

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APP. NO.: 9 OF 1998

BETWEEN: **FELIX HOMER** Defendant/Appellant

AND

NOELINE TAYLOR
NOBLEMAN PHILLIPS Plaintiffs/Respondents

Before:

The Hon. Mr. Dennis Byron	Chief Justice
The Hon. Mr. Satrohan Singh	Justice of Appeal
The Hon. Mr. Albert Redhead	Justice of Appeal

Appearances:

Mr. H. Matadial for the Appellant
Mr. S. Huggins for the Respondent

1999, December 7, 8

JUDGMENT

- [1] **REDHEAD J.A.:** This is an appeal against the judgment of Baptiste J. in a trespass action in which he granted against the appellant an injunction, award of damages of \$500.00 and an order to break down and remove "any and all the erections" placed on the respondents' land.
- [2] The respondents by their pleadings allege that by virtue of two Deeds of Conveyance 3287 and 3319 of 1992 they are seised in fee simple in possession of 22,991 square feet of land at Ocar, Bequia.
- [3] Walter Sergeant Snr. died in 1926. By his last will and testament he named his son Walter Sergeant his executor of the will. There were three separate pieces of property devised under the will approximately one acre at Ocar Reform, four acres at Cinnamon Garden and 1 lot in the town of Bequia.
- [4] By deed dated 20th October, 1992 Walter Sergeant as executor conveyed to Noeline Taylor

one of the plaintiffs/respondents approximately 11,000 square feet of land at Ocar. He also conveyed 9,795 square feet of land to the other plaintiff/respondent Nobleman Phillip..

[5] Learned counsel, Mr. Matadial, for the appellant argued that the learned trial judge erred in law when he said -

"The defendant has no documentary or prescriptive title to the disputed land. He hence had no legal right to be on the land or to occupy the land when he built the board house in 1992."

Mr. Matadial contended that the appellant was in possession of the land. He also argued:

"Possession is good against the whole world except the true owner. The [respondents] are not the true owners."

[6] He referred to Megarry and Wade on the Law of Real Property Edition. At page 103 the authors say:

"Possession by itself gives a good title against all the world except someone having a better legal right to possession."

[7] Mr. Matadial also contended that it is of importance to determine whether the appellant was in possession before a deed was given to the appellant, Nobleman Phillips, on whose land the trespass is alleged to have been committed.

[8] The problem with Mr. Matadial's contention is that the learned trial judge did not accept the Appellant's evidence that he was in possession of the land when he said:

"The defendant testified that the land he occupied belonged to Miriam Sergeant. Miriam gave it to his mother. His mother informed him of that. His mother gave the land to him but he cannot remember the date. He has no idea as to when.

The court finds the evidence of the defendant to be manifestly unreliable and unacceptable. Apart from not being able to produce any document evidencing the alleged gift of the land to his mother by Miriam, he has no knowledge as to when the alleged gift was made. His mother Celina was not called to testify in the matter. Further if the land belonged to him, why is it that his aunt Alberta, who according to him was working the land at the time, had to allow him to go on the land? Why is it that she had to permit him to build a house on the land?"

[9] From the evidence there was ample support for the judge to arrive at the finding of facts as he did and the conclusion he arrived at.

[10] As the appellant also said in his testimony before the judge that he was born on the land and he left when he was fifteen years. In cross-examination he said that he lived on the land up

to ten years. He finally said:

"I went to Trinidad when I was ten, fifteen and around twenty. I went several times".

The learned trial judge was justified in coming to the conclusion that the respondent was less than frank with his answers concerning the length of time that he spent on the land or when he left the land.

[11] Mr. Matadial, learned counsel, in support of his argument that the appellants were not "true owners" of the land referred to the last will and testament of Walter Sergeant. Clause 2 reads as follows:

"I devise and bequeath all my property real and personal unto my wife Clementina Sergeant for life and from and after her death I devise unto my son Walter Sergeant my property in the town of Bequia for himself absolutely. I devise unto Miriam Sergeant one acre of my land on the level at Reform at Bequia absolutely. I devise the residue of my real estate at Reform at Bequia unto all my other children not including the said Walter and Miriam Sergeant in equal shares. I devise and bequeath all the residue of my real and personal estate unto my son Walter Sergeant."

[12] Walter Sergeant conveyed the land to Nobleman Phillips on 20th October, 1992. He did so as executor and beneficiary. Nobleman Phillips' land is the land on which the trespass is alleged to have been committed. Mr. Matadial invited the court to declare that conveyance a nullity on the ground that Walter Sergeant was not a beneficiary.

[13] The appellant is not claiming to be in possession by any devise under the will of Walter Sergeant Snr. None of the beneficiaries under Walter Sergeant's will is challenging the conveyance to Nobleman Phillips. I am therefore in agreement with learned counsel Mr. Huggins that the construction of the will of Walter Sergeant has no application or relevance to the determination of this dispute, and that the court cannot make a declaration of nullity in these proceedings

[14] Finally, learned counsel, Mr. Matadial, argued that the appellant is entitled to set up the defence of the sight of a right of a third party - jus tertii.

[15] He referred to Megarry and Wade pages 106 and 107. At page 107 it is there stated:

"Jus tertii. We have already seen that other persons who have themselves no title cannot exploit the relative weakness of S's title by pleading jus tertii. If [a stranger] takes possession of land from S. S or his successor can recover it within the limitation period and X cannot plead that the land is not in fact S's but O's. This is very evident for otherwise anyone could help himself to the land. If X claims the land he must do so on the strength of some title of his own not on the weakness of S's."

- [16] Mr. Matadial in my view stressed that if the respondents' claim to the land they must do so on the strength of some title of their own not on the weakness of the appellants'.
- [17] But in my view it is beyond doubt that the appellant has no title of his own, he is relying on the possession of the lands as against the respondent's title to get ownership of the land.
- [18] The learned trial judge in my view rightly found from the evidence that the appellant was not in possession of the land. The evidence is that the appellant ceased living on the land at the age of ten years, went to Trinidad where he remained until he was about 45 years and returned to Bequia in or about the year 1992.
- [19] Bassy Alexander, the land surveyor testified that he carried out two surveys on the land. The first time he surveyed the land it was in bush. He said that when he returned to do the second survey there was a structure on the land. From the evidence this was in or about 1992.
- [20] The inescapable inference therefore is that the appellant began to go on the land after the respondents had begun the survey of the land, that is after the respondents had asserted their right to the land, after they had taken possession.
- [21] Mr. Matadial's reference to the law that:-
"Possession by itself gives a good title against all the world except someone having a better legal right to possession"
is a sound legal proposition. But the appellant was not in possession of the land the respondents have possession and legal title which the appellant is not in a position to challenge.
- [22] In the premise therefore the appeal is dismissed. The judgment and orders of the learned trial judge are affirmed.
- [23] Costs to the respondents to be taxed if not agreed.

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Albert Redhead
Justice of Appeal

I concur.

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C.M. Dennis Byron
Chief Justice

I concur.

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Satrohan Singh
Justice of Appeal