

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 37 OF 2004

BETWEEN:

MAVIS NEDD

Claimant

v

FLORENCE HACKSHAW
a.k.a. FLORENCE NEDD

Defendant

Appearances: Mr. Ronald Marks and Ms. Niara Fraser for the Claimant
Mr. Carlyle Dougan Q.C. for the Defendant

2008: December 8

2009: April 27

JUDGMENT

[1] THOM, J: This is a claim for possession of land.

BACKGROUND

[2] The Claimant was married to Chieftain Nedd who was the grandson of Margaret Hackshaw. The Defendant is the great granddaughter of Margaret Hackshaw and the niece of Chieftain Nedd, the Defendant's mother Marie Nedd being the sister of Chieftain Nedd. Marie and Chieftain Nedd are the children of Agatha Nedd who was the daughter of Margaret Hackshaw.

[3] It is not disputed that the land at South Rivers belonged to Margaret Hackshaw. Crown Grant No. 3 of 1949 which was exhibited by the Claimant shows the land was granted to

Margaret Hackshaw by the Crown on November 6, 1948. There is a small wooden house on the land in which Margaret Hackshaw resided along with Chieftain Nedd and the Claimant before the Chieftain Nedd migrated to Trinidad and Tobago. The Claimant joined him subsequently. After the Claimant migrated to Trinidad, Agatha Nedd, her daughter Marie Nedd and the Defendant went to live at South Rivers with Margaret Hackshaw. Margaret Hackshaw died in February 1963 intestate leaving her three children surviving her, being Agatha Nedd, Helon Dublin and Helena Perreira. Agatha Nedd died in 1977. She was survived by her children Chieftain and Marie. It is not clear from the evidence whether her other daughter Alma Horne survived her. The Defendant and Marie Nedd continued to reside in the house at South Rivers. Chieftain Nedd obtained Letters of Administration in the estate of Margaret Hackshaw in 1986. By Deed No. 43 of 1987 Chieftain Nedd as Administrator conveyed the land at South Rivers to himself as the only beneficiary of the estate of Margaret Hackshaw. Chieftain Nedd died in 1996 intestate. The Claimant obtained Letters of Administration in his estate in 1997. By Deed No. 2398 of 1998 the land at South Rivers was vested in her along with a parcel of land at Park Hill.

[4] In 2005 the Claimant instituted these proceedings in which she claims that she is the owner of two parcels of land situate at Park Hill and South Rivers as described in the schedule of Deed of Gift No. 2893 of 1998. The Defendant is unlawfully in occupation of the said lands and has constructed concrete structures on the said lands. The Claimant seeks the following orders:

- (a) That the Claimant is the fee simple owner of the said lands.
- (b) That the Defendant gives up possession of the said lands to the Claimant.
- (c) That an injunction be granted restraining the Defendant, her servants and or agents from trespassing on the said lands.

[5] The Defendant in her defence denies that the Claimant is the owner of the said lands and alleges that Deed No. 2893 of 1998 is null, void and of no effect. The said lands did not form part of the estate of Chieftain Nedd. The Defendant admits that she is in possession of the said lands but alleges that she and her predecessors have been in undisturbed possession of the lands for over fifty-three years. She has been in undisturbed possession

of the lands for over thirty years. The Claimant's claim is statute barred by virtue of the Limitation Act Cap. 90.

ISSUE:

- [6] The issues to be determined are:
- (1) whether the Claimant is the owner of the said lands; and
 - (2) whether any interest which the Claimant may have had in the two parcels of land has extinguished by virtue of section 17 (1) of the Limitation Act Cap. 90.

EVIDENCE

[7] The Claimant testified on her own behalf and called one witness Nola Lawrence. The Defendant testified on her own behalf and she called no witnesses.

[8] The evidence led on behalf of the Claimant is that the land at South Rivers was the matrimonial home of the Claimant and her husband Chieftain Nedd. The land was given to Chieftain Nedd by his grandmother Margaret Hackshaw who resided on the land with the Claimant and Chieftain Nedd. Chieftain Nedd migrated to Trinidad and Tobago in 1958 leaving the Claimant to take care of Margaret Hackshaw who was ill. Margaret Hackshaw recovered and the Claimant joined Chieftain Nedd in Trinidad and Tobago. Chieftain Nedd then permitted his mother Agatha Nedd the daughter of Margaret Hackshaw to reside with Margaret Hackshaw on the land. The Defendant and her mother Marie Nedd, the daughter of Agatha Nedd also joined Agatha Nedd in residing at South Rivers. Margaret Hackshaw died on February 7, 1963 and Agatha Nedd died in 1977. In 1987 Chieftain Nedd obtained Letters of Administration in the Estate of Margaret Hackshaw and by Deed No. 43 of 1987 the land at South Rivers was vested in him. In 1988 Chieftain Nedd returned to St. Vincent and in the presence of the Defendant and her mother who is partially disabled, he gave the Deed to the land at South Rivers to his daughter Nola Lawrence and told the Defendant and her mother that they had to vacate the land and he was giving the land to Nola Lawrence. The Defendant and her mother begged Chieftain

Nedd to permit them to remain on the land since they had nowhere else to live and the Defendant intended to construct a house on another parcel of land. Nola Lawrence pleaded with Chieftain Nedd and they were permitted to remain on the land until the Defendant constructed her own house. Chieftain Nedd died in 1996. In 1997 the Claimant visited St. Vincent and she visited the lands at South Rivers and the Defendant was abusive to her and disputed her claim to the land. The Claimant caused her attorney to write to the Defendant. The Claimant obtained Letters of Administration in his estate in 1997 and the land at South Rivers was vested in the Claimant by Deed No. 2893 of 1998. After Chieftain Nedd died the Defendant began to claim the land as her own and commenced construction of a concrete house on the land. The Defendant has repeatedly refused to deliver up possession of the land.

[9] Under cross-examination the Claimant agreed that the land was previously owned by Margaret Hackshaw and she died intestate with her three children surviving her, being Helon Dublin , Agatha Nedd and Helena Perriera. The Claimant also testified that the Defendant was planting bananas on the land in Park Hill and had given someone permission to work the land.

[10] The evidence on behalf of the Defendant is that the Defendant has resided on the land ever since she was a child. She lived there with her mother, her grandmother and her great-grandmother, Margaret Hackshaw who died in the 1960's. After the death of Margaret Hackshaw, the Defendant continued to occupy the land along with her mother and her children. The wooden house began to deteriorate and with the assistance of the Government she constructed a concrete house on the land. The Claimant has lived in Trinidad almost all of her life and she has never asked the Defendant to vacate the land.

[11] Under cross-examination the Defendant testified that she knew Chieftain Nedd to be living in Trinidad and Tobago. Neither Chieftain Nedd nor the Claimant ever lived at the house at South Rivers. She saw Chieftain Nedd once. When he visited St. Vincent he stayed with Nola Lawrence. She was not aware that he was claiming the land at South Rivers as his property. She paid the taxes for the land and receipts were issued in the name of

Margaret Hackshaw. The Defendant also denied that she works the land at Park Hill. Under re-examination she confirmed that she did not occupy the land at Park Hill. She never planted bananas on the land at Park Hill.

SUBMISSIONS

- [12] Learned Counsel for the Claimant submitted that the Defendant was not a truthful witness in that she testified that she met her uncle Chieftain Nedd only once and she never spoke to him, and further that the Defendant testified that her sister was living in Trinidad with a friend of hers and she did not know the friend's name. The Defendant was not in adverse possession of the land. The Defendant occupied the land at South Rivers with the permission of Nola Lawrence who was acting in the capacity of agent of Chieftain Nedd. The only evidence of the Defendant exercising acts of ownership over the land at South Rivers is the Defendant's testimony that she paid taxes for the land but no receipts were tendered in evidence. Also the Defendant only commenced construction of the house on the land at South Rivers after Chieftain Nedd died in 1996 and the house was completed after the Claim Form was filed in 2005.
- [13] Learned Counsel referred the Court to the cases of JA Pye Oxford Ltd and Another v Graham and Another [2002] 3 AER p. 865; and Archer ET VX v Georgina Holdings Ltd [1974] 21 WIR p. 431.
- [14] Learned Counsel for the Defendant submitted that the Claimant's Deed No. 2893 of 1998 was null and void since the root of her title, Deed No. 43 of 1987 was null and void because when Margaret Hackshaw the owner of the land died intestate in 1963 Chieftain Nedd was not the sole beneficiary nor was he her heir as stated in the Deed No. 43 of 1987. Secondly, any right which the Claimant may have had to the lands has been extinguished by virtue of Section 17(1) of the Limitation Act Cap. 90.
- [15] Learned Queen's Counsel referred the Court to the cases of J A Pye Oxford Ltd; and Wills v Wills 64 WIR p. 176.

