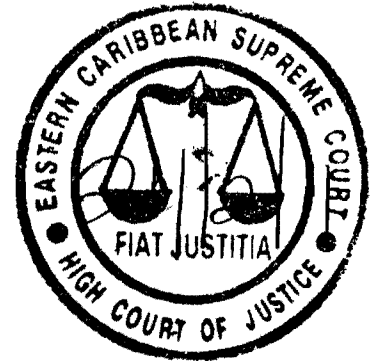


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 15 OF 2010



IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF POSSESSORY TITLE OF
LAND

BETWEEN:

ROZEMMA SHALLOW

Applicant

v

WESLEY MASON

Respondent

Appearances: Mr. Jomo Thomas, for the Applicant
Ms. K. Isaacs, for the Respondent

2011: February 1st
February 24th 2011

DECISION

- [1] **JOSEPH MONICA J:** On 3rd March 2010 the Applicant filed an application with supporting affidavit for a declaration of title by twelve years adverse possession of land, under section 3 of the Possessory Act 2004 (No. 38 of 2004) (The Act). Her application was supported by affidavits of Julian Morris and Alanzo Archibald.
- [2] On 10th May 2010, pursuant to Section 7 of the Act, the Respondent filed an entry of appearance opposing the application for a declaration of title. Affidavits in support of this opposition were filed on 17th May 2010 one by the Respondent, the other by Michah Hackshaw.

THE LAND

- [3] A parcel of land at Westwood in the parish of Saint David measuring 4,130 sq ft abutted and bounded North East by a right of way on the South East by a right of way on or onwards the North West by lands in the possession of Grafton King and on or onwards the South West by lands in the possession of Alanzo Archibald as shown on a plan registered at the Surveys Department No. D4/8.

EVIDENCE FOR THE APPLICANT

Affidavits

- [4] In March 2010, the Applicant deposed that the land was occupied by herself and her sister (Cheryl Shallow aka Mandy) for the past 15 to 18 years. They started building the foundation and the superstructure on the land nine years ago, and they had continuous and exclusive possession of the land for more than 12 years.
- [5] In a supplemental affidavit filed on 13th October 2010, the Applicant deposed that she has occupied the land since she was eighteen years and her sister occupied the land before she did. She paid to have the land cleaned as the need arose for more than 12 years. She planted coconut, orange, plum and apple trees on the land. She built a foundation and started to block in the structure and she started to build after she began working on the Y.E.S Programme in 2001.
- [6] Julian Morris deposed that he and the Applicant grew up together. The Applicant and her sister Cheryl Shallow had occupied the land exclusively and continuously for close to 20 years. Alanzo Archibald deposed that he has known the Applicant all his life. She occupied the land exclusively and continuously for at least 15 years.

Oral evidence

- [7] The Applicant stated that she cannot remember when Ms. Mason a.k.a. Miriam Hackshaw (Hackshaw) told her sister she could have the land as she (Applicant) was young. Her sister went on the land and constructed a small brick foundation. Her sister did not do “anything else on land – not really”.
- [8] As her sister was not doing much with the land, she went to Hackshaw and asked her for the land. Hackshaw told her to return with her sister. When she did, Hackshaw enquired of her sister whether she had any objection to the Applicant being given the land. They both agreed to give her the land. At the time she was 18 and she is now 31. She cleaned and planted the land. She made the foundation bigger but cannot recall when she did this.
- [9] When her sister built the foundation Hackshaw did not object neither did she object when she (Applicant) made the foundation bigger or planted trees. When she did all this she felt that the land was hers. When all that activity took place the Respondent was abroad.
- [10] The land was originally owned by Charles Williams. Two other persons occupied other portions. She has remained in occupation of the land and she clears the land although the land is bushy now. She cleared the land in November. In five years since the Respondent returned she is not aware that he ever cleared the land. The Respondent returned to Saint Vincent and the Grenadines just before his mother died in 2006, and has been here since then.
- [11] Julian Morris testified that he knows that Hackshaw was responsible for the land but could not say if that responsibility passed to her son Roy. The Applicant and her sister occupied the land and he lives ‘below them’. The Applicant built on the land after her sister ‘give over’ the land to her. He was not present when that occurred but knows that happened as she took over responsibility. He did not see the Respondent clearing the piece of the land that the Applicant occupies.

