

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHPT2014/0029

**IN THE MATTER OF AN APPLICATION BY FOR A DECLARATION OF
POSSESSORY TITLE TO LAND BY MARJORIE MATTHEWS**

**AND IN THE MATTER OF AN APPLICATION FOR DECLARATION OF
POSSESSORY TITLE IN ACCORDANCE WITH THE POSSESSORY TITLE ACT OF
2004.**

Appearances: Mr Sylvester Raymond Cadette for the Applicant.

2016: Feb. 1 & 15

JUDGMENT

BACKGROUND

[1] **Henry, J.:** This is an application¹ for possessory title by Marjorie Matthews. She seeks a declaration in respect of land situated at Brighton in the state of Saint Vincent and the Grenadines. Ms Matthews alleges that she and her predecessors have enjoyed undisturbed and exclusive possession of the subject land since the 1930s. She claims to be entitled to be registered as owner by virtue of her adverse possession. The application is unopposed.

ISSUE

¹ Filed on April 15, 2014.

[2] The issue is whether Marjorie Matthews is entitled to the grant of a declaration of possessory title of the said property.

ANALYSIS

Issue – Is Marjorie Mathews entitled to a declaration of possessory title of the said property?

[3] The Possessory Titles Act (“the Act”)² outlines the legislative framework governing the grant of declarations of possessory title. It mandates that the application be in the prescribed form. It must also include a description of the subject land and its estimated value.³ Ms Matthews utilized the prescribed form. She provided two different estimates of the value of the subject property – twenty thousand dollars and \$15,000.00.⁴ Ms Matthews did not supply a valuation

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)

⁴ See the Schedule to the application.

prepared by a licensed valuator. It is therefore unclear which value Ms Matthews relies on and whether it is a realistic estimate. In this regard, Ms Matthews has not strictly complied with the legislative edict.

[4] Ms Matthews' application contains a description of the land as required. She indicates further that initially her grandmother Ellen Marcell was in possession of the subject land. After her death, her daughter Leonora Matthews went into immediate occupation. Marjorie Matthews claims to be Leonora Matthews' daughter. She alleges that she was born on the land⁵ and after her mother's death in the 1960s went into occupation and has lived there since. She avers that the land is used as a building plot and for small market gardening. This account fulfills the statutory requirement⁶ necessitating incorporation of facts on which adverse possession is claimed.

[5] The application contains no information regarding the registered owner and it does not state whether anyone else claims to be the registered owner or is capable of so claiming. The failure to include those details renders the application non-compliant with the Act.⁷

[6] Survey plan G56/103 authenticated by the Acting Chief Surveyor, was filed in support of the application, as were copies of publications in the Vincentian and Searchlight newspapers, the Calliaqua Magistrate's Court and the High Court Registry Office. In addition, bailiff Rodwell Alexander⁸ deposed that he served

⁵ In 1936.

⁶ Supra. at section 4.

⁷ Ibid. at section 4.

⁸ See Affidavit of Service filed on June 4, 2014.

notices on adjoining owners of the subject land and posted a copy on the subject land. These notifications satisfy other statutory procedural requirements.⁹

- [7] Ms Matthews' sworn affidavit and those of two other affiants (her brother and son) were filed in support of her application.¹⁰ The court observing that the affidavits appeared to raise succession interests in respect of the house on the subject land, fixed a trial date for disposal of this matter. On the trial date, Ms Matthews testified but called no witnesses. She repeated the statements contained in her application. She testified further that she has used the subject land as her residence and cultivated fruit trees and vegetables on it. In response to the court, she said that she resides on the subject land in a wall house she built in 1980. Before then, she lived in a thatched home owned by her mother. Her responses to the court regarding the building were hesitant. Her demeanour left me with the impression that she was not comfortable with the questions and would have preferred not to have been asked. I am left with a nagging doubt regarding that part of her testimony.

⁹ See sections 6 (1), 7 and 8 of the Act which provide:

"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.

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."

¹⁰ On April 15, 2014.

[8] Ms Matthews declined to call witnesses in support of her claim. Her evidence is accordingly uncorroborated. The Act requires an applicant to support her claim to adverse possession by providing testimony of two other witnesses. Although Ms Matthews has filed two additional affidavits as mandated¹¹, her witnesses did not appear in court and were therefore not available for examination by the court as contemplated by the order setting a trial date. While their non-appearance without more does not invalidate Ms Matthews claim, it substantially restricted the court's ability to make inquiry of them. The court was deprived of the opportunity to resolve lingering doubts and critically assess Ms Matthews' application against "independent" evidence.

[9] An applicant claiming adverse possession of land must prove that she has enjoyed exclusive and undisturbed factual possession of the subject land and in

¹¹ 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.

doing so intended to own it.¹² This concept was described by Slade J. in **Powell v McFarlane and Another**¹³ as follows:

“...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...”.

[10] Ms Matthews has complied with most of the legislative procedural requirements. However, her failure to present witnesses at the trial has undermined her claim and created doubt regarding her claim to adverse possession of the subject land. Her assertions that she has resided on the subject land for over 12 years without interference from anyone claiming to be owner, if convincing and corroborated by others, would be sufficient to establish adverse possession. In the circumstances of this case, where Ms Matthews’ unsatisfactory testimony is the only evidence before the court, I find that she has failed to discharge the burden of proving adverse possession to the subject land. This is compounded by her failure to identify a registered owner or persons capable of claiming ownership. While Ms Matthews very well might have formed the intention to own the land I am not satisfied on a balance of probabilities that

¹² 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.”

¹³ (1977) 38 P & CR 452 Ch D at 470 – 471.

her acts of ownership were unequivocal. I am not satisfied that she has been in adverse possession for 12 years.

ORDER

[11] It is accordingly ordered that Marjorie Matthews' application for a declaration of possessory title of property situated at Brighton in the State of Saint Vincent and the Grenadines, delineated and described in survey plan G56/103, approved and lodged at the Lands and Survey Department on March 19th, 2014 by Acting Chief Surveyor Keith Francis is dismissed.

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