

SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 2 OF 1995

BETWEEN:

FRANSICA BROOKES

and

HOPE BRADLEY RICHARDSON

Before: The Hon. Justice Satrohan Singh	Justice of Appeal
The Hon. Justice Albert Redhead	Justice of Appeal
The Hon. Justice Albert Matthew	Justice of Appeal [Ag.]

Appearances: Mr. Terence Byron for the Appellant  
Mr. Lindsay Grant and Miss Patricia Haynes for the Respondent

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1997: April 16 and 18  
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*Land Law* - Application for first certificate of title - Sale by deed - Long possession - Caveat entered - **Pollard v Dick** OECS Vol. 2,239 considered - Whether an animus possidendi or intention to dispossess another was required - **Phillips v Bisnott** 8 WIR 299 (JA C.A.) considered - Title By Registration Act S. 12(1)(d). Matter remitted for re-hearing.

### JUDGMENT

MATTHEW J. A. (Ag.)

On February 2, 1994 the Respondent filed a request for the issue of a first certificate of title in respect of a plot of land in Brown Pasture containing 2 acres 1 rod 31 poles. On February 15, 1994 the Appellant entered a caveat against the issue of the certificate of title. The caveat was based on the fact that 0.5 acre of the said land was purchased by the Appellant from one Beatrice Dasent in 1972 and that since that date the Appellant had her residence on the portion of land and had cultivated the same and taken the rents, fruits and profits as undisputed owner.

On August 12, 1994 the Appellant filed a request for the issue of a first certificate of title in respect of the said 0.5 acre of land. In that request she relied on the 1972 purchase from

Beatrice Dasent. Despite that deed the Appellant filed two affidavits by Ellsworth Morton and herself to the effect that before her purchase in 1972 they knew Beatrice Dasent and her late husband to have resided on the land since the late 1930's or early 1940's and had taken the rents, fruits and profits of the same as undisputed owners. The Appellant seems then to have been relying, not only on the 1972 deed, but also on long possession by Beatrice Dasent and herself.

On September 27, 1994 the Respondent entered a caveat against the issue of a first certificate of title to the Appellant.

**Hylton J** dealt with both applications and caveats together and in a rather terse judgment given on July 31, 1995 stated as follows:

"I have checked the authorities referred to by Counsel for Hope Bradley Richardson that is:

**(1) Pollard v Dick OECS Vol. 2 page 239; and**

**(2) Phillips v. Bisnott 8 WIR 299**

and hold therefore that the Title of Hope Bradley Richardson..... is indefeasible".

The learned Judge then granted the issue of the first certificate of title to the Respondent and refused the Appellant's application.

Learned Counsel for the Appellant enumerated several grounds of appeal in his notice filed on September 11, 1995 and in the relief sought he asked this Court to set aside the orders issuing a first certificate of title to the Respondent and denying a first certificate of title to the Appellant and remitting the applications to the High Court for rehearing.

In my view the principle of law stated in **Pollard v. Dick** is that the owner of land (**Pollard**, the applicant) could not be dispossed unless the claimant (**Dick**, the respondent) obtained possession animus possidendi. The Court found on the facts of the case that **Dick** had no such intention. The Court found this was so because firstly, when he took possession of the land in 1959 **Dick** was relying on the alleged sale to him by Conrad Matthews, secondly, he tried to get the true owner of the land to sell to him; thirdly, when that failed he tried, without success, to recover his money from Conrad Matthews. That was the evidence which the learned Chief Justice found to be strong evidence that Dick never had the intention to dispossess **Pollard**.

Unfortunately, the learned Judge did not say how the decision in **Pollard v. Dick** was applied to the particular facts. The decision does not state that whenever a person acquires by deed he can never form the intention to dispossess another. Indeed the learned Chief Justice said towards the end of page 242:

"If he formed the intention to dispossess the rightful owner after he failed to get her to sell him the land or after he failed to recover from Conrad Matthews then he could not, in point of time, bring himself within the limitation Ordinance because this intention

would have been formed after 1963, and perhaps as late as 1967 when he was still trying to recover his money from Conrad Matthews".

The Chief Justice then found as a fact that Dick never formed that intention. So in my judgment the decision of **Pollard v. Dick** turns in the end on the facts of the case.

**The learned Judge also relied on Phillips v. Bisnott** without relating the case to her findings. The short point in that case was that a land owner made two conveyances - one to the Plaintiff on June 25, 1958 and another to the Defendant on May 12, 1958 but the Plaintiff was in possession of the land since 1954. In 1962 the Defendant entered the premises and broke a padlock which the Plaintiff had placed on the door. The Plaintiff sued and the Resident Magistrate held that the Plaintiff was a trespasser and entered judgment for the Defendant. The Court of Appeal of Jamaica held that the Plaintiff having been in do facto lawful possession of the land since 19K could not in the circumstances be said to be a trespasser. Again the learned Judge has not made it clear how that judgment was applied to the facts of the case before her.

Before the Court was a caveat to the Respondent's title which alleged that the Appellant had been continuously occupying 0.5 acre of the land being claimed by the Respondent for a considerable period of time and in my view the Appellant's claim ought to have been properly investigated and reasons given for any findings.

It also seems to me that the Appellant in her application for the issue of a first certificate of title by her use of the affidavits already referred to was trying to bring herself within the provisions of Section 12 (1)(d) of the Title by Registration Act which states -

"Land not registered under this Act may be so registered -

- (d) if the land has been in the sole and undisturbed possession of the applicant alone in his own right or as executor, administrator or trustee, or partly in the sole and undisturbed possession of the applicant in any such right and partly in the sole and undisturbed possession of any other person through whom he claims, continuously for a period of thirty years next before the date of the presentation of the request under this Act".

In my view that aspect of the matter also called for specific enquiry.

I would therefore make an order -

- (1) setting aside the order granting the issue of a first certificate of title to the Respondent in respect of 2 acres 1 rod 31 poles of land;
- (2) setting aside the order denying the issuance of a first certificate of title to the Appellant in respect of 0.5 acre of land;

(3) remitting the said applications and caveats to the High Court of Justice for re-hearing.

There shall be no order as to costs.

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A.N.J.MATTHEW  
Justice of Appeal (Ag.)

I concur

.....  
SATROHAN SINGH  
Justice of Appeal

I concur

.....  
ALBERT REDHEAD  
Justice of Appeal