

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHPT2016/0037

IN THE MATTER OF AN APPLICATION BY JESSIE AGNES POLSON ALSO KNOWN AS JESSIE AGNES
ICENA JOHN FOR A DECLARATION OF POSSESSORY TITLE TO LAND

Appearances:

Mr. Matthias Stewart for the applicant.

Mr. Jonathan Lewis for the respondent.

2019: Jul. 11 & 23

Jul. 31

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Ms. Jessie Agnes Polson is also known as Jessie Agnes Icena John¹. In October 2016, she applied for a declaration of possessory title of a parcel of land comprising 4.165 acres of land ('disputed land'). The land is situated at Union Island, in the Parish of the Grenadines in the State of Saint Vincent and the Grenadines. Ms. Polson claimed that she has occupied the land for over 40 years with the intention to own it.

[2] Ms. Veronica Haynes filed an Affidavit in December 2016 in which she alleged that she owns the disputed lands by Deed of Assent. She deposed that the disputed land was owned by her grandmother Sarah Hutchinson (a.k.a. Sarahlean Hutchinson) and was inherited by her mother Bethamous Hutchinson who then transferred it to her. She sought an order dismissing Ms. Polson's application.

ISSUE

[3] The issue is whether Jessie Agnes Polson is entitled to a declaration of possessory title to the

¹ Referred to hereafter as Ms. Polson or Jessie Polson.

disputed land.

ANALYSIS

Issue – Is Jessie Agnes Polson entitled to a declaration of possessory title to the disputed land?

[4] The Possessory Titles Act ('the Act')² outlines the requirements for grant of a declaration of possessory title. Ms. Polson's application will therefore be assessed in light of its provisions. The Act provides that an applicant must file an application in the prescribed form, include a description of the land and an estimated value. Ms. Polson supplied those particulars. She indicated that it is valued at \$249,900.00. She described the land by area and by reference to the boundaries, and included survey plan Gr16/119³ which depicted the land. A notation on the plan states that it supercedes lot S108 on plan Gr2.

[5] In accordance with the Act, Ms. Polson advertised notice of her application by publication in two newspapers circulating in Saint Vincent and the Grenadines. She caused notice of the application to be published the Magistrate's Court office in Union Island and in the High Court Registry office. She exhibited copies of the advertisements and provided certificates of publication in the High Court and Magistrate's Court. She did not serve notices of the application on landowners who own property adjoining the disputed land as required by the Act. Ms. Polson has thereby complied with only some of the stipulated statutory requirements.

[6] A person seeking to obtain a declaration of possessory title to land must establish on a balance of probabilities that she has enjoyed adverse possession of the land. 'Adverse possession' is defined in the Act⁴ to mean exclusive and undisturbed factual possession of the subject land for at least 12 years and with the requisite intention to own it.

[7] In the celebrated case of **Powell v McFarlane and Another** Slade J. explained the concept. He remarked:

'.... Factual possession signifies an appropriate degree of physical control. It must be a

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

³ Approved and lodged at the Lands and Survey Department on 20th April 2016 by Chief Surveyor Keith Francis.

⁴ Section 2 of the Act.

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...'.⁵

[8] Ms. Polson averred that she had exercised such control over the disputed land. Her testimony was corroborated in material respects by her witnesses Junior Polson and Egbert John. Ms. Polson testified that she has lived in Union Island for over 70 years and is very familiar with the disputed land. She acknowledged that she did not know the adjoining landowners or where the boundaries are located. She alleged that the disputed lands were owned by her grandmother Mary Polson with whom she lived from the age of 5 until her grandmother passed away in 1950. She explained that her grandmother had one child, her father Simeon John who took control of the disputed land after his mother's death.

[9] Ms. Polson claimed that she took control and possession of the disputed land in 1975, after her father migrated from Union Island. She averred that thereafter she treated them as her own. She deposed that she and her children reared cattle and sheep on the land for many years to bring in additional income through the sale of the livestock. She explained that this might have been about 20 something years ago. She stated that over the years she has exercised her right over the lands as legal owner, maintained the boundaries, and protected them from trespassers and encroachment. She indicated that she has not been on the subject land for the past 50 or 55 years.

[10] Ms. Polson testified that her mother Anesta Henry planted cotton, peas, corn, pumpkin and other crops on the lands until she 'got down in age'. She did not indicate when this ceased. She stated that she too also planted crops on the lands about 30 years ago. Ms. Polson said that no one has ever questioned or challenged her right to ownership of the subject lands since 1975. She averred that no one has conducted any activity on the disputed land for the past 12 or so years. This is telling and cannot be ignored.