- [12] Alanzo Archibald testified that he does not know where the owner of the land is. At one time Hackshaw was in charge of the land. The Respondent is her son. The Applicant occupied the land for thirteen years. There is a foundation structure on the land now, but before that it was in wilderness. The small community knows that the Applicant obtained permission from Hackshaw but not the terms of the permission.
- [13] The Respondent was on the land, then went away. On the Respondent's return he made 'noise' claiming that the land belonged to his mother. He inquired about boundaries and began cutting down trees on the land, including a cedar tree near to the boundary. The Respondent removed the marks put on the land by a surveyor who the Applicant retained.
- [14] The Respondent said that there would be no further building on his mother's land, that he is now in charge and the Applicant would have to pay him for it. He stated that that occurred more than once, and that when the Respondent's mother was alive she had complained to persons who live in the area that her son wanted to put all the land in his name. She told him that the land did not belong to her. She said that she was stressed out and could not take it anymore.
- [15] He did not know what happened between the sisters. A sister occupied and then the other sister (Applicant) went on the land after a year or so. He said that it was in 1992, then he said it was before 1992 that the other sister went on to the land. When he returned from Barbados construction on the land was held up.

EVIDENCE FOR RESPONDENT

Affidavits

- [16] In May 2010 the Respondent deposed that his mother Hackshaw had given permission to the Applicant to occupy the land at a yearly rent. In a supplemental affidavit in October 2010, he deposed:

".....Rozemma Shallow was never given possession by myself or my late mother, Miriam Hackshaw to occupy the land as a yearly tenant. Several persons

in the Coulls Hill area were given permission to do so but never Rozemma Shallow.”

- [17] He deposed that an Attorney at law wrote to the Applicant a letter dated 1st July 2009 cautioning the Applicant about trespassing on his land. The letter informed the Applicant that his mother was in possession and on her death the land passed to him as her representative.
- [18] He deposed that there is a Deed of Settlement dated 26th December 2008 “for his benefit with regard to the same land”. He deposed that he had never given up possession of the land, and was in shock to see the Applicant’s application claiming that the land has no owner, when he had written her in July 2009 stating that he was the owner of the land and had inherited it from his mother.
- [19] The Deponent stated that Charles Williams, who was the original owner of the land, had written to Hackshaw in 1973 that he was giving her the land. She paid tax for the land until the date of her death when, under her Will, the land passed to him. He continued to pay the tax and transferred the land to his name. He deposed that he has been in more than twelve years undisturbed possession of the land.
- [20] In a supplemental affidavit in October 2010, he deposed that exclusive possession of the land always was retained by him. Persons who rented the land were mere licensees with no interest in the land vested with them.
- [21] After his mother’s death he occasionally checked the land to make sure there were no squatters on the land and every two months he would personally clear it. In 2008 he noticed that someone (he learnt it was the Applicant) was attempting to construct on the land, as blocks and sand had been dropped on the land.
- [22] He attempted to inform her that he was the owner but she retorted that she did not want to speak with him. He attempted to contact the Applicant’s mother but was barred entrance to their home by the Applicant. Upon approaching the department responsible for

planning, he was advised that they could only stop her from building the concrete structure as she had not presented a plan for the building. Upon learning from a neighbour that the Applicant had taken a surveyor to have the land surveyed he instructed an attorney at law to ask her to cease trespassing on the land, which she did.

- [23] Michah Hackshaw deposed that her aunt Miriam Hackshaw used to pay the tax for the land. She knew that the Respondent 'came into occupation' of the land that his mother left him by Will after her death. She knew the Respondent to be in possession of the land in excess of twelve years.

Oral Evidence:

- [24] The Respondent said that he left Saint Vincent and the Grenadines for Trinidad in 1979, at which time a Mr. Penner was occupying the land planting tomatoes and cabbage. He returned from Trinidad in 1992 and left again going back and forth, sailing until 2002 when he stopped. He was living in Trinidad returning to Saint Vincent every year.

