

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

POSSESSORY TITLE APPLICATION NO. 2 OF 2008

BETWEEN:

ANDREW JOHN

Applicant

V

FREDERICK ALDERMAN TIM

Respondent

Appearances:

Mr. C. Glasgow for the Applicant

Mr. A. John for the Respondent

2008: July 24;
September 22.

JUDGMENT

- [1] **MATTHEW J (Ag.) (In Chambers):** On January 29, 2008 the Applicant filed an application for declaration of possessory title in respect of a portion of land at Evesham containing 30,975 square feet.
- [2] In support of his application he filed an affidavit on the same day in accordance with the provisions of the Act. Elroy Williams and Margaret Edwards also filed affidavits on the same day.
- [3] Notices of the application were advertised in the Searchlight and News papers in February and April 2008.
- [4] On May 23, 2008, learned Counsel for the Respondent filed an entry of appearance on behalf of the Respondent as the intended legal representative of the Estate of Gladys Tim

deceased. The Deceased was the grandmother and mother of the Applicant and Respondent respectively. On June 25, 2008 the Respondent filed a fixed date claim asking for a declaration that at the time of her death Gladys Tim was the fee simple owner in possession of a parcel of land situated at Evesham and that the said land passed upon her intestacy to vest in her estate; and that the Applicant possesses no equitable nor legal entitlement to the property.

- [5] Andrew John filed an affidavit in reply on June 30, 2008.
- [6] On June 18, 2008 the Respondent, pursuant to Parts 21.4 and 21.9 of the Civil Procedure Rules, sought leave to be appointed as the representative of the Estate of Gladys Tim. His application was supported by an affidavit filed on June 18, 2008 and was subsequently granted.
- [7] Frederick Tim filed an affidavit on July 15, 2008 in support of his claim. Jonathan Davis filed an affidavit on the same day and so did Westfield John on behalf of the Respondent. On July 22, 2008 Candace Lewis nee John filed an affidavit in support of her brother, the Applicant.
- [8] On July 24, 2008 the matter came up for hearing in Chambers. Andrew John and Candace Lewis gave evidence for the Applicant and were cross-examined on their affidavits. Later Frederick Tim and Jonathan Davis gave evidence and were cross-examined on their affidavits. Westfield John was called several times but did not appear.

EVIDENCE:

- [9] In his first affidavit filed on January 29, 2008 the Applicant stated that his grandmother, Gladys Tim, put him in possession of the land before her death and since then he has exercised acts of ownership; building a board house on the land, establishing a pig farm thereon and has cultivated the said land with fruit trees.

- [10] In his second affidavit filed on June 30, 2008 in reply to that of the Respondent filed on June 18, 2008, he said all the children of Gladys Tim except his mother, Veronica John, nee Tim, and that includes the Respondent, migrated from Saint Vincent and the Grenadines over forty years ago before the death of the Deceased, Gladys Tim, and it was Veronica and her children including the Applicant, who lived with the Deceased and took care of her for many years.
- [11] He said that since the death of his mother he has paid the taxes for the said parcel of land and that the Respondent and his brothers have seldom visited Saint Vincent and have until lately shown absolutely no interest in the subject parcel of land.
- [12] When he was cross-examined he said he was about 10 years old when his grandmother died. He admitted that his mother obtained her land from her mother, Gladys Tim. He said his mother's house was near to the subject parcel of land.
- [13] He said his mother and her children were looking after his grandmother and they were in and out of her house. He built the board house with the permission of his mother in 1993. He began to rear pigs on the land in 1999. He said his mother died in 2006.
- [14] He said when his mother died she was 73 years old but she could not then take care of the land and it is not true that his mother was in control of the land up to the time of her death.
- [15] He said even though he later got married and built his home some where else he was still planting crops and rearing pigs on the land.
- [16] He said prior to her death his grandmother had already given land to all her children, including the Respondent.
- [17] Candace Lewis nee John filed an affidavit on July 22, 2008 in support of the Applicant, her brother. She said her grandmother had already distributed all her land, except the parcel in dispute, to all of her children.

