learned Counsel for the Defendants Mr. Moet Malcolm, this witness again categorically stated that when he returned from Trinidad in 1973 he met Gloria his Aunt the First Defendant in this Suit, living at her own home, on a piece of land given to her by his grandmother. He stated that Eunice had her own home there with Gloria. He stated that he had never known the lands in issue as family lands. He stated that he did not know of Patrick Dickson picking fruits from the fruit trees on the land. She did know of Gloria Gonsalves picking breadfruit from the said lands and no one interfered with her. He also stated that Vandyke's building is close to his mother's home, and that it was legal for Gloria to pick fruits from the land as she was part of the family, but then he had known the land to be his grandmothers land and not family land. There was no re-examination of this witness.

[12] The Defendants Case simply put is that the lands in question are family lands, and must be divided among the family. To support this contention was the evidence adduced by the witness for the defence that the land taxes were paid in the name of Joseph Dickson deceased, who was the Uncle of the Claimant Joyce Ryan and the First Defendant Gloria Gonsalves, and the Great Uncle of the Second Defendant Vandyke Dickson.

[13] In her evidence, the First Defendant told the Court that she did not know the Claimant until she was an adult, since she the Claimant did not live with them on the said lands until her return in 1961, having no place to stay. This witness further stated that at the time she was living with her Grandmother and her mother Marie Dickson on the said lands, and that those lands which are in issue were in the name of Joseph Dickson. She stated further

that she presently lived in her Sister Eunice's house. She further stated that the land in issue belong to her brother Joseph Dickson, but that she never knew Joseph Dickson. She insisted that the lands in issue were family lands.

[14] She also stated that when Joyce Ryan was building her house, she used to go on the said lands to pick all kinds of fruits, and that there was no objection from Joyce to her doing so. She told the Court that the said land could be divided. She and her brother Patrick went to the Claimant and asked for her share of the land. She said the Claimant told her she had no share in the land. She claimed that on 26th November 1993 the Court ordered both the Claimant and Vandyke the Second Defendant to stop building on the land. She stopped building, but Joyce Ryan continued to build and finished the building. I must confess that I see no evidence of this on file. What I see is an injunction granted by the Court against the Defendants restraining them from erecting any building or structure or doing any excavating or any works whatever upon the property situate at Stubbs until the trial of the action or until further order. Why this witness would choose to mislead the Court on this boggles the mind.

[15] This witness further stated that Joyce was not a regular member of the family and that she did not know her until 1961. She insisted that the area of the land where herself and the Second Defendant were building is away from the Claimants house, with access by way of a road leading to where the Second Defendant was building. The Second Defendant does not have to go through the Claimants land to get where he is building. She ended her examination in chief by asking the Court to declare the said lands as family lands which ought to be divided. She insisted that where she lived was Eunice's house and that her brother Patrick used to pay taxes on the said land, and also picked coconuts, breadfruit and all that was on the land with no objections from the Claimant.

[16] Under Cross-examination this witness insisted that she did not have her own piece of land, but instead built on land owned by her sister Eunice who lived in St. Croix. She said Eunice got that land from Edward Chance through her grandfather who actually put her on the land to live. The witness further stated that she met Eunice living on the said land.

She denied her mother had given Eunice and herself their own pieces of land to build on. She described this land as one piece of land but with a road running right through it. She did admit though that her mother Marie Dickson left the land in 1977 to live at Eunice's house. She the First Defendant said she returned home from Trinidad to look after her sick mother. From 1977 the Claimant occupied the board house her mother had lived in. Interestingly enough this witness testified that she did not know how many lots this land in issue comprised of, but knew that it was the same piece of land on which their mother built her board house.

[17] She further testified that she did not know what the Claimant did with the board house after she had built her concrete house on the land, but again admitted that after her mother left to live with Eunice's house, no one but Joyce Ryan lived on the land. She however said that it was her mother Marie Dickson and subsequently Patrick Dickson who used to pay the taxes for the said land. She insisted her brother Patrick paid the taxes for the said land up to 1986, but that she did not have the receipts. But she was adamant that the Claimant did not pay any taxes for the land. She admitted picking fruits and breadfruit from the said land, but that those fruit trees were on the land before the Claimant moved onto the land in 1977. She further stated that apart from picking fruits and other produce from the land she did nothing else to the land. She denied seeing peas trees on the land, nor cutting down any peas trees on the said land. She said apart from the banana trees she knew Joyce planted on the land, there was nothing else on the land.