FINDING OF FACTS

[16] Having seen the witnesses and having reviewed their evidence I find the Defendant to be a credible witness. She was very candid in her answers. Learned Counsel for the Claimant urged the Court to find that the Defendant was not a credible witness because she testified that she only met her uncle Chieftain Nedd once and she never spoke to him. However, the evidence shows that Chieftain Nedd migrated in the late 1950's. The Defendant was born in 1952. She would have been a little girl when he left St. Vincent. They were not living at the same house. The evidence of his visits to St. Vincent other than in 1988 are quite unreliable. The Claimant simply stated that he visited from time to time. No dates were mentioned nor no length of his stay, nor where he stayed in St. Vincent. Further, the Claimant's testimony of when she left St. Vincent was unreliable. She stated in her witness statement that Chieftain Nedd left St. Vincent in 1958 leaving her to look after his grandmother who was ill and she joined him after the grandmother had recovered, but under cross-examination she stated that she lived in Trinidad from 1956 to 1960 and she returned to St. Vincent in 1960 when she spent two weeks, and she returned in the 1960's, she could not recall when. Learned Counsel for the Claimant also referred the Court to the Defendant's testimony that the Claimant did not send for the Defendant's sister to go to Trinidad but it was a friend of hers and she did not know the friend's name. The evidence shows that the Defendant testified that her sister's boyfriend sent for her and she did not know his name. Even if the witness did not know the name of her sister's friend who sent for her that would not have made the witness unreliable.

[17] On the other hand I find the evidence on behalf of the Claimant to be unreliable in several respects. As stated earlier, I find the evidence of when the Claimant left St. Vincent to be unreliable. I also found the Claimant's testimony under cross-examination that the Defendant was planting bananas on the land at Park Hill in the 1960's to be unreliable. The Claimant could not recall when she visited St. Vincent. The Defendant was born in 1952. I also found unreliable the testimony of Nola Lawrence when she stated under cross-examination that she did not know where the Defendant was living when in her

witness statement she stated that she begged her father for the Defendant and her mother to continue to reside at South Rivers. In paragraph 13 of her witness statement Nola Lawrence stated that "The Defendants are still occupying the property despite repeated requests for them to quit and deliver up possession." Also in paragraph 9 of her witness statement Nola Lawrence stated that she went to South Rivers and Marie Nedd told her that the Defendant was building a concrete structure on the land and she advised her to stop but she refused. It is not disputed that Marie Nedd cannot speak.

[18] Where the evidence on behalf of the Claimant differ from the evidence of the Defendant I accept the evidence of the Defendant.

[19] I find that Margaret Hackshaw was the owner of the land at South Rivers. The Defendant never occupied the land at Park Hill. No evidence was led by the Defendant to show that she and or her predecessors were ever in possession of the land at Park Hill. Under cross-examination she admitted that she never occupied the lands at Park Hill. She confirmed this when she was re-examined by Learned Queen's Counsel. The Claimant and Chieftain Nedd resided in South Rivers with Margaret Hackshaw before Chieftain Nedd migrated to Trinidad in the late 1950's and the Claimant subsequently joined him. While no specific date was stated in the evidence when the Claimant migrated from Saint Vincent and the Grenadines , I find that this was prior to February 1963 since it is not disputed that Margaret Hackshaw died in February 1963 and the Claimant migrated to Trinidad before Margaret Hackshaw died. When the Claimant left for Trinidad to join her husband, Agatha Nedd, her daughter Marie Nedd and the Defendant all went to live with Margaret Hackshaw at South Rivers. At that time the Defendant who was born in 1952 would have been ten years at most. Agatha Nedd died in 1977. Chieftain Nedd obtained Letters of Administration for the estate of Margaret Hackshaw in 1986 and by Deed No. 43 of 1987 he conveyed the property to himself as the sole beneficiary of the estate of Margaret Hackshaw. Chieftain Nedd visited St. Vincent in 1988 and gave Nola Lawrence Deed No. 43 of 1987. Chieftain Nedd died in 1996 intestate. The Claimant visited South Rivers in 1997 and the Defendant disputed her claim to the land. The Claimant obtained Letters of Administration in the estate of Chieftain Nedd in 1997. By Deed No. 2893 of

1998 the lands at South Rivers and Park Hill were vested in the Claimant. The Defendant and Marie Nedd continued to live on the land at South Rivers.

LAW AND ANALYSIS

[20] The relevant provisions dealing with limitation of actions to recover land are sections 17 and Schedule 1 of the Limitation Act Cap. 90 Section 17 reads as follows:

- “1. No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims to that person.
2.
3.
4.
5. Part 1 of the Schedule contains provisions for determining the date of accrual of rights to recover land in the cases therein mentioned.”

[21] While paragraphs 1, 2 and 8 (1) and (2) of Schedule 1 read as follows:

- “1. Where the person bringing an action to recover land, or some person through whom he claims, has been in possession of the land, and has while entitled to the land been dispossessed or has discontinued his possession, the right of action shall be treated as having accrued on the date of dispossession or discontinuance.
2. Where any person brings an action to recover any land of a deceased person (whether under a will or an intestacy) and the deceased person:
 - (a) was on the date of his death in possession of the land or, in the case of a rent charge created by will or taking effect upon his death, in possession of the land charged; and
 - (b) was the last person entitled to the land to be in possession of it, the right of action shall be treated as having accrued on the date of his death.
- (8) (1) No right of action to recover land shall be treated as accruing unless the land is in possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as “adverse possession”); and where the preceding provisions of this schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing, unless and until adverse possession is taken of the land.
- (2) Where a right of action to recover land has accrued and after its accrual, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be treated as accruing and no fresh right of action shall be treated as

accruing unless and until the land is again taken into adverse possession.”

[22] The effect of the above mentioned provisions is that the right of action to recover the land is barred whenever twelve years have elapsed from the time when a right of action accrued. The right of action is accrued only when the land is in adverse possession of a person other than the true owner. Time begins to run when adverse possession is taken of the land.

[23] The principles to be applied by the Court in determining whether a person was in adverse possession were outlined in the case of Powell v McFarlane (1977) 38P. p. 452. These principles were approved by the House of Lords in J A Pye (Oxford) Ltd and Another v Graham and Another [2002] 3 AER p. 865.

[24] I will deal first with the parcel of land situate at Park Hill. While the Defendant in her defence pleaded that she and her predecessors were in undisturbed possession of the land for over fifty-three years, the Defendant in her witness statement made no mention of the land at Park Hill. Under cross-examination she categorically denied that she was ever in occupation of the land at Park Hill. She confirmed this under re-examination. The Claimant also in her witness statement made no mention of the land at Park Hill, neither did her witness Nola Lawrence. Under cross-examination the Claimant testified that the land belonged to Chieftain Nedd's grandfather Jeshura Nedd and he gave it to him. He did not get a Deed for the land but he paid the taxes for it. No receipts were exhibited. The land at Park Hill is included in Schedule 1 of Deed No. 2893 of 1997 as being part of the estate of Chieftain Nedd. Having regard to the above, I find that the Claimant has not adduced sufficient evidence on which the Court can make an order that the Claimant is the lawful owner of the land at Park Hill.

[25] In relation to the land at South Rivers, there is no evidence that Chieftain Nedd or the Claimant exercised any acts of ownership on the land at South Rivers after they migrated to Trinidad. The Claimant testified that she visited in 1960 and spent two weeks and again some time in the 1960's. She could not recall when. No evidence was led that she stayed

at South Rivers. She also testified that Chieftain Nedd visited St. Vincent from time to time, no dates were given also no evidence was led that he stayed at South Rivers. As stated earlier, I found this evidence to be unreliable.

[26] I find that the Defendant and her predecessors resided on the land since the early 1960's. They resided with Margaret Hackshaw the owner of the property prior to her death. Margaret Hackshaw died in February 1963. The Defendant, her grandmother and mother continued to occupy the small wooden house in which Margaret Hackshaw resided in the 1950's after Margaret Hackshaw's death undisturbed until 1997 when the Claimant visited St. Vincent after Chieftain Nedd died in 1996 and spoke to the Defendant about the land and the Defendant disputed her claim. When the small wooden house in which the Defendant and her mother had been living since the early 1960's deteriorated in the early 2000's the Claimant commenced the construction of a concrete house on the land.

[27] Learned Counsel for the Claimant did urge the Court to find that the Defendant was not in adverse possession of the land because she was given permission in 1988 to occupy the land by Nola Lawrence who was acting as agent of Chieftain Nedd. I agree that possession would not be adverse if it is enjoyed with the permission of the owner or a person with legal authority to do so, see the case of Hughes v Griffin (1967) 1 W.L.P. p. 23. Likewise permission granted by a person other than the owner who has no legal authority to do so is of no effect in relation to adverse possession, see the case of Riley v Braithwaite and Another [1979] 37 W.I.R. p. 66. While I stated earlier that I did not find this evidence of permission of Nola Lawrence to be reliable, even if this evidence was reliable, in 1988 the Defendant was in undisturbed possession of the land for a period in excess of twelve years.

[28] In view of the above, I find that the Claimant is not entitled to any of the reliefs sought.

[29] It is ordered that:

(1) The Claimant's claim is dismissed.

(2) The Claimant shall pay to the Defendant costs in the sum of \$14,000.00.

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Gertel Thom
HIGH COURT JUDGE