

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: 339/2002

BETWEEN:

**SCOTT INVESTMENTS COMPANY LTD
KINGSTOWN**

Claimant

AND

**THE SOLICITOR GENERAL
MINISTRY OF JUSTICE
KINGSTOWN**

Defendant

Appearances:

Mr. Carlyle Dougan Q.C. for the Claimant

Mr. Jaundy Martin, Senior Crown Counsel, Attorney General's Chambers for the Defendant

2003: March 26
2003: September 23

JUDGMENT

[1] **BRUCE-LYLE, J:-** The Claimant, Scott Investment Company Limited, Kingstown in the State of Saint Vincent and the Grenadines, is claiming against the Solicitor General, Ministry of Justice, Kingstown for a declaration that the lands as described in the Second and Third Schedules to title Deed Number 1237 of 2000 are held by Scott Investment Company Limited in fee simple absolute in possession.

[2] The defendant on the other hand contends that the said parcels of land in Deed Number 1237 of 2000 have never been in the possession of the Claimant and that these are and have always been Crown lands, and put the claimant to proof as to how it acquired possession of the said lands.

- [3] The crux of the claimant's case as spelt out in the affidavit of Mr. Sylvester Raymond-Cadette, an attorney at law and Managing Director of the claimant company, which was duly registered under the Companies Act of Saint Vincent and the Grenadines, was to the effect that one Charles Sutherland who is presently residing in the United States of America and also a member of the claimant company declared by Declaration Number 788 of 1996, that he was claiming possession of two parcels of land as mentioned in the schedules to the said Declaration Number 788 of 1996 which were previously owned by his ancestors.
- [4] The said declaration Number 788 of 1996 was exhibited was Exhibited SRC1. By titled Deed Number 1237 of 2000, Mr. Raymond-Cadette deposed in his affidavit that the said parcels of land were transferred to Scott Investment Company Ltd. This title deed 1237 of 2000 was exhibited as SRC 2.
- [5] Mr. Raymond-Cadette further deposed that to his knowledge, information and belief the said parcels and other parcels being part of the estate of Union Island were granted to the ancestors of the said Charles Sutherland and other inhabitants of the island around the year 1911, when the whole island was first surveyed.
- [6] Mr. Raymond-Cadette further deposed that the purchasers of those surveyed lands in 1911 were given a maximum of fifteen years within which to pay for their parcels of land, after which Crown Grants were issued certifying their ownership. He further deposed that based on the records from the Registry and from his personal knowledge of the island and its inhabitants, Crown Grants were first issued in 1926 by the Government and continued until 1932 when such grants were then only issued on a purchaser personally applying to the Chief Surveyor with a recommendation in writing by the District Officer on the island.
- [7] Mr. Raymond-Cadette, then went further to depose that because of the transport difficulties prior to 1960, when transportation to and from mainland St. Vincent was only by sailing boats and due to the yearly disasters that occurred in crossing the channel, most of

the land owners opted for possession instead of Crown Grants; as a result most of the said parcels were possessed without the issue of Crown Grants.

[8] Another reason as deposed to by Mr. Cadette was to the effect that with the decline of agriculture most parcels were abandoned which culminated in the neglect of landowners to pursue Crown Grants, but however periodical grants were made on application by the respective landowners whenever sales or other uses were found for the said lands. He further deposed that because of a fire in Union Island around 1994 which destroyed the records office, all records pertaining to details for obtaining a Crown Grant were destroyed and the local inhabitants were left in a dilemma as to obtaining proper title to their lands. He further deposed that no records as to the duplication of the said records containing the ownership of the said lands as were recorded in the records office in Union Island exists at the Lands and Surveys Department of this State.

[9] As a result, Mr. Cadette stated, and because of the time frame involved being 90 years, during which the said two parcels of land were in the possession of the ancestors of Mr. Charles Sutherland, he is asking the Court to declare that the fee simple title is vested in the claimant company and not in the Crown.

[10] This matter came up for trial. Both parties relied on affidavits and exhibits filed, and also oral arguments to the court by both learned counsel supported by skeletal arguments and authorities.

ISSUES

[11] Simply stated, the issue for trial is, in whom does the title to the lands reside? There is no dispute from both parties that title was originally vested in the Crown. The claimant however contends that its predecessors in title purchased the lands from the Crown. The Crown denies this. To go further this court also has to decide whether or not the claimant's immediate predecessor in title had undisturbed possession of the subject lands for forty one (41) years prior to his declaration in 1996 and accordingly was entitled to

make such declaration and subsequently to transfer his legal and equitable interest therein to the claimant company.

[12] Section 17 of the Limitation Act of Saint Vincent and the Grenadines Cap. 90 of the Revised Edition of the Laws of Saint Vincent and the Grenadines provides that no action should be brought by any person to recover any lands after the expiration of 12 years from the date on which the right of action accrued. The section further provides that at the expiration of the period of 12 years the title of the person entitled to bring the action shall be extinguished. This limitation extinguishes the former owner's right to possession of the land, leaving some other person with a title based on adverse possession. If I believe the claimant's position on a balance of probabilities then the Limitation Act Cap. 90 and the Prescription Act Cap. 246 would come into play in support of the claimant's case.

[13] Having perused and carefully analyzed the plethora of affidavits filed by both sides to this suit I find as a fact that lands in Union Island were surveyed in 1910 – 1911 and divided into two categories – Public and Private allotments; and that persons purchased private lots and most never received Deeds of Conveyance to this day; and that most, if not all of the private allotments were occupied by inhabitants of Saint Vincent and the Grenadines, with specific regard to the natives of Union Island for over 90 years.

[14] I am also persuaded in making the above findings having regard particularly to the affidavits of Sylvester Raymond-Cadette, a Union Islander and local solicitor and counsel, and especially that of Mr. Vibert Dublin retired Civil Servant and for a long time District Officer of Union Island and the Southern Grenadines, and also Mr. Cleveland Mulrairie, a retired Civil Servant. Their affidavits speak for themselves and present a clear picture of what existed then and still exists in relation to the private allotments on Union Island.

[15] There was a survey plan of Union Island filed in these proceedings. This gives an adequate and sufficient definition of what was to pass to private individuals and what was to be kept for the Crown. There is nothing advanced to the contrary to galvanize this court

into taking the view that the survey was not properly made. There is no evidence to rebut the presumption that it was properly made.

[16] The defendant on the other hand, in the face of the evidence from the claimant in its bid to prove its title, contends based on the general principle with respect to onus of proof per Viscount Dunedin that “onus is always on a person who asserts a proposition of fact which is not self-evident” – in the case of *Robins v National Trust Company Limited* [1927] All E.R. 73 at p. 75 letter E, that it having been agreed by both parties that the Crown was the original owner of the land, the onus is on the claimant to show that it now has title; and present evidence in support of its claim of ownership by way of say, receipts, showing payment or testimony of persons who knew of John Sutherland’s possession and knew that he had completed payment for the lands, which would be good evidence of possession. All of these the defendant contends are absent from the evidence.

[17] The defendant further contends that the claimant’s nine affidavits from seven witnesses, do not speak of the particular parcels of land in question, except Mr. Sylvester Raymond-Cadette, who even though he refers to the parcels of land in issue, does not give direct evidence as to the nature of the possession of the claimant’s predecessors in title nor does he depose to how and when payments to the Crown were made. Does this in any way detract from the claimant’s case? I would say no. There is no speculation on the part of the court as to why the claimant’s predecessor in title received no Crown Grant. The affidavits of Vibert Dublin, and Cleveland Mulraine prevent any speculation on the part of the court. These are two retired Civil Servants with over fifty years in total service to Union Island in particular. They are and were well versed with the system of land distribution and ownership in Union Island for years. I have no reason to doubt their evidence. And in any case, the claimant’s position as far as I can glean, is not that the Crown stopped issuing Crown Grants in 1930, but that after 1930 Crown Grants were issued on more of an individual basis than wholesale grants prior to 1930. The reasons for a significant drop in the issuance of Crown Grants after 1930 is clearly evident in the affidavits of the claimant’s witnesses.

[18] It is known to all and Sunday in this State, that in 1994 a fire destroyed the records office on Union Island. Mr. Raymond-Cadette is not necessarily obliged to state what form those “records pertaining to details” are. It is evident from the evidence of Vibert Dublin and Cleveland Mulraine what records were kept in the Records Office of Union Island. I am convinced beyond doubt that all material records involving this case and others were destroyed in that fire. Neither am I saying, flowing from this finding, that the records office was a repository for deeds. The affidavits of Dublin and Mulraine clearly show what records pertaining to this case were kept in that records office.

[19] I have carefully looked at the affidavit of the Chief Surveyor, Mr. Adolphus Ollivierre, who is the only witness for the defendants whose evidence is worth looking at, only for the reason of his position as custodian of all Crown lands. Regrettably, his affidavit throws no light on this matter, except to throw light on his exalted position as custodian of all Crown lands and Chief Surveyor of this State. There is a clear dichotomy between his evidence as Chief Surveyor and that of experienced persons as Mr. Vibert Dublin and Cleveland Mulraine whose evidence as to the practice and system pertaining to Union Island I have no reason to doubt. Particularly galling is his splitting of hairs over the words “Reserve” and “Crown lands”. I need not hash over what I would consider irrelevant on his part. All told, I do not accept his evidence. His affidavit to my mind is a personal response to Mr. Raymond-Cadette’s affidavit, rather than deal with the issues pertaining to this suit especially the claimant’s claim.