⁵ (1977) 38 P & CR 452 Ch D at 470 – 471. See also J. A. Pye (Oxford Ltd & Ors v Graham and Another [2002] UKHL 30.

- [11] She produced copies of 5 receipts⁶ for payment of land taxes in respect of land situated at Union Island. The receipt described the land respectively as District No. 356700 and 15/151/10310101L. The receipts for the first 3 of those years reflected that the taxes were paid on September 27th 2013 and for the last 2 years, on 25th September 2015. Ms. Polson stated that she paid taxes for a number of years then stopped, then re-commenced. She insisted that although the references on some of the receipts are different, that they are for the same parcel of land with the same reference – ‘Mary Douglas’. The receipts do indeed contain that name as the payee.
- [12] Ms. Polson insisted that the disputed lands are the only lands in respect of which she is paying taxes. She stated that she never observed that the receipts had different district numbers. She submitted that the clerk made a mistake by writing those numbers. No evidence of such mistake was adduced. I therefore reject that contention.
- [13] Ms. Polson produced a copy of a Crown Grant in respect of 4 acres and twenty eight poles of land situated at Union Island and made in favour of Mary Douglas on 24th May 1933. A legend at the left side of the Crown Grant depicts a plot of land described as S108 bordered on the West by S102 and on the East by S109. Ms. Polson testified that the land was owned by her grandmother Mary Douglas who died in 1950 as stated in her application.
- [14] Mr. Egbert John said that he and Ms. Polson are cousins. Mr. Junior Polson is her son. Mr. Polson and Mr. John testified that they are familiar with the subject lands. They stated the lands were used by Ms. Polson for rearing livestock (mainly cattle and sheep). Mr. Polson averred that he was about 15 years old when his mother took control of the subject lands. He recalled that he and his siblings used to raise animals on it and pick mangoes. He testified that they stopped rearing animals about 25 to 30 years ago.
- [15] Mr. Polson said that the land contained grass and trees at that time and could be described as normal pasture land. He indicated that it is now full of trees and has been like that for the past 35 – 40 years. For his part, Mr. John stated that the land has been in bush for the past 15 years and that

⁶ For assessment years 2011, 2012, 2013, 2014 and 2015 numbered respectively 746751, 746752, 746753, 778206 and 778204.

Ms. Polson is doing nothing on the land at present. Ms. Polson accepted that the disputed land is now covered in bush and trees.

- [16] Mr. Polson testified that he picked mangoes on the disputed land within the past month. He stated that he has never seen anyone there since he last went there to pick mangoes. He identified the adjoining landowners as 'One Mulrairie, one Cadette, 100 acre and estate to the bottom where the resort is in Chatham'. He stated that the government is in charge of 100 acre.
- [17] Ms. Veronica Haynes testified that the disputed land was owned by her grandmother Sarah Hutchinson who was succeeded as owner by her mother Bethamous Hutchinson, who eventually transferred it to her. She produced a certified copy of Deed of Assent No. 3154 of 2010. It recited that it was made between Bethamous Hutchinson and Veronica Haynes. It outlined that Sarah Hutchinson aka Saralene Hutchinson aka Sarahlean Hutchinson⁷ was 'seised of the subject lands at the date of her death; and that Letters of Administration 2 of 1972 were subsequently extracted in her Estate by her husband Isaac Hutchinson who died without fully administering the estate.
- [18] It recited further that the referenced Letters of Administration were amended; that Letters of Administration De Bonis Non were issued by the High Court in 2010 bearing registration number 106 of 2010; and that the beneficiary Bethamous Hutchinson requested Sarah Hutchinson ('the administratrix') to transfer the subject lands to Veronica Haynes. The Deed of Assent purported to convey to Veronica Haynes the land described in the Schedule, being 74.99 acres of land at Union Island shown as lots S90, S103, S105 and S109 compiled from a Government survey of the island of Union Island during the years 1910 and 1911. No such government survey was presented to the court.
- [19] The Deed of Assent referred to no root of title or other registered deed which traced the documented and authenticated history of the ownership of the disputed land. In effect, it is a self-serving document which does not prove that the subject lands were owned by Sarah Hutchinson or Bethamous Hutchinson or by Ms. Veronica Haynes. Significantly, while the parties have referred to

⁷ Referred to hereafter as 'Sarah Hutchinson'.

the disputed lands as lot S108 in their testimony, the Schedule to the Deed of Assent does not purport to convey any interest in lot S108.