- [18] She said all her brothers and sisters including the Applicant and herself spent a lot of time at her grandmother's house and slept there throughout most of their young lives.
- [19] She said the Applicant cultivated the land belonging to her grandmother and reared pigs on the land for some time. He also built a timber house on the land and lived there for some time with his girlfriend.
- [20] She said Jonathan Davis or Plaugh used to help her brother in cultivating and reaping the crops. As will be seen later Jonathan denied that statement when he gave evidence.
- [21] She said the Respondent, her uncle, and his brothers migrated to the U.S.A. over forty years ago since she was a child and have never shown any interest in the disputed property.
- [22] She said she and her other siblings have no objections to a possessory title being given to the Applicant.
- [23] When she was cross-examined she said she and her siblings grew up in two houses. She said the disputed land was just there when her brother took it over and she could have done the same if she was so inclined. She said she did not remember the year he took over.
- [24] She said she left Evesham about 25 years ago, about 1993 and when she left and got married her brother was still working the land. She said her mother was not working the land when she left. She was more or less a housewife.
- [25] She said her brother went to Argyle to live but he still worked the land.

- [26] The Respondent filed an affidavit in opposition to the Applicant's claim on July 15, 2008. In his affidavit he states that he currently resides in Brooklyn, New York, in the United States of America.
- [27] He stated that Gladys Tim, his mother, died on the 1st day of January 1974 and at the time of her death she was seised in fee simple absolute in possession of the parcel of land which is the subject matter of the dispute.
- [28] He said the Deceased left surviving her five lawful sons including himself and one daughter, Ursula John nee Tim, the Applicant's mother. He said his mother had 3 acres of land and after distributing 2 acres, there remained 1 ½ acres which were not conveyed or otherwise transferred during her lifetime.
- [29] He said he made frequent visits to the island and sometimes spend one year in Saint Vincent before returning to the United States.
- [30] He said since the death of his sister, Ursula John in 2006, the dwelling house in which his mother lived has become uninhabitable and cultivation as well ceased, and no one has since occupied the said land. He submitted photographs to that effect.
- [31] He said the Defendant was never in occupation of the premises that he is declaring to be in possession of and he only assisted his mother Ursula John when she took care of his mother.
- [32] He gave additional oral evidence. He said he is 80 years old. He said after his mother died his sister, the Applicant's mother, looked after the land but the Applicant had no dealing with the land. He said the land has never been worked "since I am coming here."
- [33] He admitted that the Applicant had a board house on the land for about three years but could not remember the period. He said there is nothing cultivated on the land save tall trees. He said since he is in Saint Vincent Andrew had dug plantain holes.

- [34] Under cross-examination he said he had received lands at Belmont from his mother, Gladys Tim. He said he was planning to come home next year to clear and work the land.
- [35] Jonathan Davis filed an affidavit on July 16, 2008 in support of the Respondent. He said he was born in Evesham and had resided there all his life. He said when he was a young man he visited the home of Gladys Tim regularly and associated with her children.
- [36] He admitted that the Applicant had built a small house and a pig pen on the land and he reared pigs. He said no one has been cultivating the land since the Applicant's mother died.
- [37] He said Frederick Tim who resides in the United States visits St. Vincent on a yearly basis and very often stays for a year or two. Not even the Respondent made the visits so frequent.
- [38] He ended his affidavit by stating in the penultimate paragraph –
“That I know that the lands for which Mr. Andrew John is now making application for a possessory title is absolutely owned by the Estate of Gladys Tim, she having obtained title by a deed of assent by the deponent.”
- [39] On further oral examination he said he knows the Applicant as a little boy growing up on the land of Gladys Tim as also in his mother's house. He said after Gladys died nobody was in charge of the land. Not even the Respondent said that. Later he said Ursula was in charge of the land planting different crops.
- [40] He said, contrary to what Candace Lewis said in her affidavit, that he never one day worked with Andrew John.
- [41] He said he never knew Andrew working the parcel of land and the land was in “ruin” now. He said Andrew built a house on the land about 3 to 4 years ago and had pigs on the land for a long while but he has removed them.

- [42] He said before Ursula John died she controlled the land.
- [43] Under cross-examination he said he did not know if Ursula and her mother had a great relationship and he did not see Andrew and his siblings have a close relationship with their mother.
- [44] He said Ursula used to cultivate the land until she fell sick but he did not know who was looking after the land afterwards.
- [45] He said he saw Andrew living in a house on the land and he saw plantains on the land but did not know if it was Andrew or his father who planted them.

CONCLUSIONS:

- [46] Section 9 of the Possessory Titles Act requires the person who enters appearance to state the name of the person who has title to the piece or parcel of land. This in effect tells the challenger if he says the Applicant is not entitled whom does he say has title.
- [47] In paragraph 1.1. of his submissions learned Counsel for the Respondent said that "the said parcel of land was conveyed to his deceased mother Gladys Tim whose title has not been extinguished."
- [48] Counsel is therefore stating that this is the position even though Gladys Tim died on January 1, 1974 and there is to date no Personal Representative to her Estate. Indeed in his fixed date claim the Respondent is asking the Court to represent her estate. Incredible!
- [49] In my judgment Counsel's basic conclusion that the Estate of Gladys Tim has always remained legal fee simple owner of the parcel of land because of a deed of conveyance registered on February 29, 1960, No. 441 of 1960 is wrong.

[50] Surely the Respondent cannot mean that the Estate has been in possession for 34 years. But in his said final submission Counsel stated –

“There is no dispute that the Respondent’s (Tim has been referring to Andrew John as Respondent) mother Ursula John nee Tim may have enjoyed undisturbed possession of the said parcel of land for a period of time in excess of twelve years thereby satisfying the factual prerequisite for a claim of adverse possession.”

[51] If that is so, and with the necessary intention which is something to be determined according to the circumstances of the case, the rights of the Estate of Gladys Tim would be extinguished and with it any entitlement of the Respondent.

[52] Counsel seems to be drawing a wedge between the Applicant and his mother. He says the mother could be in adverse possession but not the Applicant as though the Applicant cannot join his mother’s possession to his if that were necessary.

[53] The Respondent is under the mistaken impression that in some way he has some leverage or footing if Ursula John was in possession. Why should this be? Did she tell him she was holding possession for him or that she would lend support to his claim in opposition to her son?

[54] This is essentially a factual issue. On the one hand there is the evidence of Andrew John supported by the evidence of his sister, Candace Lewis. On the other hand is the evidence of Frederick Tim supported by the evidence of Jonathan Davis.

[55] I ask myself how can Frederick Tim who has spent, and is still spending, the greater part of his life in the United States of America say with conviction as he said in his affidavit that the Applicant was never in possession of the premises?

[56] How can Jonathan Davis say as he said in his affidavit that Andrew John had access to the land because his mother had possession to cultivate it? Was it he who gave the mother the possession? I referred earlier to the bold assertion on an issue of law in the penultimate paragraph of his affidavit.

[57] On the totality of the evidence I find the evidence of the Applicant and his sister much more convincing than that of Frederick Tim and Jonathan Davis.

[58] The Respondent has a legal hurdle to clear under Section 9 of the Possessory Titles Act which I do not think he has successfully cleared, and on the facts I am satisfied that the Applicant had occupied the land in his own right in excess of 12 years and with the necessary intention to possess it as owner.

[59] I therefore dismiss the Respondent's claim in opposition to the application of the Applicant and I order the Respondent to pay the Applicant costs in the amount of \$3,000.00.

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Albert N. J. Matthew
HIGH COURT JUDGE (Ag.)
(August 7, 2008)