

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0024

IN THE MATTER OF AN APPLICATION BY NOEL MC MILLAN FOR A DECLARATION OF
POSSESSORY TITLE TO LAND

APPLICATION FOR A DECLARATION OF POSSESSORY TITLE

BETWEEN

NOEL MC MILLAN

APPLICANT

and

CHESLEY BROWNE

SUZANNE BROWNE

CARLSON BROWNE

RESPONDENTS

Appearances:

Mr. Grenville John for the applicant.

Mr. Sylvester Raymond Cadette for the respondents.

2018: Nov. 8

Dec. 18

2019: Feb. 13

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Noel Mc Millan has applied to the court for a declaration of possessory title in respect of a parcel of land situated at Richland Park in the Parish of Charlotte in the State of Saint Vincent

and the Grenadines. He claimed that he has lived on that property in excess of 12 years and has built a residence there. He averred that he did so because his intention was to own the land.

- [2] Mr. Mc Millan's neighbours Chesley Browne, Suzanne Browne and Carlson Browne opposed his application. They alleged that the subject property belonged to their grandmother and forms part of her estate, which is yet to be administered. They have asked the court to dismiss Mr. Mc Millan's claim and to award them costs. I have found that Mr. Mc Millan is entitled to a declaration of possessory title to the subject lands.

ISSUES

- [3] The issue is whether Noel Mc Millan has established entitlement to a declaration of possessory title of the disputed lands?

ANALYSIS

Issue – Has Noel Mc Millan established entitlement to a declaration of possessory title of the disputed lands?

- [4] Provision is made in the law of Saint Vincent and the Grenadines to enable an individual to acquire an interest in land merely by possessing it continuously for over 12 years. If he intended to own it when he did so, he may be granted a declaration of possessory title in respect of the land, if his possession was for an uninterrupted period. Acquisition of an interest to land in this manner is referred to as 'adverse possession'.
- [5] The governing law is the Possessory Titles Act¹ ('the Act'). The Act defines 'adverse possession' as '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'². An applicant must use the prescribed form under the Act and include in it the name of the registered owner of the subject land. He must also indicate whether he is aware of any other person who claims or is capable of

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

² Section 2 of the Act.

claiming to be owner of the land.³ Mr. Mc Millan used the form prescribed by the Act.

[6] He stated that the land was registered in the name of his deceased relative Lester Browne. By supplying this detail, his application is rendered procedurally compliant, even though ownership is disputed by his neighbours. Chesley Browne, Suzanne Browne and Carlson Browne averred that their great grandmother Roberta Simmons bought the disputed land and that her title was registered by title deed and recorded in Liber R Volume 6 Page 269 in the Registry of the State of Saint Vincent and the Grenadines. They exhibited a copy of that record. In it, Adelta John of Hopewell Village purportedly sold a parcel of land at Hopewell Village in the Parish of Charlotte to Robertha Simmons.

[7] The Schedule to that title describes the land as:

‘All the Vendor’s interest in that piece or parcel of land situate at Hopewell Village ... containing Three Lots more or less and bounded on the North by lands of Ann McLean and John Weeks on the South by a Public Byway on the East by lands of Moses Stanley and on the West by a Public Road or howsoever otherwise butted bounded known or described and in all the buildings and erections thereon Together with all easements and appurtenances thereto belonging or usually held occupied therewith or reputed to belong to be appurtenant thereto.’

[8] Mr. Mc Millan contended that this description does not refer to the subject lands. If he is correct, it means that the Brownes have no claim to the land conveyed by that deed. Their objections to the grant of declaration of possessory title to Mr. Mc Millan may also fail unless they have advanced and established legitimate grounds for such objections. It is therefore important to carefully examine the evidence in relation to the description of the subject land.

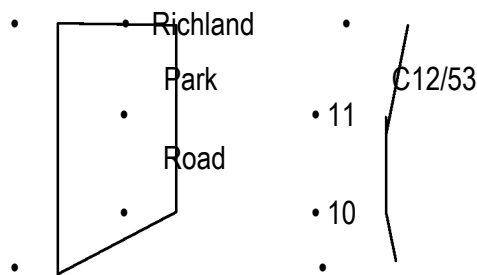
[9] In his application, Mr. Mc Millan described the disputed land as comprising 1,262 sq. ft. and being bounded on the:

³ At section 4 (c) and (d) of the Act.