[20] Ms. Haynes testified further that Ms. Polson has not grazed animals on the disputed lands. She stated that she often makes trips to Union Island and has never seen any animals grazing on the land. She averred that the valuation list at the Government valuation department would show that there has been a change of ownership in relation to the records kept there in respect of the disputed land. She claimed that on the one hand, the assessment number for the land is now '450356' and the map reference is 158/10/270L; while on the other hand, the receipts presented by Ms. Polson refers to district No. 15/151/030101L and 356700. She asserted that Ms. Polson must be mistaken regarding the lands she claims that her grandmother owned or possessed.

[21] Neither party produced any records from the Government property tax office or Inland Revenue Department which addresses the numbering or reference system for the disputed lands or lands in Union Island. The court may not just act on Ms. Haynes' say so without credible proof as to her assertions. I refrain from doing so.

[22] Ms. Haynes admitted that she has been institutionalized in a mental institution in the United Kingdom and in Glenn a few times. She indicated that she did not know how many times. She said she did not know if Glenn is in Saint Vincent and the Grenadines. She stated that she was of sound mind when she 'took out' the Deed of Assent. She indicated that her mother paid taxes in respect of the disputed lands up to 2010. She also claimed that in 2010 after the Deed of Assent was executed, she (Ms. Haynes) paid taxes in respect of the 74.99 acres mentioned in the Deed.

[23] Ms. Haynes testified that her mother had been in charge of it. She indicated that she has made numerous trips to her property for many years. She denied that the Polson family has paid the taxes and are in possession of the disputed lands. She was shown a copy of survey plan Gr16/119. She stated that she was unaware that the land depicted on it is the disputed land.

[24] Ms. Haynes did not provide a survey plan of the land described in the referenced Deed of Assent. The Schedule to that Deed contains no description of the boundaries and does not identify any

adjoining owners. There is nothing in the Deed which suggests that it is identical to any portion of the disputed land. Ms. Haynes provided proof of payment of land taxes in respect of land situated at Union Island in District No. 15, reference number 450356 and map reference no. 158/10/270L. Neither corresponds to the entries on Ms. Polson's receipts. It appears that they relate to a different parcel of land.

[25] In any event Ms. Haynes' receipts are in respect of assessment years 2010, 2011, 2013, 2014 and 2015. The tax receipts exhibited by Ms. Haynes do not assist in arriving at a determination as to ownership of the disputed land. No other witness testified as to any similarities between the disputed lands and the lands in the Deed of Assent. I make no finding that any part of the disputed lands constitute part of the lands described in the Deed of Assent.

[26] Ms. Haynes contended that Ms. Polson has not satisfied the requirements of the Act. She submitted that Ms. Polson and her witnesses have given contradictory evidence of the period of time that she has occupied the disputed land. She argued that Ms. Polson has not visited the land in over 50 years and is unsure of the identity of the adjoining owners. Ms. Haynes submitted that Junior Polson's and Egbert John's testimony that the land is covered in trees and bush and that nothing has been done on it for 25 or more years contradicts Ms. Polson's claim to exclusive possession during that time.

[27] Ms. Haynes contended that Ms. Polson has not identified the person who is registered as the owner of the subject property. She argued that this failure is fatal to the application because it is a requirement stipulated by section 4 (c) and (d) of the Act. She relied on the judgment in civil claim **SVGHPT2009/0023 – In the Matter of an Application for Declaration of Possessory Title to land by Corlins Small**. Ms. Polson did in fact name Mary Douglas as the owner in her application filed on 3rd October 2016⁸. She exhibited a copy of the Crown Grant to a further affidavit filed on March 20th 2019. The Crown Grant was listed in her List of Documents⁹. Ms. Haynes is therefore

⁸ At paragraph 5a.

⁹ Filed on December 21st 2018.

taken to have conceded its authenticity¹⁰.

- [28] Ms. Haynes submitted further that Ms. Polson has not complied with the statutory requirement as to the details which must be included in a supporting survey plan. She contended that the plan is not authenticated by the Chief Surveyor and does not show the names of the adjoining owners or occupiers. The survey plan exhibited by Ms. Polson does not contain those details.
- [29] Ms. Haynes argued that there is no certainty that the adjoining land owners were served with notice of the application as required by section 8 of the Act. She argued further that this is further reason why the application should not be granted. She cited the judgment in civil case **SVGHPT2011/0079 – In the Matter of an Application for a Declaration on of Possessory Title to Land by Milad Sassine** where a claim with a similar defect was dismissed. I agree that this is a mandatory requirement.
- [30] The case file in the case at bar reflects that no service of the application was effected on the adjoining land owners. Adjoining landowners have a right to know about any application for a declaration of possessory title to land which has one or more common boundaries with theirs. It would afford them an opportunity to review the boundaries of the land which is the subject of the application and assist the court in making orders which do not have the effect of varying established boundaries. Such owners must be afforded an opportunity to record objection if necessary. Lack of notification deprives them of that opportunity. The Court cannot countenance a departure from this requirement unless there is good reason for doing so. Ms. Polson has provided no such justification.
- [31] Ms. Polson filed a photocopy of a survey order which suggests that a survey was conducted on 12th April 2016. It does not appear from that document that any adjoining landowner was present during such survey. By Affidavit filed on 15th November 2017 Police Constable Rohan Holder averred that he posted a copy of the Notice of the application on a wooden post adjacent to the disputed land at Chatham Bay, Union Island on August 9th 2017 at 1.30pm. No other allegations of such service on any person were made in this matter. I find that there was none. I therefore conclude that the adjoining landowners were not served with the requisite statutory notices. This is fatal to Ms.

¹⁰ CPR 28.18.

Polson's application.

[32] Ms. Polson submitted that she is entitled to a declaration of possessory title in respect of the disputed land. She argued that her grandmother Mary Douglas was allotted the subject lands on 7th June 1920 as evidenced by Crown Grant dated May 23rd 1933. She contended that the legal title is registered in the name of Mary Douglas by virtue of the Crown Grant. This suggests that Ms. Polson might be advancing a claim as executor de son tort or on behalf of the beneficiaries of the deceased's estate. Her claim was not formulated as such. Moreover, she would be faced with the legal peril that an applicant cannot seek adverse possession of land which is owned by her.¹¹

[33] In light of the foregoing and having regard to the lack of information supplied regarding the delineation of boundaries or other identifying delineation markers for the lands purportedly transferred by the Deed of Assent 3154 of 2010, I make no finding that it is related in any way to the disputed lands. I hold that as a matter of law, the Deed of Assent creates no legal interest to the disputed land in Ms. Haynes' favour.

[34] I accept Ms. Polson's and her witnesses' testimony that she has occupied and exercised exclusive and continuous control over the disputed lands for many years. She has failed to establish that she has so occupied the disputed land for a continuous period during the 12 year period immediately preceding her application for a declaration of possessory title. While she has complied with most of the other procedural and statutory requirements under the Act, she has not complied with the imperative obligation to notify adjoining landowners and she has not supplied cogent evidence that she has exercised acts of ownership over the disputed land continuously for the relevant 12 year period. She has not established on a balance of probabilities that she has enjoyed adverse possession of the disputed lands. For those reasons, she is not entitled to a declaration of possessory title of those lands. I make no order in her favour.

Miscellaneous - Veronica Haynes' Mental Capacity

[35] Ms. Veronica Haynes was absent from the hearing on the first day fixed for trial. Her legal practitioner made an oral application for the trial date to be vacated without a firm date being fixed

¹¹Arnold Celestine (Administrator of the Estate of O'Ferril Celestine) v Carlton Baptistes, GDAHCVAP2008/0011.

for the trial to take place. He indicated that he was unable to get in touch with Ms. Haynes because she had moved from her residence at Redemption Sharpes and was now living at Glenn. The record revealed that proof of service had been effected on the parties in May 2019. The application was dismissed.

[36] At the end of Ms. Polson' case, the trial was adjourned to enable Ms. Haynes to attend to testify. On the adjourned date, she testified that she lives at Redemption Sharpes. She submitted that her admission of having been hospitalized due to mental illness is not definitive as to whether she is precluded from giving evidence. She argued that her testimony is not thereby rendered inadmissible. Ms. Polson submitted that her admission that she was hospitalized as a patient at a mental institution proves that she is not of sound mind. I do not agree. In the absence of medical evidence on this issue, I make no finding that Ms. Haynes is not of sound mind.

Costs

[37] Costs usually follow the event and are generally awarded to the party who wins. In deciding what costs order to make, the court takes a number of matters into consideration including whether it is reasonable for a party to pursue a particular allegation. Having reviewed the evidence, it is clear that the property referred to in Deed of Assent No. 3154 of 2010 is not the same as the disputed land. This is demonstrated by a comparison of the description in the tax receipts submitted by Ms. Haynes, with the entries and details supplied in the Crown Grant and the references to S108. In the circumstances, the appropriate order is that each party bears her own costs.

Order

[38] It is declared and ordered:

1. Jessie Agnes Polson a.k.a. Jessie Agnes Icena John's application for a declaration of possessory title of property situated at Chatham, in the State of Saint Vincent and the Grenadines, is dismissed.
2. Each party shall bear her own costs.

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

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar