

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 1228/2000

BETWEEN

LUCY JOHNNY et al

Claimants

VS

GERALDINE NELSON nee JEAN et al

Defendants

Appearances:

Mr. Patrick Straughn for Claimants

Mr. Al Eliote for Defendants

.....
2006: May 8
October 9
.....

Mason J

[1] This action was begun on 14th December 2000 by Writ of Summons together with Affidavits in support.

[2] Appearances were filed for the two (2) Defendants on 8th May, 2001.

[3] On 17th April, 2002 an Order was made by the Court granting among other things leave to the Claimants to amend their claim to include particulars of fraud and to the Defendants to file a defence in accordance with the Civil Procedure Rules 2000.

- [4] Pursuant to this order, an amended claim was filed on 9th May, 2002.
- [5] The Defendants filed their defence on 2nd August, 2002.
- [6] The subject matter of this action is a portion of land formerly so registered in the Land Registry but which subsequent to a survey has been registered as two (2) separate parcels.
- [7] It is the Claimants' claim that:
- 1) all the parties to this action - both Claimants and Defendants - are heirs to the late Gilbert Joseph (the deceased) who originally owned the land;
 - 2) the first Claimant is the niece of the Defendants, her father being their brother;
 - 3) the second Claimant is cousin in the first degree to the Defendants, their mothers being siblings
 - 4) the other Claimants are cousins to the Defendants
 - 5) that before and after the death of Gilbert Joseph, all the parties were in possession of the property
 - 6) by Petition dated 10th July 1998 and filed on 14th August, 1998 in the Land Registry, the first Defendant fraudulently claimed to be the owner in possession of the said property;
 - 7) consequent upon this Petition an order was made granting the Defendants prescriptive title to the property;
 - 8) as a result the Claimants have been deprived of their legal rights, have been wrongly disturbed in their possession and have been prevented from exercising their lawful rights over the property;
- [8] The Claimants are therefore claiming:
- 1) an interim injunction prohibiting the Defendants by themselves, their servants or agents from interfering with the legal rights of the Claimants in respect of

the property are from dealing with the property until a final decision as to true ownership

- 2) a declaration that the Claimants and the Defendants are heirs of the deceased and are the owners entitled to possession of the property; and
- 3) an order authorizing the Land Registrar to rectify the Land Register by deleting the names of the Defendants as owners of the two (2) parcels of land and substituting therefore the heirs of the Deceased

[9] The Defendants in their defence have essentially denied "each and every allegation" contained in the Amended Statement of Claim and have put the Claimants to strict proof of the familial relationship.

[10] It should be noted that both Defendants are unfortunately now deceased.

[11] Evidence for the Claimants was led from their witness statements.

[12] In her statement, the first Claimant states that she is 64 years of age, a housewife and retired Castries City Council worker. She was born on the disputed land and has lived there all of her life and in fact continues to live there with her 91 year old mother.

[13] She also states that the first Defendant is her aunt, being the sister of her father.

[14] She claims that a survey was done for her aunt so that she could claim the whole of the land by long possession but that she had never been given notice of the survey although she lives there with her mother. She was subsequently shown a copy of the Plan of Survey – she does not state by whom – but this plan does not show her house nor the Community Centre which had been built on the land in 1979 and was burnt in 1994. Accordingly to the Claimant, it had been used as a Hurricane Centre, a Mass Centre and a Pre-School.

[15] She continues that it was her aunt, the first Defendant, who "brought her up as a child" and

it. was the first Defendant's mother who told her that all her children had been born on the land.

[16] According to the first Claimant, her aunt, first Defendant, had spent some time in Barbados returning to St. Lucia on the death of her mother in the 1960's and so the first Defendant could not have lived on the land for the period of 75 years as she claimed in her application.

[17] The first Claimant accepts that the first Defendant does have a share in the land as does she and that she ought not to have been deprived of her share.

[18] Under cross examination the first Claimant claims not to have been aware of the application by her aunt in 1999 except that around that time her aunt, the first Defendant, told her that she had had a survey done to claim title to the land but never knew whether she had in fact done it. She remembers being sent "a lawyer paper" to remove them from the land.

