ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 247 OF 1996

BETWEEN:

CUTHBERT ANDERSON

Plaintiff

and

ALEXANDER JACK

Defendant

Appearances:

Mr Arthur Williams for the Plaintiff
Ms Paula David for the Defendant

2000: May 8,29,31

JUDGMENT

[1] MITCHELL, J: This was a family dispute over land situate in the village of Layou in the State of St Vincent and the Grenadines.

[2] The Pleadings: The case began with a specially endorsed writ issued in June 1996 in which the Plaintiff claimed that he owned a parcel of land with a house on it at Layou. He had a deed for it dated 5 September 1987. The Defendant was a tenant of the house. He had been given a notice to quit, but did not vacate. In June 1996 the house was partially destroyed by fire, and when the Plaintiff sent workmen to repair the building the Defendant obstructed them. The Plaintiff claimed the reliefs of possession, an injunction restraining the Defendant, and damages.

[3] By his Defence and Counterclaim filed on 1 August 1996, the Defendant raised several defences. The substance of the defence was that the property formed a part of the estate of Jane Fraser, the grandmother of the Plaintiff. She had died on 16 October 1954. She left a will, which disposed of the property in dispute. That will had been probated on 6 February 1956. In the will she left the property to her daughters Violet Fraser and Dorothy Fraser. After the death of Jane Fraser, Dorothy Fraser had exercised all rights of ownership over it. Dorothy Fraser had been the mother of the Plaintiff. Dorothy Fraser had died on 3 July 1985 leaving Violet Fraser as the sole surviving joint owner. The Defendant was in possession with the consent of Violet Fraser. Further or alternatively, the deed of the Plaintiff was not the deed of Conrad Fraser the Executor. Further or alternatively, the Plaintiff is estopped from alleging he had purchased the property because in his letter to the Defendant he had claimed that the property was a gift to him. Further or alternatively, the Limitation Act had extinguished the title of the Plaintiff. Further or alternatively, the Plaintiff's claim had been barred by laches and/or acquiescence as the Defendant had been allowed to carry on business in the premises and to carry out repairs to it and to believe that the Plaintiff would not claim the property. Further or alternatively, the Plaintiff's deed had been fraudulently procured. The deed stated that it had been made to pay the debts, estate and succession duties, but these had amounted to only $69.63, and had been paid since 3 February 1956. The Plaintiff had known that the property belonged jointly to Dorothy Fraser and Violet Fraser. The relief the Defendant sought was a declaration that the Plaintiff's deed was null and void, an injunction to restrain the Plaintiff, and damages.

[4] In his Reply and Defence to Counterclaim filed on 19 June 1998, the Plaintiff pleaded that he and his predecessors in title had been in adverse possession for over 12 years and any right which the Defendant and the person from whom he claimed had been extinguished under the Limitation Act. After the death of Dorothy Fraser on 3 July 1985, Violet Fraser had no interest in the property and could not give the Defendant consent to occupy it.

[5] The Trial: The case came up for trial on 8 May 2000. The court heard evidence from the Plaintiff, a retired man of Layou who resides in Virginia in the USA. Giving evidence for the Defendant were the Defendant himself, Juanita Nesbitt his sister, Len Grant the clerk to his solicitor, and his cousin Rosemary Venkatra. At the close of the case, addresses were adjourned for a week. Counsel prepared written submissions on the law and the evidence together with photocopies of all the authorities on the many legal issues that arose in this case. I must express my gratitude for the thorough research and presentation made by both counsel.

[6] The Facts: Not many of the facts are in dispute. The facts as I find them are as follows. Jane Fraser owned the disputed parcel of land and house until her death in 1954. The Plaintiff and the Defendant are cousins and are both lineal descendents of Jane Fraser. On 6 February 1956 Conrad Verbin Fraser the Executor obtained a grant of probate to the will of Jane Fraser. By her last will, Jane Fraser devised the disputed property to her two daughters, Violet Fraser and Dorothy Fraser. No deed of assent in their favour was ever executed. Violet Fraser was at the time of the making of the will of her mother Jane Fraser living in the USA, where she still lives now 81 years old and ill. She was unable to come to St Vincent to give evidence in this dispute. After the death of Jane Fraser in 1954, only Dorothy Fraser exercised acts of possession over the property. She permitted members of her extended family to occupy the house with her. Both the Plaintiff and the Defendant as boys lived in the disputed property around the time of the death of their grandmother Jane Fraser in 1954. The Plaintiff migrated to the UK in 1962 and returned to St Vincent in 1972. His mother permitted him to occupy the disputed property with his wife and family. He and his wife moved to the USA and vacated the house in 1979. The Defendant was born on the disputed property in 1947. He lived there with his extended family until about the age of 12 when he came to Kingstown to live with his aunt Dorothy Fraser. He did not go back to live on the disputed property until his aunt Dorothy Fraser permitted him to live there in about 1980. After Dorothy Fraser left Layou to live in

