

[3] According to the Claimants, the property is bounded as follows: East: by Lands of Victor L'Anglais and heirs of Sebastien Family; North: by Colihaut River and land of Morlina Parillon; South: by a dry ravine and lands of Ravino Peters and Ernest St. Louis; and West: by Lands of Pinnard St. Louis.

[4] In support of their claim the Claimants advance the following averments:

- a) they have occupied the property with their said mother during her old age and continued to do so after her death planting provisions;
- b) the deceased mother in her last will and testament devised the property to the Claimants;
- c) the Claimants have been financially unable to probate their said mother's will; and
- d) the first Claimant has been in exclusive occupation of the property from the date of her deceased mother's death, cultivating same on behalf of herself and her sister, the second Claimant, as sole owners.

[5] With respect to the Defendant, the Claimants' contentions are:

- a) over the past year or two the Defendant has come unto the property and has been cultivating about one acre of the property despite constant protests of the Claimants; and
- b) the Defendant has built a wooden house on the property and has refused to cease his trespass despite repeated demands by the Claimant, both orally and in writing.

Defence

[6] At the start of his Defence, the Defendant says that he neither admits or denies the pleadings contained in paragraph 1 to 3 of the Claimants' Statement of Case. And with respect to paragraph 4 of the said Statement of Case, this is denied, and the Defendant avers that the Claimants are not owners in fee simple of the said portion of land in Colihaut as delineated in the plan dated October 01 2009, as alleged. Further that: "The said portion of land which is delineated on the plan includes 3.2 acres of land in Colihaut of which the Defendant and his predecessors in title have been in possession of for approximately 120 years."

[7] According to the Defendant, the abbuttals of the said 3.2 acres parcel of land situate at Colihaut are: North: by Heirs of Henney Parillon; East: by land of Eula Matthew; South: by Heirs of Henney

Parillon, Heirs of Fagan Peter and Heirs of John Antoine separated by a footpath and North-West: by heirs of Henney Parillon. And further that the said 3.2 acres of land is more specifically described on the plan dated 27th May 2008, prepared by Lionel Laville, a Licensed Surveyor.

[8] In further answer to paragraph 4 of the Claimants' Statement of Claim, the Defendant says that: "...he and his predecessors in title have been in exclusive, continuous and undisturbed possession of the 3.2 acres of land for approximately 120 years and by reason of this long possession and undisturbed occupation and possession of the property."

[9] The Defendant in his Defence goes on to delineate his root of title and says that he relies on Section 2 of the **Real Property Limitation Act**; Chap. 54:09 against the Claimants.

[10] Further averments by the Defendant in response to paragraphs 5,6,7,10 and 11-13 of the Claimants' Statement of Claim are:

- a) the Claimants in obtaining the plan dated 1st October, 2009 trespassed on the Defendant's land and thereby damaged several of the Defendant's trees;
- b) the Claimants' mother has never occupied 3.2 acres of land, as it was in the possession of the Defendant and his predecessors since 1880;
- c) the Defendant and his predecessors have been in exclusive, undisturbed and uninterrupted possession of the land for approximately 120 years; and further that the 2nd Claimant has for many years resided in England and has never occupied the said property as alleged or at all;
- d) the Defendant has been cultivating the 3.2 acres since 1983 almost 27 years ago and not the year or two as alleged by the Claimants;
- e) the Claimants are not entitled to the reliefs claimed or any other relief.

Counter Claim

[11] In his Counter-Claim, the Defendant repeats paragraphs 1-15 of his Defence and in the alternative contends that he has extinguished all the rights of all others who may have been entitled to claim ownership of the 3.2 acres of property which he now possesses entitling him to an order pursuant to section 12 of the **Title by Registration Act**, Chap: 56:50.

[12] The Defendant counter-claims: (a) a declaration that he is the owner in fee simple in possession of the 3.2 acres of land in Colihaut, in the parish of St. Peter [as described in his Defence]; (b) in the alternative, an order pursuant to section 12 of the **Title by Registration Act**, Chap. 56:50; (c) damages for trespass to land; (d) all necessary and consequential directions, accounts and inquiries to ensure the issuance of a certificate of title in favour of the Defendant for the said portion of land; and (e) further and/or other relief as the court deems fit.

Reply and Defence to Counter-Claim

[13] In their Reply and Defence to Counterclaim the Claimants deny the facts and particulars alleged in paragraphs 4-13 of the Defendant's Defence. And state further that the Defendant's uncle, Griffin Reynolds, did give him a piece of land but this land was (i) not part of the Claimants' land which the Defendant has encroached upon and (ii) is not even one acre of land.

[14] In Defence to the Defendant's Counterclaim, the Claimants contend that the land surveyed belongs to them and not the Defendant and repeat paragraphs 1-14 of their Statement of Claim.

[15] Finally, the Claimants say that there is not existing certificate of title for the land in question, and that for this reason and other reasons the Defendant's claim at paragraph 2 of his Counter-Claim is improper.

