GRENADA

IN THE COURT OF APPEAL

HCVAP 2008/011

BETWEEN:

ARNOLD CELESTINE
(Administrator of the Estate of O'Ferril Celestine)

Appellant

and

CARLTON BAPTISTE

Respondent

Before:

The Hon. Mde. Janice George-Creque	Justice of Appeal
The Hon. Mr. Michael Gordon, QC	Justice of Appeal [Ag.]
The Hon. Mr. Davidson Baptiste	Justice of Appeal [Ag.]

Appearances:

Ms. Sabritha Khan and Ms. Celia Edwards, QC for the appellant
Mr. Michael Lindo for the respondent

2009: November 24;
2010: January 11.

Civil Appeal – Property Law – adverse possession – owner in fee simple – whether person claiming ownership of land as of right may also claim ownership based on adverse possession under the ***Limitations of Actions Act*** *Chap. 173 of the Laws of Grenada*

The appellant ("Mr. Celestine") is the son and Administrator of the estate of O'Ferril Celestine, deceased. The respondent ("Mr. Baptiste"), O'Ferril's stepson, purchased a parcel of land in Radii, St. George's ("the Land") in 1967 pursuant to which a Deed of Conveyance was registered in the Deeds Registry ("the 1967 Deed"). Mr. Baptiste has been in possession of the Land since the date of purchase.

In 2001, Mr. Baptiste agreed to sell a portion of the Land to his son, and upon a search being done, it was discovered that another deed pertaining to the Land was registered at the Deeds Registry. This deed ("the 1973 Deed") purported to be a conveyance of the Land by way of gift from Mr. Baptiste to his stepfather, O'Ferril. Mr. Baptiste claimed that the 1973 Deed was a false document and commenced proceedings against Mr. Celestine as the Administrator of O'Ferril's Estate and in his personal capacity. He sought

declarations to the effect that he was the fee simple owner and possessory owner of the Land, the 1973 document was false and of no legal effect and the Land was never owned by O'Ferril, his estate or Mr. Celestine.

The learned judge held that there was no evidence to support the claim that the 1973 Deed was a false document. Mr. Celestine was accordingly found to be the paper title owner. It was however held that Mr. Baptiste had been in open possession of the land for over twelve years and that any right which Mr. Celestine had to the Land had been extinguished by operation of law, that is, the Limitation of Actions Act Chap. 173. A declaration was therefore granted in favour of Mr. Baptiste against which decision Mr. Celestine appealed.

Held: allowing the appeal, setting aside the order in the court below and awarding costs in the appeal and in the court below to the appellant:

1. Adverse possession can only arise where it is recognised by the "adverse possessor" that the paper title is vested in someone else. In essence, the adverse possessor seeks to say that he has dispossessed the paper owner. It is inconsistent for the respondent, Mr. Baptiste, to claim to be in possession of land "as of right" whilst at the same time claiming to be in adverse possession.

2. Sections 4 and 27 of the Limitation of Actions Act are directed at the right of the paper owner to bring a claim for recovery of land and limit the time frame within which the paper owner may do so. This contemplates that the paper owner must have become dispossessed of the land by the adverse possessor. What these provisions do not permit or contemplate is the situation where, as here, the adverse possessor brings a claim against the paper owner and then sets up the limitation bar as against the paper owner as a basis upon which the adverse possessor becomes entitled to ownership of the land.

3. The court is empowered to make binding declarations of right whether or not any consequential relief is or could be claimed. The grant of a declaration must be based on some right which a claimant has established, or is shown to be entitled to, which the court is empowered to grant. In this case, Mr. Baptiste is simply not entitled to a right or title as owner. Accordingly, the learned judge could not properly grant to Mr. Baptiste a declaration of such a right and title.

   Gordon Charles (also known as Augustus James Alexis, Administrator in the Estate of Lorna Alexis, Deceased, By His Attorney Raymond Scott) v Clarie Holas Grenada Civil Suit No. 151 of 1996 (unreported), approved.

JUDGMENT

[1] GEORGE-CREQUE, J.A.: This appeal arises from a decision of the trial judge made on 18th July 2008, in which she declared, the respondent ("Mr. Baptiste") to be the owner, by adverse possession, of a parcel of land ("the Land") measuring some 158,387 sq. ft. situate at Radii, in St. George's, Grenada.

[2] The appellant ("Mr. Celestine"), being the defendant in the court below, has appealed. His grounds of appeal though numbering three, in my view, substantially boil down to the determination of two questions namely:

(1) Whether the learned trial judge erred in law in concluding and declaring that Mr. Baptiste was the owner of the Land by virtue of adverse possession; Mr. Baptiste having put forward his claim on the basis of being the fee simple owner thereof.

(2) Whether the trial judge erred in finding that Mr. Baptiste was in adverse possession of the Land for twelve years despite her finding that Mr. Celestine was in occupation of the Land and burning coals thereon in the 1990s.

The background

[3] I set out a summary of the background facts as gleaned from the judgment of the trial judge, so as to place this appeal within context.

(1) Mr. Celestine is the son and the Administrator of the estate of one O'Ferril Celestine, deceased. O'Ferril died in December 1983. Mr. Baptiste is the stepson of O'Ferril.

(2) Mr. Baptiste claimed that he purchased the Land from one George Joseph in 1967. This was pursuant to a Deed of Conveyance exhibited as CB1 and registered in the Deeds Registry in Liber C11 at page 790 ("the 1967 Deed").

(3) He also claimed that he has been in possession of the Land since he purchased it and that when he did so there was nutmeg and cocoa growing on it and he planted in addition, bananas, and that he reaped both bananas and nutmeg, selling nutmeg to the Grenada Nutmeg Association. An identification Card No. 18715 was issued to him by the Grenada Nutmeg Association on 28th November 1994 which described the location and size of the Land as being at Radii, St. George's, and being "3Acs. 2Rds. 22Pls. respectively".

(4) Sometime in 2001, Mr. Baptiste agreed to sell a portion of the Land to his son and caused a search to be conducted by a lawyer on his behalf in preparation for the sale. This search revealed that another deed was registered at Liber Y11 at page 216 of the Registry of Deeds. This Deed purported to be a conveyance of the Land by way of gift from Mr. Baptiste, to his stepfather, O'Ferril, and was dated 25th July 1973 ("the 1973 Deed"). Mr. Baptiste claimed that he never executed the 1973 Deed and that it was a fake.

(5) Mr. Baptiste launched proceedings by Fixed Date Claim on 8th June 2006, against Mr. Celestine, as Administrator of the estate of O'Ferril, and also against him in his personal capacity. He claimed, in essence, in so far as is relevant to this appeal, the following relief:

    (a) a declaration that the 1973 Deed is a false document and has no legal effect or validity;

    (b) a declaration that the Land was never owned by O'Ferril, his estate, or Mr. Celestine;

    (c) a declaration that he is the fee simple owner of the Land pursuant to the 1967 Deed;

(d) a declaration that he is the possessory owner of the Land; and

(e) an order for the cancellation and expunging from the record of the 1973 Deed.

The findings of the Trial Judge

[4] In relation to the first declaration sought, the learned judge, after considering the matter at some length in paragraphs 13 to 17, concluded at paragraph 18 as follows:

> "[18] No expert evidence was presented. In the absence of the original or a photocopy of the Deed of Gift, no signature analysis was done. The claimant therefore relies on his sworn affidavit wherein he deposes that the signature on the Deed of Gift is not his signature. In view of the fact that the Deed of Gift was duly proved and registered under the Act[1] and in light of the presumption created by section 24 of the Act, the bare denial of the claimant is insufficient and claimant has failed to prove by a preponderance of the evidence that the said Deed of Gift is a fake."

[5] The trial judge accordingly rejected Mr. Baptiste's claim that he was the fee simple owner. Indeed, she expressly found Mr. Celestine (the defendant below) to be the paper title owner.[2] At paragraph 19 however, the trial judge said this:

> "[19] In paragraph 9 of his Statement of Claim, the claimant states that he has been in open, uninterrupted and exclusive possession of the land for in excess of 39 consecutive years. He therefore asserts that even if the defendant had a claim to the land, such a claim is barred by the Limitation of Actions Act, Chapter 173 of the Laws of Grenada."

[6] At paragraph 20 she also said this: "The claimant asserts…that the defendant has been dispossessed." This is a clear statement by the trial judge that the claimant's relief for a declaration that he was possessory owner of the Land was one grounded in adverse possession.

---

[1] A reference to the Deeds and Land Registry Act Cap.79 of the Laws of Grenada

[2] At paragraph 20 of the judgment

[7] After considering the principles by which the Court can ascribe possession to someone other than the paper title owner as set out in the classical authorities in which those principles were expounded[3] and considering the factual evidence for establishing possession, the learned trial judge concluded at paragraphs 25 and 26 of her judgment as follows:

> "[25] Although [the] claimant's evidence in support of his assertion of possession of the land between 1973 and 1990 is weak, his evidence of possession from 1990 is substantial. In addition his action of having his Lawyer write to the defendant when he became aware that the defendant and his sons were burning coals on the land shows that [the] claimant considered himself the owner of the land and that he had the requisite animus possidendi.
>
> [26] On the other hand, the defendant's claim to ownership of the land is inconsistent with his behaviour towards the land. The evidence is that the claimant was reaping and selling nutmegs from the land as late as 1994. The Defendant's response is that he also has a card from the Nutmeg Association. If this means that he was also reaping nutmeg at the same time the claimant was, then [the] claimant's occupation of the land must have been obvious to him. However, at no time did he assert any superior claim to the land. Furthermore, except for burning coals sometime in the 1990s (in response to which he was met with a letter [from] claimant's counsel) there is no evidence of acts of possession by Arnold Celestine after the death of his father, O'Ferril Celestine in 1983..."

