

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHPT2013/0008

**IN THE MATTER OF AN APPLICATION BY GEORGE DEROCHE FOR A
DECLARATION OF POSSESSORY TITLE TO LAND**

AND

**IN THE MATTER OF A CLAIM BY LENNOX ANTROBUS IN OPPOSITION TO THE
SAID APPLICATION**

BETWEEN:

GEORGE DEROCHE

APPLICANT

-AND-

LENNOX ANTROBUS

RESPONDENT

Appearances: Mr Akin John for the Applicant, Mr Jonathan Lewis for the Respondent.

2015: Jun. 8
Jul. 23

JUDGMENT

BACKGROUND

[1] **Henry, J.:** George DeRoche and Lennox Antrobus are cousins who each claim to be entitled to a declaration of possessory title in respect of lands situated at Compton, Canouan. Mr DeRoche applied¹ for a declaration of possessory title in respect of 1.0649 acres of the said lands. In his pleadings and supporting

¹ By Application filed on February 20, 2013.

affidavits, Mr DeRoche claims that he has enjoyed exclusive and undisturbed possession of the disputed lands for over 18 years. He deposed that the subject land was “owned” by his grandfather James DeRoche who gave it to his mother Jestina DeRoche, who in turn occupied it for over 50 years.² Mr DeRoche avers that his mother never obtained a paper title to the said lands. He asserts that in 1990 he renovated an existing structure on the property and began a period of exclusive and undisturbed possession of the land. He claims to be the owner in his own right.

[2] Mr Lennox Antrobus filed a claim³ opposing Mr DeRoche’s application and seeks a declaration that he is owner of part of the lands. He claims that he and George DeRoche have a common grandfather, James DeRoche. Like Mr DeRoche, he asserts that James DeRoche considered himself to be the owner of the disputed land and treated it as his until his death. He deposed that James DeRoche fathered three children namely, his mother Theresa Antrobus née DeRoche, Jestina DeRoche, and Frederick DeRoche, all deceased. Mr Antrobus averred that Frederick DeRoche extracted Letters of Administration to his father’s estate intending to distribute the property to the beneficiaries, but was unable to completely administer the estate before he died.

[3] At the case management conference⁴, the parties were invited to file written submissions regarding the effect of section 20 and paragraph 9 of Part 1 of the Schedule to the Limitation Act⁵, in relation to the application. They have done so. Both provisions address and limit the time within which actions to recover land may be commenced in respect of land held on trust.

ISSUES

[4] The issues which arise on the pleadings and affidavits are:

² See paragraph 6 of George DeRoche’s affidavit filed on February 20, 2013.

³ On June 28, 2013.

⁴ In March, 2015.

⁵ Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

1. Whether they disclose a *prima facie* basis on which James DeRoche's estate could establish an interest in the subject property?
2. If so, whether the interest potentially vested in James DeRoche's estate is capable of being extinguished by George DeRoche's and Lennox Antrobus' respective claims?

ANALYSIS

Issue 1 - Do the pleadings and affidavits disclose a *prima facie* basis on which James DeRoche's estate could establish an interest in the subject property?

[5] George DeRoche stated in his affidavit⁶ "The said property was formerly owned by my grandfather James DeRoche, who subsequently gave the same to my mother...". Lennox Antrobus deposed⁷ "I know the Applicant, George DeRoche as he is my cousin and we are both the grandchildren of the late James Nathaniel DeRoche who was the original owner of the disputed property situated at Canouan." *Ex facie*, both parties appear to rely on their grandfather's ownership of the subject land to ground their claim to a declaration of possessory title. However, George DeRoche seems to have resiled from this position in his submissions.⁸ He submitted that "*the title or interest in the said land which it is alleged passed on the death of James Nathaniel De Roche's (sic) was one based on his being in possession of the said land. There is no suggestion on the record that he had acquired or had been granted any other interest therein.*"

[6] The apparent shift in Mr George DeRoche's posture contrasts with Mr Antrobus', who has not withdrawn from his assertion that the subject land forms part of James Nathaniel DeRoche's estate. He contends "*...both the Applicant and the Respondent are the beneficiaries of the Estate of James Nathaniel DeRoche by*

⁶ Filed on February 20, 2013, at paragraph 6.

⁷ At paragraph 3 of his Affidavit filed on January 13, 2014.

⁸ Filed on May 13, 2015.

virtue of their parents' beneficial interest in the said disputed land." Whereas initially the seeming factual convergence in the two claims, would have necessitated consideration of issues of succession to an intestate's estate⁹ and related trust issues, the divergence occasioned by Mr DeRoche's submissions removes both issues identified above, from consideration at this juncture. It would be impossible to determine either issue until the respective claims are fully ventilated during the trial. In the circumstances, this matter will be returned to the cause list for case management directions to be given. I so order.

ORDERS

- [7] It is accordingly ordered that this matter be returned to the cause list for case management directions to be issued.

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

⁹ In relation to administration of James Nathaniel DeRoche's estate.