ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 87 OF 1997

BETWEEN:

SONIA PATTERSON

Plaintiff

and

CORA MATTHEWS

Defendant

Appearances:

PR Campbell Esq and Ms C McSheen with him for the Plaintiff
AF Williams Esq for the Defendant

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2000: January 18, February 8,10

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JUDGMENT

[1] MITCHELL, J: This is a case of a mother claiming adverse possession of property against her daughter. Put another way, it is a case of a daughter who claims to have the deed to her mother's house.

[2] The Plaintiff is a married woman aged 39 years, and residing in Barbados with her husband and children. The Defendant is a widow aged 74. The dispute surrounds the house and land at the Long Wall in Kingstown in St Vincent in which the Defendant has lived since 1957, and in which the Plaintiff was brought up and lived in until she moved away and got married (hereinafter called "the Disputed Property").

[3] The Plaintiff's father and the Defendant's husband was the late Conrad Matthews who died in 1967. Conrad Matthews was the brother of the late Athaline Matthews who died in the year 1956. Athaline Matthews owned the Disputed Property. About a year after she died, her brother and his family moved into the Disputed Property. The circumstances in which he moved into the Disputed Property are not in evidence. On 30 June 1960, a Grant of Letters of Administration to the Estate of Athaline Matthews was granted to one Gerald Pollard. Up to the date of his death in 1967 Conrad Matthews lived in the upper story of the Disputed Property. He collected rent from the tenants in the lower story. After the death of Conrad Matthews, his widow, the Defendant, continued to collect the rent from the tenants.

[4] One day in 1973, the Defendant's son Arthur informed the Defendant and the other members of the family including the Plaintiff that the Disputed Property had been advertised for sale in the newspapers. The family could not afford to purchase the Disputed Property. By an indenture dated 15 December 1973, Gerald Pollard conveyed the Disputed Property to one Sydney Hewitt. Around that time, Sydney Hewitt together with Gerald Pollard and Lawyer Nanton visited the Defendant. The Plaintiff had given evidence that when the men came to visit the Defendant, she had agreed to move out of the house and find somewhere else to rent. The Defendant appeared anxious to deny this. The Defendant gave very strange evidence about this visit of the lawyer, the Administrator, and the purchaser. She claimed that she had no such conversation with the men. It was true they came inside and sat down with her, but they told her nothing at all. She had no idea what they wanted. She let these strange men go through her house without saying a word to them. She had no conversation at all with any one of them, then or at any other time. The Plaintiff gave her evidence clearly and honestly, though with obvious emotion considering that she was suing her mother. The Defendant, by contrast, showed her attitude to her daughter to be poisoned. The Defendant did not attempt to be frank and honest in giving her evidence to the court. I found that on this matter of the visit to the house, and other parts of her

evidence, I could not believe the Defendant. I am satisfied that the men came into the house and discussed with the Defendant the sale of the Disputed Property, and the need for the Defendant and her family to vacate it. I accept that the purchaser, Mr Hewitt, used to visit the house from time to time to do work on the premises. I also accept, though the Defendant denies it, that the Defendant used to visit Mr Hewitt to discuss the possibility of her purchasing the Disputed Property. She also sought the forbearance of Mr Hewitt in the matter of her delay in moving out of the Disputed Property. None of this in law would amount to an acknowledgment of title by a squatter, as such an acknowledgment is required by the Act to be in wiriting.

[5] After the death of her husband, the Defendant was a widow bringing up several children on her earnings as a seamstress. None of her children was earning a salary. She could not afford to purchase the Disputed Property. In the year 1980, the Plaintiff got a job as a stenographer. She was earning $500.00 per month. The Plaintiff and her sister Ann Marie went to see Mr Hewitt several times over the following years. They discussed with him their purchasing the Disputed Property so that their mother and family would not have to move out of it. Ann Marie got a job around 1981 and so could contribute to the purchase. Her brother Arthur also discussed the possibility that he might purchase it. They all lived together as a family in the Disputed Property. They would have known all about each other's business. The family fortunes had now changed for the better. The Plaintiff and Ann Marie agreed with Mr Hewitt in early 1984 for the purchase of the Disputed Property for the sum of $12,000.00. The Plaintiff paid down a deposit of $1,000.00 out of her money. The family home was safe, and there must have been rejoicing among the family. But, the Defendant denies knowing anything about the Plaintiff's negotiations with Mr Hewitt and the eventual sale. She claimed that the Plaintiff purchased the property from Mr Hewitt secretly, behind her back. She claimed that at that time she considered the house to be hers. I do not believe her.

[6] Sydney Hewitt died on 28 August 1984. By a Grant of Letters of Administration No.7 of 1985 Celsus Hewitt, his son, became his personal representative. The Disputed Property was valued at the time at $12,000.00. In 1985 the Administrator Celsus Hewitt completed the transaction begun by his late father and sold the property to the Plaintiff for $12,000.00 inclusive of the deposit paid to his father before his death. Ann Marie was no longer willing or able to join in the purchase, so the Plaintiff had to complete on her own. She made arrangements with a bank to borrow the major part of the purchase price. She gave a legal mortgage of the Disputed Property to the bank. By this time her salary was $800.00 per month. The monthly installment on the loan was $522.00. The Plaintiff made all the monthly payments until the loan was paid off. The Plaintiff was living in the house with the Defendant at the time in a normal mother-daughter relationship. I cannot believe that the Defendant did not know that her daughter while living with her had committed the major part of her monthly salary over a period of several years to repay the bank the loan that had been used to purchase the Disputed Property in which the family lived. Additionally, over the years the Plaintiff spent considerable sums of money to improve and repair the house. She constructed an indoor toilet and bathroom, repaired the roof and the floor, built up the wall to the road and installed a gate, and wired the house for electricity. But, the Defendant insisted that the Plaintiff only did this for her own convenience. I am satisfied that the Plaintiff did what she did not only for her own convenience, but because the property belonged to her. A significant event occurred in 1988. The Plaintiff was at that time in New York. The Defendant telephoned her and complained to her that her son Arthur had moved into the Defendant's bedroom with his wife. The Defendant asked the Plaintiff to get rid of Arthur. The Plaintiff wrote a strong letter to Arthur, and as a result Arthur moved out of the house. The Defendant did not deny that this incident occurred or try to explain away the obvious inference that at that time the Defendant and other members of the family considered that the house belonged to the Plaintiff. None of the other children gave evidence in this matter, only the Plaintiff and the Defendant. But, if it was notorious in the family that the Disputed Property belonged to the Defendant and

not to the Plaintiff, surely the Defendant would have had no difficulty in bringing one of the children to support her story.

[7] The Plaintiff moved away from the Disputed Property in about 1990, and married in 1992. She eventually moved with her husband and family to live in Barbados. The Defendant got it into her head that she should take out title to the Disputed Property. She went to see a lawyer, and on 27th March 1995 executed a form of Possessory Title. In St Vincent this takes the shape of a sort of declaration on oath before a Notary Public, and is registered in the Registry of Deeds. By this document, the Defendant swore:

> 1. That for the past 38 years I have been in actual exclusive continous [sic] uninterrupted and unmolested possession of a piece or parcel of land situate at Long Wall, Cane Garden, as the same is more particularly described in the schedule hereto.
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> 2. That during the period that I have occupied the said lands, I have paid no rent nor given any portion of the crop thereof to anyone and have paid all relevant rates and taxes concerning the said land.
>
> 3. That I have possessed the said lands as my own.
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> 4. That I am unaware that anyone other than myself or through me has made any claim to the said lands of which I remain in unmolested possession as aforementioned.

[8] The Limitation Act, Cap 90 of the 1991 Edition of the Revised Laws of St Vincent and the Grenadines provides at section 17(1) that:

> No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action

> accrued to him or, if it first accrued to some person through whom he claims, to that person.

And at section 19 the provision reads:

> … At the expiration of the period prescribed by the Act for any person to bring an action to recover land … the title of that person to the land shall be extinguished.

[9] Counsel for the Defendant submitted that there was only one issue. The evidence was that the Defendant had been occupying the Disputed Property for 40 years, rent free, receiving the rents and profits, and it was not open to the Plaintiff to have purchased the property. Counsel for the Plaintiff submitted that while it was for the Plaintiff to prove the soundness of her paper title, it was for the Defendant to prove that she, the Defendant, had acquired a good possessory title. Counsel for the Plaintiff submitted that while the Plaintiff had proved her root of title, the Defendant had failed to discharge her burden of proving adverse possession for the statutory period.

