ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV62 / 2002

BETWEEN:

MARY NEVERSON MORRIS ACTING HEREIN BY HER LAWFUL ATTORNEY ON RECORD ARNOTT PAYNTER

Claimant

and

HENRY NEVERSON JUNIOR

Defendant

Appearances:

Mr. Samuel E. Commissiong for the claimant
Mrs. Kay Bacchus-Browne for the defendant

2003:January 29, March 3, May 5, 13.

JUDGMENT

ALLEYNE J.

[1] By Fixed Date Claim Form filed on 18th February 2002 the claimant claimed against the defendant damages for trespass, an injunction restraining the defendant from trespassing upon the claimant's land, and possession of the land.

[2] In her statement of case the claimant claimed to be owner in fee simple of a portion of land admeasuring 7 acres 3 roods 24 poles a part of which is delineated in a registered survey plan G2/86 dated 12th December 2001, which she holds by virtue of an Indenture of conveyance dated 11th September 1944, registered as Deed number 329 of 1944. She further alleged that in 1992 the defendant wrongfully entered on the land and erected a small chattel house behind a cluster of cedar trees, and continued to live there undetected until December 2001, when

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his presence was discovered in the course of a survey of the land. She demanded that he vacate the land.

[3] On 18th April 2002 the defendant filed a defence and counterclaim whereby he alleged that the claimant was a close relative of his father who she put in charge of her land before she migrated from St. Vincent about 20 years ago. He alleged that since about 1982 his father alone has been in control of the land and paid all rates and taxes in his name. The defendant claimed in his defence that he entered the land in 1982 "as he lived with his father." He claimed to have lived there from that time continuously to the present time. However, it is common ground, on the evidence, that the house in which his father lived and which is still occupied by his father's daughter is not on the subject land, but on adjoining Crown land. The evidence, which I accept, is that the defendant left his father's house in 1992, and I believe that it is then, or after that date, that he built a house on the disputed land. The defendant pleaded in his defence that his father moved off the land about 1984, and thereafter he, the defendant, "lived there alone, uninterrupted from 1984 to the present time". The evidence does not support that assertion.

[4] In any event, in his defence and counterclaim the defendant asserted that before she left St. Vincent in 1982 the claimant, a close relative of his father, "put the defendant's father Henry Neverson Sr. in charge of her land", and that he, the defendant, lived with his father. In my view that assertion negatives a claim to adverse possession, at least in the father, and in the son while he lived with his father, presumably as a licensee of his father. The claimant denies that either father or son occupied with her consent, but does assert that as long ago as 1976 there were negotiations between her and Henry Neverson Sr. for him to purchase a portion of her land. These negotiations did not bear fruit.

[5] The claimant's attorney on record, Arnott Paynter, in his evidence, said that the father worked a portion of the claimant's land adjoining the house on Crown land which was occupied by him and is still occupied by his daughter. He denies ever seeing the defendant working the land until 1998, when he saw him cultivating the land to peas and other "little cultivation". On being challenged the defendant

claimed that the claimant's sister Edline Neverson gave him permission to work the land. This witness claimed that the defendant is currently occupying about 5000 sq. ft. of the land, as indicated by a survey, which is not denied.

[6] Cross examination of this witness focused initially on allegations that this is not the first time that he is fighting for land that is not his. The witness denied several specific allegations in that regard that were put to him. I have no reason to doubt him, nor do I think that the allegations assist in a resolution of this dispute. Paynter has been legally appointed attorney on record of the claimant and is acting on her behalf to protect her legitimate interest in this land, which interest is confirmed by deed and registered plan, against which the defendant sets up a "Deed of Settlement", No. 821/2002, in support of his claim to have acquired title against the claimant by adverse possession. The "deed of settlement", being of such recent vintage, is, of course, of little if any value as evidence of title.

[7] The "deed of settlement" recites the claimants Indenture of conveyance, alleges that the claimant gave the land to the defendant's father in 1982, an allegation which is contrary to the defendant's pleading, and claims further that he, the defendant, has been in uninterrupted possession of the land since 1984.

[8] The claimant's "deed of settlement" was made on 4th March 2002, some 10 days after the claim form in the action was served on him and 6 days after he filed his acknowledgment of service. The deed was evidently made for the purpose of bolstering his defence. The defendant is both grantor and grantee in this deed, and his self serving statements are of no evidential value, nor does the purported conveyance serve to convey a good title. It is nothing more, in my view, than a colourable device of an opportunistic nature, calculated to assist the defendant in his effort to acquire the land which undoubtedly belongs to the claimant, on the basis, in the words of the defendant in his cross examination, that "if you on the land for 10 – 15 years, the land belongs to you", a quite misinformed understanding of the law. Counsel for the claimant has cited the case of **Cobham v Frett** [2000] 59 WIR 161 which restates the well established rule that "in order to establish a title to land under the Limitation Act the person claiming a prescriptive

title must establish that he was in peaceable, open and uninterrupted possession without permission for a continuous period of 12 years, and the acts of possession must be clear and unequivocal."

[9] The defendant's claim can only be supported on the basis of adverse possession, not on the basis of the "deed of settlement". It is of considerable interest that in his witness statement the defendant said that his father "worked the lands for the claimant." This he confirmed in his oral evidence. This severely undermines the defendant's case.

[10] The defendant's witness Brenton Smith, whose witness statement is at best questionable in that he admitted in his oral testimony not knowing anything about the deed to which he referred in his witness statement, nevertheless confirmed that the defendant has been living in his present house on the land "since about 1992 or so", and later "since just before 1992". In either case, the evidence falls short of proof that the defendant lived there for at least 12 years prior to the filing of the claimant's action in 2002. This witness also admitted that his evidence concerning the defendant's occupation of land for over 20 years referred to his living with his father, in his father's house, on what is Crown land, not the disputed land.

[11] Franklyn Welcome, a Public Health worker who works in the area of the subject land and is familiar with the land, having lived with the claimant's family as a boy, made a witness statement in which he claimed that up to 1993 – 1994 "nobody including Henry Neverson ever occupied any part of the Neverson's land". This witness asserts that the defendant occupied the land and a small shack behind some trees on the land from 1993 – 1994.

[12] This witness has known the defendant for many years, and there appears to be an ongoing disagreement between them concerning the proceeds of sale of a dead animal. He denies ever having seen any of the defendant's family members working the claimant's land, but concedes that the defendant was there from 1993/94, and that some coconut trees on the land were there since in or about

1990, and were about 1 to 2 ft. tall in 1993/94. This suggests that they were fairly recently planted.

[13] The claimant called the land surveyor Rudy Coombs. I have to confess that I was not overly impressed by this witness, who re-surveyed the claimant's land in or about November 2001 and produced plan No.G2/86, based essentially on the claimant's plan G2/90 prepared in 1944, referred to in the claimant's deed. In any event his evidence is of little value, although his plan did assist in the illustration of the evidence of other witnesses.

[14] The claimant's final witness was Brian Rock. This witness projected a rather truculent, somewhat rude and dismissive attitude to the court, to both counsel, and indeed to the entire process. Nevertheless I found his evidence rather helpful. He has been a friend and playmate of the defendant and his large family from his childhood. They all lived in the area of what he called "Neverson land". Not surprisingly, he did not know the specific boundaries of the Neversons' land, or indeed which of the Neversons was the legal owner of the land. As a child he understood the land in that area to belong to the Neversons, and did not distinguish between the claimant's family and the defendant's family.

[15] This witness says that he and the defendant used to skate on the land. They played all over the land, on which he says all kinds of wild trees grew. According to him there were no fruit trees or other cultivation on the land. Henry Neverson Sr., the defendant's father, cultivated a small portion of land at the top of the hill around his house, and kept animals. His evidence does not support the defendant's claim that his father occupied the claimant's land, but suggests instead that the land was the playground of the children of the area. I accept this evidence.

[16] This witness, who is clearly familiar with the general area, seemed to me to be fairly disinterested, indeed as friendly, or as hostile, to both parties as the mood directed him from time to time during his testimony. He was emphatic that until 1993/94, no-one worked what he has "come to know as Sarah Neverson's land".

He said that the defendant's father had a "copper" in the area near where the defendant has built his house, but his evidence does not support a claim that Henry Neverson Sr. enjoyed or claimed exclusive possession with the intention to possess, to the exclusion of the claimant, of that or any other part of the claimant's land. The defendant claimed in his defence that the claimant put his father in charge of the land. Occupation by the father in those circumstances was occupation by the claimant; **Peakin v Peakin** [1895] 2 I.R. 359, **Nesbitt v Mablethorpe Urban Council** [1918] 2 K.B. 1.

[17] Time begins to run against an owner entitled in possession only when he/she has been dispossessed or has discontinued possession **and** adverse possession of the land has been taken by someone else; **Archer v Georgiana Holdings Ltd.** [1974] 21 WIR 431. A person is dispossessed when he or she has been driven out of possession by another. Discontinuance occurs when the owner has abandoned possession. **Halsbury's Laws of England** 4th edition Vol. 28 paragraph 769.

[18] The second element necessary for time to begin to run against the rightful owner is adverse possession, which has been described in **Megarry's Manual of the Law of Real Property** seventh edition as a somewhat complex concept. Megarry says:

> "It depends on the squatter having possession of the land in fact, and also on his having the necessary *animus possidendi*, and in some cases these requirements may be affected by the owner's intended use for the land."

[19] Possession is not adverse if it is enjoyed under a licence granted by the owner, as in this case in relation to Henry Neverson Sr.; **Hughes v Griffin** [1969] 1 WLR 23. Further, possession is adverse only if the squatter has an *animus possidendi,* intending to possess the land to the exclusion of all other persons, including the owner; **Buckinghamshire C.C. v Moran** [1990] Ch. 623. **Megarry** says the mere use of vacant land until the owner needs it is a frail foundation for a possessory title.

[20] There is nothing to suggest that any occupation by Henry Neverson Sr. was anything other than as agent for the claimant, and it was certainly not exclusive or adverse in relation to the claimant's title. The defendant says that his father died last year. The evidence suggests that the father himself made no claim to title to the subject land, whether by way of gift as suggested in the "deed of settlement", by virtue of adverse possession or otherwise.

[21] The witness Rock says that the defendant's brother Basil had a house on the land, approximately where the defendant built his house in 1993. There is no suggestion that Basil's possession extinguished the claimant's title, and Basil, who is apparently now dead, has made no claim to that effect. The defendant, in any event, cannot depend on Basil's occupation in support of his claim under the Statute of Limitation. **Trustees, Executors and Agency Co. Ltd v Short** [1888] 13 App. Cas. 793.

[22] I believe this witness that the defendant had not established himself in possession of any part of the claimant's land until in or about 1993, when he built his shack on the land. I believe that one or two years prior to that date he planted a few coconut trees on the land, but at that time his occupation, such as it was, was not exclusive, and was not open. It did not meet the requirement of *nec vi, nec clam, nec precario.* The claimant had neither been dispossessed, i.e. driven out of possession, nor had she abandoned her possession. In any event, I find as a fact that the earliest date of such occupation was approximately 1991, and the defendant has failed to discharge the onus of proof, on a balance of probabilities, to bar the claimant's right of action or to extinguish her title.

[23] The defendant ultimately admitted that the tax receipts which he tendered in evidence in support of his claim related to the house and land where his father lived, which has been established to be Crown land, not the land the subject of this dispute.

[24] The defendant has clearly failed to establish a claim to title to the disputed land, either by virtue of his "deed of settlement", or by long possession, whether on the

part of himself, or of his father or his brother. He has no legitimate claim to the land, but has merely continued to make use of the land after his father had ceased to occupy it on behalf of the claimant. There is no evidence of exclusive or adverse possession for upwards of 12 years, or of dispossession of the claimant.

[25] There will be judgment for the claimant for

1. Immediate possession of the land more particularly delineated on the registered survey plan G2/86.

2. Damages for trespass in the sum of $2000.00.

3. An injunction restraining the defendant, whether by himself, his servants or agents or otherwise from trespassing upon the claimant's said land at Cox Heath, from building or erecting any structure thereon, from cultivating the said land, or doing or causing to be done any act or thing whatsoever on the said land without the consent or permission of the claimant.

4. Costs of $6000.00.

Brian G.K. Alleyne
High Court Judge

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