

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SUIT NO: 467 of 1993

BETWEEN:

CARL NICHOLLS Executor of the
Will of CLAUDE NICHOLLS

PLAINTIFF

AND

GODFRED NICHOLLS

DEFENDANT

Douglas Williams and Ms. Horne for the plaintiff.
A. F. Williams for the defendant.

1st December, 1997
Delivered 2nd December, 1997

BAPTISTE J.

JUDGMENT

The plaintiff's claim, is for:

- (i) Recovery of possession of a parcel of land situate at Relair.
- (ii) A Declaration for the cancellation of Statutory Declaration No. 294 of 1993.
- (iii) Further or other relief.
- (iv) Costs

The plaintiff sues as executor of the will of Claude Nicholls deceased who died on the 25th of March, 1984. Probate of the said will was issued out of the High Court of Justice on the 5th of October, 1993 (Probate No. 155 of 1993).

The plaintiff testified in examination in chief that Claude Nicholls left land under his will for his wife Miriam Nicholls, (that's Claude's wife) and after her death to Debra Nicholls, Claude's grand-daughter. Miriam Nicholls died and the land now belongs to Debra but he has not been able to pass the land to Debra. The reason he advanced was that before Claude Nicholls died he put the defendant to work the land and the defendant is still working the land. He stated that he gave the defendant verbal notice to quit the land but the defendant has not left.



The defendant testified in examination in chief that he had been on the land since 1977, he built a house on the land in that year and the land was his. He explained that before the land became his it belonged to his great uncle, Claude Nicholls. The defendant said he paid no rent and did not give anyone anything he planted on the land. He further stated that no one molested him on the land until the year 1992 when the plaintiff told him he was going to administer the land. Further he never acknowledged that the land belonged to anybody else but himself.

As I understand it, the plaintiff is contending that the Defendant entered the land and was allowed to work the land with the permission of Claude Nicholls, deceased. The defendant however contends that he did not enter the land with the permission of anyone. No one gave him permission to work the land and he entered into possession in 1977 before Claude Nicholls died.

If the plaintiff's contention is right, the defendant is a licensee. The law is that occupation of land as a licensee is not adverse possession. (See Halstary's Law of England, 4th ed. Volume 28 paragraph 751)

I accept the evidence of the defendant that no one gave him permission to build on the land or to work the land and I accordingly hold that he was not a licensee.

The defendant states in paragraph 9 of his Defence that

"... because of his continuous and exclusive possession for upwards of 12 years prior to the filing of this action, the plaintiff's title was extinguished by virtue of the provisions of section 19 of the Limitation Act of Saint Vincent and the Grenadines Cap. 90."

Sections 17 (1) and 19 of the Limitation Act provides as follows:

17 (1) "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."

19 "Subject to section 20, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished."

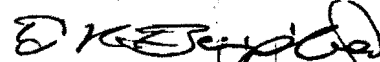
The question is whether the plaintiff's title was extinguished by virtue of section 19. As executor the plaintiff derived his title not from the grant of probate but from the will. An executor may generally do before probate all things which pertain to the executorial office. He

may begin an action as executor before probate, (See Halsbury's Laws of England 4th ed. Volume 17 para 730 and para 731).

Claude Nicholls had twelve years from the time the defendant entered into possession in 1977 to bring an action. That is up until 1989. He did nothing. He died on March 25th, 1984. The plaintiff as executor, claiming through Claude Nicholls had from 25th March, 1984 until 1989 to bring an action against the defendant.

I find as a fact that Claude Nicholls died on the 25th of March 1984. The defendant entered into possession of the land sometime in 1977 and remained in continuous and exclusive possession for upwards of twelve years before the filing of this action on November 2, 1993. He built a house on the land, paid no rent, worked the land and gave no one from the produce. The plaintiff is claiming through Claude Nicholls whose right of action first accrued in 1977. The plaintiff brought his suit on November 2, 1993 at a time when his title was extinguished by virtue of section 19 of the Limitation Act Chapter 90 of Saint Vincent and the Grenadines.

It is ordered that the plaintiff's action is dismissed with costs to be taxed if not agreed.


Davidson Kelvin Baptiste
High Court Judge (Ag.)