[8] The trial judge then went on to find[4] that Mr. Baptiste had been "in open possession of the Land for over twelve years and that any right of the defendant to the Land has been extinguished by operation of law" and on that basis granted to Mr. Baptiste the declaration which he sought.

[9] I now deal with the grounds of appeal.

---

[3] J.A. Pye (Oxford) Ltd. and Another v Graham and Another [2002] UKHL 30; Powell v McFarlane [1979] 38 P & CR 452

[4] At paragraph 27 of the judgment

Did the trial judge err in declaring Mr. Baptiste as the owner of the Land by adverse possession?

[10] It is not surprising that the first challenge made by counsel for Mr. Celestine on this appeal is that the prayer for a declaration by Mr. Baptiste that he was the fee simple owner of the disputed land was inconsistent with his prayer for possession of the same land based on adverse possession.

[11] Paragraph 9 of Mr. Baptiste's case as pleaded in his statement of claim and in paragraph 10 of his affidavit bears out this inconsistency and it is worthwhile reproducing paragraph 9 of his statement of claim verbatim so as to get the real gist of what he claimed:

> "9. The Claimant has been in open, uninterrupted and exclusive possession of the Land as of right (my emphasis) for in excess of 39 (thirty nine) consecutive years up to the present. Accordingly, even if, which is denied, the Defendant or the deceased O'Ferril Celestine had some claim to the Land that claim is barred by the Limitation of Actions, Chap. 173 of the Laws of Grenada."

[12] In my view, this is clearly an inconsistent pleading. To claim to be in possession of land "as of right", whilst at the same time claiming to be in adverse possession of it, is simply incomprehensible, given the legal connation of each. If an owner is in possession "as of right" (i.e. with the paper title) then the question of that owner being in adverse possession to his own paper title simply cannot arise as a matter of law. It goes without saying that the obverse position is this: Adverse possession can only arise where it is recognized by the "adverse possessor" that the paper title is vested in someone else. In essence, the adverse possessor seeks to say that he has dispossessed the paper owner.[5] Accordingly, I agree with counsel for Mr. Celestine that the claims are inconsistent.

[13] The second and more substantive challenge made by counsel is that it was simply not open to the trial judge, having found that Mr. Baptiste was the paper owner, to proceed nevertheless, to grant a declaration of possessory ownership of the Land

[5] A presumption of possession operates in favour of the paper owner.

on Mr. Baptiste's claim. In essence, what Mr. Baptiste succeeded in doing was to invoke the Limitation of Actions Act[6] as a sword in acquiring a declaration of ownership of the Land rather than using limitation as a shield against any claim made by Mr. Celestine, the paper owner to the Land. Indeed, Mr. Celestine has brought no claim for recovery of the Land. It is most unusual for statutes of limitation to confer positive benefits or rights on those invoking such provisions. The whole purpose of such statutes growing out of public policy considerations and well recognized over many years, was to bar stale claims, or, put another way, they are designed to encourage the timeliness of claims. The Limitation of Actions Act of Grenada is no exception in this regard.

[14] Sections 4 and 27 of the Act warrant setting out:

> "4. No person shall ….. bring an action to recover any land, but within twelve years next after the time at which the right to…..bring the action, has first accrued[7] to some person through whom he claims, or, if the right has not accrued to any person through whom he claims, then within twelve years next after the time at which the right to….bring the action, has first accrued to the person… bringing it."
>
> "27. At the determination of the period limited by this Act to any person for ….bringing an action, the right and title of that person to the land for the recovery whereof the….action might have been… brought within that period shall be extinguished."

[15] Counsel for Mr. Baptiste sought to rely on these provisions in support of his contention that Mr. Baptiste had acquired ownership of the Land and for defending the trial judge's declaration to this effect. With the utmost respect to counsel and the learned trial judge, this approach is quite wrong. On a proper construction of these sections of the Limitation Act, it becomes clear, in my view, that these provisions do no such thing. It appears to have been overlooked that these provisions are directed at the right of the paper owner to bring a claim for recovery of land and limit the time frame within which the paper owner may do so. This

[6] Cap. 173 of the Laws of Grenada

[7] Section 5 deals with the circumstances in which the right to bring an action for recovery is deemed to have accrued.

contemplates that the paper owner must have become dispossessed of the land – by the adverse possessor. What these provisions do not permit or contemplate is the situation where, as here, the adverse possessor brings a claim against the paper owner and then sets up the limitation bar as against the paper owner as a basis upon which the adverse possessor becomes entitled to ownership of the land.

