ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 137 OF 1994

BETWEEN:

LESLIE OWEN GORDON

Plaintiff

and

VINCENT ANDREWS

Defendant

Appearances:

Samuel Commissiong for the Plaintiff
Paula David for the Defendant

2000: October, 11, 18, 30

JUDGMENT

[1] MITCHELL, J: This was a land dispute between two step-brothers. It concerned a property with a house on it at Arnos Vale in St Vincent.

[2] The pleadings reveal that the Plaintiff claimed that in 1974 his mother had given him the property, and he had left the Defendant in charge of the property with the right to use it and to ensure the taxes were paid. Instead, he claimed, the Defendant had in 1978 obtained a fraudulent title to the property from the Defendant's father after the death in 1976 of the Plaintiff's mother. In preparing his Defence, The Defendant, however, did not rely on this deed. He must have realised that he could not rely on the fraudulent Grant of Letters of Administration and the fraudulent deed that proceeded from it. He pinned his hopes to have his title to the property confirmed, not based on his deed of 1978 but on the long period of time that the Plaintiff took to bring proceedings against him. His filed

Defence was that the Plaintiff's title has been extinguished by the Limitation Act. He did not plead that he was a tenant at will or a squatter, but that he had supported his father and stepmother when the Plaintiff failed to do so, and that he had been in possession since 1978 paying the taxes for the property. The Plaintiff, by contrast, claimed in his Reply that the Defendant could not rely on the Limitation Act, as he was a trustee for the Plaintiff.

[3] Giving evidence for the Plaintiff was the Plaintiff himself and his fiancée. They came from Brooklyn in New York, where they live, to give the evidence in this case. The Defendant gave evidence on his own behalf. A number of exhibits were put in evidence without objection. From the evidence I find the following facts. The Plaintiff was born at Barralouie in St Vincent on 2nd November 1939 to Emily Andrews or Gordon as she then was. Emily Andrews moved to Kingstown to find work after the Plaintiff was born. She had no other child. The Plaintiff was brought up by his grandmother with assistance from his mother. When the Plaintiff was 15 years of age, his mother took him to live with her in Kingstown and sent him to secretarial school. Emily Andrews worked with the Cotton Ginnery, which has now closed down. The Plaintiff soon left school and found himself a job. Emily Andrews married Albert Andrews around 1955 or 1957. Albert Andrews worked for a while as a Prison Officer, but lost his job. The Defendant was the son of Albert Andrews and was born in 1945. On 10 September 1960, Emily Andrews, the mother of the Plaintiff, purchased by registered deed from Theophilus Warner one and a half lots of land at Arnos Vale in St Vincent. It is not disputed that she subsequently purchased another half lot of land, bringing her holding to a total of two lots of land. Her husband had no interest of any kind in the property. The Plaintiff and the Defendant lived as boys with Albert and Emily Andrews at Emily Andrews' home at Arnos Vale. In 1960, the Plaintiff and his stepfather Albert Andrews emigrated together to find better opportunities in England. Before he left, Albert Andrews put his son, the Defendant, who was then about 15 years old to live elsewhere with his cousin. Emily Andrews was left alone in the house at Arnos Vale. Her son and her husband were living together in London, and found

work in factories. Her son and her husband sent money back to her. After a year, Emily Andrews shut up the house at Arnos Vale and went to England to join her son and her husband. The property was left unoccupied while Emily and Albert Andrews were in England. The Plaintiff soon moved out of the family flat in London and left his mother and stepfather with privacy. Emily and Albert moved back to St Vincent after about 8 to 10 years of living and working in England. That would have been about 1970. They moved back into Emily Andrews' house at Arnos Vale. After they returned to St Vincent, Albert never found regular work. He was ill, and appears from the Defendant's evidence to have suffered from hypertension and diabetes. The Plaintiff continued to support Emily by sending back to St Vincent regular remittances of money. While his stepmother and father were alive, the Defendant never lived in the house in dispute; he became a taxi driver and lived on his own at various places about St Vincent. He began to have his own children.

[4] The Plaintiff returned to St Vincent on a Christmas vacation in 1974. While he was in St Vincent, his mother, Emily Andrews, presented him with a deed of gift that she had previously that year had prepared. By this deed she transferred the fee simple in the property which she owned at Arnos Vale. The Plaintiff testified that his stepfather, Albert Andrews, was present at the dining table when his mother gave him the deed. Albert Andrews is not here to speak for himself. Before the Plaintiff left, he had a falling out with his stepfather Albert Andrews. The Plaintiff says it was over the way Albert Andrews treated the Plaintiff's mother. There was a suggestion from the defence that it might have been because of the deed. At the end of December, the Plaintiff left St Vincent and returned to England. I am satisfied that his stepfather Albert Andrews knew about the deed by this time. The Plaintiff's mother died two years later in 1976. The Plaintiff was not told by his stepfather or stepbrother of the death of his mother. He learned of the death some two months after she had been buried. The falling out in 1974 may explain why Albert Andrews did not telephone or write to his stepson about the death of his mother. Albert Andrews was also by this time a very sick man. He was shortly to

lose both his legs to diabetes and hypertension, and he died not long after his wife, in 1979. The Plaintiff says he continued to send money back to his mother and stepfather after he went back to England in 1974. He claims that even after the death of his mother he continued occasionally to send money back to his sick stepfather. That may well have been so. Certainly, the Defendant never supported his father. He has no idea, as he testified, even of how his father supported himself.

