

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
SAINT VINCENT AND THE GRENADINES  
CLAIM NO. 61 OF 2012**



**BETWEEN:**

**ELVIRA MAC DONALD**

**APPLICANT**

**-AND-**

**GILBERT MASSELL**  
(acting herein by his lawful  
Attorney-on-Record Randolph Toussaint)

**RESPONDENT**

Appearances: Mr Sylvester Raymond Cadette for the Applicant, Mr Andrew Cummings Q.C. with Ms Annique Cummings and Mr Jadric Cummings for the Respondent.

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2014: June 2, 3, 16  
Sept. 29  
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**JUDGMENT**

[1] **Henry, J. (Ag.):** This is an application by the Applicant Elvira Mac Donald for a declaration of possessory title in respect of a parcel of land ("the disputed land") situate at Ratho Mill in the State of Saint Vincent and the Grenadines, more particularly described and delineated on survey plan G52/35, approved and lodged on November 24, 2011 at the Lands and Survey Department by the Chief Surveyor Adolphus Ollivierre. The application is made pursuant to the provisions of the Possessory Titles Act, Cap. 238 of the Revised Laws of Saint Vincent and the Grenadines 2009 ("the Act").

## BACKGROUND

[2] The Applicant, who lives at Ratho Mill, St. Vincent and the Grenadines, filed the Application for declaration of Possessory Title on 25th September, 2012 of the disputed land admeasuring seven thousand nine hundred and twenty three (7,923) square feet. Her application is supported by affidavits sworn by her, her husband Caesar Mac Donald and her cousin Desmond Carr all filed on September 25, 2012.

[3] The applicant exhibited a survey plan<sup>1</sup> of the disputed land – G52/35 and two consecutive Advertisements publicizing notice of her Application in the Vincentian and Searchlight Newspapers on October 5 and 12, 2012, respectively<sup>2</sup>. She filed affidavit evidence on November 26, 2012 providing particulars of service of the Notice on adjoining land owners.<sup>3</sup> She also filed on November 30, 2012 a Certificate of Compliance with section 7(b) of the Act.<sup>4</sup> No appearance was entered by anyone within the stipulated timeframe of one month from the date of the second publication in the Newspaper<sup>5</sup>. Consequently, on November 30, 2011 a certificate of Non- Appearance was executed by the learned Deputy Registrar.<sup>6</sup>

[4] The respondent filed an Entry of Appearance on December 13, 2012 through his lawful attorney on record Randolph Toussaint. He made no application to the court for extension of time to enter appearance nor did he apply for relief from sanctions. Randolph Toussaint swore to and filed a witness statement on 28 December 2012. A witness statement of Fitzgerald Morgan was filed on December 28, 2012 and of Dave

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<sup>1</sup> In accordance with section 6 (1) of the Act

<sup>2</sup> Pursuant to section 7(1) (a) of the Act.

<sup>3</sup> Pursuant to section 8 (1) of the Act.

<sup>4</sup> Evidencing publication of the Notice of application in the High Court Registry.

<sup>5</sup> One month from October 12, 2012 (i.e. November 13, 2012)

<sup>6</sup> In accordance with section 10 (1) of the Act.

Frederick, Gilbert Massell and Benson Quamina on January 4, 2013 in support. An affidavit of David Frederick was filed on February 14, 2014 and of Randolph Toussaint and Benson Quamina on February 12, 2014. Affidavits of Fitzgerald Morgan and Gilbert Massell on April 30, 2014 and May 30, 2014 in support of the respondent's case.

[5] The applicant filed a further affidavit in response on January 21, 2013 and a Certificate of Compliance by the Magistrate<sup>7</sup> on March 19, 2013.

#### **POINTS IN LIMINE**

[6] On June 2, 2014 when hearing of this matter commenced, learned counsel Mr Cadette for the Applicant indicated that he wished to make two legal points in limine. He submitted:

1. "Mr Waithe owns the property. Mr Waithe died. There is no evidence that he died. Mr Massell should produce a death certificate of his death." We do not know if he died intestate or testate yet Mr Massell is representing his father Mr Waithe. In the absence of a birth certificate in proof of the relationship between Mr Waithe and Mr Massell, a paternity order is necessary. In the circumstances Mr Massell has no *locus standi* in this matter. There is nothing to show that he has authority to oppose the application. Mr Massell must get Letters of Administration to act on behalf Mr Waithe's estate.
2. The respondent has to prove if Mr Waithe or Mr Mc Quilkin had the paper ownership to the property. Land can only be transferred by livery in seisin, in other words by possession. Mr Waite's concerns in respect of the land was based in contract only.

[7] In response, learned Queens Counsel Mr Cummings submitted:

1. This is not an administrative action but rather one under the Possessory Titles Act. The submissions made by Mr Cadette are irrelevant to this matter. The claimant has an irresistible duty to the court to prove that she meets the

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<sup>7</sup> Pursuant to section 7(1)(b) of the Act.

criteria of adverse possession under sections 3 and 4 of the Act. She cannot hope to succeed unless and until those criteria are met. The respondent has *locus standi* under section 15 of the Act which allows anyone (with or without an interest in the disputed land) to come to court and state that the land belongs to "X". Gilbert Massell is hereby giving the history of the land and stating that the Applicant has no claim to the land. He is disputing the applicant's claim to the land and has supplied a number of witnesses who are ready to testify.

2. If in fact the applicant has elected to rely on his submissions that Mr Waithe owns the land, the applicant would have conceded that she is not entitled to a declaration of possessory title to the disputed land.

### **Ruling on the points in Limine**

[8] In relation to the submission by learned counsel for the applicant that the respondent has no *locus standi* in this matter, the court is satisfied that based on the Respondent's witness statement filed on January 4, 2014, the affidavit of Randolph Toussaint filed on December 28, 2014 and the submissions of learned Queen's Counsel Mr Cummings, the respondent is not seeking a declaration of possessory title in respect of the subject property and accordingly is not disqualified from objecting to the grant of declaration sought by the applicant. Regarding the second submission that Mr Waithe's concern in respect of the land is based in contract only, the court is of the view that this is not a point which can be addressed until all relevant matters are adduced in a trial and no ruling is made in respect of that point.

[9] Finally, the court noted that learned Queen's Counsel submitted that the applicant having chosen to include as part of her first submission that Mr Waite is the owner of the land, will forfeit her claim (thus effectively disposing of this matter) if she does not succeed on that point. The court is of the view that the applicant by relying on both submissions was seeking to raise alternative bases of objection against the respondent proceeding as a party before the court and was not necessarily conceding that another

individual had a superior title to the one she is claiming. The justice of this case requires that the trial proceeds.

## **EVIDENCE**

### **Case for the Applicant**

[10] The applicant alleges that she went into possession of the disputed land around 1990. She asserts that the land was occupied previously by James Mc Quilkin who vacated it and went to North America where he died about 2008.<sup>8</sup> She alleges that she immediately went into possession after the property was vacated by Mr Mc Quilkin and she cultivates annual crops such as ground provisions, peas, corn, vegetables on it and maintain it up to the present. In her second affidavit filed on January 1, 2013, she states that she possessed the disputed property "for over 20 years, no one has ever trimmed it nor there is no need for trimming it since it was not in "continuous" use and is mainly covered in shrubs;"<sup>9</sup> "I plant periodical crops on one section";<sup>10</sup> "I will enter the land cut down trees clean up certain areas and planted certain vegetables while Mr Morgan tied his animals further up;"<sup>11</sup> "the stock on the land is owned by Mr Morgan with my authority;" Mr Massell has never cleared any bush from the land;"<sup>12</sup> "I am retired and would not enter into fulltime agriculture;"<sup>13</sup> "I claim possessory title ... by paying taxes for the said parcel on the name of James McQuilkin since the early 1990s." Exhibited to her affidavit are several receipts for payment of property taxes in the name of James Mc Quilkin for 1990, 1991-1999 and 2000 – 2012.

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<sup>8</sup> See paragraph 2 of her affidavit filed on September 25, 2012.

<sup>9</sup> Paragraph 4

<sup>10</sup> Paragraph 6

<sup>11</sup> Paragraph 6

<sup>12</sup> Paragraph 10

<sup>13</sup> Paragraph 14

[11] Under cross-examination, the applicant repeated much of her claims as set out in her affidavits and maintained that she had cultivated part of the disputed property for many years. She also stated that the public has access to the property and that no one has to ask permission to go on it and carry their goats and pigs there without permission. She insisted that the disputed land has never been trimmed down. She also repeated her assertion that Mr Fitzgerald Morgan raised animals on the disputed land but not close to her end, that they would be tied about 5 feet away from the peas she planted.

