

SAINT VINCENT

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 10 of 1986

BETWEEN:

ALBAN CLENNON DAVIS
(Administrator of the Estate
of Cassatt Davis - deceased) - Plaintiff/Appellant

Vs

ISMAY DAVIS
(Administratrix of the Estate
of Emily Davis - deceased) - Defendants/Respondents

and

ISMAY DAVIS - Defendants/Respondents

Before: The Honourable Mr. Justice Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: S.E. Commission for the Appellant
Arthur Williams for the Respondents

1987: Apr. 1,
July 20.

JUDGMENT

ROBOTHAM, C.J.

The decision appealed

In a statement of claim filed in the High Court for St. Vincent on 21st September, 1982 in Suit No. 16 of 1982, the plaintiff/appellant sought against the respondents the following relief:-

- (a) A declaration that Cassatt Davis deceased, late of Retreat, Lower Bay, on the Island of Bequia, in the State of St. Vincent and the Grenadines who died on 3rd January, 1973, was entitled to all the real estate of James Davis deceased, who died on 27th October, 1943.
- (b) A declaration that he (the appellant) together with his named brothers and sisters are heirs-at-law of the Estate of Cassatt Davis deceased, and as such are entitled in equal shares to all the real and personal Estate of the said Cassatt Davis deceased.

/The matter.....

The matter was heard before Bertrand J and on 16th June, 1986, she entered judgment for the defendants and in so doing held that there was sufficient evidence to show that Cassatt Davis (deceased) was entitled to all the real estate of James Davis (deceased) as from the date of James' death in 1943 but that he had subsequently been effectively disposed by the respondent Ismay Davis as from 1979 under and by virtue of section 3 of the Real Property Limitation Act, Cap. 86. Costs were awarded to the respondents. From this decision, the appellant has appealed.

The chronological order of Facts

James Davis and Emily Davis were lawfully married, and there were many children of the marriage including Cassatt Davis, the eldest son and heir-at-law and Ismay Davis, the respondent herein.

On 27th October, 1943, James Davis died intestate leaving as survivors his wife Emily and several children, in particular Cassatt Davis, the eldest surviving male heir, and the sister of Cassatt, namely, the respondent Ismay Davis.

Under and by virtue of the laws of Primogeniture in existence in St. Vincent and the Grenadines at the time of James Davis' death in 1943, Cassatt Davis was entitled to all the real property owned by the said James Davis of whose estate he would have been heir-at-law subject to a limited life interest in his widow Emily. Part of this estate was a parcel of land on the Island of Bequia consisting of 3 acres, 3 roods, and 11 poles, which land is the subject matter of this action.

On 30th July, 1949, Letters of Administration were granted to Emily Davis, as the lawful widow and next-of-kin, in the estate of her deceased husband James Davis.

On 29th May, 1952, Emily Davis and Cassatt Davis joined in conveyance of a portion of the land mentioned above to Lilly Child the consideration being one thousand dollars.

Sometime between 1955 - 1956, according to the respondent Ismay Davis, her brother Cassatt Davis left the Island of Bequia for St. Vincent. According to the witness Seaton Simmonds, Cassatt left Bequia in either 1950 or 1952.

The plaintiff/appellant Alban Davis said that he lived with his father Cassatt at Arnos Vale in St. Vincent since the year 1956. For the purposes of this case therefore it can be assumed from the evidence that

/Cassatt.....

Cassatt Davis left Bequia with his children between 1952 and 1956. The appellant Alban Davis also said in evidence that his mother had deserted the family before he moved with his father Cassatt and the other children to St. Vincent.

It must here be stated that Bequia is an Island separate and apart from the Island of St. Vincent. To get from one to the other, one has to travel by boat. They are some 5-6 miles apart but they both form part of the State constitutionally known as St. Vincent and the Grenadines.

When Cassatt Davis was leaving Bequia for St. Vincent at whatever time between 1952 and 1956, he sold the house which he had built on a portion of land which his father had given him, to Mrs. Child. On leaving he left his mother Emily and his sister Ismay on the remainder of the land. After Cassatt Davis departed the shores of Bequia, he never once returned before his death and burial in St. Vincent in 1973.

On 25th April, 1966, Emily Davis died leaving Ismay Davis on the land in Bequia. This was the only home that Ismay had known up to the date of the death of her mother Emily.

