

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. 59 OF 2008

BETWEEN:

ROLAND LESLIE

Applicant

V

**BRADLEY DAVIS
LEX CLAYTON DAVIS
DOREEN LESLIE**

Respondents

CONSOLIDATED WITH:

CLAIM NO. 45 OF 2010

BETWEEN:

BRADLEY DAVIS

Claimant

V

ROLAND LESLIE

Defendant

Appearances:

Mr. Ronald Marks and Ms. Elizabeth Ryan for Applicant.

Mr. E. Robertson Snr. for First and Second Respondents.

Mr. Richard Williams and Mr. Sten Sargeant for Third Respondent.

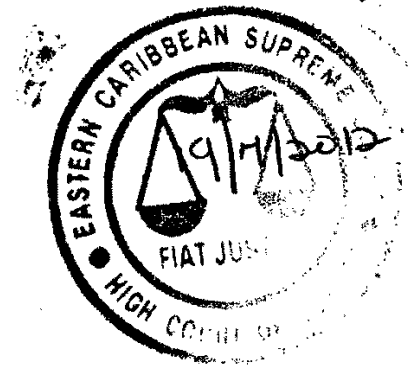
2011: May 16, 23

July 25, 26

2012: March 12, 13

May 14

July 19



DECISION

BACKGROUND

- [1] **JOSEPH, Monica J. (Ag.):** Suit No. 59/2008 filed on 25th January 2008 by Roland Leslie (Applicant) is a possessory claim for land under the Possessory Titles Act (Cap 328) (the Act) in respect of 29,453 sq ft at Hill View, Mt. Pleasant, Bequia (the disputed property). Survey plan GR 12/57 relates to that land. The 45/2010 fixed date claim is for recovery of possession of the disputed property filed by Bradley Davis, the First Respondent on 5th February 2010.
- [2] In the possessory application suit... Section 5 of the Act requires the filing of affidavits. Following publication of the application for possessory title, entries of appearance were filed by Doreen Leslie (Third Respondent) on 22nd December 2008, on 9th January 2009 by the First Respondent and Lex Clayton Davis (Second Respondent). They filed claims in opposition to his application. In the recovery of possession suit, under CPR 2000 witness statements are filed.

WRITTEN SUBMISSIONS: 15th, 18th JUNE 2012

- [3] **WITNESSES:** The Applicant's witnesses who are George William King (King), Cecil Ollivierre and Paul Kirby gave affidavits, witness statements and gave oral testimony. The First, Second and Third Respondents gave evidence.

HISTORY OF SEVEN ACRES OF LAND:

- [4] The unchallenged history of seven acres of land was given by the Third Respondent. By Deed No. 95 of 1939 of 20th May 1937, Jane Davis conveyed seven acres of land (including the disputed land) to her sons Edric Davis and Dontlin Hewitt Davis in equal shares as tenants in common, which land was never divided between them. Edric and Almena Davis are the father and mother of The First Respondent. Edric Davis died around 1945 and Dontlin Davis died in 1989.
- [5] In 1992, the Third Respondent purchased Dontlin's share of the seven acres from his (Dotlin's) wife, Gladys Davis. Three and a half acres of the land were conveyed by Gladys

Davis to the Third Respondent, by Deed No. 1182 of 1993. Edris Davis erected a dwelling house on a small portion of the disputed land and, after his death in 1945, his widow Almena Davis occupied that house.

- [6] By statutory declaration Deed No. 3153/1988, Almena Davis declared she was in undisturbed possession of the seven acres. By Deed of Gift No.1199/1989 she conveyed those acres to her son, the First Respondent. The First Respondent conveyed one acre of the seven acres by Deed of Gift No. 161 of 1994 to his son, Lex Clayton Davis, (the Second Respondent).
- [7] By Suit No. 47 of 1998 the Third Respondent instituted proceedings against the First and Second Respondents. On 27th July 2005, Thom J ordered that the First and Third Respondents are tenants in common of the seven acres of land in Deed No. 95 of 1939 (from Jane Davis). The Court cancelled Possessory Title Deed No. 3153/1988 to Almena Davis and subsequent Deeds of Gift No. 1199/1989 to the First Respondent and No. 161/1994 to the Second Respondent. The Court upheld that 27th July 2005 judgment by a ruling on 29th January 2007. The process of dividing the seven acres between the tenants in common, the First and Third Respondents is ongoing.

DISPUTED LAND

- [8] All that lot piece or parcel of land situate at Mt. Pleasant, bounded on or towards the north by lands belonging to the heirs of A. Davis on or towards the south by the main road from Port Elizabeth to Hope on or towards the east by lands of William King and on or towards the west by lands belonging to the heirs of Jane Davis as shown on Survey Plan No. GR12/57 lodged at the Surveys Department on 20th June 2008 containing twenty nine thousand four hundred and fifty three square feet.
- [9] The Court visited the area of the disputed land. It is bounded by the Applicant's property and consists of a pasture covered with short grass. An unfinished shed, under which there are the remains of a hull of a small boat, stands on a portion of that pasture. There are

some fowl pens erected near to that shed. There are several mature trees including coconut trees, golden apple tree, mango tree, breadfruit and a sapodilla tree.

THE APPLICANT'S CLAIM

[10] Ms Ryan's submission: The Applicant is entitled to the disputed land as he has been in exclusive and undisturbed possession of the disputed land for a period of over twelve years. The evidence on his behalf is that the disputed land was in the possession of the Applicant's father, George William King (King). King gave evidence that the disputed land was first in the possession of his father, Lester George Gooding, (Gooding) and that he (King) took possession in 1963. He occupied the disputed land, grazing his horses, cows, goats and sheep and remained in continuous and uninterrupted possession. In 1994, he (King) relinquished possession to the Applicant, who has been in continuous and uninterrupted possession since then.

[11] Ms Ryan further submitted: The First Respondent claims that, first, his father, Edris Davis, was in possession of the entire seven acre plot, then his mother, Almena Davis, who in turn passed title to him by way of deed of gift. In his affidavit dated 4th May 2009, the First Respondent claims title to the disputed land, by virtue of Deed No. 1199 of 1989. That deed was cancelled by Court Order dated 9th August 2005 in a suit instituted by the Third Respondent against the First Respondent.

THE FIRST RESPONDENT'S CLAIM

[12] Mr. Robertson's submissions: the First Respondent is the owner in possession of seven acres of land having lived thereon continuously from 1951 to 2012. He was given a Deed of Gift No. 1199 of 1989 for the seven acres by his mother Almena Davis.

[13] Counsel argues that as, between the First and Third Respondents, the court is not called upon to decide who has the better title, or who has the better right to possession. The application before the court is a claim by the applicant, that he has the right to obtain a possessory title, having been in adverse possession of the disputed land. The Applicant

claims to have acquired adversely from the First Respondent or from the Third Respondent.

[14] The First Respondent's evidence is that he gave oral permission to the Applicant to occupy the disputed land, by building fowl pens and doing some cultivation. He withdrew that permission orally and by letter dated 8th October 2002, thus terminating the tenancy.

[15] Counsel submits that the arrangement between the parties created a tenancy at will or alternatively, a license to occupy the disputed land until it was determined. The Applicant, having entered with the permission of the First Respondent, ought not to be permitted to question the First Respondent's title. He cited *E.H. Lewis and Sons Ltd v Morelli and Another 1948* 2 AER 1021 at page 3.

THE SECOND RESPONDENT'S CLAIM:

[16] The Second Respondent's claim follows that of the First Respondent.

THE THIRD RESPONDENT'S CLAIM

[17] Mr. Sargeant's submission: The Third Respondent states that she is a tenant in common along with the First Respondent. They both gave the Applicant permission to occupy a portion of the disputed land to keep chicken pens, and his application for possessory title should fail.

ELEMENTS OF POSSESSION

[18] Ms. Ryan's argument for the Claimant is that King has been in possession of the disputed land, and is on the land on a daily basis, where he planted crops and reared animals. Those acts, she submits, are clear indications that King had assumed the character of the owner, and was exercising peaceably the ordinary rights of the owner since 1963.

Counsel cited *Petty v Clissold* (1907) A.C. 73 at p. 79 (P.C.) followed in *Elroy Arthur v T. Michael Findlay* Claim No. 36 of 2009.

- [19] Mr. Robertson's submission is that possession is a question of fact and it is not difficult for the court to find that the First Respondent has been and still is in possession of all the seven acres of land. The Applicant has not established any ouster of possession of the First Respondent, neither has he established that the requisite statutory period has run in his favour and uninterrupted. Counsel cited J.A. Pye; *(Oxford) Ltd. v Graham* [2003] 1 AC. 419, *Cobham v Frett* (2000) (59) WIR 161.
- [20] Mr. Sargeant submits: the tested oral evidence of the witnesses for the Third Respondent should persuade the court that the Applicant was on the land with the consent of both owners, or in the alternative, the Applicant acknowledged the Third Respondent's title.
- [21] Counsel's argument is that neither the Applicant nor his predecessors ever exercised a degree of control over the disputed land so as to exclude the paper title owners. There is no dispute that the parcel of land is part of a seven acre plot of open pasture. There is no demarcation between the parcel the Applicant and his father King who lives on land adjoining the disputed parcel. The court inspected the disputed lands and photographs were admitted into evidence.
- [22] Mr. Sargeant's further submission is that neither the Applicant nor King had the requisite intention to possess the disputed land. No tax receipts were exhibited to support the notion that George Lester Gooding or George William King or the Applicant believed the land belonged to their family. King's evidence is that around 1994, he gave the Applicant a parcel of land below his house to build his (Applicant) house but did not give him any part of the disputed land so to do.
- [23] King's explanation is that he gave the Applicant the land he had. Counsel invited the court to find that the Applicant and King knew that they were never the owners of the disputed

land and that it would have been risky for the Applicant to construct his house on land to which he had no title legal, equitable or adverse.

- [24] Counsel cited a number of authorities including the common law authority as to possession referred to in the judgment of Slade J. in *Powell v McFarlane* (1977) 38 P &CR452, Ch. D.

THE LAW APPLIED

- [25] It is for the Applicant to prove, on a balance of probabilities, that he has been in possession of the disputed land for at least Twelve Years. There are two elements to satisfy possession, which are physical possession of land, and intention to possess the land (*animus possedendi*). Section 2 of the Act gives the definition of "adverse possession": "factual possession of an exclusive and undisturbed nature of a piece or parcel 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."
- [26] On behalf of the Applicant, the evidence is that Gooding claimed the disputed land as his own and grazed animals on it. The mere grazing of animals on pasture land is insufficient to ground a possessory title. The evidence falls short of legal possession of the disputed land by Gooding. I find that Gooding was not in possession of the disputed land. In *Cobham v Frett* at p. 172 paragraph (d) Lord Scott delivered the advice of the Board.

"The judge applied his mind correctly to the question whether the respondents had proved "sole and undisturbed possession user and enjoyment" of the disputed strip. These words convey the same meaning as possession to the exclusion of the true owner. What constitutes possession, adequate to establish a prescriptive claim, may depend upon the physical characteristics of the land, such acts as cutting timber and grass from time to time is not sufficient to prove the sole possession which is required."

[27] The First Respondent states that he lived on the land from 1951. He denies that the Applicant and his family ever occupied the disputed land. The Third Respondent admits that King was in occupation of the disputed land when she deposed in paragraph 15 of her affidavit that King has "squatted on the land owned by herself and Bradley Davis without permission but he has no proprietary rights.Roland and his father have sought to take advantage of the fact that Bradley and I have been in dispute over these lands for such a long time period."

[28] I find that King occupied the disputed land for a period of time. What year did King's occupation commence? In the Applicant's amended defence in suit 45 of 2010, the claim is that, around 1965, King was in possession and thereafter he abandoned his adverse possession in favour of the Applicant. In the same suit, the Applicant's witness statement gave the year as 1963. In oral testimony, the Applicant states that he lived from 1963 when he went on the disputed land at two years old, and occupied it ever since, unmolested.

[29] According to the Applicant, King handed over occupation to him in 1994. I find that King was in occupation of the disputed land from 1965 to 1994. Indeed the Third Respondent admits his occupation during that time, King planted trees on it and grazed animals on it. The physical element of possession by King is satisfied. Did King have the element of intention (*animus possendendi*)?

[30] King's oral evidence is that he never claimed the twenty nine thousand plus as his own although he occupied it. He stated: "I had all land under my control my piece 24,000 and the twenty nine. We had more than the twenty nine. I went to live on mine when Roland was,,, since 1960 on mine. About month after I went on other bit.Never fence my land off from lands of Edric Davis. I plant on 29 plus. I never claim 29 plus feet as my own. No reason I didn't claim although I occupy it."

[31] That evidence shows King's intention. I find that King's intention was to occupy the disputed land and use it in the way it can be used, that is, by grazing animals and planting, until the owner claims it. I find that from 1965 to 1994 King did not have the necessary intention to possess the disputed land as owner. The Applicant commenced occupation of the land in 1995. Twelve years from 1995 is 2007. The applicant filed the application for possessory title in 2008, but a suit was filed in 1998 relative to ownership of land which affected the running of time.

[32] The acts done by King, while in occupation of the disputed land, cannot advance the Applicant's possession, as I have found that King did not have the necessary intention to possess. It would be for the Applicant to show acts done by him from 1994 that could constitute physical possession and intention to possess.

[33] The Applicant's affidavit evidence of 12th March 2010: "I took over possession of the said land in 1994 and claimed ownership of the land. Since that date I have been in exclusive, continuous and uninterrupted possession of the land. I built a house immediately adjacent to the said land in 1993 and there is no barricade between my house and that parcel of land which evidences that I have always maintained control of the said land and considered it my property."

[34] The fact that there is no barricade between his house and the disputed land does not by itself, constitute evidence of possession of the disputed land. He stated: "I have fowl pens where I live have had pens on several places on said lands where I grew. We do have fruits and ground provisions planted on the land..." I accept that the Applicant built fowl pens on the disputed land without any permission by the First and Third Respondents. I find that the Applicant was in possession of the disputed land from 1994.

[35] I accept that the Applicant visits the disputed land daily and that he planted crops on the disputed land. The fact that he did have cultivation on the disputed land is supported somewhat by the First Respondent who, in his affidavit of 4th May 2009, deposed that he

gave the Applicant permission to cultivate a small portion of land. I think what the First Respondent was stating is that there is cultivation on the disputed land, which is not surprising, as he had given the Applicant permission to cultivate an area of the disputed land.

WAS THERE DISPOSSESSION?

[36] In 2005, in suit 47 of 1998, a Court held that the First and Third Respondents are tenants in common of the disputed land. They would therefore have the right to possession of the disputed land. In DOMHCV 2001/0161 **Hector Caesar Luke v Bernard Alexander**, Rawlins J. (as he then was) at para.15 had this to say:

"The Court will, prima facie, ascribe possession to the paper owner of land or a person who can establish title through 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."

[37] It is necessary to ascertain whether those tenants in common were dispossessed by the Applicant. If the Applicant proves that he was in continuous possession for twelve years, then the right to the disputed land by the Respondents is extinguished under the Limitation Act (Cap. 129).

[38] Any time running against the First and Third Respondents owners would have started in 1995, when I have found that the Applicant commenced occupation of the disputed land. In 1998, a suit relating to the seven acres was instituted by the Third Respondent against the First Respondent. Although the Applicant was not involved in the institution of that

suit, the suit relates to ownership of the disputed land by the First and Third Respondents which ownership gives them a right to possession of the disputed land.

[39] Time ran against the First and Third Respondents for three years, from 1995 to 1998, on which latter date the suit was filed. With the filing of that suit in 1998, I regard the running of time in favour of the Applicant as suspended from 1999 to 2005, in which latter year a court order was made, giving a right to possession to the First and Third Respondents.

[40] Extra judicial comments and notices to quit do not taint the continuity of possession but legal action stops the running of time. The commencement of a lawsuit by the owner against the occupant over the right of ownership and possession of the land is one way to interrupt continuous possession. The suit destroys the continuity of possession only if there is a successful judgment. If a court dismisses the suit, the continuity of possession is not affected.

[41] Time recommences running against the First and Third Respondents from 2006, that is, after the suit was filed. The Applicant applied for possessory title in 2008. The total time running against the First and Third Respondents is five years: three years, 1995 to 1998, and two years from 2006 to 2008, when, at the latter date, the application for possessory title was filed.

[42] The First and Third Respondents are not dispossessed as twelve years have not passed. Their rights have not been extinguished. The Limitation Act Sections 17 and 19 relate to the time limit for actions to recover land.

"17. (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.

"19. Subject to.....,at the expiration of the period prescribed by this Act for any person to bring an action to recover land.....the title of that person to the land shall be extinguished."

CONCLUSION

Claim No. 59 of 2008

[43] The Applicant has not been in possession of the disputed land for twelve years.

[44] The Applicant's application for possessory title fails. The First and Third Respondents' claim in opposition to the Applicant's application succeeds. The First and Third Respondents are tenants in common in possession of the disputed land.

Claim No. 45 of 2010

[45] The First Respondent's claim partially succeeds. A declaration sought in respect of 29,453 sq ft of land cannot be granted as the First Respondent is one of the two tenants in common of the disputed land. A declaration will be made that the First Respondent is entitled to half of the area of 29,453 sq ft, that is, 14,726 sq ft. of land as described in plan Gr 12/52.

Claim No. 59 of 2008

[46] It is ordered:

- (1) The Applicant's application for possessory title fails.
- (2) The First and Third Respondents claim in opposition to the Applicant's application succeeds
- (3) The First and Third Respondents are tenants in common in possession of the disputed land.

Claim No. 45 of 2010

[47] It is ordered:

- (1) The First Respondent's claim partially succeeds.
- (2) The declaration the First Respondent sought in respect of 29,453 sq ft of land cannot be granted as he is one of the two tenants in common of the disputed land.
- (3) The declaration is made that the First Respondent is entitled to half of the area of 29, 453 sq ft, that is, 14,726 sq ft. of land as described in plan Gr 12/52.
- (4) Liberty to apply.

[48] The court will entertain oral submissions on costs, ten minutes by each counsel, in Chambers at 11.00 a.m. today 19th July 2012.


MONICA JOSEPH
HIGH COURT JUDGE (Acting)
10th July 2012