

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHPT2009/0023

**IN THE MATTER OF AN APPLICATION BY FOR A DECLARATION OF
POSSESSORY TITLE TO LAND BY CORLINS SMALL**

BETWEEN:

CORLINS SMALL

APPLICANT

-AND-

PETER SMALL

RESPONDENT

Appearances: Ms Patricia Marks, Counsel for the Applicant, Mrs Kay Bacchus-Browne, Counsel for the Respondent.

2015: Apr. 21
May 7
Jul 8

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Mr Corlins Small and Mr Peter Small are brothers. They are locked in a dispute over ownership of 3,297 sq. ft. of land (“the disputed land”) situate at Park Hill. Mr Corlins Small is seeking a declaration of possessory title of the disputed land. His brother Peter Small claims that the disputed land is part of a half acre given to him and his brother Randall Small by their mother, Amy Small

(deceased). He maintains that he is the sole owner of the disputed land and objects to the grant of a declaration of possessory title to Corlins Small.

ISSUE

[2] The sole issue to be decided is whether Corlins Small is entitled to a grant of declaration of possessory title of the disputed land.

ANALYSIS

Is Corlins Small entitled to a granted of declaration of possessory title of the disputed land?

Claim to ownership as of right versus claim of adverse possession

[3] The Possessory Titles Act¹ (“the Act”) establishes the legislative framework which governs the grant of a declaration of possessory title to land. A successful applicant must satisfy the court that he or she has exercised factual possession of an exclusive and undisturbed nature of the subject property for a continuous period of at least 12 years and during that time, had the requisite intention to possess the land as owner.² Essential components of the application are requirements that the applicant states the name of the registered owner and whether he is aware of any other person who claims or is capable of claiming to be owner of the subject land.³

¹ Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

² Ibid. at section 2 of the Act which defines “adverse possession” 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;”

³ Ibid at section 4 (c) and (d) which provides:
“An application shall state:
(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

[4] Mr Corlins Small has indicated in his application that there are no other persons claiming to be owner of the disputed lands and that he “claims to be the owner in his own right”.⁴ He adds that he took possession of the disputed lands in 1981 and has since then cultivated a variety of crops including plantain and ginger on it, maintained the boundaries and protected it from encroachment and trespassers. He repeats most of these statements in his affidavit and oral testimony, adding that his mother Amy Small gifted the lands to him in the early 1980s. The alleged gift appears to be an oral *inter vivos* gift as no document was produced as proof of this. His witnesses Sheldon Small (his son) and Gloria Haywood both describe him as the owner. Sheldon Small also testified that Amy Small gave the said lands to his father. Sheldon Small and Gloria Haywood gave evidence that Corlins Small has cultivated the lands in excess of 8 years, planting plantains and ginger. Sheldon Small recalled that this cultivation spanned a period of 26 to 27 years.

[5] Peter Small has produced Deed of Gift 107/1980 evidencing a conveyance of ½ acre of lands at Park Hill from Amy Small to Randall Small and him. Corlins Small does not dispute that the disputed lands are part of the lands so registered. While he admits that Amy Small transferred the entire ½ acre lot to his brothers Peter and Randall, he has maintains that his mother gave him the disputed lands and that Peter Small is not the owner. Mr Corlins Small admitted that Amy Small did not transfer the lands to him by Deed, and that the arrangement was for his brother Randall Small to do so.

[6] Corlins Small’s Application, the testimony of his witnesses and his own testimony create an incompatible predicament for him. He claims to be owner in his own right and at the same time appears to hint at adverse possession of the disputed lands, ostensibly against Amy Small’s estate. He never acknowledges that the

(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.”

⁴ See paragraphs 4 and 6 of the application filed on April 7, 2009.

disputed lands are owned by Peter Small although he accepts that Peter and Randall Small are registered as owners by Deed of Gift. Mr Corlins Small hinges his claim to the disputed land as of right on an *inter vivos* gift to him by Amy Small.

- [7] In this regard, it seems that Corlins Small recognizes no one else as having a more superior title to the property than he. His two-pronged claim is not sustainable as he cannot simultaneously own the disputed lands and be in adverse possession. As explained by George-Creque J.A. (as she then was) in **Arnold Celestine (Administrator of the Estate of O’Ferril Celestine v Carlton Baptiste**⁵

“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.”

Therefore, as formulated, Corlins Small’s application establishes no legal basis for grant to him of a declaration of possessory title to the disputed lands. For this reason his application must fail. I find that Corlins Small’s failure to recognize Peter Small’s ownership of the disputed land is fatal to his application for a declaration of possessory title.

Entitlement to Declaration of Possessory title – legal and factual requirements

- [8] If perchance, Corlins Small’s statement that he “claims to be the owner of the land in his own right” is nothing more than a misguided description of his avowed interest in the disputed lands, I turn to consider whether he has met the legal threshold for a grant of declaration of possessory title. The Act mandates that an applicant for a declaration of possessory title, use the prescribed form and

⁵ GDAHCVAP2008/011 at para. [12].

include in it a description of the subject land and an estimated value.⁶ Corlins Small's application⁷ was in the correct form, it contained a description of the disputed land and an estimated value of \$13,000.00. It therefore complies with those statutory requirements. The Act also stipulates that the application must identify the registered owner of the disputed land and indicate whether any other person claims to be owner or is capable of so claiming.⁸ The application identifies Corlins Small as the owner of the disputed property in his own right and states that no other persons claim to be owner of the disputed property.

[9] There is no evidence that Deed 107/1980 which names Peter and Randall as owners, has been cancelled or varied. In the premises, Mr Corlins Small has not complied with the legislative edict to name the registered owner of the disputed land. Moreover, Peter Small steadfastly resists Corlins Small claim to any interest in the disputed land. He testified that Randall Small is now deceased and Corlins Small admits this. In those circumstances, Peter Small will be the sole owner by operation of law.

⁶ Ibid. at Form 1 of the First Schedule as stipulated in sections 3(1) and 4(a) 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.

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;...”

⁷ Filed on April 7, 2009.

⁸ Ibid at section 4(c) and (d) which provides:

“An application shall state:

(b) ...;

(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)

[10] The Act requires that an applicant rehearse the facts on which he or she relies to establish adverse possession,⁹ and provide affidavit evidence of at least two other persons who have knowledge of his adverse possession.¹⁰ He has also supplied affidavit evidence in support as required. Corlins Small claims that he has been in exclusive and undisturbed possession of the disputed lands for over twelve years. He testified that Sheldon Small lives in the disputed land and has done so since 2012 when he started building a house there. He admitted that he has not lived at Park Hill for over 25 years since he got married and that he is not paying any rates or taxes in respect of the disputed lands. Sheldon Small admitted constructing the basement floor of a house on the disputed lands in 2012 and denied that Peter Small either stopped him from building there or challenged Corlins Small's claim to ownership of the disputed lands. He repeated his father's account that Amy Small gave him title to the land and acknowledged that his father has never lived there. He declared that he was testifying because he has built a house on the land, he wants to remain there and his father told him that his mother gave him the land.

[11] Ms Gloria Haywood did not add much to the evidence. She testified that she is married to Alston Small who is Corlins and Peter Small's brother and she lives close to the disputed lands. Ms Haywood admitted knowing that Peter Small had a Deed for the lands from his mother. She stated that all she knows is that

⁹ Ibid at section 4(b) which states:

"An application shall state:

(b) the facts upon which the applicant relies to establish adverse possession;"

¹⁰ See section 5(1), (2) and (3) of the Act 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."

Corlins Small has been working the disputed lands for a long time, about 8 – 10 years but not for the entire 15 years that she has been living in the area. This conflicts with Sheldon Small's testimony. Similarly, Ms Haywood testified that Sheldon Small has been living on the disputed lands since 2009. This differs significantly from Corlins and Sheldon Small's account that he has been living there from 2012. Interestingly, Ms Haywood confessed that she did not understand what is meant by paragraph 4 of her affidavit where she stated "*Corlins Small has been in peaceful public possession of the lands.*" Ms Haywood was not a credible witness and I reject her testimony where it conflicts with that of other witnesses. Apart from his failure to name the registered owner of the disputed land, Mr Corlins Small has provided the details stipulated in the Act, in support of his claim.

[12] Peter Small testified that he and Randall Small are registered as owners of ½ acre of land (including the disputed land), as joint tenants. He claims that Corlins Small is trespassing on the disputed lands and has built a wall house there. He denies that Corlins Small has ever planted anything on the disputed land. He testified that in 2003 he instructed his lawyer to write to Corlins Small to direct him not to trespass on his land. He averred that Corlins Small desisted from trespassing since then but returned in 2012, placed blocks there and started to construct a house. He said that he took no further legal steps as he had no money to bring a court action against Corlins Small. He denied that Corlins Small has occupied or possessed the disputed lands since the 1980s or cultivated it.

