

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV2007/502

BETWEEN:

SIMONE JEAN POPO

Claimant

and

**[1] JOHN POPO
[2] JUSTIN WILLIAMS
[3] HILARY HUGHES**

Defendants

CONSOLIDATED WITH:

SLUHCV2008/012

BETWEEN:

**[1] VICTOR HIPPOLYTE (aka Victor St. Clair)
[2] THERESA ST. CLAIR
[3] ROGER ST. CLAIR
[4] MARCIA ST. CLAIR**

Claimants

and

SIMONE JEAN POPO

Defendant

Before:

The Hon. Mr. Ephraim Georges

High Court Judge [Ag.]

Appearances (on written submissions):

Mr. W. Hinkson of Counsel for the Claimant
Ms. S. Charles of Counsel for the 1st Defendant
Mr. K. Monplaisir, QC for the 2nd and 3rd Defendants
Mr. A. St. Clair for Claimants 1 – 4 in Suit No. 2008/012

2010: October 14.

DECISION

- [1] **GEORGES, J.:** Pursuant to an application without notice by Simone Jean Popo in Claim No. SLUHCV 2006/361 for a declaration of title by prescription filed 5th May 2006 a master of the Supreme Court by order dated 15th March 2007 declared the applicant owner by thirty years prescription of all the piece or parcel of land known as Block 1450B Parcel 301 ("Parcel 301") measuring 1.94 hectares being the remainder of a larger portion which measured 5 acres 1 rood from which an area of 6.587 square feet was dismembered.
- [2] The Registrar of Lands was also directed to rectify the Register Block 1450B Parcel 301 to reflect the order so made.
- [3] By Fixed Date Claim No. SLUHCV 2007/502 filed 8th June 2007 the claimant Simone Jean Popo claimed against the defendant John Popo vacant possession of the said Parcel 301 which she had acquired by declaration of title by thirty years prescription.
- [4] In her statement of claim she alleged that the defendant had trespassed on her land and she applied for an injunction restraining him from entering thereon and from building or erecting any structure or house whether by himself, his agents and/or servants.
- [5] By order of the Court dated 25th September 2007, leave was granted to join Justin Williams and Hilary Hughes as defendants to that suit and on the matter coming on for pre-trial review on 21st April 2008, the Court confirmed the trial date as 15th May 2008 and directed that the trial bundle be filed by counsel for the claimant by 2nd May 2008 with the sanction to be imposed for failure to comply with any directions being that the party's statement of case should be struck out and judgment entered with costs to the other party or parties.
- [6] Subsequently by application filed on 5th May 2008 Victor Hippolyte aka Victor St. Clair, Roger St. Clair and Theresa St. Clair applied to be joined as parties to the

said suit and the Court so ordered at the same time directing that Suit Nos. SLUHCV 2006/361 and SLUHCV 2008/012 be consolidated with the instant Suit No. SLUHCV 2007/502.

- [7] I pause to mention that in actual fact the said applicants on 9th January 2009, together with Marcia St. Clair filed Claim No. SLUHCV 2008/012 against Simone Jean Popo to set aside the prescriptive title which had been granted to her by the master on 15th March 2007 as being irregular and applied for a declaration that their ancestors Sydney and Elvira St. Clair were the rightful owners of Parcel 301 and that the Registrar of Lands should be ordered to rectify the Land Register so that the names Sydney and Elvira St. Clair be reflected as the owners thereof.
- [8] The trial bundle referred to in the pre-trial review order of 21st April 2008 (see paragraph 5) was now ordered to be filed by 19th December 2008 (instead of 2nd May 2008) to include the documents and witness statements of the applicants Victor Hippolyte aka Victor St. Clair et al and the trial of the consolidated actions was scheduled and confirmed for 14th and 15th January 2009 but in all other respects the pre-trial review order of 21st April 2008 was confirmed.
- [9] On the consolidated actions SLUHCV2007/502 and SLUHCV 2008/012 coming on for trial on 14th January 2009 and upon hearing counsel for the respective parties it was ordered that Claim No. SLUHCV 2007/502 be struck out for non-compliance with direction 7 of court order dated 21st April 2008 and direction 9 of the order dated 15th May 2008 pursuant to Part 26.3(1)(a) Civil Procedure Rules 2000 with costs of \$300.00 to each opposing counsel.
- [10] The trial bundle which was ordered to be filed by 2nd May 2008 initially and later by 19th December 2008 was in actual fact filed on 13th January 2009 one day before the actual trial date.
- [11] The Court also ordered that the parties submit written arguments to claimant counsel in Suit No. SLUHCV 2007/502 within 21 days (i.e. no later than 4th February 2009) regarding the legality of the prescriptive title granted by Master

Cheryl Mathurin on 15th March 2007 in respect of Parcel 1450B 301 situate at La Guerre in the Registration Quarter of Dauphin for determination by the Court.

- [12] I now do so against the background outlined and the submissions of counsel.
- [13] It is undisputed that by grant dated 15th October 1908 Sydney and Elvira St. Clair acquired the ownership of a parcel of land measuring approximately 5 acres in extent more or less situate in the Quarter of Dauphin.
- [14] It is also undisputed that during the Land Registration and Titling Project (LRTP) the said parcel of land was claimed on behalf of Sydney and Elvira St. Clair upon production of the grant and on 11th December 1986 the property was registered in the Land Registry in the names of Sydney and Elvira St. Clair as the registered owners with absolute title.
- [15] Subject to the provisions of sections 27 and 28 of the **Land Registration Act** (Chapter 5.01) of the **Laws of Saint Lucia 2001** (LRA) the registration vested in them the absolute ownership of the parcel of land (Parcel 301) in question with all rights and privileges belonging or appurtenant thereto free from all other interests and claims.
- [16] There was no appeal against the decision of the Adjudicating Officer or challenge to the ownership of the property until the defendant Simone Jean Popo applied for prescriptive title more than 12 years from the date when the property had been awarded to them.
- [17] Master Cheryl Mathurin granted prescriptive title to Simone Jean Popo on 15th March 2007 which she subsequently ordered to be stayed over a year later on 9th July 2008 pending the determination of consolidated Claims Nos. SLUHCV 2006/361, 2007/502 and 2008/012 in respect of Parcel 301.
- [18] The statement of case in Claim No. SLUHCV 2007/502 was struck out as indicated earlier on 14th January 2009 for non-compliance by claimant counsel with pre-trial review order dated 21st April 2008 with costs of \$300.00 to each

opposing counsel and the legality of the master's order granting a declaration of prescriptive title in respect of Parcel 301 to Simone Jean Popo on 15th March 2007 now falls to be determined by the Court.

- [19] The master's declaration is largely based on the Registrar's certificate of non-appearance. It is claimant counsel's contention in Suit No. SLUHCV 2008/012 that the master had no jurisdiction to make such an order as "the master has essentially determined prescriptive title to a parcel of land by default".
- [20] I pause at this juncture to draw attention to sections 94 and 95 of the LRA which allows any person who claims to have acquired the ownership of land by positive prescription to apply to the Registrar (of Lands) in accordance with rules of court for registration as proprietor thereof.
- [21] Section 95(1) requires notice of the application to be given by the Registrar to the proprietor of the land affected and to any other person who may in his or her opinion be affected thereby and after one month has elapsed from the date of giving such notice and being satisfied that the applicant has acquired the ownership of the land claimed may allow the application and register him or her as proprietor of the land claimed subject to any interests on the register which have not been extinguished by the possession.
- [22] It is clear therefore that by sections 94 and 95 of the LRA the Registrar of Lands is specifically empowered on the fulfilment of certain conditions to register as proprietor of land an applicant who has acquired the ownership thereof in accordance with the rules of court for registration as proprietor thereof. It is noteworthy that nowhere in the LAA or the LRA or the general scheme of land registration is there any reference to power of a master in that regard.
- [23] Counsel further contended that an application for prescriptive title must be done in a particular manner under the **Statutory Rules and Orders No. 7 of 1970** Chap 2.01 of the **Revised Laws of Saint Lucia 2001** which can only be heard by a judge of the High Court. The application for prescriptive title cannot be heard by a

master as the Rules do not recognise a master as having jurisdiction to make an order thereunder particularly an order granting prescriptive title.

- [24] The Civil Code and the **1970 Rules** counsel submitted were established long before the **Civil Procedure Rules 2000** (CPR) were enacted. The master is a creature of the CPR and does not have the comprehensive and all encompassing inherent jurisdiction that a judge has he further submitted.
- [25] Moreover as the **1970 Rules** relate solely to the Code with respect to prescriptive title and as the Code is substantive legislation the word “master” could not be construed interchangeably with the word “judge” when that word is used in the Code counsel declared. Therefore “judge” when used in the **Civil Code** cannot mean “master”. When the word “judge” is used in the Code it means a judge and only a judge he added.
- [26] Part 2.4 of the **Civil Procedure Rules 2000** defines a judge as “(a) including the Chief Justice and in the case of Part 62 a judge of the Court of Appeal but (b) does not include a master except where required by the context” which is not the case here. The very rules which “create” the master restrict his or her jurisdiction qua master counsel pointed out. The **Civil Code** must be amended in order that a master can be recognised and be able to fulfil any function thereunder counsel further stressed. For after all the CPR are the rules which govern civil procedure in the Eastern Caribbean Supreme Court and there is no provision therein pertaining or relating to the granting of prescriptive title to land. This is dealt with by an altogether regime.
- [27] It follows therefore that the master has no jurisdiction to grant a declaration for prescriptive title to land and the order of Master Cheryl Mathurin granting a declaration of prescriptive title on 15th March 2007 to Simone Jean Popo in respect of Parcel 301 is consequently illegal, irregular, null and void and of no effect and is revoked and set aside accordingly.

- [28] That view is reinforced by the fact that over a year after the said declaration had been made the master on 9th July 2008 proceeded to order a stay thereof during which period the defendant Simone Jean Popo on 8th June 2007 launched a suit against John Popo (and others) for vacant possession and an injunction to restrain them from **remaining in illegal occupation of her land**. (My emphasis)
- [29] As mentioned at paragraphs 14 and 15 the property in question was awarded (by production of a grant) to Sydney and Elvira St. Clair during the LRTP in 1986 and registered in their names on 11th December 1986. Subject to sections 27 and 28 (relating to overriding interests) of the **Land Registration Act 1984 (LRA)** the combined effect of section 23 of the **LRA** and the **Land Adjudication Act (LAA)** – that is the award and the registration – was to vest in Sydney and Elvira St. Clair absolute ownership of Parcel 301 together with all rights and privileges belonging or appurtenant thereto free from all other interests and claims whatsoever.
- [30] This is exemplified and echoed in the judgment of Barrow J [Ag.] (as he then was) in Saint Lucia Suit No. 680 of 1993 **Felicite Castang (nee Emilien) and Florus Joseph (commonly called Rufus) Louis** on his own behalf of the Heirs of Walter Louis (deceased) in which the learned judge explained that the determination of title to land by an Adjudicator is a judgment in rem. “A judgment in rem may be defined as the judgment of a court of competent jurisdiction determining the status of a person or thing... Apart from the application of the term to persons, it must affect the “res” in the way of ... declaration of status or title...”; 16 Halsbury’s at para 969.
- [31] Continuing at paragraph 14 of the said judgment the judge elaborated thus:
- “The whole scheme of the Land Adjudication Act 1984 was to provide for the final determination of the ownership of land. Where there were disputes as to ownership the Act provided for an adjudication, which was clearly a judicial process with a right of appeal, as is explained in the judgment of the Court of Appeal in Civil Appeal No. 2 of 1992, *Loopsome Portland v Sidonia Joseph* (unreported). Once the adjudication was completed the Registrar of Lands was required to effect the first registration of the parcel of land including the particulars of the ownership of that land; as s. 11(1) Land Registration Act 1984. The effect of that

registration was to confer upon the person registered with absolute title “the absolute ownership of that parcel...*free from all other interests and claims whatsoever*”, according to s. 23 of that Act. It seems to me therefore, that the Adjudicator’s judgment was very much a judgment *in rem*.”

[32] When the land was awarded to Sydney and Elvira St. Clair under the **Land Adjudication Act** the issue with respect to the title to the land was res judicata. In the words of Barrow J “That award is a final decision of a competent tribunal on the matter; the matter is therefore res judicata. See *Loopsome Portland v Sldonia Joseph*, Civil Appeal No. 2 of 1992 (unreported)”. Any prescriptive claim was then interrupted. No prescriptive title could now be made by anyone apart from the St. Clairs, who, if their title was defective, which it is not, could prescribe under Article 2112 of the **Civil Code**.

[33] In Saint Lucia the laws which govern the acquisition of land by way of prescriptive title are the **Civil Code** (Art 2103A and related articles) and **The Supreme Court – Prescription by 30 Years (Declaration of Title) Rules** Cap 2.01.

[34] The **Civil Code** provides for the circumstances under which one can claim prescriptive rights while the **Supreme Court – Prescription by 30 Years (Declaration of Title) Rules** (hereinafter referred to as the “**Prescription Rules**”) prescribe the procedure and the formalities to be followed before a declaration of prescriptive title will be made.

[35] Article 2103A of the **Civil Code** provides that:

“Title to immovable property or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of court.”

[36] The **Prescription Rules** are the statutes or rules of court referred to in Article 2103A. The Rules have several requirements or steps that must be undertaken before prescriptive title can be awarded.

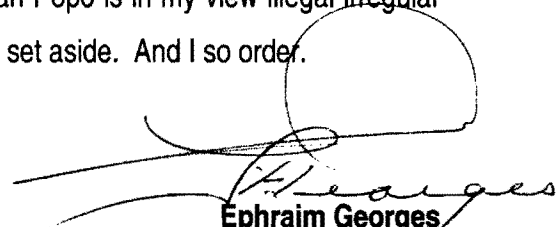
- [37] To any extent that the claimant's (Simone Jean Popo) petition for prescriptive title did not meet the requirements of Article 2103 as well as the requirements of the Prescriptive Rules the Order granting the claimant prescriptive title is irregular.
- [38] For example it is submitted that the affidavits of the two other persons used by the claimant in support of her petition did not comply with the standard of the requirement of section 6 of the Prescriptive Rules, the reason being that the two deponents namely Frances Sydney and Lawrence David never specify what land they refer to save for referring to land in La Guerre Babonneau. The said deponents could have been referring to any land in La Guerre. More specific detail would have been required to any land in this situation where the claimant was claiming to have been in 30 years sole and uninterrupted possession of some 1.94 hectares (approx 5 acres) of land that is the Parcel.
- [39] No disclosure has been made by the claimant of any plan of survey by a licensed land surveyor accompanying the petition as in required by section 7 of the Rules.
- [40] Section 9 of the Prescriptive Rules provides that:
"The Applicant shall also within 7 days after the filing of the Petition cause a copy of the summons to be served personally upon all owners or occupiers of land adjoining the property to which the application relates, and upon all persons having hypothecary claims to it and no declaration of title shall be issued until proof has been given by the applicant that such copy has been served and that 8 weeks has expired since the service thereof."
- [41] The Claimant disclosed one affidavit by a PC 541 Jean to the effect that he did on 6th May 2008 serve two adjoining owners namely (1) Michael Leopold and (2) Gilbert Cornibert. However whereas the petition was filed on 5th May 2006 the order for title was made on 15th March 2007, the affidavit of service of PC 541 Jean was sworn to on 19th February 2008 and filed on 20th February 2008, almost a year after the order. In the circumstances, the proof required by section 9 of the Prescriptive Rules of the service of adjoining owners was not before the Court when the order was made and therefore the order was made in contravention of section 9.

- [42] The result of the defaults in affidavits, survey plan and service of affidavits on adjoining owners requirements as illustrated above is that all procedural requirements were not adhered to and the order granting prescriptive title is therefore irregular and must be set aside.
- [43] Finally it is submitted by counsel for the defendant John Popo and it is indeed palpably plain that the claimant procured the order for prescriptive title by fraud and or misrepresentation in that it is a requirement under Article 2057 of the **Civil Code** that the claimant's possession must have been continuous uninterrupted peaceable public unequivocal and as proprietor and the petitioner made her application knowing that this was not the case and represented to the Court that it was so. In the claimant's own petition she states that she has been "in sole, public and undisturbed and continuous possession as owner" of the Parcel for over 30 years.
- [44] Yet only two months after gaining title by virtue of the master's order, the claimant sought vacant possession of the very same parcel for which she had just been granted prescriptive title from the defendant John Popo whose activity and presence on the Parcel indicates that he had been in occupation well over the time it took to make the application to the Court for prescriptive title. There are two houses built on the area which the defendant lives on and has crops growing. The claimant not once refers to the defendant in her petition or affidavits even to refer to him as a trespasser or to discount his claim to ownership. She suppressed the defendant's presence on the Parcel from the Court. Further there are other individuals living on the Parcel apart from the defendant two of whom are claimants (1) Victor Hippolyte and (2) Theresa St. Clair in the consolidated case SLUHCV 2008/012.
- [45] The Claimant herself does not live on the Parcel at all but cultivates crops on a portion of it. All of these things are within the knowledge of the claimant and were within her knowledge at the time of the petition. In all the circumstances the claimant fraudulently represented to the Court that she has been in sole public

undisturbed and continuous possession and as owner. The claimant at the very least has not been in sole possession of the Parcel neither has she been occupying the whole of the Parcel as owner. The claimant knew her representations in her affidavit and petition for prescriptive title to have been false and so procured the order by fraud.

[46] In light of all of the foregoing the Court is unable to accept the submission of learned counsel for Simone Jean Popo in Claim No. SLUHCV 2008/012 that she had an unregistrable overriding interest in form as stipulated in section 28 paragraph 7(f) of the **LRA**. This is clearly negated by paragraphs 42, 43 and 44 as well as the deficiencies in the claimant's petition for prescriptive title set out at paragraphs 37, 38, 39 and 40 of the judgment.

[47] Beyond any doubt the order of the master dated 15th March 2007 granting prescriptive title of Parcel 301 to Simone Jean Popo is in my view illegal irregular and procured by fraud and must therefore be set aside. And I so order.



Ephraim Georges
High Court Judge [Ag.]