

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 54 OF 2008**



BETWEEN:

CHARLES CORDICE

Claimant

v

KENROY GEORGE

Defendant

Appearances: Ms. S. Robertson for the Claimant
Mr. Bayliss Frederick for the Respondent

2009: May 25
September 17

JUDGMENT

- [1] **THOM, J:** Edwin David (deceased) was the owner of a parcel of land at Fairbain Pasture measuring approximately three and one half acres. He was married to Elcita David (deceased) who was the mother of the Defendant.
- [2] The Claimant alleges that he is the lawful owner of a portion of land measuring approximately one acre (the disputed land) of the said land that was owned by Edwin David. He based his claim on the ground that he purchased the disputed land from Enos David the son of Edwin David. The Claimant seeks inter alia a declaration that he is the owner of the disputed land.
- [3] The Defendant in his defence and counterclaim alleges that since the death of Edwin David on the 13th December 1978 he was put into possession of Edwin David's land by his mother and he continued in exclusive possession after her death in 1986. In his

counterclaim he seeks inter alia an injunction to prevent the Claimant, his servants and or agents from trespassing on the disputed land.

EVIDENCE

[4] The Claimant testified and he called two witnesses being Shermilla Mars his common law wife and Enos David. The Defendant testified and called one witness David Kennedy.

Evidence on Behalf of the Claimant

[5] The evidence on behalf of the Claimant is that the disputed land was part of a larger parcel owned by Edwin David. In 1970 Edwin David by Deed of Gift conveyed the disputed land to Enos David by Deed No. 208 of 1972. In the later 1990's the Claimant commenced cultivating the disputed land. From 1997 the land was cultivated by his common law wife while he was engaged in block making. In 2004 Enos David offered to sell the disputed land to the Claimant and he purchased the disputed land. The disputed land was conveyed to him by Deed No. 769 of 2005. In October 2006 the Claimant surveyed the disputed land and the plan is registered as Plan Number G 42/69.

[6] Around 2007 the Defendant trespassed on the disputed land and reaped produce from the disputed land and on some occasions destroyed some of the produce on the disputed land.

[7] The plan G 41/15 shows the larger parcel of land owned by Edwin David but does not take into account that a portion of the land being the disputed land was conveyed by Edwin David to Enos David by Deed No. 208 of 1972.

Evidence on Behalf of the Defendant

[8] The Defendant was the step-son of Edwin David. The disputed land was owned by Edwin David. Edwin David gave his lands to the Defendant's mother. After the death of Edwin

David the Defendant went into possession of the land and he continued in possession of the land after his mother's death in 1986. After the Defendant came into possession of the land, the Defendant was sentenced to a term of imprisonment and one David Kennedy was left in charge of the land. While the Defendant was in prison the Claimant commenced building blocks on the disputed land.

- [9] In 2004 the Claimant commenced raising pigs on a commercial scale on the disputed land. In December 2005 the Defendant caused the land that belonged to Edwin David to be surveyed. The land is delineated and shown on plan G 41/15.

ISSUE

- [10] The issue to be determined is whether the Claimant is the lawful owner of the disputed land or whether the Defendant acquired title to the disputed land by adverse possession.

SUBMISSIONS

- [11] No submissions were received on behalf of the Claimant.
- [12] The submissions on behalf of the Defendant can be summarized as follows:
- (a) Plan G 42/69 is not compatible with the recital clause in Deed No. 769 of 2005. The Claimant failed to produce the evidence of a surveyor to explain the difference in the description.
 - (b) The Court should find that Plan G 41/15 is the correct plan and it could not be nullified by the later Plan 42/69. Learned Counsel referred the Court to Sections 3, 13, 15, 18, 23, 25, 26 and 30 (2) of the Land Surveyors' Act Chapter 266.
 - (c) The Claimant did not cultivate the disputed land. The Valuer's Report which was prepared on behalf of the Defendant and dated 23rd March 2006 shows that no cultivation existed on the land except a few fruit trees.

FINDING OF FACTS:

[13] Both parties agree that the disputed land was formerly owned by Edwin David. Both parties also agree that the disputed land is the land shown on the Plan G 42/69. It was not disputed by the Defendant that Edwin David conveyed the land described in Deed No. 208 of 1972 to Enos David. It was also not disputed that Enos David sold the same parcel of land to the Claimant in 2005 and conveyed it to him by Deed No. 769 of 2005.

[14] I find that the Claimant commenced cultivation of the disputed land in the late 1990's when the Defendant was incarcerated. In 2004 the Defendant commenced raising pigs on a commercial basis on part of the land formerly owned by Edwin David. The evidence on behalf of the Claimant that the Defendant trespassed on the disputed land and reaped and destroyed produce thereon was not contradicted. I accept this evidence on behalf of the Claimant.

LAW AND ANALYSIS

[15] I will deal with the submissions made on behalf of the Defendant.

Description of the Disputed Land

[16] Learned Counsel for the Defendant submitted that the description of the land in Deed No. 769 of 2005 is inconsistent with the description on Plan G 42/69. The land claimed was not defined with sufficient particularity therefore the Court should reject the Claimant's claim of title to the disputed land.

[17] An examination of Deed No. 769 of 2005, the Deed of Conveyance from Enos David to the Claimant shows that the description of the disputed land is in the same words as contained in Deed No. 208 of 1972 the Deed of Conveyance from Edwin David to Enos David. The disputed land is described in Deed No. 769 of 2005 as follows:

"One acre more or less and butted and bounded on one side by a Road and another side by lands now or formerly in the possession of Ezekiel

McCoy on the Third side by a river or ravine and on the Fourth side by lands now or formerly in the possession of Edwin David or howsoever otherwise the same may be butted bounded known or distinguished or described..."

The Plan G 42/69 shows the boundary to be a river, a gully, lands owned by one Shirley Joseph and lands owned by Elcita King.

[18] I note that the Defendant agreed under cross-examination that the land that the Claimant is in occupation of is the same land that is shown on the Plan G 42/69. It is not disputed by the Defendant that the disputed land is part of a larger parcel that was owned by Edwin David (deceased). The description on the Deed 769 is the same description that was made since 1972 when the land was conveyed to Eros David. The Defendant's Plan G 41/15 shows similar boundaries as the Plan G 42/69. They both show land belonging to Elcita King as a boundary. The only difference being that in the Plan G 42/69 part of what was formerly land of Edwin David is shown as land belonging to Shirley Joseph. I find that the land shown on the Plan G 42/69 is the same land described in Deed No. 769 of 2005.

Plan G 41/15

[19] Learned Counsel referred the Court to several sections of the Land Surveyor's Act to show that the Defendant's Plan G 41/15 was not cancelled by the later plant of the Claimant Plan G 42/69 therefore Plan G 42/69 is a nullity.

[20] I have reviewed the sections referred to by Learned Counsel for the Defendant, and I found the relevant sections to be Sections 25 and 26. Section 25 provides in effect that all plans authenticated by the Chief Surveyor shall be conclusive evidence in any court of law of the information contained therein unless such plan is cancelled by the Chief Surveyor by virtue of Section 26, while Section 26 outlines the circumstances in which the Chief Surveyor may cancel an authenticated plan.

[21] It is not disputed that the land described in G 42/69 is part of the land described in G 41/15. The fact that the Chief Surveyor in authenticating the plan G 42/69 which is the

later plan simply stated that it supersedes a portion of the Plan G 41/15 does not make Plan G 42/69 a nullity. It does not in any way affect any interest that the Claimant obtained in the disputed land by purchase from Enos David.

Cultivation of the Disputed Land

[22] Learned Counsel urged the Court to find that the Claimant did not cultivate the disputed land. I believe the evidence of the Claimant that he did cultivate the disputed land. The Defendant himself agreed that the Claimant's common law wife cultivated the land.

Adverse Possession by the Defendant

[23] The question that arises is whether the Defendant had acquired title to the disputed land by adverse possession prior to the sale of the land by Enos David to the Defendant.