[19] The second Claimant, 75 years old claims to know the land, "every corner of it" but never to have lived on it. The first Defendant she states is the daughter of her aunt.

[20] The third Claimant, 73 years old, gives evidence that he was born on the disputed land. His mother who he claims is the aunt of the first Defendant moved away from the land when he was about seven (7) years old.

[21] He also knows the land very well and still goes there. He attests that in 1979 his uncles and aunts gave permission for the Community Centre to be built on the land.

[22] The fourth Claimant, 69 years old, was also born on the land in question and lived there for 59 years. The first Defendant was his aunt.

- [23] He states that his grandmother, his mother, his aunts and uncles all lived on the land and that on her death, his grandmother, by will dated 9th June 1975 left her portion of the land to him.
- [24] He denies under cross examination any knowledge of a survey having been carried out on the land. He was never given notice nor had he ever seen any surveyors on the land.
- [25] Evidence on behalf of the two (2) Defendants was given by the son and nephew respectively of the first and second Defendant.
- [26] In his witness statement he had referred to himself as son and grandson respectively of first and second Defendants but the second Defendant being brother of the first Defendant, the reference to himself as grandson of the second Defendant would have been incorrect.
- [27] The witness, 42 years old, has lived all of his life on the disputed land. He states that his mother had been in peaceful, public, uninterrupted occupation for all of his life.
- [28] He then purports to give evidence which because of his age, he could not have personal knowledge of viz that his grandfather, his mother's father, entered from the land in 1899 and that he lived there until his death in 1961. The witness was born in 1963 as stated in cross examination.
- [29] He also states that his mother, the first Defendant, had duly advertised her claim for prescriptive title of the of property.
- [30] Under cross examination he admitted living in Barbados for "some time". This he later states was one year.
- [31] He admitted that other people had lived on the land but he never knew the fourth Claimant to have lived there. He admits that the first Claimant has always and still lives on the land. He claims not to know the other Claimants.

[32] I should admit at this stage that in the main, I did not in the main detect any subterfuge on the part of the witnesses. The evidence given was simple and straightforward with no attempt at prevarication. They appeared to give the evidence according to their knowledge.

Claimant's Submissions

[33] It is the submission of Counsel for the Claimants that the Petition of the first Defendant which resulted in the Defendant acquiring prescriptive title to the land was fraudulent. Moreover the Defendants in the Petition did not satisfy the requirements of Articles 2056, 2057 and 2103 of the Civil Code.

[34] Counsel submitted that the basis of prescription is possession and not ownership and that such possession must be sole and undisturbed. Thus the first Claimant, having been born on the land, having lived there all of her life and still living there on the land with her mother is evidence that the Defendants' possession was not sole and undisturbed.

[35] The fourth Claimant was born on the land, has lived on it for 59 of his 69 years and still visits.

[36] It was suggested that all of the parties have the same interests in the land.

[37] With respect to the survey, Counsel submitted that there had been no actual or constructive notice given by the Defendants to the Claimants as is required by section 18 of the Land Surveyors Act. In addition the survey plan does not show any buildings on the land, whether the house of the first Claimant, the first Defendant's house or the derelict community building which would have alerted the Registrar that notice had to be given to other parties.

[38] The Claimants had not been served with notice by the Registrar.

- [39] Counsel was of the view that in accordance with section 95 of the Land Registration Act, the Registrar ought to have gone to the land to satisfy himself that what the Petitioner/Defendant had said was correct and if he had so done, then the situation would have been revealed to him.
- [40] The Petitioner/first Defendant was not at liberty to choose who was owner of the land by prescription.
- [41] Counsel contended that the Petitioner/first Defendant by denying the presence of other persons on the land and claiming that the two Defendants were the only persons entitled to claim it made fraudulent representation to the Land Registrar and so the order of the Registrar should be set aside and the land partitioned equally among the parties.

