

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE



SAINT VINCENT AND THE GRENADINES

CLAIM NO: 23 OF 2010

BETWEEN:

AUGUSTINE J. C. MIGUEL

Applicant

and

- [1] NATALIE MIGUEL NEE SARDINE
- [2] JASON SARDINE
- [3] NOEL SARDINE
- [4] MAGDALINE SARDINE

Respondents

Appearances:

Mr. L. George for the Applicant
Mr. D Daniel for the Respondents

2013: November, 22 and 27;
2015: January 12.

JUDGMENT

- [1] **THOM, J:** Dorothy Sardine during her life time was in possession of three parcels of land at Clare Valley totalling approximately seven acres. She died intestate in June 1976. She was survived by her six children, namely, Stanley Griffin (now deceased), Milton Brown (now deceased), Natalie Miguel, Jason Sardine, Noel Sardine and Magdalene sardine.
- [2] On April 12, 2010, Augustine Miguel the son of Natalie Miguel and grandson of Dorothy Sardine, made application pursuant to the Possessory Titles Act(the Act)

for a declaration that he is the owner of the largest of the three parcels of land measuring approximately 4.2016 acres (the disputed land) by virtue of his exclusive and undisturbed possession of the disputed land in excess of 12 years.

[3] The application was supported by his affidavit and affidavits sworn by Bernard Soleyn, Parville Lewis and Viola Andrews – Jacobs.

[4] The application was opposed by the Respondents on the ground that Mr. Augustine Miguel was in possession of the disputed land with their permission.

Evidence

[5] At the trial Mr. Augustine Miguel testified and he called two witnesses being Viola Andrews and Bernard Soleyn. The Respondents other than Magdalene sardine testified.

[6] The evidence on behalf of Mr. Augustine Miguel is that he is the grandson of Dorothy Sardine who died on 23rd June, 1976. During her life time she cultivated her lands at Clare Valley with the assistance of Parville Lewis' sister. Shortly before Dorothy Sardine died she gave him absolute possession and control of the disputed land. He has been in sole exclusive possession of the disputed land from that time to present. He never paid rent, accounted to or attorned to anyone for anything done in relation to the disputed land.

[7] In 1981 he constructed a two bedroom house on the disputed land and cultivated the remainder with the assistance of his brother-in-law Bernard Soleyn. Over the years he extended the house to a six bedroom house. He did not seek permission from anyone to do so. The house was completed around 2006. He also paid taxes for the disputed land. He exhibited several receipts.

[8] On 23rd November, 1990 he made a declaration of Possessory Title in relation to the disputed property which was registered as No.3630 of 1990.

[9] At trial he amplified his testimony and stated that he, his brother Ulric and his cousin Anthony lived at his Grandmother's house both before and after her death.

He further testified that he wrote Mr. Noel Sardine in 1989 but explained that his letter was in relation to the Bay side land. He denied that he occupied the disputed land with the permission of any of the Respondents.

- [10] Under cross-examination he denied that he was a caretaker of Dorothy Sardine's estate which included the disputed land. He also denied that when he visited the United States he would account to the Respondents what was taking place on the land. He further testified that the only matter he discussed with Mr. Noel Sardine was the fencing of the Bay Side property. Mr. Noel Sardine was only interested in the Bay side property. Mr. Augustine Miguel further testified that when he went to live on the disputed land his brother Ufric also live in the house and his cousin Anthony stayed there from time to time. Subsequently Anthony built a house on the 1 acre parcel of land. He agreed that he paid taxes for the entire portion of land not just the disputed land.
- [11] The witnesses Bernard Soleyn and Viola Andrews supported Mr. Miguel's testimony.
- [12] The evidence on behalf of the respondents is that they are the children of Dorothy Sardine and are the beneficiaries of her estate. Mr Augustine Miguel was residing at Dorothy Sardine's residence at the time of her death and subsequently he moved to the disputed land. He was the caretaker of Dorothy Sardine's estate.
- [13] Mr Noel Sardine testified that Mr. Augustine Miguel always recognised him as the person who held sway with respect to what decisions should be taken with the estate. Mr. Augustine Miguel wrote to him in 1989 about the lands. Also Mr. Augustine Miguel travelled to the United States regularly and he would give an account of what was taking place on the lands.
- [14] Under cross-examination, Mr. Noel Sardine reiterated that the Respondents permitted Mr. Augustine Miguel to remain on the disputed land as a caretaker. His family is a very close family. All arrangements were done through him and he would report to the other Respondents. Mr Miguel wrote to him in 1989 about the

lands and he responded. He was always interested in St. Vincent and he visited regularly. When he visited St. Vincent he would visit the lands at Clare Valley.

- [15] Mr Noel Sardine agreed that Mr. Augustine Miguel did not seek their assistance in getting water and electricity connected to the building on the disputed land. He testified further that because Mr. Augustine Miguel was the caretaker of the lands he never interrupted his occupation of the disputed land. When he became aware that Mr Augustine Miguel was taking steps around 2006 to sell a portion of the disputed land to the Government, a meeting was arranged with Mr. Augustine Miguel while he was in the United States but he did not attend the meeting.
- [16] Mr Jason sardine and Mrs Natalie Miguel supported the testimony of Noel Sardine. Mr Jason Sardine also testified that when his brother Stanley griffin died, he visited St. Vincent for the funeral and stayed at the Guest House operated by Augustine Miguel's wife. While there Augustine Miguel indicated that he was looking after the lands for the benefit of the respondents.
- [17] Under cross-examination, Jason Sardine testified that he left St. Vincent in 1968 and he first returned in 1993. He also returned in 1997 when Stanley Griffin died. During that time himself, Noel Sardine and Magdalene Sardine visited Clare Valley and they held discussions about the lands with Augustine Miguel.
- [18] Mrs. Natalie Sardine testified under cross-examination that she did not return to St. Vincent when her mother died in 1976. She returned in 1980 and she visited Clare Valley. She is close to her siblings and to her son Augustine Miguel and his children and grandchildren. Her share of the estate is for Mr. Augustine Miguel. Mr. Noel Sardine dealt with Dorothy Sardine's affairs while she was alive and he continued after her death. When she returned to St Vincent in 1997 for Stanley Griffin's funeral she visited Clare Valley but she could not recall if the other Respondents were there at the same time. During her visit to Clare Valley there was no discussion about the land. Also there was no discussion at the Guest House.

Submissions

[19] Mr. George submitted that Mr. Augustine Miguel and his witnesses were credible and their testimony should be accepted by the court. Mr George also submitted that the following were undisputed facts:

- (1) Mr. Augustine Miguel has been cultivating the said lands from before his grandmother's death and he has continued to this very day.
- (2) He paid the land taxes.
- (3) He commenced construction of his house in the 80's having laid the foundation in 1979 and he made several additions to it up to the year 200 without seeking permission from anyone.
- (4) All utility bills are in his name and he did not seek assistance or permission to do so.
- (5) In 1990 he filed a statutory Declaration in relation to the disputed land and registered same as No. 3630 of 1990.
- (6) He was never served with a notice to quit or to cease cultivation and construction on the disputed property.

[20] Mr. George next submitted that having regarded to the undisputed facts, Mr. Augustine Miguel has satisfied all of the requirements for the grant of a declaration of possessory title. The Respondents on the other hand were unreliable and their testimony was riddled with inconsistencies. In relation to Mrs. Natalie Miguel, Mr. George submitted that she did not witness any conversation between Mr. Augustine Miguel and Mr. Noel Sardine concerning the disputed land, nor was she aware that Stanley had applied for letters of Administration for Mrs. Dorothy Sardine's estate. Similarly Mr. Jason Sardine never witnessed any conversation that took place between Mr. Noel Sardine and Mr. Augustine Miguel about him being caretaker of the land. Further Mr. Jason Sardine's testimony that there was

discussion about the lands at Clare Valley after Mr. Stanley Griffin's funeral was not corroborated by any of the Respondents.

[21] Mr. George also submitted that Noel Sardine only produced one letter that Mr. Augustine Miguel wrote to him since 1989, even though he testified that he was in regular contact with Mr. Augustine Miguel. Further after his brother Stanley died in 1997 he applied for probate of Stanley's estate but he did nothing in relation to his mother Mrs. Dorothy Sardine's estate even though he understood the importance of having a deed for the property. He never tried to stop Mr Miguel from dealing with the land nor did he get a power of attorney or notarised letter from the other respondents to gain legitimate control over the said lands. This showed he had no interest in the disputed land.

[22] Mr. George also referred to the judgment of this court in the case of **Alfred St. Clair Neverson v Brenda Neverson** and submitted that Noel Sardine could not give permission to Mr. Augustine Miguel as he was not the owner of the disputed property. Thus Noel's purported permission was of no effect. Further the extra judicial act of Mr. Stanley Griffin applying for letters of administration did not interrupt the title of Augustine Miguel.

[23] Mr. Daniel submitted in response that Mr. Augustine Miguel has not satisfied the requirements of the Act since he occupied the disputed land with the permission firstly of Mrs. Dorothy Sardine and then the respondents. Also other family members resided on the disputed property at the same time as Mr. Augustine Miguel before they moved to another part of the estate.

[24] Mr. Daniel next submitted that the statement in the Statutory Declaration that he was living on the disputed property in excess of 12 years is a fabrication since his testimony is that he commenced construction of the house in 1981. Also the Statutory Declaration is of no effect since adverse possession must be notorious and unconcealed. Mr. Augustine Miguel agreed that he did not disclose to any of the respondents that he had made a Statutory Declaration in respect of the

disputed land. He continued in possession with the full knowledge that his possession would be regarded by the respondents as being with their permission.

[25] Mr. Daniel next submitted that the 1989 letter evidences a family arrangement whereby Mr. Augustine was permitted to occupy the land and take care of it. The payment of the taxes was part of the arrangement since he was the caretaker. He relied on the cases of **Riley v Brathwaite and Scantlebury v Young**.

[26] Mr Daniel submitted further that the survey plan is not in keeping with the provisions of the Act since at the time of filing of the application the plan was more than 3 years old.

Issue

[27] The sole issue to be determined in this case is whether Mr. Miguel was in adverse possession of the property for a continuous period of 12 years prior to his application for a declaration of possessory title.

Law And Analysis

[28] Section 3 of the Act makes provision for a person who claims to be in adverse possession of land to make an application to the court for a declaration of possessory title to the land. Adverse possession is defined in section 3 of the Act as follows:

“Adverse possession “means 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.”

[29] The above statutory provisions require an applicant to show that he/she has been in exclusive and undisturbed possession of the land for a continuous period of twelve years or more and that he/she during that period also had the intention to possess the land as owner of the land.

[30] Having seen and heard the witnesses, I believe the testimony of the respondents where they differ from Mr. Augustine Miguel. I do not believe that Augustine

Miguel's mother gave false testimony against him. She testified that she was close to her siblings and also to her son and his children and grandchildren. This is borne out by her actions towards him. While a resident of the United States of America she filed the necessary papers so that he became a green card holder. During his regular visits to the USA he stayed at her home in Brooklyn. On her visits to St. Vincent she would visit him at Clare Valley. She testified that her inheritance from the estate is for Augustine Miguel. The close relationship between Mr. Augustine Miguel his children and his mother was very evident throughout the trial.

[31] Mr. Noel Sardine is the Patriarch of the family. Everyone looked to him to make decisions relating to the family, including his mother Mrs. Dorothy Sardine. This is borne out in Mr. Augustine Miguel's letter and in his testimony and the testimony of the Respondents. Mr. Noel Sardine was the one chosen by the older sibling Mr. Stanley Griffin to be the executor of his will.

[32] The Sardine family is a closely knit family. Several grandchildren lived at Mrs. Dorothy sardine's residence before and after she died including Mr. Augustine Miguel, his brother Ulric his cousin Anthony. Anthony and Ulric lived in the house with Mr Augustine Miguel on the disputed land before Anthony built a small house on the adjacent 1 acre land of the estate. Indeed they all moved from Mrs. Dorothy Srdine's house at the Bay Side to the disputed land. This was confirmed by Mr Bernard Soleyn the witness of Mr. Augustine Miguel. When Anthony migrated to the USA, Ulric moved into Anthony's house. Mr. Augustine Miguel's daughter and her children subsequently moved into the house and lived with Ulric. In the words of Mr. Augustine Miguel "we're just one big family". Whenever the Respondents visited St. Vincent they would stay at Mr. Augustine wife's Guest House and they would visit Clare Valley. The only time a dispute arose between the family was around 2006 when the Respondents learnt that Mr. Augustine Miguel was attempting to sell a portion of the disputed land to the government.

[33] While there is no written agreement between Mr. Augustine Miguel and the Respondents permitting him to occupy the disputed land that is not the end of the matter. Family arrangements are generally oral arrangements made quite informally, they are rarely written. The case at bar is one such situation.

[34] Mr. George placed much emphasis on the fact that both Mr. Jason Sardine and Mrs. Natalie Miguel testified that they did not give Mr. Noel Sardine a power of Attorney to act on their behalf, nor did they witness a conversation between Mr. Noel Sardine and Mr. Augustine where Mr. Noel Sardine made arrangement for him to be caretaker of the estate. This does not mean that such conversation never took place. I believe the testimony of Mr. Noel Sardine on this issue that he did discuss the lands with Mr. Augustine Miguel, the arrangement was he would occupy it and take care of it. He visited St. Vincent regularly and would visit Clare Valley. He was always in contact with Mr. Augustine Miguel. Also Mr. Augustine Miguel himself in his 1989 letter acknowledged and confirmed that he was in charge of the family estate. Further Mr. Augustine Miguel in his testimony acknowledged that he visited the USA from 1991 and during those visits he had discussions with Mr. Noel Sardine although he confined it to the Bay Side land. I do not believe Mr. Noel Sardine would have only discussed the Bay Side land. In his letter to Mr. Noel Sardine before he commenced visiting the USA he had discussed issues relating to the entire estate, so I do not believe on the occasions when they met face to face in the USA they discussed only the Bay Side land.

[35] The 1989 letter addressed the following issues:

- (a) Stanley Griffin's enquiries about the estate and his actions
in relation to the Bay Side land.
- (b) His response to Stanley Griffin's enquiries and actions.
- (c) An account of the estate.
- (d) Division of the estate.
- (e) Changes in his personal life and request for financial

assistance.

- [36] Mr. Stanley Griffin's enquiries about the land taxes were in relation to all the lands forming part of Mrs. Dorothy Sardine's estate not only about the Bay Side land. Mr. Augustine Miguel's response was that he should make the enquiries of Mr Noel Sardine. This was an acknowledgement that Mr. Noel Sardine was the person who made decisions in relation to the estate. He did not refer Mr. Stanley Griffin to any of the other siblings.
- [37] Mr. Augustine Miguel was quite upset that Mr. Stanley Griffin had permitted his son to occupy the Bay Side land without first consulting him because as he explained, not only did the Bay Side land belong to Mr. Noel Sardine, but he was in charge of it, further not only Bay Side he was in charge of the family estate, in effect he was the caretaker.
- [38] Mr. Augustine Miguel continued in his letter to state "Everybody loves how the land looks and the development on it." This could not be a reference to the Bay Side land since the house there had deteriorated, Mr. Stanley Griffin's son had started a foundation, he was using it to sell blocks and drinks. It could also not be a reference to the 1 acre land since there was no evidence of development on it other than the house Anthony had built. The only reasonable inference is he was referring to the disputed land where he had built a house and was farming the land.
- [39] Mr. Augustine next reported to Mr. Noel Sardine that Mr. Stanley Griffin's son stated that the lands were to be divided up in that year, but he would not allow anyone on the lands except the shareholders. At trial he sought to explain the lands referred to were the Bay Side land and the 1 acre. I do not accept his testimony, he had already stated that the Bay Side land belonged to Mr. Noel Sardine, he could not therefore be referring to division of the Bay Side land.

It is correct that since this letter was written in 1989 and Mr. Augustine Miguel was in occupation of the land immediately before Mrs. Dorothy Sardine died in 1976,

by 1989 more than 12 years would have elapsed. The permission granted by Mrs. Dorothy Sardine would have had no effect after her death. However when read carefully the letter shows that Mr. Augustine Miguel was reporting to Mr. Noel Sardine on the state of affairs of the estate. This was in keeping with him being a caretaker as contended by the Respondents.

- [40] In view of the above, I am of the opinion that Mr. Augustine occupation was permissive. He occupied the disputed land under a family arrangement, he was the caretaker. He reported on the state of affairs of the lands from time to time as evidenced in his letter and when he visited the USA commencing from 1991. When the Respondents visited St. Vincent they would visit the lands at Clare Valley.
- [41] While it is not disputed that Mr. Augustine Miguel did not seek permission to construct the house or to extend it and the Respondents did nothing about it, I accept the evidence of Mr. Noel Sardine that they were a close family, Mr. Augustine Miguel had nowhere to live, he was living in the Bay Side house it deteriorated, there was a cow shed on the disputed land that was built by the Government during the period they leased the disputed land and Mr Miguel built on the cow shed. Further, his mother was entitled to a share of the estate, and he was taking care of the estate.
- [42] It is also not disputed that Mr. Augustine Miguel made a statutory declaration. His explanation for doing so was that there was no deed for the estate and a friend who was also an attorney advised him to make a statutory declaration. He agreed that he did not disclose to the Respondents that he had made the declaration. This act done in secrecy could not terminate the family arrangement.
- [43] I agree with the submission of Mr. George that permission must be from the owner and I would add or from a person with legal authority to do so. In this case the Respondents are the beneficiaries of the estate and they all testified that they agreed for Mr. Augustine to be the caretaker of the estate. As indicated earlier, I believe their testimony.

[44] In conclusion I find that Mr. Augustine Miguel has failed to prove on a balance of probabilities that he was in adverse possession of the disputed land for a period in excess of 12 years. I find his possession was permissive.

[45] It is hereby ordered:

(1) The application is dismissed.

(2) The Applicant shall pay the Respondents costs in the sum of
\$7,500.00.


Geriel Thom
High court Judge