[24] The relevant provisions dealing with limitation of action to recover land are Sections 17 and Schedule 1 of the Limitation Act Chapter 90. The effect of these 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.

[25] 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) 389 p. 452. These principles were approved by the House of Lords in **JA Pye (Oxford) Ltd and Another v Graham and Another** [2002] AER p. 865 as follows:

“The legal possession required is a sufficient degree of physical custody and control (factual possession) and an intention to exercise such custody and control on one's own behalf and for one's own benefit (intention to possess). As regards factual possession everything depended on the circumstances, but broadly, such possession was constituted where the alleged possessor had been dealing with the land as an occupying owner might have been expected to deal with it, and nobody else had done so.

The necessary intent was one to possess, not to own and an intention to exclude the proper owner only so far as was reasonably possible."

[26] Applying the above principles to this case the question is: Did the Claimant dispossess the true owner of the disputed land? The onus of proving that the owner has been dispossessed is on the party who alleges it. In this case it is the Defendant.

[27] The evidence led by the Defendant is to be found in paragraphs 5 and 6 of the Defendant's witness statement, and the evidence of his witness David Kennedy. Paragraphs 5 and 6 of the Defendant's witness statement read as follows:-

- "5. Mr. David gave the lands to my mother Elcita David before his death; I then came in possession of the lands prior to the death of my mother in 1986, since that time I held sole non (sic) disturbed ownership of the said lands.
6. In the year 2004 I began a commercial piggery on the said lands, in that same year I instructed my solicitor to effect application for possessory title as shown on Plan registered and numbered G 41/15."

[28] Under cross-examination the Defendant testified that the only persons who worked the land were Edwin David, his mother and himself. After he came out of prison in 2000 he saw the Claimant's common law wife working the land and he spoke to the Claimant about it.

[29] The evidence-in-chief of David Kennedy is very short. I will outline the entire four paragraphs that make up his witness statement:

- "1. I know Kenroy Haynes through his mother since he was a youth man growing up in Fairbain Pasture.
2. After coming into possession of the lands in question Kenroy Haynes went to Prison.
3. While Kenroy Haynes was in prison he instructed me to oversee the land on his behalf, during that time a man started building blocks on the land.
4. Kenroy Haynes mother was married to Mr. Edwin David who was the owner of the lands."

[30] Under cross-examination he testified that he did not see anyone work the disputed land. However, under re-examination he stated that he saw Edwin David farm the disputed lands. He never saw the Defendant farm the disputed land.

[31] Having reviewed the evidence and having regard to the principles as outlined in JA Pye I find that the evidence led on behalf of the Defendant was not sufficient to establish adverse possession by the Defendant. There is the bald statement of the Defendant that he came into possession of the lands prior to the death of his mother in 1986. No evidence was led on which the Court could find that there was factual possession by the Defendant as outlined in JA Pye. While the Defendant testified under cross-examination that only himself, Edwin David and his mother worked the lands, there is no evidence on behalf of the Defendant showing the period during which he worked the land. His witness David Kennedy did not assist his case since the witness testified that the only person he saw working the land was Edwin David. The witness specifically stated that he did not see the Defendant farm the land. I find that the Defendant has failed to prove on a balance of probabilities that he had acquired title to the disputed land by adverse possession.

[32] In conclusion, I find that the Claimant is the owner of the disputed land, the Claimant having purchased the land from Enos David. I find that there was no sufficient evidence that the Defendant had acquired title to the land by adverse possession.

[33] It is ordered:

- (1) It is hereby declared that the Claimant is the owner of the parcel of land described in Deed No. 769 of 2002 and delineated and shown on Plan G 42/69.
- (2) The Defendant's counterclaim is dismissed.
- (3) Damages to be assessed on application of the Claimant, such application to be made on or before December 31, 2009.
- (4) The Defendant shall pay the Claimant costs in the sum of \$14,000.00.


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Gerfel Thom
HIGH COURT JUDGE