

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 of 1989
BETWEEN:

STEPHANIE EVANS (for heirs of
Florence Evans) - Appellants
and
GLYNN BERNARD - Respondent

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

Appearances: K. Foster and D. Theodore for the Appellants
V. John for the Respondent

1990: May 29,
Oct. 22.

JUDGMENT

MOE, J.A.

This appeal is against a decision of the Land Adjudication Tribunal upholding an award to the respondent by the Land Adjudication Officer of a half carre of land situated at Macdomel in the Quarter of Laborie.

The respondent's claim to the one half carre is based on his purchase of it in July, 1981 from Lillian, Jerome, Justin and Corabelle Fadlin as evidenced by a Deed of Sale registered on 8th July, 1981 in Vol. 121 No. 133119. The Vendors were the successors in title to Alcee Fadlin who died in June, 1941 and who until the date of her death had owned, occupied and cultivated the said half carre. The successors in title seldom visited the land between 1941 and 1980.

The appellants claimed title to the one-half carre which they say their family occupied from the time their predecessor in title Florence Evans acquired in 1941, 2 carres of land by Deed of Sale registered on 24th March, 1941 in Vol. 86 No. 51554.

A survey done in 1988 by Land Surveyor Phillips revealed that the one-half carre of land sold to Glynn Bernard was in the occupation of the appellants and included in the land claimed by them.

/The Land.....

The Land Adjudication Tribunal found that the land which the appellants claimed and as shown on the Surveyor's plan bore no relation to the land described in their title deeds, whereas the description of land in the Schedules to the deeds of the respondent fit the half carre of land claimed by the respondent.

The Tribunal awarded the half carre to the respondent but went on to award as follows:-

"In view, however, that the heirs of Florence Evans (Appellants) have been in occupation of the remainder of this land since 1941 the Tribunal thinks that it should be awarded to them with Absolute Title on the grounds of long possession."

The appeal is on the ground that the decision is against the weight of the evidence. The appellants contended that the evidence shows that from the year 1941 they have been in continuous, uninterrupted peaceable and unequivocal possession of the land. They submitted that the Tribunal having accepted that they were in long possession of the land since 1941 ought to have awarded the land to them; for they had prescribed against the predecessor in title by 1971. The respondent's submission was that the respondent's predecessors in title had not abandoned the one-half carre

It is not disputed that in 1941 the appellants went into possession of land other than that described in the Schedule to the Deed of Sale entered into in that year. The land they occupied is shown on the survey plan made for the parties with a view to settling the dispute. On that plan the one-half carre concerned is shown as included in the land in the possession of the appellant. It had to be decided as a question of fact whether the appellants' family had been in open, uninterrupted and peaceable possession of the land from 1941 until 1981 when the respondent bought that half carre.

A review of the evidence before the Land Adjudicator and as reviewed before the Land Adjudication Tribunal revealed that all the evidence pointed in the direction that the appellants were in possession of that land shown on the plan uninterrupted from 1941 to the date of sale to the respondent. It would appear, that the Tribunal found as a fact that the appellants were in "long possession of the land".

In the circumstances the appellants had by 1981 prescribed against the owner of the half carre and the provisions of Article 2103A came into play. That Article states:

/Title to.....

"Title to immovable property, or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of court."

The fact that the description of the land in the respondent's title deed fitted the location of the half carre could not defeat the appellants' entitlement under the Article nor does the fact that the appellants were in long possession of land not fitting the location of land as described in their deed preclude them from enjoying the benefit of the Article.

I would allow the appeal, set aside that part of the decision of the Tribunal awarding the half carre to the respondent and order that the half carre be awarded to the appellants with Absolute Title.

T.C.R. MOE,
Justice of Appeal

L.L. ROBOTHAM,
Chief Justice

E.H.A. BISHOP,
Justice of Appeal