SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

PETITION NO. 358 0F 1998

IN THE MATTER of an application Under Section 2103A of the Civil Code Chapter 242 for a declaration of title to Immovable property

AND IN THE MATTER of the Supreme Court - Prescription By Thirty Years (Declaration of Title) Saint Lucia Rule 1970

BETWEEN:

ROSANISE LOUISY

Petitioner

and

1. JOHNSON ISIDORE
2. FELIX JULIEN
3. MARY BRUIN
4. HELEN BRUIN
5. FRANCES BRUIN
6. GRETA PIERRE
7. MOSES LOUIS
8. LEROY OCHILIEN
9. ROSE LOUIS
10. PAHFINA PAUL

Claimants

Appearances:

Ms. Isabella O. Shillingford for the Petitioner
Ms. E. Petra Jeffrey-Nelson for the First- Nine Claimants
Ms. Esther Greene-Ernest for No. 10 Claimant.

1999: December 03
2000: January 31

JUDGMENT

[1] HARIPRASHAD-CHARLES J. On 31st day of January 2000, I dismissed the Petitioner's application for Prescription under Section 2103A of the Civil Code of Saint Lucia 1957 and the Supreme Court - Prescription by Thirty Years (Declaration of Title) Saint Lucia Rules 1970 and indicated that the reasons therefor would be

reduced into a written judgment subsequently. The following represents my reasoned judgment.

[2] On 21st day of April 1998, the Petitioner filed a petition with supporting affidavits of even date praying for a declaration of title in her favour pursuant to Article 2103A of the Civil Code. After due advertisement of the Summons for a Declaration of Title to Immovable Property, three Claimants entered Appearances. This was subsequently followed by Appearances from seven other Claimants.

[3] The Petitioner's claim is based on the ground of sole and undisturbed possession for more than thirty years as owner of a portion of land commonly called Petit Monier in the Quarter of Gros Islet consisting 5.26 acres or 2.13 hectares recorded in the Land Register as Parcel Nos. 1449B 243 and 1449B 244. In a nutshell, the Petitioner, an octogenarian is claiming prescriptive rights. In her Petition she alleged that for more than thirty years she has been in possession of the said parcels of land as the absolute owner thereof together with two children as and when they lived with her. During that period she made coals on the land and planted it with cocoa, coconuts, breadfruit, oranges, mangoes and made garden thereon from time to time consisting of dasheen, yams, potatoes, bananas and plantains.

[4] In the said Petition, the Petitioner alleged that Antoine Louis also known as Estaphane Louis now deceased claims title to the land and after his death his son, Moses Louis so claimed. The claim by Antoine Louis was dismissed with Costs by the High Court on 11th day of March 1991 and his appeal to the Court of Appeal was withdrawn and dismissed on 27th day of May 1992.

[5] In her affidavit sworn to on 24th day of March 1998, the Petitioner deposed that the lands belonged to her uncle, Estaphane Louis. And that during her uncle's lifetime, he told her mother in her [the Petitioner's] presence that he would leave to her

mother the portions of land after his death. He also gave the Petitioner permission to erect her house on a part of the land, which was done during the lifetime of her uncle and her mother. Immediately after her uncle's death, her mother took charge of the whole land as owner thereof. The Petitioner also deposed that immediately after her mother's death on 5th day of June 1969, she took charge of the portions of land as the owner thereof and continued in peaceful possession thereof up to this date as owner.

[6] In paragraph 7 of her Petition as well as paragraph 10 of her supporting affidavit, the Petitioner stated that she has not knowingly withheld any fact concerning the land which ought to be disclosed in this Petition, and have truly and honestly, to the best of her knowledge and belief, represented the truth concerning the title thereof.

[7] As I earlier alluded to, shortly after the advertisement of the Summons For A Declaration Of Title To Immovable Property, three claimants, namely Pahfina Paul, Leroy Ochilien and Rose Louis entered appearances; the latter two being heirs of Antoine Louis.

[8] On 8th day of February 1999, the Petitioner filed an application with supporting affidavit for Summons For Judgment In Default Of Written Claim as required by Rules 11 and 14 of the Supreme Court - Prescription By Thirty Years (Declaration By Title) Saint Lucia Rules, No. 7 of 1970.

