THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2012/0180

BETWEEN:

LAVERNE GURLEY **CLAIMANT**

-AND-

CASSIAN-ANNE TANNIS **DEFENDANT**

Appearances: Mr Duane Daniel and Mrs Anneke Russell for the Claimant, Mr Arthur Williams and Mr Sten Sargeant for the Defendant.

2014: May 20, Jun. 10 & Jul. 9
2015: Mar. 12 & Apr. 22

JUDGMENT

BACKGROUND

[1] **Henry, J. (Ag.):** Laverne Gurley and Cassian Tannis are cousins. Laverne Gurley owns a parcel of land at O'Car Reform, Bequia, which is adjacent to land owned by Cassian Tannis and her siblings. Ms Gurley and Ms Tannis' respective family homes are built on those lots. Each parcel shares a common boundary with a vacant lot - the disputed land. Laverne Gurley resides in the Dominion of Canada. In her absence, her brother Frankie Gurley occupies their family home. Cassian Tannis lives with her extended family on the property she owns jointly with her siblings. Laverne Gurley and Cassian Tannis both claim

ownership of the disputed land, Ms Gurley in her own right and Ms Tannis on behalf of her siblings and herself. Laverne Gurley claims that Cassian Tannis has trespassed on that lot and defiantly refuses to desist from so doing. Ms Gurley asserts that the property was given to her by her mother, who bought it over 50 years before. She seeks an order declaring that the property is hers, an injunction restraining Ms Tannis from trespassing on it and damages. Cassian Tannis counters that she and her family have occupied the disputed parcel of land since 1931 and she denies trespassing. She maintains that she and her siblings inherited the disputed land from her father and she seeks a declaration that she and her siblings are the owners of the disputed land.

ISSUES

[2] The issues are three-fold:

1. Whether Laverne Gurley or Cassian Tannis' family owns the disputed land?

2. If Laverne Gurley owns the said land, whether she should be granted:

   a) an injunction restraining Cassian Tannis, her servants and agents from trespassing on the said property? and/or

   b) damages?

ANALYSIS

Issue 1 – Does Laverne Gurley or Cassian Tannis' family own the disputed land?

[3] The subject matter of this case is land situated in Bequia, one of the beautiful Grenadine islands. It is part of the country of Saint Vincent and the Grenadines and is accessible from Kingstown, Saint Vincent by daily ferry service and aircraft. The kernel of the dispute between the parties is whether the southern boundary of the disputed land depicted on survey plan GR11/37 constitutes the

northern boundary of Laverne Gurley's property. The description of the property in the Deed of Conveyance and Deed of Gift as well as the testimony of the witnesses on this central factual and legal contention are material considerations. Accordingly, the witnesses' testimonies will be rehearsed in some detail.

Laverne Gurley - Evidence

[4] Laverne Gurley commenced this action by Fixed Date Claim Form.[i] Her mother Louise Gurley, brother Frankie Gurley and relative Grace John testified as her witnesses. Laverne Gurley gave evidence via video link from Vancouver, Canada. She testified that she owns one and a half lots of land at O'Car, Reform, through Deed of Gift[ii] from her mother Louise Gurley. She explained that she becomes entitled to her interest on her mother's death. The court takes note that the deed creates a life interest in Louise Gurley's favour as tenant for life, with Laverne Gurley being the reversionary or remainderman. Laverne Gurley asserts that her mother bought the property from one Benjamin Burgin in 1962 and acquired title to it by Deed of Conveyance.[iii]

[5] Mrs Gurley averred that her family members have lived there continuously since their house was built after the land was purchased. She explained that Cassian Tannis recently started to trespass on the disputed land and as a consequence she got her lawyer to write her to instruct her to desist. She indicated that her mother Louise Gurley had written to Cassian Tannis[iv] previously to this effect but that Ms Tannis has continued to trespass contending that her family owns the land. Under cross examination, she admitted that she did not know when this trespassing started. She steadfastly maintained however, that when Cassian Tannis and her family were building their home they sought and obtained permission from her mother to access their building through the disputed land and that this licence ended when the construction was completed. The only witness who gave evidence about the completion of that house was Cassian Tannis who

testified that it was built in the late 1980s. If this is correct, the alleged licence to the Tannises to cross the disputed land would have ended then.

[6] Ms Gurley insisted that the property she owns includes the disputed land and that it has a lot of sentimental and monetary value to her. She, her mother and brother acknowledged that the family property is enclosed by a fence but insisted that this fence is not indicative of a boundary to their property. Collectively, they insist that the fence was erected around 1982 to prevent animals from coming onto that part of the property and primarily to prevent the overflow of water coming onto their house during heavy rainfall. Ms Gurley added that when the fence was being built, her father was unable to afford the cost enclosing the disputed land.

[7] Laverne Gurley admitted that before her mother bought the land, Cassian Tannis' father (whom she refers to as "Boy Tannis"), was living on the adjoining land which he owned, but she disagreed that the Tannises used the disputed land before her mother acquired her lot. I note that Ms Gurley would have no knowledge of what took place on the disputed land at that time, as she would have been only 3 years old in 1962 when her mother bought her property. I cannot accept or act on this testimony. In fact, Ms Gurley's witness Grace John contradicts her on this point when she testified that Mr John Tannis and his family used the disputed land to access their home even before Louise Gurley acquired it. Mrs John added that the Tannises are still using that land as their access up to the present Laverne Gurley testified that the ownership of that the disputed land was not in question before 2006 when a survey of the land was conducted by Cassian Tannis. Ms Gurley was argumentative, combative and evasive at times during her testimony. I was left with the distinct impression that she was being less than forthright and that she did not have a full appreciation of what her claim entails.

