

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2003/0016

BETWEEN:

RUBY BENOIT

Claimant

AND

AUGUSTINE FRANCIS

Defendant

Mr. Ernest Wilkinson for the Claimant.
Mr. Anselm Clouden for the Defendant.

2005: November 29
December 7
2006: May 17

JUDGMENT

- [1] **BAPTISTE, J.:** This family dispute concerns land at St. Paul's in Grenada which formed part of the estate of William Irvin Bullen. William was the grandfather of the litigants. Ruby Benoit claims that between June and September 2002 Augustine Francis wrongfully entered her land, placed building material thereon as well as planted flowers on a portion of the land and has wrongfully failed and refused to remove the said building material and flowers. Ruby claims that she was at all material times the owner and entitled to possession of the land while Augustine claims that the land belongs to him.
- [2] Ruby avers that she became entitled to the land by virtue of a devise in the last will of her mother, Doris Bullen, subject to the life interest of Thelma Garraway. Doris was in possession of the land from about 1931 to the date of her death on 3rd September, 1999. After Doris died Thelma continued in undisturbed possession until March 2001 when she

was moved to a home for the aged. After Thelma's death she (Ruby) continued in undisturbed possession and occupation. Ruby also pleads the Limitation of Actions Act.

[3] Augustine avers in the defence that Doris was never the owner of the land and it could not therefore be the subject of a devise in her will. Doris was allowed to remain on the land with the permission of Hubert Bullen (Augustine's father) and after Hubert's death, with Augustine's permission. In 1931 Doris and her sibling lived on the land with their father, William. William died on 22nd March, 1933, intestate. A grant of letters of administration was made to Hubert in 1936. Hubert remained in occupation until his death in 1981. Neither Ruby nor Thelma was ever in undisturbed possession of the disputed land. Doris was never in undisturbed possession of the disputed land. The disputed land was at all material times in the possession of his father Hubert or himself. Hubert was in possession from 1933 to 1975. Hubert's title was by virtue of an Administrator's Conveyance dated 13th March, 1967 between Hubert as administrator of the one part and as heir-at-law of the other part.

[4] I have sought to capture the essence of the pleading of the parties as it relates to the ownership and occupation of the disputed land. Upon the death of William in 1933, intestate, his real estate vested in his heir-at-law, pending a grant of administration. His heir-at-law was his son Hubert. Letters of administration in William's estate was granted to Hubert in 1936. As a matter of law, William's real estate vested in Hubert upon his death in 1933. It did not vest in Doris. Hubert took the whole of the real estate of his father. So the averment in paragraph 3 of the statement of claim that "from or about the year 1931 to the date of her death Doris had been in undisturbed possession of the lot of land" is clearly not sustainable

[5] A significant development occurred in 1956. In that year Doris and three of her siblings made an application to partition the land. Augustine was the Respondent to that application. The Court ordered that inquiries be conducted by the Registrar. The application failed, the reason being that as heir-at-law Hubert was the only person entitled to his father's estate.

[6] Before William's death in 1933, Doris and her sibling, including Hubert, lived on the land. Upon William's death the land was vested in Hubert as heir-at-law. In 1936 Hubert took out letters of administration to William's estate. I accept the evidence of Martina Moore that Hubert always remained in charge of the whole estate of William and only permitted Doris to occupy a small portion around the chattel house. Augustine also stated in his witness statement that Hubert granted Doris permission to remain on the land during his (Hubert's) lifetime, she being a spinster with two children and without any means of providing for herself and her children. I also accept that evidence. Ruby got married in 1952 and continued living on the land until 1955, after which she went to live with her husband at his home. In my judgment, Hubert allowed Doris and the other family members to remain on the land. Doris' occupation was permissive. She was there as a licensee of Hubert. This remained the case even after 1956 when an unsuccessful attempt was made to partition the land.

