

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

HIGH COURT OF JUSTICE

SUIT NO. GDAHCV 2004/0153

BETWEEN:

VERONICA DOREEN AUGUSTINE

Claimant

and

SALLY ANN NELSON
ANASTASIA DATE

Defendants

Appearances:

Ms. Afi Ventour for the Claimant

Mrs. Evette John for the Defendants

2013: March 6, 8;
May 2.

DECISION

- [1] **MOHAMMED, J.:** The Claimant is the administratrix of the estate of her uncle Innocent Thompson, who passed away in 1986. In that capacity she has brought this action against the Defendants for a declaration that the estate of Innocent Thompson is entitled to possession of a lot of land at Tivoli measuring 4 acres and 1 road English statute measure by virtue of indenture of conveyance dated 4th October 1979 ("the larger parcel of land"). She has also sought to have declared void a Statutory Declaration dated 14th August 1997 sworn to by Virginia La Cra and Catherine Bartholomew recorded in the Deeds and Land Registry of Grenada in Liber 2-98 at page 270; that a Deed of Gift dated 19th April 1999 between Anastasia Date and Sally Ann Nelson recorded in the Deeds and Land Registry of

Grenada in Liber 2-2001 at page 343 be rendered null and void; she request vacant possession of the said lot of land; general damages and mesne profits.

- [2] In the Defence and Counterclaim filed by the Defendants they have denied the Claimant's claim to possession and instead asserts that they are entitled to possession on the basis that they have been in free and undisturbed possession of the said lot since 1980 and therefore the Claimant's right has been extinguished by virtue of the provisions of the Limitation of Action Act Cap 173. They also counterclaim that they are the owners and are entitled to possession of the said lot.
- [3] The issue is whether the Claimant is entitled to possession of the disputed land ie 4952 square feet of land ("the disputed land") which is part of the larger parcel of land, the Defendants having failed to satisfy the provisions of the Limitation of Actions Act Cap 173 of 1990.
- [4] The Claimant asserts that the estate of Innocent Thompson is entitled to possession of the disputed lands on the basis that Innocent Thompson was the owner of the land by virtue of Indenture of conveyance dated 4th October 1979 and that he never disposed of the property either by deed or will to the Defendants.
- [5] The Defendants on the other hand submits that Innocent Thompson gave the First Defendant the disputed land, yet both Defendants admit that Innocent Thompson did not convey the land by Deed.
- [6] Section 4 of the Limitation Act Cap 173 of 1990

" No person shall make an entry of distress, or bring an action to recover land, but within twelve years after the time at which the right to make the entry of distress, or to bring the action has first accrued to some person through whom he claims, or if the right has not accrued to any person through whom he claim, then within twelve years next after the time at

which the right to make the entry or distress or to bring the action, first accrued to the person making or bringing it".

[7] In **Arnold Celestine v Carlton Baptiste HCVAP 2008/011** it was held that this aforesaid section and section 27 are directed to the right of the paper owner who is to bring a claim for recovering of land and limit the time frame to 12 years within which the paper owner may do so. These sections contemplate that the paper owner must have become dispossessed of the land by the adverse possession.

[8] The elements of adverse possession were described in **Riddall in Introduction to Land Law 5th ed**, as (a) the taking of possession of land *without* the owner's authority with (b) the adverse possessor usually required be in actual physical possession of the land with (c) the *necessary intention to dispossess* the true owner. It is undisputed that the Defendants have already satisfied one of these conditions which is they are in actual possession of the disputed land.

[9] In **Arnold Celestine** it was also held that it is inconsistent to claim ownership as of right and at the same time mount a claim for adverse possession.

[10] The Defendants have failed to satisfy me that they took possession of the disputed land without the Innocent Thompson's authority and that they had the necessary intention to dispossess Innocent Thompson or Peter Sanders. They are not entitled to possession of the disputed lot by virtue of adverse possession for the following reasons:

(a) Inconsistency between the Defendants pleaded case and their evidence.

The Defendants pleaded case is that they have been in undisturbed possession of the disputed lot since 1980 and as such the Claimant's right to possession is extinguished. However the Defendants adduced evidence which was not consistent with this pleaded defence. Both Defendants asserted that Innocent Thompson gave Sally Ann the

disputed land, then Sally Ann stated under cross examination *"from 8 years until his death almost every day he would tell me he would leave a lot of land for me"* then she stated *"before he died he left instructions for his brother to give me the land...he did in 1986; I was 13; at the age of 13, Innocent Thompson had a conversation about land with me he wanted to give through his brother"*. This alleged gift of the land by Innocent Thompson or instructions to Peter Sanders to Sally Ann was not pleaded in their Defence and as such I attach no weight to this evidence since it was not consistent with the Defendants pleaded case. I will now turn to the evidence in support of the pleaded case.

- (b) There was no evidence of undisturbed possession for the period 1980-1994.

The Defendants pleaded that they have been in possession of the property since 1980, but they admitted in cross-examination that this was not correct. They stated that they knew both Innocent Thompson from about 1986 and later Peter Sanders the brother of Innocent Thompson. They claimed they had a good relationship with both persons. They admitted during the time they knew both Innocent Thompson and Peter Sanders they did not live on the land, but regularly visited it. This was also confirmed by Virginia La Cra and Catherine Bartholomew, both neighbours of Innocent Thompson. Mr. Peter Sanders was the legal personal of the estate of Innocent Thompson until he died in 1994. In light of this evidence I find that the Defendants were not in undisturbed possession of the disputed lot during the period 1980-1994.

- (c) There was no intention by the Defendants to dispossess the owners, Innocent Thompson or Peter Sanders between 1986 – 1994

Both Defendants were consistent in their evidence that Innocent Thompson intended to give Sally Ann the disputed land and that after he died Peter Sanders had the land surveyed and a plan drawn to give Sally Ann the disputed land as promised by Innocent Thompson. Both Defendants admitted no conveyance of property was done by deed and they accepted that neither Innocent Thompson nor Peter Sanders prepared a deed giving it to either Defendant. While this was also the evidence of the Defendants witnesses, Virginia La Cra and Catherine Bartholomew I find that the evidence of Virginia La Cra and Catherine Bartholomew was filled with hearsay and as such I attached little weight to it.

It was not disputed that the Second Defendant received a notice to quit for the Claimant in 2002. In my view there was no intention by the Defendants to dispossess innocent Thompson or Peter Sanders. As such I find that at best the Defendants were in undisturbed occupation of the land between 1994-2002 which is 7 years. In the circumstances, the Defendants have failed to meet the statutory requirement of 12 years free and undisturbed possession.

- (d) The impugned Statutory Declaration

According to the Statutory Declaration sworn to by Virginia La Cra and Catherine Bartholomew on 14th August 1997 the Second Defendant Anastasia Date was in continuous possession of the land since 1980, yet in cross-examination, Anastasia Date admitted that this was not correct. Both Virginia La Cra and Catherine Bartholomew confirmed in cross-examination that although the Statutory Declaration stated that Anastasia Date was in continued occupation of the property, they said so since the

First Defendant Sally Ann was a child and that Sally Ann was the person that Innocent Thompson wanted to give the property to.

In my view, this admission in cross-examination is enough to find that the contents of the Statutory Declaration are false and have it set aside.

Order

[11] The Defendant having failed to satisfy the court that they have been in continuous, undisturbed possession for 12 years and therefore unable to establish a claim for adverse possession, the Claimant reliefs in the Statement of Claim are granted. I therefore order as follows:

- (a) It is declared that the Claimant is entitled to possession to the land situate at Tivoli in St Andrew as set out in the Indenture of Conveyance dated 4th day of October 1979 between Belmont Estate Ltd of the one Part and Innocent Thompson of the other part.
- (b) The Statutory Declaration dated 14th August 1997 and sworn to by Virginia La Cra and Catherine Bartholomew and recorded in the Deeds and Lands Registry in Liber 2-98 at page 270 is declared null and void and is set aside.
- (c) Deed of gift dated 19th April 1999 between Anastasia Date and Sally Ann Nelson and recorded in the Deeds and land Registry of Grenada in Liber 2-2001 at page 343 is null and void and is set aside.
- (d) Vacant possession of the said lot to the Claimant.
- (e) The Defendants to pay the Claimant general damages for trespass and mesne profits to be assessed if not agreed.

- (f) The Defendant's counterclaim is dismissed.
- (g) The Defendants agree to pay the Claimant's cost of the action in the sum of \$3,500.00.

Margaret Y. Mohammed
High Court Judge