[20] In paragraph 20 of Mr. Olliviere’s affidavit he purports to state that there is no record which suggests that John Sutherland or Charles Sutherland ever had interest in any lands at Rapide, Union Island. This, despite the fact that there are records of numerous Crown Grants being issued between 1930 and 1939, which is the period to which the claimant traces its purported root of title. He goes further to state that two of Union Island’s oldest and most prominent residents who are intimately acquainted with the at Rapide have no knowledge of the existence of a John Sutherland or a Charles Sutherland. The affidavit further states that one of the disputed parcels of land had been allotted to Mr. King Mitchell’s mother. Mr. Mitchell has deposed that his mother never rented land from John

Sutherland. He has further deposed that his mother was allotted the land by the Crown and that she abandoned the land and failed to complete payment to the Crown, and further that in his, Olliviere's professional opinion, the claimant has failed to demonstrate that it is entitled to the parcel of land which it claims.

[21] The question I ask myself goes to the preponderance of the evidence before me. Why should I deem this area of Ollivier's evidence, from two of Union Island's oldest citizens, over and above two retired civil servants Mr. Vibert Dublin, and Mr. Cleveland Mulraine who together have over fifty years of service in running the very system pertaining to land acquisition by private citizens and oversight of Crown lands. In my view the evidence of Dublin and Mulraine coupled with the evidence of Thomas Gellizeau, a Forest Ranger and Crown Lands Bailiff of Union Island puts those issues beyond doubt.

[22] I accept that Union Island had a peculiar system of land distribution that was in a way autonomous from that pertaining to other parts of Saint Vincent and the Grenadines; and that this system was determined by various vagaries including illiteracy, bad weather conditions impacting on any meaningful use of these lands by citizens, causing many of them to migrate leaving these lands with relatives, or in a state of disuse, and also difficulties in traveling to Saint Vincent to engage the services of a lawyer with a view to perfecting their titles. To conclude then, that these lands so "abandoned", in which category the lands in issue at one time fell, revert back to the government as Crown lands would be seeking to open an hornet's nest of a possible class action suit against the government.

[23] To my mind, in the circumstances peculiar to Union Island, and having regard to the law referred to earlier in this judgment, the claimant has satisfactorily explained his root of title to these two parcels of land, and the defendant's title, if any, has been extinguished by operation of the Limitation Act Cap 90 of the Laws of Saint Vincent and the Grenadines.

[24] It is instructive to refer to the judgment of Mitchell, J in the case of Marcia Simmons (the duly constituted attorney on record for Abraham Adams) Administratrix of the Estate of

Annie Adams, deceased vs The Attorney General, Civil Suit No. 547 of 1999. That case is on all fours with this case. In his judgment Mitchell, J brought home with such force the situation pertaining to land titles in Union Island. He had this to say:-

“Land titles to parcels in Union Island should not be in controversy. This island was purchased by the Crown in 1910 from private hands and was immediately surveyed into lots with established boundaries, and the lots sold out to private persons. The original survey maps still exist. Each lot is numbered, and the boundaries exactly known. The original and subsequent purchasers should have no difficulty in establishing their boundaries and their titles. I am satisfied however, that many of the purchasers from the Crown have never received their deeds, and that in Union Island too, as on mainland St. Vincent, the absence of a deed is no proof of lack of title, nor is the holding of a deed by an original owner any proof of present day title to a parcel of land...”

[25] Elsewhere in his erudite judgment, Mitchell, J opined at page 5 –

“You do not pay land and house tax in St. Vincent and the Grenadines for land you rent, only for land you own. Those tax rolls have recently gone up in flames when the Revenue Office burned down in 1995. The records could not be produced at the trial. I am satisfied that they existed at the time of the entry by Government onto the lands to construct the building in 1993, and that the records, if they had been available, would have showed the Heirs of Annie Adams to hold title to the land in dispute.”

“4. The Chief Surveyor produced an original survey plan of 1912 for that part of Union Island that included the land in dispute. This plan showed the ownership of the parcel of land, originally known as Parcel A, which was then much larger than it now is, to be in the Crown. On the plan, the entire parcel A was marked as being owned by the Crown. The Chief Surveyor admitted that in the years since 1912 other parts of the Parcel A had been sold by the Crown to private owners. Their purchases had not been marked off on the plan in evidence. The plan still showed the original ownership of all of Parcel A as being in the Crown. The plan was worthless to prove who at this present time or at any time subsequently to the year 1912, owned any part of Parcel A.”

[26] This is the exact situation with this instant case. Need I say more. I am more than persuaded by Mitchell, J’s judgment as referred to above. In fact I agree with it in every material particular.

ORDER

[27] As a consequence, having regard to the preponderance of the evidence before me, the law relative to the issues at hand, and all the authorities cited on a balance of probabilities,

I hold and declare that the two parcels of land in issue as described in the Second and Third Schedules to Title Deed Number 1237 of 2000 are held by Scott Investment Company Ltd in fee simple absolute in possession. The defendant will pay the claimant's costs in the sum of \$9,000.00.

.....
Frederick Bruce-Lyle
HIGH COURT JUDGE