

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Suit Pet. 255 of 1980

In the Matter of an application
under Section 2103A of the
Civil Code Chapter 242 for a
Declaration of Title to immovable
property.

Ex parte St. Pierre Volney

and

Suit No. 207 of 1981

Between

HILTON JOSEPH

and

1. ST. PIERRE VOLNEY
2. HUBERT PHILLIP

BEFORE THE HONOURABLE MR. JUSTICE MITCHELL

1985 : November 25
December 2

1986 : March 26
1987 : January 12

K. Monplaisir, Q.C. for Hilton Joseph

E. Calderon for St. Pierre Volney and Hubert Phillip

JUDGMENT

St. Pierre Volney initially filed a petition seeking a declaration of title pursuant to Article 2103A of the Civil Code of St. Lucia.

He pursued his declaration under the provisions of the Supreme Court – Prescription by Thirty years (Declaration of Title) Rules 1969 (S.R.O. No. 7 of 1970) which states at Rule 4 that an application for a declaration of title to immovable property, or to any servitude or other right connected therewith, under article 2103A of the Civil Code shall be made by petition to the Court.

St. Pierre Volney complied with the procedural requirements under the provisions of Rules 5, 6, 7, 8 and no person entered appearance and filed a written claim.

Consequently, an Order dated 14th January, 1981 was made by the later Mr. Justice Glasgow declaring the then petitioner, St. Pierre Volney to be owner in title to the immovable property described in the schedule to that order.

Later by an order dated 25th April, 1985, on a motion of Hilton Joseph, the Declaration of Title dated 14th January, 1981 issued to St. Pierre Volney in respect of lands situated in his petition No. 255/80 was wholly set aside and in terms of Rule 11 of the Supreme Court Prescription of Thirty Years (Declaration of Title) Saint Lucia Rule 1969 (No. 7 of 1970) the said Hilton Joseph was thereby granted leave to enter appearance to the said petition of St. Pierre Volney, to file a written claim setting out his title to the property and a statement on which the same was founded and serve the same on Hubert Phillip, the Executor of the estate of the late St. Pierre Volney on his solicitor. It was further ordered that thereafter the proceedings shall be continued in terms of Rule 13(2) of the said Prescription Rules.

The respective petitions of St. Pierre Volney and of Hilton Joseph and the respective affidavits in support stand as pleadings in this matter.

In terms of Rule 15 of those Rules “the Court may adjudicate between their opposing claims and may by its judgment make such declaration of title in favour of the applicant or any of the defendants as it thinks just.”

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The petition of St. Pierre Volney was in respect of lands at Millet in the Quarter of Anse-la-Rayé consisting of twenty-two (22) acres and asserted that he was in continuous, undisturbed possession of that said portion of land for over thirty (30) years.

There were affidavits supporting that assertion of fact from St. Pierre Volney himself, Altide Regis, Hetti Prospere.

Hubert Phillip, the executor of the estate of St. Pierre Volney deceased, gave oral evidence in support of the petition and told that St. Pierre Volney left a piece of land at Choiseul and another piece of land at Millet. He Phillip had never gone to Millet to see that piece of land but St. Pierre Volney had always told him about the land at Millet before he died.

Harry Benjamin, who said that he was the brother of Hilton Joseph, the other claimant, said also that he went to Millet about 1936 to 1937 and when he went there with his step father John Joseph, Hilton Joseph was not at Millet, he was at Soufriere with his mother. Hilton Joseph went to Millet about a year after the 2 ½ years that he was there.

Harry Benjamin admitted that he was not on friendly terms with his brother. However, his brother was on the same piece of land on which he went when he was a boy. He had seen crops on the land. One Maurice Henry was on the land on which they were living at Millet. He said that Hilton Joseph was on the land for years but he did not know how many years.

Maurice Henry told of knowing St. Pierre Volney about 1934, down by Millet side, and he was living around the place that he rented from him. He had rented the place from St. Pierre Volney from 1938. He said that Maurice Floris was the agent of St. Pierre Volney – St. Pierre Volney had introduced him to Floris since about 1945. He said that he paid \$8.00 per year as rent for the land.