[18] All this litigation arose when her son Vandyke returned from Canada, she testified. She then spoke to the Claimant about putting up a house on the said land. That is when the Claimant told her she had no share in the land. She told the Court that she took some of the land because she is a grandchild of the land, as the Claimant also was. She categorically stated that her mother gave no land to the Claimant. In 1984 when she returned to St. Vincent from Trinidad her mother had done nothing about the land. She was adamant that their mother never gave the land to the Claimant, but admitted again that after their mother left the land in 1977 to live at Eunice, no one else apart from the Claimant lived there. Then she very interestingly said that before 1993 she was going onto

the land, but she never claimed her portion until then, because the thought did not occur to her to make a claim then. This is in direct contrast to her testimony under examination in chief when she says that in 1982 when she realized that the Claimant was building a concrete structure on the land she went with her brother Patrick to demand her share of the land from the Claimant, who told her that she had no share in the land. She then tells us that it was when Vandyke returned from Canada that she thought of asking her sister the Claimant for her share. Which of these versions is the Court to accept? To my mind this touches directly on this witnesses credibility. I observed her demeanour from the witness stand and I am satisfied that she is not a witness of truth. The only consistent portion of her evidence is when she states that since 1977 the Claimant has been the only one in possession of the land.

[19] This fact is borne out by all the Claimants witnesses and by all the Defendants witnesses. There was no re-examination of this witness.

[20] The Second Defendant also testified as to the truth of the statement he gave to his Lawyer pertaining to this Suit. He gave his age as 32 years and stated that he was very familiar with the lands in issue since he used to go on the said lands. He was living with his grandmother Marie Dickson from since he was a little boy. After Marie Dickson left the lands, he still used to go to the lands to pick breadfruit, coconuts, mangoes and anything that grew on the land. He said there was no objections from the Claimant to his doing so.

[21] This witness further stated that in 1993 he went onto the said lands to build a house. He stated that he was give permission to go on the lands by his mother Gloria Gonsalves the First Defendant, and his uncle Patrick Dickson. He denied ever trespassing on the Claimants lands to get to where he was building his house as there was a public road from which he could access his land. He admitted that in 1993 the Claimant sought an injunction against him and the Judge ordered both Claimant and himself to stop building on the land, but the Claimant continued building. I have already stated earlier in this Judgement that I find no evidence of this on the file, and this twist to the events before trial are calculated to mislead the Court. This witness ended his examination in chief by

admitting that he cut down the coconut trees to enable him build the house. He denied ever threatening Joyce Ryan, the Claimant.

[22] Under Cross-examination this witness told the Court as the other witness for the Defendant had done earlier that the injunction granted by the Court was not against himself alone. This I again find to be misleading because nowhere in the pleadings or documents filed pertaining to this Suit do I find any order for an injunction against the Plaintiff.

[23] The witness further testified that he used to pick fruits from the said land, and went on the land everyday, but not to lay any claim to the land. He then surprisingly said "my mother and my uncle made me decide to build on the land". He described the land as a big piece of land capable of holding four to five houses, he could however not say the actual size of the land in square footage. The witness then stated that he was born in the board house of his grandmother, but stopped living there when she moved from there to live in his aunts house. He has not gone back to the house since. He then contradicted his mother by saying "I know my mother owns a house. She does not live there but she lives in her sisters house". He described the land his mother lived on as one piece, with a road running through it, and that the land belonged to his aunt Eunice, even though he had not seen the Deed. He insisted that the Claimant only came to live on the land in issue in 1977 when his grandmother moved out. He did admit though that the Claimant had uninterrupted possession of the said land and house from 1977 until 1993, and during this period no one interfered with the Claimant.

[24] Again this witness contradicted his mother the First Defendant when he said, "Both parties cut down trees to build on the land. My mother cut down coconut trees to build my house. She cut down three coconut trees I used to climb. She also cut down a Golden Apple tree, banana trees, and peas trees". Earlier in her evidence the First Defendant Gloria Gonsalves had categorically denied ever cutting down any tree on the land in issue.

- [25] I find on the issue of credibility that the First and Second Defendants are not witnesses of truth. Their evidence is at variance with one another in very material areas. The only common thread running through the evidence of the Defendants so far is the uninterrupted possession of the Claimant of this piece of land from 1977 to 1993 when this Suit was filed. This witness Vandyke Dickson is of the view that the Claimant filed this Suit to prevent him from building on his grandmother's land, and not the Claimants land.
- [26] Defence witness Patrick Dickson, to my mind was of no help to the Court either. The main thrust of his evidence was that the land in issue belonged to Joseph Dickson and that he Patrick Dickson was the one paying the taxes on the said land. He admitted that when his mother Marie took sick, she moved to stay with her daughter Eunice and left the Claimant in occupation of the board house. He told the Court that Marie Dickson, their mother told all of her children, that the land belonged to all of them. But he cannot recall if the Claimant Joyce Ryan was present when Marie Dickson made this very important pronouncement. He said Joyce made improvements on the house which began in 1982 and that he sought Marie Dickson's consent for her to do so. He contended that Joyce lived on the said land from 1982 to 1993. This piece of evidence is at variance again with that given by the First and Second Defendants that the Claimant occupied the land alone from 1977 to 1993.
- [27] It is again note worthy that no one sought to challenge the Claimants occupation of the said land from 1977 until 1993 when the First Defendant made a claim for her portion of the land, which was rejected by the Claimant. This witness then insisted that the land belonged to Joseph Dickson and that taxes were still being paid in his name. He insisted also that the land could be shared, and that where the Second Defendant was building his house could be accessed by a public road without disturbing the Claimants quiet enjoyment of her portion of the land.
- [28] Under Cross-examination the witness said he did not know Joseph Dickson, and that since he knew himself his mother Marie was in control of the said land. He knew his mother had been in control of the said land for over forty years, and that no one tried to take