Kingstown she left members of the family living in the disputed property. When they all moved away from Layou, she rented out the property to one Tony Young who lived in the top and used the ground floor as a shop. After he left, around the year 1980, she permitted the Defendant to occupy the property after he returned from abroad. The Defendant occupied upstairs and ran a shop downstairs. It was suggested that the Defendant paid Dorothy Fraser rent as Tony Young had done. The Defendant denied he paid rent, and there was no acceptable evidence of his having paid rent. After Dorothy Fraser's death in 1985, the Plaintiff approached the Executor, Conrad Verbin Fraser, then resident in New York, and obtained a Deed of Conveyance to the disputed property. The Plaintiff and his sister, Joan Anderson now deceased, were the only heirs of Dorothy Fraser. The Plaintiff did not take out Letters of Administration to her estate and claim the disputed property as part of her estate. The evidence is that no personal representative to the estate of Dorothy Fraser has as yet been appointed. The Plaintiff went instead to the Executor and obtained from him a deed of conveyance to the disputed property. The other devisee, Violet Fraser, was still alive and living in New York at the time of the deed of conveyance from the Executor to the Plaintiff. The deed recites that the Plaintiff had paid the Executor the sum of $9,587.00 in 1964 to permit the Executor to discharge estate debts. The Plaintiff admitted in cross-examination that he had not paid any money to the Executor or to the estate for the purchase of the property, and the recital of payment in his deed is not correct. On 6 January 1986 the Plaintiff wrote a letter to the Defendant informing him that he now had the title to the property and demanding rent from the Defendant. The Defendant did not pay rent, but, instead, approached his aunt Violet Fraser in New York and by a document in evidence dated 21 April 1986 obtained her written permission to stay in the property. After various lawyers' letters and abortive lawsuits, the result was this suit, the writ in which was issued on 25 June 1996.

[7] There are a few facts in dispute. One important one is the signing by the Executor of the Plaintiff's deed. The Defendant denied that the Executor had ever executed the Plaintiff's deed. If he had, the Plaintiff claims it had been fraudulently

obtained. The Plaintiff admitted in cross-examination that the deed was a voluntary conveyance. No question of it being a conveyance for value without notice arose. Rosemary Venkatra gave evidence to show the deed was a forgery. The deed says it was "signed sealed and delivered" by Conrad Verbin Fraser on 5 September 1987. The death certificate shows Conrad Verbin Fraser died in New York at the age of 79 on 6 June 1987. So, he could not have signed the deed on 5 September 1987. Of course, it may just have been carelessness that caused the solicitor preparing the deed for registration to complete the date of the deed as 5 September, especially as 5 September 1987 is the date of the execution by the witness of the Declaration of Attesting Witness before the Notary in New York. The place on the Declaration for the attesting witness to insert the date of the signing of the deed of conveyance has been left uncompleted. More seriously, Rosemary Venkatra gave evidence that I accept that from the date of the failing of the health of her uncle Conrad in New York in the early 1980s, she managed his affairs. She had been born in the disputed house and had lived there with the extended family until she moved to Kingstown with her aunt Dorothy Fraser at the age of about 11. Conrad Verbin Fraser himself had lived there until he also moved to New York. Rosemary Venkatra's mother is the now 81-year-old Victoria Fraser who has lived in New York from before the date of the will of Jane Fraser. Rosemary Venkatra produced evidence that she deposited for Conrad Verbin Fraser his social security cheques. She produced several documents signed by Conrad in the years before 1987, but none to show his signature in that year. There was no expert testimony on the variations in the signature of Conrad on the disputed deed and his other undisputed signatures. I could not help observing that the signature on the disputed deed has clearly been gone over in the three letters "rad" in "Conrad." Also, the letters "F" in Fraser and "r" in "Conrad" and the "r" on the first occurrence in "Fraser" are completely unlike the way Conrad wrote them in his undisputed signatures. This version of the signature on the 1987 deed is also surprisingly more vigorous and cleanly written than any of the undisputed signatures from the preceding years. We do not know the exact date when the deed was signed. It certainly was not the date given on the deed. If it was really

signed by Conrad, and he signed it in 1987 the year he died, at an advanced age and his signature should have been even weaker than in the earlier documents that he signed. It is also surprising that though Conrad was under the care of his niece Rosemary Venkatra who had witnessed other deeds of his that were put in evidence, the Plaintiff was able to get his deed executed by Conrad without Rosemary Venkatra knowing anything about it. These matters cause great concern and suggest that the signature on the deed was forged.