He said that Hilton Joseph went to live there in Millet when he (Hilton Joseph) was about ten (10) years old and he lived there ever since.

John Joseph, the father of Hilton Joseph, left the place in 1947. He did not know with whom he left his children including Hilton Joseph.

Since St. Pierre Volney died in 1984 (last year) he has not paid rent to anybody. He has seen Hubert Phillip, who told him that he was the executor of St. Pierre Volney but he has not paid rent to him. He has not paid Hubert Phillip because one Frederick Prospere had told him that he had bought the land and he was paying Frederick Prospere.

Under cross-examination by Counsel for Hilton Joseph, Maurice Henry stated that he had gone on a piece of land of about there (3) acres which was given to him by St. Pierre Volney.

He denied having paid rent to Hilton Joseph up to 1979.

He said further that John Joseph's land adjoins the land which he was renting.

Hilton Joseph gave evidence and said that he has been living on the land for 48 years. He was born in 1930 and was eight (8) years old when he went on the land, placed there by his father, John Joseph, who has since died.

He had the land surveyed by a Mr. Alexander and he produced a plan.

He has been cultivating that portion of land.

The only person who has claimed the land is Frederick Prospere and he did so about three (3) years ago. Prospere was not living there.

He knows Henry and he used to pay him a rent but he stopped doing so about 4 to 5 years.

Under cross-examination by Counsel for Volney, Hilton Joseph said that he could not remember exactly what year he went on the land but it was 48 years since he was there. He could not count.

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It was not true that his brother Harry Benjamin went on the land before he did, nor is it true that he found Maurice Henry living on the land when he went there. He said that Maurice Henry came and met him there.

He was cultivating the land.

When he went to live there Maurice Henry's mother was living on the land. He did not see Maurice Henry there with his mother.

He said that he heard that it was one Herman Charles who had put his father on the land. But he did not know when his father went on the land.

Hilton Joseph then said significantly that one Man Floris who was collecting rent for him "was collecting it to pay Floissac for the same land".

He could not say whether he paid any money to Floissac but that is what he told him.

He did not go to Man Floris because he knew that Man Floris had a "condition" with his father to collect the rent and pay Floissac. The "condition" was that his father had left him (Man Floris) in charge of the land to pay Floissac for the lands.

He did not know if his father was paying Floissac for the land.

Man Floris did not pay the price for the land, he did.

He could not remember when he was finished paying for the land. He could not remember whether it was 1979 or 1980 or how long ago he paid for the land.

He again said significantly that he was already in Court with Volney when he paid Mr. Floissac for the land.

He further said very significantly and I quote:-

"I am claiming the land because I bought it. I bought it from Floissac. I bought town portions of land from Mr. Floissac on piece called "Anaize".....I now say I paid Floissac for the land before I was in Court with St. Pierre Volney. I went to Court with St. Pierre Volney because he claimed the land as his".

These words of Hilton Joseph indicate that he is claiming the land by virtue of a purchase of the ownership of the land and he identified a Mr. Floissac as the previous owner from whom he purchased the land and the title of the land.

That evidence, too, would indicate that Hilton Joseph himself entered into the possession of the land in question and remained there and used the land pursuant to an agreement of sale and purchase and therefore he was not in possession of the said land nec vi, nec clam, nec precario. His possession was consensual. At the time of his entry, on the evidence, he had not fully paid for the land and did not enter under the right of ownership.

I find that Hilton Joseph's entry on the land and that of his father was made for the purpose of user and enjoyment.

Again, by saying that he is claiming the land because he bought it from Floissac, Hilton Joseph is asserting a valid contract for the sale of the land, even though he did not produce it.

The effect of a valid contract for the sale of land is that the vendor is ordinarily entitled to the actual possession of the property or the actual receipts and rents and profits until the whole of the purchase money is paid.

Under re-examination by his Counsel Hilton Joseph said that he paid Mr. Floissac because he wanted the land. That is a clear expression of his intention. Mr. Floissac is now dead.

His answer to his own Counsel is unequivocal as to his act and his intention.

Joseph Norman gave evidence on behalf of Hilton Joseph and told of having known Hilton Joseph since Joseph was about eight (8) years old in 1934 when he (Norman) was working with

Joseph's father at Millet. He said that he raised Hilton Joseph and he has been on the same land. He had heard that St. Pierre Volney was claiming the same piece of land.

Eulie Joseph in her evidence on behalf of Hilton Joseph told that a river separates her mother's land from Hilton Joseph's lands.

Rene Raveneau gave evidence that he was a Justice of the Peace and that a Lewis Floissac swore to a particular affidavit which he tendered as identifying the signature of Lewis Floissac on that document.

It is clear on the principles enunciated in Myers v Director of Public Prosecutions (1965) A.C. 1001; (1964) 2 All. E.R. 881 that the affidavit of Lewis Floissac, who was not called as a witness as the maker of that document, who is dead since the making of that affidavit, is not admissible as evidence, of the facts stated in that affidavit and of the truth of those facts and as Lord Reid said in the same Myers case the Court does not have a discretion to admit legally inadmissible evidence. I have no discretion to do so. The affidavit of Lewis Floissac also was not proved to have formed a "continuous record" of Lewis Floissac's business.

Mr. Monplaisir for Hilton Joseph referred to Article 2103 of the Civil Code of St. Lucia which states that all things, rights and actions the prescription of which is not otherwise regulated by law are prescribed by thirty years.

He also referred to Article 2112 which states that he who acquires, a corporeal immovable in good faith under a written title prescribes the ownership thereof and liberates himself from the servitudes, charges, and hypothesis upon it by an effective possession in virtue of such title during ten years.

In the circumstances of this case it emerges that as between Hilton Joseph and Floissac, there is no written title. Hilton Joseph did not acquire the lands which he claimed under a written title having regard to the legal definition of "title" as stated in the Interpretation Section 11 paragraph 61 of Chapter 242 of the Civil Code where in relation to the Civil Code "the word "title" is

used with reference to property to denote either the act or contract upon which the right to property is founded, or the document which is the principal evidence of such act or contract".

In this case the act within the meaning of "title" which Hilton Joseph himself asserts is equivocal, as demonstrated by the evidence where by the very act of possession he is saying that he bought from Frederick Floissac and by the very act of possession he is claiming ownership by prescription. There is no acceptable evidence of a contract between Hilton Joseph or someone through whom he claimed by virtue of his own right, not by virtue of the right of his father or some else) and Frederick Floissac or Herman Charles who might have had a right to the property. There is, also, no evidence of a document which is the principal evidence of such an act or contract upon which the right to the property is founded as between Hilton Joseph or someone through whom he claimed and Frederick Floissac or Herman Charles. So the evidence does not support Hilton Joseph's acquisition of a corporeal immovable under a written title.

The hypothecary obligation by one Herman Charles, as mortgagor in favour of Frederick Floissac as martgagee, registered on 13th January, 1911 in Vol. 66a at No. 33784 did not confer any title on a third person be it Hilton Joseph or anyone else and the ownership of the lands in so far as those documents are concerned remained in Herman Charles. There is no acceptable evidence of a document or any other evidence that someone who was the absolute owner of the lands in question transferred the legal right to him or his predecessors. There is also no acceptable evidence that he took possession of the lands which he claimed by virtue of that legal title. The significant words are "by virtue of that title".

Mr. Monplaisir also referred to Article 2057. Article 2057 states that for the purposes of prescription the possession of a person must be continuous, peaceable, unequivocal and as proprietor, sometimes expressed as nec clam, nec vi, nec precario.

Mr. Monplaisir in his address reiterated that Hilton Joseph admitted that he was paying monies to Floissac for the land and that Hilton Joseph never had title to the land.

Having regard to all the evidence and to what Mr. Monplaisir has said it is appropriate to refer to Article 2060 which states as follows:-

“Acts which are merely facultative or of sufferance cannot be the foundation either of possession or of prescription.”

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If, according to Hilton Joseph, he was living on the land for about forty eight (48) years, since he was eight (8) years old and the land was still being paid for up to about 1980, it is a reasonable inference that he was on the land and did acts which were “facultative” or permissive or was there on the sufferance of Frederick Floissac or the person to whom the land belonged until he had fully paid for it. According to Article 2060, his presence on the land, and his acts in the circumstances, be they of cultivation or otherwise, during that period cannot be the foundation either of his possession of the land in question or of prescription of those lands.

That is a most significant Article as far as Hilton Joseph’s claim is concerned.

Mr. Calderon said that the title which St. Pierre Volney described was the title of the former owner Herman Charles.

He further said that Hilton Joseph must elect as to whether he is claiming the land by prescriptive title or on the strength of a sale.

He referred to Article 2052 which states that the Court cannot of its own motion supply the defence resulting from prescription.

Mr. Calderon also referred to the Article 2060 previously stated and applied.

What constitutes adverse possession is a question of fact and degree. Occupation of land as a licensee is not adverse possession (Hughes v Griffin (1969) 1 All. E.R. 460; (1969) 1 WLR 23 C.A.

In every case the possession which will cause time to run against the owner involves an animus possidendi, that is an occupation with an intention of excluding the owner as well as other

persons; and such a possession must be shown unequivocally by the person who claims adverse possession (Littledale v Liverpool College (1900) 1Ch 19 C.A. 69 L.J. Ch. 87, 81 L.T. 564.

I find in this case in the exercise of my jury and judicial mind on all the circumstances that there is no acceptable evidence of animus possidendi and of ouster on the part of Hilton Joseph towards the owner of the lands in question, be he Herman Charles or Frederick Floissac.

There is no acceptable evidence either that Hilton Joseph's father, John Joseph, whom he asserted had taken him on the land, intended to oust either Herman Charles or Frederick Floissac or anyone else from the land before him or that Herman Charles or Frederick Floissac discontinued their possession of the land in question at anytime so that either his father before him or he himself could have embarked on a possession of his own.

The onus of proving that the true owner has been dispossessed is on the person who alleges it.

It is appropriate to appreciate the difference between "dispossession" and "discontinuance" and this was well expressed by Fry J. in Rains v Buxton (1880) 14 Ch. D. 537, 49 L.J. Ch. 473; 43 L.T. 88 when he said:

"The difference between "dispossession" and the "discontinuance" of possession might be expressed in this way; the one is where a person comes in and drives out the other from possession, the other case is where the person in possession goes out and is followed in by others".

The mere fact that the true owner does not make use of his land does not necessarily mean that he has discontinued possession of it. Leigh v Jack (1879) 5 Ex. D. 264; 49 L.J. Q.B. 220; 42 L.T. 463. Non-user is equivocal. To establish discontinuance it must be shown positively that the true owner has gone out of possession of the land, that he has left it vacant with the intention of abandoning it.

Rather, Hilton Joseph himself said in his evidence in relation to the price for the land that he is the one who paid it and that he was claiming the land because he bought it from Mr. Floissac. His intention from his evidence was one of purchase not of dispossession. The document of hypothec dated 21st May, 1909 and the document of Hypothecary obligation tendered in evidence

by consent of the parties indicate that one Frederick Floissac was the mortgagee and Herman Charles the mortgagor and proprietor.

The possession of Hilton Joseph as he asserted it in that case was therefore referable to a lawful title by virtue of which he entered on the land whether it be the title of Herman Charles or Frederick Floissac and possession is never considered adverse if it can be referred to a lawful title as Hilton Joseph purported to do by referring the purchase to the title which Herman Charles or Frederick Floissac probably had to the lands and by virtue of which he intended to acquire a right to the lands by a bona fide purchase and nothing else.

This rule of referring possession to a lawful title was applied by the Privy Council in the case of Corea v Appuhamy (1912) A.C. 230. In that case it was stated that "the principle recognized by Wood. V.C. in Thomas v Thomas (1855) 2 K. B J. 79 holds good, possession is never considered adverse if it can be referred to a lawful title".

Again, the rule of referring to a lawful title was again applied by the Privy Council in Muthumayagun v Brita (1918) A.C. 895 where it was held that the question whether possession is adverse depends on what was the character of the defendant's possession as a matter of right.

Again, if a squatter was entitled to an interest in the land less in extent than that which he claimed under the statute (i.e. the Civil Code) his possession was referred to his lawful title (See Lightwood on Possession P. 159 et seq.)

This legal principle is recognized and expressed in Articles of the Civil Code of St. Lucia. For example at Article 2067 it is stated:-

"Those who possess for another, or under acknowledgment that they hold under another, never prescribe the ownership even by the continuance of their possession after the term fixed.....

and at Article 2072 it is stated

"No one can prescribe against his title, in this sense that no one can change the cause and nature of his own possession except by intervention".

Frederick Floissac was not disposed nor did he discontinue in his possession merely by virtue of Hilton Joseph's occupation of the land with his permission and for which Hilton Joseph said he was paying him.

I find as a fact that the acts of Hilton Joseph were not done with the purpose of defeating the interests of any other person including Herman Charles and those entitled to benefit under him or Frederick Floissac whom Hilton Joseph seem to have acknowledged and accepted as a person entitled to the ownership and possession of the land at the time or in the position of owner. I find as a fact that Hilton Joseph did not intend to be a trespasser or infringe upon Floissac's right to possession, or that of Herman Charles. On his own evidence it is apparent that he acted in the honest belief that by paying as he said he did, he was purchasing the land from Mr. Floissac and would thereby obtain legal title for the same.

It was held by Romer J. in Tinker v Rodwell (1893) 9 T.L.R., that the onus of proving a change lies on the person asserting that such a change has been made.

I find that Hilton Joseph has not discharged that burden of proof through his evidence and that of his witnesses. For the sake of brevity I would not go into the details of the evidence.

Adverse possession is a determinable legal proposition based on the examination of legally admissible and acceptable facts and until it receives the sanction of some competent authority such as a court of competent jurisdictions is of uncertain, indertiminable quality and description even though there may be an aspect of long duration of time. Long duration of time is only one element in the consideration and determination of adverse possession. There are others.

Time does not run against an owner of lands simply because he is out of possession for the limitation period. The law on this point was stated by Parke B. in Smith v Lloyd (1854) 9 Exch. 562 at 572 in a passage cited with apparent approval in the case of The Trustees Executors Agency Co. Ltd v Short (1898) 13 App. Cas. 793 at 799 as follows:-

“..... we are clearly of opinion that the statute applies not to cases of want of actual possession by the plaintiff but to cases where he has been

out of it and another in possession for the prescribed time. There must be both absence of possession by the person who has the right and actual possession by another whether adverse or not, to be protected to bring the case within the statute”.

Mere non-user on the part of the owner is not sufficient evidence of discontinuance of possession without some other acts of definite adverse possession on the part of the person claiming the land by long possession (Smith v Lloyds (1854) 9 Exch 562).

Again, where the occupier of land as Hilton Joseph purported to be, is in possession by the owner's will in this case Frederick Floissac or Lewis Floissac) his occupation is not an independent possession by him, but rather the possession of the owner himself so the owner is still in possession through the occupier as his licensee. Occupation of land as a licensee is not adverse possession (Hughes v Griffin (1969) 1 All. E.R.. 460, (1969) 1 WLR. 23 C.A.

In Hughes v Griffin (Supra) at p. 464 and at 30, 31 Harman L.J. adopted the definition of adverse possession of Romer L.J. in Moses v Lovegrove (1952) 2 Q.B. 533 at 544, (1952) 1 All. E.R. 1279 at 1285 C.A. where he said “if one looks to the position of the occupier and find that his right to occupation is derived from the owner in the form of permission or agreement or grant, it is not adverse.....”

The words of Romar L.J. in Moses v Lovegrove (Supra) find reflection in the provisions of Article 2060, previously stated.

It emerges in the testimony of Hilton Joseph himself that he was and remained on the lands in question as a result of the permission, agreement or grant until he would have finally and fully paid off for the lands.

The implication of Hilton Joseph's evidence was that he was not questioning the title of the vendor of land i.e. Floissac and he was going to accept what title Floissac had to give him as purchaser. His possession therefore, must have been referable to Floissac's title and no other. He could not approbate and reprobate Floissac's title at one and the same time. Also, he himself in those circumstances had no right to possession of the land.

