**GRENADA**

**IN THE HIGH COURT OF JUSTICE**

**CIVIL SUIT NO. 590 OF 1999**

**BETWEEN:**

**DERICK STEELE**

Plaintiff

and

**ERROL MAITLAND**

Defendant

**Appearances:**

Mr. E.C. Wilkinson for Plaintiff.
Dr. F. Alexis for Defendant.

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2001: February 5, 14
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**JUDGMENT**

[1] **ST. PAUL, J.**: On 14th December, 1999 the Plaintiff filed a Writ of Summons asking for the following:

1. A Declaration that the Plaintiff is entitled in fee simple absolute to all those two lots pieces or parcels of land numbering lots 5 and 6 of a subdivision of a portion of Grand Anse Estates and situate in the parish of Saint George and State of Grenada containing by admeasurement Eleven Thousand Square Feet (11,000 Sq. Ft.) and Eleven Thousand Two Hundred and Seventy Square Feet (11,270 Sq. Ft.) English Statute Measure respectively;

2. An injunction restraining the Defendant whether by himself, or by his agents or servants or otherwise, howsoever, from trespassing on the

Plaintiff's two lots of land and from building any structure, laying of a fencing of any kind whatsoever on the Plaintiff's land;

3. An order that the Defendant do forthwith pull down and demolish and remove the building and split wood fence recently erected on the Plaintiff's two lots of land or any part thereof;

4. Recovery of possession;

5. Damages;

6. Further or other relief;

7. Costs.

[2] On the 11th January, 2000 the Plaintiff filed a Statement of Claim.

[3] On 24th January, 2000 the Defendant filed his Defence in which he claims to have been in adverse possession of the land in question for a period in excess of 12 years next before the action was brought, having been in possession since or on about January 1985. He pleads section 4 of the Limitation of Actions Act (Cap. 173) of the 1990 Revised Laws of Grenada.

**THE LAW**

[4] Sections 4 and 27 of the Limitation of Actions Act (Cap. 173) provide as follows:

> "4. No person shall make an entry or distress, or bring an action to recover any land, but within 12 years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to some person through whom he claims, or, if the right has not accrued to any person through whom he claims, then within 12 years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to the person making or bringing it."

> "27. At the determination of the period limited by this Act to any person for making an entry or distress or bringing an action, the right and title of that person to the land for the recovery whereof the entry, distress, or action, might have been made or brought within that period shall be extinguished."

[5] The Plaintiff must prove on the balance of probability that the Defendant has not been in possession of the land *nec vi, nec clam, nec precario* for a period of 12 years. If he fails to do so then his claim must fail.

**THE EVIDENCE FOR THE PLAINTIFF**

[6] The Plaintiff, Derick Steele, said he bought both lots of land from Joseph and Mary John on 18th September, 1998. When he bought there was nothing but bush on the land. He had men cut down the trees. The land was not cultivated and there were no derelict vehicles or water tanks on the land as claimed by the Defendant. On or about October 1999 he saw a building being erected on the land. On seeing that he contacted the Defendant and told him he was building on his (the Plaintiff's) land. The Defendant denied he was doing so. Subsequently the Defendant placed a picket fence on the land.

[7] Joseph John said he is a Civil Engineer and Farmer. On or about September 1998 he sold two lots of land (lots 5 and 6) to the Plaintiff. He bought that land from a Mrs. Daniel through her agent Mr. William Campbell. Prior to purchasing the land he visited same. The land was overgrown with bush. As a result he was not able to identify the boundaries. As a result he employed Alan Robertson, a Land Surveyor and gave him certain instructions. That was late 1997. The surveyor cleared the boundary lines. In early 1998 he (Joseph John) spoke to the Defendant whose land was in boundary with the said land and told him he was purchasing the land. The Defendant asked him if he was buying from Bill Campbell and he said he was. The Defendant at no time said he owned that land. He asked the Defendant if he wished to buy the land but the Defendant told him he had no money at the time. That was between June and July, 1998.

[8] Alan Robertson, an Engineering Surveyor, said he did locate the boundary marks for lots 5 and 6. He found the land very, very bushy. The bush was extremely thick. There were no derelict vehicles. His first survey of the land in question was in July 1997. There was no building on the land then.

[9] Henry Ogilvie, a licensed Land Surveyor, said he did survey work for the Plaintiff on the Grand Anse property in December 1999. He did not then complete the survey as the Defendant stopped him continuing. He however said he was familiar with the land in question. He went back there in 1970 when he did a sub-division of a portion of the Grand Anse Estates. He went back there in 1997 when he did a topographic survey for the Defendant. There was nothing on lots 5 and 6. There was no cultivation on the lots. The lots were covered in bush.