[12] The applicant said that she knows the former Commissioner of Police Mr Randolph Toussaint who lives in the area right near to where she lives and has for over 10 years. She claimed that she is not sure if he has lived there for over 16 years. She indicated that if Mr Toussaint was living there at the time that she cultivated cucumbers and other vegetables on the disputed land, she would have given some to him but he was not living there at that time. She admitted that paragraph 8 of her affidavit filed on January 21, 2013 confirms that Mr Toussaint came to live at Ratho Mill in 1997 some 17 years ago and that he got no vegetables from her because she planted none on the disputed land during that time."

[13] The applicant appeared to the court to be a witness who was bent on nothing more than establishing her claim to a declaration of possessory title to the property by adverse possession and if necessary being economical with the truth. In many instances, she appeared evasive and could not recall specifics about matters which a person of her background, intellect, education and training would be expected to recollect by reference to other related events and particulars. She did not impress the court as a witness of truth. For this reason, where her evidence conflicts with that of other witnesses, their version is preferred and accepted.

[14] Caesar Mac Donald's affidavit did not add much to that of the applicant and vaguely referred to occupation by the applicant of the land for over 20 years after James

Mc Quilkin left the State and went to North America to live. On cross-examination he stated that Randolph Toussaint lives across the road from his house at Ratho Mill. He recounted that he and the applicant have cultivated the disputed land but as they got older they stopped cultivating it and it might have been within the last 10 years they have stopped. When pressed for a year, he said he could not recall but answered that they planted crops there for some twenty years starting in 1986.<sup>14</sup> He also said that recently Fitzgerald Morgan has been tying his goats on the parcel during the night, sleeping there in his car sometimes. He stated that they<sup>15</sup> allowed them to keep their goats there to keep the grass low.

[15] The second and final witness for the applicant was Desmond Carr whose affidavit mirrored almost exactly that of Caesar Mac Donald. He testified that he is the applicant's cousin. Referred to paragraph 1 of his affidavit the witness admitted that although he attested that he lived in the area of Ratho Mill all his life, he in fact resides at Level Gardens for the past 48 years and that Level Gardens is about 5 to 6 miles from Ratho Mill. He concluded that that statement needs an amendment. He stated that the applicant planted corn and peas on the disputed property between 1990 and 2000 on the entire parcel, in his words "the whole place.". He also stated that the land was never cut down by anyone. Listening to this witness, the court got the distinct impression that he was a witness of convenience whose sole interest was in supporting his cousin, the applicant's claim. He even contradicted the applicant when he said that she planted crops on the land between 1990 and 2000 when the applicant stated that she planted no crops from 1997 when Mr Toussaint came to live at Ratho Mill. His testimony is discredited in this and other particulars and is disregarded as not being credible.

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<sup>14</sup> 20 years from 1986 would have ended in 2006.

<sup>15</sup> Presumably he and the applicant

## Case for the respondent

[16] Gilbert Massell's witness statement traced his knowledge about the disputed land from the 1970s when his father Granville Waithe purchased it from Mr James Mc Quilkin. He averred that although the purchase price was paid to one Mr Hudson Tannis on behalf of Mc Quilkin, a conveyance was never executed. He denied that the applicant has ever planted any crops on the property or exercised any rights of ownership over it. He testified under cross-examination that he did not pay taxes in respect of the land and he did not know who did. He also testified that he gave Mr Randolph Toussaint a Power of Attorney No. 298 of 2012 in respect of the lot shown on survey plan G52/35 as the parcel comprising 7923 sq ft. In answers to Learned Queens Counsel Mr Cummings on re-examination he said that he treated the land as his own and cleared it on more than one occasion. His evidence was not discredited under cross-examination and he was forthright and credible.

[17] Mr David Frederick testified on behalf of the respondent. He is a licensed land surveyor who has lived at Ratho Mill since 1976, about 30 yards away from the applicant. He testified that if he is outside his house, he can see the disputed land from there and that the house does not totally obstruct his view. He stated under cross-examination that he has never seen the applicant on the land and has never seen anything planted there. Mr Randolph Toussaint also gave testimony on behalf of the respondent. In his affidavit he states that he has lived at Ratho Mill for 16 years, a few feet from the disputed land, on one side of a public road across the road from the applicant. He stated that he has never seen the applicant on the disputed land.

[18] Mr Fitzgerald Morgan gave testimony on behalf of the respondent although he testified that he does not know the respondent but he knows Mr Randolph Toussaint. His testimony was delivered in a terse, direct and matter of fact manner. He said that he lives about half a mile from the applicant and the disputed land. Under cross-examination he answered that he visits the disputed land every day because he has



about 18 goats which he ties there and has been doing so for a number of years from before the applicant moved there. He responded that he returns to that land at night. He said he has never had a discussion with the applicant about getting permission to tie his goats there. He insisted that he has never seen the applicant on the disputed land and has never seen her or her husband plant crops, "not even a small garden, nothing at all" on the disputed land. Mr Benson Quamina did not attend court for cross-examination.

[19] In general, the testimony of the witnesses for the respondent is to be preferred over that of the witnesses for the applicant. Their delivery in court was straightforward and matter of fact. They impressed the court as witnesses of truth by their demeanour and posture throughout their testimonies. Mr Morgan in particular struck a chord as a no nonsense individual who was concerned with testifying based on his recollection. While the witnesses for the applicant were related other and might have personal reasons for supporting her claim, the witnesses for the respondent except for Mr Toussaint who is a family friend appear to have had professional relationships with the respondent and in the case of Mr Morgan no connection at all. Their testimony was credible and is accepted over that of the witnesses for the applicant.

### **Issues**

[20] The issues which arise for consideration are twofold:

1. Whether the Respondent claims to have an interest in the said land and if so whether he has established adverse possession of the subject land for a continuous period in excess of 12 years coupled with a concurrent intention to possess the land as the true owner?
2. Whether the Applicant by her evidence and that of her witnesses has established that she has enjoyed adverse possession of the subject land for a continuous period in excess of 12 years coupled with a concurrent intention to possess the land as the true owner?

## **Applicant's Submissions**

- [21] Learned Counsel, Mr Raymond Cadette on behalf of the applicant submits that the respondent seems to have an interest in possession of the disputed parcel as he stated that he cleaned it up and commissioned Mr Benson Quamina to carry out a cadastral survey for the purpose of establishing boundaries. Based this he submits that the respondent is making claim for adverse possession in this suit although he was not in possession for the statutory period. He submits further that the respondent has failed to prove his case and that accordingly it should be dismissed.
- [22] Regarding the applicant's claim for a declaration of possessory title, learned counsel Mr Cadette submits that the applicant provided sufficient proof that the disputed land was under her undisturbed control from her arrival in Saint Vincent in 1986 to the present day. She showed that the land was abandoned by Mr Mc Quilkin on his departure from Saint Vincent and as the land was adjoining hers, she acquired possession in 1990 and remained there undisturbed up to the present day. I must interject here that I reject that submission in its entirety as a basis for establishing adverse possession under the Act. He submits further that the main burden on the land is taxes, that Mr Waithe, Mr Toussaint and Mr Morgan not having shown any interest in payment of taxes for over 30 years, the applicant having done so now claims adverse possession.

## **Respondent's Submissions**

- [23] On behalf of the Defendants, learned counsel Mr Jadric Cummings in his written submissions relied on the decision of Slade J in **Powell v McFarlane and Another (1979) 38 P. & C.R. 452** in the Chancery Division of the English High Court for guidance on the definition of "possession" and "*animus possidendi*" respectively, he cited with approval Slade J.'s pronouncements at pages 470-472 of that report that:

*"(2) If the law is to attribute possession of land to a person who can establish no paper possession, he must be shown to have both factual possession and the requisite intention to possess (animus possidendi)"*

*“(3) Factual possession signifies an appropriate degree of physical control. It must be single and exclusive possession..... but broadly I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question, as an occupying owner might have been expected to deal with it, that no one else has done so”.*

On the matter of what constitutes “*Intention to Possess*” (*animus possidendi*) Slade J opined:

*“intention in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title, if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow”.*

[24] Mr Cummings submitted further that “in cross examination, the Applicant admitted to not having any crops on the disputed land during the time Mr. Randolph Toussaint lived in the area, which was from 1997 to the present. Therefore, by her own admission, the Applicant could only have planted crops from about 1992 to 1996, a period of four years, if at all. Accordingly, 12 years adverse possession in accordance with the Act did not pass.” And also that “By the Applicant's own admission in cross examination, anyone was allowed to go onto the disputed land without her permission as it was not enclosed and in fact, Fitzgerald Morgan tied animals on the disputed land some 5ft away from where she allegedly planted peas. “Mr. Fitzgerald Morgan, who was called as a witness by the Respondent, gave evidence in support of the fact the he tied animals on the disputed land for several years with the permission of Mr. Randolph Toussaint (lawful Attorney-on-Record for the Respondent), not the Applicant herein as alleged by her.”.

[25] Mr Cummings also submitted that "Mr. Dave Frederick, a licensed land surveyor, who has lived at Ratho Mill since 1976 in close proximity to the disputed land and to the Applicant herein, gave evidence that at no time has he ever seen crops planted on the disputed land or seen the Applicant herself present on the disputed land." Accordingly, this illustrates the lack of factual possession accompanied with the requisite intention to possess for 12 years that is necessary for there to be a finding of adverse possession pursuant to Section 2 of the Act.

[26] Mr Cummings also contends that "Slade J indicated that the 'intention to possess' meant *"intention in one's own name and on one's own behalf, to exclude the world at large..."* it is clear from the Applicant's own admission, she did not seek to exclude the world at large in that anyone could come on to the disputed land without her permission. Fitzgerald Morgan's presence on the land, tying animals for years without her permission or interference clearly supports this." The payment of taxes does not evince any possession whatsoever. Section 2 of the Act provides that there must be a coincidence of factual possession and intention to possess for 12 years as owner. The Applicant, Elvira McDonald, has failed to prove to the court that she planted crops on any part of the disputed land as alleged or at all, or to show factual possession in any way whatsoever. The Applicant has admitted that the disputed land is not enclosed and that anyone was free to go on the land. Accordingly, the Applicant has failed to meet any of the criteria necessary for obtaining a declaration of Possessory title in that she has failed to prove that she has been in 'actual 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 twelve years or more accompanied by the requisite intention to possess the said land as owner. Therefore, the Application for declaration of Possessory Title must fail."

### **Law and Analysis**

[27] The Applicable law is contained in the Possessory Titles Act Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines 2009 ("the Act") which creates the legislative framework governing the grant of a declaration of possessory title.

Sections 3 and 4 provide respectively:

**“ 3. Application for declaration of possessory title**

(1) A person who claims to be in adverse possession of a piece or land in Saint Vincent and the Grenadines shall be entitled to make an application to the Court for a declaration of possessory title to the said land.

(2)...

(3)...

(4)...

**4. Content of application**

An application shall be made in accordance with Form 1 of the First Schedule and shall state-

- (a) the description of the land, giving its extent, its boundaries and its estimated value;
- (b) the facts upon which the applicant relies to establish **adverse possession**;
- (c) whether to the applicant's knowledge, any other person claims or is capable of claiming to be the owner of the land for which the declaration is being sought; and
- (d) the name, if any, of any person recorded in the Registry and entitled to ownership of the land immediately before the period of adverse possession began to run. (bold mine)

“adverse possession” is defined in section 2 of the Act to mean “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 twelve years or more accompanied by the requisite intention to possess the said land as owner thereof.

[28] Sections 5 and 6 provide respectively that affidavits and a survey plan must accompany the application; as well as copies of advertisements in two issues of newspapers circulating in Saint Vincent and the Grenadines notifying the public of the fact and contents of the application. Sections 7 (2) and 9 of the Act empowers a person with an interest in the subject property to enter an appearance within one month from the date of last publication of the advertisement in a newspaper and file a written claim “setting out the name of the person who has title to the piece or parcel of land and a statement of the facts on which the claim is founded.

[29] Sections 10 (2) & (3) and 12(3) of the Act provide:

**“10. Duty of Registrar in respect of proceedings**

(1)...

(2) Where a person enters an appearance pursuant to section 7, the Registrar shall, at the expiration of the time fixed for appearance enter an application in his cause book as a suit in the name of the applicant and of the person who has appeared as the respondent.

(3) The affidavits and written claims filed in support of an application under subsection (2) shall stand as pleadings and no further pleadings shall be filed without the leave of the court.”

**“12. Default judgement or *ex parte* proceedings**

(1)...

(2)...

(3) Where a person who has entered an appearance pursuant to section 7 fails to file a written claim within the time allowed for so doing, the applicant may proceed *ex parte* and the Court may make an order or give a decision as it sees fit.”

[30] Sections 15 (1) and (2), 19 and 20 of the Act state:

**“15. Person who has information may file affidavit**

(1) A person who has information in relation to the nature of possession of the piece or parcel of land by the applicant, may file an affidavit with the Registrar whether or not he has an interest in the said piece or parcel of land or whether or not he intends to file an opposing claim with the Registrar.

(2) An affidavit filed pursuant to subsection (1) shall-

(a) attest to the truth of the facts set out therein;

(b) be filed with the Registrar; and

(c) be served on all parties to the proceedings.”

**“19. Procedure for making applications under this Act**

The Eastern Caribbean Supreme Court Civil Procedure Rules, 2000, except where expressly excluded, shall apply to all proceedings made under this Act.

## **"20. Proceedings not void for want of form**

No petition, order, affidavit, certificate, recording or other proceedings under this Act shall be invalid by reason of any informality or technical irregularity therein, or any mistake not affecting the substantial justice of the proceedings."

[31] In addressing the first issue outlined in paragraph [20], an examination of the pleadings in this case is necessary. It is important to note that the Entry of Appearance by the respondent was filed out of time on December 13, 2012, exactly two months after the time limited for entry of appearance under the Act.<sup>16</sup> Section 10 (3) of the Act stipulates that no further pleadings filed outside of the strict parameters of section 7 of the Act shall be filed without leave of the court. This position is further bolstered by section 19 of the Act which prescribes that the Eastern Caribbean Supreme Court Rules 2000 ("CPR") apply to proceedings under the Act. By extension, the requirements for compliance with timelines coupled with the mandatory provisions for application for extension of time and relief from sanctions under the CPR are imported into these proceedings by that section. The respondent having failed to comply with those stipulations could not without leave of the court seek to rely on his affidavits and witness statements to make a claim for a declaration of possessory title. He does not seek to do so either in his pleadings, *viva voce* testimony of his witnesses and himself or in written submissions by his counsel. I therefore find that the respondent has not made a claim for declaration of possessory title and make no finding in respect of his entitlement to a grant of such declaration. Indeed the respondent's case as set out in his affidavit and his supporting witness statements falls squarely within the provisions of section 15 and I find that his intervention is made pursuant to that section.

[32] The applicant seeks a declaration of possessory title in respect of the disputed land. To sustain such a claim, the applicant must discharge the burden of proof on her on a balance of probabilities. I agree with the submissions by learned counsel Mr Jadric Cummings that she must establish factual possession of the land and an intention to possess the land to the exclusion of all others. As stated by Slade J **Powell v McFarlane and Another** "factual possession" signifies an appropriate degree

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<sup>16</sup> *ibid.*

of physical control. This must be coupled with the requisite intention to own the land. The applicant relies on two main indicia to establish factual possession, namely the act of cultivation by her of peas, corn and annual crops on the disputed land and the payment of taxes. She has produced receipts for payment of taxes for a period of 20 years. The receipts are in the name of James Mc Quilkin. Other than the testimony of the applicant, there is no independent evidence regarding who paid the taxes. In addition, the evidence of the applicant and her witnesses that she cultivated the disputed land for over 12 years is so totally discredited by her own testimony, that of her witness Desmond Carr and witnesses for the respondent that it is doubtful that she cultivated the land for the 12 year period immediately preceding the application for declaration of possessory or at all. While she might have formed an intention to own the land, she did not exercise effective or any control over the disputed land by excluding all others. The evidence throughout from both sides is that she took no steps to exclude anyone from accessing or using the disputed land. I reject that evidence of the applicant and find that the applicant did not cultivate any crops on the disputed land as she claims, nor did she exercise any acts of ownership over the disputed land at all. In all the circumstances of this case, I find that the applicant has not established to the satisfaction of the court on a balance of probabilities that she has enjoyed exclusive and undisturbed possession of the disputed land in excess of twelve years as she claims. Her application for a declaration of possessory title is dismissed.

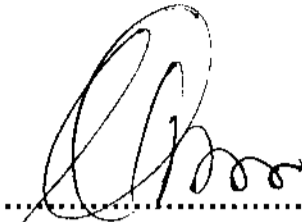
## **ORDERS**

### **It is accordingly ordered:**

1. The applicant's application for a declaration of possessory title of property situated at Ratho Mill in the state of Saint Vincent and the Grenadines, measuring 7,923 sq.ft and delineated and described in survey plan G52/35 approved and lodged on November 24<sup>th</sup>, 2011 by Adolphus Ollivierre is dismissed.



2. Applicant is to pay the respondent's costs of \$2000.00.



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**Esco L. Henry**  
**HIGH COURT JUDGE (Ag.)**