[9] While this application was pending before the Court, an Appearance was entered on behalf of the remaining seven claimants on 25th day of February 1999. An affidavit sworn to by Leroy Ochilien, one of the Claimants was filed on behalf of all the claimants on 29th day of June 1999. In essence, the affidavit challenged the Petitioner's affidavit and state that she, the Petitioner knowingly misled the Court and withheld pertinent facts which ought to have been disclosed to the Court concerning

the land. The gist of his affidavit is that there are other family members living on the land for in excess of thirty years and he himself has a concrete dwelling house with his workshop on the Property. He prayed for the following:

(1) A dismissal of the Suit with Costs or in the alternative;

(2) A declaration that all the claimants are entitled to receive the portion of the land which they occupy; or

(3) An or der t hat t he P etitioner do pay al l t he claimants for their improvements to the Property which have been made in good faith.

[10] On 30th day of September 1999, No.10 Claimant, Pahfina Paul filed an affidavit on behalf on herself and No. 9 Claimant, Rose Louis. At paragraph 8 of her affidavit, she deposed that she entered the land in or about 1962 and erected a wooden dwelling house thereon. She further deposed that her five children were born on the land and that she planted coconut, plum, breadfruit, grapefruit, banana trees on the property and that she moved off the land in 1997 because of the taunting of the Petitioner and acts of waste committed on the property by the Petitioner, her servants or agents. That at the time of her leaving the property she left improvements by way of crops and trees referred to above and that she had been in occupation in excess of thirty years. Pahfina Paul made out a case for Rose Louis which I shall deal with later on.

[11] The matter came on for hearing on a few occasions in Chambers before it was given a hearing date. It was eventually heard on 3rd day of December 1999 on the basis of affidavit evidence and submissions advanced by Counsel. By the time the matter came on for hearing, the Petitioner had filed two additional affidavits in reply.

[12] Learned Counsel for the First nine Claimants, Mrs. Jeffrey-Nelson having previously indicated her intention to raise by way of preliminary objections certain points of law namely:

(1) Whether for the purposes of prescription, the possession of the Petitioner was continuous and uninterrupted, peaceable, public, and unequivocal for a period of thirty years and

(2) Whether a co-owner of undivided property could prescribe against another co-owner?

(1) WHETHER THE POSSESSION OF THE PETITIONER WAS CONTINUOUS AND UNINTERRUPTED, PEACEABLE, PUBLIC AND UNEQUIVOCAL FOR A PERIOD OF THIRTY YEARS?

[13] Learned Counsel for the first- nine Claimants, Mrs. Petra Jeffrey-Nelson commenced her arguments by stating that the application before the Court is for Prescription pursuant to Article 2103A of the Civil Code and the Supreme Court - Prescription by Thirty Years (Declaration of Title) Saint Lucia Rules 1970. According to her, Article 2057 of the Civil Code reads:

> "For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor."

[14] Before I proceed any further, it is perhaps appropriate for me to state that while Mrs. Nelson appeared as Counsel for the First-nine Claimants, she basically argued the matter on behalf of all ten claimants. Mrs. Esther Greene-Ernest for No. 10 Claimant, Pahfina Paul concurred with all of the legal submissions advanced by Mrs. Nelson.

[15] Counsel submitted that on the face of the record, the Petitioner is not a proper Applicant before the Court as she has not been in possession for a continuous period of thirty years. Counsel referred to paragraph 4 of the affidavit of the Petitioner filed on 11th day of November 1999 and submitted that the Petitioner herself admitted that it is true that she stopped living on the land a few years ago and went and lived about

forty yards away. Counsel also alluded to the affidavits of Vitalis Julien and Victor Tertulien filed on 21st day of April 1998 in support of her Petition for a Declaration of Title.

[16] Mrs. Nelson fortified her arguments by referring to paragraph 8 of another affidavit filed by the Petitioner on 15th day of November 1999. Paragraph 8 reads:

> " With reference to paragraph 10 of the said affidavit of Leroy Ochilien I state that it is true that I stopped living on the said land a few years ago and went to live about 40 yards away. However, I never ceased to visit the land almost daily. Furthermore, my daughter Mrs. Marie David has been living on the said land even before I left it and continues to live on it where she has her dwelling house. She has been in possession of it on my behalf. Thus it is untrue to say that I am not presently in possession of the said land."

[17] She then declared that nowhere in the Civil Code or the Rules governing Prescription is there such a legal principle that the Petitioner is entitled to use the occupation of her daughter in order to compute a period of thirty years and in this context, Counsel referred to Section 5(c) of the Supreme Court - Prescription By Thirty Years (Declaration of Title) Saint Lucia Rules. Section 5(c) states as follows:

> " The Petition shall be in Form 1 of the Schedule and shall set out -
>
> (c) the facts upon which the applicant relies to establish that the applicant (or the applicant and some other person or persons through whom he claims) has been in sole and undisturbed possession of the property continuously for 30 years, and, in particular, the acts of ownership exercised over the property, and that the rents, fruits and profits accruing out of the property have been taken and appropriated by the applicant (or by the applicant and some other person or persons through whom he claims) as owner during that period."

[18] Learned Counsel also made reference to Article 2063 of the Civil Code which reads thus:

> " An actual possessor who proves that he was in possession at a former period is, in the absence of proof to the contrary, presumed to have possessed during the intermediate time."

[19] Counsel tersely expressed, "the Petitioner is still absent; she has not resumed possession."

[20] Learned Counsel for the Petitioner, Ms. Isabella Shillingford lamented for not being informed beforehand of the preliminary objections to be raised by Mrs. Nelson. Suffice it to say, she commenced her arguments by stating that the Petitioner had permission from her lawful uncle, Estaphane Louis in his lifetime to be on the land which originally belonged to the said Estaphane Louis. Upon his death she inherited a share in the land and that she has been in possession of the said parcels of land as the absolute owner for more than thirty years.

[21] Counsel submitted that the Petitioner lived on the land for a number of years and when she got married, she went to live not far away and left her daughter in possession of the land on her behalf but she herself never ceased to visit the land. In this regard, Counsel referred to paragraph 4 of the Petitioner's affidavit filed on 11th day of November 1999. It is further submitted on behalf of the Petitioner that her daughter, Mrs. Marie David has been in possession on her mother's behalf. In that way, the Petitioner has been in possession for more than thirty years.

[22] At paragraph 9 of the affidavit of the Petitioner filed on 21st day of April 1998 she deposed thus:

> "Immediately after my mother's death, I took charge of the portions of land as owner thereof and continued in peaceful possession thereof up to this date as owner. My mother was in continuous possession of the said portions of land before me for more than 30 years and she died on 5th day of June 1969 as shown on her death certificate a true copy of which is exhibited hereto and marked " B" and from that date I have been in continuous possession and peaceful possession of the portions of land as owner."

[23] Learned Counsel for the Claimants vociferously argued that the Petitioner left the land after she got married so she is not in possession of the land and that nowhere in the Civil Code or the Rules governing prescription is there any provision that she is entitled to use the occupation of her daughter to satisfy the requirement of continuous possession for thirty years. I do not agree with Counsel's argument. The Petitioner stated that when she got married, she went to live not far away. She left her daughter in possession of the land on her behalf but she herself never ceased to visit the land. So, in my opinion, the Petitioner has been in possession of the lands in that way. However, the Petitioner's own evidence is that she took possession of the land as owner when her mother died 5th day of June 1969 and from that date, she has been in continuous possession and peaceful possession of the portions of the land as owner. A quick mathematical calculation from the date she took possession as owner to the date of the filing of this Petition on 20th day of July 1998 falls short of requisite thirty year period for prescription.

[24] In the event that I am wrong to conclude that the Petitioner has not satisfied the requisite thirty-year period as stipulated by the law, the Claimants alternative argument was that the requisites of "uninterrupted" and "peaceable" possession are significantly absent.

[25] Counsel for the Claimants submitted that the mere fact that a Civil Suit was filed by the Petitioner in 1983 as is evident in the Exhibits filed herewith reflected that Antoine Louis and his son, Moses Louis have been in possession of the said property as owners up to 1992 when Moses Louis caused as appeal against the decision given by Matthew J. [as he then was] on 11th day of March 1991 to be withdrawn.

[26] Ms. Nelson further contended that the Petitioner was forced to take action against Antoine Louis because he had a Deed of Declaration made on 21st day of February

1984 and registered in Volume317a No. 77196 in his favour. According to Counsel; this illustrated that Antoine Louis was the one in possession of the Lands in question up to 1984 when he died. She stated that his possession was continued by his son, Moses up to 1992 when the appeal was withdrawn.

[27] Counsel argued that this precluded the Petitioner from claiming prescription for the relevant period of thirty years as she cannot satisfy the legal requirements of sole and undisturbed, uninterrupted and peaceable possession for thirty years. Counsel declared that there are other family members on the land; some with concrete dwelling houses.

[28] To further support her argument, Counsel referred to Article 2084 of the Civil Code which states as follows:

> "Natural interruption takes place when the possessor is deprived, during more than a year, of the enjoyment of the thing, either by the former proprietor or by any one else."

[29] Mrs. Nelson concluded her arguments by declaring that the Petitioner has not satisfied the legal requirements that her possession as owner was continuous, uninterrupted, peaceable, public, unequivocal.

[30] Counsel for the Petitioner did not assist the Court on this aspect of the submissions made on behalf of the Claimants. I am in agreement with Counsel for the Claimants that for the purposes of prescription, the Petitioner has not satisfied the Court that her possession as owner was continuous, uninterrupted, peaceable, public and unequivocal as owner for thirty years and I so hold.

(2) WHETHER A CO-OWNER OF UNDIVIDED PROPERTY COULD PRESCRIBE AGAINST ANOTHER CO-OWNER?

[31] The second submission advanced by Learned Counsel for the Claimants is that a co-owner of undivided property cannot prescribe against another co-owner and in support thereof, Counsel referred to Article 2072 of the Civil Code which states:

> "No-one can prescribe against his title, in the sense that no one can change the cause and nature of his own possession, except by interversion."

[32] Counsel referred to an Order of the High Court dated 11th day of March 1991 and entered on 5th day of April 1991. Matthew J. ordered inter alia as follows:

3. The Defendant, Antoine Louis and his heirs are not owners nor are they co-owners of the portion of land described in the Schedule hereunder;
4. The Plaintiff is a co-owner of the said portion of land and is entitled to possession in common with the co-owners.

[33] According to Counsel, the Petitioner was declared a co-owner of the said portion of land in question and as a consequence, is entitled to an undivided share in the whole property which she acquired by virtue of inheritance.

[34] Counsel drew the Court's attention to Article 2067 of the said Civil Code which reads:

> " Those who possess for another, or under acknowledgment that they hold under another, never prescribe the ownership, even by the continuance of their possession after the term fixed."

[35] Counsel further elaborated that the Petitioner in her affidavit averred that she was put on the land by her uncle and that she erected her own house on a part of the land during her mother's lifetime and during her uncle's lifetime. That after her uncle died, her mother took charge of the whole land as owner thereof and after her death, she

took charge in the same capacity. Counsel contended that under common law, the Petitioner was a mere licensee and as such, incapable of deriving a title by prescription. Counsel cited in support the cases of **Callendar & Callendar v Dottin (1965) 8 W.I.R. 429, Edwards v Brathwaite (1978) 32 W.I.R. 85** and **Gonzague Remy & Marie Eugene v Cyrillia Mathurin (Civil Suit No. 628 of 1995) [Saint Lucia] (unreported).**

[36] It was submitted on behalf of the Claimants that pursuant to Article 1515 of the Civil Code, the Petitioner was a tenant at sufferance and according to Article 2060 of the Civil Code:

> "Acts which are merely facultative or at sufferance cannot be the foundation either of possession or of prescription."

[37] Counsel submitted that even before the Order of Matthew J. made on 11th day of March 1991, the Petitioner could not prescribe as she fell into two categories of an heir and or tenant at sufferance. In this regard, Counsel alluded to Article 2068 of the Code which reads:

> "Heirs and successors by universal title of those whom the preceding article hinders from prescribing cannot themselves prescribe."

