

SAINT VINCENT

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 of 1982

BETWEEN:

DORIS CHARLES - Plaintiff/Appellant
 and
 JOEL WOODS - Defendant/Respondent

Before: The Honourable Mr. Justice Robotham - Chief Justice
 The Honourable Mr. Justice Bishop
 The Honourable Mr. Justice Williams (Acting)

Appearances: St. A. Cato for the Appellant
 E.W. Robertson, Esq., for the Respondent

1985: March 25, 29.

JUDGMENT

BISHOP, J.A.

In 1982 Doris Charles of Stubbs, then about 83 years old, filed an action in the High Court against Joel Woods of Diamond in which she claimed as follows:-

- "1. Damages for trespass and damage to the Plaintiff's land from about January 1980 to the present time by the defendant, his servants or agents.
2. An order that the defendant do forthwith pull down and remove a wooden post and demolish and remove the concrete base into which the post is cemented, built by the defendant, his servants or agents, on the plaintiff's land at Diamond.
3. An injunction to restrain the defendant whether by himself or his servants or agents or otherwise howsoever from entering or crossing the plaintiff's said land.
4. Further or other relief."

Her claim was defended and Joel Woods counterclaimed for among other things:-

/A declaration....

"A declaration that he is entitled to all that lot piece or parcel of land situate at Carapan Rivulet and Diamond Estates Allotment as the same is more particularly set out in paragraph 7 of the Defence therein.

A perpetual injunction restraining the plaintiff whether by herself her servant or agent from entering and/or crossing and/or cultivating and/or occupying the defendant's land and reaping any produce thereon."

It is helpful to refer to the pleadings bearing in mind the initial claim and counterclaim of the respective parties. In the Statement of Claim Doris Charles alleged, among other facts:-

- "1. The plaintiff is and was at all material times the owner in possession of a parcel of land known as part of the Rivulet Estate allotments. The defendant is and was at all material times the occupier of adjoining land and premises known as part of the Rivulet Estate allotments - situated at Diamond.
2. Since about January, 1980, the defendant by himself, his servants or agents has on divers dates wrongfully entered the plaintiff's said land and damaged the land and crops planted by the plaintiff thereon by a tractor and otherwise.
3. In or about the said January, 1980, the plaintiff protested to the defendant about the said trespass and damage. The defendant promised to pay for the damage caused to the plaintiff's crops on the said land and to re-instate the land to its former state but to date the defendant has not fulfilled his promise.
4. From about the said January, 1980, the defendant by himself or by his servants or agents continued to commit acts of trespass on the said land belonging to the plaintiff despite the continued protests made to him by the plaintiff.
5. On or about the 3rd January, 1982, the defendant by himself, his servants or agents again entered the plaintiff's land, wrongfully built a cement base thereon and planted a wooden pole on the said cement base about four feet from the boundary of the defendant's land and situated within four feet of the plaintiff's land. The defendant caused telephone wires to traverse the plaintiff's said land up to and including about the 8th February, 1982.

/6. By letter....

6. By letter from the plaintiff's solicitor dated the 26th day of January, 1982, the plaintiff by her solicitor requested the defendant to remove the said pole but the defendant refused and still refuses to do so."

Particulars of special damage were pleaded and then Doris Charles sought"-

- "(1) Damages and loss occasioned by the trespass.
- (2) An Order that the defendant do forthwith pull down and remove the said pole and cement base.
- (3) An injunction to restrain the defendant whether by himself or by his servants or agents or otherwise howsoever from entering or crossing the plaintiff's said land.
- (4) Further or other relief."

There can be no doubt, in my view, that Doris Charles was alleging trespass by Joel Woods, on lands owned by her; although the facts on which she relied to establish her ownership of the land were not clearly pleaded in the Statement of Claim.