[7] In 1967 Hubert executed an Administrator's Conveyance and in 1975 conveyed the land to Augustine. Hubert died in 1981. The question is, what was the nature of Doris' occupation after the conveyance to Augustine in 1975. Augustine stated that after his father conveyed the land to him he allowed Doris to continue occupation of the spot and the chattel house situated on the lot. Doris knew that her occupation was only by permission and as a consequence never attempted to improve the old chattel house. In cross-examination, Augustine stated that shortly after his father's death, Thelma came over to his house and said, "Now that Daddy is dead, what is the position?" He told Thelma that everything will continue as is. Augustine stated that his father told him of the permission granted to Doris and Thelma to stay on the land and asked that he allow them to live there. It was part of the condition his father put to him when his father granted him the deed of gift for the property. I accept the evidence of Augustine and I am driven to the conclusion that from 1975 Doris' occupation of the land was also permissive. Her occupation was with the permission of Augustine.

[8] In his witness statement Augustine stated that his father always exercised acts of ownership over the land and continued to reap the breadfruit, cocoa and coconuts on the land. Upon his father transferring the land to him, he (Augustine) continued to exercise

acts of ownership of the said lot to the exclusion of all others and reaped the fruits and paid taxes. After Doris' death and upon Thelma being sent to live at a nursing home, he took full possession of the property. In cross-examination Augustine said that he cultivated the land and after his father's death he continued to cultivate the land. Doris planted nothing on the land, maybe a flower tree, nothing else. She did not plant peas and corn. Ruby never visited the land until her sister's (Thelma) death.

[9] Mr. Wilkinson argued that assuming but not admitting that the Claimant had a licence to be on the land for upwards of 52 years and not accounting to anyone for rents and profits then she would have acquired an equitable interest which could not be revoked by word of mouth. The Defendant has not pleaded that that licence was ever revoked either orally or in writing. Mr. Wilkinson submitted that the Defendant is estopped from trying to establish a licence at this stage. Two points can be made here. First, the Claimant (Ruby) was never on the land for 52 years. She left the land in 1955. Secondly, during the time she lived on the land her occupation was a permissive one.

[10] Mr. Wilkinson contended that assuming, but not admitting that any licence exists, the defendant having admitted that the claimant's mother was on the lot of land by licence of his father, he having a conveyance executed in his favour, took the property with notice of the licence and he is clearly bound by the licence if there is any such licence. Mr. Wilkinson relied on the case of **Inwards v Baker** [1965] 1 All ER 446. In that case a son wished to build a bungalow as his home and was persuaded by his father to build upon the father's land. The son constructed the bungalow in the belief that he would be permitted to remain there for his lifetime, but upon his father's death the trustees of his father's will sought to eject the son from the bungalow. It was held that the son was entitled to remain in occupation and that his expenditure had created such an equity that the court should satisfy the equity by permitting him to remain in occupation for so long as he desired.

[11] In my judgment, **Inwards v Baker** bears no similarity with the case at bar. Equitable estoppel does not arise in the circumstances of the instant case. Doris' licence terminated upon her death in 1999. After Thelma went to the nursing home in 2001, Augustine moved to take full possession of the land.

[12] Doris never owned the land. Her occupation of the land was always permissive. She was a licensee. Doris was never in undisturbed possession of the land. Her statutory declaration to the contrary is of no effect. It entirely disregards the fact that Doris' occupation was a permissive one. Doris was not therefore in a position to make any disposition of the land. She could not grant what she did not have. Doris could not make any devise of the land by will. The land was in the successive ownership of Hubert and Augustine. Doris never dealt with the land as an occupying owner might have been expected to deal with it. Hubert cultivated the land and after his death Augustine also cultivated the land. They both exercised acts of ownership. Doris never cultivated the land. She only occupied the chattel house. Doris never sought to exclude Hubert or Augustine from the land. Doris did not have factual possession or the intention to possess. No question of adverse possession arises here, neither can Doris pray in aid the provisions of the Limitation of Actions Act. Further, insofar as Ruby bases her entitlement to the land in the last will of her mother Doris, her claim cannot stand. In the premises, Ruby has failed to prove her claim.

[16] It is ordered that the claim is dismissed with costs agreed in the sum of \$3,000.00.

Davidson Kelvin Baptiste
High Court Judge