

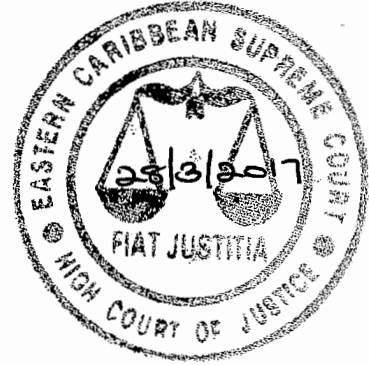
EASTERN CARIBBEAN SUPREME COURT

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2006/0216

BETWEEN:



DORSILLA JACK
CECILY JACK
MAURICE JACK
NICHOLAS JACK

CLAIMANTS

AND
VIRGINIA BROOKER
NICOLE GLYNN
JULIANA GLYN-JONES
MAXINE GLNN
LAVERN BROOKER

DEFENDANTS

Appearances:

Mr. Emery Robertson of Counsel for the Claimants

Mr. Parnell Campbell, QC and Ms. Mandella Campbell of Counsel for the Defendants

2017: March 22, 28

JUDGMENT

[1] **ROBERTS, J. [Ag.]**: This is a case where the claimants and defendants are claiming the whole of a parcel of land, although in each case they have established possessory title to only part of the land. By their fixed date claim form, the claimants have approached the court for:

1. A declaration that the claimants being in possession are entitled to possession of all that piece or parcel of land situate at Rose Place admeasuring 1960 square feet ...together with all buildings and erections ...appurtenant thereto.

2. An order declaring that Deeds No 272 of 1999 and 639 of 2002 are null and void and of no effect.
3. An order that the defendants do forthwith deliver up possession of all that lot piece or parcel of land admeasuring 1960 square feet situate at Rose Place as described in Deeds No 272 of 1999 and 639 of 2002.
4. An injunction to restrain the defendants whether by themselves their servants or agents or howsoever from entering and or crossing and/erecting and/or constructing and/or demolishing the wall building on the land of the claimants.
5. A perpetual injunction to restrain the defendants whether by themselves their servants or agents or howsoever from entering and or crossing or exercising acts of ownership over the claimant's land situate at Rose Place.
6. Damages for trespass.
7. Costs

[2] The defendants have also asked the court for:

1. A declaration that the defendants are entitled to possession of all that parcel of land situate at Rose Place, Kingston admeasuring 1960 square feet mentioned in the Deeds Registration Numbers 272 of 1999 and 639 of 2002.
2. An order declaring that Deed Number 272 of 1999 and 639 of 2002 are valid dee.ds
3. An injunction restraining the claimants whether by themselves, their servants or agents or howsoever otherwise from entering, interfering or exercising acts of ownership over eh defendant's land.

[3] In their statement of claim the claimants state that they are the children of Gordon Jack and Villain Jack, deceased, of Rose Place having been born and lived on the piece of land at Rose Place for over 55 years. The land was the property of their grandfather Gordon David Jack and he left it to his sons Ivan Jack and Everard Jack in a will that was probated. They state, "the claimants have

always been in possession and control of the property of their grandfather, father and uncles and have never recognized anyone else as being the owner thereof".¹

[4] The claimants relate that on 26th August 2005 they saw a notice of intention to construct on the land by first defendant and second defendants and they objected. They claimed that the land was never divided or bounded off and everybody had access to any property within the yard. Nicholas Jack built a small walled house on a portion of the land "over twenty years ago accessible by using a walkway through the common yard as well as by way of the public road".

[5] The claimants averred that Everard Jack had built a house on the land and Beatrice Glynn was living in room of the house as a tenant, while Everard lived in the rest of the house. "After she left she turned over the room to her sister Virginia Brooker whilst my uncle lived in the balance of the house", Everard died in 1972 and Bertram Arthur was agent for collecting the rent from Virginia Brooker. Bertram Arthur died in 1996 and since his death Virginia Brooker stopped paying the rent but she continued to occupy the premises. They contend that the deed No 272 of 1999 "falsely declares" that the Defendant Virginia Brooker is the owner of the land. "This is neither factually nor legally correct as the title she purports to have is self-serving and has no probative value". They also complain that the first defendant gave the land to her children, Juliana Glyn-Jones, Maxine Glynn, Nicole Glynn and Lavern Brooker, the other defendants, by Deed No 639 of 2002.

[6] On their part, the defendants stated that the claimants never had access to the house and frontal part of the land but entered the back of the land by a narrow entrance on the east. They claimed that the claimants were never in possession of the house. They reiterated that first defendant ceased paying rent since 1980 and from then onwards never paid rent and was in no way responsible to any superior landlord. They denied that the declaration in the Deed No. 272 of 1999 was either factually or legally incorrect, since at the time the first named defendant made the declaration, she was in unmolested and exclusive possession of the house since 1980 and since then paid no rent and was responsible to no one. They denied that they abandoned possession of the property but stated that they were forced to give up residence of the property because the

¹ Para 3 of statement of claim.

house had fallen into a state of disrepair. The fact that they had applied to the Planning Board for planning permission was "express intention" to reconstruct a building on the land.

[7] The defendants counterclaimed asking the court for a declaration that they were entitled to possession of the land; that Deeds No 272 of 1999 and 639 of 2002 were valid deeds; and an injunction restraining the claimants from entering, interfering or "exercising acts of ownership over the defendant's land".

[8] In their reply, the claimants said "that the purported declaratory title is self-serving, has no probative value and is a fraud of the claimants and their predecessors in title. The claimants have always been in possession". They also stated that "the defendants are out of possession of the said property and the claimants are in possession".

THE EVIDENCE AND ANALYSIS

[9] The witness statement of Dorsella Jack is verbatim her affidavit in support of the fixed date claim form except that her birth date appears to have been corrected. She repeated, "We have always been in possession and control of the property of my grandfather, father and uncle and we have never recognized anyone else as being the owner thereof. In cross examination the witness was adamant that Everard did not leave property to Carmen Bailey.

[10] Cicely Jack's witness statement was miraculously verbatim the witness statement of Dorcilla Jack. Again. In cross examination she admitted that Everard Jack left the property to Carmen Baily, the mother of Everard Jack's child. She acknowledged that Carmen Bailey died but she did not know Carmen's daughter. The evidence of Donald Llewellyn was not very helpful to the court. He did agree in cross examination that were two properties on the land that of the Jacks and that of the Brookers. Shirley Lynch gave evidence on behalf of the claimants but her evidence was even less helpful.

[11] The first defendant in her witness statement related that her sister, Beatrice De Roche occupied a room of Everard Jack, a blind man who she helped to look after. In 1969 she moved into the house on the disputed property with her sister and Everard Jack. Mr Jack was trying to put the

property in my sister's name but because he was blind he was depending on his brother Mr Bertram Arthur to take him to the lawyer. Unfortunately, Mr Jack died in or around April 1971 before that was done. After the death of Everard Jack, both sisters continued to live in the house. Her sister paid rent up to 1980. She stopped paying the rent because the house was very badly damaged and Mr Arthur was not taking on the responsibility of fixing the house. They did some repairs to the house. In or around 1978 her sister moved out and the first defendant lived there with her children. Three of her children were born while she was living on the disputed property.

[12] The first defendant explained that the house was falling into disrepair and her family needed money to finance the renovation, she therefore conveyed the property to her daughters by virtue of Deed of Gift No 639 of 2002 "because they would find it easier to secure a loan for the repair work, due to their ages and work prospects". She commissioned a structural report on the house which formed part of the disputed property and she applied for planning permission to develop the property. They have paid taxes due on the property and they exhibited a bundle of tax receipts.

[13] In cross examination the first defendant stated that she was of the view that the 1960 square feet belonged to the house of Everard Jack. She agreed that there was a house situate at the back where Dorsilla Jack lived. There was one common yard and that Nicholas Jack had built a house from an old wall that was there. She admitted that she had made a "declaration for everything". She stated that Everard Jack told her that he had turned over the land to her daughter but she did not want it, so he was going to turn it over to me. She indicated that she was trying to find the lady, Elsa Bailey Carmen Bailey's daughter) to buy the land but "she told me don't bother with that - take out possessory title". She also stated that Carmen was giving them the land for them having taken care of her father. She admitted that Dorsilla Jack was living on the land long before her and was still living there. In reexamination the witness indicated that as far as she was concerned, she was claiming what Carmen had. Her daughters, Nichole Glynn and Maxine Glynn, supported her evidence.

CONCLUSION

[14] It became quite clear to me that, as counsel for the claimants put it, "this case is a draw". The claimants have failed to prove that they are entitled to a declaration that they were in adverse

possession of the whole of the property, all 1960 square feet of it. I find that there was no trespass on the part of any of the defendants. I also conclude that there is no need to interfere with deeds No 272 of 1999 and No 639 of 2002. There is no evidence of any fraud or deception having been involved in the registration of the deeds. I find the explanation of the defendants as to why they made a declaration in respect of all of the property, not just the area of which they were in factual possession.

[15] I however find that the claimants were in adverse possession of the back part of property on which they had built houses and lived undisturbed for well over twelve years before they brought the claim.

[16] Likewise, the defendants were only partially successful on their counterclaim. I find that they are not entitled to a declaration that they are entitled to possession of all the land mentioned in Deeds Numbers 272 of 1999 and 639 of 2002. I do not find Deed Number 272 of 1999 or 639 of 2002 invalid. However, it is clear that the defendants had been in adverse possession of the frontal part of the land for well over twelve years before the claim was brought.

[17] It will be necessary for a surveyor to be retained to recommend the technical division of the property so that the house and its curtilage which I hold to be owned by defendants and the remainder which would represent the houses and curtilage which I hold to be owned by the claimants.

ORDER

[18] Under the circumstances, I order as follows –

(1) It is declared that the claimants and the defendants are entitled in equal shares to the entire parcel of land described in the fixed date claim form.

(2) The defendants are entitled to register possessory title under the Possessory Titles Act in respect of the concrete house and its curtilage (in front) situate at Rose Place in St Vincent and the Grenadines.

- (3) The claimants are entitled to register possessory title under the Possessory Titles Act in respect of the remainder of the land (at the back) situate at Rose Place in St Vincent and the Grenadines.
- (4) Both parties to agree on a surveyor to recommend on the technical aspects of the boundaries of the land in keeping with (1), (2) and (3) of this order, and to draw a plan of the boundaries.
- (5) The fees of the surveyor to be met 50% by the claimants and 50% by the defendants.
- (6) No order as to costs.
- (7) Liberty to apply.

APOLOGY

[19] I cannot close this matter without noting that this matter took nearly eleven years to come to trial. This is an example of the unfortunate problem of delay of justice plaguing our justice system. On behalf of all responsible for the delay, the lawyers, the court office, the bench, I apologise to the parties, who deserve better service.



Sir Clare K. Roberts, QC
High Court Judge (Ag)