‘North by lands in the possession of Roy Adams South by a track East by the Richland Park road and on the West by a drain or as the same is more particularly delineated and shown on a Plan or Diagram drawn by Kendon Lavia ... approved and lodged at the Lands and Surveys Department ... on the 30th September 2016 bearing Registration Number: **C25/103.**’

He exhibited a copy of survey plan C25/103 which illustrated the boundaries as described in his application. That drawing depicted a wall house on Northern side of that parcel of land.

- [10] The parcel of land on survey plan C25/103 is rectangular in shape, the shorter boundaries being on the North and South. A reasonable reproduction of the parcel outlined on the plan would resemble the drawing below. The arced line at the right shows the Western boundary of C12/53 another parcel of land (on which the numbers 11 and 10 are shown).



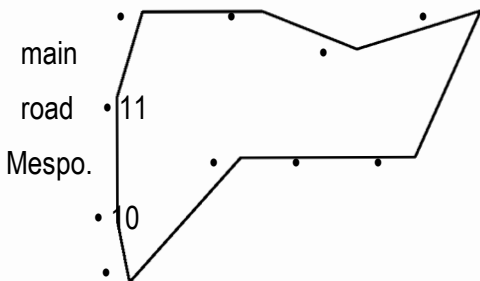
- [11] On survey plan C25/103 the name ‘Roy Adams’ appears above the Northern boundary of the rectangular parcel. Immediately below and within the boundaries, the words ‘wall house’ appears on a rectangular shape towards the Northern side of the land⁴. The word ‘track’ is inscribed below the Southern boundary while ‘drain’ is written alongside and to the left of the Western boundary.

- [12] Chesley Browne, Suzanne Browne and Carlson Browne relied on survey plan C12/53, a copy of which was exhibited to their claim. Chesley Browne and Suzanne Browne testified that the land described in their deed was surveyed at Chesley Browne’s direction and is delineated in survey plan C12/53. That survey plan depicts a parcel of land comprising 12,382 square feet. The legend

⁴ No buildings are shown on the drawings in this judgment.

reveals that it contains a wall house and a structure 'under construction'. Suzanne Browne testified that the wall house belongs to her brother Chesley and that the structure under construction might relate to his garage. Neither building on the C12/53 plan is of the same shape or size as the wall house depicted on survey plan C25/103. Without more, it is reasonable to infer that the two plans show two different parcels of land or conceivably includes an overlap between them. The evidence will indicate which it is.

[13] The land depicted on survey plan C12/53 is of an irregular shape somewhat like the depiction immediately below. The number 11 and 10 are positioned in a similar fashion as they appear on the survey plan.



On the Northern border the names Eileen Stephen Shallow, Carlton Shallow and Glen Ottley appear. The words 'Heirs of Moses Stanley' are written on the Eastern side; on the Southern border, the following is written: 'C12/52 Benjamin Swift' and the Western side of the drawing contains the words 'Main Road Mespo.' as indicated above.

[14] Suzanne Browne was shown both survey plans. She acknowledged that the numbers 5, 11, 10 and 2 appear on survey plan C12/53⁵. On being shown survey plan C25/103, Ms. Browne accepted that the rubric 'C12/53' appears on the right (of the Richland Park Road) and that the numbers 11 and 10 were just below 'C12/53'. (The numbers 11 and 10 appear to be the boundary markers on the Western side of the disputed property, where it adjoins the Richland Park public road. The legend⁶ on the plan revealed that they represent iron pegs.)

⁵ I have omitted numbers 5 and 2 from the above drawings.

⁶ On survey plan C25/103.