Joel Woods alleged that he owns and occupies lands adjoining the lands of Doris Christian, that "he is the fee simple owner of a piece or parcel of land, Lot 18 of the Carapan Rivulet and Diamond Estate Allotments..... comprising:-

"Three (3) rods and thirty three (33) poles in extent and butted and bounded on the North and North-West by Lot Number 17 and a Road on the South-West by Lot Number 14A on the East by Lot Number 19A and on the South-East by public highway or as the same is more particularly shown or described in a Plan or Diagram thereof dated the 6th day of October, 1949 prepared by Charles F. Richardson Licensed Land Surveyor which said Plan is registered under Plan Number G17 in the Surveys Office of Saint Vincent or howsoever otherwise the same may be butted bounded or described Together with all buildings and erections thereon and all ways waters watercourses rights lights liberties privileges and all other easements and appurtenances thereto belonging or usually held used occupied or enjoyed therewith or

/reputed to.....

reputed to belong or be appurtenant thereto having bought the said property from Eustace Valentine Morgan on the 25th day of May, 1976 and his said Deed is recorded in the Registry of the State of Saint Vincent as Deed No. 99 of 1976."

Paragraphs 3 and 4 of the Defence alleged:-

- "3. The Defendant admits that in the month of January, 1980 he was approached by the Plaintiff and one Mr. John and Mr. Alexander on the matter of a possible trespass, and the Defendant suggested to the Plaintiff that while he was not admitting any trespass he would like to have the land resurveyed and that if upon the re-survey he was found to be trespassing he would compensate the Plaintiff for any injury she might have sustained.
4. Despite the suggestion made by the Defendant to the Plaintiff the Plaintiff has in no way cooperated with the Defendant in having the said land re-surveyed to establish proper boundary marks."

Insofar as the telephone lines were concerned, Joel Woods pleaded, inter alia, that they were erected on his property.

Joel Woods' case was that he had not trespassed on any lands owned by Doris Charles, that on the 25th May 1976 he bought Lot 18 from Eustace Valentine Morgan and that he would welcome a re-survey on the lands so that if it showed a trespass by him he would compensate Doris Charles for consequential loss or damage. He also claimed that since January 1980 Doris Charles had trespassed on his lands by planting crops.

From the pleadings as they then stood the Court was being asked to decide whether or not Joel Woods had trespassed upon lands of Doris Charles in the manner alleged by her and whether or not she had entered upon and cultivated his lands, as he claimed.

The pleadings which followed did not leave the issues there. They introduced new issues by making distinctly different, if not inconsistent, allegations concerning the area of land in dispute.

/By paragraph 3.....

By paragraph 3 of the Reply, Doris Charles indicated how she became owner of the land (Lot 14A) adjoining that owned by Joel Woods (Lot 18):-

"The plaintiff says that on or about the 14th day of June 1955 she purchased two lots of land from one Arnold Morgan Punnett situate at Rivulet in Saint Vincent known as Lot Number 14A and bounded on the North by a Road on the South by a Public highway and on the East by Lot Number 18 and on the West by Lot Number 13A AND ALSO Lot Number 14A measures three acres and nine poles.....14A and 14B as is shown on the said plan and her said Deed therefor is recorded at the Registry in Saint Vincent and the Grenadines bearing number 362 of 1955. The Plaintiff also states that she went into occupation of the said land from the said date of purchase and has remained continuously in occupation of all the said land from that date and up to the present time."

and, for the first time and additionally, she was asserting that:-

3.the land on which the defendant has trespassed was in her possession and under cultivation by her at the time of the said trespass.
4.the land on which the cement base and pole were erected was in the sole and exclusive possession of the plaintiff at the time the defendant entered thereon and trespassed as aforesaid and had been continuously in her sole and exclusive possession from 1955 to the present time."
6. if, as he alleges, the defendant bought the said land from Eustace Valentine Morgan in 1976 he has had ample notice that the said portion of land on which he trespassed was before and after the purchase in the sole and exclusive possession of the plaintiff who exercised ownership and occupied the said land continuously from 1955."

In the Defence to the Counterclaim, Doris Charles alleged in part that Joel Woods' action:-

"is barred by Section 3 of the Real Property Limitation Act, Chapter 86 of the Revised Laws of Saint Vincent and the Grenadines, 1926, and his right and title (if any) to the said land have been extinguished by virtue of Section 29 of the said Act."

/I think....

I think it is relevant to indicate here that the action was conducted and decided in the High Court on the basis that the claims of the plaintiff were made in the alternative rather than in conflict, despite the absence of any application to amend the pleadings.