On the death of Emily Davis, Cassatt Davis became wholly entitled to the land which had now devolved on him in its entirety consequent on the termination of the life interest of his mother Emily Davis. None-the-less, he never appeared on the scene to claim his inheritance. On 3rd January, 1973, Cassatt Davis died in St. Vincent and was buried there in Arnos Vale Cemetery. He was survived by his widow Isabel Davis and 6 lawful children one of whom is the plaintiff/appellant Alban Davis. The widow Isobel died in December 1979 without having applied for Letters of Administration. It was not until 28th August, 1981 that the plaintiff Alban Davis applied for Letters of Administration in the Estate of his father Cassatt.

The evidence is undisputed and accepted on all sides that from the time Cassatt left Bequia between 1952 - 1956 up to the date of his death in January, 1973, he never once returned to Bequia and there is no evidence even to suggest that any of his children did so.

During the entire period from 1943 when James died up to the time of the death of Cassatt Davis in St. Vincent in 1973, the respondent Ismay Davis had occupied the land first with her mother Emily up to the time of her death in 1966, and thereafter solely as from 1966 up to the time of Cassatt's death in 1973, and she is still to this date in possession thereof.

/On 13th.....

On 13th January, 1975, based on an application filed on 9th October, 1974, in the High Court in St. Vincent, Ismay Davis the respondent was granted Letters of Administration in the Estate of her mother Emily Davis.

In her application for the Letters of Administration in the Estate of her mother Emily, the respondent listed as real property of which Emily Davis died possessed, the same land the subject of this action, which, on the death of the said Emily Davis in 1966 and the consequent termination of her life interest, had passed absolutely to Cassatt Davis as heir-at-law, of James Davis. This is a salient factor in the case.

On 28th August, 1981, Letters of Administration in the Estate of Cassatt Davis were granted to the appellant Alban Clennon Davis of Arnos Vale, St. Vincent, the lawful son of the said Cassatt who had died from as far back as 3rd January, 1973. The same land was listed as real property of which he died possessed.

On September 1, 1981, Commissiong and Commissiong, Solicitors in St. Vincent, wrote to Ismay Davis in Bequia on behalf of the appellant. I shall refer to part of that letter in detail at a later stage of this judgment. There was no reply.

On 6th January, 1982, the Writ was filed seeking the relief stated above, and which was refused by Bertrand J.

The Appeal

At the very outset of the hearing of this appeal, Mr. S.E. Commissiong who appeared for the appellant, and who wrote the letter to the respondent on September 1, 1981, made an opening statement which considerably narrowed the scope of this appeal. I will quote him verbatim:-

"The short point is whether the application in respect of the Letters of Administration interrupted time from running in Ismay's favour. I concede that had she not applied for that grant, I would be out of Court on the ground of adverse possession. The short point is what is the effect of the Letters of Administration?"

He submitted that even if Ismay Davis had the necessary animus possidendi from the death of Emily Davis in 1966, it was destroyed when in 1974, after an interim of only 8 years, she applied for the Letters of Administration in the Estate of her mother Emily Davis naming the same land and stating in her affidavit as the persons entitled to share in her Estate 9 other children of James and Emily Davis. In naming the children in that affidavit she expressly excluded the deceased Cassatt Davis. In her
/evidence.....

evidence in the Court below, she said that she took out Letters of Administration in the estate of her mother because the land belonged to her Ismay. She further said that she did not include Cassatt's name in the affidavit because his father had already given him a piece of land.

Counsel submitted that during the lifetime of Emily and under the laws of Primogeniture then in force, Cassatt was entitled to all the real estate of James Davis as the heir-at-law, subject to a life interest (or the right of Dower) in one third reposing in the widow Emily. In these circumstances Cassatt was entitled to the other two thirds but seeing that he had left the Island of Bequia in 1956, for St. Vincent, Emily remained in sole occupation, during which period Ismay lived with her, up to her death in 1966.

This he submitted could have extinguished the title of Cassatt Davis in favour of Emily under section 4(b) of the Real Property Limitation Act, Chapter 86 after 12 years covering the period 1956 - 1968. This however was overlooking the fact that Emily died in 1966.

I cannot accept this argument because when Emily died in 1966, she would if the year 1956 is used as the time when Cassatt left Bequia, only have been in possession for 10 years. His argument on this was an effort to establish that the land had fallen into the possession of Emily Davis, it being the only basis on which he could succeed.

Counsel nevertheless pressed on with his submission by adding that if in fact Emily did acquire by adverse possession, the land would enure for the benefit of her Estate and she having died intestate, all her children would be entitled to share including Cassatt.

Once Emily died he continued, Ismay continued on the land from 1966, up to 1974 when she applied for the Letters of Administration. He admitted that she grew and sold crops, paid taxes, and rebuilt the house. In 1974 however when she applied for the Letters of Administration and omitted the name of Cassatt Davis, it was the clearest possible indication that in her own mind she knew that she was not entitled solely to the land.

Counsel acknowledged that Cassatt's absolute interest only arose in 1966 and that no one came forward until 1981 when the letter was written by him on behalf of Alban Davis. Be that as it may, the Letters of Administration in 1974 had he submitted, the effect either of making time start to run afresh in Ismay's favour, or alternatively it made her a trustee of the land for the persons entitled, against whom, time could not run.

/Soar

Soar v Ashwell - 1893 - 2 Q.B. 390 at 394

Pollard v Dick - unreported 11/74 - St.Vincent.

Counsel for the respondent submitted that once time has begun to run, it can only be postponed by a disability, fraud, fraudulent concealment, or mistake. (The Law of Real Property - Megarry and Wade - 3rd edition, page 1015). In this case time began to run from Emily's death in 1966 at which time Cassatt became absolutely entitled to the land.

He submitted that whilst it is acknowledged that time cannot run against a beneficiary in favour of a trustee, Emily Davis at the time of her death left no property in respect of which her daughter Ismay could properly have applied for Letters of Administration.

It is possible he submitted that Emily could have prescribed against Cassatt Davis if it was firmly established that he left the Island of Bequia in 1952, in which case 12 years would have expired in 1964. Even if this were tenable, I am of the view that if adverse possession was to be established in favour of Emily, having regard to the final consequences of such finding, a firm and positive date would have had to be established showing exactly when time started to run in her favour. The period here of 1952 -1956 is too elastic when it is considered that 1952 would be within the statutory period, but the date at the other end viz, 1956, would be without counting, up to the death of Emily in 1966.

Counsel's alternative submission is based on a sounder footing. He said that as found by the trial Judge, Emily and Ismay lived together. On the death of Emily in 1966, Ismay assumed possession and she remained exclusively in possession for a period of 15 years up to the filing of the Writ in 1981. Her inclusion of the land in the application for the Letters of Administration in 1974 was an innocent mistake on her part. Emily did not then own the land and therefore the application could not interrupt or affect or preclude time from running. Under and by virtue therefore of the Real Property Limitations Act, Cap. 86, the title of Cassatt Davis was extinguished twelve years after the death of Emily Davis in 1966, during which period neither Cassatt Davis nor anyone claiming through or under him made any entry or claim to the land.

Did Cassatt abandon the land?

There is no doubt that Cassatt Davis knew during his lifetime that he had an interest in the land. The conveyance No. 336/1952 to which he was a party when the land was sold to Lilly Child in 1952, referred to Emily Davis as the "Life Tenant" and to him Cassatt Davis as the "Heir-at-Law" of James Davis. Despite this, upon the death of Emily in 1966, at which
/time he.....

time he became solely entitled to all the beneficial interest in the land, he never returned to Bequia or made any entry on the land, nor did he at any time from the date he left be it 1952 or 1956, exhibit any desire to return to the land. In short he totally abandoned and discontinued all interest therein from the date he shook the dust of Bequia from his feet. It is not surprising therefore that Counsel had to make the ^{CONFESSION} conclusion which he did. I have no hesitation whatsoever in coming to the conclusion that as from the date of his departure from Bequia, he had discontinued possession of the land. That this discontinuance or abandonment of possession, continued up to and after the death of Emily in 1966, at which time Ismay Davis went into possession. Further, that Ismay remained in possession openly, and without any interference from anyone, up to September 1, 1981 when for the first time her right to be on the land was challenged by the appellant.

The date on which time started to run in Ismay's favour would I hold have to be 25th April, 1966, when Emily died, Ismay could not pray in ^{aid} the prior period from 1952 or 1956 after Cassatt departed from Bequia, as she then merely occupied the land with her mother Emily. Between 1966 and 1981 however, she would have been in sole and undisturbed occupation of the land for a period of 15 years.

Was time interrupted?

Before answering the question which Counsel for the appellant seeks to have answered namely, whether the application by Ismay Davis in 1974 for Letters of Administration in the Estate of her mother in respect of this land, had the effect of interrupting time running in her favour, it is absolutely necessary to decide who was the owner of the land at the time when she made the application. To put it succinctly, did this land in fact form part of the Estate of Emily Davis at the time of the making of the application by Ismay?

In order to determine this, I repeat the undisputed fact that Cassatt Davis became absolutely entitled to the land upon the death of Emily in 1966. It was not until September 1, 1981 that the Solicitors Commission and Commission wrote to "Miss Ismay Davis, Retreat, Lower Bay, Bequia" in the following terms:

"We are instructed by the beneficiaries of the Estate of Cassatt Davis, deceased, that in 1975 you applied for and obtained a grant of Letters of Administration in the Estate of Emily Davis in respect of land she never owned (emphasis mine). You completely overlooked the fact that her first lawful son Cassatt Davis owned this land at Retreat, Bequia after the death of his father James Davis; and never once mentioned the other

/lawful.....

lawful children in the administratrix' oath leading to the issue of the grant you obtained.

At this point in time we are simply demanding an account of all of cassatt's property or the lands you ever held on behalf of the children....."

When Mr. Commissiong wrote this letter in September, 1981, he had the correct answer namely, that the land in 1974 when the application was made for the Letters of Administration by Ismay Davis, did not form part of the Estate of Emily Davis. It was Cassatt Davis' land from the time of Emily's death in 1966 up to the date of his death in 1973, and I so hold. Thereafter it would, all things being equal, have devolved upon those entitled to share in his Estate upon his death intestate. This would include the plaintiff Alban Davis, one of his lawful children.

It being the case that the land did not form part of the Estate of Emily Davis when Ismay applied for the Letters of Administration, her honest mistake in including it in the application could not alter the fact that legally it was, a part of the Estate of Cassatt Davis. In my view therefore, it would have had no effect upon the time which admittedly in 1974, was running in favour of Ismay Davis from 1966 when Cassatt died.

Conclusion

I need only refer to one final point raised by Counsel for the appellant and that is that the application for the Letters of Administration by Ismay in 1974 even assuming time was running in her favour negatived the animus possidendi in Ismay Davis, a factor which is essential if adverse possession is to be established. In my view there was abundant evidence here of that factor and all others required to establish adverse possession.

Ismay in her affidavit filed along with the application for the Letters of Administration, deliberately excluded Cassatt Davis from amongst those entitled to share in what she mistakenly thought was land belonging to the Estate of Emily Davis. In her evidence before Bertrand J she said:

"My mother died in 1966. Since 1966, I have been living same place. I had to build a new house. I pay no rent to anybody. I paid tax after the death of my mother. I work all the land. I tie sheep and everything on it. My brother Cassatt left Bequia in 1955/56. Before he lived in Bequia. He had a home. He built his home on the same land a piece of which his father gave him. Cassatt sold it to Mrs. Child. He never returned to Bequia. Cassatt never made any demand on me for rent during his life-time.. He never told me he wanted his house. I took out Letters of

/Administration.....

Administration in my mother's Estate because I say the land is mine..... In 1981 that is when I knew plaintiff claiming land. Cassatt, his wife and children left Bequia at one time. Since then the plaintiff lived at Arnos Vale, St. Vincent.

In cross-examination she said:

"I did not include Cassatt's name (in the Letters of Administration) because his father gave him a piece of land already and I was so advised....."

I have already found that Cassatt abandoned or discontinued possession when he left Bequia and never returned. Further, that from 1966, when he became fully entitled, up to his death in 1973, the position remained the same, and that the application for the Letters of Administration did not interrupt the period 1966 to 1981, when the first claim was made by his beneficiaries. The evidence of Ismay in my opinion supplies all the necessary animus possidendi especially against Cassatt.

In the final conclusion therefore, I hold that the respondent Ismay Davis had effectively between 1966 when Emily died and 1981 when the first claim was made on her prescribed against Cassatt Davis and all claiming through him, and that her claim to the land is now undefeasible.

I would dismiss the appeal with costs to be taxed.

L.L. ROBOTHAM,
Chief Justice

E.H.A. BISHOP
Justice of Appeal

G.C.R. MOE,
Justice of Appeal.