[5] The Plaintiff's next trip back to St Vincent was in 1989, 15 years after his mother had given him the property. What he was not aware of either before or during that visit was that on 5th June 1978, just before he died, Albert Andrews had taken out Letters of Administration to the Estate of his late wife. On 8th June 1978, Albert Andrews, acting as Administrator and beneficiary of the Estate, transferred the properties in dispute to the Defendant by way of a deed of gift. The Defendant got the lawyer to prepare both the application for the Letters of Administration and the subsequent deed of gift that was the objective of the Grant. He says that his father instructed him to bring the lawyer to him, but his father is not available to confirm this. What Albert Andrews did was quite wrong. He must have concealed the existence of the Plaintiff from the lawyer who prepared the application for Letters of Administration and the subsequent deed. This concealment is evidence that he knew that what he was doing was wrong. The lawyer would have advised him that if Emily had died intestate leaving a child, that child was also an heir to the land. Neither the Grant nor the deed makes any mention of the Plaintiff, and both documents wrongfully claim that Albert was the sole heir of Emily. What the Defendant did in taking title to his stepbrother's property was also quite wrong. Albert Andrews died on 10th August 1979. Though the Defendant disputes it, I have no doubt that the Plaintiff spoke to him and wrote to him after the death of Emily Andrews and after the death of Albert Andrews. I accept that he wrote the Defendant and told him that he had his permission to occupy the property until he needed it. But, the Defendant never replied to these two letters and concealed from the Plaintiff the fact that he had been given a deed to the Plaintiff's property

by his father. I find as a fact that the Defendant had knowledge that his father had defrauded the estate of Emily Andrews. That is the only explanation for his behaviour whenever the Plaintiff attempted to approach him over his occupation of the property. Indeed, the Defendant admitted to organising the lawyer who prepared the application and the subsequent deed. The Defendant would have been actively involved in concealing the existence of the Plaintiff from the lawyers. The Defendant went into occupation under and by virtue of his fraudulent deed. It would not have been until his lawyers did the research after the writ in this action was served on him in 1994 that the Defendant would have realised that he could not rely on his deed. Indeed, during his crossexamination, he still could not believe that his deed was not good. It was his reliance on his deed that caused him to repulse the Plaintiff in 1989 and 1991. He had no thought of acquiring title by adverse possession until he received advice about the effect of the fraud of his father in 1978. Then, for the first time, he advanced a claim of exclusive and undisturbed possession adverse to the Plaintiff for a period in excess of 12 years.

[6] Upto the time he gave his evidence, he was clearly relying on his deed being stronger than the Plaintiff's deed. In St Vincent this is not an unusual contest. After having tried scores of land disputes in this court, I have come to suspect that there are few parcels of land in this State that do not have two or three current deeds, happily issued by various conveyancers to different persons, awaiting an opportunity to be tested to determine which deed is the "best." The people of St Vincent and the Grenadines are not well served by the present archaic system of recording and dealing in titles to unsurveyed parcels of land: by frequently poorly and hurriedly drafted deeds of conveyance, indifferently indexed, housed in cramped and inaccessible quarters, stored in files and books kept in cupboards and boxes on the floor of the Registry, incapable of being accessed by those unhappy persons fruitlessly attempting to search a title.

[7] The Defendant, having received his deed in 1978, had gone into occupation of the property in dispute sometime after the death of his father in 1979, say by 1980 at

the latest. The Plaintiff had learned on his visit in 1989 that the Defendant was living in Georgetown, but had left some of his children in occupation of the property in dispute. The Plaintiff testified that he found children of the Defendant occupying the premises when he went to visit them in 1989. The Plaintiff had held the deed to the property since the year 1974. Neither on his visit in 1974 nor subsequently did the Plaintiff apparently attempt to put his name on the tax roll as owner of the property. The Defendant held the deed given to him by his father from the year 1978. He had the title to the property on the tax roll changed to reflect his ownership, and I accept that he paid the taxes from the time he got the deed. At no time did he reveal to the Plaintiff what his father had done. When the Plaintiff was in St Vincent on vacation in the year 1989, he met his stepbrother the Defendant and spoke to him. He told the Defendant that he would be needing the property. The Defendant's reply was a cryptic, "That can't happen." The Plaintiff, now suspicious, did not leave matters for long.

