

GRENADA

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

CLAIM NO. GDAHCV2006/0287

BETWEEN:

THEOLINDA THERESA JOSEPH
SIMEON M. PIERRE
JOSEPHINE L. PIERRE
SUSANNAH M. CHARLES
ELIZABETH L. VINCENT
CATHERINE V. Mc INTOSH

Claimants

and

BEBEE CUMMINGS
AGNITA CLESSIE CUMMINGS

Defendants

Appearances

Mr. G. Prime for the Claimants

Mrs. C. Edwards for the Defendants

2007: October 2

2008: October 7

JUDGMENT

- [1] **CUMBERBATCH, J.:** The claimants allege that they are and were at all material times the owners and in possession of a lot of land (hereinafter referred to as 'the property') situate at Beausejour in the Island of Carriacou in the State of Grenada and comprising 31,096 square feet English Statute Measure which is delineated and described in a survey plan annexed to an Indenture of Conveyance made on the 21st day of May 2005.
- [2] By a fixed date claim filed on the 21st June 2006 the claimants claimed against the defendants "an order for possession of the property of the claimants, an order that the

defendants do forthwith pull down and demolish the building/shop wrongfully constructed on the property, damages for trespass and costs."

- [3] The thrust of the claimants' case is that they inherited the property from their father the late Henry Pierre who died on the 7th January 1993. They allege that the property was bought by the said Henry Pierre some time in the 1940's for the sum of \$100.00 from its previous owner one Lawrence Cummings. This alleged purchase was 'evidenced' by a receipt which is not now in existence. However, in an Indenture of Conveyance dated the 21st May 2005 the first-named claimant in her capacity as Administratrix of the estate of the said Henry Pierre described the property to be vested in her and the other claimants in the following terms:

"WHEREAS at the date of his death next hereinafter recited Henry Septimus Pierre (hereinafter called "the deceased") late of Snell Hall in the parish of Saint Patrick in the State of Grenada has been in possession of the hereditaments hereinafter described and hereby conveyed (hereinafter called "the said hereditaments") for 12 years and upwards without acknowledgement of the title of any other party thereto subject as hereinafter mentioned...." (Underscoring mine)

- [4] The claimants' parents went into possession of the said property and built a dwelling house thereon which was occupied by them (the claimants) up to and until the death of their father in or around the year of 1992. It is common ground that the defendants were the neighbours of the claimants and that for a period of time in the 1990's Bebee Cummings rented the said dwelling house after the departure of the claimants therefrom.
- [5] In the year 1996 Bebee Cummings placed a small wooden shop on a part of the land claimed by the claimants. It is common ground that she subsequently informed the claimants of this and sought their permission for its continued occupation of the property. Permission was denied. She nevertheless however went ahead and constructed the shop and continues to occupy same.
- [6] The defendants claim that the land upon which the shop is situate is theirs. They contend that it belongs to Agnita Cummings who claims to have inherited same from her mother

and grandparents. They also allege that that part of the land on which the shop is situate was cultivated by them at the time when the claimants lived at their house aforesaid. It is the defendants' case that when Bebee Cummings made the requests for permission to build the shop this was done with the mistaken belief that the land was owned by the claimants. The defendants are not seised of any title deeds for the land claimed by them.

- [7] The claimants have sought to rely on the deed hereinbefore mentioned as evidence of their ownership of the property. The claimants have testified however that the land was purchased by their now deceased father for the sum of \$100.00. Quite surprisingly however, it is recorded on the aforesaid deed that title to the land was obtained by adverse possession. The claimant Josephine Pierre under cross examination stated that that part of the deed which states that the land was acquired by adverse possession is incorrect and insisted that her father purchased the land. The Court is only left to conclude therefore that the land was not acquired *nec vi, nec clam, nec precario*. In the circumstances the Court finds that the deed produced and relied on by the claimants is not a valid title deed to evidence the claim of ownership of the property. That being so, without more the claim should fail and be dismissed.
- [8] The claim against the defendants is however founded in trespass. It is trite law that the absence of paper title is no bar to such a claim, indeed the law is that the claimants must establish possession of the land in question to found their claim in trespass against the defendants.
- [9] It is the evidence of the defendants that the claimants' mother was given a house lot and that that portion of land in front of that house lot was cultivated by the defendants. The claimants deny the fact of the cultivation of that part of the land as alleged by the defendants and assert that it was at all material times occupied by them. The issue herein however is not with the house lot but with that portion of land on which the shop is built.
- [10] The Court at the invitation of the parties paid a visit to the site and found it to be quite helpful. The Court observed that the land claimed by the claimants comprises of a lot of land which adjoins that on which the houses of the defendants are built. Bebee Cummings' house is built on that part of the land which lies in front of Agnita Cummings' house. The

Court also observed that there are trees which constitute a boundary between the land on which the claimants' house is situate and that on which the houses of the defendants are. Clearly the parties occupy neighbouring lots of land. The Court has also observed the remnants of an entrance to the land claimed by the claimants which is now partially covered by the offending shop and evidence of recent cultivation of the land in front of the building formerly occupied by the claimants.

- [11] Both parties can only rely on possession as a root of title in support of their individual claims. In **Powell v McFarlane** [1977] 38 P & CR 452, Slade, J. stated at 469:

" Possession of land, is a concept which has long been familiar and of importance to English Lawyers, because (inter alia) it entitles the person in possession, whether right fully or wrongfully, to maintain an action of trespass against any other person who enters the land with out his consent, unless such other person has a better right to possession. In the absence of authority, therefore, I would for my own part have regarded the word " possession" in the 1939 Act as bearing the traditional sense of that degree of occupation or physical control, coupled with the requisite intention commonly referred to as the animus possidendi, that would entitle a person to maintain an action of trespass in relation to the relevant land...."

- [12] Slade, J. continued at 470-471 thus:

(2) if the law is to attribute possession of land to a person who can establish no paper title to possession, he must have shown to have both factual possession and the requisite intention to possess (animus possidendi)

(3) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly.....the question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of the nature is commonly used or enjoyed....everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so."

- [13] Slade, J. defined the *animus possidendi* as requiring an

'intention, in one's name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the process of the law will allow.'

[14] In the more recent decision of **JA Pye (Oxford) Ltd and another v Graham and another** [2002] 3 All ER 865 at 873- 876-877 Lord Browne-Wilkinson approved the dicta of Slade, J. in **Powell's case** aforesaid.

[15] In **West Bank Estates Ltd v Arthur** [1967] AC 665 at 678,679 Lord Wilberforce on the question of possession opined,

'what is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants' (underscoring mine)

[16] The claimant Catherine Mc Intosh testified that she was born and last lived on the land in or around the years 1993 to 1994. Thereafter the house was rented to Bebee Cummings.. The Court accepts that Bebee Cummings wrote to the claimants seeking their permission to build a shop and by another letter informed them that she had already built the shop. The Court finds this to be compelling evidence that Bebee Cummings considered that part of the land to be the property of the claimants. The Court does not accept the evidence of the defendants that they cultivated the land on which the shop is situate. Indeed had that been so it is most unlikely that Bebee Cummings would have written the claimants on two separate occasions for permission to have her shop on their land. What makes this evidence more compelling is that she testified that she was born on the larger lot of land owned by her deceased grandmother. The Court finds that the close proximity of her mother Agnita's house to the claimant's house would have made her aware of matters relating to the occupancy of the land, hence her belief that it was owned by the claimants. The Court finds that the assertions by her that after having sought and been denied permission she learnt that the land belonged to her mother to be contrived and does not accept same.

[17] Agnita Cummings relied on tax receipts to evidence her possession of the land in question but the Court found these to be unhelpful as she did not state with particularity the size and location of the land for which taxes were paid. She also exhibited the Letters of Administration of the estate of her mother Lillanna Sylvie Cummings granted to her on the 29th day of September 1983. However, no deeds in respect of the land belonging to

the said estate were ever executed. Thus the Letters of Administration without more is also found to be unhelpful.

[18] The Court accepts that the claimants' family has been on the land since the year 1940; some of them were born there and they all lived there as a family until the death of their father and their migration. The Court finds on a balance of probabilities that the claimants occupied the land in question and does not accept that the defendants at one time cultivated that part of the land on which the shop is situate. The Court finds that the fact of them renting the house to Bebee Cummings after they migrated and causing the land to be surveyed together with the acquisition of the title deed though invalid, to be compelling evidence of the *animus possidendi*. The Court therefore finds that the claimants have possessory title to the land. The Court also finds that Bebee Cummings having gone onto the land with the permission of the claimants is not seised of a better title than them.

[19] In the circumstances the claim succeeds and the claimants are granted the following orders against the defendants

(a) Possession of the property herein;

(b) That the defendant Bebee Cummings do forthwith pull down and demolish the building/shop wrongfully constructed on the claimants' property.

[20] No evidence was adduced nor was the Court addressed as to loss and damage incurred by the claimants as a result of the actions of Bebee Cummings. In the circumstances the Court awards the claimants nominal damages in the sum of \$500.00 for trespass. Prescribed costs in the sum of \$1,500.00 are awarded to the Claimants. The First-named Defendant Bebee Cummings is allowed a period of time of three (3) months from the date hereof to remove the shop from the Claimants' land, with liberty to apply.


Francis Cumberbatch
High Court Judge