

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

SAINT LUCIA

CLAIM NO: SLUHCV2006/0266

BETWEEN:

ROSEMITA VALTON

Claimant

and

JOHN BAPTISTE MATHURIN
BUELAH GILBERT

Defendants

Appearances:

Mr. O. Larcher for the Claimant
Mr. H. Fraser for the Defendant

2007: October 25, 29
December 11

JUDGMENT

- (1) The claimant is the registered proprietor of a parcel of land at Adelaide in the Quarter of Dennery. The defendants occupy a wooden house on the

parcel. Before the claimant bought the parcel, the land register indicates that there were three (3) previous registered proprietors.

- (2) The first defendant makes no claim to the parcel. He is the common Law husband of the second defendant and resides with her. The second defendant says she was born on the land and has resided there since her birth in 1967. She goes further to say that her mother to was born on the land in 1934 and resided there up to her death. She thus claims to have been in continuous, undisturbed and peaceable possession of the land for over 33 years in her own right and over 66 years by reason of succession of title from her parents.
- (3) The case for the claimant is based on the fact that she is the registered Proprietor.
- (4) Before she purchased the property it was owned by Lawrence Velinor. In 2000 Velinor wrote to the defendant. He informed her that he was selling the property. He required her to vacate and remove the wooden house by 1st May, 2000. This notice was served on the defendants on 14th February, 2000. The implication, says the counsel for the Claimant is that

the defendants were tenants at sufferance at most. The defendants have taken no steps to make any claims to the property.

THE EVIDENCE

- (5) Rosemita Valton swore two (2) witnesses statement, she was cross examined. She admitted that prior to purchasing the Land from Lawrence Velinor she visited and noticed two small houses on the land. She did not speak to the occupiers. She made no other enquiries of anyone. She was content to rely on Velinor's registered title.

Lawrence Velinor gave a witness statement. He purchased the land from Henry and Joseph Telliam. He offered to sell to the second defendant who said she would seek financial assistance from a sister who lived abroad. When he checked with her again she said she had not heard from her sister. Velinor later decided to sell to the claimant. He caused his Solicitor to send her a notice to quit. When this was ignored he sent a second notice, to then be told by the second defendant that he would have to take her to Court.

- (6) On cross examination, Velinor said that he first knew the defendant No. 2 when he returned from St. Croix over 30 years ago. He knew the grandfather of the second defendant had lived on the land before but he did not live there on his return from St. Croix. He also said that he did not proceed to take the second defendant to court for her failure to vacate as he had no time to take her to court.
- (7) The witnesses for the defense were the second defendant herself and George Stevens.
- (8) In her witness statement the second defendant describes the land as admeasuring about a half an acre. Her grandfather Austin Fannis came to occupy it "as a result of a business agreement with one George Matura". She avers that she has been "in continuous occupation and possession" for 40 years and for 66 years' by virtue of succession. Under cross examination she denied ever speaking to Velinor about buying the land. She admitted that a previous registered owner of the land had brought a case against her. This was in the Magistrates Court and it was dismissed. It was unclear what that case was about. She considered the land to have been owned by her Grandfather. After his death in 1993, she remained in

the house along with several of her siblings. She now considers the property as hers because she is the last one left there now.

- (9) She admits that no claim was made to the property by her grandfather during his lifetime. No effort was made by him to 'claim his land' during the Land Reform and Title Project of the mid 1980's.
- (10) George Steven could add no useful evidence save that under cross examination he admits that he was told by the second defendant that the claimant was saying that she was the rightful owner of the property and that a previous registered owner, Ferdinand Henry had also made a claim.
- (11) From the evidence I find the following facts. The second defendant has been living in a small wooden house on the property since her birth. The house in which she lived was owned by her grandfather. He built it on the land with the consent of George Matura. He did not occupy the land on which the house was built as proprietor. The fact that he made no effort to have himself registered as proprietor up to his death in 1993 indicates that he did not consider that he owned the land. The defendant No. 2 herself says that at best her personal claim to the land began when the last of her

other family members moved out. None of these other members have made a claim.

(12) Indeed even the second defendant herself has not sought to file a court claim to have herself declared owner by virtue of long last possession.

(13) Article 2057 of the Civil Code is crucial. To establish prescription long possession must be continuous and uninterrupted peaceable public unequivocal and as proprietor.

(14) I do not consider that the occupation by the defendant meets those criteria.

(15) It is also significant that while the claimants have title to only 12, 748 square feet (sq. ft) of land while the defendants occupy a half an acre. I believe the family of the second defendant recognized that they occupy the land on which the wooden house is erected as tenants at sufferance at best. This is why all except the second defendant have vacated. The second defendant has been aware that for many years that there have been registered proprietors of the land. She has done nothing. Counsel

for the defendant cites the words of Denning M. R in Strand Securities Ltd
V Caswell et – 1965 1 All ER 820

(Section 28 of the Land Registration Act 70 (1) (g)) is an important provision. Fundamentally its object is to protect a person in actual occupation of land from having his rights lost in the welter of registration. He can stay there and do nothing. Yet he will be protected. No one can buy the land over his head thereby take away or diminish his rights. It is up to every purchaser before he buys to make inquiry on the premises. If he fails to do so, it is at his own risk. He must take subject to whatever rights the occupier may have... Not only is the actual occupier protected, but also the person from whom he holds. It is up to the purchaser to inquire of the occupier, not only about the occupier's own rights, but also about the rights of his immediate superior...If he fails to do so it is at his own risk for he takes subject to "the rights of ever person in actual occupation..."

- (16) The obvious difficulty here is that the occupier as I have found had no rights.

- (17) I thus give judgment for the claimant. The defendants are ordered to give Up possession of the property known as Block 1840B parcel 144 by 31st January, 2007.
- (18) I award costs to the claimants which I fix in the Sum of \$7,000 for this full Trial on the fixed date claim form.
- (19) The defendants are to remove the house from the property by 31/1/08 failing which the claimants is at liberty to remove the house without any compensation to the defendants.

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BRIAN S. COTTLE
HIGH COURT JUDGE