[10] Adverse possession is dealt with at Halsbury's Laws of England 4th Edition Vol 28 paragraph 997 as follows:

> … No right of action to recover land accrues unless the land is in the possession of some person in whose favour the period of limitation can run (adverse possession) … What constitutes adverse possession is a question of fact and degree and depends on all the circumstances of each case, in particular the nature of the land and the manner in which land of that nature is continually used … The claimant's possession should be sufficiently exclusive and the claimant should have intended to take possession. …

And at paragraph 979 under the rubric "Intention to possess:"

> For there to be adverse possession the person claiming possession should have the necessary *animus possidendi*, that is, an intention to possess the land to the exclusion of all other persons including the owner with the paper title so far as is reasonable and so far as the process of law will allow. …

Megarry and Wade 3rd Edition at page 1006 deal with adverse possession this way:

> Before 1833 'adverse possession' bore a highly technical meaning. Today it merely means possession inconsistent with the title of the true owner, and not, eg, by a trustee on his behalf.

In the case of Charles v. Gittens and Hutchinson (St Vincent CA 6/1991) [unreported] Sir Vincent Floissac CJ delivering the judgment of the Court of Appeal gave a definition of adverse or prescriptive possession of land as:

> continuous, uninterrupted, peaceable, public and unequivocal possession of the land as owner thereof and to the exclusion of the proprietor for at least 12 years whether the adverse or prescriptive possession was as the result of dispossession of or discontinuance of possession by the proprietor.

In the later judgment in the case of Burton v. Elvin (Dominica CA 1/1992) [unreported] the same Chief Justice defined adverse possession slightly differently. He found in that case:

> Prima facie, these acts of ownership and possession indicate that William was in actual, continuous, uninterrupted, peaceable, public, unequivocal

and sole and exclusive possession of the disputed land as owner thereof for more than 30 years.

[11] Applying the law to the facts found above I conclude as follows. I am satisfied that the Plaintiff has a valid deed to the Disputed Property. The burden of proving adverse possession rests on the Defendant. She has given no evidence of how her husband came to be in his sister's property in the first place. Her behaviour over the years in dealing with the Hewitts suggests strongly that she was in occupation with the permission of the owners and never considered herself as occupying adversely to the owners. Her failure to challenge Sydney Hewitt's purchase in 1973 suggests that she accepted his and his predecessor's better title. Her acceptance of his right to visit the premises and to cut down trees and do work on the premises after he had bought the Disputed Property, and her negotiating with him in an effort to purchase, do not support the theory of the existence of any claim of ownership on her part at that time. Her standing by in the 1980's while her daughter the Plaintiff invested $12,000.00 plus other significant sums in the purchase and repair of the property runs against her contention today that she always claimed the property as her own. Her relying on her daughter, the Plaintiff, to put her son out of the house in 1988, is evidence that she accepted her daughter as the lawful owner at the time. Family arrangements for the occupation of property are made on the basis of mutual trust and confidence. Such occupation will be treated differently from occupation by a stranger. The court will not presume that such occupation was adverse to the paper owner. There must be some credible evidence to support such a claim. The Defendant has not satisfied me that her and her husband's occupation of the husband's sister's property, the Disputed Property, was adverse to the sister's estate. Nor has she satisfied me that she held any intention adverse to the paper owner until 1995 after her daughter the Plaintiff had begun living in Barbados. The earliest point at which she appears to have had the necessary *animus possidendi* until immediately before she applied for her possessory title in 1995. Further, the possession of the house by the Defendant was not exclusive, in the sense that the

Plaintiff also occupied the Disputed Property at least up to the date of her departure in 1990. The acquiring in 1985 of title to the Disputed Property by the Plaintiff with the acquiescence of the Defendant brought the paper owner into possession along with the Defendant. Even assuming she had at that time, of which I am not satisfied, been acquiring title adverse to the paper owner, her adverse possession would have come to an end.

[12] There will be judgment for the Plaintiff as follows:

(a) for a declaration that she is the fee simple owner of all that lot piece or parcel of land conveyed by deed No. 1463 of 1985;

(b) for a declaration that she is entitled to immediate possession of the said property;

(c) for an order canceling the Possessory Title dated 27 March 1995 and registered as deed No. 881 of 1995;

(d) for her costs to be paid by the Defendant to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge