

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 48 OF 2009

BETWEEN:

THE INCORPORATED TRUSTESS OF THE SEVENTH DAY ADVENTIST CHURCH

Applicant

V

DELORES JORDAN

Respondent

APPEARANCES:

Mr. Bertram Commissiong, Q.C., and Ms. Mira Commissiong for the Applicant.

Ms. Zhing Horne-Edwards for the Respondent.

2011: May 9th, 10th, 24th
July 21st

DECISION

BACKGROUND

[1] **JOSEPH, Monica J.:** On 1st September 2009 the Applicant filed an application seeking declaration of possessory title to a parcel of land, 3,715 sq ft., situate at Chateaubelair (the disputed property). That application was made in accordance with section 3 of the Possessory Titles Act 2004 (No. 38 of 2004) (now Cap 238) (the Act). The application was supported by affidavits of Yvonne Jordan, Norma Marshall, Doreen Mason, Selwyn Jones (who gave oral testimony) and Roseclair Roberts (deceased) filed in accordance with section 5 of the Act.

[2] There was publication of the application in the High Court building, Magistrate's Court building and newspapers as required by section 7 of the Act. The application was

opposed by respondent Delores Jordan (Administratrix of the estate of Leon Jordan deceased), who filed an entry of appearance on 7th October 2009.

- [3] In accordance with section 7 of the Act the Respondent filed an opposing claim on 2nd November 2009. Affidavits in support of the opposing claim were filed on 9th March 2009, by Delores Jordan, Wonetha Jordan, Andrew Cummings, (who gave oral testimony) and Saville Cummings (deceased).

THE DISPUTED LAND

- [4] During cross examination of Andrew Cummings, it was suggested that the Respondent was claiming a different parcel of land, or a parcel of land differently described. I accept the disputed property (3,715 sq ft) at Chateaubelair as published: "on the North by an allotment road, on the North-east by an existing road and West by a road leading to Leeward Highway on the South by lot Number 20 on Plan D 62.."

- [5] On this property stands a building which is occupied by the Seventh Day Adventist Church. As I understand Selwyn Jones, an elder of the Church, the local community Church has certain responsibilities, but when property is acquired by the church, it is owned by the Incorporated Trustees of the Seventh Day Adventist Church in St. Vincent (Applicant).

WRITTEN SUBMISSIONS - 30th June 2011

Documents Related to the Disputed Land

- [6] The under-mentioned documents were put in evidence by the Respondent:
- (1) A statutory declaration No. 3191/2000 filed on 2nd November 2009 - Leon Jordan declared that for the past forty-two years he had been in possession of the disputed land from the death of his sister Rosa Jordan, the owner of the land who died on 29th April 1956. Rosa Jordan is Leon's aunt.
 - (2) Letters of Administration No. 203/2002 of 29th December 2002, granted to Delores Jordan, Daughter and Administratrix in the estate of Leon Jordan.

- (3) Suit No. 184/2007 - Notice of application Delores Jordan (Administratrix of the estate of Leon Jordan, deceased) against The Seventh Day Adventist Church and Norma Marshall filed on 21st May, 2009.
- (4) Chateaubelair Town Board receipts for town rates for 1998, 1999 and 2000 in the name of Lucy Jordan 2001 to 2009 in the name of Leon Jordan.
- (5) Property Information Report: Property name is Leon Jordan from 1995 to 2006.
- (6) Central Water Sewerage Authority receipt in the name of Florence Jordan c/o Seventh Day Adventist Church – billing period April-May 2005; periods in 2009.
- (7) Property tax bills of Inland Revenue Department, Kingstown for tax years 23rd June 2004 and 3rd July 2006 in name of Leon Jordan c/o Florence Jordan. Owner shown as Leon Jordan.

CASE FOR APPLICANT

- [7] Lucy Jordan, accepted as owner of the disputed property, died in 1956. On her death, Carmen Cummings (Cummings) became caretaker of the disputed property. In 1977, the Applicant, through Norma Marshall (Marshall) sought permission of Cummings to renovate and occupy the disputed property .
- [8] Improvements were made to the disputed property by members of the Church's congregation. Cummings died on 29th October 1997. The Applicant continued in occupation to the present date.
- [9] With the exception of claim no. 184 of 2007 by Delores Jordan which was dismissed with costs awarded to the Applicant, the Applicant has been in exclusive and undisturbed possession of the property for the statutory period of twelve years.

CASE FOR RESPONDENT

- [10] The Respondent Delores Jordan is the daughter and administrator of the estate of Leon Jordan deceased who made a statutory declaration for the disputed property on 17th September 1998. Letters of Administration in the estate of Leon Jordan were granted. The disputed property is included in the estate of Leon Jordan.
- [11] The Respondent and members of her family have been paying the taxes for the disputed property since 1998, first, in the name of Lucy Jordan, and then from 2001 in the name of Leon Jordan.
- [12] Both sides have admitted that the disputed property was owned by Lucy Jordan although a paper title was not produced. It was also admitted that Lucy Jordan placed Cummings (referred to by witnesses as Ms. Carms) in charge of the disputed property. After Lucy Jordan's death, Cummings permitted a number of persons to occupy the disputed property, the last being Marshall, on behalf of the Applicant, about 1977.
- [13] About 1977, Marshall, acting for and on behalf of the Applicant, asked and obtained Cummings' permission to use the disputed property to hold church services. The Applicant is in occupation of the disputed property to date.
- [14] According to Leon Jordan's statutory declaration, at the time of its making in 1998 he had been in possession of the disputed property for 42 years through Cummings, his agent. Forty-two years back from 1998 would be 1956 the year that Lucy Jordan died.
- [15] The Applicant claims to have begun to occupy the disputed property as owner from 1997 when Cummings died. Up to the time of her death the Applicant considered Cummings to be the person in control of the disputed property.

LEGAL SUBMISSIONS

- [16] Learned Counsel for the Applicant submitted: The Church claims title by adverse possession pursuant to section 2 of the Possessory Title Act. Delores Jordan, one of the children of Leon Jordan and administrator of his estate, has opposed the grant of title to the church on the grounds: Lucy Jordan who was acknowledged to be the owner of the property but without a paper title had told Cummings that the property should go to Leon Jordan who is described by his descendants as his aunt and by Leon Jordan, in a solemn declaration as his sister.
- [17] Cummings never did anything to pass the property to Leon Jordan but instead in 1976 put the Church in possession as a place of worship and the Church has never paid any rent to her or anyone else.
- [18] Marshall in two affidavits detailed how the Church came to be in possession and the Church's reaction to defend its possession. Wonetha Jordan deposed for ten years her family has been objecting to the Church's occupation of the disputed property. Similar averment by Delores Jordan, both ignoring that the Church had been in quiet and undisturbed possession for 24 years prior to these protests and the legal effect of that occupation.
- [19] The evidence of Saville Cummings and Andrew Cummings attempts to show that Leon Jordan was the "owner" without paper up to 3rd October 2000 when two years later Leon Jordan's statutory declaration of continuous possession of the disputed property that was made on 17th September 1998 was registered. That document, argued Learned Counsel, is self-serving and can avail the Respondent nothing.
- [20] The declaration that Lucy Jordan was his sister cannot be believed as under cross-examination Worentha Jordan said that Leon Jordan had told her that Lucy Jordan was his aunt. Learned Counsel invited the court to find that the evidence of the Jordan is unbelievable. Inconsistencies make the evidence for the Respondent unreliable and should be rejected by the court.

- [21] Instances of inconsistencies given: even though they were a family of ten living in a two bedroom house within a stone's throw of the disputed property and knowing that the property "belonged" to their father, they did not ask Cummings to put the Church out of the property so they can move there. Further that, Cummings was to collect rent from the Church to help alleviate the poverty they said they were experiencing. Why if they were so sure that the property belonged to the family did they not seek to interfere with the Church's possession until after the death of Cummings and the making of the most questionable declaration of title?
- [22] There are curious aspects of Robert Andrew Cummings' affidavit as well. If it was considered imprudent by him "to give" the property to Leon Jordan because he was a drunkard and would sell it to get drinking money. How did it become prudent to make the declaration of title purporting to give him the right to sell after the death of Cummings? Surely, a proper legal way could have been designed (by assignment) "to give" the property to Delores Jordan who described herself as their father's "right hand" for the benefit of the family.
- [23] Whatever may have been her "arrangement" with Lucy Jordan, if at all there was one, Cummings being a truly Christian lady considered it proper to hand the property over to the Applicant to carry on and further the service of the Lord.
- [24] Learned Counsel's submission was that the Applicant's evidence remains believable and uncontradicted and should be accepted by the court. If accepted, does the possession of the Claimant entitle them to a declaration under the Act? The quality of possession that would entitle a possessor (a trespasser or one put into possession as in this case) has been discussed in cases: **Tootsie Persaud Ltd. v Andrew James Investment Ltd and Others**. CCJ App. No. CV 1 of 2007. Civ. App. No. 72 of 2004 and **J.A. Pye (Oxford) Ltd and Others v Graham and Anor**, (H.L.) 2002 UKHL **Desmond Vincent Warner and Anor v Anastaina Bianca Thomas and Others**.
- [25] Dicta in **Pye** and **Tootsie** judgments make it clear that a person in exclusive possession with the intention to possess as owner who offers to purchase does not take away from the

quality of his possession. In this case the fact that the Church offered to purchase does not make any the less its intention.

- [26] Counsel for the Respondent submitted: It was admitted by both sides: the disputed property was owned by Lucy Jordan although a paper title was never produced.: that Lucy Jordan had placed Cummings in charge of the disputed property: Cummings had permitted a number of persons to occupy it, the last being Marshall on behalf of the Applicants about 1977. To date the Church occupies the disputed property.
- [27] Leon Jordan's statutory declaration states that at the time of making it in 1998 he had been in possession of the disputed property for 42 years through Cummings his agent. Forty-two years back from 1998 would be 1956, the year Lucy Jordan died.
- [28] The Applicant's claim to have begun to occupy the disputed property as owner in 1997, according to Marshall, when Cummings died. Up to the time of her death the Applicant considered Cummings to be the person in control of the disputed property.
- [29] Counsel's submission was that the Applicant is required to prove factual possession accompanied by intention to possess as owner, for a continuous period of twelve years or more before the filing of an application for a declaration of possessory title.
- [30] Counsel argued that the Applicant's case would crystallize on 28th October 2009, twelve years after Cummings' death. Having filed their application on 1st September 2009, the Applicant is approximately two months short of the qualifying period for adverse possession, and their application must fail. Counsel cited the Act, *Pye* case and *Powell v McFarlane* (1977) 38 PT 452.
- [31] Counsel submitted that Pastor Works who made enquiries about purchasing the disputed property had ostensible authority of the Applicant and that act impacted on the Applicant's intention.

FACTS: THE LAW APLLIED

Factual Possession - Occupation

- [32] There is no doubt that the Applicant occupied the disputed property from 1977 to the present time. The question to be determined is, in what capacity was that occupation enjoyed? Lucy Jordan lived with her great-nephew George Smith on the disputed property until she died in 1956, intestate. From 1956, after Lucy Jordan's death, Cummings took over Lucy Jordan's business and was in charge of the disputed property.
- [33] She rented the disputed property to a number of persons, one being Hilma Hadaway, the mother of Roseclair Roberts nee Robinson who vacated the property in 1965. According to Roberts, her mother who paid rent to Cummings told her that the property belonged to Lucy Jordan. The property remained unoccupied for a number of years and became dilapidated.
- [34] Following a crusade, in 1976, Marshall became a member of the Seventh Day Adventist faith. She was Town Clerk with responsibility for ensuring that the town was kept clean. She noticed that the property was vacant, the wall building dilapidated, without windows, doors and floor. She sought permission of Cummings for the Applicant to use the property, informing her that the church would renovate the building, and she 'readily agreed'.
- [35] Members of the congregation collected stones from the river to build the foundation for the new building. In her capacity as Town Clerk, Marshall arranged for the workers who cleaned the drains to put sand collected from the drains and other suitable material collected from the streets, onto the property to build up the land. Marshall's husband, a mason, cast the floor of the building and Brother Godwyn Harry, a carpenter, did the woodwork.
- [36] In the first quarter of 1977 the congregation occupied the building as a place of worship. In 1978 and 1993 the church members made additions to the building on the property. Marshall deposed that no-one made any objections to those additions. From whom did

she expect objections? People in the town were aware that Cummings was in charge of the building as she was the one who rented it to a number of persons.

[37] Would the small community of Chateaubelair not be aware that the Applicant, through Marshall, was given permission by Cummings to occupy the property? I conclude that the town people would be so aware from a reading of affidavit of Roseclair Roberts:

“I deny that Leon Jordan owned the property.....I say so because if he did own it he would never have allowed the Seventh Day Adventist Church to occupy the property let alone do all the work they have done to the building. He cannot say that he did not know, for Chateaubelair is a really small place, everyone knows each other and he would have been told of all that the Church was doing on the property.”

[38] Additionally, members of the congregation collected stones from the river in Chateaubelair and helped in the renovation of the building on the disputed property. So the community of Chateaubelair would have been well aware of what was taking place.

[39] Pastor Howell asked Cummings to sell the property to the Applicant. Her reply was that Lucy Jordan's brother who was in the United States, was in charge of the property. Cummings promised to write the brother and did so but received no reply.

[40] A question to be answered: Did the payment of taxes, and connection of water to, the disputed property change the character of the use of the disputed land?

Payment of Taxes:

[41] Marshall gave differing versions regarding the payment of taxes and stated that the given versions may be believed. She stated there were arrears of taxes from 1976 to 2001 which the Applicant paid off. She also stated she did not pay any arrears after Cummings' death (1997). She further said she gave money yearly to Cummings from the Applicant to pay the taxes from 1985 to the date of her death. Further she said Pastor Works paid taxes for 1998 and 1999.

[42] This is her affidavit evidence:

"After we had been on the property for about 20 years we were asked by Ms. Cummings to pay the land taxes for it and we did so. The land taxes were arrears from 1976 to 2001 and we paid it off. When we went to pay the land taxes for 2002 we were told that other persons had been paying land taxes for the property. We continued to pay the land taxes even so."

[43] In cross examination, she stated:

"(applicant) paid taxes all the time not from inception but after a while Ms. Cummings told us to pay tax so we would carry the money to her and she would pay the tax. I would take the money to Ms. Cummings every year. From around eighties I personally would take the money to Ms. Cummings until she died. From 1985 to her death I would take money".

[44] In re examination she stated:

"During (Cummings) time she told us to pay tax and then we gave money to her. We paid no arrears after her death...Before it was five dollars we used to pay a year. But then when we ask her to pay we paid up to 1997 there was no arrears.....When we went to pay tax Gemma Wyers said she not ready to take taxes yet. We went twice. Third time, she said somebody paid tax already.

When we went Pastor Works went to town and paid tax for two years, 1998 and 1999. Taxes could be paid in Kingstown and Chateaubelair. If you pay in Kingstown it isn't credited to me in Chateaubelair. Leon Jordan name was there not Ms. Lucy."

[45] I accept that, when permission was given to the Applicant to renovate and use the building as a place of worship, there was no arrangement for payment of money. That situation changed after the Applicant had been in occupation for many years when Cummings asked the Applicant to pay the tax and to take the money for the tax to her for payment. The tax money was taken to Cummings on a yearly basis by Marshall.

[46] Why did Cummings request the Applicant to take the money to her when she could have requested the Applicant to pay the taxes direct to the property tax office? I conclude from that new arrangement that Cummings was ensuring remuneration for use of the disputed property, to take the form of payment of tax, with payment to be made through her. That method ensured that tax was paid: it was paid through her: she did not keep any money. What she collected she paid out. It is common ground that Cummings was an honest

Christian lady. The payment of tax, through her, is equivalent to paying her rental for the disputed property as agent for the owner.

- [47] By complying with Cummings' request in furtherance of the permission she had granted to them, the Applicant acknowledged a superior interest in the disputed land held by Lucy Jordan whose affairs Cummings was handling. As I have held that payment of tax was equivalent to paying rental, it follows that possession of the disputed land by the Applicant cannot be adverse.

Water connection:

- [48] The manner in which Marshall made the arrangement for water connection to the disputed property is enlightening. In cross-examination, Marshall stated:

"Water wasn't always connected to the property. Water was connected to the property after Cummings died. Can't remember rightly when.

I applied personally for the water because I had preschool there so I applied for the water. I applied on behalf of the Church. I had to get a bill that we are there paying the rent, not the rent the taxes. We used to give money to Cummings and she would pay the tax. I had to get a bill from the taxes, sorry, a receipt so I went at Income Tax office to pay tax but when we went searching Ms. Lucy's name was not there. The then Town Clerk had taken off Ms. Lucy's name and put on Leon Jordan name.

Then I saw a Florence Jordan and Leon Jordan name there on tax list so I paid the water bill in Florence Jordan on behalf of the Church. That is how we keep water bill. That is how I got water connected to property in the name of Florence Jordan.....I know that Leon Jordan's wife's name is Florence. People have same name..."

- [49] When reminded of 15th April 2010 affidavit paragraph 3, she stated:

"After we saw deed we know her name was Rosa Jordan. Just remember. At time I connected water I didn't know that Florence Jordan was wife of Leon Jordan. I thought it was a namesake like two persons having same name. Thought it was. When I connected water in Florence Jordan I did not know that she was Leon Jordan's wife. When I connected water Leon Jordan was not alive. His name was entered on tax list after he died. I had to fill out application. I had to put name of owner. I put Florence Jordan name not knowing it was Leon Jordan's wife name."

- [50] Marshall suggested that it was coincidence that she used the name Florence Jordan. Also, that she put Florence Jordan name on the document not knowing it was Leon Jordan's wife name. Why did she not use the name Mary John or Joan Smith? I do not believe her. She also said: "Kinship well known in village". In answer to a question whether Leon Jordan was related to Lucy Jordan, she replied he was not as 'if he was I would have known because I am affiliated with everybody'.
- [51] It is unbelievable when Marshall said that she did not know Florence Jordan was Leon Jordan's wife. She was able to give other details: That "Lucy Jordan's father was an Adams but he and Lucy's mother never married. Lucy used the surnames Jordan and Adams interchangeably" and her affidavit: "While Cummings and Leon Jordan were still alive Delores Jordan, her mother Florence Jordan and her brother Trevor Jordan worshipped at the Applicant's church in Chateaubelair". She described where the Jordan family lived in relation to where she then was (in Court) and indicated Chinatown.
- [52] I think she desired to place Florence Jordan as far away from Leon Jordan as Leon Jordan was claiming possession of the disputed land through statutory declaration. The fact is she was not keen to link Florence Jordan to Leon Jordan who swore a statutory declaration that Cummings was agent for the disputed land for the Jordans (Leon).

CESSATION OF PERMISSION – RUNNING OF TIME

- [53] Did occupation of the property with Cummings' permission continue indefinitely or did it cease? If it did cease, what date did that cessation take place? There is no evidence that permission to occupy the disputed land was confirmed or extended after Cummings' death. I think the permission to occupy the disputed property ceased with Cummings' death in 1997.
- [54] Did occupying the disputed land with permission prevent time running against the owner (whoever the owner might be), in favour of the Applicant? Time can only run against the owner of land where there is an adverse possessor who can claim factual possession of the land as against the owner.

[55] A person who occupies land with the permission of the owner, or permission of the person in charge of property, cannot claim to be an adverse possessor. The Applicant, having acknowledged that, from 1977, they occupied the disputed property with the permission of Cummings, the person in charge of the property, cannot claim to have been in adverse possession. I find that time did not run against the owner.

[56] The grant of permission by Cummings to occupy the disputed land, ceased to be operative from Cummings' death on 29th October 1997. Marshall's affidavit evidence:

"The applicant began to occupy the land as owner in 1997 when Carmen Cummings died and George Smith indicated that if Lucy had wanted him to have the land she would have made a will and as a result he thought the applicant should have the land. No other member of Lucy Jordan's family came forward to claim the land."

[57] Halsbury's Laws of England 4th Edition Reissue Volume 28 paragraph 977 reads:

"What constitutes adverse possession is a question of fact and degree and depends on all the circumstances of each case, in particular the nature of the land and the manner in which land of that nature is continually used.....However, for the claimant's possession of the land to be adverse so as to start time running against the owner, the factual possession should be sufficiently exclusive and the claimant should have intended to take possession. Where the occupier's possession of the land is by permission of the owner, that possession cannot be adverse."

REQUISITE INTENTION; Purchase of property:

[58] The requisite intention is the intent to possess the disputed land, evidenced by factual possession and the full use of the land in the same way that an owner would. The applicant's intention to hold the property as adverse possessor surfaced with Cummings' death on 29th October 1997. That intention was evidenced in Marshall's Supplemental Affidavit of 15th April 2010 that the Applicant began to occupy the land as owner in 1997 when Cummings died. I find that the Applicant had the necessary intention to possess.

[59] In **Tootsie Persaud** case, the Court said:

"Court of Appeal was correct in holding that the requisite intention to possess is present when the claimant in factual possession of the land intends to make full use of it in the way an owner would."

[60] In *Powell v McFarlane* Slade J defined the animus possidendi as:

“The intention in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title in so far as is reasonably practicable and so far as the processes of the law will allow.”

Purchase of property:

[61] Marshall's affidavit filed on 1st September 2009:

“We were always trying to purchase the property and asked Cummings to get in touch with the person in the USA who was supposed to have inherit it. She did write as we requested. On several occasions I personally went together with 2 of the senior members of the church and pastors in our district to Cummings to enquire if she had any reply to her letters but she said that she never did.”

[62] I find that the Church was interested in purchasing the disputed property and took the risk of continued renovation and occupation, in the hope that it would obtain ownership, if not by purchase, eventually by adverse possession.

[63] The intention to purchase hovered over the intention to possess required of an adverse possessor, which later came to the fore on 30th October 1997(after Cummings' death). The desire to purchase the disputed property did not lessen the Applicant's intention to possess. Purchasing the disputed property did not materialize.

[64] In J.A. *Pye (Oxford) Ltd. and Others v Graham and another* (HL)(2002) UKHL 30 Lord Browne-Wilkinson in commenting on squatters giving evidence that if they had been asked by the paper owner to pay for their occupation of the disputed land or take a lease they would have been prepared to do so. Lord Browne-Wilkinson referred at para. 46 to what Lord Diplock stated in *Ocean Estates v Pinder* (1969) AC1924, that an admission of this kind which any candid squatter hoping in due course to acquire a possessory title would be almost bound to make did not indicate an absence of an intention to possess.

Adverse Possession

- [65] The Applicant as adverse possessor of the disputed land can succeed in their application for possessory title only if they have been in exclusive possession for twelve years, with the animus possedendi i.e., intention to possess the disputed land.
- [66] Section 2 of the Act defines “adverse possession” to mean 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 12 years or more accompanied by the requisite intention to possess the said land as owner thereof.
- [67] The statutory period of twelve years possession by the Applicant runs from 30th October 1997 to 29th October 2009. The Applicant's application for a declaration of possessory title was filed on 1st September 2009. This is fifty-nine days short of the twelve years required for adverse possession of land. The Applicant has not been in adverse possession of the property for the statutory twelve years.

DISTURBANCE

- [68] The notices to quit sent to the Applicants by Solicitor for Florence Jordan are of no legal effect. Taking action by written notification to a person in possession of land that he is to give up possession is not sufficient to take over possession from the possessor. In **Mount Carmel Investments v Peter Thurlow Ltd** (1988) 3 AER 129 at 133 (Court of Appeal) Nicholls L.J. had this to say:

“We do not accept that, in a case where one person is in possession of property, and another is not, the mere sending and receipt of a letter by which delivery up of possession is demanded, can have the effect in law for limitation purposes that the recipient of the letter ceases to be in possession and the sender of the letter acquires possession.”

- [69] Sir Vincent Floissac in Civil Appeal 13 of 1944, **Florence Louise Belfon v Lester McIntosh**:

“The respondents' extra-judicial protests, objections and demands do not in law constitute acts of ownership (i.e., acts which evince an intention to assert ownership) or acts of possession (i.e. acts which evince an intention to assume,

retain or regain possession) are acts which legally interrupt, disturb or otherwise affect the quality of adverse possession.”

SUIT NO. 184 OF 2007

- [70] The commencement of a lawsuit by the owner or person acting for the owner, against the person occupying land over the right of ownership and possession of the land is one way to interrupt continuous possession. The suit interrupts the continuity of possession. If the owner abandons or settles a suit or if a court dismisses it, the continuity of possession is not affected. Disturbance of the church’s possession must be by process of law. What is the legal effect of proceedings in suit 184 of 2007 instituted against the Applicant (church and Marshall) by the Respondent (Delores Jordan Administrator)?
- [71] A notice of application filed on 21st May 2007 sought an injunction against the Applicants in respect of the property, on grounds: deceased (Leon Jordan) owned the property by virtue of a statutory declaration No. 3191 of 2000: that the applicants have refused to vacate the property and have begun physical works on the property despite the Respondent’s requests to stop any further construction. The Respondent has instructed a solicitor to prepare documents to apply for a declaration of possessory title under the Act. However, a possessory title application was made by the applicant as Trustees of the Church and a claim in opposition to that application was filed by Delores Jordan as Administrator of the estate of Leon Jordan on 2nd November 2009.
- [72] The filing of the suit on 21st May 2007 by Delores Jordan in the estate against the Applicant over possession of the land interrupted the continuous possession by the Applicant. In her affidavit, Delores Jordan deposed that the suit wrongly referred to the Applicant as The Seventh Day Adventist Church instead of The Incorporated Trustees of the Seventh Day Adventist Church and at the hearing the wrong heading was struck out and the matter was adjourned.
- [73] Upon realizing that the Applicant was enclosing the property and not erecting a structure, the application for injunction was discontinued. I find there was discontinuance of the interruption of continuous possession.

[74] No discontinuance date was given but I think that is of no consequence in this circumstance as the running of time against the applicants was not affected. How do I rationalize this? When the suit was filed, the physical occupation by the Applicant continued but their intention to possess the property was disturbed and suspended, pending the determination of the suit.

[75] The discontinuance of the suit revived the intention, and intention and possession by the Applicant continued, as if there had been no disturbance. The fact that the Respondent mentioned that it was her intention to apply for a possessory title takes the matter no further. It is not the intention of the owner or the person acting for the owner that matters, but the successful taking by the person of judicial action within the statutory period.

[76] **Perry v Clissold** (1907) A.C. 73 at p 79 (Privy Council) Lord Macnaghten stated:

"It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title."

[77] The relevant sections of The Limitation Act (Cap. 129) are Sections 17 and 19:

17 (1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him"

19 "...at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished."

WHO HAS THE BETTER RIGHT?

[78] Salmond on Jurisprudence Eleventh Edition, observes at page 345

"In English law possession is a good title of right against any one who cannot show a better. A wrongful possessor has the rights of an owner with respect to all persons except earlier possessors and except the true owner himself."

[79] In this case, the Applicant is adverse possessor of the disputed property. Lucy Jordan, with no documentary title but with possessory title accepted by all parties as possessory owner, dies. Cummings, recognized by the parties as caretaker of Lucy Jordan's property, permitted the Applicant to occupy the disputed property. Cummings died in 1997 and permission ceased to be operative.

[80] From 1997, the wrongful possessor, that is, the adverse possessor, the Applicant, has rights against the world except earlier possessors and except the true owner. While time is running in favour of the Applicant, the Applicant can exercise their rights against everyone except someone with a superior interest, i.e., a possessory interest.

WHO IS A PERSON WITH THAT SUPERIOR INTEREST?

[81] On Cummings' death in 1997 when time began to run in favour of the Applicant, the persons with a superior interest (possessory interest) were the heirs of Lucy Jordan. They had the right to possession of the disputed land, acting through Cummings, caretaker for the land.

[82] The heirs of Lucy Jordan with a right to possession of the disputed land, can assert that right as against the Applicant the person wrongfully in possession, and prevent the Applicant's wrongful possession ripening into prescriptive title, by operation of the Limitation Act. The Applicant has not obtained twelve years adverse possession (October 1997 to September 2009).

WHO ARE THE HEIRS OF LUCY JORDAN?

[83] Lucy Jordan is regarded by the parties to have been the possessory owner of the disputed land. There is evidence from Marshall that she put Florence Jordan's name as owner on a document when she was applying for water connection to the disputed property. She sought to explain that by saying that it was coincidence and that people sometimes have the same name. I have indicated that I do not believe her explanation. I believe at the time she inserted Florence Jordan's name on the application that she believed the Jordan

family had some interest in the disputed property. She therefore put Florence Jordan as the owner to facilitate water connection to the church.

[84] The Respondent's evidence was that she is one of the daughters of Leon Jordan. She produced copies of notice to quit by solicitors for Florence Jordan, wife of Leon Jordan, and Letters of Administration in her father's estate No. 203/2002 given under the hand of the Registrar on 29th December 2002 bearing Deputy Registrar's stamp 28th October 2009, description of property 4000 sq ft of land with building at Chateaubelair. Leon Jordan was related to Lucy Jordan (he said sister, the Respondent said aunt).

[85] I accept from the evidence that the heirs of Lucy Jordan include Delores Jordan, the Respondent and Administrator of the Estate of Leon Jordan. When Letters of Administration are issued, they are accepted as conclusive evidence of the title of the administrator as personal representative of the deceased, (unless there is a revocation). Tristram and Coote's Probate Practice 25th edition at p. 6: Effect of Probate or Letters of Administration.Similarly, (executor's title): "A grant of letters of administration is accepted in all such courts as conclusive evidence of the title of the administrator as personal representative of the deceased."

STATUTORY DECLARATION: AFFIDAVITS OF PERSONS DECEASED

[86] Leon Jordan (for the Respondent) swore a statutory declaration. Saville Cummings (for the Respondent) and Roseclair Roberts (for the Applicant) swore affidavits. They have since passed to the great beyond. I bear in mind that they were not available for cross-examination. I have not made any use of Saville Cummings' evidence. I have made limited use of what Leon Jordan and Roberts have sworn in those documents.

[87] Leon Jordan's declaration is in accord with the Applicant's evidence that the disputed land was in the possession of Lucy Jordan prior to Cummings taking charge of it.

OSTENSIBLE OR APPARENT AUTHORITY

[88] Counsel submitted that Pastor Works had ostensible or apparent authority to act for the Applicant when he made enquiries regarding the purchase of the disputed property. In view of the decision I shall be making, I do not think it necessary for me to comment.

CONCLUSION

[89] Lucy Jordan was the accepted possessory owner of the disputed property until she died in 1956. Cummings took over Lucy Jordan's affairs and was the caretaker of the disputed property until she died on 29th October 1997. In 1977, Cummings permitted the Applicant to renovate and occupy the disputed property for the purpose of worship.

[90] There was no arrangement for the payment of rent when that arrangement was made. The Applicant, with Cummings' consent, renovated the dilapidated building and occupied it until the present date. As the Applicant occupied the disputed property, with the consent of Cummings, acting for the owner, time cannot run in favour of the Applicant so as to permit the Applicant to obtain a prescriptive twelve year title under the Limitation Act.

[91] During the occupation of the disputed property, Cummings made a change to the arrangement originally made with Marshall, on behalf of the Applicant. Cummings requested the Applicant to pay the property tax through her. The Applicant complied with her request and every year gave her the money to pay the tax. That act of paying the tax, through her, is equivalent to paying rent for the disputed property. By that method of payment of tax through her, Cummings maintained right to possession of the disputed property on behalf of the owner. In that circumstance time does not run against the owner of the disputed property.

[92] When the permission granted by Cummings to the Applicant became inoperative on her death in 1997, time began to run in favour of the Applicant. The Respondent instituted legal proceedings against the Applicant but discontinued those proceedings. Time continued to run in favour of the Applicant.

[93] The Applicant filed an application for a declaration of possessory title on 1st September 2009. Twelve years from 30th October 1997 (Cummings date of death is 29th October 1997), would be 29th October 2009. The Applicant is fifty-nine days short of the twelve year statutory period required for a declaration of possessory title.

[94] The Applicant has not established twelve years adverse possession of the disputed property. The declaration for possessory title cannot be granted.

[95] Order:

- (1) The Applicant's application for a declaration of possessory title fails.
- (2) The Respondent is entitled to a declaration of possessory title.
- (3) Costs of \$3,000.00 to be paid by the Applicant.
- (4) Liberty to apply in Chambers on 27th July 2011.


Monica Joseph
High Court Judge (Acting)
17th July 2011