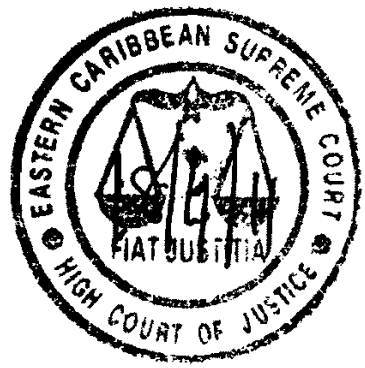


THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL SUIT NO. 18 OF 2009

BETWEEN:

ANGELLA RICHARDSON (Executrix of the Estate of Marian Richardson)

Applicant

V

WAYNE STEPHENS

Respondent

Appearances:

Mr. P. R .Campbell, Q.C., and Ms. R. Frederick for the Applicant.
Ms. D. Isaacs for the Respondent.

2011: April 18th

REASONS

[1] **JOSEPH, MONICA J**: I gave an oral finding that the opposing claim of the Respondent fails. I indicated that I would provide written reasons.

[2] Mr. Campbell sought and was granted an amendment of the suit to read: Angella Richardson, Executrix of the Estate of Marian Richardson.

[3] The Applicant filed an application for possessory title under the Possessory Title Act (No. 38 of 2004) (the Act) on 9th March 2009. The Respondent filed an entry of appearance followed by an opposing claim. The latter was filed on 23rd February 2010.

[4] The Applicant's application for possessory title relates to a parcel of land, 2,422 sq. ft., the boundaries of which are: on the north by a drain and the public road, on the south by land in the possession of Leon Chambers, on the east by land in the possession of Janie Pipe, on the west by a 4 foot access road with a drain.

[5] Marian Richardson (deceased) is mother of the Applicant. Marian Richardson is the grandmother of the Respondent, who lived with her until her death on 3rd September 2005. She paid taxes on the land and was in adverse possession of the land until her death.

[6] Mr. Campbell made submissions *in limine* on two points. One, that the Respondent alleged that his grandmother Marian Richardson could not read or write, that the will was not her will and that Angella Richardson was involved in its making. This was a handwritten will dated 10th August 2004, under which Angella is sole beneficiary.

[7] A will made by Marian Richardson dated 17th November 2004, probated on 30th October 2007, and certified by the Deputy Registrar and Official Attestor, was filed on 8th April 2011. That will appointed Angella Richardson as executrix. Counsel for the Respondent quite rightly withdrew the Respondent's allegation in the filed affidavits that the handwritten will was not Marian Richardson's will and that Angella Richardson was involved in the drawing up of that will.

[8] Mr. Cambell's second point: In this possessory title application, it is undisputed that Marian Richardson had been in possession of the land up to date of her death. Section 19 of the Act enacts that this court is subject to CPR 2000 (Pt 68) - probate proceedings must be begun by the issuing of a fixed date claim form. Angella Richardson's, the Executrix, appointment in the Estate of Marian Richardson takes effect on death of deceased in 2005 and the executrix automatically takes possession of the land. The Respondent has no *locus standi* in probate proceedings.

[9] Ms. Isaacs submitted that the Respondent claims joint possession with Marian Richardson, to which Mr. Campbell's response was that that has not been pleaded in the filed affidavits. The Court read out the affidavits filed in support of Wayne Stephen's claim, paragraph by paragraph.

[10] The opposing claim, filed on behalf of the Respondent, states:
"Wayne Stephens claims to be the owner of the land. Stephens has been in undisturbed exclusive possession of the land in excess of 12 years as appears by the following facts:

(i) has been in possession of the land from 1967 to present and assisted in the construction of the two dwelling houses on the land.

(ii) after the death of his grandmother, Marian Richardson with whom he lived he continued to pay taxes for the property with the assistance of his mother Magdeline Richardson."

[11] (Stephens) on the basis of these facts, claims to be solely entitled to be declared fee simple owner of the land. Immediately before adverse possession began to run in his favour, the land was registered in the name of Gladys Llewelyn.

[12] The Respondent's affidavit:

"I was born in 1967 and lived on the land at Barrouallie all of my life. My grandmother was given the land by Gladys Llewellyn and ... land is still registered in Ms. Llewellyn's name. Throughout her lifetime my grandmother paid the taxes for the land. After her death in 2005, my mother Magdaline Richardson continued to pay the taxes.

When my mother migrated to Barbados I lived with my grandmother at Barrouallie. She was my primary caregiver as a young child and I in return cared for her after she had gotten a stroke and suffered a minor heart attack.

Originally there was only a wattle and dab house on the land, but after some time that began to fall apart. My mother sent money and my uncle, Fitzroy Bennett Richardson, and I constructed a wall house on the land. My uncle later built a board house in place of the wattle and dab house. I lived with my grandmother in the wall house until the date of her death and I am presently living there.

All the years I lived with my grandmother I never knew her to be able to read and write. I verily believe that if she signed any will she did not understand what she was signing. My grandmother would depend on her son Fitzroy Bennet Richardson to read mails or postcards to her and do her business because she could not read. I have been in more than twelve years undisturbed possession of the land. Angella Richardson has never been in continuous exclusive possession of the land for a period of twelve years.....

Angela has lived in several places but never on the land with myself and her mother Marian Richardson."