- [15] Suzanne Browne was adamant that survey plan C12/53 shows the land on which Noel McMillan lives (the disputed land). However, during cross-examination she acknowledged that the lands which are the subject of Mr. Mc Millan's application do not appear on survey plan C12/53. On being re-examined, she responded that she was relying on survey plan C12/53 to claim the disputed land. I concluded that she was confused, mistaken or not being truthful.
- [16] Ms. Browne testified that she was claiming the land where the words 'wall house' appear on the C25/103 drawing. She explained that this is because it is bounded with Roy Adams. She insisted that the disputed land is her 'old parents' land' and is part of the land described in the deed. She explained 'after "they" cut the road, piece of the land go over on the other side'. Chesley Browne's account mirrored his sister's regarding the interest they claim in the disputed land.
- [17] A comparison of the survey plans with each other on the one hand and between them and the description of the land in the Brownes' deed on the other hand, shows that survey plan C12/53 depicts to a certain extent, the parcel of land described in the Brownes' deed. In that survey plan and in the deed, the western boundary is identified respectively as 'main road Mespo' and 'a public road'. The eastern Boundary in the C12/53 survey plan and in the deed says 'Heirs of Moses Stanley'. The similarities are glaring. None of the parties disputed the eastern boundary on that plan. It can therefore be accepted as settled as between them. The main disagreement was about the western boundary.
- [18] On that survey plan (C12/53), the northern boundary is occupied by Eileen and Carlton Shallow and Glen Ottley while Roy Adams is identified as the owner of the parcel of land to the north of the disputed land. In the deed, the owners of lands to the North are stated to be Ann McLean and John Weeks. No evidence was led to explain the differences.
- [19] As between the parties, neither the southern boundary nor the northern boundary on survey plan C12/53 or the deed is contested. It is not necessary to dwell on them for present purposes. However, I summarize the relevant descriptions for the sake of completeness. In respect of the southern boundary, the Brownes' deed states that a public byway exists in that location. However,

on plan C12/53 the southern boundary is described as C12/52 and the name Benjamin Swift appears there, signifying that he (Swift) is the owner of that parcel of land. On survey plan C25/103 (the disputed land) the property immediately to the south is described as a track, and below that, by lands are shown on a survey plan C10/114. Survey plan C10/114 was not exhibited. No evidence was adduced linking the 'public byway' to 'the track'.

[20] In light of the descriptions in the deed and on the survey plans, it is apparent that survey plan C25/103 bears no resemblance to the boundary descriptions in the deed. On the other hand, the western and eastern boundaries of the land described in the schedule to the deed correspond with those boundaries as shown on survey plan C12/53. This is strong tangible evidence of the particulars of the land conveyed by that deed.

[21] The deed estimates the size of the land to be three lots more or less. If the entire parcel is captured by survey plan C12/53, each lot would equate to 4,127.33 sq. ft. If the area of the disputed parcel is added, each lot would amount to 4, 548 sq. ft. No evidence was adduced regarding the customary size of lots at the time of the conveyance or since. I make no finding on that issue but observe that the smaller size (4,127.33 sq. ft.) appears to be more commensurate with the parcels of land on which some houses are constructed in the State. I make this observation purely from anecdotal remarks made by parties in their testimony in other trials before the High Court in this jurisdiction⁷. However, I draw no inference and form no conclusion from that observation.

[22] The disputed parcel and the parcel delineated on plan C12/53 are separated by the main Richland Park Road to Mesopotamia. Ms. Browne accepted in her testimony that their land 'stops on the West by a public road'. She testified that she was relying on plan C12/53 to claim the disputed land. She was clear that it showed the land on which Mr. Mc Millan lives. This assertion is contradictory of the other evidence in the case. From this statement, it seems that Ms. Browne was labouring under a mistaken belief.

[23] In their submissions, the Brownes conceded that their title deed 'placed the boundary of the land by

⁷ Over which I have presided.

a road'. They were presumably referring to the western boundary as described in the deed. Their testimony was to like effect. The western boundary is the only one which fits the corresponding description in the deed. It is also compatible with the portrayal of that boundary on survey plan C12/53.

[24] The Brownes' concession is remarkable. Nonetheless, they submitted that the road runs between the small parcel and the bulk of the land which they own. They testified that it was previously a dirt road; its trajectory was changed to facilitate the building of the highway and was apparently adjusted to suit the convenience of the engineers. They produced no evidence of this. I therefore reject this notion as conjecture. It is not grounded in any credible testimony. I am not persuaded by that argument.

[25] Mr. and Ms. Browne contended further that Mr. McMillan relied mainly on title deed of 1936. This is not so. They were the ones who relied on that deed. In any event, they argued that based on that deed, the disputed land was bounded from a previous title deed of 1920 which 'because of the primitive time the land would only have been bounded by primitive dirt road which ... was moved around until the Highway was eventually built.' This appears to be a repetition of the earlier submission.

[26] The 1936 title deed identifies Robertha Simmons as the purchaser and Adelta John as the Vendor. It states in part:

'... Whereas by an Indenture dated the 16th day of January 1920 and made between Edward Corner Mills of the first part Leopold Lester Van Burer Browne of the second part and Adolphus Andrews of the third part the hereditaments hereinafter described were granted and conveyed to the said Adolphus Andrews in trust to the use of the Purchaser for the term of her natural life and after her death to the use of the Vendor her heirs and assigns forever And Whereas the Vendor has agreed to sell all her interest in the said land and hereditaments to the Purchaser free from encumbrances at the price of Seventy – five pounds ...'

[27] It is clear from the foregoing extract that the land conveyed by that deed, was:

1. described and delineated fully in the 1936 deed;

2. comprised all of the land which was previously transferred by the 1920 deed to Adolphus Andrews in trust; and
3. had identical boundaries to the land conveyed by the 1920 deed.

[28] Mr. Mc Millan argued that the disputed land is shown as 1262 sq. ft. on survey plan C25/103 and is similarly described in the valuation report that he exhibited. He submitted that the Brownes have asserted title to a different parcel of land. In this regard, he contended that the title deed and survey plan C12/53 on which they rely accurately depict that their property is bounded by a road on the western side.

[29] A comparison of the description of the land in the 1936 deed with the survey plans produced in this case revealed that the disputed land is an entirely different parcel of land from the land registered by the 1936 deed. In view of this it is clear that while the Brownes' objections are to the grant of a declaration of possessory title in respect of the disputed land, their documentary evidence revealed that the title deed on which they are relying to establish ownership, does not related to the disputed land, but rather to a different parcel of land. Similarly, although they contend that survey plan C25/103 delineates the disputed land, their insistence that the 1936 deed established title to the disputed land is not borne out by the descriptions in the deed and illustrations on the survey plan. Their assertions that the disputed land is described in the deed and illustrated in their survey plan is therefore without merit and is therefore rejected.

[30] In their Entry of Appearance⁸ Chesley Browne, Suzanne Browne and Carlson Browne stated merely that they oppose the grant of declaration of possessory title of the disputed land to Noel Mc Millan. In their claim⁹, they pleaded that the disputed land is family land on which generations of their family lived. They asserted that they were all elderly and (with the exception of Suzanne Browne) were still in possession of and living on the disputed land. They alleged that Suzanne Browne

⁸ Filed on 28th September 2017.

⁹ Filed on 29th September 2017.

occupied a nearby parcel of land while Chesley and Carlson Browne controlled the family land without making a defined partition.

- [31] The Brownes further pleaded that the disputed land was passed to their great grandmother by their grandmother Adelta Simmons. Their evidence is that the converse happened. They alleged that Mr. Mc Millan asked their permission to build a little wooden shop on the disputed land which they allowed. They alleged further that Mr. Mc Millan secretly started to replace parts of 'the house' with concrete blocks and that he did so beginning from the back. They averred that they reported him to the Ministry of Planning as a consequence of which he stopped the building for a while. No explanation was provided as to why they did not stop him directly and why they resorted to making a complaint to the authorities, if as they say they are the persons with a legitimate claim to the land.
- [32] They Brownes pleaded that Mr. Mc Millan later completed the wall structure and ignored all efforts to prevent him from doing so. They alleged that Chesley Browne intervened when Mr. Mc Millan brought a surveyor to survey the disputed parcel. He and his sibling averred that they had a long talk with Mr. Mc Millan concerning his deception, to which he responded that he is entitled to the land having lived there for 12 years. The Brownes pleaded that they only became aware of all of these happenings when they saw a notice in the newspaper of Mr. Mc Millan's intention to apply for a declaration of possessory title.
- [33] Suzanne Browne, Chesley Browne and Carlson Browne have brought no ancillary claim for a declaration of possessory title to the disputed land. An affidavit was filed containing Carlson Browne's name as deponent. He was called by Mr. Mc Millan as a witness. He declined to support Mr. Mc Millan's claim and instead testified that the affidavit was not his. It was not admitted into evidence. No other affidavit was filed on his behalf. He was not permitted to testify for or against Mr. Mc Millan.
- [34] Suzanne Browne's and Chesley Browne's affidavits¹⁰ were admitted as their evidence in chief. At paragraph 2 of her affidavit she stated 'However, due to a family dispute over the strip land

¹⁰ Filed respectively on 3rd January 2018

CARLSON refused to communicate with the family acting and living on his own.' Ms. Browne denied that she had given that statement. She admitted that she had read the affidavit before signing it. She could not remember that the affidavit contained that statement when she read it. Suzanne Browne denied that she and her brother Carlson had a dispute after she became aware of the application by Mr. Mc Millan. I have concluded that Ms. Browne is either forgetful or untruthful. Either way, her testimony is unreliable in view of those inconsistencies.

[35] In response to questions posed during cross-examination when asked when Mr. Mc Millan had placed a board house on the land, Ms. Browne she at first that no board house was ever on the land; then, 'any board house on the land was built by Mr. Mc Millan a few years ago. She then stated that she could not remember when he did so. She added that she believes it was in 2012. She and Chesley Browne accepted that they never collected rent from Mr. Mc Millan. Ms. Browne also stated that 'we' paid taxes for the land in their old people's names. She did not produce any such receipts and said simply that she thinks they are 'somewhere about'.

[36] Ms. Browne admitted writing a letter to Planning on her brother Chesley's behalf in 2001. Almost in the same breath she denied doing so. She was shown a copy of a letter dated 18th May 2001 signed 'Susan Browne'. She admitted that it was her signature but was adamant that she wrote or signed that letter. Her brother Chesley testified that she did write the letter on his behalf to the Ministry of Planning to grant him permission to build on the land circumscribed by survey plan C12/53. He recalled that he needed her permission because she was the one who pays the taxes and he had to report to her. Ms. Browne repeatedly denied knowledge of the letter or that she had exhibited as part of her case. The court's record reflects that the letter was exhibited to a document headed 'List of Exhibits', signed by the Brownes' legal practitioner Mr. Sylvester Raymond Cadette and filed on 29th September 2017.

[37] Chesley Browne testified that he surveyed the land in 2001 and that it amounted to three lots. Under cross-examination, he accepted that he asserted in his evidence in chief that the land he and his siblings were claiming were fully captured in survey plan C12/53 which is bounded by the main road on the Western side. He acknowledged too that it is the same land described in the

1936 deed. He explained that he was unable to afford the cost of surveying the entire parcel and he therefore only paid to survey the part which was on the eastern side of the public road.

[38] Mr. Browne recalled that when he surveyed the land in 2001, the surveyor told him that there is a piece over the road that he would have to pay to do separately because that's a part of the old land. Interestingly, Mr. Browne averred that Mr. Mc Millan already had a house on the disputed land by that time (2001) and also before he (Browne) took the letter to Planning. He said that Mr. Mc Millan has been living on the disputed land since the 1990s. He was not sure if it might have been 1980.

[39] I find it curious that the surveyor would survey and file a survey plan for part of a single parcel of land and have it approved by the Chief Surveyor. In this regard, I am mindful of the prescriptions of the Land Surveyors Act¹¹ which impose duties on the latter to supervise all surveys, ensure that they are correct and authenticate them. I am reluctant to accept and act on this part of Mr. Browne's testimony. I therefore reject it as being unreliable.

[40] Mr. Browne claimed that he did not stop Mr. Mc Millan from building the wall house because he did not know he was constructing it. He said that his view was obstructed by the galvanize fence which was very high. Mr. Browne added that he placed some materials on the property which have secured his interest in it. He did not say when he did so and under what circumstances.

[41] Neither Suzanne Browne nor Chesley Browne filed their claim in this matter in a representative capacity on behalf of Adelta Simmons' estate. Neither did Carlson Browne. They are therefore unable to prosecute a claim in that capacity¹². They have not proffered any facts on which the court can find that they are entitled to object to the claim in their personal capacities. Moreover, they led no satisfactory evidence from which the court may find that they are so entitled.

[42] Ms. Browne based her personal 'claim' on an assertion that she worked the disputed land about 10 years ago previously and Mr. Browne asserted that he put an old vehicle and other items on it at

¹¹ Cap. 370 of the Laws of Saint Vincent and the Grenadines, Revised Edition, 2009.

¹² *Ingall v. Moran* [1944] 1 All E.R. 97 at pg. 172; *Finnegan v. Cementation Co.* [1953] 1 Q.B. 688; Civil Procedure Rules Part 21.

some point. These alleged acts of possession are inadequate to establish a legal or equitable interest in the disputed property. The Brownes' accounts were riddled with inconsistencies on documentary and material matters. This makes it difficult to accept their assertions. I therefore reject their accounts. In the absence of relevant pleadings supported by testimony, I conclude that their objections to Mr. Mc Millan's claim are not credible and baseless. In any event, they (Chesley, Suzanne and Carlson Browne) have made no application for a declaration of possessory title in their own right. I make no award in their favour.