The learned trial Judge heard evidence from Doris Charles and two witnesses - Osmond Lynch, an overseer, who delivered the land to her but did not know which lots they were, and Mc Intosh Lespie, a painter and appraiser of crops. The case for Joel Woods was contained in his own testimony and that of Leroy Ellis, a land surveyor who surveyed the relevant lands in August 1982. Two plans were admitted in evidence, one - a master plan - showed allotments 14A, 14B and 18 among others, and the other - a single plan - showed the result of a survey of Lot 18 done at the instance of Joel Woods.

In giving his decision the trial Judge reviewed the evidence which he considered to be salient and stated:-

"In the result there will be judgment for the defendant stating that the defendant is hereby declared to be the owner of all that lot piece or parcel of land containing by admeasurement 3 rds. and 33 pls. lot No. 18 as referred to in his Deed. The Defendant is entitled to the injunction as prayed and his costs to be taxed.

The injunction ad interim ordered in favour of the plaintiff is hereby discharged and the plaintiff's claim is hereby dismissed."

Doris Charles was dissatisfied and appealed to this Court on the following grounds:-

- (1) The learned trial Judge erred in law in holding that the Plaintiff's claim is not one based on adverse possession.
- (2) That the learned trial Judge was wrong in law in adjudicating upon the paper title and in not considering the application of the Real Property Limitation Act, Chapter 86 of the Revised Laws of Saint Vincent, 1926, to the evidence.

/(3) The....

- (3) The learned trial Judge misinterpreted the Plaintiff's evidence as contained in the words "I claim what I buy. I want the Court to uphold what I buy. How could I claim more land than I bought?"
- (4) The learned trial Judge was wrong in law in holding that since the Plaintiff was put into possession by Mr. Lynch, the Agent for the Vendor, her possession of the land was not adverse.
- (5) The learned trial Judge failed to take full and adequate account of the evidence and particularly the evidence of the defendant himself and his witness Le Roy Ellis.
- (6) That the learned trial Judge erred in law in not considering the evidence pertaining to the claim for damages for trespass.
- (7) That the judgment is against the weight of the evidence."

In presenting the appellant's case before us learned counsel argued grounds 1, 2 and 4 together. He referred to the evidence of the appellant and of the respondent and urged that there was uncontracted testimony that the boundaries of her land were pointed out to Doris Charles in 1949. Counsel submitted that whatever those boundaries were and whatever the area of the land, Doris Charles was put in possession of the land by the overseer Mr. Lynch who was acting as agent for the vendor. It may be recalled here that the Reply quoted earlier that Doris Charles went into occupation of the land from the date of purchase, that is to say, from about 14th June 1955, and exercised ownership continuously after that date. Counsel contended that it was not now available to the respondent to lay claim to the land because, in his words, "it was in adverse possession for over the statutory period of twelve years from 1949". Mr. Cato relied upon the cases *HYDE v PEARCE* (1982) 1 All E.R. 1029, *CHISHOLM v HALL* (1959) 1 W.L.R. 413, *BLIGH v MARTIN* (1968) 1 All E.R. 1157 to support his view that the evidence before the trial Judge permitted him to find and he ought to have found that Doris Charles held by adverse possession.

/In arguing.....

In arguing grounds 3 and 5 simultaneously, learned counsel for the appellant submitted that the passage quoted in the former ground could not and did not mean "I want what I buy in relation to my deed; or, to put it another way, that what she bought was the land described in the deed. Rather, he contended, Doris Charles was saying in effect that the physical boundaries shown to her by Mr. Richardson and Mr. Lynch represented the totality of the land she occupied from 1949. Mr. Cato referred to the plans and stressed that according to the surveyor himself, though he "surveyed on the 8th August 1982 and ran out the line common to Lots 14A and 18 in the presence of the plaintiff" she nevertheless disapproved of the line that he ran out and held the view that it was a different line, identifiable by a row of trees.

As far as the evidence of the defendant Joel Woods was concerned, counsel for the appellant recalled that under cross-examination Joel Woods conceded that it was not until 1982, after the survey was done at his instance, that he knew that he was not occupying all the land that he bought, although for a number of years after he bought it, he had allowed Mr. Morgan to cultivate the land.

Under ground 6, learned counsel for the appellant argued that the evidence showed that there had been an act of trespass against Doris Charles who was in possession and who suffered loss and yet there was no award of damages by the learned trial Judge for such trespass. He submitted that the trial Judge failed to consider the evidence pertaining to the claim.

I say, with respect, that it could have served no useful purpose to consider more than was done any evidence pertaining to damage caused, if the learned trial Judge had come to the conclusion that the claim by Doris Charles must fail. This ground is without merit and I say no more on it.

/The same...

The same arguments and submissions advanced by learned counsel when dealing with the other grounds were relied upon to support Ground 2.

Learned counsel for the respondent regarded the instant appeal as seeking the answers to two questions, namely, "can a person whose possession of land is referable to a lawful title set up adverse possession to land and secondly, can the appellant set up in her reply, a new case?" At this stage it is unnecessary, in my view, to dwell upon seeking an answer to the latter question. It is academic because the provisions of Order 18 Rule 10 of the Rules of Supreme Court 1970 were not followed at any stage and because of the manner in which the case was conducted and decided. So far as the first question was concerned, learned counsel submitted that the whole claim by Doris Charles was based on the assertion that she had purchased the land and so she owned it with a lawfully obtained title and when Doris Charles told the High Court that she was asking it to 'uphold what she bought' this was an unequivocal indication that she had no intention whatever of claiming the land adversely. Quoting from a case mentioned in the 3rd edition of *Freston & Newson on Limitation of Actions* (third edition), Mr. Sylvester urged that "a possession may fail to be adverse by reason of the rule that 'possession is never adverse if it can be referred to a lawful title'". Further, according to counsel, the basis of a claim of adverse possession was that the land was occupied by someone in defiance of the title of the true owner of the land. Counsel invited this Court to say that the question must be answered No he cannot, and therefore the appeal could not succeed. Mr. Sylvester relied upon the main judgment in a case heard in this Court in 1977, *GERALD POLLARD, Attorney for Mary Matthews and Edna Stevenson, devisees under the will of Athaline Matthews, deceased v WILLIAM DICK*.

The whole tenor of the case as disclosed by the evidence was that each party claimed to have bought the land in dispute. Doris Charles said in clear language that she bought the lands in Diamond and that when she went into occupation its boundaries were shown her by Mr. Lynch the
/overs an.....

overseer. She made it clear that she was accusing Joel Woods of a title on her lands and destroying crops that she had planted, by burying them beneath earth that had been bulldozed to create a building site; and she asked the learned trial Judge "to keep Mr. Woods from my land". Now the answers which were elicited from Doris Charles under cross-examination were enlightening. She agreed that the land had been surveyed prior to her buying the lots from Arnold Punnett and she explained that she paid part of the purchase price before she received her deed. Because counsel for the appellant placed emphasis on this aspect of her evidence and more particularly because it formed the basis of a ground of appeal, I shall quote the entire passage (rather than that which was set out in the ground), so that the meaning of the plaintiff's testimony may be truly understood. She told counsel this:-

"In 1955 he gave me the deed. What is in the deed is what I buy. I want the Court to uphold what I buy. I claim what I buy. Mr. Morgan and I buy land together..... I still have the land I bought from Mr. Punnett. How could I claim more land than I bought."

I have no hesitation in saying that Doris Charles was relying on the simple fact that the land which she was claiming as her land, had been bought by her from Mr. Punnett, that she had made a part payment towards its purchase price, and then, in 1955, she had been given the title deed to that land. She was not saying that she dispossessed anyone to whom it belonged for the relevant statutory period; nor was she saying that someone discontinued his possession and she then went into possession and remained in uninterrupted possession for more than twelve years. Nor did the only witness called by her go beyond her evidence that she bought the land in dispute. Osmond Lynch the overseer told the High Court that around 1949 the lands of Rivulet Estate owned by a Mr. Punnett were surveyed by a Mr. Richardson and thereafter sold in lots. In the witness' words: "Everybody knew they bought a surveyed lot and bought by reference to a plan". Doris Charles was one of the purchasers and it was the overseer Osmond Lynch who "delivered each boundary to each person who /purchased....."

purchased", and more particularly, "delivered the land to the plaintiff". The witness said further (in his evidence-in-chief) that he did not know the number of the lots which were purchased by Doris Charles, and that he would not be able to say whether or not she cultivated the land to her boundary.

