

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 433 OF 2000

BETWEEN:

STEPHANIE SEALES BY HER ATTORNEY ON RECORD EWART KING
Complainant

and

LEON GRANT
Defendant

Appearances:

Mr. Cecil A. Williams for the complainant
Mr. Parnell R. Campbell and Mrs. Cheryl McSheen-Bailey for the defendant

2001: November 6, 28.

JUDGMENT

ALLEYNE J.

- [1] The claimant's claim is for damages for trespass to a portion of land at Choppins, St. Vincent, admeasuring 7,362 square feet, by wrongful entry thereon in June 1999, by cutting down a coconut tree, by planting coconut trees, and by placing building materials on the land preparatory to constructing a building thereon.
- [2] The defence filed denies all the substantive allegations of the plaintiff, but the defendant goes on to plead that there has from about 1968 been a thatched house erected on the disputed land, which was occupied as a dwelling by Stephen Sutherland, the defendant's uncle.

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- [3] The defendant alleges in his defence that in about 1964 his grandmother Naomi Woods rented the land from Berry Goodluck, and in about 1968 Sutherland, Woods' son, erected the thatched house on the land and commenced living there and working the land, and has continued to do so up to the present time. He alleges further that in about 1971 Woods erected a wooden dwelling house on the land, and lived there with members of her family, including the defendant, until she died. The house was moved off the land in 1995. He pleads that the complainant never lived on the land or occupied it.
- [4] The defendant further pleads that before the house was moved off the land in 1995, he had gathered a quantity of lumber with the intention of building a wooden house for himself on the land. He built a wooden foundation frame near the spot formerly occupied by Woods' house, and continued to make brooms on the land.
- [5] The defendant claims that the coconut trees were all planted by Sutherland, and he admits cutting down one of them which, he says, was dangerously overhanging telephone lines. He asserts that neither he nor Sutherland ever paid rent for occupation of the land, and claims that he and Sutherland have been in actual physical possession of the land at all material times.
- [6] By way of counterclaim the defendant claims that the complainant's possessory title "taken out by Deed Number 587 of 2000" is defective in that the complainant was never in physical possession of the land. In consequence, he claims a declaration that the complainant does not have any right in or title to the land, an order that the said deed be cancelled, and an injunction to restrain the complainant from interfering with his occupation of the land.
- [7] In the defence to counterclaim the complainant says that the thatched house was built not in 1968, but in 1972, and was never used as a dwelling house. She also denies that Woods rented the land in 1964, and says the land belonged to her uncle James Ashton, in whose name she paid land taxes. She denies that

Stephen Sutherland moved onto the land in 1968, erected a thatched house thereon, and began to work the land.

[8] The complainant asserts that she rented the land to Rosita Woods, not Naomi Woods, in or about 1972, at a rent of \$9.00 annually, later increased to \$12.00. She says the thatched house was built after 1972 by her tenant Rosita Woods, who had rented the land to build a wooden house on it. When, in 1995, Rosita Woods' daughter built a second wooden house on the land the complainant gave her notice to quit.

[9] The complainant claims to have been in possession of the land since 1964, and rented the same to Rosita Woods from 1972 to 1995, when Rosita Woods quit as a result of having been given notice to quit. She says the wooden frame and lumber were placed on the land only in 1999.

[10] The defendant did not, either in his defence or in evidence, make any claim to title to the land, but contented himself with the plea that the complainant herself had no title to the land, and therefore had no *locus standi* on the basis of which to seek a remedy against him, an admitted trespasser.

[11] Trespass is actionable at the suit of a person in possession. Possession is evidenced by a wide variety of acts, depending on the type of land, and "In the case of vacant and unenclosed land which is not being cultivated there is little which can be done on the land to indicate possession". Renting land to a tenant is evidence of possession; **Clerk & Lindsell on Torts** fourteenth edition paragraph 1318.

[12] **Clerk & Lindsell** in the same paragraph goes on to say that

"proof of ownership is prima facie proof of possession, unless there is evidence that another person is in possession; but if there is a dispute as to which of two persons is in possession, the presumption is that the person having a title to the land is in possession. And even a long

continued assertion of title, without proof of title, can be of significance 'in that it attaches to the activities of those claiming under it a quality of acts of possession'"

[13] In paragraph 1320 the learned author says

"A person claiming possession against the true owner cannot be said to have possession unless the true owner has been dispossessed."

[14] Contrary to what appears to be presumed by the counterclaim, possessory title is not acquired, or "taken out", by means of a statutory declaration registered as a deed, but, as illustrated by the judgment of Floissac C.J. in **Davis & Davis v Charles & Ors.** Civil Appeal No. 20 of 1998, Antigua & Barbuda,

"whether during the fifteen year period (or whatever may be the relevant period) Charles performed unequivocal acts of ownership and adverse possession by virtue of which he had acquired a possessory title to the disputed land".