[43] I turn now to consider whether Mr. McMillan has proved that he has acquired an interest in the disputed land through adverse possession. He said he did not know Lester Browne because he died while he (Mc Millan was a child). He recalled that when he was growing up, he lived with his siblings on a neighbouring lot of land. He claimed that he has lived on the disputed lands from the time he was 18 years old. He testified that he started built a two room board house on the disputed land in the 1970s which he subsequently broke down and converted to a concrete house in the 1980s. Ms. Browne and her brothers denied this. They averred that Mr. Mc Millan at all times had their permission to occupy the subject lands. He refuted this.

[44] He had one witness – Rhonda Cecelia Haynes. She testified that she has known Mr. Mc Millan for over 25 years, during which time he has always lived in the disputed lands. She averred that Mr. McMillan lived there in a wooden house during the 1990s and that he converted it to a wall house around 2005. She stated that she and Mr. McMillan have lived there together as man and wife for over 11 years.

[45] Ms. Haynes claimed that on occasions she has paid the property taxes and utility bills on Mr. McMillan's behalf. She said that he has treated the land as his own for over 25 years and has not paid rent to anyone in connection with his occupation. She testified further that she is not aware that anyone else has claimed the parcel of land.

[46] Her account is similar to and corroborates Mr. Mc Millan's except in relation to the timelines when the board house was built and converted to wall. However, Ms. Haynes was not subjected to any cross-examination. Consequently, her account was not challenged. Suzanne Browne and Chesley

Browne asserted that Mr. Mc Millan migrated to Trinidad for an extended period of over 20 years and that he was never in continuous occupation of the disputed property in excess of 12 years. Ms. Haynes' account says otherwise. It stands uncontroverted and may be accepted by the court in proof of Mr. Mc Millan's claim. The Brownes' failure to challenge her testimony is accepted by the court as an acknowledgement by them that she was being truthful.

[47] Mr. Mc Millan's version of what has transpired on the land over the 12 years immediately preceding his application for a declaration of possessory title is credible and I believe him. I also believe Ms. Haynes. The discrepancies in their testimony as to the dates can be reconciled by regard to the differences in recall capabilities of different persons. In other respects, their demeanour and the manner in which they testified left me with the impression that they were witnesses of truth. Together Ms. Haynes and Mr. Mc Millan have provided evidence of his exclusive and uninterrupted occupation of the disputed land in excess of 12 years immediately before the claim was filed. I believe them.

[48] In accordance with the Act¹³, Mr. Mc Millan filed a valuation of the subject land; newspaper advertisements of notice of his application; copy of a survey plan authenticated by the Chief Surveyor; proof of service of his application on adjoining land owners; publication of notices at the relevant Magistrate's Court and the Registry of the High Court; and copies of receipts for payment of property taxes and utility bills¹⁴. Mr. Mc Millan's valuation report did not include an estimated value of the buildings on the property. Those particulars are required for stamp duty purposes¹⁵.

[49] The Brownes submitted that the court may not rely on the survey plan because the surveyor did not serve notices on them. Ms. Browne gave evidence to this effect. The Brownes submitted that the surveyor's failure in this regard is a 'great irregularity by the surveyor Kendon Lavia'. They did not indicate why they describe it as an irregularity. Section 16 of the Land Surveyors Act imposes an

¹³ Sections 4, 5, 6, 7 and 8.

¹⁴ Filed respectively on 13th June 2017, 6th October 2017; 29th September 2017; 29th September 2017; and 12th June 2017.

¹⁵ Pursuant to section 31 of the Act.

obligation on a surveyor to give notice to any owner of land which he intends to survey. Section 26 of that Act empowers the Chief Surveyor to cancel any authenticated survey plan.

[50] The surveyor Kendon Lavia was not a witness or party in the case. The Brownes have not alleged that any part of the survey is incorrect. In any event they may apply to the Chief Surveyor under the Land Surveyors Act for any relief they consider necessary. They have advanced no allegations from which this court may find that an irregularity has occurred which attracts any sanctions.