[38] Learned Counsel for the Petitioner, Ms Isabella Shillingford stated that there is nothing in the Civil Code which specifically prevents one co-owner from prescribing against another co-owner. She stated that Article 2072 of the Civil Code is of some relevance in this regard and declared that the effect of this provision is that except by interversion, a person cannot prescribe against his own title.

[39] I do not disagree with Counsel but I am reluctant to venture into somewhat unvirginal territory when it is unnecessary to do so for the purpose of deciding the case as I

have already concluded that the possession of the Petitioner did not satisfied the legal requirements for prescription especially for interversion to operate the requirements of ***openly, peacefully and unequivocally as owner*** must be present.

[40] It is also the submission of Counsel that Matthew J. found in his judgment delivered on 11th day of March 1991 that the Defendant Antoine Louis and his heirs are not owners nor are they co-owners of the portion of land in dispute before him; that is the very land now in question.

[41] Counsel stated that Matthew J. further held that the Plaintiff i.e. the Petitioner in this case is a co-owner of the said portion of land and is entitled to possession in common with the co-owners. An appeal against the judgment of Matthew J. to the Court of Appeal was withdrawn and dismissed. In effect, the Judgment of Matthew J. still stands. As Counsel rightly pointed out, the question before Matthew J. was restricted to the rights of Antoine Louis and his heirs in and over the land.

[42] The application before the Court does not only involve the heirs of Antoine Louis but seven other claimants; most of whom have lived on the land for varying lengths of time. The Petitioner admitted in a subsequent affidavit filed on 15th day of November 1999 stated at paragraph 16(b) that the only claimant who would have had a legal right (by Succession) to receive a share of the said land is Felix Julien who was the lawful nephew of Estaphane Louis (the original owner) but whose share I (Rosanise Louisy) prescribed since he never lived on the land neither did his father Anitus Julien.

[43] The Petitioner also deposed that the affidavit deposed to by Leroy Ochilien to appear on behalf of the ten claimants is defective and the Court ought not to act on them. While I do agree that the affidavit is defective, I do not think in the interest of justice, it

ought to be struck out. I am minded to make a similar observation of the Petitioner's affidavit sworn to on the 15th day of November 1999 and filed on even date.

[44] In analyzing the case in its entirety, I opined that when the Petitioner filed her Petition on the 21st day of April 1998 with supporting affidavits, certain vital information were not disclosed in the Petition but only came to light when the ten claimants entered their appearances and filed their affidavits so when she averred in paragraph 7 of the said affidavit that the Petitioner has not knowingly withheld any fact concerning the land which ought to be disclosed in the said Petition, and has truly and honestly, to the best of her knowledge and belief, represented the truth concerning the title thereof was inaccurate and misleading. It is my view that she was well aware of the claimants; some of whom live on the land.

[45] I am in agreement with Counsel for the Claimants that a co-owner of undivided property cannot prescribe against that property, except by interversion. Counsel for the Petitioner has not satisfied the Court that interversion took place.

[46] On the evidence, it is abundantly clear that the Petitioner was in occupation of the land in question under a family arrangement and it could be inferred that the Petitioner was a licensee and as such, incapable of deriving a title by prescription. See: **Edwards v Brathwaite [supra]**. Since the Petitioner's possession of the land in question was, in effect by leave or license; in those circumstances, the Petitioner cannot pray in aid of the provisions of the Supreme Court - Prescription By Thirty Years (Declaration of Title) Saint Lucia Rules or under the provisions of the Civil Code to acquire a possessory title. The cases of **Callendar and Callendar v Dottin [supra]** and **Heslop v Burns [1974] 1 WLR 1241** are illustrative of this principle.

[47] I accordingly dismissed with Costs the Petitioner's application for Prescription under Section 2103A of the Civil Code of Saint Lucia 1957 and the Supreme Court - Prescription By Thirty Years (Declaration By Title) Saint Lucia Rules 1970.

Indra Hariprashad-Charles
High Court Judge
25th day of May 2000