

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. 286 of 1997

BETWEEN:

ARTHUR VERNEUIL

Claimant

and

ELEUTHERE SEVERIN sued herein in his personal capacity and
as representing the heirs of Joseph Sylvester

Defendant

Appearances:

Mr. Dexter V. O. Theodore for the Claimant

Mrs. Wauneen Louis-Harris for the Defendant.

2004: January 27, February 04
February 11

**PRESCRIPTIVE RIGHTS...FORM AND PROCEDURE...WAS THERE COMPLIANCE WITH
ARTICLE 2103A OF CIVIL CODE AND SUPREME COURT PRESCRIPTION BY THIRTY YEARS
1969 RULES...ADVERSE POSSESSION...FRAUD---FINALITY OF ADJUDICATION ORDER**

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** Mr. Arthur Verneuil, now deceased filed a Writ of Summons indorsed with Statement of Claim claiming among other things, prescriptive rights of a parcel of land comprising less than 0.02 hectares situate at Martin Luther Street in the village of Laborie. The land is recorded in the Land Registry as Parcel No. 0820C 153 in the name of the Heirs of Joseph Sylvester as provisional owner in title.
2. Mr. Verneuil alleged that he was at all material times the owner in possession together with his deceased wife and children, of the parcel of land by virtue of his sole, peaceable, public,

unequivocal and undisturbed possession for a continuous period, which is still continuing, of over 30 years.

3. He also alleged that the defendant, Mr. Eleuthere Severin had actual notice of his interest in the parcel of land because he and his family have since 1953 continuously resided in a wooden house on the land and Mr. Severin lives in close proximity to his wooden house.
4. He next alleged that Mr. Severin fraudulently claimed the land before the Land Registration and Titling Project, well knowing that he was entitled to the land.
5. Mr. Verneuil passed away on 7th November 1998 and his son, Marcus Verneuil was appointed by the Court to represent the estate of his father.
6. Mr. Severin, in his defence alleged that Mr. Verneuil paid rent to his deceased uncle, Joseph Sylvester for the use and occupation of the land. He next alleged that since his uncle death in 1984, no rent has been collected and that Mr. Marcus Verneuil continued to live in the house on the land as a tenant at sufferance.
7. Mr. Severin averred that Mr. Verneuil never claimed the land to which he alleged he is entitled to by virtue of long possession during the Land Registration and Titling Project.

The Issues

8. Two issues falls to be determined namely:
 - (i) Whether Mr. Verneuil's claim of prescriptive title is tenable.
 - (ii) Whether Mr. Severin fraudulently claim the land.

Prescriptive Title

A: Form and Procedure

9. Article 2103A of the Civil Code states:

"Title to immovable property, or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title

in regard to the property or right upon application in the manner prescribed by any statute or rules of court.”

10. At paragraph 3 of his statement of claim, Mr. Verneuil claimed title to the said parcel of land by virtue of his sole, peaceable, public, unequivocal and undisturbed possession for a continuous period of over 30 years. Yet, he circumvented the issue by applying for rectification of the land register when in fact, he ought to make his application for declaration of title within the meaning of Article 2103 A of the Code.

11. Mrs. Harris appearing for Mr. Severin submitted that the deceased has failed to conform to the manner prescribed by the Supreme Court – Prescription By Thirty Years (Declaration of Title) Saint Lucia Rules 1969 which reads as follows:

“An application for a declaration of title to immoveable property, or any servitude or other right connected therewith, under article 2103A of the Civil Code shall be made by petition to the Court.”

12. Rule 5 states the contents of the Petition. Rule 6 states that the Petition must be accompanied by affidavits of the applicant and *of two other persons at least.* (My emphasis)

13. Rule 8 states that forthwith upon filing of the Petition the Registrar shall issue a summons to all persons claiming an interest in the property to enter an appearance within 2 months from the last publication of such summons in the Gazette. The summons must be advertised in 2 separate issues of the Gazette and of a newspaper circulating in Saint Lucia. Provision is also made for a copy of the summons to be posted up in a conspicuous place in the court office and in a court room of the Magistrate in the District in which the land is situated.

14. In my opinion, non-compliance with the Supreme Court –Prescription by Thirty Years Saint Lucia 1969 Rules amounts to a flagrant breach of the procedure and form to be adopted. It seems to me that Mr. Verneuil has surreptitiously approached the court by a Writ of Summons endorsed with Statement of Claim.

B. Adverse Possession

15. Article 2057 of the Code states that for the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor. Article 2058 states that a person is always presumed to possess for himself and as proprietor in the absence of proof that his possession was begun for another.
16. It is undisputed that Mr. Verneuil entered into possession of the land in dispute in 1953 and that his wife and son, Marcus who was born on 16th March 1958 lived on the land continuously to the present date.
17. But Mr. Severin alleged that Mr. Verneuil was allowed to occupy the parcel of land by his uncle, Cornette Sylvester for the payment of rent and after the death of Mr. Sylvester, Mr. Verneuil lived in the house on the land as a tenant at sufferance and that his son, Marcus is fully aware that his family does not own the land. As a result, Marcus sought permission from Mr. Severin to renovate the house on the land and that he also offered Mr. Severin's sister, Philomen Polius to purchase the land.
18. I have had the opportunity of seeing and hearing the witnesses. I found Mr. Severin and his sister to be witnesses of candour. I could not say the same of Marcus Verneuil and his brother, James. In my opinion, they were hesitant and not forthright in their testimony. I found them to be unreliable witnesses. On a balance of probabilities, I prefer the evidence given by Mr. Severin and his sister.
19. Based on the evidence, I therefore concluded that Mr. Cornette Sylvester rented a house spot belonging to his father, Joseph Sylvester to the wife of Arthur Verneuil on which she placed a wooden house. She paid rent for the spot. Since the death of Cornette Sylvester in 1984, no rent was collected from Mr. Verneuil although his family remained on the land. I also found as a fact that Marcus Verneuil sought permission from Mr. Severin and his sister when he wanted to renovate the house on the land. He also offered to purchase the property. Having failed in his endeavours, his father instituted these proceedings.

20. The law is settled that where a claimant has gone into occupation under a family arrangement the claimant was nothing other than a licensee at any time and as such incapable of deriving title by prescription. The Barbadian cases of *Edwards v Brathwaite*¹ and *Callender v Dottin*² are authorities for the principle.

21. The ineluctable conclusion to be drawn from these facts is that Mr. Verneuil and his family recognized the successors of Joseph Sylvester including Mr. Severin as the rightful owners of the land in dispute and were not in adverse possession thereby they cannot acquire a possessory title by virtue of Article 2103A of the Civil Code.

22. Article 2067 of the Code states:

"Those who possess for another or under the acknowledgement that they hold for another, **never prescribe** the ownership, even by the continuance of their possession after the term fixed.

Thus, emphyteutic lessees, tenants, depositaries, usufructuaries and those who hold precariously the property of another cannot acquire it by prescription."

23. Further, Article 2068 precludes the representatives of the claimant, that is, Mr. Marcus Verneuil from claiming possessory title on the basis of prescription.

24. Mr. Theodore argued that "possession" under the Code does not necessitate adverse possession. In my view, there is a plethora of authorities which clearly establish that the nature of prescriptive title from its English origin requires adverse possession.³ It is a cardinal principle of law that an applicant must occupy a parcel of land independently of any permission in order to acquire a good prescriptive title. The occupation of any land by virtue of a family arrangement or permission or rental defeats any claim for prescriptive title.

¹ (1978) 32 WIR 92

² (1965) 8 WIR 429

³ *Burton v Elvin* (1993) 46 WIR 117; *Brown v Perry* (1983) 40 WIR 165; *Riley v Brathwaite & another* (1984) 37 WIR 69

25. It is also interesting to note that during the Land Registration and Titling Project, Mr. Verneuil and his family made claims to other lands but not to the land in dispute. Mr. Severin on the other hand, claimed the land for the estate of Joseph Sylvester and they were awarded provisional title on August 27, 1987.

Fraud

26. I now turn to the issue of fraud. At paragraph 6 of his statement of claim, Mr. Verneuil alleges as follows:

“Further or in the alternative, the defendant made the said claim fraudulently, well knowing that the claimant was entitled to the parcel of land claimed by the defendant.”

27. Mr. Theodore submitted that the paragraph was in the alternative and it is not the crux of his claim which is for prescriptive title under Article 2103A.

28. Mrs. Harris, on the other hand, argued that Mr. Verneuil has failed to plead particulars of fraud and such a deficiency is fatal to their case.

29. The legal principles which govern the pleadings where fraud is alleged are ancient and settled and would apply to both the common law and statutory claims. In *Thomas v Stoutt and Others*⁴, Byron CJ (ag) [as he then was] stated:

“The mere averment of fraud in general terms, is not sufficient for any practical purpose in the prosecution of a case. It is necessary that particulars of fraud are distinctly and carefully pleaded. There must be allegations of definite facts, or specific conduct. A definite character must be given to the charges by stating the facts on which they rest.”

30. The ancient principle was referred to in the case of *Wallingford v Mutual Society*.⁵ Lord Selborne, L.C. at p. 697 said:

“With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are

⁴ (1997) 55 WIR 112

⁵ [1880] 5 App. Cas. 685

insufficient even to amount to an averment of fraud of which any court ought to take notice. And here I find nothing but perfectly general and vague allegations of fraud. No single material fact is condescended upon, in a manner which would enable any court to understand what it was that was alleged to be fraudulent. These allegations, I think, must be entirely disregarded.”

31. In the present case, the allegations of fraud are indeed general and vague. The statement of claim does not contain any particulars at all which explained how Mr. Severin made the claim fraudulently. I therefore conclude that the allegation of fraud in paragraph 6 lacks distinct and careful particulars. It may be fitting to add that Mr. Theodore abandoned the issue of fraud in his submissions.

The Finality of the Adjudication Order

32. Mrs. Harris submitted that this case turns largely on the issue of whether or not a High Court Judge sitting in its original jurisdiction has the right to alter or amend a final decision of the Adjudication Officer by invoking the provisions of section 98 of the Land Registration Act 1984, after a lapse of 10 years from the date of the decision of the Adjudication Officer.
33. This very issue arose for the determination of the Court of Appeal in *Skelton v Skelton*⁶. The Court of Appeal concluded that the respondent was required to invoke the appeal procedure laid down in section 10 of the Land Adjudication Ordinance where the final decision of the Adjudication Officer was incorrectly recorded in the Land Register. The case is also authority that a High Court Judge sitting in original jurisdiction has no right to alter or amend a final decision of the Adjudication Officer on a question of fact based on his own inquiry in the absence of an appeal following a lapse of 9 years, under the guise of an ingenious action for rectification.

34. Sir Lascelles Robotham at page 181 stated:

“I am of the view that the respondent not having exercised his right to petition the adjudicating officer and not having exercised his right of appeal to the Court of Appeal, nor sought an extension of time within which to appeal, and lastly (but by no means least) not

⁶ (1986) 37 WIR 177

having done anything for nine years, cannot now impeach the finding of the adjudication officer by an ingenious action for rectification in the High Court.”

35. In my judgment, the instant claim by Mr. Verneuil is an ingenious action not only in respect of rectification to impugn the finding of the Adjudication Officer but also in respect of prescription. In the latter case, he was in flagrant breach of the procedure and form to be adopted in approaching the court for declaration of title by prescription.
36. In my opinion, the issues of res judicata and estoppel are wholly unnecessary for the determination of this claim.
37. In the result, I will dismiss the claim and order that the claimant, Mr. Verneuil pays the costs of \$2,500.00 to Mr. Severin (as agreed by Counsel).

Indra Hariprashad-Charles
High Court Judge