[13] His sole witness, Ms Saint Angela Bradshaw-Small testified that ½ acre of lands including the disputed lands are owned by Peter Small and that Corlins Small has been trying to claim the disputed lands. She stated that she is Corlins' youngest sister and that she maintains a good relationship with all of her brothers including Corlins and Peter. She stated that while she loves them all she does not like when they do wrong things but that does not affect her love for them. She testified that Sheldon is living on Peter's land, on the disputed lot. She denied

that Corlins Small took possession of the disputed lands in 1981 or planted any crops on the land as he claims. She insisted that Corlins Small went into possession of the disputed lands only when he filed the application for possessory title. Ms Bradshaw-Small acknowledged that portions of her witness statement were incorrect and she described those paragraphs¹¹ as mistakes. The court observes that they are similar and in some respects identical to paragraphs in Peter Small's witness statement¹² and infer that a single template was utilized resulting in duplication of those sections. Ms Bradshaw-Small impressed me as a witness of truth. Although her testimony pitted her between two brothers whom she professes to love, she spoke with no rancor and it was obvious that she was interested in assisting the court to uncover the truth. I accept her testimony as being credible.

[14] Mr Corlins Small must prove on a balance of probabilities, that he had "factual possession" of the land of "an exclusive and undisturbed nature" for a continuous period in excess of twelve years and that during that period he had the "requisite intention to possess" it as owner.¹³ It has been established that "factual possession signifies an appropriate degree of physical control" and "it must be a single and conclusive possession, ...".¹⁴ In other words, there must be a "coincidence of factual possession and intention to possess."¹⁵ Corlins Small's

¹¹ Paragraphs 4, 5, 7, 8, 12 and 13.

¹² See paragraphs 16, 22, 24, 25, 28 and 19.

¹³ See definition of "adverse possession" in section 2 of the Act.

See also the *locus classicus*, **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")..."

See also **J. A. Pye (Oxford) Ltd & Ors v Graham and Another [2002] UKHL 30** and **Winston Molyneux v Hugh Smith et al BVIHCVAP2009/0022**.

¹⁴ *Ibid*.

¹⁵ **Michael Findlay (duly appointed attorney on record for Muriel Findlay Small) v Elroy Arthur SVGHCAP2010/0017**.

evidence that his mother gave him the lands in the 1980s is not believable. To accept his testimony would mean that his mother made gifts of the same property to him and also to Peter and Randall Small around the same time, without effecting a legal conveyance to him by Deed. An examination of Deed 107/1980 reveals that the gift was very specific. Not only did it convey title to Peter and Randall, it reserved a life interest to Amy and her husband Raymond. This reflects deliberate and conscious reflection and intent by the donor. I reject Corlins Small's assertion that he was also a recipient of his mother's benevolence in this regard.

[15] Furthermore, Corlins Small's testimony and that of his witnesses was discredited in material respects. While he and Sheldon Small attested that Sheldon Small has been living on the disputed lands since 2012 Gloria Haywood says that it has been since 2009. Likewise, while he and Gloria Haywood claim that he has been cultivating the disputed land for 8 to 10 years, Sheldon Small testified that it was for 26 to 27 years. These two divergent accounts on those important matters are not reconcilable. Even more importantly, Corlins Small appears to rely on the act of cultivation as a basis for his claim to adverse possession. Ms Haywood's timeline of 8 to 10 years falls short of the statutory 12 year period.

[16] Sheldon Small's timeline of over 26 years conflicts with Corlins Small account and is therefore not supportive of his claim. In addition, even if Sheldon Small's construction of the house on the disputed lands was intended to be a basis for anchoring the claim to adverse possession, it would not satisfy the mandatory 12 year period. While Corlins Small might have formed the intention to exercise factual possession of the disputed lands over 12 years ago, there is no credible evidence that he acted on that desire until 2012 when Sheldon Small built the house on the disputed lands. I find therefore that he has failed to establish factual possession of the disputed lands for the requisite 12 year period. His application for a declaration of possessory title therefore fails on this basis.

[17] Even if he had established factual possession of the disputed lands for a period in excess of 12 years, Corlins Small has not served notice of his application on adjoining land owners and occupiers as required by the Act. He has filed no affidavit evidencing such service. In addition, his publication of the notice at the Registry and the Magistrate's Court were both non-compliant with the Act¹⁶ as they were published respectively before and after the time specified. In view of these multiple instances of non-compliance with the legislative requirements, the court is constrained from granting him a declaration of possessory title.¹⁷ For all of the foregoing reasons, Corlins Small application for a declaration of possessory title is dismissed.

ORDERS

[18] It is accordingly ordered:

1. Mr Corlins Small's application for a declaration of possessory title of property situated at Park Hill in the State of Saint Vincent and the Grenadines, delineated and described in survey plan C17/21, approved and lodged at the Lands and Survey Department on August 9th, 2007 by Chief Surveyor Adolphus Ollivierre is dismissed.

¹⁶ See section 7 (1) (b) and 8 (1) (a) of the Act which provide:

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

(a) ...

(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 ..."

¹⁷ Ibid at section 8 (2) (a) which states:

"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;"

2. Corlins Small shall pay prescribed costs of \$7,500.00 to Peter Small pursuant to CPR Part 65.5 (2) (b).

.....
Esco L. Henry
HIGH COURT JUDGE