

Same as (9)
~~(12)~~

IN THE COURT OF APPEAL
DOMINICA

Civil Appeal No. 4 of 1970

Between: ST. FORD PAUL Caveatee/Claimant
and

ALDITH PAUL
and
MIDORA BONTIFF Caveators/Respondents

Before: The Honourable the Chief Justice
The Honourable Mr. Justice Gordon
The Honourable Mr. Justice P. Cecil Lewis

F.E. Degazon and E. Francis for Caveatee/Claimant
J. Armour and B. Alleyne for Caveators/Respondents

1971, March 24

JUDGMENT

LEWIS, C.J.:

This is a claim for the decision or direction of the Court of Appeal under section 170 of the Title by Registration Ordinance Chapter 222. It concerns an application for a certificate of title to a portion of land containing 30.275 acres situate at Thibaud in the parish of St. Andrew made by the claimant now the caveatee, St. Ford Paul. Against the grant of the certificate requested, the caveators filed separate caveats on the 4th March, 1970. The matter in due course came before the learned judge in Chambers under sections 13 and 17 of the Ordinance. Evidence was given by both caveators and witnesses on their behalf and also by the claimant and witnesses on his behalf.

The caveators objected to the grant of the certificate on the ground that they are the legal owners of the land and intend to apply at the appropriate time for the issue of a certificate of title in their favour. A number of testamentary documents were put in evidence. These showed that the land originally belonged to one Euphrasine Soubrian and that in due course a portion was left to the children of one Severin Augustine and the remainder to one Eugenia Figaro. Eugenia Figaro was the mother of the two caveators. Their case was

/that they had

that they had occupied the whole land, first of all along with their mother, and then with one Virginia Letang who was one of the children of Severin Augustine; that Virginia Letang was the last of Severin Augustine's children to die, and that they had continued in possession of the whole land since her death in 1952. They had, they said, cultivated the land together with their mother and Virginia Letang mainly in coconuts, and also in vanilla and bananas and a little coffee. They gave evidence that two cases had been brought against them to recover the land, one by the claimant and the other by one Bruney who purported to represent the estate of Virginia Letang. Both cases had failed, and from 1954, after the second case, the claimant had made no attempt to enter into possession of the property.

The claimant, Paul, said that he had first gone on the land in 1944 with Virginia Letang and her husband and that he had planted and cultivated the land with them in coconuts, vanilla, bananas and coffee. He had purchased the land under a Deed of Conveyance, which he produced, dated the 27th September, 1947, and he also claimed that a further portion of land had been devised to him under the will of Virginia Letang. The caveators, he said, had cultivated gardens on his land without his permission, and by 1954 had planted up the whole land.

Paul had been absent from Dominica on several occasions and had left one Watson Bontiff to take care of his interests. Bontiff and two other witnesses, Claude Bruney and Trevellyan Bruney, gave evidence on his behalf regarding the shipment of coconut plants, but their evidence was unsatisfactory and was not accepted by the learned judge.

In his judgment, delivered on the 30th April, 1970, Berridge, J. found as a fact that the caveators had been in possession of the land the subject matter of the application for upwards of twelve years. He held that that being so, section 2 of the Real Property Limitation Ordinance, Cap. 16 would operate against the claimant and that he would not be able to recover the land in possession of the caveators or to bring an action in respect of the land. He also said that the caveators had not established title under either section 12 (1) (a) or (b) of the Title by Registration Ordinance, and basing himself upon this statement he discharged the caveats.

/The claimant

The claimant has asked the Court to review this decision. On his behalf learned counsel submitted that the judge having discharged the caveats ought to have gone on to make a finding with respect to the claimant's application for a certificate of title. He further submitted that the learned judge was in error when he said that because of the adverse possession for upwards of twelve years the claimant would not be able to recover the land, and it was contended that this was so because there was a difference between the Dominica Real Property Limitation Ordinance, Cap. 16 and the Real Property Limitation Act, 1833 (3 & 4 Wm. 4 ch. 27) of the United Kingdom. The difference, learned counsel submitted, was that section 34 of the United Kingdom Act barred the right of the former owner, whereas that section was not reproduced in the local Ordinance, and section 2 of the Real Property Limitation Ordinance barred only the remedy.

It was agreed by counsel at the Bar that the judge having found that the caveators had been in possession of the land for upwards of twelve years - and this finding of fact was not challenged - he was in error in discharging the caveats. Under section 12 (1) (b) of the Title by Registration Ordinance, a person who wishes to register land under the Ordinance and who cannot show a good documentary title to the land in himself and his predecessors in ownership for at least thirty years next before the date of the presentation of his request may, nevertheless, claim a certificate if he can satisfy the Court from the deeds or other documents accompanying the request, that he has the right to claim the land as owner and that he himself has been in undisturbed possession of the same continuously during the period of twelve years next before the date of the presentation of the request under this Ordinance. This paragraph is tied in with section 2 of the Real Property Limitation Ordinance which bars the right to bring an action to recover any land after the expiration of twelve years next after the time at which the right to make entry or to bring an action or suit to recover possession first accrues. So that it is clear from the judge's finding that the caveators had succeeded in showing that the claimant could not bring himself under section 12 (1) (a) or (b) of the Ordinance, as they had established adverse possession for over 12 years, and therefore the caveats should have been upheld.

/It was

It was also agreed at the Bar that the learned judge had misdirected himself in assuming, as he seems to have done, that the caveators had to establish title under section 12 (1) (a) or (b) of the Title by Registration Ordinance in order that the caveats should be upheld. It was not the caveators who were asking for a certificate of title, and that section applies not to caveators, but to the person who requests the certificate of title. Therefore, the learned judge erred in basing himself upon that section when he decided to discharge the caveats.

Objection was taken by learned counsel for the claimant to the judge's statement that the caveatee, that is the claimant, will not be able to recover the land, and as I have said he based that submission on an alleged difference between the United Kingdom Act and the local Ordinance. But it was pointed out to the Court that section 10 of Chapter 16 does apply to this State the provisions of 3 and 4 Wm. 4 ch. 27 of the United Kingdom with the exception of certain sections which are not pertinent to this case. Therefore the submission based on the supposed absence of s. 34 of that Act from the local Ordinance fails.

In my view the decision of this Court ought to be that the decision of the Court below discharging the caveats should be set aside and that an order maintaining the caveats should be made. The claimant should pay the costs of the caveators here and in the Court below.

(Allen Lewis)
Chief Justice

GORDON, J.A.:

I agree.

(K. L. Gordon)
Justice of Appeal

CECIL LEWIS, J.A.:

I also agree.

(P. Cecil Lewis)
Justice of Appeal