GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 4 of 2001

BETWEEN:

ERROL MAITLAND Appellant

and

DERRICK STEELE Respondent

Before:

The Hon. Mr. Satrohan Singh Justice of Appeal
The Hon. Mr. Albert Redhead Justice of Appeal
The Hon. Mr. Joseph Archibald Justice of Appeal [Ag.]

Appearances:

Dr. Francis Alexis and Mr. Anselm Clouden for the Appellant
Mr. G. Delzin and Miss R. Wilkinson for the Respondent

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2001: July, 5, 19

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JUDGMENT

[1] READHEAD J.A: The appellant, Errol Maitland, is a businessman. He is a car salesman. His business premises, that is, his car mart is near to premises, the Birds Nest Restaurant, owned and occupied by the respondent for about twenty [20] years prior to the commencement of this action.

[2] In or about September, 1998 the respondent, Derick Steele, bought from Joseph and Mary John two lots of land, lots 5 and 6 of subdivision of Grand Anse Estates containing by admeasurement 11,000 sq. ft. and 11,270 sq. ft. respectively. Derick Steel obtained a

conveyance from the Josephs for these two lots. Now the evidence reveals that lot 6 is contiguous to the appellant's land, that is the car mart.

[3] The respondent sought to survey lots 5 and y on 26th December, 1999 but the surveyor was prevented from carrying out his survey by the appellant. As a result the respondent brought an action in the High Court seeking a declaration that he is entitled in fee simple absolute to the two pieces of land numbering 5 and y of the said subdivision and at the same time praying for an injunctive relief to restrain the appellant from trespassing on the said land. The appellant set up as a defence that he was in undisturbed and uninterrupted exclusive and continuous possession from 1985 to 1999. That is for a period of about 14 years.

[4] Before the learned trial judge it was contended on behalf of the appellant that he, the appellant, was in possession of the disputed lot for more that twelve years and therefore he had acquired a prescriptive title.

[5] In support of that contention the appellants led evidence that one Albert Mason, cultivated the land on the appellant's behalf from 1st January 1985 to October 1990. Evidence was also led that the appellant put cars on the land in 1998. He put two water tanks there in 1991 and he excavated the land in 1999. The appellant erected a split wood fence on the land in December 1999 (this came out in cross examination of the appellant).

[6] The learned trial judge in rejecting the claim of the appellant said:-

> "The crops the defendant claims to have grown are crops generally carried on under a peripatetic system. 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."

[7] The appellant has appealed to this court against the judgment of the learned trial judge.

[8] Five grounds of appeal were filed on behalf of the appellant:-

(1) The judgment of the learned trial judge is against the weight of the evidence wherein he ruled that the defendant/appellant could not have been in possession of the land since 1985.

(2) The learned trial judge erred in law in placing the weight he did on the evidence of Andrew Bierzynski.

(3) The learned trial judge erred in law in saying that the evidence of the defendant/appellant that between 1985 and 1999 he cultivated the said land contradicts the evidence that Albert Mason was the sole cultivator thereof between 1985 and 1990; the learned trial judge erred in seeing contradiction therein because the uncontradicted evidence is that the cultivation of Albert Mason was that of the defendant/Appellant, since it was the defendant/appellant who had Albert Mason as a servant or agent of the defendant/appellant, cultivate same for the defendant/appellant.

(4) The judgment of the learned trial judge is against the weight of the evidence wherein he holds that when Albert Mason, servant or agent of the defendant, moved off the land in full in 1990 the land was abandoned by the defendant/ appellant and that his occupation ended when Mason left.

(5) The learned trial judge erred in law in concluding that the defendant/appellant who owns a few parcels of land and who is also a businessman and who the learned trial judge says is the proprietor of the newspaper must know the difference between 11,000 and 1,500 square feet of land, it being wrong to say that the defendant/appellant is the proprietor of newspaper, and it being manifest that the defendant/appellant was estimation that part of the land on which the building stands.

[9] I shall deal and dispose of ground 5 first. In my considered view it does not mean that because someone is the proprietor of a newspaper or a businessman that places him in a position to determine the difference between 11,000 and 1,500 square feet of land. However having said that I am of the view that nothing turns on that finding of the judge.

I now address ground 4 of the grounds of appeal. There is uncontroverted evidence from Albert Mason, the appellant's witness that he moved off the land in 1990. He said:-

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

[10] I shall address the question of abandonment of the land by the appellant as a result of Mason leaving the land later in this judgment. Dr. Alexis submitted that when Mason was put on the land by the appellant to plant crops, Mason was there on behalf of the appellant and never on Mason's own behalf.

[11] I am of the view that Mason's occupation of the land for a period of about five years even it was to be regarded as on behalf of the appellant is not significant so far as the resolution of this issue is concerned.

[12] This must be so having regard to the fact that the learned trial judge found that:-

"The crops the defendant claims to have grown are crops generally carried out under a peripatetic system of gardening….."

[13] This finding in my opinion is supported by the evidence, for example, of the respondent, Derick Steele who said there was nothing but bush on the land. Joseph John also said:-

"I visited the lots. They were overgrown by bush."

[14] Learned Counsel for the appellant submitted that the learned trial judge treated the cultivation by Mason as separate from and independent of cultivation by the appellant, and the cultivation by Mason as separate and independent of occupation by Maitland.

[15] Learned Counsel, Mr. Delzin argued on behalf of the respondent that the appellant has not based his case on possession but on occupation and use. Mr. Delzin contended that the placing of water tanks and old vehicles on the land could not amount to occupation but use of the land.

[16] Learned Counsel also argued that the appellant did not have the necessary animus possidindi to acquire a possessory title. He drew attention to paragraph 7 of the judgment where the judge said Joseph John said he is a civil engineer and farmer.

[17] On or about September 1998 he sold two lots of land (lots 5 and 6) to the plaintiff. He bought that land from a Mr. and Mrs. Daniel through her agent, Mr. William Campbell. Prior to purchasing the land he visited the land. The land was overgrown with bush. 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 1998 he (Mr. Joseph John) spoke to the defendant whose land was in boundary with the said land and told him he was purchasing the said 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 the 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.

[18] Learned Counsel argued that this was never controverted by the appellant. He argued that no questions were put to Joseph John when he gave evidence to suggest or contradict the witness that the appellant did not tell the witness John that he did not have money to buy the land nor was it suggested to the witness that the appellant did not ask him if he, Joseph was buying from Bill Campbell.

[19] Dr. Alexis argued that the testimony of the witness was in fact challenged on that issue and he drew attention to the record. The record reveals that John gave these answers in cross examination:-

> "When I was about to buy the land I spoke to Mr. Maitland because I know he occupied land in boundary. I spoke to Mr. Maitland after the boundaries were cleared…. I spoke to Mr. Maitland by his place at Grand Anse….."

[20] There is no record of the questions that were asked. However, from the answers that were recorded, one can come to the conclusion that he was only asked general questions such as you did not speak to Mr. Maitland or when did you speak to him? Where did you speak to him? From the answers given too it is quite obvious to me that it was never put to the witness, that Mr. Maitland did not ask him if he was buying from Bill Campbell.

[21] It was not put to the witness that the appellant did not say that he did not have money to buy the land. There is absolutely no reference in the answers to any of the above mentioned matters.

[22] The appellant is claiming the disputed land by prescription. He therefore bears the burden of showing that he was in uninterrupted possession of the land for a period of at least 12 years and that he had the intention to dispossess, not only the owner but the whole world. If therefore in 1998 he was recognizing Bill Campbell as owner or agent of the owner – as this is the only interpretation one can put on his asking John if he is buying from Bill Campbell – even if he was in undisturbed occupation from 1985, he would not have had the animus possidendi from then to acquire a possessory title. (See Pollard v Dick OECS Law Rep p.239 Vol.2).

[23] Mr. Delzin, learned Counsel, for the respondent argued that the appellant's case was based on user of land and not on occupation as the appellant placed some used vehicles on the land, placed water tanks on the land and he was engaged periodically in cultivation the land.

[24] Mr. Delzin referred to:-

J.A. Pye (Oxford) Ltd and another v Graham and another 2001 WLR 1293

At page 1298 Mummery L.J. said:-

"In Buckinghamshire County Council v Moran (1990) Ch.623 the Court of Appeal approved the statement of law in the judgment of Slade J. In Powell v Mc Farlane 1977 38 P. 6 CR 452 that three requirements must be satisfied by a person seeking to establish title to land by adverse possession.

(1) Factual Possession

He must show that for 12 years or more he had single and exclusive possession of the land.

I powell's case (Powell v. Mc Farlane (1977) 38 P6 cr 452)

Slade J. help at pp 470-471that:-

"The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which the land of the nature in commonly used or enjoyed.

Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so."

(2) Intention to Possess

He must also show that during the period of 12 years or more in which he enjoyed factual possession he had the requisite intention to possess the land. In Powell's case Slade J. held at pp 471-471 that this:

"Involves the intention, in one's own name and one's behalf, to exclude the world at large, including the owner with the paper title…..so far as is reasonably practical and so far as the processes of the law will allow"

(3) Adverse Possession

The squatter must establish that the possession of the land during the period of 12 years or more has been "adverse possession" within the meaning of the 1990 Act. (In our case the limitation Actions Act Chapter 13).

[25] The evidence in the instant case does not support that the appellant had exclusive possession of the land for a period of 12 years. His putting of vehicles, water tanks and planting of seasonal crops on the land through Mason cannot in my judgment give him exclusive possession. The issue, therefore, of abandonment by Mason cannot therefore impact upon this matter. Moreover these acts do not involve, or show and intention to exclude the world at large.

[26] In addition I hold that John's evidence that when he John asked the appellant, if he wanted the land to buy he the appellant said to John:-

"I don't have money to buy it.", is unchallenged. Also unchallenged is John's evidence that the appellant asked him if he was buying from Bill Campbell.

[27] These two pieces of uncontroverted evidence clearly demonstrate to my mind that as late as 1998 the appellant did not have the requisite animus possidindi. For these reasons the appeal is dismissed. The judgment of the learned trial judge is affirmed. The declaration and injunction granted and the damages awarded by the learned trial judge are affirmed.

[28] There will be costs of this appeal to the respondent to be taxed, if not agreed.

Albert J. Redhead
Justice of Appeal

I concur

Satrohan Singh
Justice of Appeal

I concur

Joseph Archibald
Justice of Appeal *[Ag.]*