possession of the land from his mother. He claimed not to know the exact year his mother left the land to live at Eunice's which was quite convenient, I would say. But since his mother left the land, Joyce Ryan the Claimant had lived there with her son, but only in possession of the house but not the land. He maintained that the rest of the family including himself went on the land to pick breadfruits and that he used to pay the taxes on the land. Surprisingly enough, this witness had no receipts to show that he had indeed paid the taxes. He even specifically stated that he had paid the taxes for the years 1986. When by consent of his Counsel and the Court he was shown land tax receipts for the years 1985 and 1986 which he identified as being land tax receipts, the receipts had no connection with him Patrick Dickson. He then told the Court that he must have paid the taxes the year before. I at this stage state that I categorically reject this witnesses evidence pertaining to his knowledge and any dealings with the land. To my mind he is not a witness of truth.

- [29] He did however say that the Claimant was working the land since the death of their mother Marie. Suffice it to say this witness's evidence was fraught with untruths and contradictions. He did under re-examination state that the rest of the family used to pick fruits from the land while Joyce the Claimant was in possession and she did not object to them picking fruits from the land. This signified the case for the Defence.

Issues

- [30] The main issues to be determined in this case are:
1. Has title accrued to the Claimant?
 2. Did the Claimant have uninterrupted possession for title to accrue. I think these are two very simple questions to be determined, based on the quality and weight of evidence provided by both sides to this case. The third issue to be determined is
 3. Have the Defendants by their actions trespassed on the Claimants land or have they asserted their right to title to the land based on their evidence or belief that the land was to be divided amongst the parties to this Case.

- [31] The Limitation Act, Cap. 90 of the 1990 Edition of the Revised Laws of St. Vincent and the Grenadines provides at section 17(1) that:

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

And at Section 19 the provision reads:

... At the expiration of the period prescribed by the Act for any person to bring an action to recover land the title of that person to the land shall be extinguished.

- [32] Counsel for the Defendants submitted that for title to accrue there must be a basis by way of evidence and that the only evidence from the Claimant was that her mother gave her the land. He further argued that paragraph four of the Claimants Skeleton Arguments did not support this fact and that nothing suggested that Marie Dickson had given the Claimant the house or the land. He further argued that the land was still being paid for in the name of Joseph Dickson up to the date of trial.
- [33] Learned Counsel for the Defendants went on to state that uninterrupted possession would confer title on the Claimant, but in this instant case the Defendants had access to the land, with no objection from the Claimant to these acts of access. He further contended that Marie Dickson died in 1985 and the Claim having been brought in 1993 put it within the Statute of Limitation period of 12 year, and that the Defendants had no problem with the Claimant having part of the land, as she was the sister of the Defendant. He further contended that the Claimant had no proprietary interest in the land and could only be considered a licensee.
- [34] Counsel for the Defendant further pointed out that the Statement of Claim of the Claimant did not ask of the Court to declare that the land belonged to her, because she herself knew that the land was family land. He further submitted that since the Defendants are beneficiaries the Claimant could not say they were trespassing on the land, and that the

Claimant had not even attempted to obtain a proper title to the land. Counsel further reiterated that since the Claimant had not pleaded the statute of Limitation, it was fatal to the Claimants case.

[35] Counsel for the Claimant on the other hand submitted that this was not a claim based on adverse possession, but that it was one of trespass. He added that neither the Claimant nor her mother had title to the said land but that from the evidence of Defendants third witness Patrick Dickson their mother was in possession of the said land for over 40 years. He further argued that all the witnesses in this case testified to the fact that the Claimant was in sole possession of the land since 1977 and that in law she was the proper person to sue for trespass. The Defendants contention that they picked fruits and other produce from the land could not vitiate or reduce the Claimants claim as the sole and undisturbed possessor of the land, he concluded.

[36] He further went on to say that the Defendants had to support their counterclaim by title of their own and not that of a third party.

[37] Having examined the evidence led by both sides to this matter carefully and with due regard to the quality of evidence given by the Claimant as juxtaposed to that of the Defendants and their witness, I find the evidence of the Claimant to be most credible even though it was uncorroborated. As mentioned before in this Judgement, the Defendants evidence was fraught with inconsistencies and contradictions, with attempts to mislead the Court interspersed. I find as a fact that from 1977 until the Suit was filed in 1993 the Claimant had sole and undisturbed possession of the land, and that the acts by the Defendants and other members of the family where they picked fruits from the land in issue did not amount to having disturbed the control and sole possession of the Claimant.

[38] I agree with submissions made by Learned Counsel for the Claimant, that this is not a case for adverse possession, and that it is simply one of trespass. Both parties to this Suit have no title to the land. There is uncontroverted evidence however that Marie Dickson,

the mother to the claimant and First named Defendant was in possession of the said land for over Forty years.

[39] To go further every witness who testified in this case, said the Claimant was in sole possession of the land from 1977 except one Patrick Dickson who put the Claimants sole occupation as from 1982. I agree therefore that the proper Claimant to sue for trespass is the person in possession. The Defendants would have to support their claim by title of their own and not that of a third party. This is settled and trite law.

[40] "Any form of possession, so long as it is clear and exclusive and exercised with the intention to possess, is sufficient to support an action of trespass against a wrongdoer. It is not necessary, in order to maintain trespass, that the Plaintiffs possession should be lawful, and actual possession is good against all except those who can show a better right to possession in themselves" – per Megarry and Wade "Law of Real Property" 3rd Edition, at paragraphs 1213.

[41] Again Megarry says "Trespass is an injury to a possessory right, and therefore the proper Plaintiff in an action of trespass to land is the person who was, or is deemed to have been in possession at the time of the trespass. The owner has a right to sue in trespass if any other person was lawfully in possession of the land at the time of the trespass, since a mere right of property without possession is not sufficient to support the action" at paragraph 1214.

[42] I am satisfied that the Claimant is covered by the Limitation Act, Cap. 90 of the 1991 Edition of the Revised Laws of St. Vincent and the Grenadines. It provides at Section 17(1) that:

No action shall be brought by any person to recover any land after the Expiration of twelve 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".

And at Section 19 the provision reads:

..... At the Expiration of the period prescribed by the Act for any person to bring an action to recover land the title of that person to the land shall be extinguished.

- [43] The Claimant through the preponderance of the evidence led at trial, has firmly established her sole possession of the said property from the year 1977, until the Defendants filed this Suit in 1993. By simple Mathematics, the Defendants clearly fall outside the 12 year Limitation period. To compound their problems they have failed woefully to establish a better title to that of the Plaintiff. For the purposes of completeness I quote from Halsbury's Laws of England 4th Edition Vol. 28 paragraph 997:

"... No right of action to recover land accrues unless the land is in the possession of some person in whose favour the period of Limitation can run (adverse possession) ...

What constitutes adverse possession is a question of fact and degree and depends on all the circumstances of each case, in particular the nature of the land and the manner in which land of that nature is continually used

The Claimants possession should be sufficiently exclusive and the Claimant should have intended to take possession...."

In the case of Charles v Gittens and Hutchinson (St. Vincent CA 6/1991) [unreported] (Sir Vincent Floissac CJ, delivering the Judgement of the Court of Appeal gave a definition of adverse or prescriptive possession of land as:

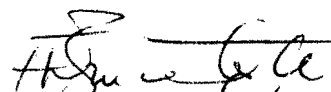
... continuos, uninterrupted, peaceable, public and unequivocal possession of the land as owner thereof and to the exclusion of the proprietor for at least 12 years whether the adverse or prescriptive possession was as the result of dispossession of or discontinuance of possession by the proprietor".

[44] Having regard to the above legal principles as juxtaposed with the facts in this case I am satisfied on a balance of probabilities and even beyond that, that the Claimant in this case is entitled to judgement in her favour for special damages, general damages, costs and an injunction to restrain the Defendants whether by themselves, their servants or agents from entering or crossing the Plaintiffs said land at Stubbs.

[45] I award -

- (a) As Special Damages the sum of \$200.00, for the loss of three coconut trees, eighteen peas trees and banana trees as claimed;
- (b) General Damages in the sum of \$5,000 to be paid by the Defendants to the Plaintiff; and
- (c) A Perpetual injunction restraining the Defendants whether by themselves, their Servants or agents from entering or crossing the Plaintiffs said land at Stubbs.

I also order that the Defendant forthwith remove or demolish the building erected on the Claimants land. In the premises also the Defendants Counterclaim is dismissed with costs to the Plaintiff in the sum of \$500.


Frederick Bruce-Lyle
High Court Judge