[10] Andrew Bierzynski, a businessman, said he is a Director of Bernard Developments Limited. That company owns lands at Grand Anse. He knows the land in question very well. Adjoining his company's land is land owned by the Plaintiff. He visited his company's land very often. He began doing so when the company acquired the land in 1968. He last visited the land about 2½ weeks ago. During his visits the state of the Plaintiff's land was covered in bush. There were briar and picker trees on the land. There was nothing else on the land. Between 1985 and 2000 he saw no cultivation on the Plaintiff's land. He never saw the Defendant on the land nor did he see anyone working it. He at one point saw surveyors surveying the land.

**THE EVIDENCE FOR THE DEFENDANT**

[11] The Defendant said he has been occupying that land since 1985. That land is a little behind the Bird's Nest Restaurant owned by the Plaintiff. The restaurant is on the flat and the land he occupies is on the hill behind that restaurant. He began cultivating that land in February 1985. He had Albert Mason plant melon, peas, corn and pumpkin on the land. When he went on the land it was bushy. It had cow bush. He first went on that land in 1969 but started cultivating it in 1985.

Besides cow bush there was nothing else on the land. The Plaintiff spoke to him in 1999 about his being on the land. Between February and March 1999 he erected a building on the land. The land in question is One Thousand Five Hundred Square Feet (1500 Sq. Ft.). He had about four boats on the land. He put them there in 1995. He has a car mart in boundary with that land. He operated that car mart since 1969.

[12] Noreen Chandler said she and the Defendant were married in 1972. They divorced in 1980. During their marriage they lived at Grand Anse, next door was a vacant piece of land. The piece of land occupied by the Defendant is on top the hill directly above the Defendant's car mart and in boundary with the Bird's Nest Restaurant, owned by the Plaintiff. The Defendant began occupying that land somewhere around 1986. The Defendant used to plant short crops such as peas, potatoes, pumpkins and melon on that land. She herself picked peas on that land. One Mr. Mason came to help the Defendant cultivate that land. Besides the crops she mentioned she saw nothing else on the land in 1986.

[13] Albert Mason said he did cultivate the land for the Defendant. He started on 1st January, 1985 and worked the land up to 1990. When he started working the land it had trees which he cleared and burnt.

[14] Cephas Pilgrim said he knew the Defendant to have been occupying the land in question from sometime between 1985/6. The Defendant had crops growing on that land. Crops like pigeon peas and corn. He himself had on occasions helped himself to some of the crops.

[15] Carla Briggs said she knew the Defendant to have been occupying that lot of land with the concrete building since February 1986. It was at the time cultivated with peas, ground provisions, sweet potatoes and yams. It was cultivated by one Mason.

[16] Timothy Redhead said he knew the Defendant to have been linked with the property in question since about 1995. Scotiabank had an arrangement with the

Defendant to store repossessed vehicles on the car mart site. At that time Scotiabank had repossessed about four boats known as "Herbie Cats" which they stored on the piece of property to the back of the car mart, going up the hill.

[17] The question to be answered is: Has the Defendant been occupying that land *nec vi, nec clam, nec precario* to give him posssessory title within the meaning of section 4 of the Limitation of Actions Act?

[18] The Plaintiff has not shown that the Defendant has not been occupying part of his land since 1985. The evidence is that the Plaintiff only gives evidence of the situation as from 1997. However, Mr. Bierzynski said he has been visiting the area since 1968 and his last visit was 2½ weeks ago and all he saw was very thick bush. In some places the bush was twice his height. (He is about 6 feet).

[19] The Plaintiff has shown that since 1997 there was the intention not to abandon the land. In **Bristow v Cormican** [1878] 3 A. C. 641 at 657, Lord Hatherly said:

> "Put at its highest against the Plaintiffs it is clear law that the slightest acts by the person having title to the land or by his predecessor in title, indicating his intention to take possession, are sufficient to enable him to bring an action for trespass against a Defendant entering upon the land without any title unless there can be shown a subsequent intention on the part of the person having the title to abandon the constructive possession so acquired."

[20] The Defendant in the defence filed on 24th January, 2000 claims a possessory title to Eleven Thousand Square Feet (11,000 Sq. Ft.) of land at the back of and to the top of or up the hill from the respective premises of Maitland Car Mart and the Bird's Nest Restaurant on which the Defendant erected a concrete building in or about February, 1999. However, in his evidence the Defendant said:

> "The land in question is about 1500 square feet... . I just average the land I occupy is 1500 square feet."

[21] The Defendant claimed a possessory title to the whole of the land and advanced no alternative claim to any part of the land as distinct from the whole Eleven Thousand Square Feet (11,000 Sq. Ft.). The Defendant has failed to prove a possessory title to the Eleven Thousand Square Feet (11,000 Sq. Ft.) as claimed.

[22] It is my view that the Defendant who owns a few parcels of land and who is also a businessman and the proprietor of a Newspaper must know the difference between 11,000 and 1,500 Square Feet of land.

[23] What is more, all the witnesses for the Defendant claim that they know the Defendant occupied the land because he had Albert Mason cultivating melon, peas, corn and potatoes for him as far as they are aware. If I accept the Defendant's evidence that he has been on the land since in that he began cultivating the land since February 1985 and I am also to accept that Alan Robertson, the Engineering Surveyor, did his first survey of the land in July 1997 and Henry Ogilvie, the Surveyor, did his topographic survey in 1997, then the Plaintiff would have failed to prove that the Defendant was not in undisturbed possession of the land for 12 years in accordance with the Limitation of Actions Act. However, two of the witnesses for the Defendant have contradicted the Defendant's evidence in a material and grave particular. Carla Briggs who is closely associated with the Defendant in a number of ways, as per her evidence, said she knew the Defendant to have been occupying that lot of land with the concrete building since February 1986. The Defendant's ex-wife (Noreen Chandler) said the Defendant began occupying the land somewhere around 1986. If I am to accept that evidence along with that of the surveyors then the Defendant could not have been in undisturbed possession for the 12 years as provided for in the Act.

[24] Moreover, in evidence Albert Mason said:

> "I worked Maitland land. I did garden. I started from 1st January, 1985. I planted watermelon, corn, peas, potatoes and yam. I work the land up to October, 1990 but I moved off the land for full at the end of 1990."

[25] The Defendant said that between 1985 and 1999 he cultivated the land. That contradicts the evidence of Albert Mason who was the sole cultivator of the land.

[26] Noreen Chandler said:

> "One Mr. Mason came to help Mr. Maitland in planting the crops. That was during 1986."

That contradicts Albert Mason who was positive that he started cultivating the land on 1st January, 1985.

[27] Cephas Pilgrim said:

> "I know who cultivated the crops. One Mr. Mason was cultivating those crops. That was between 1988 and 1989. I came to know Mr. Maitland occupying lands in the area because I did business with him sometime in 1985/6."

That contradicts Mason's evidence.

[28] Carla Briggs said:

> "I have known Mr. Maitland to be occupying that lot with the concrete building since 1986... . It was cultivated by a man called Mason... . Mason worked the land until about 1990."

[29] Joseph John, the Civil Engineer and predecessor of the land in question said:

> "Prior to purchasing the land I visited the two lots of land. They were overgrown in bush. In late 1997 I call a surveyor. He was Alan Robertson. I gave him instructions, as a result he cleared the boundary lines. I decided to sell in about July 1998. Mr. Maitland at no time told me he owned that land. I asked Mr. Maitland if he wanted to buy and he said he don't have any money at the time… . I told him the water tank was on my land. I can't recall him saying anything about the tank but I asked him to move it… ."

Mr. Joseph John, the Plaintiff's predecessor in title has indicated that he did not abandon the land.

[30] I accept that Albert Mason was the sole cultivator of the land. I also accept that he ceased cultivating it in October 1990 and "Moved off the land in full at the end of 1990."

When the witnesses for the Plaintiff went on the land between 1997 and 1998 there was nothing but bush on the land. There was no cultivation. That clearly indicates that after Mason moved off the land in full in 1990 the land was abandoned by the Defendant in that his occupation ended when Mason left.

The evidence of Pastor Timothy Redhead is of little assistance since he can account for nothing concerning the land before 1995.

[31] The crops the Defendant claims to have grown are crops generally carried on under a peripatetic system of market gardening. His occupation of the land as claimed though it may have been exclusive while under actual cultivation, was not continuous when he went on to build the structure and run the fence in 1999, a fresh period would have started and the limitation period of 12 years would have begun anew.

[32] I am of opinion that the Plaintiff has on the balance of probability proved his case against the Defendant. I accordingly give judgment for the Plaintiff as follows:

(a) The declaration and the injunction granted as prayed.

(b) The Defendant to remove the building and fence within six (6) months or at such time as agreed by both parties.

(c) Damages to the Plaintiff in the sum of $1,000.00.

(d) Costs to the Plaintiff to be agreed or taxed.

**L. K. St. Paul, C.B.E.**
High Court Judge