

COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

HCVAP 2006/013

BETWEEN:

BURTON RIVIERE

Appellant/Claimant

and

JUDITH DURAND

Respondent/Defendant

Before:

The Hon. Sir Brian Alleyne, SC

Chief Justice [Ag.]

The Hon. Mr. Hugh A. Rawlins

Justice of Appeal

The Hon. Mr. Errol L. Thomas

Justice of Appeal [Ag.]

Appearances:

Mrs. Zena Dyer and Ms. Gina Dyer for the appellant/claimant

Ms. Noelise Knight for the respondent/defendant

2007: November 27;

2010: November 10.

Civil Appeal – land dispute – whether the respondent wrongfully entered and took possession of the land – uninterrupted possession – whether the respondent's claim to title is valid – s. 33 of the Title by Registration Act – whether the appellant's claim of wrongful entry and possession is statute barred –

The appellant claimed that in November 2003, the respondent wrongfully entered and took possession of the disputed land, and has wrongfully remained in possession and at the time constructed a building thereon. The respondent's case was that she had rented the disputed portion of land from 1980 and paid rent until 1984. Further evidence was adduced at the trial that the respondent's house on the land was consumed by fire in either 1993 or 1995. The trial judge held that if the respondent was in uninterrupted possession without paying rent since 1984, a period in excess of 12 years, any attempt to remove her would have been statute barred.

Held: dismissing the appeal and awarding costs to the respondent.

1. That the title to the land remains vested in the registered proprietors under the **Title by Registration Act**. Section 8 of the Act provides that the Certificate of Title is indefeasible, and any attempt to limit the rights of the registered proprietors can only be effective if pursued in accordance with the provisions of the Act.
2. That the learned judge was correct in holding the appellant's claim to be statute barred in terms of the **Real Property Limitation Act**. In light of s. 33 of the **Title by Registration Act** it would not have been within the jurisdiction of the learned judge to order that the respondent be issued a Certificate of Title to the disputed land.

JUDGMENT

This is the judgment of the Court:

Background

- [1] **Alleyne C.J [Ag.]**: The respondent, Burton Riviere, the son of Lawrence (or Lawrance) Riviere and grandson of Joseph Alexander Riviere, claimed to be entitled to 6.062 acres of land, part of Beausejour Estate containing some 216 acres 1 rood, registered under the **Title by Registration Act**¹ in Book A2 fol. 3, the registered proprietors being 12 individuals including Joseph Alexander Riviere. The Certificate of Title is dated 6th March 1969. The Certificate of Title was at the time of trial and appeal, still in the names of the original registered proprietors, many of whom were by then deceased.
- [2] There exists a survey plan of the land claimed by Lawrence Riviere, surveyed and drawn by licensed surveyor Olive Georges, in the name of Lawrance Riviere, and dated July 1988. Lawrence Riviere, also known as Lawrance, made a witness statement in which he claimed to be the only child of Joseph Alexander Riviere deceased, one of the persons listed as registered proprietors of the Beausejour Estate in the parish of St. Paul. The disputed land is part of that land claimed by

¹ Chap 56:50 Laws of the Commonwealth of Dominica

Lawrence Riviere, and "given" to his son Burton Riviere.² This land which is at the heart of contention comprises 2,321 square feet.³

- [3] The appellant claims that in November 2003, the respondent wrongfully entered and took possession of the land, and has wrongfully remained in possession thereof, and is constructing a building thereon.
- [4] The learned trial judge, at paragraph 7 of his judgment, adverted to the evidence of the respondent (defendant) that Davidson Riviere, manager of the Beausejour Estate, rented the disputed portion to her in 1980, and that she paid rent until 1984. The learned judge found that "it is probable that the defendant (respondent) never paid rent to anyone" since 1984. The evidence is that the respondent's house on the land was consumed by fire in either 1993 or 1995. No specific finding as to the year in which this event occurred is recorded by the learned judge. However the learned judge stated that if the respondent "was in uninterrupted possession without paying rent since 1984, which is a period in excess of twelve years... any attempt to remove her will (sic would) have been statute barred. She will also be able to apply for title under the relevant section of the **Registration of Titles Act.**"
- [5] Section 33 of the **Title by Registration Act** under which Act the registered proprietors hold title to the land in dispute, provides that "where any person has acquired or claims to have acquired under the **Real Property Limitation Act**, the ownership of land brought upon the operation of this Act, he shall present a request to the Registrar of Titles to have a Certificate of Title issued to him in lieu of the registered proprietor in the original Certificate of Title, and the person who has acquired, or claims to have acquired, the ownership shall not be entitled to maintain any suit in regard to the land until he has obtained a Certificate of Title thereto." The procedure for pursuing such an application is provided for in that section. There is no indication that such an application has been made by the

² See Witness Statement of Lawrence Riviere, para. 7 of the Record of Appeal/Core Bundle #1

³ See para. 1 of Statement of Claim, page 14 of the Record of Appeal/Core Bundle #1

respondent, and all indications are that the Certificate of Title in favour of the Riviere family remains in effect.

- [6] It follows that the respondent is not entitled to maintain any suit in regard to this land. The title to the land remains vested in the registered proprietors under the Act. Section 8 of the Act provides that the Certificate of Title is indefeasible, and any attempt to limit the rights of the registered proprietors can only be effective if pursued in accordance with the provisions of the Act.
- [7] The **Title by Registration Act** makes reference to the **Real Property Limitation Act**⁴ (see paragraph 4). That Act, at section 2, protects tenants against any entry or distress, or action or suit, to recover any land or rent, but within 12 years next after the time at which the right to make the entry or distress, or to bring the action or suit, has first accrued.
- [8] Clearly, given the finding of the learned judge that the respondent never paid rent since 1984, and never abandoned the land, the learned judge was clearly right in holding the appellant's claim to be statute barred in terms of the **Real Property Limitation Act**. We would however comment that, in light of the provisions of section 33 of the **Title by Registration Act**, it would not have been within the jurisdiction of the learned judge to order that the respondent be issued a Certificate of Title to the disputed land even if a counterclaim had been filed. The parties are bound by the statutory provisions of section 33 of the **Title by Registration Act** with respect to any dealings in relation to this statutory title.
- [9] In the result, the appeal is dismissed with costs.

⁴ Chap 54:07 of Laws of the Commonwealth of Dominica