I appreciate, however, that where a purchaser in possession of land sold pays the full purchase price but no transfer is made, his possession becomes adverse to that of the vendor, who becomes a bare trustee for him, and the vendor's title will be extinguished after the statutory period has expired. (See Bridges v Mees (1957) 1 Ch. 475 (1957) 2 All. E.R. 577)

Unless the purchaser (Hilton Joseph) had the authority of the vendor (Floissac) to enter and remain in possession of the land before he paid off the entire purchase price, he could not have entered on the lands before. Authority to enter and remain in possession before he paid off in full was in the nature of possession. The bare contract of sale and purchase which Hilton Joseph asserted could confer no right of possession on him in the absence of express agreement to that effect and there is no acceptable evidence of that express agreement in relation to the land.

The case of Lysaght v Edwards (1876) 2 Ch. D. 499 45 L.J. Ch. 554; 34 L.T. 787 is illuminating on this principle where Jessel M.R. stated (1876) 2 Ch D at p. 506 inter alia

“.....the vendor having a right to the purchase money a charge or lien on the estate for the security of that purchase money, and a right to retain possession of the estate until the purchase money is paid in the absence of express contract as to the time of delivering possession”.

Where, however, a purchaser is let into possession on terms that he pays the price by instalments (as seemed to have been the case on Hilton Joseph's evidence) subject to the vendor's right to rescind and re-enter on non-payment the vendor's right to possession only arises when he actually rescinds, whatever the length of the default in payment and meanwhile the purchaser's possession is not and I emphasise not adverse: LSee Lakshijit s/o Bhai Suchit v Faiz Mohammed Khan Sherani (as administrator for estate of Shahbaz Khan) (1974) A.C. 605, (1973) 3 All E.R. 737 P.C.

Again in the circumstances of this case certain documents reveal a hypothec in favour of Frederick Floissac. It is not clear if and when the hypothec in favour of Frederick Floissac became extinct. For until that was so he would have had a lien or charge upon the lands in question.

On the evidence before me in this case, even accepting what Hilton Joseph has said that he paid Floissac for the land and he was in possession, I cannot find that the Statutory period giving rise to the extinguishment of Floissac's title or even possessory rights to the area of land has expired. Hilton Joseph himself, on the evidence cannot remember when he was finished paying for the land so that the period could begin to run.

He could not remember whether it was 1979 or 1980, or how long ago he paid for the land. The inference to be drawn from the facts in the evidence of Hilton Joseph indicate that the period when he could possibly have been finished paying could be less than thirty years.

At first he said that he was already in Court with Volney when he paid Floissac for the land. The suits were filed in 1980 and 1981. Then he later said that he paid Floissac for the land before he was in Court with St. Pierre Volney. There is uncertainty as to the time when adverse possession could begin.

There could be no right for a declaration based on adverse possession unless the land is in possession of such person in whose favour the statutory period can run.

Accordingly, having regard to all that I have previously said I am not satisfied on the facts and on the relevant law applicable to those facts that Hilton Joseph was in continuous and uninterrupted, peaceable, public, unequivocal possession of the Lands in question and as proprietor for a period of thirty years and in the circumstances of this case the evidence could not support a declaration of title by prescription for thirty years in his favour.

I would, therefore, refuse his application for a declaration of title under the provisions of Article 2103 A of the Civil Code and I find that his opposition is not well-founded.

In so far as the petition of St. Pierre Volney is concerned, he has satisfied the basic requirements of the provisions of the Supreme Court Prescription by thirty years (Declaration of Title) Rules, 1969 as to the procedure with respect to his application for a declaration of title to

immovable property under Article 2103 A of the Civil Code. These are the basic formalities of the application.

He nevertheless, has to adduce acceptable evidence to satisfy the Court that he has acquired ownership of the property by thirty years prescription before the Court can issue a declaration of title in his favour.

It is to be appreciated that within the provisions of Rule 13(2) of the Supreme Court Prescription by Thirty Years (Declaration of Title) Rules 1969 the petitions and supporting affidavits of the applicant and opposer stand as pleadings. Again, as is well known, a pleading contains only a statement in a summary form of material facts on which the party relies but not the evidence by which those facts are to be proved. The facts still have to be proved in acceptable evidence.

Among the documents tendered and admitted in evidence by consent of the parties is a Crown Grant to Cherubin Mathurin on 20th May, 1898. The legal Crown Grant as a document of title has a diagram No. 167 showing the boundaries of the parcels of land alienated to Cherubin Mathurin.

In the document tendered as the Hypothec by Herman Charles in favour of Frederick Floissac dated 21st May, 1909 and registered in Vol. 65 a at No. 32203, the lands mentioned in the schedule to that hypothec as belonging to Herman Charles as proprietor refer to the crown Grant of 20th May, 1898 to Cherubin Mathurin in Gaillette as their root of title and by implication to the Diagram No. 167 which is attached thereto.

A hypothec can take place only in the cases and according to the formalities authorised by law and a conventional hypothec which results from agreement, as in the case of Herman Charles and Frederick Floissac, can only be granted by those who are capable of alienating the _____ which they subject to it.

It follows, therefore, and there is no evidence to the contrary that so far as the lands initially granted by Crown Grant to Cherubin Mathurin as in Diagram 167 are concerned, on that particular point in time, they can be said to have belonged to Herman Charles as proprietor.

The evidence of Harry Benjamin does not say if and when St. Pierre Volney was ever on the land, which belonged to Herman Charles.

Maurice Henry knew that St. Pierre Volney was living by Millet around 1986 and he rented lands from him.

Again there is no acceptable nexus of descent or description between the lands of Herman Chalres or Frederick Floissac and those above St. Pierre Volney was living or those which Maurice Henry said he rented from Volney himself.

Both Harry Benjamin and Maurice Henry knew one Joseph Herman.

Joseph Herman knew that Herman Charles was living on the land but he did not know when he died. He said that Herman Charles put John Joseph the father of Hilton Joseph on the land and that Hilton Joseph continued on the land after his father had left.

The evidence on behalf of St. Pierre Volney does not clearly establish when he went on the land and whether he obtained possession of the land with the animus possedendi as I indicated earlier in this judgment, so that time could have begun to run in his favour against someone who then owned or was in possession of the land to support a claim for ownership of the land by adverse possession of thirty years prescription nor does the evidence establish that Herman Charles discontinued his possession so that St. Pierre Volney could have established his thirty years prescription.

In this regard, I would refer to all the legal articles which I have previously stated, which would go to support possession and consequently, adverse possession giving rise to the thirty years prescription which is required for the issue of the declaration of title under the Code and the Rules.

The evidence led on behalf of St. Pierre Volney is insufficient and unsatisfactory and does not establish on the balance of probabilities that he had the continuous and uninterrupted, peaceable, public, unequivocal possession of the lands stated in the diagram No. 167 attached to the Crown Grant of Cherubin Mathurin which probably descended to Herman Charles and that he did so as proprietor.

Accordingly, I am also not satisfied that St. Pierre Volney and his executor Herbert Phillip have acquired ownership of the property in question by thirty years prescription and I cannot issue a declaration of the title in their favour.

According to Article 2047 of the Civil Code of St. Lucia

“Prescription is a means of acquiring property, or of being discharged from an obligation by lapse of time, and subject to conditions established by law”.

When that Article is read in conjunction with Article 2103 previously stated, it emerges as a matter of law that time does not begin to run against the owner of land so as to extinguish his right to his land unless it has been proved to the satisfaction of the Court that:-

- (i) he has been dispossessed of the lands
- (ii) he has discontinued his possession of the lands and that in either event
- (iii) some other person in whose favour the period of prescription for thirty years can run is in adverse possession of the land. Time then runs against the true owner at the time that adverse possession is taken of the land.

The Court by its judgment on the evidence submitted for its consideration therefore in this case will not issue a declaration of title either in favour of the applicants or the defendants and there is nothing in the law which says that the court must issue a declaration of title in either case. The Court, also in the exercise of its judicial discretion thinks it just to do as it has done.

Each party will bear his own costs.

Sgd. H. Mitchel
HORACE MITCHELL
PUISNE JUDGE

Dated 12th January, 1987