Defendant's Submissions

- [42] Counsel for the Defendants on the other hand contended that acquisition of the prescriptive title to the disputed property was done pursuant to all relevant requirements of the Civil Code, that the appropriate notice was given through advertisement in the Official Gazette and local newspaper informing the general public of the Defendant's intention to acquire prescriptive title to the property.
- [43] The Defendants' title was acquired based on the undisturbed possession of the land by the Defendants' father and the Defendants themselves.
- [44] Counsel submitted that even if the Claimants did in fact have a legal interest, they are to be taken as having slept on their rights and therefore have effectively lost such rights.
- [45] Further if any question had arisen with respect to the Petition of 1999, any legally interested persons would have had two (2) months within which to make their interest

known. Having failed to do so for whatever reason, they in effect acquiesced in the decision made regarding the petition.

[46] Counsel remarked that when surveyors come onto property where someone claims to have a legal interest and to have lived there all their lives, it is commonplace for the surveyors to seek permission from those persons to occupy the land for their work and this too would give notice to such persons of the survey.

[47] Given the above, Counsel was of the view that the prescriptive title of the Defendants was final and absolute and could only be defeated by issues such as fraud which would now be difficult to prove since the Defendants were now deceased and they had in any event satisfied the requirements of Article 2103A of the Civil Code.

[48] Issues

It would appear that the questions to be resolved are:

- 1) whether the Defendants satisfied the legal requirements for acquiring prescriptive title to the property, or
- 2) whether such title was acquired by the false misrepresentation of the first Defendant/Petitioner

[49] He who alleges fraud must prove it. Fraudulent misinterpretation consists of a false statement of fact which is made by one person to another knowingly, or without belief in its truth, or recklessly, without caring whether it is true or false with the intent that it should be acted upon and which is in fact acted upon by that other person.

The Petition of 1998

[50] Section 94 (1) of the Land Registration Act provides:

- (1) Any person who claims to have acquired the ownership of land by positive prescription may apply to the Registrar in accordance with rules of court for registration as proprietor thereof.

[51] The Petition which is the root cause of this action was filed in the Land Registry on 14th August, 1998.

[52] The Petitioner/first Defendant stated that she was the owner in possession of the property.

[53] She continued:

4. *“That there in no other person claiming to be owner of the said portion of land.*
5. *That the Petitioner and her family before her has been in peaceful, public, unequivocal and uninterrupted occupation as owner of the property for a period of seventy eight (78) years as appears by the following facts:*
 - a) *The petitioner’s father entered upon the land in 1899*
 - b) *That he lived on this land until his death in 1961*
 - c) *That your Petitioner is the daughter of the said deceased Maxius Jean*
 - d) *That your Petitioner was born on the land in 1921 and grew up there and also raised a family there. That her brother Joseph Jean also called Lawrence Jean was born on the land.*
 - e) *That the Petitioner and her brother Joseph Jean are the only children of the said deceased Maxius Jean who remained in occupation and possession of the property*

- f) *That the Petitioner occupies the property with animals and crops*
6. That the Petitioner and her brother Joseph claims (sic) to be owners of the property in their own right.
7. That the Petitioner is not aware of the owner or other particulars of the registration of the property immediately before prescription began to run in the Petitioner's favour
8. That the Petitioner has not knowingly withheld any fact concerning the I and which ought to be disclosed in this petition, and has truly and honestly to the best of her knowledge and belief, represented the truth concerning the title thereof.

[54] The Petition therefore prays the Registrar will issue a Declaration of Title in favour of the Petitioner pursuant to section 94 of the Land Registration Act, 1984".

[55] The Petition was dated and signed by the Solicitor for the Petitioner giving his address for service.

[56] Appended to this Petition was the following note:

"No one is required to be served with a copy of this Petition".

[57] In her Affidavit in support, the Petitioner/first Defendant gave her age and continued:

- 2) That the facts mentioned in the above Petition are true to the best of my knowledge
- 3) That by virtue of my undisturbed possession of the portion of land registered in the land Registry as Block and Parcel Number 06446-66 for over thirty years. I am entitled to full ownership.

[58] The Petition was also supported by Affidavits in almost identical terms of two (2) other persons who claim to be both over 50 years of age and have lived in the area of the disputed land all their lives. They stated that for upwards of 40 years they have known and recognized the two (2) Defendants and their father to be owners of the property.

[59] They very curiously state that "The Petitioner and her parent Maximus Jean have been in sole and undisturbed possession of the property for a continuous period of over thirty (30) years".

[60] As is required by section 95(1) of the Land Registration Act, the Registrar of Lands duly had the application advertised in two (2) issues of the Official Gazette and two (2) issues of the local Voice Newspaper.

[61] The Registrar seemingly having been satisfied that the Defendants had acquired absolute title to the property, made the relevant order.

[62] Section 95 (3) of the Act provides:

After one month has elapsed from the date of giving notice under subsection (2) the Registrar on being satisfied that the applicant has acquired the ownership claimed, may allow the application and register him or her as proprietor of the land claimed, subject to any interests on the register which have not been extinguished by the provision".

[63] Counsel for the Defendants raised the issue of acquiescence in that the Claimants as persons claiming interest in the property are required to make said interest known and failure to do so for whatever reason, they have acquiesced in the decision of the Registrar.

[64] With this contention I would have agreed, the notion of constructive notice having been satisfied as required by law, had there not been a countervailing factor: the Defendants having lived on the land all of their lives, had to have been aware of the existence of the

first Claimant and her mother and so in making their application to exclude the Claimant were not entirely honest

The Law of Prescription

- [65] According to the Civil Code of St. Lucia, by Article 2047, prescription is a means of acquiring property by lapse of time, and subject to conditions established by law.
- [66] Possession, according to Article 2056, is the detention or enjoyment of a thing or of a right which a person holds or exercises himself or which is held or exercised in his name by another.
- [67] For the purposes of prescription, a person must be in possession of that property and that possession in accordance with Article 2057, must be continuous and uninterrupted, public, unequivocal and as proprietor
- [68] In addition Article 2103 provides that title to land may be acquired by sole and undisturbed possession for thirty years.
- [69] That article continues “.....*if that possession is established to the satisfaction of the Supreme Court.....may issue a declaration of title in regard to the property or right upon application.....*”
- [70] Counsel for the Claimants seeks to introduce, through his submissions, certain information regarding the test of whether the first Defendant's possession satisfied the requirements of continuous and uninterrupted, peaceable, public, unequivocal and as proprietor.

- [71] This information related to the first Defendant having lived elsewhere other than the disputed land during her lifetime e.g. in Barbados and at La Croix Maingot with her husband where she bore and raised some of her children.
- [72] Since this information was not adduced in evidence through one of the Claimants and the Defendants both being deceased, this information cannot be accepted by the court.
- [73] The fourth Claimant gave evidence of his mother and grandmother being related to the Defendants and living on the land until their deaths and of him inheriting through her will the grandmother's entitlement to part of the land.
- [74] Although his evidence went unchallenged and a copy of the will was produced, there was not the nexus with respect to the family relationship.
- [75] In fact throughout the case, the Claimants all claim to be related to the two (2) Defendants but have not produced sufficient evidence - either oral or documentary - to substantiate this claim.
- [76] In the absence of such evidence and with the two (2) Defendants now deceased, it is not possible for the Court to adequately determine the degree of kinship between the parties and so that evidence must be rejected.
- [77] It is the contention of the Claimants that the Defendants' possession could not have been sole and undisturbed since it has been established that the first Claimant had always lived there and continues to live there with her mother and that the fourth Claimant has lived there for 59 of his 69 years and still exhibits an interest by his frequent visits.
- [78] Witness for the Defendants while denying the existence of the other three (3) Claimants acknowledges that the first Claimant lives on the land and that he has seen her there from the time "when he was a little boy running up and down".

- [79] It is on such admission that I must accept that the Defendants' possession could not have been sole and undisturbed.
- [80] By section 95 (2) of the Land Registration Act it is provided: "The Registrar shall give notice of any such application (application for registration as proprietor of land acquired by prescription) to the proprietor of the land affected and to any other person who may, in his or her opinion, be affected thereby".
- [81] Counsel for the Claimant contends that the Claimants fell into the category of "any other person affected thereby", and that it was the duty of the Registrar to have gone to the land to satisfy himself that what the Petitioner was saying was correct.
- [82] I cannot however agree with this contention because it defies logic and commonsense for the Registrar and/or his staff to physically check each and every application coming to his office. He must rely on the veracity of the Petition and Affidavit and the evidence of the survey plan if produced.
- [83] It is contemplated that if there are responders to the advertisement or that if the survey plan gives indication of the presence of other persons/structures on the land, then the Registrar is obliged to give such person or persons notice of the application.
- [84] Notice through advertisement in the Official Gazette and the local press is constructive notice to all and sundry of the Petitioner's intentions.
- [85] So on the face of it, the requirements of the law have been met with respect to the procedure as laid down by the Land Registration Act when land is acquired by prescription.

Land Survey Plan

[86] Section 18 of the Land Survey Act relates to the power of the surveyor to enter land for the purpose of carrying out a survey. That section replaces section 9 of the Surveyors and Boundaries Settlement Ordinance.

[87] By subsection 1 it is provided in part:

“When a surveyor intends to survey any land, he or she shall give at least seven (7) days notice of his or her intentionto the owner or occupier of the adjoining lands.....”

[88] Subsection 4 provides:

“Any surveyor who fails to comply with any of the foregoing provisions of this section commits an offence against this Act”.

[89] Counsel for the Claimants submits that the plan of survey should be regarded as an instrument of fraud in that it failed to show that any buildings were situated on the land thus creating the impression that the land is purely agricultural.

[90] It should be noted that in her Petition, the first Defendant stated “that the Petitioner occupies the property with animals and crops”. Such statement is obviously meant to satisfy the criteria of Article 2057 that the possession must be public that is open and undisguised. Such a statement if accepted as truth would be evidence of the possession being public.

[91] Evidence has been led to show that the house of the first Claimant is on the land as well as the derelict building used as a Community Centre. Photographs of this building were put in evidence.

[92] This evidence remains uncontroverted.

- [93] On the copy of the plan of survey submitted as an exhibit, it is to be noted that, as required by section 18 of the Land Surveyors' Act, notices of intention to survey were served on Hess Oil (St. Lucia) Ltd, Virginia Alexander and one De Beauville whose names are printed on the said plan, indicating that they occupy the surrounding lands.
- [94] According to the said plan which was executed on the 15th and 18th days of December 1997, witnesses for the Defendants, Maximus Ferdinand at the aforementioned De Beauville were present during the survey. There were no objections according to the note on the survey plan.
- [95] The document reveals that the survey was made at the instance of the said Maximus Ferdinand, son of the first Defendant/Petitioner.
- [96] There being a derelict building as well as the property of the first Claimant on the land, it can only be concluded that either the surveyor was neglectful of his duty to give notice under section 18 of the Act or that certain instructions were given to him by Maximus Ferdinand, son of the first Petitioner, at whose instance and in whose presence the survey was conducted which resulted in the omission of these structures from the plan.
- [97] The first Defendant/Petitioner cannot however be excused for denying the existence of the first Claimant on the derelict building, she having, according to her lived on the land all her life.
- [98] And therefore to make the statement that she "has not knowingly withheld any fact concerning the land which ought to be disclosed", is evidence of a glaring and fraudulent representation.

Conclusion

[99] It is evident that the Defendants in their application for prescriptive title did not fully satisfy the requirements of the Civil Code because while it can be argued that their possession was continuous, peaceful and public, it was neither sole uninterrupted nor unequivocal.

[100] They cannot in the circumstances be allowed to benefit from their misrepresentations .

[101] It can also be seen that the first Claimant has a definitive interest.

[102] I am however unable to make such determination on behalf of second and third Claimants, their claim is somewhat nebulous.

[103] The fourth Claimant appears to have an interest which can be supported by the existence of the will but it needs to be clearly defined.

ORDER

The Order of the Registrar dated 25th August 1999 in which prescriptive title was given to the Defendants is hereby revoked.

The parties must now make the appropriate applications.

It is recommended that the parties attend it at mediation for determination of their interests.

Costs to be prescribed in favour of the first Claimant and to be paid by the Defendants.

SANDRA MASON QC

High Court Judge