Evidence

[16] Lucillia Ravariere's evidence-in-chief is that she is 84 years old, resides in Colihaut, Dominica and is very familiar with the land in issue since she was 7 years old. It is also her evidence that she knows the Defendant, Agnan St. Louis who is also known in the community as 'Busy'.

[17] With respect to the land in issue, Lucillia Ravariere's evidence is that: the land was owned by her mother "Henrietta" Ketura St. Claire, who died on 26th November, 1986 at age 91; at the age of 7 she would accompany her mother to the land working the land; in her will dated 10th January, 1976 her mother stated that she was leaving the land to her children, Vandermark, Maria and herself, a copy of the will is in her possession; in the 1960's long before her mother's death, she and her husband Irvins Ravariere, took possession of the land and worked it and planted grafted mangoes, bayleaf, sapodilla, plantain, lime, dasheen, coconut and pear trees; their son, Marsden, used to go

to the land with her and her husband, and Marsden did business on the land with her permission, and that she knows the boundaries to the land.

[18] In so far as the portion of land being claimed by the Defendant, Lucillia Ravariere says that "we" planted many cashew nut trees and that she went on the land until she got blind.

[19] In commenting on paragraph 10 of Forbes Parillon's Witness Statement, Lucillia Ravariere testified that she knows Forbes Parillon and that Victor Parillon gave them land when they were young. Also, that her mother's mother died young and left her mother and her sister who stayed with Fagan and Victoria, their uncle and aunt.

[20] In a further comment the witness said that: "Fagan did not give them the land of my mother. He gave them property by their mother, Alicia Parillon; Alicia's property was delivered to her by their mother. The mother's property was left by their mother; their mother left them small and Fagan, Alicia and Victor Parillon were brothers and sister."

[21] The witness' final comment was that 'Busy' land was right up.

[22] Under cross-examination, Lucillia Ravariere testified that Fagan Parillon gave her mother and her mother's sister land and that her mother and her sister were adopted by Fagan Parillon.

[23] With respect to the property in issue, the witness said that Claimants were not claiming Busy's land but were claiming her grand mother's land. Her evidence continued thus: "The land Busy is fencing is not his. It is my grandmother's property. It is my grand mother's share. Mr. Peter William is next to me. There are four other people where Busy is fencing is not his land. It is my mother's land."

[24] In further cross-examination the witness testified as follows: "My husband was working the land. I used to sell yams, mangoes and sapodillas. I don't know that Busy land was given by 3 person. I cannot say how much land my husband was working. I was always on the land. I fell sick in 2002. The eyes were getting bad so I did not go up there. My son knows the boundaries of this land. I was not in court about land with Busy."

[25] As a result of certain propositions put to the witness her responses were: "I know the boundaries of my land." "I disagree that Busy's land does not form part of my land." "I do not know about land

with Forbes, Busy and Parillon." "My mother was a Parillon and I know the land by my mother but not by Busy."

Marsden Ravariere

[26] Marsden Ravariere in his evidence-in-chief says he is 68 years old, the son of Lucillia Ravariere, resides presently in Colihaut, knows Busy and also knows the subject land all his life which is part of some 25.32 acres belonging to his mother and her sister, Maria Elizabeth Lewis. The witness went on to say what his parents did on the land and what he also did thereon. He added that he kept goats in the area where the Defendant has now trespassed and built a wood and galvanized house.

[27] In commenting on paragraph 11 of Agnan St. Louis' witness statement, Marsden Ravariere said that Agnan St. Louis took over the land and the place he occupies is "mine". He commented further by saying that his land was already fenced and he is in the fenced placed for 4 to 5 years.

[28] In commenting on paragraph 10 of Forbes Parillon's witness statement, Marsden Ravariere said that the adoption is true and Fagan Parillon gave her some land. He went on to say that his grandmother took out Letters of Administration with respect to Fagan Parillon.

[29] Under cross examination in relation to the 25 acres, Marsden Ravariere said he did not know of Rabaey Parillon occupying the land, and he went on to say that Rabaey never asked him to remove a fence or cause him to take down a fence.

[30] Under further cross examination Marsden Ravariere said that: "The Defendant claims to be farming on our side on one acre. I know it is a little piece of land. I know Griffin Reynolds and I know his uncle gave Busy a piece of land through his sister. I don't know Forbes gave 2 acres to Busy. My mother's land is below and his land is up."

[31] Finally, under cross examination Marsden Ravariere said he did not know about the caveat in 2009, disagreed that his mother was claiming Busy's land which he had been farming for more than 30 years, and also denied that his mother was trying to claim Parillon's land.

[32] In re-examination the witness maintained his evidence given in cross-examination that he was never asked to remove a fence. According to him, he had the fence from he was 20 years old and now he is "60 something". The witness then went on to describe the fence with measurements.

[33] In further re-examination the witness described the land in this way: "In my 25 acres there is a road. There is a track going up the land is a little flat and a little slope. The Colihaut River is on the left side as you go down from Pois Doux. Our land is to the main road.

Wayland Joseph Peter

[34] In his evidence in chief, Wayland Joseph Peter said that he was born on 15th April 1928 and came originally from Colihaut.