[8] The Plaintiff returned to St Vincent two years later, in 1991. He spoke to the Defendant again about the property. The Defendant was not helpful, and there was an incident between them. As a result, the Plaintiff consulted a lawyer. The lawyer turned out to be the lawyer who had prepared the deed for the Defendant, and the Plaintiff got nowhere during this visit in 1991. The Plaintiff returned to St Vincent on a visit in 1993. The lawyer he had consulted and who had previously worked for the Defendant refunded the fees to him and he consulted new lawyers during this visit in 1993. The result was the bringing of this case in 1994. By this time the Defendant had been occupying the property for some 14 years since the year 1980.

[9] The time limit for actions to recover land is set by section 17 of the Limitation Act, Cap 90 of the Laws of St Vincent and the Grenadines. Section 17(1) provides:

> 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 other person.

Time thus begins to run against the true owner from the accrual of the cause of action to the plaintiff. Time begins to run from the moment a true owner is dispossessed, ie, driven out of possession by another, or the owner has discontinued, ie, abandoned, his possession. In neither case is it necessary that the owner should be aware that he has been dispossessed or that another has taken possession. Adverse possession is a question of fact, depending on all of the circumstances. Comparatively trivial acts of possession where the owner has no immediate use for the land are not likely to be persuasive. Adverse possession depends also on the relationship between the owner and the squatter. There may be evidence that there was a licence. The main rule is that the squatter must intend to occupy the land and to exclude others, but he need not intend to acquire title. The squatter's possession must always be exclusive, and if he cannot prove exclusive possession the owner is deemed to be in possession.

[10] Counsel for the Plaintiff submitted that the Defendant occupied the property under a family agreement that amounted to a licence. He relied on the cases of Helsop v Burns (1974) 3 All ER 406 and Cobb and another v Lane (1952) 1 All ER 1199. The first case is distinguishable in that the court found that the defendants had from the outset entered into occupation not as tenants at will but as mere licensees with no right to exclude the owner from the premises. That case really turned on whether the occupation of the defendants was as tenants at will or as licencees. Here, there is no evidence, other than the disputed testimony of the Plaintiff that he wrote the Defendant two unacknowledged letters after the death of the Defendant's father, giving him permission to occupy the property. In the second case, the court found that the defendant had gone into occupation of his sister's house under an agreement to keep the house intact. The question for the court was whether the defendant was a tenant at will, in which case under the Limitation Act that tenancy at will was deemed to be determined at the expiration

of one year, and that after twelve further years' possession by him without any notice in writing, the estate of the landlord would have been extinguished, or whether the defendant had only a personal privilege with no interest in the land. The claim of the defendant to have been a tenant at will was dismissed. The question in all these cases, said Denning LJ, in his judgment in Cobb's case, is one of intention: Did the circumstances and conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land? In this case before us, there is no real evidence of the parties having come to any family agreement for the occupation of the premises by the Defendant. There could have been no agreement with the Defendant after the death of Albert Andrews in 1979 because the Defendant had got his deed to the property since 1978. Prior to the death of Albert Andrews, the only person the Plaintiff could have entered into an agreement for the occupation of the property in dispute was Albert Andrews. From 1980, the Defendant would have felt he was in possession as owner under his deed of gift of 1978. If the Plaintiff had enquired, he would have found that the Defendant believed he had a perfectly good deed for the land and did not consider that he was occupying the property under any licence or by virtue of any family relationship. The Plaintiff simply lived away from St Vincent for too long, and took steps to recover the property which had been deeded to him in 1974 only 20 years later in 1994 without once having put in place any agreement with the Defendant. The Defendant was neither a licensee nor a tenant at will.

[11] Did the Defendant hold the property in dispute as a trustee for the Plaintiff, as claimed by the Plaintiff? It was in his filed Reply that the Plaintiff raised the claim that the Defendant holds the property as trustee for him. There was no explanation in the pleadings or in the legal submissions of counsel for the Plaintiff how the Defendant came to be a trustee for the Plaintiff. There is no question of an express trust in this case. On this trust issue, I assume that the Plaintiff is placing reliance on section 23(1) of the Limitation Act which provides:

> No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action
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> (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
>
> (b) to recover from the trustee any trust property, or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.

The Defendant's father Albert Andrews was the Administrator appointed by the court under the Administration of Estates Act to administer the estate of the Plaintiff's mother according to law. As such he was a trustee under that Act. The mother had since 1977 divested herself of the property in dispute, and transferred it to the Plaintiff. The court included the property in dispute in the estate, based on the facts presented to it by the Albert Andrews. By virtue of the Grant the Administrator was held out as having the authority to deal in the title in the property. That Grant could have been declared fraudulent and set aside, but this was not done as the Plaintiff was not aware of it. If the property had not previously been transferred to the Plaintiff, but instead had passed normally on the intestacy of Emily Andrews, the Administrator would have held the property in trust as to a portion for himself and the greater beneficial interest for the Plaintiff. If Albert Andrews had then fraudulently sold the property to a bona fide purchaser for value without notice of the fraud, there would be a good argument that the purchaser had acquired a good title. Albert Andrews would have been liable to the Plaintiff in damages for his fraud, but the purchaser from the Administrator might well have been able to claim that the fee simply had been vested in him. If Albert Andrews, holding the property as Administrator, had fraudulently given the property by a deed of gift to his son, that deed of gift could have been set aside. He would have gone into possession of the land with knowledge of the fraud of his father, and under the colourable title of his fraudulent deed, and as such he would have been caught by section 23 of the Act: he would have been privy to the fraud of his

predecessor in title, his father the Administrator. He would not be permitted to rely on the defence of the Limitation Act. However, in this case no issue of trust arises; the property did not pass by the fraudulent and ineffective deed of gift to the Defendant; he has no title to hold in trust for the Plaintiff.

[12] The issue in this case is whether or not the Plaintiff owner of the land had lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. He had never personally and physically been in possession of the property, but he had legally been in possession of it through his mother and his stepfather's possession while they were alive. In the leading case of Pollard v Dick 2 OECS Law Reports 239, which was a case where the respondent had gone into possession under a belief that he had in fact purchased the property, the Court of Appeal held:

> Now in order to acquire by the Statute of Limitation a title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. I shall deal with discontinuance of the appellant first. The evidence shows that the appellant filed an action against the respondent in 1963 to recover possession of the said lot of land, and that he has never ceased paying land tax in respect of the land – a fact admitted in evidence by the respondent. This evidence shows clearly that there has never been any intention on the part of the appellant to part with the possession of the land. But if the appellant has lost his right to the land it must not be by reason of any withdrawal or discontinuance on his part, but by reason of his being dispossessed by the respondent, and the appellant could not be dispossessed unless the respondent obtained possession *animus possidendi*, that is, occupation with the intention of excluding the owner as well as other people. The evidence that the respondent never had any such intention is extremely strong. Let us look at it. First of all, when he took possession of the land in 1959, he never had any such intention to dispossess the rightful owner. As far as he was concerned, he had

> purchased the land from someone who held out to him that he was the owner of the land. When he endeavoured to get the title to the land he discovered that this was untrue. He then tried to get the true owner of the land to sell it to him. When this failed he tried without success to recover his money from [the vendor.] If he formed the intention to dispossess the rightful owner after he failed to get them to sell him the land he could not, in point of time, bring himself within the Limitation Ordinance because this intention would have been formed sometime after 1963, and perhaps as late as 1967 when he was still trying to recover his money from [the vendor.] I do not think, however, that he ever formed such an intention. Indeed, at the trial, he said in cross-examination that if he had to pay for the land again he would do so at the 1958 price. In my view, the respondent has failed to prove the acquisition of a title to the lot of land. The evidence is not enough to prove that the appellants have been dispossessed for the statutory period of the land which unquestionably was theirs.

As in the case of Pollard v Dick, the Defendant in this case did not go into possession either as a tenant at will, or as a tenant holding over, or as a squatter. He considered that he had a deed to the land from his father and he relied on his deed at all times. Up to the time of the filing of his defence in this case, unlike in Pollard v Dick, the Defendant in this case clearly had the intention to exclude the Plaintiff as well as other people. He never contacted the Plaintiff and asked him to sell it to him. He never acknowledged, either in writing or even orally, that the Plaintiff was the true owner. He had formed the intention to dispossess the true owner from the time he helped his father to procure the fraudulent deed for him, as early as the year 1978. He never admitted at the trial or at any other time to any person that the Plaintiff had any right or claim to the property. He did not conceal his claim to the right to occupy the property. He not only published in the Registry of Deeds to the world at large his own deed, he also recorded on the public tax roll of property owners his ownership of the property in dispute.

[13] "Limitation" means the extinction of stale claims and obsolete titles. The principle is that rights of action are limited in point of time, and are lost if not pursued within due time. In relation to land, it is in the public interest that a person who has long been in undisputed possession should be able to deal with the land as owner. It is more important that an established and peaceable possession should be protected than that the law should assist the agitation of old claims. A statute which effects this purpose, it has been said, is "an act of peace. Long dormant claims have often more of cruelty than of justice in them." In our case, the wrong doing of the Defendant was, no doubt, morally reprehensible. In most cases of the stealing of someone else's property this is not a disqualification, it is almost a pre-requisite for eliminating the title of a rightful owner.

[14] Given the facts found above and the law as I have found it to be, the court is obliged to dismiss the claim of the Plaintiff. The Defendant is entitled to his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge