SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HIGH COURT CIVIL APPEAL NO.6 OF 2002

BETWEEN:

[1] GLORIA GONSALVES
[2] VANDYKE JEFF DICKSON

Appellants

and

JOYCE RYAN

Respondent

Before:

The Hon. Mr. Albert Redhead — Justice of Appeal
The Hon. Mr. Ephraim Georges — Justice of Appeal [Ag.]
The Hon. Mr. Brian Alleyne, SC — Justice of Appeal [Ag.]

Appearances:

Mr. Emery Robertson for the Appellant
Mr. Richard Williams for the Respondent

2002: December 3;
2004: March 1.

JUDGMENT

[1] ALLEYNE, J.A. [AG.]: The Appellant Gloria Gonsalves and the respondent Joyce Ryan are sisters. The Appellant Vandyke Jeff Dickson is the son of the Appellant Gloria Gonsalves and the nephew of the respondent. The respondent issued a claim in 1993 against the Appellants for trespass to certain lands of which she claimed to have been in possession unmolested for 17 years. She built a wall house on the land in 1982. She claimed that Marie Dickson, her mother, and the mother of the Appellant Joyce Ryan, died in 1985, and by her statement of claim alleged that since then she has continued to live on the land with her children. She alleged that in October 1993, and thereafter, the Appellants trespassed on the

land, and built a concrete dwelling house on it. For their part the Appellants alleged that the land was family land to be divided, and they admit that they have habitually entered the land, but deny that their entry was unlawful. They counterclaimed that the respondent unlawfully prevented them from constructing a dwelling house on the land. In her defence to counterclaim the respondent claimed to have been in exclusive possession of the land for in excess of 17 years, and that the Appellants begun their acts of trespass only in October 1993.

[2] In her witness statement the respondent/claimant, Joyce Ryan, claimed to have lived with her mother in a chattel house on the land, which was owned by her mother, until 1975, when the mother allegedly "handed over the chattel house" to her and went to live "in a house nearby" which is owned by another daughter. The Appellant Gloria Gonsalves lived in that house with the mother until her death in 1985 and thereafter until 1990. In cross examination the respondent said that her mother gave the land to her in 1980, without a deed. This witness also said that her mother "gave the others their portion of land." On the other hand the Appellant Gloria Gonsalves in cross examination admitted that her mother never went back to live on the land after 1977 when she went to live elsewhere, and that no-one else apart from the respondent lived there from 1977. She however claimed that she was going on the land, but never "claimed my portion" until 1993. She said in 1993 the respondent Joyce was the only one in possession of the land.

[3] In his judgment at paragraph 6 the learned trial Judge found that it was clear that the respondent was the only person in actual possession of the land, and that it was not in contention that the Appellant Gloria Gonsalves and others were allowed to pick breadfruit and other produce from the land. In fact the witness statement of Patrick Dickson says:

> "We had fruit trees on the land. I usually go and pick fruits from the fruit trees. She (Joyce Ryan) never objected, as she knew that it was family land. ... Other members of the family go to the land to pick fruits."

[4] For her part, the Appellant Gloria Gonsalves said in her witness statement that "I always go to the land to pick breadfruit and coconuts. Patrick (her brother) will bring his friends and do the same thing. The plaintiff never objected. She knew the land was family land." In examination in chief she said that her brother Patrick used to pay taxes for the land and pick coconuts, breadfruit and all that was on the land, with no objection by Joyce Ryan. The evidence of the respondent under cross-examination is that she used to give her siblings fruits and food from the land. Her son Keith Ryan in cross-examination said that Gloria Gonsalves came sometimes to pick breadfruit from the land, and that no-one interfered with her. He continued; "Gloria would pick breadfruit from the tree. It was legal for her to do that, as she was part of the family." Patrick Dickson in re-examination claimed that he used to pick fruits from the land while Joyce was in possession of it, and she did not object.

[5] The Appellant Vandyke Dickson in his evidence said that he used to go to the land to pick breadfruit, coconuts, mango and anything that grew on the land, with no objection from the respondent. In cross-examination he said that he used to pick fruits from the land, and used to be on the land every day, but not to claim the land.

[6] The evidence does not support the learned Judge's finding that it was not in contention that the Appellant was allowed to pick fruit from the land. The preponderance of evidence was that the Appellants and others picked fruit from the land as of right by virtue of it being undivided family land, and that the respondent did not object. In context, the absence of objection is very different from the granting of permission, which is implied in the learned Judge's finding. At the very least the issue was clearly highly contentious between the parties and witnesses. Keith Ryan's evidence that it was legal for the Appellant Gonsalves to pick fruits from the land as she was part of the family is not weakened in its effect by the fact that this witness had known the land to be his grandmother's, not family land, as the learned Judge appears to infer in paragraph 11 of the judgment. On

the contrary, it is precisely the case for the Appellants that the land belonged to their mother, and descended on her death, not to one daughter, the respondent, but to the family on the basis of intestate succession.

[7] It is trite law that title to land in St. Vincent and the Grenadines cannot be transferred except by deed.[1] It follows that the legal title to the disputed land has not passed to the respondent.

[8] The evidence establishes, as the learned trial Judge found, that the respondent was the only person living on the land from 1977 when her mother went to live with another daughter. However, equally, it is clear from the evidence, both of the Appellant and her witnesses and of the respondent and her witnesses, that other members of the family, including the Appellants, continued to enjoy the benefits of the land, reaping fruit and other produce from the trees on the land without interference from the respondent. The respondent's possession was not exclusive.

[9] As to time from which, even if the evidence established exclusive possession, time would be deemed to run, it seems to me that the evidence discloses that when she was put into possession by her mother in 1977, it was no more than by way of license. The circumstances and the conduct of the parties showed that all that was intended was that the occupier should be granted a personal privilege with no interest in the land. She would thus have acquired no more than the status of a licensee, occupying with the permission of her mother.[2] It was nothing more than a family arrangement, and would not supply the basis for the acquisition of a prescriptive title.[3]

[10] In the circumstances I would allow the appeal, set aside the award of special and general damages and an injunction, order that judgment be entered for the

[1] Real Property Act CAP. 248, section 4.
[2] Errington v Errington [1952] 1 All ER 149.
[3] Edwards v Brathwaite [1978] 32 WIR 85.

Appellants/defendants on the claim, and on the counterclaim for an injunction restraining the respondent/claimant from preventing the Appellants/defendants from entering the land or constructing a dwelling house thereon. I would award costs in favour of the Appellants in the sum of $14,000.00 in the Court below and $9,333.33 in this appeal.

Brian Alleyne, SC
Justice of Appeal [Ag.]

I concur.

Albert Redhead
Justice of Appeal

[Sgd.]
I concur.

Ephraim Georges
Justice of Appeal [Ag.]