IN THE COURT OF APPEAL

SAINT VINCENT

CIVIL APPEAL NO. 11 OF 1976

BETWEEN:

GERALD POLLARD of Kingstown (Attorney for Mary Matthews & Edna Stevenson Devisees under the Will of Athaline Matthews deceased) — Plaintiff/Appellant

AND

WILLIAM DICK of Kingstown Park — Defendant/Respondent

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: O. Sylvester for Plaintiff/Appellant
H. Samuel for Defendant/Respondent

1977, 13th January
1977, 19th April

J U D G M E N T

DAVIS, C.J.

This is an appeal from a judgment of Berridge J., in which he ordered that judgment be entered for the defendant with costs, on the ground that the defendant had been in undisturbed possession of the land, the subject of the plaintiff's claim, since the year 1959, and that the plaintiff was barred from bringing his action by virtue of section 3 of the Real Property Limitation Ordinance, Cap. 86 of the Laws of St. Vincent.

The plaintiff's claim was for an order for possession of a lot of land at Kingstown Park in the State of St. Vincent which he alleged that the defendant was wrongfully occupying since the year 1964. The plaintiff also claimed mesne profits but led no evidence in support

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of this claim. The defendant admitted that he is in possession of the said land but says that he is legally entitled to the ownership of the said land because he purchased it in 1958, entered into possession, and has since that time remained in uninterrupted possession until the bringing of the plaintiff's action. He also pleaded that the plaintiff's claim is barred by virtue of the Real Property Limitation Ordinance, Cap. 86 of the Laws of St. Vincent.

Section 3 of the Real Property Limitation Ordinance, Cap. 86 reads as follows:-

> "No person shall make an entry or distress or bring an action or suit to recover any land or rent but within 12 years next after the time at which the right to make such entry or distress, or to bring such action or suit shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims then within 12 years next after the time at which the right to make such entry or distress, or to bring such action or suit shall have first accrued to the person making or bringing the same."

The history of the case is that one Athaline Matthews who lived in the United States of America owned a lot of land at Kingstown Park and held title to it by virtue of a deed of conveyance dating back to 1942. She was in possession of the said land through her tenant Millicent Pollard or her husband Gerald Pollard. Athaline Matthews died on the 16th day of August, 1956 and by her Last Will and Testament she devised the said lot of land to Mary Matthews and Edna Stevenson. On the 30th day of June, 1960, Letters of Administration with the Will Annexed in the estate of the said Athaline Matthews was granted to Gerald Pollard the lawful Attorney of the said Mary Matthews and Edna Stevenson. Sometime after the death of the said Athaline Matthews, her brother Conrad Matthews chased the appellant from the land and took possession of it. In May 1958, the said Conrad Matthews sold the said lot of land to the respondent telling him that his sister Athaline Matthews had given him the land and that he had the necessary papers. When the respondent tried to obtain a title to the land he soon realized, to use his own words, "that the matter was twisted in some way". He then tried to get his money back from Conrad Matthews

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but without success. In April, 1963, the appellant filed a claim which was similar to the one under consideration. This claim was struck out but no reasons appear on the record for the action taken by the court. Sometime after 1963, the respondent went to the solicitor of the said Mary Matthews and Edna Stevenson and asked whether the owners of the land would sell it to him. Mr. Nanton, the solicitor, and a witness at the trial, told him he had no authority to sell on behalf of the owners.

The grounds of appeal are as follows:-

(1) The decision is erroneous in point of law. The learned trial judge misdirected himself in holding that the defendant remained in uninterrupted possession of the premises for a period of over 12 years thereby acquiring title by virtue of the Real Property Limitation Ordinance, Cap. 86.

(2) The judgment is against the weight of the evidence.

By leave of the Court, the following ground of appeal was added:-

3(a) The learned trial judge was wrong in law in holding that the plaintiff/appellant was barred by section 3 of the Real Property Limitation Ordinance, Cap. 86 of the Revised Laws of St. Vincent in that the defendant/respondent's entry was as a purchaser of the fee simple of the land and not as a tortious possessor, and consequently time did not commence to run in his favour ab initio.

(b) Further or alternatively, if time began to run ab initio in favour of the defendant/respondent then the acts and dealings of the defendant/respondent and those of Conrad Matthews amounted in law to an acknowledgment of the plaintiff's title thereto and the right to recover the land is deemed to have first accrued on the last of such acknowledgment.

The learned trial judge found that the respondent was in occupation of the premises since 1959 either by himself or by his children. This finding is based on the evidence given by the respondent, and since possession is a question of fact depending on all the particular circumstances, I can see no sufficient ground upon which this court would be justified in setting it aside.

Now, 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 by having discontinued his possession of it. I shall deal with discontinuance of the

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appellant first. The evidence shows that the appellant filed an action against the respondent in 1963 to recover possession of the said lot of land, and that he has never ceased paying land tax in respect of the land -- a fact admitted in evidence by the respondent. This evidence shows clearly that there has never been any intention on the part of the appellant to part with the possession of the land.

But if the appellant has lost his right to the land it must not be by reason of any withdrawal or discontinuance of possession on his part, but by reason of his being dispossessed by the respondent, and the appellant could not be dispossessed unless the respondent obtained possession animus possidendi, that is, occupation with the intention of excluding the owner as well as other people. The evidence that the respondent never had any such intention is extremely strong. Let us look at it. First of all, when he took possession of the land in 1959, he certainly had no intention to dispossess the rightful owner. As far as he was concerned, he had purchased the land from someone who held out to him that he was the owner of the land. When he endeavoured to get the title to the land he discovered that this was untrue. He then tried to get the true owner of the land to sell it to him. When this failed, he tried without success to recover his money from Conrad Matthews. If he formed the intention to dispossess the rightful owner after he failed to get them to sell him the land or after he failed to recover his money from Conrad Matthews then he could not, in point of time, bring himself within the Limitation Ordinance because this intention would have been formed sometime after 1963, and perhaps as late as 1967 when he was still trying to recover his money from Conrad Matthews. I do not think, however, that he ever formed such an intention. Indeed, at the trial he said in cross-examination that if he had to pay for the land again he would do so at the 1958 price. In my view, the respondent failed to prove the acquisition of a title to the lot of land. The evidence is not enough to prove that the appellants have been dispossessed for the statutory period of the land which unquestionably

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was theirs.

The position is somewhat different in the case of a squatter. If a squatter takes possession of land belonging to another and remains in possession for 12 years to the exclusion of the owner, that represents adverse possession, and accordingly at the end of the 12 years the owner's title is extinguished. The simple question usually is, "Did the squatter acquire and remain in exclusive possession?" He enters into possession with the intention of dispossessing the owner.

In regard to the ground of appeal dealing with acknowledgment of the plaintiff's title, it is sufficient to say that this ground must fail because any such acknowledgment is required ~~by~~ law to be in writing.

For the reasons I have given, I would allow the appeal, set aside the judgment of the Court below, and order that judgment be entered for the appellants on their claim with costs both in this Court and in the Court below.

(Sir Maurice Davis)
CHIEF JUSTICE