[8] Louise Gurley's evidence was similar. She gave evidence about the dates she purchased the property and transferred an interest to her daughter Laverne

Gurley. She also gave evidence of planting a mango tree and a plum tree on the disputed land when her children were small. She testified that her children used to pick fruits from those trees and she herself tried to raise crops on the disputed land without success. She described her son Frankie Gurley's rearing of a pig and sheep on the disputed land as a child. Mrs Gurley testified that she gave John Tannis permission to access his house through the disputed lot. She explained that he and his family used to walk alongside the gutter to get to and from their property before she gave him permission to do so. If this is true, John Tannis and his family would have been effectively landlocked. I will return to this later.

[9] Mrs Gurley indicated that her land was surveyed in 1962 when she bought it. She did not however present a copy of that survey plan. Under cross-examination Mrs Gurley agreed that the lot shown on survey plan GR11/37 as comprising 13, 560 sq. ft. belongs to Cassian Tannis' father, John Tannis. She admitted that her house is located below the wall which is erected along the southern boundary of the disputed lot. She also accepted that her house is completely fenced around. She was adamant that she is claiming the disputed land which is located above the wall. When questioned about the survey undertaken in 2006, Mrs Gurley stated that she was not at home when it was being done, but that her husband Nathan Gurley was present and would know the boundaries of her land She denied however that he represented her.

[10] Frankie Gurley echoed his mother's testimony regarding the raising of animals on the disputed land when he was a child. He remembered keeping a pig, pig pen, sheep and sheep pen there and denied that John Tannis allowed him to put the sheep pen there, hinting that he occupied the property through his mother who owned the land. He also recollected that during his childhood he used to pick mangoes and plums from the trees his mother planted there. He denied that others were permitted to pick from those trees without his father's permission. He

admitted that the mango tree is an "open" tree and his father would never stop Cassian Tannis from picking mangoes from it. He added that he still picks plums from the trees when they are in season and that he would park his pickup on the road and stand on the back to reach the fruits. He indicated that there is a permanent fence along Nathan Gurley's property where it bounds with the main road[v] and that along the southern boundary of the disputed land there is a lower wall and fence.

[11] Contrary to his sister and mother's testimony, he stated under cross-examination that the Tannises walk through the disputed land presently with permission. This contradicts his earlier statement[vi] that Cassian Tannis "*recently started her unlawful trespass of the property.*" He added that there is no other access to John Tannis' property from the main road. He testified that he became aware that his father Nathan Gurley and brother Matthias Gurley were present when the survey of the disputed land was done in 2006. Mr Gurley appeared unsure during parts of his testimony, was not forthcoming and proved not to be a credible witness on important aspects of his testimony. For this reason, where his testimony conflicts with that of other witnesses particularly on relevant details, their testimony will be preferred and accepted.

[12] Ms Grace John testified that she was born at O'Car, Reform and moved to Lower Bay, Bequia to live when she got married as a teenager around 1965. She explained that she returned from time to time to O'Car, Reform to visit her mother who lived opposite the disputed land. She stated that she is related to Mrs Louise Gurley and John Tannis. She indicated also that her aunt, the Gurleys' mother, used to farm the disputed land then. Very importantly, she testified that John Tannis was living there before Louise Gurley built her house and that at that time he used a track from the public road through the disputed land to get to his board house. She agreed that the Tannises continued to use that track after they re-built their house and that they are still using that track to get to their home.

[13] Mrs John also gave evidence that Louise Gurley's mother, her great aunt tried to plant corn, peas and cassava on the disputed land with mixed results depending on the weather. She explained that the soil has deteriorated since then and is now rocky and unable to sustain crops. She did not give any indication of when Mrs Gurley's mother planted the crops, where and with whom she was living at the time, whether Louise Gurley had already bought her property or not. I cannot speculate about those details or under whose authority she was cultivating the land. Therefore, this testimony does not assist in resolving any of the issues. Mrs John also stated that she is not sure but has always assumed that the disputed land belongs to Louise Gurley based on its use and occupation. In this regard, she explained that Louise Gurley's children used to always pick fruits from the trees when they were in season. Mrs John's testimony was frank and credible. It had the ring of truth to it and I accordingly accept her as a witness of truth.

Cassian Tannis – Evidence

[14] Cassian Tannis testified that her father got his land from his father Philbert Tannis in 1931 by Deed of Gift and he and his family has occupied it continuously since then. She indicated that her family accessed their property through a concrete road on the disputed land. No Deed was produced to this effect, however her account of this transfer by Deed of Gift was not contradicted or contested. Ms Tannis explained that she extracted Letters of Administration to her father's estate[vii] and transferred his property to herself and her 9 siblings by Deed of Assent No. 3138 of 2008. She admitted receiving a letter in September 2009 from lawyers acting on Louie[viii] Gurley's behalf complaining that she was trespassing on the disputed lot to which she responded by letter the following month denying any such trespass. She testified that she commissioned a survey of her father's property in 2006 which was conducted by Keith Francis licensed land surveyor. She recalled that Nathan Gurley, Mattias Gurley and others were present during the survey. She stated also that Mr Francis notified the other property owners.

[15] Cassian Tannis admitted that Frankie Gurley used to keep sheep in a pen on the disputed property, but no pig or pig pen. She claims that her father gave him permission to put his pig pen there. She described the fence on the southern boundary of the disputed land as being 1 ½ to 2 ½ feet with wire on top. Cassian Tannis was not discredited during cross-examination. Her testimony is credible and I believe her. Her sister Jacqueline Tannis supported her testimony by providing a similar account. She described the fence below the disputed land as consisting of 2 ½ feet of stone wall with wire fencing on top. She too accepted that Frankie Gurley had a sheep pen but no pig pen. Jacqueline Tannis like Cassian Tannis did before her testified that she and her siblings have always kept the disputed land trimmed and clean while their father was alive and that they continued to do that after his death up to the present. Interestingly, she stated that contrary to what is contained in paragraph 11 of her witness statement she has never planted sweet peppers on the disputed land. She explained though that she has planted sweet peppers on her father's land. I infer from this and the incredulous manner in which she responded to the question about that, that her witness statement contains an error. She was clear and forthright in her responses and I accept her testimony as being truthful.

Survey – Keith Francis

[16] Due to the technical nature of some of the evidence which is central to determination of ownership of the disputed land, the court with agreement of both parties requested that the Chief Surveyor Mr Keith Francis[ix] serve as an assessor and provide responses to questions formulated jointly by the parties and the court. It proved difficult to secure Mr Francis' attendance at court and this was not achieved until March 12, 2015. Mr Francis presented his report in response to the questionnaire. He indicated in it that he invited Cassian Tannis to inform her neighbours about the survey as it sometimes proves difficulty to agree dates with residents of Bequia. He stated that he did not issue notices to anyone

himself. He reported that Nathan Gurley, Geneive Peters, Cassieann Tannis and B. Tannis were present during the survey.

[17] Mr Francis explained further that he conducted a survey and not a re-survey as the land was never surveyed previously. He testified that during the survey all boundaries except those of the disputed area (consisting of 1,578 sq. ft.) were agreed by those present. He indicated that the areas representing the northern boundary of the lands of G. Peters;[x] and survey plan Gr 11/34[xi] were established by previous surveys; while the southern boundary of Vincent Tannis' lands and the western boundary of A. Tannis' land[xii] were agreed by the persons present. He explained that the hook on the survey on the lands at both sides of the public road signify that the two parcels of land are the same.

[18] Mr Francis stated that the deeds which were presented to him did not have survey plans attached and he accordingly relied on the statements of persons who were present to assist with identifying boundaries. He indicated that while Nathan Gurley agreed that John Tannis' land does cross the road, he presented Deed No. 219/63 "stating that his land is bounded to the North by Vincent Tannis ... and claimed that his fence (erected by him) **should therefore be extended** to include an area occupied by John Tannis (and his heirs) for many years." (Bold mine) Both positions are mutually exclusive for obvious reasons – no boundary of John Tannis' "accepted" land runs adjacent to the lot across the street. with It strikes me that this was conceivably a recent realization of Nathan Gurley. He also declared that the land owned by John Tannis was once owned by Vincent Tannis. There is no evidence of this from parties or other witnesses. This declaration by Mr Francis is therefore disregarded in resolving the related issues.

[19] Mr Francis explained that the government accepts a building lot as being 3,750 sq. ft. but that in surveying "a lot" does not have a specified size and there is no specific area for a lot size. He added that some lots may be bigger or smaller but

a "lot" is a portion of land irrespective of how big it is. He also indicated that the measurements in the deed are described colloquially as "meet and bound" and that they at times can be ambiguous as they do not give a specific measurement and in some cases the person referred to in them may no longer be in the area. I understood this to mean that at times ownership of land attributed to one person on a deed might have since passed to someone else.

[20] Laverne Gurley contends that survey plan GR11/37 is self-serving as it was commissioned by Cassian Tannis and the boundaries on it were pointed out by her. She submits that her deed is declaratory of the northern boundaries on her land and the court should accordingly find that the disputed property is part of her land. She contends further that Mr Francis conducted the survey in clear violation of the Boundaries Settlement Act[xiii] which mandates that formal notice in writing be given to adjoining owners and occupiers of the subject land by the person conducting the survey. Failure by Mr Francis to give this notice she argues is breach of a statutory duty which should not be condoned. She contends that Cassian Tannis has failed to prove her entitlement to the disputed land, while she has proved hers. She submits that she should accordingly prevail and be declared owner of the disputed area of land and be awarded damages for trespass against Cassian Tannis.

Observations and Findings of Fact

[21] While Laverne and Louise Gurley insist that the Tannises started to cross the disputed land only "recently" in 2006, Frankie Gurley and Grace John testified that they have been using the land continuously to access their home. Mrs John's account is credible and I accept her testimony. I do not believe Laverne and Louise Gurley. I am fortified in arriving at this conclusion in light of the sequence of events surrounding Laverne Gurley's and Louise Gurley's protestations about this alleged trespass. The first objection was launched by

Laverne Gurley the same year that Cassian Tannis arranged for the disputed land to be surveyed. I accept Cassian Tannis' evidence that she left for Canada in 1987 and that she and her sister sent money from Canada to convert their board house to concrete during her sojourn there in the 80s. If the Gurleys are to be believed, the Tannises stopped using the access road on the disputed land in the late 80s or early 1990s after their concrete house was completed and then suddenly resumed using it again around the time that the survey was completed. Yet they made no protestations regarding this until roughly 3 years later by letter dated September 9, 2009.[xiv] Laverne Gurley sent a letter of her own on March 17, 2011 although Louise Gurley transferred title to her in 2010.

