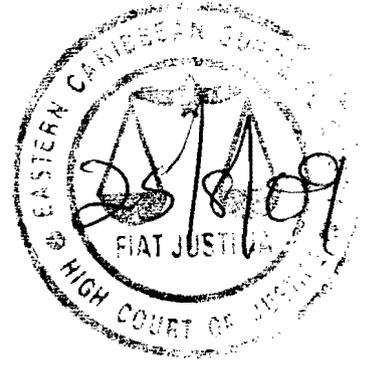


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 62 OF 2008
BETWEEN:



LAMBERT BROWNE

Applicant

V

THERESA ADAMS
GLORIA JACK
HENRY JOHN
MARGARET JOHN-WILSON

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

Appearances:

Mr. R. Williams for applicant
Mr. C. Joseph for First and Second Respondents
Mr. J. Thomas for Third and Fourth Respondents

2009: July 15th
August 25th

JUDGMENT

BACKGROUND

[1] **JOSEPH, Monica J.:** Claimant Lambert Browne has made an application for possessory title under section 3 of the Possessory Titles Act 2004 (No. 38 of 2004) (the Act) for a parcel of land (the disputed land) at Campbell, Union Island, measuring 48,186 sq ft. His application is supported by affidavits of two persons: Mary Dillon Joseph and Henry Cox in accordance with section 5 of the Act.

- [2] There was publication in the newspapers as required by section 7 of the Act and entries of appearance opposing Lambert Brown's application were filed by Theresa Adams and Gloria Jack on behalf of Seaview Development Ltd. (Seaview Development) on 5th January 2009, and by Henry John and Margaret Wilson on 3rd February 2009.

WRITTEN SUBMISSIONS; 10th August 2009 AND 14th August 2009

- [3] **ISSUES** on behalf of respondents Theresa Adams and Gloria Jack – Seaview Development:

1. Whether the Declaration of Possessory title registered as 3673 of 1995 was obtained legitimately.
2. Whether the applicant was in adverse possession of the land for a period of at least 12 years exclusively

- [4] **BALANCE OF PROBABILITIES:** I consider the evidence and decide on a balance of probabilities. In doing so I keep in mind that the parties have interests to protect. I indicate evidence that tend to support a finding I make, and I identify inconsistencies that cause me to ignore certain evidence. I consider the demeanor of the witnesses. I try to assess the witnesses on the several pieces of evidence that they have given. I acknowledge that on a particular aspect a witness might be straightforward and on another aspect that witness might not be. That is the manner in which I attempt to decide where the truth lies.

EVIDENCE FOR APPLICANT BROWNE:

Lambert Browne – Affidavits - filed on 1st December 2008, 28th April 2009

- [5] In December affidavit the applicant deposed that around 1945 Diana Cox sold a parcel of land – ¾ acre more or less, a part of lot 17 at Campbell, Union Island to his mother Winnifred Edwina Browne (the disputed land). She took possession of the parcel of land in 1946 and erected a wall structure on it.

- [6] Diana Cox died intestate without executing a Deed of Conveyance to Winifred Browne. In 1960 his mother Winifred gave him the said disputed land and put him in possession. He remained in possession to the present time. He has not paid rent to anyone and he has enjoyed the rents and profits from the land absolutely. While he was out of state he allowed Henry John to clear the parcel of land and to keep his animals on the parcel of land.
- [7] In April affidavit he asserted that in 1995 he filed a Declaration of Possession 3673/1995 which is notice to the world. All residents of Union Island were aware that he was owner and person in possession of the land. By deed 2226/2002 he sold 7,546 sq.ft of land to Pearl and Henry Cox. The application before the Court relates to the remainder of the land the subject of deed 3673/1995.

Lambert Browne - Oral testimony:

- [8] He was born in 1938 and for about six years lived in a house built by his father on the disputed land. His mother became ill and moved to mainland St.Vincent for medical treatment and he grew up in St.Vincent. She died in 1948 when he was eight years old at which age his mother gave him the disputed land.
- [9] A cousin Adrian Simmons cultivated the disputed land as it benefited both of them in that he profited from the produce and someone was active on the land. He visited from New York in a two year period. His sister Mary Joseph also visited. He was contacted twice in late 1990's by Henry John from Trinidad who asked him to sell the disputed land to him and his brother.
- [10] After he sold land to the Coxes, Henry. John contacted him again to purchase the remainder of the land at a price lower than the price he sold to Ms. Cox, and he told him he could not so do. Henry John had the land surveyed in 2006.

- [11] He never saw Henry John or Margaret Wilson on that land and Margaret Wilson was not cultivating the disputed land. Whenever he visited the disputed land over the years Adrian Simmons was cultivating it although he does not know when he stopped cultivating it. His uncle Harry Simmons (his mother's brother) occupied the portion of land that is above the road: Lot 17.
- [12] In cross examination he admitted that after 1970 he never lived in Union Island. He has not lived or worked on the disputed land for the past twelve years. He did not know that to claim possessory title he had to be in actual possession uninterrupted for at least twelve years.

Mary Joseph Dillon - Affidavit filed on 10th June 2009.

- [13] She is Lambert's sister, both being the children of Cornelius Browne, a police officer. She grew up with her stepmother Winnifred Edwina Simmons Browne. When Winnifred married Cornelius, Diana Cox her grandmother gave her (Winnifred) the disputed land to build a house.
- [14] Cornelius Browne built a two storey house on the parcel, lower storey was stone and the upper storey wood. About three or four years ago the lower stone wall storey was still there. Winnifred Browne had said that the disputed land was for Lambert. Winnifred went to St.Vincent leaving them living on the parcel of land and subsequently died in St.Vincent.
- [15] Mary Dillon lived in the house with one Dianna and Whitfield Simmons, Winnifred's brother. Over the years Lambert and his family occupied the disputed land and everyone in Union Island knew the land to be Lambert's after his mother's death. The only person she knows occupied the land since it was given to Lambert was Lambert and his relatives. Henry John always wanted to buy the disputed land and had called her many times about that.

Mary Joseph Dillon – Oral testimony:

[16] The land was given to Diana Cox in 1935/1936. There is a public road dividing the two parcel. Lots 16 and 17. Harris Simmons owns lot 17 which lot does not 'bound' with the sea and Winnifred owns lot 16 which 'bounds' with the sea.

Henry Cox - affidavit filed on 13th May 2009

[17] From childhood he knows Winnifred Edwina Browne, the applicant's mother to be in possession of the disputed land. After her death her son the applicant took possession of the disputed land. There were two pieces of land, the piece above the road on which the school is now built, was owned by the applicant's uncle Harris Simmons. The applicant's mother owned the piece below the road which is the subject matter of these proceedings. Harris Simmons migrated to England and sold his parcel of land to Emmanuel Adams.

Henry Cox – Oral Testimony:

[18] The piece below the road which was owned by the applicant's mother was being cultivated by Theoliphus London, Adrian Simmons and other members of the applicant's family. Henry John and Margaret Wilson's family owned and occupied lands adjacent to the subject property. In 2002 he and his wife Pearl Cox bought a piece of land from the applicant and built a house on it.

[19] The subject property had not been worked for many years but in 2008 Henry John cut down trees and put a bulldozer to dig out the tree stumps and pushed away the foundation of the applicant mother's building. Henry John fenced the land and pumpkin and peas were planted on the said land. Apart from then the land had not been cultivated for a number of years. The only person he knew owned and occupied the subject property over the years was the applicant and that is why he bought the land from him.

[20] In cross examination: he said that his father had told him that the land belonged to Winnifred Browne and then to the applicant. (In affidavit he said he knew from childhood that the applicant's mother was in possession, then the applicant was in possession). Part of the land he bought was below the road but he does not know if it is lot 16 or lot 17. The only persons he knows cultivating the land is Theophilis London and Doreen Alleyne. He knows Meldon John who fathered a child with Doreen and he recall that she cultivated the land. He visited Union Island almost every week and before 2002 Meldon and Emelda John did not cultivate the land.

[21] He went to the States in 1971 returning in 1981 and nobody cultivated the land from 1981. In 2008 the land was empty, with bushes. Bushes were cut down in 2008. In 2008 trees were cut down by Henry John who told him that he had bought the land from the applicant but the latter had told him Henry John had not bought land from him. He knew that Fatima Adams owned land at Clifton, not at Campbell (In affidavit he deposed that Harris Simmons had sold his parcel to Fatima Adams).