[35] Concerning Lucillia Ravariere and Ernest St. Louis, the witness said that he knows both of them, as well as Lucillia Ravariere's mother, and her aunt from childhood.

[36] With respect to the land in issue, it is the witness' evidence that his father raised cows on land at Pois Doux which belonged to the Claimant's mother 'Ketty'. According to him, the land "could be about 20 acres," and his father's land was on the other side of the ravine. With respect to Busy's land, he said it is not close to Ketty's land and is much higher up. And further that Busy did not have land there.

[37] It is also the evidence of Wayland Joseph Peter that when he returned to Dominica 12 years ago to live, "Busy was in the same area but still not on Ma Ketty's land." He continued: "It is two years ago, when I went up with Marsden, that I saw Busy on Ma Ketty's land.

[38] Under cross examination he described his land and Busy's land in this way: "Busy's land is Ketty's land. I don't know Busy to own land. The river is miles away from my land – about 5 to 6 acres away. It goes straight up. The river is far away. Ketty's land is closer to the River. I know the land Busy is claiming. I know where he is farming. His land is just above my land. Busy's land is on Ketty's land. All I know is when Busy occupy Ketty's land. It could be 3 to 4 acres where Busy's mother land is. I did not know Fagan Parillon. I know Theodore Parillon. He had land just by the ravine. There where Busy farming is about a mile from where Mr. Theodore was. It is the same land. I did not know Rabaey Parillon claimed the same 25 acres. I did not know it to be "Parillon land." As far as I am concerned Busy is on Ketty's land. I know Griffin and Forbes Parillon. I grew up with them. I would not know that they gave Busy land.

[39] Concerning the location of his land in relation to Busy's land, Wayland Joseph Peters said that his land and Busy's land are above the ravine, and Ketty's land is above the road and below the road. The witness went on to testify that Ketty's land is on both sides of the foot path.

[40] Finally, in further cross-examination Wayland Peters again denied that Ketty's land is Busy's land and added that he did not know Busy to have land there since it is 2 sisters who own the land.

[41] In re-examination the witness said that Busy's land is up on the main road, it is sloping land down to the ravine. He added that where Busy is claiming is flat.

Agnan St. Louis

[42] Agnan St. Louis in his evidence in chief says that he lives in Colihaut and has been farming approximately 3.02 acres of land for over 30 years which was owned and worked by his late great grand mother, Mary Lecointe and the said land was in the possession of his family for approximately 120 years.

[43] In seeking to account for the 3.02 acres which he claims, the Defendant explains the manner in which he and his mother were allowed to cultivate 1 acre by Griffin Reynolds in 1983; and in the same year approximately 2+ acres of the original 3.02 acres were given to him by his cousins Forbes and Ferdinand Parillon.

[44] According to the Defendant, he was the only person cultivating the 3.02 acres of land for the past 30 years without anyone disturbing his occupation until April/May 2008. He says further that since on or about 1999 he built a wooden structure on the land in which he stayed while doing his gardening.

[45] At paragraph 8 to 10 of his witness statement, the Defendant details a number of events concerning the land in dispute. First, the hiring of a Surveyor to survey the land in preparation for his application for title. Secondly, when he and the Surveyor were on the land Marsden Ravariere, son of the first Claimant, approached them and claimed the land. His evidence in this connection is that: "I told him that it was my land and has been for a long time." The third event is the allegation by the Defendant that agents of the Claimants trespassed on the land on or about 18th September 2009, for the purpose of conducting a survey of what they claimed to be the Claimants' land.

[46] The Defendant says that the sequel to the survey he caused to be conducted is that he received a letter from an Attorney-at-Law on behalf of the Claimants indicating that the land he was cultivating was left to Lucillia and Maria by their mother Henrietta and that he should vacate the land.

[47] The matter of an application for a First Certificate of Title with respect to 1232 square feet of land situate at Colihaut is also addressed by the Defendant.

[48] According to his evidence, the land is not the subject of the claim but a caveat was placed on his application by Lucillia Ravariere, through her duly appointed Attorney, Athenia Ravariere, the wife of Marsden, who is Lucillia's son. Further, that when the matter came up in the caveat court the caveat was withdrawn on 4th March 2009. This matter he says caused him to incur legal expenses.

[49] In the end, the Defendant said that he is not a trespasser but rather that his family has been cultivating the said land for 120 years .

[50] In commenting on paragraphs 2 and 4 of Lucillia Ravariere's witness statement, the Defendant testified that the contents are not true. And in relation to paragraph 4 he said that "They are* north-east of my property. It is 30 feet from the eastern side of my property at the brow of the ridge."

[51] Also in commenting on paragraph 5 of Marsden Ravariere's witness statement, the Defendant testified that there was no fence as stated by Marsden.

[52] Under cross examination the Defendant, Agnan St. Louis at the start said that: "The Claimants' land is not part of Parillon's land. The Claimants' land does not bound with my land. They have access and I not aware that they own the land. It is possible that Fagan could have given land in the area to the Ravariere's. It is possible."