[22] Based on the foregoing and having considered all of the evidence, I make the following observations:

1. No dispute existed about ownership of the land before 2006 and since then Cassian Tannis has strenuously refuted and resisted allegations of the alleged trespass.

2. Mr Gurley's and now his wife Louise Gurley's admission that John Tannis' land is on both sides of the road is not reconcilable with the position that Louise Gurley's property extends to the boundary with Vincent Tannis' property.

3. Mrs Gurley's testimony that her land was surveyed when she bought it is suspect as based on Keith Francis' testimony there is no record of a previous survey of the disputed land. I infer from this that Louise Gurley's land was never surveyed. If it was, and the survey was lodged, it would be reflected in the records at the Lands and Survey Department which the Chief Surveyor has a statutory duty to consult and take into account

before approving a survey plan. The details of any such prior survey would necessarily have been noted on survey plan GR11/37 and none is.

4. Grace John's and Louise Gurley's testimony is that John Tannis accessed his property through the disputed land even before Mrs Gurley bought her property and he and his family continued to do so after. While I accept that Mrs Gurley might have planted the fruit trees on the disputed land, the evidence is that both families enjoyed the fruits. Mrs Gurley's testimony of planting those trees by itself is not evidence of ownership as she had access to the land when her son was tending his animals there. She may very well have planted the trees with John Tannis' acquiescence. There is no evidence which would contradict this and that is a reasonable inference to draw from the evidence.

5. If Mrs Gurley's evidence that she gave Mr Tannis permission to access his property through her land is accepted, and if as Frankie Gurley stated the only access to the main road from John Tannis' property is through the disputed land, then John Tannis would have found himself in a landlocked position. It is incredible to accept that such a state of affairs would have been permitted to exist without remedy all of these years. Even more mind-boggling is Mrs Gurley's assertion that the Tannises walked along the gutter to get to and from their home to the main road.

[23] I therefore find as fact that:

1. John Tannis and his family accessed their property through the disputed land from 1931 and that John Tannis' heirs have continued to do so up to present without permission or interference from anyone up until 2009 when Louise Gurley had her attorney write to Cassian Tannis.

2. Louise Gurley never had her property surveyed to the disputed land prior to 2006 when Cassian Tannis commissioned her survey resulting in survey plan GR11/37 being drawn, at which time Nathan Gurley for the first time made such a claim, ostensibly on his wife Louise Gurley's behalf.

Laverne Gurley – ownership claim

[24] A deed of conveyance or transfer which is registered at the High Court registry operates to convey from the transferor to the transferee, the right, title and interest of the property described in it.[xv] Lavern Gurley relies on Deed of Conveyance[xvi] between Benjamin Burgin and Louise Gurley and the Deed of Gift[xvii] between Louise Gurley and her as proof of her ownership of the disputed land. She submits that the court should accept the description of the northern boundary in those deeds as being probative of this. Cassian Tannis submits that the court must look at the conveyances and the surrounding circumstances of the respective purported acquisition and use of the disputed land to determine who is the likely owner. He posits that the general principle which was propounded in the case of **St. Edmundsbury and Ipswich Diocesan Board of Finance v Clark and Another (No. 2)**[xviii] would apply. There, Megarry J ruled essentially that when interpreting documents the court should look at the words contained in the document and interpret in light of the surrounding circumstances.[xix] I accept that as a correct principle which should be applied in this case.

[25] In determining whether Laverne Gurley owns the disputed land, the court must examine the Deed of Conveyance[xx] between Benjamin Burgin and Louise Gurley and the Deed of Gift[xxi] between Louise Gurley and Laverne Gurley to ascertain what property was passed. They both describe the property in similar terms as:

"ALL THAT LOT piece or parcel of land being by admeasurement

one and a half [((1 ½ lot[s] ***more or less*** *situate at Ocar Reform [in the Parish of the Grenadines in the State of Saint Vincent and the Grenadines] of Bequia a dependency of the island of Saint Vincent aforesaid and is butted and* ***bounded on the North by the lands of Vincent Tannis*** *on the South by the lands of Genevive Euton on the East by the lands of Lydia Lewis and on the West by the lands of John Tannis or howsoever otherwise the same may be butted bounded known distinguished or described TOGETHER with [all buildings and erections thereon and together also] all ways waters watercourses rights lights liberties easements privileges and all other appurtenances thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto AND ALL THE ESTATE right title interest claim and demand of the Vendor In To and Upon the said hereditaments and premises and every part thereof."*[xxii] (bold and underlining mine)

[26] The description in both deeds refers expressly to an area of 1 ½ lots. There is no indication of how many square feet or what proportion of an acre that is. Neither of the parties nor the licensed surveyor were able to shed light on this either and it does not appear that a "lot" in Saint Vincent and the Grenadines is circumscribed by any single measurement. It is observed that the description changed somewhat from the previous deed to the more recent one, not only in relation to reflecting that a building is now on the land but also in other minor respects. It is not clear how this was achieved in the absence of a notation or other explanation. It is inferred that scrupulous attention was not always paid to the contents of Deeds when presented for registration. It generates some misgivings regarding the integrity of the records, and I accept that they are evidence of their contents unless there is good reason to find otherwise.

[27] The description of the northern boundary in the impugned deeds does not translate to and is not reflected in the conduct of the parties in how they lived and operated. The Tannises clearly operated as owners of the disputed land for 40 years without interference, objection being taken only within the last 10 years after a survey was conducted. In this regard, I accept that they kept the lot cleared and cleaned and used it daily to go to and from home. I find too that John Tannis gave Frankie Gurley permission to tend his sheep on the land. This conduct leads me to conclude that the description of the northern boundary in the deed is questionable.

[28] Laverne Gurley reasoned that the size of 1 ½ lots recorded on the Deed is more in keeping with the disputed piece being part of her property than being excluded from it. The disputed land comprises an area of 1,578 sq. ft. and is delineated by survey markers N1-N2-N3-I6- I10- I11-N1. If the combined area of Laverne Gurley's parcel of land and the disputed land amounts to 1 ½ lots it would follow that the disputed land belongs to Laverne Gurley. There is no evidence before the court regarding the dimensions of the property known to be Laverne Gurley's. While the key to survey plan GR11/37 contains measurements which would enable the court to calculate the dimensions of properties delineated on it, that plan shows only a part of Laverne Gurley's property, making such calculation impossible. Even if those measurements were available, there is no technical or other acceptable evidence from which the court could ascertain or infer what amounts to a "lot" in practical terms. Mr Francis' evidence of the imprecise and uncertain descriptions in deed is also a factor which does not assist Laverne Gurley. On the contrary I consider that the reality provides a basis for concluding that the description of the northern boundary of Laverne Gurley's and Louise Gurley's land is erroneous.

[29] Mrs Gurley's contention therefore that she granted permission to John Tannis to cross her land and only after construction was started on their house in the

1980s is rejected. To accept this would be accepting Mrs Gurley's account that the Tannises walked along a gutter to get to and from their property from 1962 to 1987 a period of 25 years. That defies all reason. It cannot be true. I find therefore that firstly, the description of the northern boundary of the Gurleys' land is wrong. It should that the property above northern boundary is vested in the Tannises. Secondly, that Louise and Laverne Gurley's property does not include the disputed land; and thirdly that the disputed lot, the lot on the other side of the main road and the "accepted" portion of the Tannis' land (on which their family house is built) comprises a single parcel. Laverne Gurley has failed to establish on a balance of probabilities that the disputed land is part of the 1 ½ lots described in her Deed of Gift. I therefore make no such finding.

[30] Laverne Gurley seeks ostensibly to rely on her family's use and occupation of the disputed land to ground her claim to ownership alternatively through adverse possession without stating so expressly. In this regard, she asserts that she has been "*in continuous possession … since the 1960s,*"[xxiii] that "*…the disputed land properly belongs to her, having been part of her family's land all along*"[xxiv]. She relies on Louise Gurley's, Frankie Gurley's and her own accounts that she and other members of her family have utilized the disputed parcel continuously from 1962 for farming and animal husbandry. She submits also that Grace John's testimony supports such occupation and use. A party may not claim adverse possession of property in respect of which she claims possession as "of right".[xxv] There is no legal basis on which to make such a finding. The court's power to make a declaration of a legal right is a discretionary one which the court will exercise in appropriate cases.[xxvi] This case is not a fitting one in which to make a declaratory order on this issue in favour of Laverne Gurley. Laverne Gurley's claim for a declaration of ownership of the disputed land is dismissed.

Cassian Tannis – ownership claim

[31] Cassian Tannis' Deed of Assent[xxvii] contains a description of the parcel of land which she claims was passed down from her father John Tannis to her and her siblings. It is described as:

> *"ALL THAT LOT piece or parcel of land situate at O'car Reform Bequia in the State of Saint Vincent and the Grenadines admeasuring Thirteen Thousand Five Hundred and Sixty Square Feet (13,560 sq ft) and abutted and bounded on the North East by land of A. Tannis on the South West by a Road on the East partly by lands on Plan Gr11/34 partly by lands of N. Gurley and partly by lands on plan Gr4/103 in the possession of G. Peters and on the West by lands in the possession of the heirs of Vincent Tannis or as the same is more particularly delineated and shown on a Plan or Diagram drawn by Keith Francis Licensed Land Surveyor and approved and lodged at the Lands and Surveys Department of the State of Saint Vincent and the Grenadines on the 25th day of September 2006 as Plan Number GR11/37 or howsoever otherwise the same may be butted bounded known distinguished or described together with all ways waters watercourses rights lights liberties privileges and easements and appurtenances thereto belonging or usually held used occupied or enjoyed therewith or reputed to be appurtenant thereto."*

[32] On the face of it, the Deed of Assent declares that Cassian Tannis and her siblings are the owners of 13,560 sq. ft. of land including the disputed land. In the absence of prior registered title, they are considered in law to be the legal and equitable owners of the title described in it. However, Laverne Gurley contends that the title is based on an inconclusive survey conducted in violation of the Boundaries Settlement Act[xxviii] and that it should therefore be vitiated. She argues that the surveyor Mr Keith Francis did not issue the statutory notice as mandated by law.[xxix] She invites the court to infer that the title to the disputed land was

improperly imputed and allocated to John Tannis' heirs in the Deed of Assent. She implies that the deed is voidable and should be cancelled.[xxx]

[33] The object of the Boundaries Settlement Act is to "*provide for the survey of the boundaries of land.*"[xxxi] It imposes a statutory duty on a surveyor to give at least 7 days' advance written notice to **owners or persons in possession** of lands adjoining any on which he intends to conduct a survey.[xxxii] Such written notice may be dispensed with by agreement in writing by the owner or person in possession provided that it is in duplicate and witnessed by the surveyor.[xxxiii] Mr Francis did not provide written notice to the interested parties nor did they execute an agreement in writing waiving this notice. Laverne Gurley and Louise Gurley refute that they were represented at that survey. Mr Francis' and Ms Cassian Tannis' evidence is that Nathan Gurley represented that the northern boundary of Louise Gurley's property[xxxiv] is the same as Vincent Tannis' southern boundary. This is identical to Laverne Gurley's present position in this case. I accordingly find that Nathan Gurley was present as occupier of Laverne Gurley's property on that day and represented her interest. He had no interest of his own to protect. What then is the effect of the breach by Mr Francis of his statutory duty to give notice? Does that failure invalidate the survey and by extension Deed of Assent No. 3138 of 2008?

[34] Cassian Tannis submits that it does not. She contends that the requirement to give notice is not mandatory but directory and that the court should consider whether there has been substantial compliance with the requirement and if there has been no compliance whether it could be waived. Further, if non-compliance cannot be waived, what is the consequence of such non-compliance? She relies on the guiding principles enunciated in **R v Immigration Appeal Tribunal ex parte Jeyeanthan; Ravichandran v Secretary of State for the Home Department**[xxxv] in this regard. In the case at bar, strict compliance necessitates a time-bound issuance of a written notice. There is no evidence that the twin

obligations of written notification coupled with the requisite period were complied with. Substantial compliance with the strict letter of the provisions is not present. However, it would seem to me that the spirit of the legislation is satisfied if all owners and occupiers of adjoining lands are notified and given an opportunity to lodge any objections or observations during the survey. From all accounts this was achieved. Louise Gurley's and by extension Laverne Gurley's claim to the disputed property is captured in survey plan GR11/37 and has not been resolved. Laverne Gurley is therefore not entitled to claim that her interest and claim has been ignored.

[35] The statute permits waiver of written notice evidenced by agreement in writing but specifies no consequence for non-compliance. In those circumstances, the usual remedy of damages for breach of statutory duty is available to an aggrieved party. The instant trial proceeded from day one with the parties accepting the boundaries on survey plan GR11/37 except the southern boundary of the disputed lot. The parties appeared to acknowledge that the contentious points related to whether the surveyor consulted Deed No. 219 of 1963 and whether the parcels on both side of the road were one conjoined lot. I have formed the view that the court may consider the contents of survey plan GR11/37 in determining the issues of ownership in the instant case. I disregard for this purpose Mr Francis' opinion that "it is highly unlikely that Nathan Gurley's 'land' is bounded on the north by Vincent Tannis'".

[36] The evidence led by Cassian Tannis and her witnesses provides proof of possession by John Tannis and his heirs to the disputed land. Jacqueline Tannis' testimony that they have cleaned and kept the property clear throughout all the years from the 60s up to present is corroborated by Cassian Tannis. In addition, Mrs Grace John supports their assertions that they have used the land since then to access their home on a daily and continuous basis. Cassian and Jacqueline Tannis' description of the wall which comprises the northern boundary to the

Gurley's home together with the agreed fact that the Gurley's residence is completely fenced cements this impression. Likewise, there is no evidence of use by the Gurley's of the disputed land after Frankie Gurley stopped keeping his sheep there in the 60s or thereabouts. I do not consider Frankie Gurley's admitted ventures to pick fruits while standing in his vehicle in recent times to be evidence of such occupation or possession. At best those excursions appeared ad hoc and casual. I therefore find that Cassian Tannis and John Tannis before her have been in factual possession of the disputed land since in or about 1960. Cassian Tannis and her siblings are now registered as legal owners of the disputed lot with the attendant implications as their interest, right and property thereto which cannot be ignored without good reason.[xxxvi]

[37] Cassian Tannis challenges Laverne Gurley's capacity to obtain judgment as she failed to include Ms Tannis' siblings (who are joint owners of the property) as defendants. She asserts that the Civil Procedure Rules 2000 ("CPR") mandates that all parties who are entitled to the remedy claimed must be made parties to the proceedings, unless the court orders otherwise.[xxxvii] Laverne Gurley also challenges Cassian Tannis' capacity to obtain judgment on behalf of her siblings.[xxxviii] The persons who would benefit from an order on Ms Tannis' counterclaim declaring that she and her siblings are the legal owners of the disputed land would be the heirs to John Tannis' estate. Ms Tannis capacity as administratrix of her father's estate represents them to the world at large. She is before the court in this action in her personal capacity and not as representative for her siblings. Notwithstanding, the court has wide discretion to add a new party to proceedings without an application, if it is desirable to do so to enable the court to resolve the matters in dispute.[xxxix] In exercising its discretion, the court must act judicially also consider the overriding objective to deal with cases justly. [xl] I agree with Laverne Gurley's submissions that non-resolution of the issue of ownership of the disputed property would create hardship to the parties and conceivably result in re-litigation.

[38] Mindful of the overriding objective which includes saving expense, time and other resources and all of the factual background to this case. I consider this to be an appropriate case in which to add a party to represent the interests of John Tannis' heirs. The justice of this case would be best served by adding Cassian Tannis administratrix of John Tannis' estate as a defendant. I so order on condition that Ms Cassian Tannis files her written consent on or before April 30, 2015 to be so added. Such consent is to be deemed properly filed for the purposes of this case. I accordingly declare that Cassian Tannis administratrix of John Tannis' estate was the fee simple owner of the disputed land from the date of grant to her of Letters of Administration No. 73 of 2006 and that John Tannis' heirs are the fee simple owners of the disputed land as delineated in survey plan GR11/37 by survey markers N1-N2-N3-I6- I10- I11-N1.

[39] It is not necessary for me to consider issues 2 and 3. I accordingly dismiss Laverne Gurley's claim for damages and an injunction.

ORDERS

[40] It is accordingly ordered:

1. Laverne Gurley's claim for a declaration of ownership of the disputed land is dismissed.

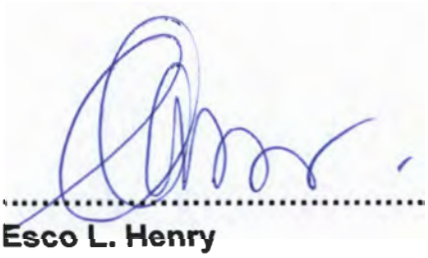
2. Laverne Gurley's claim for an injunction is dismissed.

3. Laverne Gurley's claim for damages is dismissed.

4. It is declared that Cassian Tannis administratrix of the estate of John Tannis was the fee simple owner of the disputed land from the date of grant to her of Letters of Administration No. 73 of 2006 and that John Tannis' heirs are the fee simple owners of the disputed land as delineated in survey plan GR11/37 by survey markers N1-N2-N3-I6- I10- I11-N1.

5. Cassian Tannis as administratrix of the estate of John Tannis deceased is added as a defendant on condition that she files the necessary consent to be so added.
6. Laverne Gurley shall pay to Cassian Tannis prescribed costs of $7,500.00 pursuant to CPR 65.5(2)(b).

[41] I wish to express my gratitude to all counsel for their very helpful submissions.



Esco L. Henry
HIGH COURT JUDGE (Ag.)

[i] Filed on June 22, 2012.

[ii] 1812 of 2010 dated September 30, 2009.

[iii] No. 219 of 1963 dated January 23, 1962.

[iv] By letter dated September 25, 2009.

[v] From boundary marks N1 to A2.

[vi] See paragraph 6 of Frankie Gurley's witness statement filed on September 17, 2013.

[vii] In 2006 by Grant 73 of 2006.

[viii] Mrs Louise Gurley was referred to by witnesses as both "Louise" and "Louie".

[ix] Mr Francis had conducted the survey reflected in survey plan GR11/37.

[x] Marked by boundary marks A1 to A2.

[xi] Marked by boundary marks IR8, IR2 and IR9.

[xii] Marked by boundary marks I8, I9, I11, I10, I5, I7 and IR9.

[xiii] Cap. 317 of the Revised Laws of Saint Vincent and the Grenadines 2009 at section 2 which states:

> "2. (1) *The Chief Engineer, the Chief Surveyor, or any surveyor appointed by the Governor-General, the High Court or by any person or corporation to survey or re-survey any land, shall give at least seven days' notice of his intention in writing to the owner or the person in possession or occupation of the adjacent lands, and the notice shall be served upon each of such persons by delivering a true copy, thereof, certified by a surveyor, to such person, or by leaving it at his residence, and if the person cannot be found, then the notice shall be posted up or affixed in some conspicuous place on the premises.* Such notice may be in the form of the First Schedule.
>
> *Provided however that similar notice of the land to be surveyed and the time fixed for the survey must also be given by a surveyor to the Chief Engineer or the Chief Surveyor.*
>
> (2) *Nothing in this section shall prevent the parties interested in the lines about to be run from agreeing to commence at a different point from that stated in the notice or form agreeing to have the lines run and established without notice as aforesaid.*
>
> (3) *Such agreement shall be in writing and signed in duplicate by the parties interested in the survey and witnessed by the surveyor.*
>
> (4) *No stamp duty shall be payable on such agreement.*"

[xiv] From Nicole Sylvester of Caribbean International Law Firm to Cassian Tannis.

[xv] In accordance with section 5 (1) of the Registration of Documents Act Cap 132 of the Revised Laws of Saint Vincent and the Grenadines 2009 which provides:

> "5 (1) *Every document relating to real estate required to be registered under this Act shall, on registration, operate both at law and in equity according to the priority of time of registration and the right, title and interest of the person conveying, incumbering or otherwise dealing with such real estate against every other document subsequently registered with respect to such other real estate.*"

[xvi] Deed No. 219 of 1963 dated January 23, 1962.

[xvii] Deed No.1812 of 2010 dated September 30, 2009.

[xviii] [1975] 1 All ER 772.

[xix] Ibid. at page 779 paragraphs d and h where Megarry J stated:

> "*First, what is the proper approach on the construction of a conveyance containing the reservation of a right? We feel no doubt that the proper approach is that on which the court construes all documents; that is to say, one must construe the document according to the natural meaning of the words contained in the document as a whole, read in light of surrounding circumstances.*
>
> *Counsel for the parochial church council contended that the proper method of construction is first to construe the words of the instrument in isolation and then look at the surrounding circumstances in order to see whether they cut down the prima facie meaning of the words. It seems to us that this approach is contrary to well-established principle. It is no doubt true that in order to construe an instrument one looks first at the instrument and no doubt one may form a preliminary impression on such inspection. But it is not until one had considered the instrument and the surrounding circumstances in conjunction that one concludes the process of construction. Of course, one may have words so unambiguous that no surrounding circumstances could affect their construction. But that is emphatically not the position here.*"

[xx] Deed No. 219 of 1963 dated January 23, 1962.

[xxi] Deed No.1812 of 2010 dated September 30, 2009.

[xxii] Those portions which are included in the second of the two deeds but not in the first deed are enclosed in square brackets.

[xxiii] See paragraph 12 of the Statement of Claim filed on June 22, 2012.

[xxiv] See paragraph 3 of the Reply to Defence and Defence to Counterclaim filed on October 17, 2012.

[xxv] See **Arnold Celestine v Carlton Baptiste GDAHCVAP2008/011 per George-Creque J.A. (as she then was) at para. 12** where she said:

> "*To claim to be in possession of land "as of right", whilst at the same time claiming to be in adverse possession of it, is simply incomprehensible, given the legal connotation of each. If an owner is in possession "as of right" (i.e. with the paper title) then the question of that owner*

being in adverse possession to his own paper title simply cannot arise as a matter of law. It goes without saying that the obverse position is this: Adverse possession can only arise where it is recognized by the "adverse possessor" that the paper title is vested in someone else. In essence, the adverse possessor seeks to say that he has dispossessed the paper owner."

[xxvi] Ibid. **at para. 17 where the learned Justice of Appeal stated:**

> *"...no action or other proceeding is normally open to objection on the ground that merely a declaratory judgment or order is sought. The court is empowered to make binding declarations of right whether or not any consequential relief is or could be claimed."*

See also **Gray v Spyer [1922] 2 Ch. 22, Nixon v Att. Gen. [1930] 1 Ch. 566. See also Russian Commercial Industrial Bank v. British Bank for Foreign Trade [1921] 2 A.C. 438** and **Ibeneweka v. Egbuna [1964] 1 W. L. R. 219, P.C.**

[xxvii] No. 3138 of 2008.

[xxviii] Supra at note xii.

[xxix] Ibid. at section 2 (1).

[xxx] See paragraph 2 of the Claimant's written submissions filed on March 17, 2015.

[xxxi] See the headnote.

[xxxii] Ibid. at section 2.

[xxxiii] Ibid at section 2 (3).

[xxxiv] Represented on survey plan GR11/37.

[xxxv] **[1999] 3 All E. R. 231 per Lord Woolf MR** where he stated:

> *"I suggest the right approach is to regard the question of whether a requirement is directory or mandatory as only at most a first step. In the majority of cases there are other questions which have to be asked which are more likely to be of greater assistance than the application of the mandatory/directory test. The questions which are likely to arise are as follows: Is the statutory requirement fulfilled if there has been substantial compliance with the requirement and if so, has there been substantial compliance in the case in issue though there has not been strict compliance? (The substantial compliance question). Is the non-compliance capable of being waived and if so, has it, or can it, and should it be waived in this particular case? (The discretionary question). I treat the grant of an extension of time for compliance as a waiver. If is it not capable of being waived or is not waived then what is the consequence of non-compliance? (The consequences question)."*

See also **Wilfred Miller v Gregory Miller, Margarita Robinson and Jicimaw Browne SVGHPT2012/0041 at para.[35]** where this dictum was quoted and in which this approach was considered and applied by Thom J. (as she then was).

[xxxvi] Supra. At section 5(1) of the Registration of Documents Act.

[xxxvii] CPR 8.5 which states:

"8.5 (1) The general rule is that a claim will not fail because a person-

(a) who should have been made a party was not made a party to the proceedings; or

(b) was added as a party to the proceedings who should not have been added.

(2) However-

(a) where a claimant claims a remedy to which some other person is jointly entitled, all persons jointly entitled to the remedy must be parties to the proceedings, unless the court orders otherwise; and

(b) if any such person does not agree to be a claimant, that person must be made a defendant, unless the court orders otherwise."

See also paragraphs 65 to 67 of the defendant's Submissions filed on July 2, 2014.

[xxxviii] See paragraphs 44 and 45 of the Claimant's Submissions filed on July 18, 2014.

[xxxix] CPR 19.2 (3) and 19.3 (1) and (4) which provide respectively:

"19.2 (3) The court may add a new party to proceedings without an application if –

(a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or

(b) ..."

"19.3 (1) The court may add, substitute or remove a party on or without an application.

(4) A person may not be added or substituted as a claimant unless that person's written consent is filed with the court office."

[xl] See **Fok Hei Yu and John Howard Batchelor v Basab Inc. et al BVIHCMAP2014/0010 per Dame Janice M. Pereira CJ. at para. [11]** where commenting on the court's exercise of its discretion under Civil Procedure Rules 2000, Part 19.3, she said:

"*While rule 19.3 states that the court may add, substitute or remove a party and sets out, among other things, the procedure for so doing, and while it is also true that the discretion given to the court is in the widest terms, it is also true and trite law that a discretion must be exercised judicially. In other words there must be a basis warranting the exercise of the discretion.*"

See also CPR 1.2 which provides:

"1.2 The court must give effect to the overriding objective when it –

(a) exercises any discretion given to it by the Rules; or

(b) interprets any rule."