[16] No doubt the concept of "the right and title to the land of the paper owner being extinguished" where the limitation period has expired for bringing a claim may be the culprit for the confusion. By way of explanation I can do no better than adopt the explanation contained in the treatise by Cheshire[8] which I take the liberty of reproducing:

> "What the dispossessed person loses. The dispossessed person…lose[s] the title to possession that he could have previously enforced against the squatter. To that extent, his title is finally destroyed and there is no method by which it can be revived, not even by a written acknowledgement given by the squatter.
>
> But the restricted effect of the extinguishment must be realized. It extinguishes nothing more than the title of the dispossessed against the squatter.
>
> …….. …….. ……..
>
> What the squatter acquires. It follows from what has been said, that the sole, though substantial, privilege acquired by a squatter is immunity from interference *(my emphasis)* by the person dispossessed. In other words, the statutory effect of twelve years' adverse possession is merely negative *(my emphasis)*; not, as Baron PARKE once said, "to make a parliamentary conveyance to the person in possession." This judicial heresy has long been exploded and it is now recognised that:
>
> > "we must not confound the negative effect of the statute with the positive effect of a conveyance"
>
> There is no transfer, statutory or otherwise, to the squatter of the very title held by the dispossessed person.
>
> > "He is not at any stage of his possession a successor to the title of the man he has dispossessed. He comes in and remains in always by right of possession, which in due course becomes incapable of disturbance as time exhausts

[8] Cheshire's Modern Law of Real Property, 12th Ed. p. 901

> the one or more periods allowed by statute for successful intervention. His title, therefore, is never derived through but arises always in spite of the dispossessed owner."[9]

[17] Counsel for Mr. Baptiste sought to defend the grant of the declaration based on the well established principle that no action or other proceeding is normally open to objection on the ground that merely a declaratory judgment or order is sought. The court is empowered to make binding declarations of right whether or not any consequential relief is or could be claimed[10]. The short answer to this point however, is that the grant of a declaration must be based on some right which a claimant has established, or is shown to be entitled to, which the court is empowered to grant.

[18] In this case, Mr. Baptiste, for the reasons already advanced, is simply not entitled to a right or title as owner. Accordingly, the learned judge could not properly grant to Mr. Baptiste a declaration of such a right and title as she did in this case. This point was previously made by Alleyne J., then sitting as a trial judge in Grenada, in the case of Gordon Charles (also known as Augustus James Alexis, Administrator in the Estate of Lorna Alexis, Deceased, By His Attorney Raymond Scott) v Clarie Holas[11] where at paragraph 45 of his judgment, after concluding on the facts of that case that the limitation period for bringing the action had not expired under the Limitation of Actions Act, had this to say:

> "For the same reason, and for the further reason that neither section 4 nor section 27 of the Act operates to vest in a squatter a right to possession or to title of ownership in the subject land, I find against the defendant's claim to a remedy of a declaration that he is entitled to possession and the title of ownership of the said land under sections 4 and 27 of the Act."

It does not appear that this decision was brought to the attention of the trial judge.

[19] For these reasons, I am of the view that Mr. Baptiste's claim to a declaration of ownership based on adverse possession ought to have been dismissed.

---

[9] Per Lord Radcliffe in Fairweather v St. Marylebone Property Co. Ltd. [1963] AC 510 at 535

[10] Halsbury's Laws of England, 4th Ed., Vol. 37, para.252

[11] Grenada Civil Suit No. 151 of 1996 (unreported)

Accordingly, the declaration of ownership of the Land made by the trial judge in favour of Mr. Baptiste ought to be set aside.

[20] Having arrived at this conclusion I do not consider it necessary to consider the question as to whether Mr. Baptiste is in adverse possession of the Land.

Conclusion

[21] Accordingly, I would allow Mr. Celestine's appeal; I would set aside the order of the trial judge declaring Mr. Baptiste to be the owner of the Land and also the order for costs given in the sum of $3,500. The judgment does not reflect the basis on which costs were quantified. However, having been fixed in that sum in the court below, I would award costs in respect of the action below to Mr. Celestine in the similar sum of $3,500 and two thirds of this sum on appeal.

Janice George-Creque
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal [Ag.]

I concur.

Davidson Baptiste
Justice of Appeal [Ag.]