SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 384 of 1993

BETWEEN: GODFREY DAVIS PLAINTIFF

V

KENDAL ENVILLE DEFENDANT

A Williams Esq for the Plaintiff
JA Delves Esq for the Defendant

Mitchell J.

JUDGMENT

This is a claim for possession, and for an order against the Defendant to remove his chattel house from and from entering or crossing the Plaintiff's land, and for damages for trespass. By a Statement of Claim endorsed on a Writ of Summons issued out of the Registry of the Supreme Court in St Vincent and the Grenadines on 17th September 1993 the Plaintiff claims that he is the owner of a parcel of land (Lot 6) since 18th October 1992. He claims that the Defendant is a squatter who has constructed a chattel house partly on the allotment roads on the West and Southern boundaries of the Plaintiff's land and partly on Lot 6. He claims that the Defendant has refused to remove his house.

By a Defence filed late with leave on 19th May 1994 the Defendant first denies that his house is on the land of the Plaintiff, Lot 6. He claims that the area of land where his house is was never owned by a private individual but himself. He claims he has been living on the parcel of land for more than 12 years, and that at the time he entered upon it it was owned by the Housing and Land Development Corporation (the Corporation). He claims title by adverse possession under the Limitation Act Cap 90. The Request for Hearing has been filed since 4th July 1994.

The facts as I find them are that the Plaintiff acquired the small 2,800 sq ft lot of village land known as Lot 6 at Cane Hall from the Corporation by a Deed dated 18th October 1992. His grandmother had previously had a chattel house on the lot, and he had been born there and lived there with his mother as a child. He bought the lot as an adult, and has now built his house on it. The Westen wall of his house is not 6 ft from the chattle house of the Defendant. Lot 6 is bound on the West and the South by two 20 ft wide road provisions. There is actually only a 3 or 4 ft wide concrete footpath constructed by the Corporation, but according to the plan put in evidence there is a provision for a 20ft wide road to run to the West and another 20 ft road to run to the South of the lot.

The Defendant had been squatting in the area to the West of Lot 6 for some years. The number of years is in contention. He says that his aunt Sylvia Burgin squatted the land before him and kept pigs on the spot before he took it over and occupied it. The Defendant says that he first built a one room wattle and daub hut on the spot when he was 16 years old. He is now 34, he claims. He says that it was 1979 when he built the hut. He says it was about 1985 that he replaced it with the present chattel house. Under cross-examination he admitted that his aunt Sylvia had died before he built the hut. His cousin Leona Burgin tells us that her mother Sylvia died in 1983. She says that the Defendant is mistaken, as he had built his hut before her mother died. If I accept, as the Plaintiff urges, that the Defendant built the hut after Sylvia died, and if I accept Leona's evidence that Sylvia died in 1983, that would appear to put the lie to the Defendant's evidence that he built the hut when he was 16 years old, i.e. in 1979. 1979 is good for the Defendant's claim, 1983 is fatal to it. The Defendant says that his 2 children, one of whom is now 12 years old, were born in the chattel house he has now built to replace the hut.

The Plaintiff says that the Defendant did have a hut there for some years. But, he says the hut was outside of his boundary, on the 20 ft strip that is now reserved for the road. The Plaintiff says that it was only in about 1989 that the Defendant took down his hut and built a much larger chattel house that now extends over onto his land. The survey put in evidence shows that the chattel house straddles the South-West corner boundary, so that about one third of it is on Lot 6, one third of it is on the road reserve that constitutes the Western boundary of Lot 6, and one third of it is on the 20 ft road reserve that constitutes the Southern boundary of Lot 6. The chattel house of the Defendant being very small, the major part of the road reserves are still unobstructed by the house thus intruding into their space. The Court is faced with the dilemma that it is possible that the whole of the hut was originally on the road reserve, which would mean that no part of Lot 6 was occupied by the Defendant, and time did not begin to run against the Plaintiff until the larger chattel house was built to replace the hut; and it is possible that part or all of the original hut was actually built on what is now Lot 6, which would mean that time ran against the Plaintiff from the date the original hut was built. It is possible that the Defendant first squatted on part of the Plaintiff's Lot 6 in 1979, and it is possible that he first squatted it in or after 1983.

One of the exhibits put in by the Plaintiff is a letter written by the Defendant through his Solicitor to the Solicitor of the Plaintiff on 11th March 1994. It reads:

> "I write on behalf of the defendant in the captioned matter (Re Suit No. 384 of 1993 - Godfrey Davis v Kendal Enville) to request an extension of time within which to remove the chatel house from the plaintiff's land. You will appreciate that it is no easy task to move a house of that nature after it has been there for so many years; Fourteen days is really an unreasonably short period of time. My client has diligently sought a new house spot, but these searches have been

unsuccessful as same are few are far between. Your co-operation will be greatly appreciated."

These possessory title cases are always very stressful to determine, especially when someone's home is involved. The Court looks carefully at the evidence for some clear indication of what the true facts are. Was the 12 year period satisfied? Is there clear evidence of exclusive possession? Can one find the necessary animus possedendi? Is the area claimed to have been possessed suficiently clearly demarcated or fenced in? In this case, fortunately, there is clear evidence that the claim of the Defendant to possessory title is unsupportable. On this occasion, the complex issues of law and fact usual in these cases do not have to trouble the Court. The letter of the Defendant written to the Plaintiff after the issue of the Writ is the clearest possible evidence that in March 1994 the Defendant acknowledged the right of possession of the Plaintiff. If he had the intention then to claim the land he would never have written the above letter to the Plaintiff. The first time that the Defendant makes any claim to the possession of the spot of the Plaintiff's land on which a part of his house stands is in the Defence filed in May 1994, 2 months after the letter.

In the circumstances, I find that no extinguishment of the title of the Plaintiff or of his predecessor in title ever took place. I find for the Plaintiff, and I order that the Defendant do forthwith remove his chattel house from the Plaintiff's land, I grant the requested declaration that the Defendant is not entitled to build any house on the Plaintiff's land. I grant the requested injunction to restrain the Defendant whether by himself or his servants and or agents or howsoever from entering or crossing the Plaintiff's said land. On the question of damages, the Plaintiff has had to live with the Defendant's trespassing house not 6 ft from his own house. In addition to this intrusion, he will doubtless be put to expense and inconvenience in clearing up after the Defendant has removed his chattel house to another spot. The Plaintiff should be compensated for these intrusions and inconveniences, but the amount that would be fair is difficult to ascertain. I award an amount of $2,500.00 damages for the trespass, and costs to the Plaintiff to be taxed if not agreed.

ID Mitchell, QC
High Court Judge (Ag)
21st May, 1997