- [25] He stated that between 1979 and 2002 he returned to Saint Vincent every month staying two days and on an occasion on six weeks vacation. On 25th April 1973 Charles Williams wrote his mother informing her that he has given the land to her, and his mother signed a letter to Justice of Peace Vicky Charles informing that she left everything to him. (That letter is not in evidence.)

- [26] He went on the land a month after his mother died in 2006. He saw blocks on the land and found out that the Applicant was occupying the land. First time he saw the foundation structure on the land was in 2006 because before then the land was covered in bush. He paid someone to clean the land to enable him to see the spot. He did not allow further building.

- [27] Michah Hackshaw testified that the Respondent's mother, who is her aunt, lived with her family when she was a little girl. The next time she saw her was in 2004 when she

(Michah) was grown. Hackshaw enquired of her about a deed for the land. She told her that the only deed she knows about is the land deed for her own father and mother.

- [28] She first became acquainted with the Respondent two years ago as he was not in Saint Vincent all the time, and she was not able to say whether he had visited Saint Vincent while living abroad. The information in her affidavit, including the information that the Respondent went into occupation of the land, came from Hackshaw. She stated that the Respondent's mother told her that she given him the land as she could not work the land.

FACTS

Ownership

- [29] The Respondent claims ownership of the land traced from Charles Williams who from Trinidad wrote a letter to Hackshaw dated 25th April 1973:

"This is to let you know that I have been paying the taxes of \$1.00 per year for the land which I gave to you for the past few years, but as I cannot hear from the person whom I used to send the money to I wish to let you know that as from last year 1972 you have to pay the taxes, failing to pay it I am sure you know what will happen. I sent the money (\$1.00) in November last year and up to now I have not heard from the person whom I sent it to although I wrote him several letters asking him if he has receive the money; but I got no answer from him. I do not know what is happening, he is a young man who is working in the House and Land Taxes office. In Kingstown his name is Norman Peters (not clear). He used to pay the taxes and send the receipt to me. I am enclosing 1971 receipt which would act as a guide when you are paying last year's taxes etc. So I am sure that this is plain enough for anyone to understand".

- [30] Both parties said that Charles Williams was the owner of the land. It seems that he had interest in the land. In the letter Williams mentioned that he had given the land to Hackshaw for "the past few years."
- [31] I understand him to be saying that he had given her permission to occupy the land on his behalf for the past few years. He continued to pay tax on the land. He ceased paying tax on the land when he began experiencing difficulty with the arrangement he had made for payment of the tax.

- [32] He advised her that she should pay tax for the land and pointed out that should she fail to pay tax she knows "what would happen". He could only mean that he was no longer interested in maintaining whatever interest he had in the land: that it was up to her to do what is necessary (paying the tax) to maintain her interest in the land.
- [33] From the 1973 letter, I find that Charles Williams abandoned whatever interest he had in the land. From May 1973 Hackshaw ceased occupying the land on Williams' behalf and occupied the land on her behalf. She gave permission to the Applicant's sister Cheryl to occupy the land. Cheryl occupied the land and commenced building a structure. She abandoned occupation of the land. The Applicant, having obtained Hackshaw's permission, occupied the land and continued building the structure.
- [34] The Respondent holds a Deed of Settlement registered as No. 1159/2009 made 26th December 2008, made between Wesley Roy Mason as donor conveying the land to himself Wesley Roy Mason. The preamble to that deed recites that Charles Williams bought land from Government without obtaining a title deed. Before his death in 1973 Williams gave the land to Hackshaw who went into immediate possession and so remained to date of her death in 2006. After her death, the preamble recites, the Respondent went into immediate possession and so remained to the date of the Deed.

OCCUPATION

- [35] Mr. Thomas, on behalf of the Applicant, submitted that the principle of adverse possession is the ousting of the legal owner but there is no evidence of Hackshaw owning the land.
- [36] The Applicant deposed, in March 2010, that she and Cheryl occupied the land for the past 15 to 18 years (around 1992) and that Cheryl occupied the land before she did.
- [37] Alanzo Archibald's oral evidence: ".Sister occupy and then she went on after year or so. It was in 1992 that the other sister went on to the land..... Sister went onto the land before 1992. When I came back from Barbados the construction was held up."

- [38] In cross-examination, the Respondent agreed that occupation of the land began as early as 1992. Although Cheryl, and then the Applicant, went into occupation of the land initially with permission of Hackshaw, I treat their situation differently. I find that Cheryl went into occupation of the land in 1992 and she remained in occupation (Archibald stated for a year) - would be about 1993. She started to build a structure and then abandoned occupation of the land around 1993. From that act her intention was not to acquire the land by adverse possession.
- [39] This was further demonstrated by the fact that she accompanied the Applicant to Hackshaw to obtain the latter's permission to occupy the land. By so doing, she considered that there was a superior interest in the land by Hackshaw. That interest could only be that of possession, as Hackshaw had no documentary title for the land.
- [40] I accept the Applicant's evidence that she started building on the land in 2001, and find that that is when she entered into occupation of the land. Hackshaw made no attempt to stop her from building. The Applicant formed the intention to acquire the land by adverse possession. She considered the land to be hers.
- [41] The Applicant filed an application for possessory title in March 2010. She would have been some nine years in occupation of the land (2001 to 2010), not satisfying the twelve years adverse possession required under the Act.
- [42] Ms. Isaacs for the Respondent submitted that the acts of the Applicant on the land are insufficient to support a prescriptive claim. Counsel cited **West Bank Estates Ltd v Shakespeare Cornelius Arthur and Others** (1967) 1 A.C. 665, where it was held that acts of cultivation, cutting of timber, wood and grass were insufficient. I think that that is a general principle would need to be applied in particular cases.
- [43] It was Counsel for the Applicant's submission that the building of a concrete structure on the land is a sufficient act of exclusive physical control as, by doing so, the Applicant dealt

with the land as an occupying owner, with no objection by Hackshaw. Counsel cited J.A. Pye (Oxford) Ltd and Others v Graham and Another (2002) UKHL 30 which reproduced from Powell case where Slade J. at pp 470-471 said:

“Factual possession signifies an appropriate degree of physical control.... Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. 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....what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so.”

- [44] I think that building a concrete structure on the land is a sufficient act to support a claim of exclusive physical control.
- [45] Mr. Thomas submitted that there was no break in the occupation of the land by Cheryl Shallow and the Applicant. Counsel contended that the two periods of occupation satisfied the twelve years required by legislation. Can the two periods of occupation be added? To decide that a number of questions are to be answered.
- [46] One (already answered) was that Cheryl, who had obtained permission to occupy the land, had no intention to acquire the land by adverse possession. That supplies a complete answer to whether her period of occupation can be added to buttress the Applicant's application. Her period of occupation of the land cannot be used to support the Applicant's possessory title claim. However, I move to the next question. Two, did the Applicant move into possession immediately upon Cheryl's abandonment of the land in 1993?
- [47] If the Applicant did occupy the land immediately on Cheryl's abandonment, there was no broken period between Cheryl's occupation and the Applicant's occupation, then there is continuous occupation, thus satisfying the Act (outside of her intention already considered). If there was a broken period in occupation of both sisters their occupation would not be continuous occupation within the definition of adverse possession in the Act.

- [48] The answer: I find that the Applicant did not move into possession immediately on Cheryl's abandonment of the land and there was a broken period, that is, 1993 when Cheryl abandoned occupation, and 2001 when the Applicant commenced occupation of the land.
- [49] Consequently, the one year period of occupation by Cheryl cannot be added to the nine years occupation by the Applicant. The Applicant has not been in factual possession of the land for a continuous period of twelve years. Her application for a declaration of a possessory title cannot succeed.
- [50] Ms. Isaacs submitted that the Respondent is claiming that he inherited the land through his mother Hackshaw. The land, Counsel argued, has been in the sole possession of Hackshaw who gave it to her son, the Respondent. The Respondent's acts show his intention to retain possession of the land on his mother's death i.e., he paid taxes, had his name put on the tax roll. He obtained a deed of settlement of the land. When he noticed cultivation on the land he instructed an Attorney to write the Applicant and he rooted up markers placed by the surveyor retained by the Applicant.
- [51] I hold that Hackshaw was in possession for some twenty eight years and has acquired adverse possession. She holds possession against everyone. She permits another (the Applicant) to occupy the land in 2001, and stands by while that person (Applicant) builds on the land.
- [52] Hackshaw fails to assert whatever claim she may have against the Applicant. Time began to run against her from 2001 in favour of the Applicant.
- [53] After the passage of twelve years the Applicant can obtain adverse possession. Before the passage of twelve years, the original possessor Hackshaw can recover possession from the Applicant. She has twelve years to do this (2001 to 2013). There is no evidence that Hacksaw attempted to recover possession of the land from the Applicant.

[54] Hackshaw died in 2006. I find that the Applicant was in possession, not Hackshaw nor the Respondent. Two persons cannot be in possession of the land at the same time. The Respondent cannot claim possession as successor to Hackshaw against whom time was running, in favour of the applicant. He would have to start possession afresh. (Hackshaw's possession ceased in 2001.)

[55] Neither the Applicant nor the Respondent satisfies the provisions of the Act of twelve years adverse possession. The Applicant has not been in factual possession of the land for twelve years. Her application for a declaration of possessory title fails. The Respondent has not been in factual possession of the land for twelve years. His claim in opposition to the Applicant's claim fails.

[56] A guide for considering successive possession of property by squatters appears in **Mount Carmel Investments v Peter Thurlow Ltd.** (1988) 3 AER p. 129 at 135 para. G:

"If squatter A is dispossessed by squatter B, squatter A can recover possession from squatter B and he has 12 years to do so, time running from his dispossession. But squatter B may permit squatter A to take over the land in circumstances which, on ordinary principles of law, would preclude A from subsequently ousting B. For example, if A sells or gives his interest in the property, insecure as it may be, to B."

[57] The relevant legislative provisions are: Section 2 of the Possessory Titles Act which enacts:

"adverse possession" means factual possession of an exclusive and undisturbed nature of a piece or parcel of land in St. 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."

[58] Section 17 of the Limitation Act enacts:

(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, or if it first accrued to some person through whom he claims, to that person."

CONCLUSION

- [59] There is no documentary title to the land. The question is: has any party led evidence to establish, on a balance of probabilities, twelve years adverse possession of the land in accordance with the Act?
- [60] Charles Williams had some interest (probably possessory) in the land which was recognized by Hackshaw, in that she occupied the land on his behalf up to 1973. I have held that, in April 1973, when Williams wrote Hackshaw advising her to commence paying taxes for the land, he discontinued his possession exercised through her.
- [61] I hold that Hackshaw commenced possession of the land on her own behalf in May 1973. Cheryl Shallow, the Applicant's sister, occupied the land with Hackshaw's permission from 1992. She abandoned that occupation around 1993, and accompanied the Applicant to seek Hackshaw's permission to occupy the land. Hackshaw was therefore in possession of the land up to around 2001 from 1973, that is twenty eight years. She died in 2006.
- [62] In 2001 the Applicant commenced occupation of the land (initially with Hackshaw's permission) when she continued building the brick structure that Cheryl had started. I hold that there was a discontinuance of possession by Hackshaw. The Applicant was in possession of the land from 2001 to the date of filing the application for possessory title in March 2010, that is nine years. She has not satisfied the requirement of twelve years adverse possession in accordance with the Act. Her application for a declaration of possessory title fails.
- [63] The Respondent returned to Saint Vincent in 2006 shortly before Hackshaw, his mother's death. The Applicant was in possession of the land. Hackshaw's possession of the land ceased around 2001. Time was running against Hackshaw from 2001 in favor of the applicant. The Applicant was in possession up to 2010, when she filed an application for possessory title. Twelve years have not passed.

ORDER

1. The Applicant's application for a declaration of possessory title fails.
2. The Respondent's claim in opposition to the Applicant's application for a declaration of possessory title fails.
3. I make no order as to costs.



Monica Joseph

HIGH COURT JUDGE (ACTING)

21st February 2011