[53] With respect to his possession of the land in issue, the Defendant maintained that he was in possession from 1983 and the he was there as a kid with his mother so that the 30 years is correct. In further cross examination in this regard, the Defendant said that he got his land from Griffin Reynold but he is not a witness.

Dorian Philogen

[54] Dorian Philogen says he is 66 years old, resides in Colihaut; knows Agnan St. Louis all his life and also knows that he has been farming land at Pois Doux/Beausejour for at least 30 years.

[55] With respect to the family connection, the Defendant's evidence is this: "My mother was cousin of Agnan's mother and Forbes Parillon's mother, so I am quite knowledgeable about the family land farmed by Agnan. My father, Nelson Philogen showed me the land when I was a boy."

[56] Under cross examination Philogen said that he knows Lucille Ravariere and he knows where her house is and recalled a meeting at her house and the people who were there, including Wayland Peter. According to the witness, he was asked questions which he answered in relation to family land. He said further that it is not Busy land alone and also that family means Forbes Parillon, Ferdinand, Busy and me.

[57] In further cross examination Dorian Philogen testified that he remembers Lucillia's husband and that Marsden had goats on the land below him.

Forbes Parillon

[58] Forbes Parillon in his witness statement says he is 65 years old, resides in Colihaut, knows Agnan St. Louis, his cousin all his life and knows that Agnan St. Louis has been farming about 3.02 acres which was owned and worked by his late grand mother, Mary Lecointe. The witness says further that the said land has been in "our family" for approximately 120 years; and is part of the Poix Doux/Beausejour Estate in the heights of Colihaut.

[59] The witness at paragraphs 4 to 6 of his witness statement traced the manner in which the land claimed by the Defendant came into his possession. And at paragraph 7 says this: "At or about the same time (1983), my brother, Ferdinand Parillon, and myself who were heirs of the estate of our mother, Clarisse Lecointe, gave Agnan to use and cultivate the other approximately 2 acres (one from our mother, one from our uncle) of the original approximately 3 acres."

[60] Also at paragraph 8, Forbes Parillon says that to the best of his knowledge Agnan has been cultivating all 3.02 acres of the land "exclusively, continuously and without disturbance since he was given sole possession of the land."

[61] At paragraph 10 of his witness statement Forbes Parillon details the 'unofficial adoption' of the Claimants' mother, Henrietta St. Claire and her sister by Fagan Parillon and the fact that Fagan gave them a piece of land between two gullies on the other side of the ridge from Agnan's land.

[62] Also at paragraph 1, the witness explains the manner in which his uncle [Francois] Rabaey was gifted 'Parillon land' in 1972 by instrument¹ under the hand of his father, the witness' grandfather, Theodore Parillon. He says also that Rabaey permitted Agnan to construct a shed on Rabaey's part of Pois Doux.

[63] At paragraph 13 of his witness statement the witness says that:

"By Rabaey's will dated the 30th day of September, 1993, I was made executor of his will to distribute land to his wife, Merlina, and Rabaey's three children, and therefore I know about Rabaey's land, Agnan's land, and the Claimants' land."

[64] Finally, Forbes Parillon re-states his contention that his family beginning with Mary Lecointe's parents, has been cultivating the said land for around 120 years and has been in undisturbed possession of such land for such period of time.

[65] In commenting on paragraph 2 of Lucillia Ravariere's witness statement, the witness said that his grand father told him certain things about the land, including land of the Claimants' mother and her sister.

[66] Also, in commenting on paragraph 5 of the said witness statement the witness said he was not aware of any goats on the land.

[67] Under cross examination Forbes Parillon gave evidence of his connection to Pois Doux and Agnan St. Louis as follows: "Pois Doux is not a place I go often. I have been there but only on occasions. For the last 45 years I have been there on many occasions. After 1983 I gave my share to Agnan-sometime in 1985 – 1986. He was using there before. If I said 1983 it would be a mistake. I do not quite remember when his uncle allowed him to use the land. From 1983 it is not 30 years yet. Agnan worked the land with his mother. When I gave him the land it was not surveyed but he got it surveyed in 2008."

[68] Speaking to the matter of land being given to Henrietta the witness said this: "In 1956 my grandfather showed me things. My grand father is Theodore Parillon. He did not say when Fagan gave the land to Henrietta. I would not know that his land was given in 1907 to Henrietta."

¹ Indenture of Gift dated 16th February 1972 recorded in Book of Deeds No. 9, Folio 192-194

[69] In re-examination Forbes Parillon said that during the 45 years he went on the land to show his authority by cutting wood to build a house and sending people to do things. The witness ended his evidence by saying that he had a deed for the land he surveyed.

ISSUES

[70] The following are the agreed list of issues which the parties agree arise in this case for determination:

1. Whether the **Real Property Limitation Act**, Chap. 54:07 is applicable to this case and; if so, can the Defendant rely on section 2 thereof?
2. Whether there is an overlap between the boundaries of the survey plans dated October 1st 2009 drawn by Elias Dupuis in the names of Lucillia Ravariere and Maria Lewis and the boundaries of the survey plan dated 27th March 2008 drawn by Lionel Laville in the name of Agnan St. Louis. And if there is an overlap, where and how much is that overlap?
3. To the extent of the overlap which of the parties can better establish exclusive and undisturbed possession for at least the past 40 years and therefore the right to apply for a First Certificate of Title under section 12 of the **Title by Registration Act**, Chap. 56:50?
4. Whether the Defendant has trespassed on the Claimants' land and if so, what damages are the Claimants entitled to?
5. Whether the Claimants have trespassed on the Defendant's land and if so, what damages is the Defendant entitled to?
6. Whether the Defendant is to succeed on his Counter Claim?
7. Who is liable in costs?

Issue No. 1

Whether the **Real Property Limitation Act**, Chap. 54:07 is applicable to this case and; if so, can the Defendant rely on Section 2 thereof?

[71] In the context of the claim by the Claimants for ,*inter alia*, injunction, declaration of sole ownership of property and damages, the Defendant seeks to rely on section 2 of the **Real Property Limitation Act**²(“the Limitation Act”).

[72] Section 2 of the **Limitation Act** to the extent of its materiality provides as follows:

2. After the commencement of this Act, no person shall make an entry or distress, or bring an action or suit, to recover any land or rent, but within twelve 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 to some person through whom he claims; or, if the right has not accrued to any person through whom he claims; then within twelve 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 to the person making or bringing the same.

[73] The foregoing, in the context of the pleadings, requires determinations as either the Claimants or the Defendant have or has an accrued right to bring the suit. This in turn touches and concerns possession.

[74] It is the Claimants' averment that they are owners in fee simple of a portion of land in Colihaut; in the parish of St. Peter, containing 25.32 acres, and together with their predecessors in title have been in possession and occupation of the same for the last 101 years. This is denied by the Defendant, who in his Defence, contends that the Claimants are not the owners of the portion of land in Colihaut as delineated in this plan dated October 01, 2009. It is contended further that the said portion of land includes 3.02 acres in Colihaut of which the Defendant and his predecessors in title have been in possession for approximately 120 years.

The land claimed by the Claimants

[75] Lucillia Ravariere in her evidence rests her contention as to ownership on: her acquaintance with the land from the age of 7; the property was owned by her mother, 'Henrietta' Ketura St. Claire and would accompany her mother to the land from the age of 7; in her mother's will the said property was left to her children, including the first Claimant, who together with her husband took up possession since the 1960s and cultivated same. The first Claimant also testified that Fagan and Victoria Parillon gave land to her mother and her mother's sister , but it was her mother's land.

² Chap 54:07

[76] The Claimants' contention as to possession and ownership is supported by Marsden Ravariere, the son of Lucillia who also worked the land and Wayland Joseph Peter. In the case of Wayland Joseph Peter, now 83 years old, he knew Lucillia Ravariere from childhood and also knew her mother, Henrietta 'Ketty' St. Claire who owned land in Pois Doux and on which his father grazed his cows.

Lands claimed by the Defendant

[77] In the case of the Defendant, Agnan St. Louis, he says he came by the 3.02 acres by way of permission to him and his mother from Griffin Reynolds to cultivate 1 acres thereof; and being given "2+ acres" by his cousins, Forbes and Ferdinand Parillon. It is also his evidence that he has been the only person cultivating the 3.02 acres.

Submissions

[78] The following are extracts from the submissions on behalf of the Claimants after an analysis of the evidence of two of the Claimants' witnesses:

"At this juncture, we wish to point out to the court the sheer inconsistency in the Defendant's evidence before this court in relation to the boundaries. In the Defendant's survey plan for 3.02 acres, his south and north west boundaries are 'Heirs of Henney Parillon'. However his witness Forbes Parillon, has presented a plan in the name of Merlina Parillon, which places land of Merlina Parillon as the Defendant's north and north west neighbor. The root of Merlina's title according to this witness, is through Rabaey Parillon, Theodore Parillon and originally Fagan Parillon. 'Henney Parillon' is never mentioned. Furthermore, the Defendant in his evidence in chief never admits outright that the Claimants own any land in Pois Doux, but only uses some vague terms, that is, that they had 'access' to land there. His witness, Forbes on the other hand, stated clearly that the Claimants do have land in Pois Doux, and stated further under cross-examination, that this land is 'to the North-East of the Defendant's land.' The Defendant's survey plan simply does not mention the Claimants, and seeks to exclude them altogether. Even the plan commissioned by Forbes on behalf of Merlina Parillon, identifies the Defendant's land to the south, and does not therefore acknowledge the Claimants as being the Defendant's north easterly neighbor."

[79] As far as the Defendant is concerned, Learned Counsel submits the following:

"134. In this current case, the Claimants and their witnesses have spoken about different locations of land across a large area and their evidence has not been consistent, but would allow the court to conclude that the land the Claimants claim is apparently not the same and is not well defined. It is described as being

'above the road', 'nearer to the river', 'below the Defendant's land', 'above the Defendant's land', 'on the other side of the ridge from the Defendant's land', but not consistently described as they have tried to illustrate it as comprising 25 acres as illustrated in the survey plan on page 119.

135. The Defendant and his witnesses, on the other hand, have consistently expressed that his land, and that his predecessors in possession for his 3.02 acres, has been where he is and nowhere else. He and his family have been in the one place where he claims his 3.02 acres which came from his family who have been in possession for over a hundred years going back to no less his great grand mother (see chart page 150 of trial bundle).
136. On behalf of the Defendant, we conclude that the Claimants have not proven their case, but that by the testimony of the Defendant, his witnesses, and even by the testimony of Mr. Wayland Peter and Mr. Marsden Ravariere, the Defendant has provided enough evidence that demonstrates to the court that he has been in exclusive and undisturbed possession of the 3.02 acres through himself and his predecessors in possession for well over 30 years..."

Analysis

[80] People come to courts of law to seek justice and it is the function of the court to render justice as it sees it based on the evidence adduced and accepted. But this case is special in that it involves land and prior to the survey plans there were no measurements thereof and, more importantly, even now, there is no documentary evidence regarding the said lands. Therefore, for the most part this case is to be determined on the basis of *viva voce* evidence.

[81] The court identifies the following pieces of evidence in support of the Claimants' case:

1. After Lucillia Ravariere's mother died she and her sister went to live with her mother's brother, Fagan Parillon- hence the evidence of their adoption.
2. Fagan Parillon gave the Claimants' mother and her sister a piece of land in Colihaut to work. This is supported by Forbes Parillon.³
3. The first Claimant went to the land with her mother from the age of 7.
4. The first Claimant knew that the land was large but could not have known the extent of the land being worked by her mother.
5. Marsden Ravariere, the son of Lucillia Ravariere, grew up on the land worked by his father and mother and knew the boundaries assisted the surveyor with the survey. At 68 he knew the land all his life.
6. Wayland Peter gave evidence of his father's land being adjacent the land of 'Ma Ketty' from childhood. Also that his father grazed his cows on Ketty's land as it was big, flat and with a

³ See: Paragraph 10 of the witness statement of Forbes Parillon.

- lot of grass.
7. Wayland Peter also gave evidence that the Defendant whom he knew had land higher up.
 8. Wayland Peter admitted on re-examination that he knew the Defendant's mother and his grandmother worked land he considered to be Ma Ketty's land. The land claimed to be occupied by the Claimants was always a single parcel.
 9. The witnesses of the Claimants are consistent and corroborate each other in some material particulars.
 10. The Defendant admitted under cross examination that it was possible that the land to the north of his could be the Claimants' land.

[82] In the case of the Defendant the following arise:

1. There were permissions to use land as well as the giving of land which the defendant advances in order to constitute 3.02 acres he claims to possess.
2. According to the Defendant, Griffin Reynolds, allowed him and his mother to cultivate approximately 1 acre and in 1983 Reynolds allowed him to use the said 1 acre exclusively.
3. It is also the Defendant's evidence that at about the same time, being 1983, "2+ acres" of the original 3.02 acres were given to him by his cousins, Forbes and Ferdinand Parillon.
4. There is no evidence as to if and when the Defendant was permitted to use any of the land in his own right.
5. According to Forbes Parillon, his uncle, Rabaey Parillon, was gifted 'Parillon land' by his father, Theodore Parillon which is recorded in the Book of Deeds No. 9, folios 192-194. The land is situate in the heights of Colihaut. The further evidence is that Rabaey permitted Agnan to construct a shed on the gifted land.
6. Forbes Parillon also said that he knew the land he had given to the Defendant and had gone there on many occasions over the last 45 years.

[83] Learned Counsel for the Defendant is correct in saying that:

"The great difficulty for the court is in determining whose story to believe as this is a case to be decided by 'facts' or evidence which involves a lot of oral history concerning land in dispute without registered title."⁴

[84] The various survey plans in evidence are supposed to enlighten the issues to be decided but it is the determination of the court that they do not for the most part.

[85] To begin with plan of land surveyed for the Defendant⁵ does indicate that the parcel contains 3.02 acres but it shows abbuttals which for the most part are not shown on other plans for example "Heirs of Henney Parillon". At the same time, the plan drawn for the Claimants while showing 25.32 acres of land does indicate a ravine which is mentioned in the evidence. On the whole the court

⁴Para. 102, submissions on behalf of the Defendant

⁵ Trial bundle at p. 121

considers that the plan drawn by Gifford Walsh does show the positions of the land claimed by both sides plus the 0.92 acres overlap.

[86] It follows that the survey done and plan drawn by Lionel Laville, Licensed Surveyor does not assist the Defendant as far as the court is concerned. Added to this the subdivision plans of 25.32 acres make bad matters worse.

[87] Learned Counsel for the Defendant takes issue with various descriptions of the location of the two parcels of land in relation to the road. But one can hardly expect much beyond such descriptions given the fact that most or all of the persons making such statements are farmers. The quest of the court is for the truth.

[88] To begin with, the evidence that the Defendant has occupied the 3.02 acres is not consistent with dates of the working of the land. For example, Forbes Parillon, a witness for the Defendant himself casts doubt on the 30 year occupation. Added to that, as shown above, the land was not given to the Defendant all at one in his own right. In one instance land was given to him and his mother to cultivate. This begs the question as to when did the possession or occupation by the Defendant in his own right begin.

[89] The court also takes issue with Forbes Parillon, a witness for the Defendant, whose evidence is contradictory. He also testified that what he knows about the land was told to him. On the other hand, his evidence is that he visited the land several times over the last 45 years. In his evidence Forbes Parillon spoke of a gift of 'Parillon land' to his uncle Rabaey Parillon who in turn permitted Agnan to construct a shed on part of the land at Pois Doux, yet there is no evidence of a deed of gift which is claimed to be recorded. This must be an important piece of evidence relative to the Defendant. It is even his evidence, that he had deeds to show that the 25 acres belonged to other persons⁶. Again, these deeds are not in evidence to further the Defendant's case. In this regard it is critical to note again that the survey plans at pages 151 to 153 of the trial bundle have abbuttals which are not shown on the other plans except for the Colihaut River to the north.

[90] In the case of the Claimants, the evidence of Lucillia Ravariere, Marsden Ravariere and Wayland Peter are all in alignment. More importantly, Lucillia and her son, now 68 years old grew up on the land. And Wayland Peter knew of Ma Ketty's land and his father grazing his cows on the said land.

⁶ And hence the survey plans showing subdivisions of the 25.32 acres

And despite the absence of measurements for the most part, various types of trees were the boundary markers.

[91] In the circumstances the court accepts the following submission on behalf of the Claimants:

"All of this confusion on the part of the Defendant and his counterparts, we submit, are because of their own lack of knowledge and familiarity with the history, occupation and boundaries of Pois Doux, hence their inability to get it right. This is the cause, we submit of the Defendant extending his occupation beyond his entitlement. And we ask the court to find, because of his lack of knowledge of the...boundaries and true owners, that it is more likely than not that he has in fact gone past his proper boundary, and encroached on the Claimants' land."⁷

[92] It is the determination of the court that, using Lucillia Ravariere's evidence⁸ that she knew her mother's land from the age of 7 and growing up on the land; cultivating the land with her husband plus Wayland Peter's evidence that the Claimants have been in possession of the 25.32 acres in Colihaut for more than 80 years. On the other hand, the court is not satisfied that the Defendant has occupied the 3.02 acres in his own right for 30 years as he claims. In this regard the court highlights the following paragraphs of Wayland Peter's witness statement:

"12. When I visited Dominica in 1991, or thereabout, I had gone up to Pois Doux, I saw Busy on land close by to Ma Ketty's; but not on Ma Ketty's land. I did not know how he came to be there and did not ask. He was not on Ma Ketty's land at that time.

13. When I returned to Dominica to live twelve years ago, Busy was in the same are- but still not on ma Ketty's land."

[93] In all the circumstances this piece of evidence gives credence to the Claimants' contention that the Defendant's encroachment is of recent vintage.

Conclusion

[94] It is therefore the conclusion of the court that the Defendant's encroachment was not for a sufficient period to render the **Real Property Limitation Act**⁹ applicable.

Issue No. 2

Whether there is an overlap between the boundaries of the survey plan dated October

⁷ Para. 28, closing submissions on behalf of the Claimants

⁸ It is to be noted that the court did not consider the document which is claimed to be the will of the 1st Claimant's mother since it was not probated

⁹ Chap. 54:07 Laws of Dominica

1st2009 drawn by Elias Dupuis in the names of Lucillia Ravariere and Maria Lewis and the boundaries of the survey plan dated 27th March 2008 drawn by Lionel Laville in the name of Agnan St. Louis. And if there is an overlap where and how much is that overlap?

[95] The court accepts the display plan drawn by Gifford Walsh showing an overlap of the boundaries of the land occupied by the Claimants and that occupied by the Agnan St. Louis. The plan shows an overlap of 0.92 acres onto the Claimants' land which the court also accepts.

Issue No. 3

To the extent of the overlap which of the parties can better establish exclusive and undisturbed possession for at least the past 40 years and therefore the right to apply for a First Certificate of Title under Section 12 of the Title by Registration Act, Chap. 56:50?

[96] Based on the findings of the court regarding both parties, the court further determines that the Claimants are in the better position to establish exclusive and undisturbed possession for the past 40 years and with it the right to apply for a First Certificate of Title under Section 12 of the **Title by Registration Act**.¹⁰

Issue No. 4

Whether the Defendant has trespassed on the Claimants' land and if so, what damages are the Claimants entitled to?

[97] The Defendant has claimed that he has been in occupation of the 3.02 acres of land situate at Colihaut for 30 years. This has been rejected the court in view of inadequacy of the evidence in this regard. In the circumstances the court fixes the trespass on the land in the possession of the Claimant on the date of the survey, being 27th May 2008. The supporting evidence in this connection is provided by the Defendant, who gave evidence that "on or about April/May 2008 when I was with the Surveyor on my land, Marsden Ravariere...approached us and told us that the land belonged to the Claimants."

[98] One of the consequences of trespass is an injunction or damages, not both. In recent times the Privy Council ¹¹ has laid down a formula for arriving at the quantum. It is the capital value of the land trespassed upon times 7.5 % interest of such value per year. In this case it was land in a high

¹⁰ Chap. 56:50 Laws of Dominica

¹¹ See: Joseph Horsford v Lester Bird et al [2006] UKPC 3

scale residential part of the capital city, St. John's, Antigua.

[99] In this case there is in evidence a valuation of \$100,000.00¹² for the entire 25.32 acres or 1,129,075 square feet which works out to be \$11.27 per square foot. On that basis the value of .92 acres or 40,075 square feet is \$3633.00.

[100] For these purposes the court uses the date of the survey, being 27th May 2008, as the commencement of the trespass and up to the date of this order. This gives a total period of 6 years times 7.5 % of the .92 acres of \$3633.00. In turn, this yields \$1635.00 as damages to be awarded. It must be added that there is no evidence to suggest that the .92 acres was not used by the Defendant for his benefit, so that 7.5 % yearly rate used by the Privy Council is also applied by this court in this instance.

[101] The rule regarding damages and injunctions is that an injunction is not granted if the damages are adequate; but there is authority for the proposition that an injunction may be awarded in a proper case.¹³ It is therefore the reasoning of the court that the quantum of the award of damages may not serve as a sufficient deterrent, and hence the injunction is hereby also granted.

Issue No. 6

Whether the Claimants have trespassed on the Defendant's land and, if so, what damages is the Defendant entitled to?

[102] Having regard to the ruling of the court the Defendant is the trespasser, the question of damages to the Defendant does not arise.

Issue No. 7

Whether the Defendant is entitled to succeed on his counterclaim?

[103] The Defendant counterclaims: a declaration that he is the fee simple owner of the 3.02 acres in Colihaut; in the alternative, an order pursuant to section 12 of the **Title by Registration Act**¹⁴, damages for trespass to land, all necessary and consequential directions, accounts to ensure the

¹² Trial bundle at page 120

¹³ See: *Gilling v Gray* [1910] TLR 39. See also David Bean, *Injunctions* (7th Ed.) at page 21

¹⁴ Chap. 56:50, *Laws of Dominica*

issuance of a certificate of title in favour of the Defendant for the said portion of land; and further and/or other relief as the court deems fit.

[104] Again the court's ruling on the 25.32 acres claimed by the Claimants plus the further ruling that the Defendant trespassed on land in the possession of the Claimants rule out or negate the reliefs sought by the Defendant in his counterclaim.

Issue No. 8
Who is liable in costs?

[105] The Defendant having lost on the Claim and Counter claim being ruled nugatory must pay the Claimants costs on the value of the award of damages.

ORDER

[106] IT IS HEREBY ORDERED AND DECLARED as follows:

- 1) The **Real Property Limitation Act**¹⁵ is not applicable to this case since the Defendant has not occupied the land in the possession of the Claimants for a period of twelve years so as to trigger section 2 of the said **Act** in favour of the Defendant.
- 2) The display plan drawn by Gifford Walsh, Land Surveyor shows an overlap of .92 acres between the boundaries of the survey plans dated October 1st 2009 drawn by Elias Dupuis in the names of 'Lucila Ravariere and Maria Lewis' and the boundaries of the survey plan dated 27th March, 2008 drawn by Lionel Laville in the name of Agnan St Louis.
- 3) The Claimants can better establish exclusive and undisturbed possession for at least the past 40 years and therefore the right to apply for a First Certificate of Title under Section 12 of the **Title by Registration Act**.
- 4) Having regard to the ruling above, the declaration sought by the Claimants that they are the sole owners of the 25.32 acres situate in Colihaut is denied in these proceedings.
- 5) The Defendant has trespassed on the Claimants' land from 27th May 2008, being the date of the survey by Lionel Laville, Land Surveyor to the date of this Order. And the court awards damages in the amount of \$1635.00 with interest at the rate of 5% from the date of this Order until payment in full.

¹⁵ Chap 54:07 Laws of Dominica

- 6) An injunction is also granted prohibiting the Defendant or his agents from remaining or entering on the .92 acres of land situate at Colihaut and shown on plan drawn by Gifford Walsh, Land Surveyor.
- 7) The question of trespass by the Claimants on the Defendant's land does not arise.
- 8) The Defendant cannot succeed on his Counterclaim in view of the court's determination on the issues in favour of the Claimants.
- 9) The Defendant is liable in costs and must pay the Claimants prescribed costs based on the award of damages.

Appreciation

[107]The court wishes to thank Learned Counsel on both sides for the manner in which this difficult case was dealt with at the trial and for their comprehensive submissions. These greatly assisted the court and this must be recorded.

.....
Errol L. Thomas
High Court Judge [Ag.]