THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 25 OF 2004

Between: CLARIBELLE CONNELL
(By her duly constituted Attorney on record Marissa Creese)

Appellant

And

TRELDON CONNELL

Respondent

Before:

The Hon. Mr. Brian C.K Alleyne S.C — Chief Justice [Ag]
The Hon. Mr. Kenneth A. Benjamin — Justice of Appeal [Ag]
The Hon. Mr. Dennis Barrow S.C — Justice of Appeal [Ag]

Appearances:

Mr. S. Williams for the Appellant
Mr. O. Dennie for the Respondent

2005: May 25 & 26

JUDGMENT

[1] **BENJAMIN, JA (Ag):** This appeal concerns the right to possession of property situate at Barrouallie in the State of Saint Vincent and the Grenadines. It arises from proceedings brought by the Appellant, Claribelle Connell, now deceased by her duly constituted attorney against the Respondent, Treldon Connell, by Claim Form, seeking a declaration that the Appellant was entitled to possession of the said property, an injunction restraining

the Respondent from trespassing thereon and damages for trespass. The trial judge dismissed the Claim and entered judgment upon the Respondent's Counterclaim.

[2] The undisputed facts upon which the Appellant relied can be stated shortly. The Appellant is the step-mother of the Respondent. She was married to Selwyn Connell, the Respondent's father, and they lived in the matrimonial home from in or about 1941 until he died on May 27, 1976. Thereafter, the Appellant remained in exclusive occupation of the property until July 28, 2002, when she was dispossessed by the Respondent, who has since occupied the property.

[3] By a document styled a 'Possessory Title', the Appellant declared her sole undisturbed and continuous possession of the property exercising all acts of ownership. She swore to the property having been formerly owned by her late husband Selwyn Connell with whom she lived on the property from 1941 until his death in 1976, from which date she lived on the property alone.

[4] In his Defence, the Respondent pleaded that the property had been purchased by his mother, Imore Caesar, and his deceased father in equal shares, while they enjoyed a common law relationship which produced three children including the Respondent himself. He further averred that his father had given his share to him during his lifetime with the knowledge of the Appellant.. He went on to assert that he lived with his father and the Appellant in the house built by his mother on the property until he went abroad to pursue studies at University level, and subsequently to reside in England. The Respondent stated that he returned home from time to time to effect substantial repairs at his expense before finally returning upon retirement to take care of the Appellant.

[5] In his witness statement, the Respondent departed from his pleadings and stated that the property was purchased solely by his mother and a receipt issued. No receipt was produced and it was admitted that no title deed was executed by the vendor. He further said that in his visits to St. Vincent he would stay at the property and effect repairs to the same. In his words, "it was known that the said Claribelle Connell will have a Life Interest only in the said property and thereafter I will become the absolute owner of same." The Respondent executed a Deed in favour of himself on January 17, 2003; the said

document, which is described as a Deed of Settlement, purported to convey the fee simple in possession of the property to the Respondent.

[6] In furtherance of his assertion of ownership the Respondent pointed to the Appellant having failed to list the property among the assets of the estate of his father, Selwyn Connell, for which estate she had applied for Letters of Administration in 1985. The inference urged was that this amounted to an acknowledgement that the property had been alienated to the Respondent by the inter vivos disposition of his father.

[7] In his judgment, the learned trial judge identified the main issue as being essentially factual and whether the property was owned by the Appellant or whether she had had a life interest conferred on her in light of the omission of the property from the Appellants application for Letters of Administration of the estate of Selwyn Connell, deceased. He went on to hold that the property did not form part of the estate of the deceased and that the Appellant had not proved her case on the balance of probabilities. The following orders were made on the Respondent's counterclaim:

(1) A declaration that the property did not form part of the estate of Selwyn Connell, deceased.

(2) A declaration that the Claimant (Appellant) was not entitled to possession of the property.

(3) An injunction was granted to the Respondent restraining the Appellant whether by herself, her servants or agents from trespassing on the said property or exercising any acts of ownership with respect to the property

(4) A declaration that the Respondent was entitled to possession of the property by virtue of the Deed of Settlement and that the Possessory Title of the Appellant be cancelled.

(5) The Appellant to pay the Respondent's costs in the sum of $5,000.

[8] The Appellant is dissatisfied with the decision of the learned trial judge. Inasmuch as there were five grounds of appeal relied upon this Court holds the view that the same can be condensed into the single issue of whether in the light of the Appellant's claim for possession, the Respondent has demonstrated a better right to possession of the property.

[9] Neither party has presented any valid paper title to the property. Suffice it to say that the Deed of Settlement and the Possessory Title, are self-serving and in no way amount to valid legal title. Learned Counsel for the Appellant accurately focused on the principle to be applied by reference to the Law of Real Property by Megarry and Wade (3rd ed.) at p. 997. The learned authors had this to say:

> "Possession by itself gives a good title against all the world, except someone having a better legal right to possession.
>
> "This last proposition is fundamental to our concept of title to land. If the occupier's possession is disturbed for example by trespass or nuisance, he can sue on the strength of his possession and does not have to prove his title. It follows that the person disturbing the occupier's possession cannot attack his title if he admits his possession. As against a defendant having no title to the land, the occupier's possession is in itself a title."

Since the Respondent at trial was faced with the admitted occupation of the property by the Appellant with Selwyn Connell from 1941 until his decease in 1976 and thereafter by herself, the burden was cast upon him to prove a better title to occupy the property if he was to successfully dispossess the Appellant. Regrettably, the learned trial judge did not adopt this approach. The Appellant's long occupation was not treated as prima facie entitlement to possession.

[10] The transfer of land by sale or otherwise is at law governed by the Statute of Frauds, 1677 [UK] which has been received into the law of St. Vincent and the Grenadines by the Application of English Law Act, cap 8. The requirement of a note or memorandum in writing signed by the transferor renders a deed for the transfer of land enforceable. As earlier indicated, the Deed of Settlement was signed by the Respondent himself and therefore fails to qualify as evidence of the enforceability of any transfer of land. The alleged gift of the property ought to have been effected by a deed signed by the donor to confer the legal estate in the property upon the Respondent; no such deed was produced by the Respondent.

[11] At the instance of the Respondent, the learned trial judge was invited to and did conclude that the property did not form part of the estate of Selwyn Connell, deceased. The aforementioned omission of the property from the Appellant's application for Letters of Administration of her later husband's estate was deduced to be inconsistent with her description in para 3 of the Possessory Title signed by her as being 'formerly owned by my husband Selwyn Connell'. Para 16 of the judgment reads:

> "16. This omission on the part of the claimant lends support to the defendant's case that the said property was given to him by his father with the knowledge of the claimant who armed with the knowledge, therefore did not include same in her application for Letters of Administration in the estate of Selwyn Connell."

With respect, the said omission of the property could have been attributable to other reasons, the most powerful of which is that the Appellant considered the property to be in her possession by virtue of her long occupation. Flowing from that, it would follow that she would not have included the property as being part of the estate of her late husband.

[12] In furtherance of the argument based upon the omission of the property from the Appellant's Application for Letters of Administration of the estate of Selwyn Connell, deceased, the Respondent averted to the similar omission of a property referred to as the Salvatory Building which was owned by the deceased and over which property the Respondent exercised acts of ownership with the knowledge of the Appellant. This Court finds itself unable to accept such reasoning and regards that the situation as separate from and irrelevant to the issue at hand.

[13] Learned Counsel for the Respondent in his submissions commended to the Court the conduct of the Respondent Reference was made to the Respondent having inter alia repaired the property at his own expense and provided for the upkeep of the Appellant. Even if true, such acts are equivocal as the same could be ascribed to the devotion of a grateful and dutiful stepson. Without more, these acts could not be treated as evidence of ownership.

[14] During his testimony at trial, in a departure from the Defence as pleaded, the Respondent claimed the property through his mother who died in 1958. He testified that his mother

bought the land from one Katherine Johnson and upon her death, the property automatically became his. He went on to admit that he had not taken legal steps to administer his mother's estate. Here again, there was no deed to support an inter vivos transfer and, in the absence of such a memorandum or note in writing, the estate of the Respondent's mother remains unadministered. The Respondent therefore enjoys no standing to defend against or make a claim for title to the property

[15] For the sake of completeness, it ought to be iterated that the Respondent's gratuitous assertion of a life interest being granted to the Appellant in the property is wholly untenable. In the course of submissions, learned counsel for the Respondent was unable to demonstrate the acquisition of legal title or a better right to possession of the property. Far less could he defend the creation of a life interest in the Appellant. The only evidence of such was the ipsa dixit of the Respondent which does not operate to create a life interest at law or in equity.

[16] In the Court's view, the learned trial judge did not approach the Claim on the correct basis and such misdirection led to an incorrect conclusion that cannot be supported on the evidence. Accordingly the orders made on the counterclaim must be set aside and the Appellant is entitled to judgment on her claim.

[17] The Claimant, Claribelle Connell died before the trial. She was 95 years of age when she was dispossessed of her home of 61 years. The claim was led by the evidence of her attorney on record during her lifetime, Marissa Cresse one Jeffrey Creese having been substituted as claimant. In her witness statement, Marissa Creese recounted the events leading to the deceased Claribelle Connell leaving her matrimonial home. She said that on July 28, 2002, the Respondent and his wife came to the house and told her he would turn an animal on her and her family. He threatened her with a cutlass which he had in his hand. In fear of her life and that of the Appellant she left with the Appellant for the refuge of her own home. The Defence of the Respondent denied that he forced the Appellant to leave the property against her will. In his witness statement, he elaborated by explaining that he did have a cutlass when Marissa Creese came to the property as he was then cutting coconuts. He denied threatening her and asserted that it was Marissa Creese who elected to remove the Appellant against her will.

[18] A perusal of the record yielded no evidence upon which damages for trespass could be quantified. However, the Appellant was deprived of the familiar comfort of the surroundings she enjoyed for some 61 years and was made to spend her last years elsewhere. She must have suffered anguish and some measure of distress. Trespass by the Respondent has been established by his own admission. An award of aggravated damages is therefore attracted and fixed in the sum of $5,000.00.

[19] Accordingly, the appeal is allowed. The order dismissing the Claim and the orders made on the counterclaim are set aside. The following orders are substituted:

(a) It is declared that the Appellant is entitled to possession of the property

(b) The Respondent whether by himself, his servants and/or agents is restrained from trespassing upon the property.

(c) Damages for trespass shall be paid by the Respondent to the Appellant in the sum of $6,000.00.

[20] Finally, there is the question of costs. The claim involved not only a claim for damages but also for a declaration and an injunction. The action is therefore deserving of a value of $50,000 as per Part 65 of CPR 2000. The Appellant in entitled to the costs of this appeal and in the court below fixed in the sum of $9,333 and $14,000 respectively.

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Kenneth A. Benjamin
Justice of Appeal [Ag]

I concur

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Brian C. K Alleyne S.C
Chief Justice [Ag]

I concur

....
Dennis Barrow S.C
Justice of Appeal [Ag]