[22] Margaret cultivated the land first time last season with watermelon, ochre and peas. The land was fenced in 2009.

EVIDENCE FOR RESPONDENTS THERESA ADAMS AND GLORIA JACK - SEAVIEW DEVELOPMENT:

Theresa Adams - affidavit filed 15th January 2009

[23] She is widow of Emmanuel Fatima Adams who died on 10th April 1991. He was from Union Island and in his lifetime was the governing director of Sea View Development Ltd., which owns property, comprising two contiguous parcels known as lot 16 and lot 17 of Crown grant of 7th August 1930 and Crown grant of 19th September 1920. Lambert Browne has made application for possessory title for part of Lot 17. She holds deed 9/1974 for those parcels. Deed 9/1974

recites deed 26/1947 dated 25th July 1946, as root of title conveying lots 16 and 17 to Harris Simmons who conveyed those lots to Seaview Development in deed 9/1974.

- [24] During his lifetime Emmanuel Adams was in exclusive possession of the disputed land as governing director of Sea View Development. Without her knowledge in 2002 the Applicant purported to sell a part of lot 17 to the Coxes, Deed 2226 /2002 of 5th June 2002. The statutory declaration he swore was in respect of part of lot 17. In 1996 and 2006 the land was in bush shrubbery and did not appear to be occupied by any other person.
- [25] In October 2006 Government informed her of its intention to build a secondary school and expressed a desire to purchase land from Seaview Development. The sale transaction was completed of lot 16 and northern portion of lot 17, which was conveyed by deed 2338/2007. In 2008 she noticed that the remaining part of lot 17 was being enclosed. She learnt that one John was enclosing the land. She also noticed what appeared to be construction of a house taking place on part of lot 17. She sought legal advice.
- [26] She read in newspaper of 2nd January 2009 a notice of application for possessory title by Lambert Browne and instructed her lawyer to oppose the application. She is requesting cancellation of deed 2226 of 2002 dated 5th June 2002.

Theresa Adams – Oral testimony

- [27] In cross-examination: Lot 16 is a little under three acres and lot 17 is a little over three acres. She learnt that Government had bought lot 16 from somebody else. She went to Surveys Department and found out what happened, that a Simmons had sold to Government. Her husband had bought from Harry Simmons.
- [28] After her husband's death Harry Simmons passed lot 16 to his son and his son got an agent to sell the land to Government. Government, on discovering what had

happened, paid her. Government also bought about half of an acre of lot 17. Lots 16 and 17 not now owned by the Simmons family. Henry John telephoned her asking to sell him a part of lot 17. He informed her that Lambert Browne had offered to sell him lot 17 but he knew that Lambert Browne did not have title for the land. He said that Lambert Browne had asked him to say that he was in possession of it but he was not prepared to do that.

[29] She visited Union Island with her husband around 1988. She visited in 1996 with one of her daughters at which time no 'problem' was visible. The disputed land was overgrown. In 2006 she visited the land with her son. She pays taxes for the disputed land. When she visited the disputed land in 2008 with a surveyor, she discovered that someone had built on lands belonging to Seaview Development.

[30] In 2008 she saw that the land was enclosed and learnt that Henry John had cut down the trees and enclosed the land with poles and wire fence. She called him and told him to get off the land. She spoke with her lawyer but they had difficulty in getting an address for Lambert Browne and eventually found it on the internet.

[31] She had difficulty to get surveyor Stewart from Union Island to survey for her. Stewart told her that he had surveyed the rest of the land.

Gloria Jack – affidavit filed on – 15th January 2009

[32] She is secretary of Seaview Development. Theresa Adams took over management of Seaview Development after her husband's death. Seaview Development owns land at Union Island including the disputed land and had exclusive possession of that land. It sold lot 16 and part of lot 17 to Government

Gloria Jack - Oral testimony

[33] Under cross examination she stated that as secretary she did not visit the disputed land. She visited Union Island as Education Officer, going to the school that was being built and she looked across on the other side of the street knowing that the land belonged to Seaview Development. She did not know the boundaries.