[13] Annaline Cunningham's affidavit:

"I have lived at Reversion , Barrouallie since 1974 and have been the neighbour of Wayne Stephens since that date to present. I know Wayne Stephens to be in possession of the land at Barrouallie for a period of over twelve year.

I know Angella Richardson very well, she used to live on the land at Barrouallie. However, since she dropped out of the Barrouallie Secondary School she moved out to go and live with a boyfriend of hers and has since lived all about the place but never again on the land.

I know that Wayne's brother and mother Magdeline Richardson worked and sent money to help build the wall house on the land. Wayne and his uncle did the actual building of the house. I know Marian Richardson to be paying the taxes for the land.

I can recall one incident where she gave Angella, her daughter the money to pay the taxes and she took the money and did not make the payment. I never knew Marian to be able to read and write. She would hide her mails from Angela because she feared she would thief whatever money was inside. Fitzroy was the one who would read the mails to her. Wayne and Fitzroy were Marian caretakers before she died. She was very weak as she had gotten a stroke....."

[14] Fitzroy Bennet Richardson's affidavit:

"I am uncle of Wayne Stephens and Angella Richardson is my sister. I was born on 1st October 1950 and lived at Reversion, Barrouallie all of my life. The land at Reversion, Barrouallie was given to my mother Marian Richardson by the previous owner Gladys Llewellyn. My mother continued to pay the taxes on the land up to her death. Malcolm Llewellyn, my great uncle, was a previous owner to the land but he gave it to his daughter Gladys Llewellyn. My mother had a wattle and dab house on the land while we were children growing up. As time went by the house started to break down. My sister, Magdeline Richardson, Wayne Stephens and myself worked together to build a wall house

on the land. We moved my mother into that wall house. At that time Angella was not living there with us. ... Angella left home ... live in several different places, including Chateaubelair and Barrouallie.

When my mother was sick myself and Wayne would care for her. Although Angella was living in Barrouallie she would only come around once in a blue moon.

Before my mother died in 2005 she asked me to build a house in the spot where the wattle and dab house was. I have completed a board house on that spot where I now live. I have known Wayne Stephens to be in excess of twelve years exclusive possession of the land. Wayne has lived there since he was born.

I have always known my mother to be incapable of reading and writing ...I am told by Mr. Frank Branch, the Justice of the Peace who wrote the will, and verily believe that my mother was not present when her alleged will was drawn up. I am further told by Mr. Branch that Angella instructed him as to what to write and he complied."

[15] Having set out the texts of the affidavits filed on the respondent's behalf, I now analyze. The Respondent's opposing application mentions that he was in possession of the land from 1967. In his affidavit, he deposed that he was born in 1967, so he could not have been in possession of the land from 1967.

[16] The Respondent deposed that Marian Richardson was given the land; that he lived with her as a young child and in return he cared for her when she sustained a stroke. It is clear what he was saying is that when she fell ill, in return for her caring for him as a young child, he cared for her. I find that he did what a caring grandson would do for a caring grandmother. Joint possession of the land does not arise in that circumstance.

[17] Stephens (in the opposing claim) claims to be solely entitled to be declared fee simple owner of the land. Immediately before adverse possession began to run in his favour, the land was registered in the name of Gladys Llewelyn. Legally, he cannot claim as owner and also as adverse possessor.

[18] In his affidavit, the Respondent deposed that he lived on the land at Barroualllie all of his life. His grandmother was given the land by Gladys Llwellyn and... land is still registered in Llewellyn's name. Throughout her lifetime his grandmother paid the taxes for the land. After her death in 2005 his mother Magdaline Richardson continued to pay the taxes.

[19] Statements were made in affidavits that the Respondent was in possession of the land; Cunningham deposed that he was in possession for twelve years; that from 1974 she was his neighbour. In his affidavit the Respondent deposed that all his life he lived with his grandmother, so Cunningham seems to have been his neighbour while he lived with his grandmother. I find that his grandmother was the one in possession of the land from the time she was given the land, not the Respondent.

[20] Fitzroy Richardson deposed that the Respondent was in exclusive possession in excess of twelve years - and that the Respondent lived on the land from birth. As the Respondent lived with his grandmother he could not have been in exclusive possession of the land for twelve years.

[21] It seems to the court that the Respondent was relying mainly on the allegation that the will was not Marian Richardson's will and so Angella Richardson, named as beneficiary, could not claim the land. That allegation turned out to be unfounded. He then turned to making a claim of joint possession of the land (which was not raised in his pleadings).

[22] The affidavits, filed on behalf of the Respondent's opposing claim, do not support possession, exclusive possession or joint possession of the land by the Respondent. From the affidavits filed in support of his opposing claim, I find that the Respondent lived with his grandmother Marian Richardson, and that Marian Richardson was in possession of the land until her death in 2005. If it is that the Respondent is claiming possession from 2005, as against the estate of Marian Richardson, twelve years have not passed, from 2005.

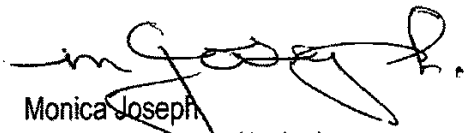
[23] The Respondent's challenge against the Applicant's application for a declaration for possessory title fails.

ORDER

[24] The order of the court is as follows:

(1) The Respondent's claim opposing the application of the Applicant fails.
(2) A declaration of possessory title is to issue to the Applicant.

(3) I make no order as to costs.



Monica Joseph
High Court Judge (Acting)
21st April 2011.