

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 598 of 2000

BETWEEN

GOLINDA PAUL

Petitioner

vs

HEIRS OF VITALIS St. ROSE

Respondent

Appearances

For the Petitioner: Ms. E. Lendor

For the Respondent: Mr. M. St. Catherine

2003: February 10th 17th
April 2nd

Prescriptive title to land.....Claimant alleging long possession.....Defendant registered owner.... Principles upon which court seeks to prefer oral testimony

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JUDGMENT

- [1] **Saunders J:** The dispute in this case is over title to a relatively small parcel of land at Dubrossay in the Quarter of Castries. Both parties claim ownership of the land. Ms. Golinda Paul, aged 52 years, states that she is entitled to the land by virtue of long possession. She says that she and, both her mother and grandmother before her, have been in peaceful occupation of the land for several decades. She has petitioned the court for a declaration of title in her favour.
- [2] The petition is stoutly resisted by the heirs of Vitalis St. Rose ("the heirs") and by Paul St. Rose in particular. He is an heir and one of the trustees for sale in whose name the land is currently registered.

- [3] The issue for decision is whether Ms. Paul and her predecessors have enjoyed, for a period in excess of thirty years, such possession of the land as has been, in the words of the statute, continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor. If such possession has been established, then Ms. Paul is entitled to her declaration. If not, then the court must give judgment for the heirs.
- [4] Several witnesses testified on either side. The testimony of Ms. Paul and her witnesses followed a consistent pattern. It was alleged that, from the time she was a small child, Ms. Paul, her mother, her grandmother and her children have been in occupation of the land; that while in occupation, they had farmed the land; that they had rented out portions to various tenants; that they had constructed and currently reside in houses on the land; and that they had given to divers persons, including some of the heirs, permission to enter and remain upon the land.
- [5] Mr. St. Rose and his witnesses gave a similar type of testimony in support of their case. They asserted that the heirs had always lived on the land; that they had all erected houses on the land before some of them had drifted off to other locations; that Ms. Paul's grandmother was actually a tenant of theirs; that Ms. Paul only lived on the land for a brief period and then, with their permission; and that they had never discontinued or abandoned their possession of the land.
- [6] The court is faced with two diametrically opposed sets of testimony. They both cannot be entirely right. The court has to weigh the evidence and ask itself which version is the more probable. In carrying out this task, the court should resist the temptation to read too much into the smug smirk of Mr. St. Rose as he gave his oral testimony, or the look of tearful desperation on the face of Ms. Paul as she sat in court fretfully listening to his and his witnesses' evidence. Those clues, such as they may be considered, are often misleading. The court prefers to identify objective facts, evidence which cannot be denied, and juxtapose the testimony of the witnesses to such evidence and to admissions or concessions made. Often when this is done, the more probable story tends to suggest itself.

- [7] What are the bits of objective evidence that are relevant to this case? I look first at the history of the land. The land in question appears to be a dismembered portion from what originally was a parcel of two carres purchased in 1901 by Vitalis St. Rose Simon, deceased. The deceased died intestate in 1927. In 1952, one of his sons obtained a Declaration of succession for an undivided one half share of the two carres of land. The other one half share was vested in the widow of the deceased. The widow died intestate in 1956 and Letters of Administration in respect of her estate were taken out in 1980. Mr. Paul St. Rose is a lineal descendant of Vitalis St. Rose Simon and he traces his title to the disputed land back to this 1901 purchase by Mr. Simon.
- [8] What is significant about these facts and dates is that they appear to show an ongoing concern by the heirs for regularising their paper title to the land. This appearance is strengthened by the fact that in 1987 the heirs were sufficiently interested in their ownership to claim title to the land in dispute during the Land Registration and Titling Project (LRTP). For one reason or another, Ms. Paul and her grandmother did not trouble the authorities at the LRTP with any claim to the land.
- [9] Crucially however, the heirs have been unable to provide the court with uncontroverted evidence of their actual possession, as proprietors, of the land in dispute throughout the years. And, as a matter of law, while the heirs do enjoy registered title, that title is subject to the rights of a person who has acquired or who is in the process of acquiring prescriptive title. See: S. 28(f) of the Registered Land Act.
- [9] There is ample undisputed evidence, on the other hand, that Ms. Paul and her forebears have enjoyed possession of the land in question for quite some time. Photographs were tendered in evidence showing several structures they had erected on the land. These houses were of varying levels of permanency. One of them was a large concrete dwelling that must have taken several months to construct. There is no evidence that they sought permission or were in any way hindered in the construction of these houses.

- [10] In December of 1999, Mr. St. Rose wrote to the Development Control Authority (DCA) complaining about the presence of "squatters" on the land. The DCA carried out an investigation and replied to Mr. St. Rose that there was no evidence of *recent* construction on the land.
- [11] Since the latter part of 1999 there has been tremendous activity on the part of Mr. St. Rose in relation to the land. Threatening letters were written to alleged squatters by the solicitor for Mr. St. Rose. In each of these letters, extremely significant admissions are made. It is acknowledged for example that the persons written to have lived on the premises for many years; that they are not tenants because from the time of their occupation they have paid no rent; and that they have claimed a right to possession.
- [12] Between 2000 and 2002, Mr. St. Rose busied himself carrying out surveys and road works on the land. All of this activity, from late 1999 onwards, stands in stark contrast to the apparent inertia of the heirs, throughout the decades before 1999, in the face of the acknowledged occupation of the land by Ms. Paul's mother, grandmother, children and tenants.
- [13] When I weigh the objective evidence in this light, I form the view that the story given by Ms. Paul is the more credible, the more probable of the two. I accept her testimony and the testimony of the witnesses who gave evidence on her behalf. I believe that the heirs had abandoned or discontinued possession of this particular parcel of land and that, from the time of Ms. Paul's grandmother, well over 30 years ago, Ms. Paul has been in actual or constructive possession of the land. I further find that it was only in about 1999 that the heirs thought to re-assert their claim to the land. By then however it was too late. Ms. Paul and those before her would have already prescribed their ownership. In response to this belated attempt on the part of the heirs to re-claim possession and ownership Ms. Paul did the sensible thing of immediately petitioning the court for a declaration of title.

[14] In all the circumstances, I find the contents of the Petition proved. I award judgment in favour of Ms. Paul. I grant her Petition for a Declaration of Title and I award her costs in the sum of \$7,000.00.

**Adrian D. Saunders
High Court Judge**