[34] She is only guessing that her sister took over control of the disputed land in the process of taking control of Seaview Development. She was told by her sister and a gentleman that lot 17 was opposite the new school. First time she was shown the disputed land was when she went on church business to Union Island and Father Andrew showed her the disputed land

EVIDENCE FOR RESPONDENTS HENRY JOHN AND MARGARET WILSON

Henry John - affidavit filed on 21st April 2009

[35] He is Son of Meldon and Emelda John of Union Island. His earliest memory of parents was planting corn, peas and cotton on lands now claimed by Lambert Browne, which lands adjoined their land. He grew up thinking that the lands were owned by his parents. His parents occupied and managed the land uninterrupted from the fifties to the eighties. The land is fully cultivated as it has been by his family members for the past sixty years.

[36] In the seventies “we fenced the lands with a special plant called Figisnut and Poison Tree”. They abandoned planting as other farmers tied 1/3 and let go 2/3 of their animals. They maintained only two pigs and some of the other animals on the land.

[37] As the animal problems improved, they started planting on the said lands again root crops, fruits and vegetables. Currently the land is planted with pumpkins,

melons, corn, peas and ochro. He was responsible for fencing the land. When he migrated to Trinidad he left his mother and Margaret (sister) to manage the land.

[38] His mother passed away in 1998 and Margaret planted the lands every year. He never saw a separation between the lands his parents left and this piece of land, as the said land was always ours' They have spent over \$30,000.00 cleaning, maintaining and fencing the land now in question from trees to concrete post and coated wire.

[39] In 2008 he was informed that Lambert Browne was selling the land his family occupied. He learnt that Lambert had sold a piece to Henry Cox who was further down from us'. He said:

Mr. Browne told me he was prepared to sell him a piece of land for a lower price if he was prepared to purchase all the land he was occupying. After negotiating, he instructed him to survey the land and inform him as to the square footage. He subsequently employed the services of Mathias Stewart to survey the land.

[40] His brother's business associate Constantine Alexander informed that Lambert Browne could not sell the land as there were changes to the law and he did not have the proper title of the land. He was told in order for the transaction to be finalized he needed to get the land surveyor to change "at the instance of myself" and insert Lambert Browne on the survey sheet. He was given an affidavit to sign and after reading it he indicated that he could not sign it and needed further clarification from his attorney. He wanted to show all documents to his lawyer if someone was claiming land.

Henry John - Oral testimony

[41] In cross examination: By using word "ours' in his affidavit he meant five acres of his grandfather Isaac John's land that was not divided. Lot 12 belongs to them and adjoins lot 17 part of which he is claiming. Their parents cultivated the

disputed land until in the eighties when because of age they stopped occupying, with Margaret continuing to occupy.

[42] In 1977 he went to live in Trinidad and Tobago ~~visiting~~ Union Island sometimes for a month, sometimes three weeks sometimes ~~fourteen~~ days. When his mother died in 1998 he realized that his father did not have title for lot 17. He is not now claiming whole of lot 17 but only part of it. A public road divides lot 17. Half of lot 17 is above the road and half below and they live below the road.

[43] He learnt that Lambert Browne is claiming the ~~disput~~ed land that they occupy. In 2006 he spoke to Lambert Browne in America ~~who~~ told him to go to Mr. Arthur Williams which he did in 2008. The land his ~~parents~~ occupy is lot 12 which was open but was fenced in the seventies with fig ~~nut~~ and poison tree bush. After fencing there were two posts and a gate. In the ~~sixties~~ he fenced part of Lot 17, fencing with concrete in 2006. One of the ~~purposes~~ was to keep out the animals. A reason for the fence was to protect his crops ~~from~~ animals. It is untrue that lot 17 was not fenced until now.

[44] It was in the eighties that there were problems with animals as there was a drought in Union Island and everybody let go ~~their~~ animals. Nobody tied their animals on the land they (Henry and Margaret) occupied as it was their land.

[45] From Trinidad he spoke to Theresa Adams enquiring whether she has title for the piece of land that Lambert Browne was claiming. He was willing and ready to buy the disputed land. He did not ask Theresa ~~Adams~~ to sell it to him.

Margaret Wilson – affidavit filed 21st April 2009

[46] The evidence relative to occupation of the land is ~~similar~~ to the evidence of Henry John. She deposed that she planted the lands ~~every~~ year since the passing of her

mother. She 'never saw a separation between the lands my parents left and this piece of land. For us the said land was always ours."

Margaret Wilson - Oral testimony

[47] She found out after her mother died that she **did not** have title deed for adjoining land. Her parents had title deeds to land known as "ours." She had no idea that her brother was negotiating with someone to **buy** adjoining land, neither did she know that another person was claiming the piece of land next to their land.

[48] Her mother cultivated the land and since her death in 1998 she cultivated the land and reared animals. She never heard of Fatima Adams owning the land and after eighties there was no interruption in her possession of the disputed land.

[49] She said that Henry Cox bought some of land that "we say we cultivating" and started building a house in 2002. Where Cox bought wasn't her parents land. She said she used to cultivate both sides.

[50] After her mother died she cultivated a small area of land but now she has extended cultivation so she cultivates all the land now. It had been half cultivated and half for the animals. In February she fenced the land

PAPER OWNER:

[51] Emmanuel Fatima Adams (wife Theresa Adams) who died on 10th April 1991 was from Union Island. He was the governing director of Sea View Development which owns property comprising two contiguous parcels known as lot 16 and lot 17 of Crown grant of 7th August 1930 and Crown grant of 19th September 1920. Lambert Browne has made application for possessory title for part of Lot 17. Seaview Department holds deed 9/1974 for those parcels.

[52] Deed 9/1974 recites deed 26/1947 dated 25th July 1946, as root of title conveying lots 16 and 17 to Harris Simmons who conveyed those lots to Seaview Development in deed 9/1974. Seaview Development is the paper owner of the disputed land.

POSSESSION:

Is Applicant Lambert Browne in possession?

[53] To obtain possessory title an applicant must have been in exclusive possession of the disputed land for at least twelve years. The applicant has not satisfied that requirement. Indeed he admitted that he has been living in New York from 1970, and was not in actual possession of the disputed land. His application for possessory title cannot and does not succeed.

[54] When the applicant swore the statutory declaration in 1995 (No.3673 /1995) he was not in possession of the disputed land. As he conveyed land by deed to Henry and Pearl Cox citing root of title from that statutory declaration, Counsel for respondent Adams invited the court to cancel the deed. I decline to consider this as Henry and Pearl Cox are not before the Court.

Is Seaview Development Company in possession?

[55] Sea View Development by Deed No. 9/1974 is the paper owner of lot 17 that includes the disputed land. Has Sea View Development been dispossessed or has it discontinued possession? Mr. Thomas submitted that Respondent Adams visited the disputed land in 1995 and 2006 and did not see signs of occupancy. Mr. Thomas invited the Court to draw the logical inference that Sea View Development never exercised continuous or exclusive control over the disputed land, it had abandoned it, had been dispossessed and is now barred from repossession.

[56] The Law is that after twelve years, no action for **land** can be maintained, as enacted in the Limitations Act (Cap 90), Section 17 of **which** provides:

(1)“no action shall be brought by any **person** to recover any land after the expiration of twelve years **form** 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**.”

And section 19 of the Limitation Act provides **that** the title of an owner is extinguished after the passage of twelve years. **That section**:

“Subject to section 29, at the **expiration** of the period prescribed by this Act for any person to **bring an action** to recover land(including a redemption action) the title of **that person** to the land shall be extinguished”.

[57] Mr. Joseph submitted that Seaview Development is **in** possession of the disputed land. Counsel referred the Court to DOMHCV 2001/016` Hector Caesar Luke v Bernard Alexander, where Rawlins J. (as he then **was**) at para.15 had this to say:

“The Court will, prima facie, **ascribe** possession to the paper owner. The Court can only **ascribe** possession to a person who does not have paper title if **that person** has factual possession and animus possidendi, the requisite **intention** to possess the land. Factual or physical possession **means** a single and conclusive possession, or exclusive physical **control** of the land. The acts that constitute a sufficient degree of **exclusive** physical control will depend upon the circumstances, **particularly** the nature of the land and the manner in which land of **that nature** is commonly used and enjoyed. The animus possidendi, **has** been described as the intention to possess the land to the **exclusion** of all other persons including the owner with the paper title, so far is reasonable and so far as the process of law...”

[58] Section 2 of the Act provides the interpretation of “**adverse** possession”: factual possession of an exclusive and undisturbed nature **of** a piece of land in Saint

Vincent and the Grenadines for a continuous period of 12 years or more accompanied by the requisite intention to possess the said land as owner thereof.”

[59] The Learned Judge in the Caesar case points to the fact, that to succeed with an application of possessory title, the acts of the adverse possessor must be of a sufficient degree of exclusive physical control of the land. All the circumstances must be taken into account. I also consider that mere non-user of land by itself does not amount to discontinuance of possession.

[60] Guidelines relating to the acts that may not, in certain circumstances constitute a sufficient degree are referred to in Geoffrey Cobham V Joseph Frett – Privy Counsel Appeal No 41 of 1999 out of B.V.L It depends upon all the circumstances. I adopt Georges J’s comment at first instance in the case.

“Mere non-user of land by itself does not amount to discontinuance of possession..... Nor in my view was the plaintiff dispossessed by the defendant activities.”

[61] The facts are Mr. Cobham (paper owner) did not do anything with the land. He was resident in the United Kingdom. He had an agent in Tortola, who was a local farmer in 1980’s she visited the land and found that someone had removed a quantity of sand from the land and that trees and bushes had been cut..... In 1984 Mr. Cobham instructed a local estate agent....to sell the land. Over the period between 1984 and 1991 Ms. Romney visited the land on a number of occasions (7 to 10 times a year, she said):

“.....Mr..Fitzpatrick (agent) on one of his visits to the land noticed that part of the flat land....had been cleared of vegetation. He saw “backhoe tyre marks’. A few days later he went to Mr.Thomas Frett’s house on parcel 58 and asked Mr. Frett what he knew about the work that had been done on parcel 57. Mr. Frett said that he had done the work, that the land was his and that he intended to occupy.”

[62] Litigation ensued and Mr. Cobham relied on his paper title. Mr. Frett’s defence was that he had for many years, before and after the adjudication by the

Adjudication Officer, been in possession of the land. He claimed possessory title. The acts relied on by the defence included cutting down of trees, the preparation of charcoal, the grazing of cows, the picking and selling of sea grapes, fishing in the pond and from time to time taking loads of sand for building purposes.

[63] I apply the principles in the cases cited. In the instant case there was no express evidence of intent to possess on the part of the parents of Henry John and Margaret Wilson. Occupation of land assists a court in determining what was the intent of the occupier. I look at the circumstances. The disputed land is owned by a company and after the death of her husband, Theresa Adams visited the land a few times, accompanied by her children but the company did nothing on the land.

[64] Evidence by Henry John and Margaret Wilson was that grazing of animals and cultivating of land were rotated between lots 12 and 17. I do believe that their parents used part of lot 17 to graze animals. It was convenient to do this as lot 17 was in boundary with lot 12. Other persons grazed their animals on the disputed land, as the pattern of life in Union Island allowed for that open arrangement. People grazed their animals, on land that they did not own.

[65] It was a case of mere user by Henry and Margaret's parents of the disputed land until the owner called for it. Seaview Development is not dispossessed by the grazing of animals by the parents of Henry John and Margaret Wilson.

Are Henry John and Margaret Wilson in possession?

[66] Mr. Thomas submitted that Margaret John Wilson is the only person who has maintained an almost daily contact with the disputed land. Her home, from birth, belonged to her parents Meldon and Emelda John, adjoins the disputed land. She recalls her parents planting and grazing animals on the disputed land. She continues the family tradition planting crops and grazing animals to the present day. Counsel further submitted that the fact that Henry John was willing to

purchase the disputed did not affect his claim for possessory title and cited *Pye v Graham* 2002, UKHL, 30.

[67] Mr. Joseph submitted that neither Henry John nor his sister was ever in possession of the disputed land neither physically or otherwise. He also submitted that they never had intention to be in possession of the disputed land adversely until 2008. In order to determine what their intention was, he invited the Court to consider their conduct, particularly Henry John's conduct who was attempting to purchase the disputed land.

[68] In *Pye* case Lord Browne-Wilkinson at paragraph 42, said:

“Once it is accepted that the necessary intent is an intent to possess not to own and an intention to exclude the proper owner only so far as it is reasonably possible, there is no inconsistency between a squatter being willing to pay the paper owner if asked and his being in the meantime in possession. An admission of title by the squatter is not inconsistent with the squatter being in possession in the meantime.”