[8] The Plaintiff's response to this is to submit that the Defendant has no locus *standi* to attack the deed. Only the Executor or his personal representative or Violet Fraser, the other co-owner, he submits, can attack the deed. Counsel submits that the Plaintiff's claim to the property is based on the adverse possession by Dorothy Fraser of the disputed property for many years resulting in the extinguishment of any title of the Executor or of the co-owner Violet. The submission is that the Defendant cannot put up the better title of the co-tenant to defeat the title of the Plaintiff.

[9] There is a factual dispute as to whether Dorothy ever acquired adverse title. The evidence is that she treated the disputed property as family property while she lived. She was in charge of it after the death of her mother Jane Fraser in the year 1954, but she did not herself occupy it, permitting members of the family to occupy it without rent for as long as they needed. Rosemary Venkatra gave evidence that her mother, Violet Fraser, had not abandoned possession of the property. She testified to her mother sending money back to St Vincent to Dorothy for the upkeep of the house. All of this happened many years ago when Rosemary Venkatra was a child, in the 1950s. She would hardly have known what money being sent to St Vincent by her mother was for. The money may as likely have been sent by her mother Violet to Dorothy as a contribution for Rosemary Venkatra's maintenance and upkeep at school in Kingstown. Her evidence was intended to support the letter given by her mother, as co-owner of the disputed property, to the Defendant in 1986 permitting him to occupy the disputed property.

I am satisfied that from the death of her mother Jane Fraser, Dorothy Fraser had the sole management of the disputed property until her death in the year 1985. There is no evidence that she ever claimed to be the sole owner of the disputed property. But, from the time that Violet Fraser left St Vincent sometime before the year 1954, she showed no further interest in the disputed property until she gave the Defendant the letter of permission in the year 1986.

[10] A question arises whether the disputed property was devised by Jane Fraser to Violet Fraser and Dorothy Fraser as joint tenants or as tenants in common. The words of the devise are ". . . my house in Layou to my unmarried daughters, Violet Fraser at present residing in the USA and Dorothy Fraser at present residing in St Vincent." No words of severance are used. This compares with the words of the devise in the first clause of the same will of 30 acres of land "to be divided equally among my ten children . . ." In this later case there are words of severance that clearly indicate that until the land was surveyed and partitioned the heirs held as tenants in common. The land law of St Vincent and the Grenadines is uncodified and is governed by pre-1925 UK principles of land law. The law of St Vincent is that where there are no words or circumstances which either expressly or by implication create a severance, co-owners take as joint tenants. The authority is the St Vincent case in the Court of Appeal of the West Indies Associated States reported as Christian v Mitchell-Lee (1969) 13 WIR 392. The Violet Fraser and Dorothy Fraser were intended by Jane Fraser to be joint tenants of the disputed property. The legal estate in the land was never vested in the intended joint tenants and remained in the Executor, unless either the deed of conveyance to the Plaintiff was valid or Dorothy obtained adverse title against the Executor and her sister Violet.

[11] The Plaintiff raises the defence of the Limitation Act against the Defendant's counterclaim. Counsel for the Plaintiff submits that even if the Plaintiff's deed did not give him a good paper title, the Plaintiff's mother Dorothy Fraser had been in continuous and exclusive possession of the disputed property for upwards of 12

years, and any right which the Defendant, and Violet through whom he claims, was extinguished by virtue of the Limitation Act. Counsels' submissions were based on the sections of the Limitation Act, Cap 90 of the 1991 Revised Edition of the Laws. That act came into effect on 16 May 1988, prior to which date the operating statute was the Real Property Limitation Act, Cap 86 of the 1926 Revised Edition of the Laws. This dispute began in the year 1988, and the claim of the Plaintiff is that by that date the title of Violet had long been extinguished. Both counsel appeared agreed that for the purposes of this dispute the relevant statute is the Limitation Act. While I am not entirely sure that that Act is the correct one, I am satisfied that so far as real property is concerned, the applicable principles do not differ much between the two Acts.