[51] The Brownes submitted further that the disputed land is too small to form a distinct and separate piece of land. They contended that it is highly unlikely that the Government would survey large parcels and leave a mere 1262 square feet without incorporating it in one of the larger parcels. They argued that the parcel 'belongs to one of the parcels surrounding it and a finding that it is a separate piece 'goes against the principle of the Government Planning and Surveying'.

[52] No such principle was presented to the court. I am unaware of such policy, regulation or law. I note however, that the impugned survey plan is authenticated by the Chief Surveyor who should be aware of such policy or law. The authentication by him suggests that no such principle exists. This submission is without merit.

[53] The Brownes argued further that Mr. Mc Millan would have needed a title deed to prove ownership of the property, in order to pay taxes. I take judicial notice that applicants for declarations of possessory title routinely aver that they have paid taxes in respect of land over which they are claiming an equitable interest. In all such cases, none of the applicants are able to produce a title deed. By its very nature, such an application hinges on an assertion that the applicant has no such title. This contention does not find favour with the court.

[54] The Brownes made a number of submissions in reliance on affidavits filed by Carlson Browne. Since he did not testify those submissions are not considered. The Brownes pointed to the copy of the survey order filed by Mr. Mc Millan and argued that Susan Browne is named as the owner of the disputed property. They submitted that this pre-supposes that Mr. Mc Millan informed the

surveyor that Suzanne Browne is the owner. They also contended that the Chief Surveyor accepted this survey order and made a ruling that Suzanne Browne is the owner of the land. No such ruling was presented to the court. Under cross-examination, Mr. Mc Millan said that he cannot read. He also said that all that the surveyor said on the survey order is correct.

[55] There is no evidence before the court as to who prepared the referenced survey order. For practical purposes, if Mr. Mc Millan cannot read he would not be able to confirm what is written on the document. He did not say whether it was read to him. I make no finding that it was. I therefore make no finding and draw no inference regarding his knowledge of what was written on it, where or by whom. It follows that I cannot charge him with responsibility for the contents of the survey order.

[56] I hasten to add that the survey order was not part of the evidence considered by the court in arriving at this decision since no certified copy or original of the survey order was produced, in accordance with the law¹⁶. The decision regarding who owns any particular real property in the State is not a function which the Chief Surveyor is empowered by law perform. Any submission to this effect is not supported by the law. It is therefore not entertained in the case at bar.

[57] I accept Mr. McMillan's testimony that he always intended to own the land during the period of his extended occupation. He has met the evidentiary and statutory requirements for the grant of a declaration of possessory title of the subject lands. It is therefore declared that he is the true owner of the disputed lands. He is entitled to recover costs from Chesley Browne, Suzanne Browne and Carlson Browne.

ORDER

[58] It is accordingly ordered:

1. Noel Mc Millan's application for a declaration of possessory title of property situated at Richland Park in the State of Saint Vincent and the Grenadines, delineated and

¹⁶ Evidence Act Cap. 220 of the Laws of Saint Vincent and the Grenadines, Revised Edition, 2009 and applicable rules.

described in survey plan C25/103, approved and lodged at the Lands and Survey Department on September 30th, 2016 by Chief Surveyor Keith Francis is granted.

2. Noel Mc Millan is the true owner of all that piece or parcel of land situate at Richland Park in the Parish of Charlotte, in the State of Saint Vincent and the Grenadines, comprising approximately one thousand two hundred and sixty two square feet (1,262 sq. ft.) with appurtenances thereon; more particularly described and delineated in survey plan C25/103 approved and lodged at the Lands and Survey Department on September 30th, 2016 by Chief Surveyor Keith Francis, bounded as follows:

On the north by lands in the possession of Roy Adams, on the south by a track, on the east by the Richland Park Road and on the west by a drain as shown on the plan drawn by Kendon Lavia authorized licensed land surveyor.

3. Noel Mc Millan shall file at the Court office on or before 13th March 2019, a valuation of the subject property prepared by a registered and qualified land valuator, such valuation to include a current value of the buildings erected on it.
4. Noel Mc Millan shall pay the applicable stamp duty pursuant to the Possessory Titles Act, based on the value ascribed in the valuation report filed in accordance with paragraph 3 of this order.
5. Chesley Browne, Suzanne Browne and Carlson Browne shall pay to Noel McMillan prescribed costs of \$7,500.00 pursuant to CPR 65.5(2) (b).

[59] I am grateful to both counsel for their written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar