

EASTERN CARIBBEAN SUPREME COURT

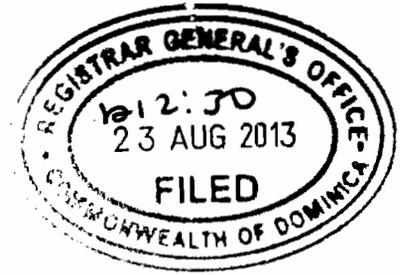
IN THE HIGH COURT OF JUSTICE

(CIVIL)

COMMONWEALTH OF DOMINICA

DOMHCV2013/0001

BETWEEN:



ANDREW LAVILLE

Claimant

and

MARCUS MARCELLIN

Defendant

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Kondwani Williams for the Claimant

Mr. David Bruney for Defendant

JUDGMENT

[2013: April 24th]

[August 23rd]

[1] Cottle J: The claimant is the registered proprietor of 2.16 acres of land at Pointe Baptiste in Calibishie. The defendant is at present cultivating 32,304 square feet of that land. The claimant seeks possession and an injunction to restrain the defendant from trespassing. The defendant says that he has been in occupation as an adverse possessor for more than 12 years and is entitled to the protection of Section 2 of the Real Property Limitation Act.

The evidence

- [2] The claimant applied for the issue of a first certificate of title to the land in 2002. Third parties filed caveats against the issue of the certificate of title on the basis that they had been in exclusive possession of the land for more than 30 years. After trial, Matthew J. gave judgment for the claimant and the certificate of title was issued in 2004 upon the judge's fiat. Again, in 2006 one Joseph Cyrille made a claim to have been in possession of the land for 46 years. His claim failed and the claimant's certificate of title was upheld.
- [3] In his witness statement the claimant says that in 2010 he hired a gang of labourers to clear the land which was overgrown with shrubs and trees. He says that he was then approached by the defendant who threatened him. The matter was reported to the police and the defendant was prosecuted before the magistrate. The claimant further swears that on 27th November 2012 he again hired labourers to clean and clear the land in preparation for a survey as he intended to sell a part of the land. When the surveyor and the prospective purchaser attended the land in December 2012, they found that the land had been recently planted with bananas and plantain. The defendant and agents appeared with cutlasses and threatened the claimant. The police were called. Subsequent to this the defendant has now planted sweet potato on the land.
- [4] In his support, the claimant called Violet Rabess as a witness. She is a sprightly 92 year old retired nurse. She knows the property well and testified that it has only been within the last three years that the defendant has entered upon the claimant's property and commenced cultivation.
- [5] The defendant gave evidence. He swore that he had been in occupation of the part of the land that he claims for 22 years. He says that prior to that his mother had cultivated that portion of the land for many years. When he was cross examined he said that he has never erected any permanent structures on the land. He has never planted any permanent crops save for a few dwarf coconut trees a few years ago. These are still immature. Augustine Lawrence, Anastasie Cyrille and Millia Thomas all gave evidence in support of the defendant. They say that the land in question has been in the occupation and cultivation of the defendant, and his mother before him, for many years.

The Law

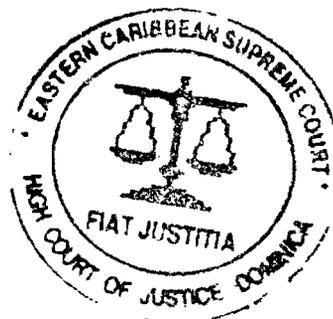
- [6] Under section 8 of the Title by Registration Act a certificate of title is indefeasible. Section 10 reads: ***The right of the registered proprietor named in a certificate of title granted under this Act shall be the fullest and most unqualified right which can be held in land by any subject of the State under law of Dominica, and such right cannot be qualified or limited by any limitation or qualification in the certificate of title itself, unless the limitations and qualifications were inserted in any State grant in place of which the certificate of title has been issued, or in respect of any certificate of title issued by virtue of any scheme under the Town and Country Planning Act or under the Slum Clearance and Housing Ordinance, or***

any Acts replacing these enactments, or as in the case of mortgages and incumbrances, when these are noted on the certificate of title.

- [7] **The Real Property Limitation Act at section 2 provides:- After the commencement of this Act, no person shall make an entry or distress, or bring an action or suit, to recover any land or rent but within twelve years next after the time at which the right to make the entry or distress, or to bring the action or suit, has first accrued 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 make the entry or distress, or to bring the action or suit, has first accrued to the person making or bringing the same.**

Analysis

- [8] The short point which falls for determination is this matter is a factual one. Has the defendant been able to show that he has been in adverse possession of the land he claims for more than 12 years. The defendant and his witnesses assert that the land he claim is 'family land'. They have produced no deed or other document to show how he became entitled to the land. They took no steps to contest the application of the claimant for the issue to him of a first certificate of title. Less than 12 years have gone by since the issue of the certificate of title to the claimant. No crops planted on the land by the defendant are more than 3 years old. I find the evidence of the claimant to be preferable to that of the defendant and his witnesses. I find that the defendant only recently entered upon the land after the claimant had hired persons to clear the overgrowth.
- [9] The resolution of this factual dispute in favour of the claimant effectively disposes of this matter. The law is clear. The defendant is only able to resist the registered proprietor if he can show that he has been in adverse possession for the requisite period. The evidence by the defendant failed to satisfy the court on this point.
- [10] Judgment is given for the claimant for possession of the property comprised in his certificate of title. A permanent injunction is granted restraining the defendant, his servants or agents from entering or remaining on the land comprised in the claimant's certificate of title. The claimant sought damages for trespass but showed no loss which the court could quantify. No fair rental value of the land occupied was offered in evidence. I thus award nominal damages for trespass in the sum of \$100.00. The defendant will pay the claimant's prescribed costs in the sum of \$7,500.00



Brian Cottle

Brian Cottle

High Court Judge