

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHPT2013/0036

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

Appearances: Mr Sylvester Raymond Cadette for the Applicant.

2016: Jan. 25
Feb. 1

DECISION

BACKGROUND

[1] **Henry, J.:** Mr George Byron has filed an application¹ for possessory title of land situated at Overland. He claims that he has occupied the property since 1980 after all of his family members died. No opposition or challenges have been made to his claim. He seeks a declaration of possessory title based on adverse possession.

ISSUE

[2] The sole issue is whether Mr Byron is entitled to the grant of a declaration of possessory title of the said land.

¹ On July 2, 2013.

ANALYSIS

Issue – Is Mr George Byron entitled to a declaration of possessory title of the said land?

- [3] The legislative framework governing the grant of declarations of possessory title is outlined in the Possessory Titles Act (“the Act”).² The application must be in the prescribed form, contain a description of the subject land and an estimated value.³ Mr Byron used the prescribed form in which he estimates the value of the land to be \$50,000.00. It also contains a description of the land. In accordance with section 4 of the Act, he also outlines in it the facts on which he claims title by adverse possession. He claims that he and his predecessors have enjoyed

² Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines 2009.

³ Ibid. at Form 1 of the First Schedule. See also 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

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)

exclusive and undisturbed possession since 1980 and that he is the last surviving member of his family.

[4] Contrary to legal requirement⁴ Mr Byron does not identify the registered owner of the land nor does he state whether any one is capable of so claiming. His application is therefore non-compliant with the Act in these respects. However, he asserts that no one else is claiming to be the owner. I address the impact of procedural irregularities later. He has sworn an affidavit and filed affidavits of two other individuals⁵ in support of his application in accordance with the statutory mandate.⁶ They depose that Mr Byron lived on the property with his relatives in excess of 12 years and he remained there after his father's death in 1991. They claim that from then he has lived there up to the present time and cultivated vegetables and other crops on a portion of the land.

[5] Adverse possession is established by proof that an applicant has enjoyed exclusive and undisturbed factual possession of the subject land accompanied

⁴ Ibid. at section 4.

⁵ His wife Patricia Byron and his cousin Osborne Jordon.

⁶ Supra. 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.

by the requisite intention to possess it as owner.⁷ As enunciated by Slade J. in **Powell v McFarlane and Another**⁸:

“...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...”.

[6] The acts of possession relied on by Mr Byron to establish adverse possession of the subject land make out a *prima facie* case that he has been in exclusive and undisturbed possession of the land upwards of 12 years. By his conduct during that time, he has evinced the requisite intention to own the subject land.

[7] In further purported compliance with other statutory dictates, Mr Byron filed a copy of survey plan C21/65 authenticated by the Chief Surveyor;⁹ published notification of his application in two local newspapers, at the Registrar’s office

⁷ See section 2 of the Act which provides:

“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.”

⁸ (1977) 38 P & CR 452 Ch D at 470 – 471.

⁹ Pursuant to section 6 (1) of the Act which provides:

“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.”

and at the Magistrate's court in Georgetown¹⁰. The publications do not all strictly comply with the letter of the legislative provisions with regards to the stipulated timing. In violation of section 7 of the Act, the publication in the High Court Registry office pre-dated those in the newspapers while the one at the Magistrate's Court was posted after. They are not however invalidated for those procedural irregularities.¹¹ The court is permitted to make an order to put things right in those circumstances if to do so would not result in a miscarriage of justice.¹²

[8] Although published before and after the statutory timelines, the notices at the Registrar's office and the Magistrate's Court would have come to the attention of the public well in advance of the date of hearing. I am therefore satisfied that this is an appropriate case in which to make an order to put things right as it does not appear that anyone would be prejudiced by the referenced irregularity. I accordingly order that the said publications be deemed properly published.

¹⁰ The Searchlight newspaper on July 16th, 2013 and August 23, 2013 and the News newspaper on August 9th, 2013 and September 13th, 2013 respectively. It was published at the Registrar's Office on July 4, 2013 and the Magistrate's Court on March 6th, 2014.

Section 7 of the Act mandates that the publications be made in two issues at least one month apart. It also stipulates the period within which the publication is to be made at the Magistrate's Court Office and the High Court Office. It 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."

¹¹ See section 20 of the Act which provides:

"No petition, order, ... 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."

¹² CPR 26.9(3) states:

"If there has been an error of procedure... the court may make an order to put matters right."

Likewise, Mr Byron's failure to identify the registered owner is deemed to be a procedural irregularity which is not fatal to his application. Based on the available evidence, he has exercised exclusive rights of ownership over the subject land and has not been disturbed by anyone claiming a better title for over 12 years. Accordingly, the law presumes that the title of the registered owner is *prima facie* extinguished.

[9] Adjoining owners of the subject land were served with copies of the notices on February 25th, 2014, as attested to by Bailiff Rodwell Alexander.¹³ A copy was also posted on a concrete building in Overland on the same date. These additional notifications satisfy other provisions in the Act.¹⁴

[10] Mr Byron has substantially complied with most of the legislative procedures which are pre-conditions to the grant of a declaration of possessory title. He has omitted to file a valuation report by a licensed valuator or other expert regarding the value of the subject land, as is customary. This omission will likely pose difficulties in assessing the appropriate stamp duty payable on registration of the declaration of possessory title. This challenge can be overcome by attaching an appropriate condition to the order.

¹³ See Affidavits of Rodwell Alexander filed on March 12, 2014 and July 30, 2015.

¹⁴ Section 8 of the Act which provides:

“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.”

[11] I am satisfied on a balance of probabilities that Mr Byron has established that he has been in adverse possession to the subject property for over 12 years. Accordingly, it is ordered that George Byron's application for a declaration of possessory title is granted. The Registrar is directed to refrain from issuing a certificate of this order unless and until Mr Byron lodges with the court a valuation report in respect of the said property, prepared by a licensed valuator. George Byron is directed to file the said valuation report within 30 days of today's date, that is on or before March 2, 2016.

ORDER

[12] It is accordingly ordered:

1. George Byron's application for a declaration of possessory title of property situated at Overland in the State of Saint Vincent and the Grenadines, delineated and described in survey plan C21/65, approved and lodged at the Lands and Survey Department on April 16th, 2012 by Chief Surveyor Adolphus Ollivierre is granted.
2. The Registrar is directed not to issue a certificate of this order unless and until George Byron lodges with the court office, a valuation report in respect of the said property, prepared by a licensed valuator.
3. George Byron is directed to file the said valuation report within 30 days of today's date, that is on or before March 2, 2016.

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Esco L. Henry
HIGH COURT JUDGE