[69] I accept Mr. Thomas' submission that offering to purchase the disputed land does not damage Henry John's application for possessory title. If the two possessory limbs are satisfied – occupation and intention. Henry John is relying on Margaret's occupation to a large extent as he lives in Trinidad and visited Union Island periodically. On occupation of the disputed land, Margaret Wilson's evidence must therefore be clear and unequivocal.

[70] I accept from Henry Cox's affidavit that there were two pieces of land, the piece above the road on which the school is now built, was owned by Lambert's uncle Harris Simmons and Lambert's mother occupied the piece below the road which is the piece in this matter.

- [71] I believe Margaret and her parents planted crops on lot 12, but not on part of lot 17. I believe that their parents did fence but the fencing was of lot 12 not of lot 17. Rather they maintained the separation between the two lots. There was an old fence and a gate between the land that they owned and the disputed land.
- [72] I accept from Henry Cox's evidence that Theophilus London, Doreen Alleyne and Harris Simmons did cultivate the disputed land, although I do not know what date this took place. I accept from his evidence that nobody cultivated the disputed land from 1981. I accept that last year Henry John cut down trees on the land and fenced it.
- [73] It is instructive to consider the evidence of Henry John and Margaret Wilson on the question of boundary and separation between lot 12 and lot 17. I think they were attempting to establish that there was no separation between Lot 12 and disputed land and that both areas were used as one for cultivating and grazing of animals. Henry John in cross examination: "I never saw boundary between the land in dispute and our land which is lot 12."
- [74] Margaret Wilson: "I have never seen a boundary between our land and adjoining land. Our land ends where there was an old fence. There is a gate to enter the piece of land. There was a boundary between the land I call ours and the adjoining land." She said she used to go to the beach through a gate at the back and there was a fence and gate between the two pieces of land which are still there.
- [75] She testified that her parents had a fence and a gate between what she called "our land" and the disputed land. Another piece of her evidence in cross examination: "I never saw a separation between this piece of land my parents land and this piece of land. Part was fenced and part not fenced". I did say that there never was a separation between this land and our parents land".

[76] A question in cross examination: When the other farmers animals started to affect you could only cultivate piece the piece that you fenced? The answer: I used to cultivate both sides. When the other farmers started to affect we could only cultivate the part I fenced.”.....My parents did cultivate the lands and myself. We recently fenced it to cultivate more of the lands. Right now everything is cultivated. I used to cultivate a small portion and the rest was for tying animals.” In re examination the question: You never saw a separation meaning what? The answer:

“ Well the land was not ours but our parents work it. I never saw separation between the lands of my parents and this land.....when I said a separation I meant my parents cultivate the land clean the land mind animals on the land. One portion was fenced where the house was and there was a gate to go to the next land”.

[77] I find that the occupation limb of the disputed land has not been satisfied in that Margaret did not occupy the disputed land exclusively from 1998. Regarding the intention limb, the earliest date that Henry John and Margaret Wilson could establish intention was from 1998 on their mother's death. At that date they discovered that their parents had no title for the disputed land.

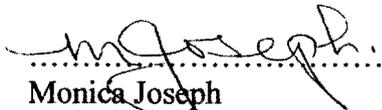
[78] The first overt act of intention to possess adversely was the cutting down of the trees in 2006 by Henry Wilson. Then Henry and Margaret entered entry of appearance raising their claim, which was filed in February 2009. The requisite period of twelve years to establish adverse possession has not passed.

CONCLUSION:

[79] I hold that Lambert Browne is not in possession of the disputed land. I do not grant his application for possessory title. Seaview Development is in possession of the disputed land. Henry John and Margaret Wilson are not in possession of the disputed land and are not in adverse possession of the disputed land in accordance with the Act and the Limitation Act.

ORDER:

1. The applicant's application for a possessory title is not granted.
2. The applicant is to pay \$3,000.00 costs to the first and second respondents
3. The third and fourth respondents are to pay \$1,500.00 costs to the first and second Respondents


.....
Monica Joseph
High Court Judge (Acting)
20th August 2009.