[12] Counsel for the Plaintiff submitted that when one co-owner is in continuous and exclusive possession of the property for over 12 years, the right of the other co-owner is extinguished by virtue of the Statute of Limitations. Counsel stated that he relied on a number of cases, copies of which he handed up. The first was Thornton v France [1897] 2 QB 143. That case dealt with the effect of a mortgage on time running under the Statute of Limitations. The co-tenancy in that case was one of interests in common, not joint interests as in this case. At the bottom of page 154 of the judgment, Chitty LJ explains that the UK Real Property Limitation Act 1837 had abolished the old doctrine that the possession of one tenant in common was the possession of all except where ouster was proved. I was not satisfied that this case helped us. Counsel for the Plaintiff also relied on the old case of Hobbs v Wade [1887] 36 Ch D 553. I could not see how it assisted. The other case relied on by counsel for the Plaintiff was Saunders v Saunders [1887] 19 Ch D 373. It did not seem to assist the Plaintiff in his argument that Dorothy Fraser's exclusive possession had extinguished the title of Violet. Indeed, as neither Violet nor Dorothy ever had title vested in them by the Executor, the question arises whether Violet ever had any title to extinguish.

[13] Counsel for the Defendant in her submissions accepted that one *cestui que trust* may hold adversely against another *cestui que trust*. The authority for this proposition, she submitted, was the Trinidad High Court case of Rousseau v Rousseau 3WIR 291. I note that that case dealt with the provisions of the Trustee Ordinance, Cap 8, and the Real Property Limitation Ordinance, Cap 5 of Trinidad. Section 14 of the Real Property Limitation Ordinance, Cap 5 specifically abolished in Trinidad the rule that possession of one co-heir, joint tenant, or tenant in common is deemed the possession of all. Equally, she acknowledged, it is clear law that a *cestui que trust* may hold adversely to a trustee. The authority for that admission she submitted was the case of Bowes v Spencer 2 WIR 122. I pause to observe that that case dealt with land subject to a trust for sale. Further, in the special facts of that case the *cestui que trust* was found to have entered into possession of the land outside of the will and not pursuant to any direction in the will or permission of the Executor, ie, as trespasser. In those circumstances, the appellant was understandably held to have acquired a possessory title to the land. Counsel for the Defendant further submitted, however, that in order for the Plaintiff to establish adverse possession, he must prove that the person through whom he claimed, his mother Dorothy Fraser, had the requisite *animus possidendi*. Her authority for this last submission was the St Vincent Court of Appeal case of Pollard v Dick 2 OECS LR 239. That was a case where the respondent took possession of the land in 1959. He purchased it from someone who held himself out as owner. He discovered this was untrue. He tried to get the true owner to sell it to him and failed. Up to 1967 he was still trying to recover his money from the seller. At the trial, he said that if he had to pay for the land again he would do so at the 1958 price. The Court of Appeal held that he had failed to prove the acquisition of title to the land. The appellant could not be dispossessed unless the respondent obtained possession *animus possidendi*. The point here is that counsel for the Defendant submitted that in the absence of any evidence that Dorothy Fraser had ever claimed the disputed property as her own, ever denied the interest of Violet, or had ever used the property to the exclusion of Violet, then the court might find that she had never

had the requisite *animus possidendi* and she had never acquired a possessory title to the property. If, therefore, the Plaintiff's deed was bad, he could not claim now, as he had pleaded in his Reply, that Violet's title had been extinguished by the Limitation Act. She submitted that the Plaintiff had at no time any reason to believe that Dorothy Fraser had sought to hold the land adversely to the Executor. And, she submitted, if Dorothy's possession was not adverse as against the Executor it was not adverse against Violet Fraser. Further, if Dorothy acknowledged the title of the Executor she must also have acknowledged the equity of her co-*cestui que trust* which existed under the Executor's title to the legal estate.

[14] The UK Limitation Act, 1939 specifically abolished the equivalent provision in the UK Real Property Limitation Act, 1833 dealt with in the Trinidadian Rousseau case [supra]. The UK 1939 Act provided by section 7(5) that a beneficiary is prevented from acquiring a title by adverse possession against a co-beneficiary or the trustee. There is no similar provision in the Limitation Act, Cap 90 of St Vincent. The nearest equivalent is paragraph 9 of the Schedule to cap 90 which provides:

> Where any settled land or any land held on trust for sale is in possession of a person entitled to a beneficial interest in the land or in the proceeds of sale . . . no right of action to recover the land shall be treated for the purposes of this Act as accruing during that possession to any person in whom the land is vested as tenant for life, statutory owner or trustee, or to any other person entitled to a beneficial interest in the land or the proceeds of sale.

The meaning if that paragraph is clear. A beneficiary under a trust for sale or a settlement cannot acquire adverse title against a trustee or another beneficiary. Under the UK Law of Property Act, 1925, land previously held by co-owners became subject to a trust for sale. Because of the state of the land law of St

Vincent, a joint interest in land exists as a legal interest and not as a trust for sale. As there is no such similar provision in St Vincent, land devised by a testator to joint legatees is held by the Executor on trust to vest it in them as joint legal owners of the land. There is no trust for sale of such land in St Vincent. It may be noted that under the Administration of Estates Act, Cap 377 land of an intestate in St Vincent held by an Administrator is subject to a trust for sale. The provisions of paragraph 9 of the Limitation Act will then apply. A beneficiary of an intestate is not normally able in St Vincent, short of ouster, to acquire adverse possession against the other beneficiaries. There is thus a lacuna or gap in the law that does permit a beneficiary under a will of a joint interest to acquire adverse title against a trustee or another beneficiary. The modern reforms in St Vincent's land law effected by the Limitation Act and the Administration of Estates Act do not extend in this respect to land devised in a will, only to land left by someone dying without a will. But, does this situation assist the Plaintiff?

[15] Counsel for the Defendant makes various other submissions under the provisions of the Administration of Estates Act, Cap 377 and the Trustee Act, Cap 383. They deal with the right of a person to recover the estate or interest to which a voluntary conveyance relates and the right to follow property to which an assent or voluntary conveyance relates. I do not deal with these issues as I do not consider that they properly arise in the circumstances of this case. No personal representative, or even beneficiary, is attempting in this case to recover part of an estate.

[16] In this case, the Plaintiff in his original statement of claim claimed possession of the disputed property as his entitlement under his deed. I find that the deed purporting as it does to have been executed by the Executor on a date several months after he is known to have died, was not the act of the Executor. Even if it was the deed of the Executor, I find that it was a voluntary deed. It can be set aside under the provisions of section 17 of the Registration of Documents Act, Cap 93. Additionally, I find that it is a fraudulent deed. The Executor was obliged

to vest the property in the two devisees Dorothy Fraser and Violet Fraser. Dorothy Fraser having died first before he did so, and the interests being joint interests, he was obliged to vest the property in Violet. Instead, he vested it in an admittedly pretended conveyance on sale in the son of Dorothy. He had no power or authority as Executor to give away Violet's property by a voluntary conveyance to a stranger to the will. The Plaintiff was aware of all of this and could not benefit from this wrongdoing on the part of the Executor, which indeed he claims to have encouraged and arranged. Following on the Defendant's Counterclaim for the avoidance of the Plaintiff's deed based on the interest of Violet, the Plaintiff in his Reply claimed that Dorothy had been in adverse possession of the disputed property and that Violet's interest had been extinguished. I find that Dorothy's possession was not adverse to Violet or to the Executor. The Executor and the other beneficiary Violet had gone away to live in the USA leaving only Dorothy at home. She lived for the rest of her life after her mother's death in Kingstown. She made no effort adversely to occupy the disputed property. Other than for a short period when she rented it out before the Defendant came into occupation, she allowed members of the extended family to use the disputed property rent-free. The disputed property was treated by Dorothy as "family land" and not as her own property. She put the Defendant into possession and left him there rent-free for several years before she died. Though the law of St Vincent permits her to have taken possession adverse to her sister, her co-devisee, I find that she never did so. In the circumstances, the Plaintiff is not entitled to the relief he claims. He is not entitled to possession of the disputed property, the injunction, or the damages he claims. The Defendant is entitled on his Counterclaim to a declaration that the deed of the Plaintiff number 307 of 1988 is null and void and to an order canceling it. An injunction is granted to restrain the Plaintiff his servants or agents from entering or crossing the said property. Where then does title in the disputed property rest? It remains in the estate of Jane Fraser for the benefit of Violet. The law is that when an Executor dies not having completed the administration of the estate entrusted to him, his executor if he has one succeeds to his powers and

duties. If there is no Executor of the Executor, then someone will have to apply as an Administrator de *bonis* non.

[17] There will be judgment for the Defendant in the above terms with costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge