

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHPT2012/0013

**IN THE MATTER OF AN APPLICATION BY FOR A DECLARATION OF
POSSESSORY TITLE TO LAND BY ALIETHEA DICKSON**

And

**IN THE MATTER OF A CLAIM BY DEVON ALEXANDER (EXECUTRIX OF THE
LAST WILL AND TESTAMENT OF ERMINE ALEXANDER) IN OPPOSITION TO THE
SAID APPLICATION**

BETWEEN:

ALIETHEA DICKSON

APPLICANT

-AND-

DEVON ALEXANDER

RESPONDENT

Executrix of the Will of Ermine Alexander Deceased

Appearances: Mr Cecil A. Blazer Williams for the Applicant, Ms Mandella Campbell and Mr Andrew Russell Counsel for the Defendant.

2015: Mar. 24
Apr. 1 & 15

JUDGMENT

BACKGROUND

[1] **Henry, J. (Ag.):** Aliethea Dickson and Devon Alexander are cousins. Ms Dickson has appliedⁱ for a declaration of possessory title of a parcel of land situated at Kings Hill in the Parish of Saint George. She claims that the land was given to

her by her motherⁱⁱ and she has been in exclusive and undisturbed possession of it for a period in excess of 12 years. Devon Alexander opposes Ms Dickson's claim and seeks a declaration of possessory title in favour of her mother Ermine Alexander's estate. She claims that Ermine Alexander was in possession of the land for a continuous period of 12 years and thereby became the true owner. She also seeks a declaration that Ermine Alexander would have been entitled to make a claim for adverse possession of the disputed land from 1972; dismissal of Aliethea Dickson's application and costs. Aliethea Dickson maintains that the land was owned jointly by their grandparents Mr and Mrsⁱⁱⁱ Nathaniel Clairmont Thompson who died intestate^{iv} survived by their eight children. Devon Alexander claims that it was owned solely by Ada Thompson and alternatively that it was owned by Ada and Clairmont Thompson jointly. Ada Thompson died 22 years before Clairmont Thompson. There is no evidence that title to the subject property was registered to either Mr or Mrs Thompson or anyone else or that Letters of Administration was extracted in respect of either estate.

ISSUES

[2] The issues in this case are three-fold:

1. Whether the subject property falls to be administered under the estate of Mrs Ada Thompson or Mr Clairmont Thompson?
2. If so, whether it can be acquired through adverse possession on intestacy by Ermine Alexander a co-beneficiary?
3. If not, whether Aliethea Dickson is entitled to a declaration of possessory title in respect of the said property?

ANALYSIS

Issue 1 – Does the subject property fall to be administered under the estate of Mrs Ada Thompson or Mr Clairmont Thompson?

- [3] In her application^v Aliethea Dickson states that the land was “originally in the possession of ... Clairmont Thompson, who died in 1982, and ... Ada Thompson, who died in 1960...” She added that her mother Maude Jackson took possession of the land after Clairmont Thompson’s demise. She repeats this in her Affidavit in support^{vi} and under cross-examination said that it was her understanding that her mother got the land verbally from her grandmother Ada Thompson but that she could not verify the accuracy of that statement as she was not present when her grandmother gave it to her mother. Mrs Maude Jackson stated that her parents Mr and Mrs Clairmont Thompson had possession of the subject land until their respective deaths and that after Clairmont Thompson’s death she took possession of it pursuant to an oral gift to her from her mother. She recounted that her mother was hospitalized for 9 days before her death and while she was in the hospital she recorded in an exercise book how the land was to be distributed, gave her the exercise book to read, read it to Clairmont Thompson and then delivered the book to Ermine Alexander for safekeeping.
- [4] Aliethea Dickson’s sister Luella Jackson indicated that Clairmont Thompson was in charge of all the family lands after Ada Thompson’s death. She stated that her mother never applied for Letters of Administration of Ada or Clairmont Thompson’s estate. For her part, Cornelia Mc Kie, another of Aliethea Dickson’s sisters said under cross-examination that she heard Clairmont Thompson tell Maude Jackson that the subject land “belongs to her”.
- [5] Devon Alexander stated that before her mother got the subject land, it was owned by her grandmother Ada Thompson and before her, by her maternal great grandmother Elfreda Bailey.^{vii} She attested that Ada Thompson expressed a desire for Ermine Alexander to own the land and in furtherance of that understanding, Ermine Alexander assumed control possession and ownership of

the land on her mother's death.^{viii} Devon Alexander's sister Sharon Alexander testified that Clairmont Thompson told Ermine Alexander to take the land. This evidence suggests that there is agreement across the two opposing sides that the subject land was owned jointly by Mr and Mrs Clairmont Thompson at some point although they did not register their interest in it and the respective beneficiaries took no steps to seek Letters of Administration in either estate. It is worth noting that Devon Alexander's alternative assertions that Ada Thompson alone owned the property would not affect substantially the line of succession to Ermine Alexander and Maude Jackson as they both sought to assert their respective title and interest to the property only after Clairmont Thompson's death. At that point, any interest he or Ada Thompson had in it, ultimately passed to their children, absent any testamentary disposition.

[6] The testimonies of these witnesses provide compelling and overwhelming material from which to conclude that Mr and Mrs Clairmont Thompson each had a beneficial interest in the subject land. The evidence suggests that they held the land as tenants in common in equal shares. As both died intestate, their interest fell ultimately to be distributed on intestacy in accordance with the applicable succession law.^{ix} In such case, their surviving children would be the sole beneficiaries after Mr Thompson's death^x as he did not remarry. While he would have been entitled when Ada Thompson died, to 1/3 share interest in the property, if it belonged to Ada Thompson solely; on his death his interest would devolve to his children.^{xi} By all accounts he enjoyed and exercised all rights of ownership over the property until his death.

[7] Until Letters of Administration are extracted in respect of an intestate's estate, their interest in the property vests in the Honourable Chief Justice.^{xii} A grantee of Letters of Administration becomes the deceased's personal representative^{xiii} in relation to his real and personal property.^{xiv} Since no grant of Letters of Administration has been extracted in Ada Thompson's or Clairmont Thompson's estate, their respective interests in the disputed land property vests in the

Honourable Chief Justice for the time being. On appointment of a personal representative, he or she would hold the property on statutory trust for sale.^{xv} The foregoing leads me inexorably to the conclusion that the subject property falls to be administered under the estates of Mrs Ada Thompson and Mr Clairmont Thompson.

Issue 2 – Can the subject property be acquired through adverse possession by Ermine Alexander, a co-beneficiary on intestacy?

[8] Aliethea Dickson's application is premised on prior ownership of the disputed land by her mother who relies on an *inter vivos* oral gift from her mother Ada Thompson to her. Devon Alexander similarly, seeks a declaration of possessory title in favour of her mother Ermine Alexander's estate based on the one hand through adverse possession and on the other hand by an *inter vivos* verbal gift from Clairmont Thompson. An *inter vivos* gift of real property must in order to have effect or create a cause of action, be evidenced by a written memorandum made by the person against whom it is to be enforced.^{xvi} No such writing has been produced to support the respective claims that Ada Thompson gave the property to Maude Jackson or Ermine Alexander. In the absence of such documentary proof, Aliethea Dickson's and Devon Alexander's reliance on an *inter vivos* conveyance is ineffective to pass a legal or beneficial interest by adverse possession in the disputed land to either Maude Jackson or Ermine Alexander.

[9] Likewise, even if Maude Jackson or Ermine Alexander had entered into occupation or possession of the disputed land for a period exceeding 12 years, either of them would on the undisputed facts of this case, be deemed to hold it as a constructive trustee for the other beneficiaries of Ada and Clairmont Thompson's estates. This is because a beneficiary who enters into occupation or possession of real property which devolves on intestacy, without extracting grant of Letters of Administration is deemed to hold it on a constructive trust for the

other beneficiaries.^{xvii} In those circumstances, equity will assist the other beneficiaries by protecting their interest from extinguishment through adverse possession by a fellow beneficiary. Likewise, while the property vests in the Honourable Chief Justice, it is deemed to be presumptively so held on a trust for sale for the beneficiaries' benefit.^{xviii} In the premises, I find that neither Ermine Alexander nor Maude Jackson could establish a claim to the subject property through adverse possession.