The registered statutory declaration is no more than a solemn declaration on oath, but a self-serving declaration, in support of the claim to have been "in actual and uninterrupted possession In my own right", and is therefore of little value in circumstances such as apply in this case. Indeed viva voce evidence of acts of possession, given at trial, subjected to testing by cross examination, is of far greater value in proving title.

[15] The case proceeded on the basis of filed witness statements treated as evidence in chief, the witnesses being cross-examined. The evidence of the claimant and his witnesses is that the land in question belonged to her great uncle James Ashton, whose only sibling was the claimant's grandmother Alice Ashton deceased. Alice Ashton, who died in 1946, was survived by her two children Miriam King, the claimant's mother, and Emily James. James Ashton was survived by his widow Alma Ashton, who died in or about 1988. The couple had one child, a daughter, Isaline Ashton, who predeceased her mother, leaving no issue.

- [16] The claimant paid land taxes on the land, in the name of James Ashton, from 1964, from which time she claims to have taken possession of the land. However, it is clear to me that in so doing she was acting for and on behalf of her uncle's widow Alma Ashton, and continued to do so until the death of Alma in or about 1988.
- [17] Alma Ashton lived on the subject land until the late 1950's to early 1960's, when she moved to live elsewhere. The land remained largely unoccupied until the late 1960's or early 1970's, when the claimant rented the land to Rosita Woods, who built a wooden house and wattle and daub outhouse kitchen on the land. Rosita Woods paid rent at the rate of \$9.00 per annum, later raised to \$12.00, which money was given, without deduction, to Alma Ashton. Elvina Horne and her mother Louisa Horne at times acted as agent to collect the rent or to deliver it to Alma Ashton. In all this I am satisfied that Alma Ashton was recognised as owner and the only person entitled to possession as such of the land.
- [18] When Alma Ashton died in or about 1988, the claimant claims that she was the only surviving relative of the late James Ashton, and that his widow Alma Ashton had died without surviving relatives. In those circumstances, the claimant claims to be the only person entitled to the land formerly of the late James Ashton, i.e. the disputed land.
- [19] Section 62 of the Administration of Estates Act CAP. 377 of the Laws of St. Vincent and the Grenadines provides for intestate succession, and section 62(a), read together with section 62(e), would have given the claimant's grandmother, as the only sibling of James Ashton, an interest in his estate if he had died with no issue. However the claimant's evidence suggests that at his death James Ashton was survived by his wife and a daughter, who has since died, and whose interest, under section 62(d), would have devolved upon her mother, Alma Ashton, who thereupon would have become entitled to the entire beneficial interest in the estate of her late husband.

- [20] The claimant thus had no legal or equitable title to the said land at that time. Nevertheless I accept the evidence that she asserted title, by continuing to rent the land to Rosita Woods in the character of owner of the land, to collect the rent in said character, and to use and dispose of same as owner, without accounting to, or holding herself accountable to anyone in respect thereof.
- [21] I accept that when in 1995 the claimant became aware that a second house was being placed on the land without her consent and contrary to her wishes, she sent the tenant, Rosita Woods, notice to quit, and Rosita Woods did in fact quit, removing the two wooden houses and leaving on the land only the wattle and daub outhouse, which was dilapidated and in any event could not by its nature be moved from one site to another. The land thereupon became vacant and possession fell into the hands of the claimant, notwithstanding that she did not physically enter upon the land.
- [22] The claimant is entitled to claim on the basis of a "long continued assertion of title", even without proof of title, that her activities in relation to the land are acts of possession on which she is entitled to rely in setting up a claim to title on the basis of long possession.
- [23] I find on the evidence that the claimant has proved that she has been in continuous, uninterrupted and undisputed possession of the land as owner thereof, adverse to any other claimant to title, since the death of Alma Ashton in 1988.
- [24] I have already indicated that I find that the defendant has no title to the land, and indeed asserts no title, and his entry on the land is an act of trespass actionable at the suit of the claimant.

[25] The claimant is entitled to judgment on the claim, and it is ordered as follows:

- (i) That the defendant forthwith remove all building materials from the said land.
- (ii) That the defendant be restrained, and is hereby restrained from entering upon the said land save at times agreed upon by the claimant for the purpose of complying with the above order.
- (iii) That the defendant pay the complainant damages for trespass in the sum of \$1000.00.
- (iv) The defendant's counterclaim is dismissed.
- (v) The defendant is to pay the costs of the claim and counterclaim, to be agreed or assessed.

Brian G.K. Alleyne
High Court Judge

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