Joel Woods said in clear language also that he bought Lot 18 from Eustace V. Morgan in 1976. This lot adjoined Lot 14A which had been bought by Doris Charles some twenty seven years earlier. A title deed was prepared in respect of Lot 18 and according to Joel Woods he allowed Morgan to cultivate the land until he was ready to erect a house in 1980. When he began excavation work he was accused of trespassing, by Doris Charles; and so in an attempt at an amicable settlement he suggested that there be a survey of the boundary dividing their Lots. It would seem that the respondent went ahead in August 1982 and obtained the services of Lesroy Ellis, a land surveyor. Using the master plan prepared by Mr. Richardson, Lesroy Ellis resurveyed the land and provided a plan which revealed that the boundary claimed by Doris Charles was not the true boundary, and that Joel Woods was entitled to more land.

In his judgment the learned trial Judge stated:-

"The evidence would seem to reveal that the plaintiff is indeed claiming 13,723 sq. feet more land than she purchased, that her neighbour.....must be deprived of a further 1R. 10P; and she bases her claim on adverse possession. She states in her evidence that she was put into possession of the land by Mr. Lynch. Such being the case her possession was not adverse since she was put into possession by the agent of the vendor. Further, she states in evidence "I claim what I buy. I want the Court to uphold what I buy. How could I claim more land than I bought? In those circumstances the plaintiff's claim is not one based on adverse possession."

I wish at this stage to deal with the legal concept of adverse possession, as I perceive it. I hasten to assure learned counsel for
/the parties....

the parties that I have looked carefully at the authorities upon which they relied. The case which I found to be the most helpful in the light of the facts and circumstances of the instant appeal was that heard in this State some eight years or so ago. In that case, POLLARD v DIAL, Civil Appeal No. 11 of 1976, the first decision of the Court was delivered by Peterkin J.A. (as he was at the time). He quoted from a case reported in the Dominion Law Reports of 1954 in which it was held "that in order to succeed in establishing a possessory title against the rightful owner of land, a claimant must show (a) actual possession for the statutory period (b) that such possession was with the intention of excluding from possession the owner or persons entitled to possession and (c) discontinuance of possession for the statutory period by the owner and all others entitled to possession. If the claimant fails to show these things he cannot establish a right to possession, and in addition he must show that the owner was aware of his exclusive possession that it was notorious. An important ingredient must therefore be the question of dispossession which is one of intention....." Peterkin J.A. also said, later in his judgment:

"It should be remembered that in every case the possession which will cause time to run against the owner involves an animus possidendi."

In my view there was no evidence whatever from which it could be properly found that Doris Charles was claiming the land in dispute on the basis of adverse possession to any owner or that she had succeeded in establishing any such claim. Her claim of possession was referable to a lawful title, and possession is not to be regarded adverse if it is so referable. Clearly Doris Charles initially acted in good faith believing that the boundary dividing Lot 18 and Lot 14A was where she thought it was and not where it was subsequently proved to her to be. Clearly Joel Woods acted in good faith and in an attempt to resolve their dispute if he was shown to be wrong. He did not know that he was entitled to more land until it was revealed by the Ellis resurvey.

/The evidence.....

The evidence which was adduced before the trial Judge merited a finding that Doris Charles had not proved that she was the lawful owner of the land in dispute or that Joel Woods had trespassed; nor did it permit a finding that she had acquired the land by adverse possession. Therefore her claim could not succeed.

This Court was asked to say that the decision of the trial Judge in dismissing the claim of Doris Charles and in declaring Joel Woods to be the owner of the disputed land, was wrong.

None of the seven grounds of appeal argued has led me to conclude that the decision was wrong and ought to be set aside. Consequently I would dismiss this appeal with costs to be taxed.

E.H.A. BISHOP,
Justice of Appeal

I agree.

L.L. ROBOTHAM,
Chief Justice

I also agree.

L. WILLIAMS,
Justice of Appeal (Acting)