Issue 3 – Is Aliethea Dickson entitled to a declaration of possessory title in respect of the said property?

[10] An applicant for a declaration of possessory title must comply with the statutory requirements prescribed under the Possessory Titles Act.^{xix} She must file an application in the prescribed form,^{xx} file at least 3 affidavits in support of the application, deposed to by her and by persons who can attest to her adverse possession.^{xxi} She must also submit a copy of a survey plan of the subject land authenticated by the Chief Surveyor.^{xxii} In addition, she is required to publish notification of the application in two local newspapers,^{xxiii} on properties adjoining the subject property, at the Registrar's office and at the Magistrate's court in the district where the land is located. She must also serve notices on owners of property adjoining the subject land.^{xxiv} Non-compliance with any of these mandatory requirements within the established mandatory timelines^{xxv} would result in the applicant being denied a declaration of possessory title.^{xxvi}

[11] While Ms Dickson published the notifications in the newspapers at least one month apart^{xxvii} as required by the law, the publication in the Registrar's office^{xxviii} preceded the first newspaper publication and is therefore non-compliant with that specific mandatory statutory timeline. She has complied with the other requirements by filing the application in the prescribed form,^{xxix} filing affidavits^{xxx} in support to which is exhibited the requisite survey plan,^{xxxi} publishing notices at

the Magistrate's court^{xxxii} on adjoining properties and serving notices on adjoining land owners.^{xxxiii}

[12] Proceedings under the Possessory Titles Act^{xxxiv} are not rendered invalid for informality or irregularity of form or process. Likewise, a mistake not affecting the substantial justice of the proceedings would not invalidate such proceedings. Although Ms Dickson lodged the Notice at the Registrar's office before the date of the first newspaper publication, I take judicial notice of the notorious fact that publication of such notices at the Registrar's office span a period of days and often weeks. I am satisfied that the notice would in all likelihood have remained on the notice board up to and beyond the statutory mandated time period. In the premises, this oversight or mistake would not affect the substantial justice of this case and would not invalidate the application. I find that this default was a mere procedural irregularity which may be disregarded as permitted by the law.^{xxxv} I therefore disregard it.

[13] In order to obtain a declaration of possessory title, Ms Dickson must prove that she had adverse possession of the subject land for a continuous period exceeding 12 years. She would do so if she proves on a balance of probabilities that she enjoyed an "appropriate degree of physical control" over the land during that time with the intention simultaneously to own it to the exclusion of all others.^{xxxvi} Her evidence on these points is that she received the property from her mother in 1996 and that her mother was paying taxes for it from 1996 to 1999. She claims that she paid the land taxes in the name of Ada Thompson from 1999 when she started working. She exhibited 6 receipts for 2006, 2008, 2009, 2010 and 2011^{xxxvii} and indicated that she does not know where the other receipts are. She responded under cross-examination that she has gone to the land but has not planted anything on it, erected a fence on it, put animals to graze on it, built anything on it, cut down any trees on it, cleared it or done anything on it because she was not old enough or ready, nor did she have the means to do so. She testified that she did not think it was necessary to do so as

her mother was still alive. Ms Dickson also stated that she does not know if her mother planted any trees, put a coal pit, erected a fence, put animals to graze on the land or built anything on it between 1982 and 1996.

[14] Ms Dickson's witnesses, Maude Jackson, Luella Jackson and Cornelia Mc Kie all gave evidence to the same effect. Maude Jackson admitted that Ms Dickson did nothing on the land and she herself had never planted anything on the land, grazed cattle there, built a house or erected a sign on declaring that it is her land. Mrs Jackson said that it was difficult to get people to work the land so it was cheaper for her to leave it. She agreed that Ermine Alexander planted peas on the land but in doing so she was not trespassing as it was family land on which she had permission to plant "things" for her children. Luella Jackson admitted that after her grandfather Clairmont Jackson's death her mother never did anything on the land such as erecting a fence or planting fruits trees. She stated that her sister did not have the means to do anything with the land and it was simply left there between 1996 and 2012. Mrs Mc Kie testified that she was not sure if her mother did anything on the land other than arranging for a survey to be conducted. She also was not sure if Ms Dickson did anything on the land.

[15] It was quite clear from the testimony of Ms Dickson and her witnesses that although she might have formed an intention to own the disputed land, she exercised no effective physical control over it by excluding all others, or at all. By her own admission, she merely left the land there. She did not seem to have any knowledge or much knowledge of the condition of the land during the period for which she claimed adverse possession. Her witnesses did not advance her case and were not helpful to her cause in any way. Her assertions and those of her witnesses that she owns the land even with proof of payment of taxes for 5 years fall short of meeting the legal requirement of factual possession of the disputed land. Accordingly, I find that Ms Aliethea Dickson has failed to establish on a balance of probabilities that she has enjoyed exclusive and undisturbed

possession of the disputed land in excess of twelve years. Her application for a declaration of possessory title is dismissed.

ORDERS

[16] It is accordingly ordered:

1. Aliethea Dickson's application for a declaration of possessory title of property situated at Kings Hill in the Parish of St. George in the State of Saint Vincent and the Grenadines, measuring 20,747 sq. ft. and delineated and described in survey plan G47/79, approved and lodged at the Lands and Survey Department on June 30th, 2009 by Chief Surveyor Adolphus Ollivierre is dismissed.
2. Devon Alexander's application for a declaration of possessory title of property situated at Kings Hill in the Parish of St. George in the State of Saint Vincent and the Grenadines, measuring 20,747 sq. ft. and delineated and described in survey plan G47/79, approved and lodged at the Lands and Survey Department on June 30th, 2009 by Chief Surveyor Adolphus Ollivierre is dismissed
3. Devon Alexander's claim for a declaration that Ermine Alexander would have been entitled to make a claim for adverse possession of the disputed land from 1972 is dismissed.
4. Each party to bear her own costs as neither prevailed.

[17] I wish to thank both counsel for their submissions.

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

ⁱ By Power of Attorney executed on October 24th 2012 and registered as No. 258/2012, Ms Dickson appointed Maude Jackson as her attorney to among other things, “bring and defend any action or other proceeding in respect of or affecting her estate.”

ⁱⁱ In 1996.

ⁱⁱⁱ Ada.

^{iv} On August 26, 1960 and December 7th, 1980 respectively.

^v Filed on February 6, 2012 at paragraph 5 (a).

^{vi} Filed on February 6, 2012.

^{vii} See paragraphs 5 and 6 of her Affidavit filed on June 29, 2012.

^{viii} Ibid. at paragraphs 7, 8, 9 and 10.

^{ix} Administration of Estates Act Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

^x Ibid. at section 62 (b) and (c) which provide:

“62 The following persons shall be beneficially entitled to the estate of an intestate dying on or after the 16th December, 1947 in the manner following, namely-

(b) if the intestate leaves a husband or wife and issue, the surviving husband or wife shall be entitled to one third thereof and the issue shall take the other two-thirds in equal shares;

(c) if the intestate leaves issue but no husband or wife, the issue shall be entitled to the whole estate in equal shares and if there be only one member of this class he or she shall be entitled to the whole. Such issue shall be entitled through all degrees according to their stock in equal shares if more than one to the share which their parent would have taken if living at the time of death of the intestate;”

^{xi} Ibid. at section 62 (b).

^{xii} Ibid. at section 31 which states:

“31. Where a person dies intestate, his real and personal estate, until administration is granted in respect thereof, shall vest in the Chief Justice in the same manner and to the same extent as in similar cases in England it vests in the President of the Family Division.”

^{xiii} Ibid. at section 2 (1) which defines “administrator” as follows:

“‘administrator’ means a person to whom administration is granted.”

^{xiv} Ibid. at section 4 (3) which provides: “The personal representatives shall be the representatives of the deceased in regard to his real estate ... as well as in regard to his personal estate.”

^{xv} Ibid. at section 47 (1) which states:

“ 47 (1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives-

(a) As to the real estate, upon trust to sell the same; and ...”

^{xvi} Section 3 of the UK 1677 Statute of Frauds which applies in Saint Vincent and the Grenadines by virtue of section 5 (1) (a) and the Schedule of the Application of English Law Act Cap. 12 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

Section 3 of the Statute of Frauds and section 5 of the Application of English Law Act and the relevant paragraph of the Schedule provide respectively:

“3...No leases, estates or interest either of freehold or terms of years or any uncertain interest not being copyhold or customary interest of in to or out of any messuages manours lands tenements or hereditaments shall at any time ... be assigned, granted or surrendered unless it be by deed or note in writing signed by the party so assigning granting or surrendering the same or their agents thereunto lawfully authorized by writing or by act and operation of law.

5. (1) Subject to the provisions of this section, only the following Acts of Parliament of the United Kingdom shall apply in Saint Vincent and the Grenadines, that is to say-

(a) all such Acts as are specified in the Schedule, to the extent specified therein; and...

Schedule

PART I

29 Chas.2 c.3 Statute of Frauds s.1-3, 4 (as it applied before the repeal of certain words by the Law of Property Act, 1925), 7-9, 13, 14 and 24.”

^{xvii} **James v Williams [1999] 3 All E. R. 309 per Aldous LJ at 315 h & j and 316 a** where he commented on the definition of “trust” and “trustee” as defined in the section 68 (17) of UK Trustee Act 1925:

“In the present case, William junior knew that the grandfather had purchased the house and that on his death the grandmother had acquired his interest. He also knew that the grandmother had died intestate. In those circumstances, he could not have believed that he alone was entitled to the property. He must have known that the plaintiff was entitled to a share. If he had taken out letters of administration, then he would have become a personal representative and would have taken on the duties incident to that office. The result, in my view, would have been that there would have been a trust within the definition of s 68 of the Trustee Act 1925 and he would have owed a fiduciary duty to his sisters. It is the fact that letters of administration were not taken out, that makes it possible for the defendant to contend that no fiduciary duty was owed. I accept that there is no duty upon a person to become a personal representative, but I believe that the failure by William junior to take out letters of administration is relevant when considering what is the equitable position in this case as equity envisages that what should have been done has been done....”

William junior knew that he was not solely entitled to the property. He took it upon himself to take possession of the property as if he owned it and assumed responsibility for its upkeep. In my view he was under an equitable duty to hold the property for himself and his sisters. Looking at the state of affairs as at the grandmother's death, the law envisaged that the property would be held upon a statutory trust for the children. It would be inequitable to allow William junior and, through him the defendant, to take advantage of his decision not to take out letters of administration and to act as if he was the owner with the full knowledge that he was not... Each case will depend upon its own facts. But, in my view, this is a case where there was a constructive trust."

Note: the definition of "trust" in section 68 (17) of the UK Trustee Act 1925 is similar to that section 2 of the Trustees Act Cap. 494 of the Revised Laws of Saint Vincent and the Grenadines, 2009. They provide respectively:

"Trust' does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expression "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and "trustee" where the context admits, includes a personal representative, and "new trustee" included an additional trustee..."

"2. In this Act, unless the context otherwise requires-

"**trust**" does not include the duties incident to an estate conveyed by way of mortgage; but with this exception "**trust**" and "**trustee**" include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person."

^{xviii} **Earnshaw and others v Hartley [2000] Ch. D. 155.**

^{xix} Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines 2009.

^{xx} Ibid. at Form 1 of the First Schedule as stipulated in sections 3 and 4 which 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.”

^{xxi} Ibid at section 5 which provides:

“5 (1) The application shall be accompanied by affidavits of the applicant and at least two other persons having knowledge of the applicant’s adverse possession of the piece or parcel of land.

(2) The affidavit of the applicant shall attest the truth of the facts set out in the application.

(3) The affidavits of the other deponents shall set out in detail any facts known to the deponents that tend to prove the matters mentioned under section 4 (b) and shall attest to the truth of those facts.

(4) Where an application is not accompanied by affidavits of at least two other persons having knowledge of the applicant’s adverse possession of the piece or parcel of land then, notwithstanding subsection (1) –

(a) the Registrar may proceed in accordance with section 10;

(b) the Court may hear the application and make an order or a decision as it sees fit.

^{xxii} Ibid at section 6 (1) which states:

“6 (1) The application shall also be accompanied by a plan of the piece or parcel of land authenticated by the signature of the Chief Surveyor.”

^{xxiii} In two issues at least one month apart. See section 7 (1) (a) of the Possessory Titles Act.

^{xxiv} Ibid. at section 7 and which states:

“7 (1) Upon filing an application, the applicant shall –

-
- (a) publish a notice in Form 2 of the First Schedule in two issues of at least two newspapers circulating in Saint Vincent and the Grenadines and the second issue shall be published not less than one month after the first issue; ...”
 - (b) between the dates of the first and last publications in the newspapers, post a copy of that notice in a conspicuous place in the Registry and in a conspicuous place in the court of the magistrate in the district in which the piece or parcel of land is situated.”

“8 (1) The applicant shall, within twenty-one days after filing the application, cause a copy of the notice referred to in section 7 to be –

- (a) served on all landowners or occupiers of property adjoining the piece or parcel of land to which the application relates; or
- (b) posted in a conspicuous place on the piece or parcel of land if the owner or occupier of land adjoining the piece or parcel of land to which the notice relates is unknown or cannot be found.”

^{xxv} Ibid. at section 7 (1) (a) and (b) and 8 (1) (a) and (b). The newspaper publications are to be made at least one month apart; the publications in the Registry and the magistrate’s court building are to be made between the date of the first and last publications in the newspapers and service and publication on adjoining landowners and properties are to be made within 21 days after the application is filed.

^{xxvi} In accordance with section 8 (2) which provides:

“8 (2) An order containing a declaration of possessory title shall not be granted unless-

- (a) the provisions of section 7 and this section are complied with; and
- (b) six weeks have expired since the service or posting of that notice.”

^{xxvii} Publication in “The Vincentian” on February 17, 2012 and March 23, 2012 and in “The News” on February 17, 2012 and April 13, 2012 respectively. The publications were not endorsed with the words “First Publication” and “Second Publication” or similar words to indicate their order of priority.

^{xxviii} Effected by Notice published on February 8, 2012, 9 days before the first newspaper publication.

^{xxix} By Application filed on February 6, 2012.

^{xxx} Affidavits of Aliethea Dickson, Hermina Nelson and Maude Jackson filed on February 6, 2012, of Maude Jackson filed on July 19, 2012 and of Luella Jackson, Maude Jackson and Cornelia Mc Kie filed on November 6, 2012.

^{xxxi} Drawn by Rudyard Coombs Licensed Surveyor, bearing Registration number G47/79 and referred to at paragraph 1 of the Application.

^{xxxii} See Certificate of Compliance signed by the learned Magistrate for the 3rd Magisterial District filed on May 17, 2012 pursuant to section 7 (1) (b) of the Possessory Titles Act.

^{xxxiii} See Affidavit of Service of Rodwell Alexander, Bailiff of the High Court of Justice attesting to service on February 15, 2012, on adjoining landowners and posting on the subject property.

^{xxxiv} Supra. at note xxv.

^{xxxv} See section 20 of the Possessory Titles Act which provides:

“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.”

^{xxxvi} Supra. at note xvi for definition of “adverse possession” in the Possessory Titles Act. See also **Powell v McFarlane and Another (1977) 38 P & CR 452 Ch D at 470 – 471 per Slade J** where he said:

“...If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (“*animus possidendi*”).... Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, ... The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed...”

“Though past or present declarations as to his intentions, made by a person claiming that he had possession of land on a particular date, may provide compelling evidence that he did not have the requisite *animus possidendi*, in my judgment statements made by such a person, on giving oral evidence in court, to the effect that at a particular time he intended to take exclusive possession of the land, are of very little evidential value because they are obviously easily capable of being merely self-serving, while at the same time they may be very difficult for the paper owner positively to refute. For the same reasons, even contemporary declarations made by a person to the effect that he was intending to assert a claim to the land are of little evidential value for the purpose of supporting a claim that he had possession of the land at the relevant date unless they were specifically brought to the attention of the true owner.”

^{xxxvii} Exhibited as “AD 1” to her affidavit filed on February 6, 2012. 2 of the receipts relate to assessment year 2010 (receipt nos. 666459 and 666460). The others are receipt nos. 523392, 575851, 598718 and 691535.