

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CASE NO. 430 OF 2000

JENNIFER SWEEN - Claimant
a.k.a Jennifer Harper
acting by her Attorney on record Cynthia Sween.

VS

NICHOLA CONNOR - Defendant

Appearances :

Mr. Carl Glasgow for the Claimant

Mr. Olin Dennie for the Defendant

2003, March 31st
2003, September 25th

JUDGMENT

[1] **BRUCE-LYLE, J:** The Claimant initiated action in this matter, by filing a Writ of Summons dated 6th October 2000. In her Statement of Claim she asserted that she is the owner of a parcel of land situate at Georgetown in the State of St. Vincent and the Grenadines by virtue of Deed No. 83 of 1999 and being 4,720 square feet in extent and numbered as Plan No. C7/33.

[2] She further asserted in that Claim that the defendant is in possession of the said parcel of land unlawfully and despite several notices, warnings and letters, the last dated October 20th, 1999 has refused to vacate the said parcel of land and continues to exercise acts of ownership in respect of the said parcel of land.

[3] The Claimant therefore requested of the Court -

- (1) A declaration that the Claimant is the owner of the said parcel of land;
- (2) A declaration that the Defendant has no valid title to the said parcel of land and is not entitled to possession of the same;
- (3) An injunction preventing the Defendant whether by herself or by her agents from entering upon the said parcel of land and from exercising acts of ownership in respect of the same until the trial and determination of this matter;
- (4) Damages for Trespass; and
- (5) Such further or other reliefs as to the Court may seem just and;
- (6) Costs.

[4] The defendant in her defence averred that she had no knowledge of Survey Plan C7/33 referred to in the Statement of Claim and that she was making no admission of the size and boundaries described therein. She most importantly denied that she is in unlawful possession of the said parcel of land and contended that on the 20th February 1978 her husband Hermus Connor, through his mother Hermia Connor, purchased the said parcel of land for the sum of \$8,207 from Balcombe Investments Limited, the lawful owner of the said parcel of land, together with other hereditaments. She further stated that the full

purchase price for the land was paid to Angella Mc Kie of Georgetown, who was the Secretary of Balcombe Investments Ltd.

- [5] The defendant again, very importantly, to my mind stated that having purchased the said parcel of land, she and her husband immediately entered into possession of the said lands in issue, and fenced same with barbed wire and planted coconut trees, plum trees and a plantain tree thereon; together with erecting a pig pen on the said parcel of land for the purposes of rearing pigs. Up to the moment of filing the defence, the defendant contended that she had peas planted on the said parcel of land.
- [6] The defendant further contended that she and her husband requested on several occasions of Balcombe Investment limited, that a Deed of Conveyance be executed to them with respect to the said parcel of land but was advised that due to a family dispute between the owners of Balcombe Investments Limited, the company was not in a legal position to execute any Deed of Conveyance until the matter involving the family dispute was resolved by the Court.
- [7] Crucially, the defendant stated that the Claimant who is from the Georgetown area where the parcel of land in issue is located, had actual notice of the fact that the defendant and her husband were currently in occupation of the said parcel of land, and had been in occupation of same since 1978; a period of 23 years.
- [8] The defendant then counter claimed the following:-
 - (1) A Declaration that the Defendant is entitled to possession of the said parcel of land;
 - (2) A Declaration that the Claimant is not the lawful owner of the said parcel of land;
 - (3) Cancellation of Deed Number 83 of 1999;

(4) An injunction to restrain the Claimant whether by herself, her Servants, and/or agents from entering upon the said parcel of land and from exercising any acts of ownership in respect of the said parcel of land until the trial and determination of this matter; and such further or other reliefs as the Court may seem just and costs.

[9] In reply the claimant denied any knowledge of the defendant having purchased the said parcel of land from Balcombe Investment Ltd. She also denied that the defendant and her husband entered into possession of the said parcel of land and fenced it. She claimed the land was fenced by the defendant in 1988, and all there was on the land at the time of filing of that reply was a plum tree and a few pea trees on the land. There was also a denial from the claimant of any knowledge of the defendants request to Balcombe Investments Ltd. to execute a Deed of Conveyance in respect of the said parcel of land, or of any dispute in the Balcombe family as stated. All told the claimant denied that the defendant and her husband have been in occupation of the said parcel of land for 23 years.

[10] The claimant posited that the defendants husband had been living abroad for over 23 years. And that the said parcel of land in issue, formed part of a long strip of land under the control of one Enna Hackshaw who permitted several persons including the defendant, to farm the lands when they were owned by Balcombe Investments. She further posited that when the Government acquired the lands in the late eighties, these persons were given notices to leave the lands as they were sold to other persons who now occupy them. The claimant then said, she received notice of approval to purchase the said parcel of land in January 1991 and informed the defendant of it, but she refused to move.

[11] The claimant called three witnesses, Cynthia Sween, who acted by virtue of a Power of Attorney from the claimant which was not disputed by the defendant; Ms. Ena O'Neal and a Mr. St. Aubin Murray. The defendant called three witnesses including herself, Mr. Joel Hudson Pitt, an Attorney-at-Law and a Mr. Lyndon Conner. All these witnesses testified by way of witness statements filed and signed, and also by way of oral testimony. Certain documents were also exhibited in evidence. These were, for the Claimant – Ex C.S.1 –

being a letter to the claimant signed by the Permanent Secretary Ministry of Agriculture, Industry and Labour, and dated 9th January 1991 and copied to the Accountant General, Director of Audit, and the Chief Surveyor; and in which the Claimant was advised that Cabinet had on Friday 14th December 1990, advised approval for the sale of the land in issue to the Claimant with certain conditions attached; Ex C.S.2 – Being Deed of Conveyance Number 83/99, Conveying the said lands in issue, in consideration for the sum of \$4,270, to the Claimant; Ex C.S.3 – being a letter from the Claimants Counsel Mr. Carl Glasgow to the Defendant, dated 20th October 1999 advising her of the claimants possession of the said lands by virtue of Deed No. 83 of 1999, and that she the defendant was a trespasser on the said lands until she could provide a legitimate claim to the said lands.

[12] The Defendant tendered two exhibits in evidence; Ex H.C.1 – being a copy of a Barclays International Passbook in the name of Hermus and Hermia Connor, Georgetown Branch, showing a withdrawal of the sum of \$8,270 on the 20th February 1978; and Ex C.S. 2 – being copies of two receipts signed and issued from the Law Firm of Joel Hudson Pitt, one dated the 27th March 1992 and the other 11th April 1994, each in the sum of Five Hundred Dollars, and issued to Hermus Connor and the other to Lyndon Connor pertaining to fees towards obtaining documents ancillary to Deed of Conveyance Re: Balcombe Investments, to Hermus Connor.

[13] **Issues**

It is clear from the evidence compressed above, that the claimant is claiming that by virtue of Crown Grant Number 83 of 1999 she is the lawful owner of a parcel of land at Grand Sable, Georgetown in this State; and that the Defendant claims that her husband Hermus Connor purchased the said parcel of land since 1978 and that she has been in uninterrupted possession of the land since that time, despite the fact that she has no document of title to the said lands. Who therefore is the rightful owner of the said lands?

[14] In her evidence the Defendant stated that the said parcel of land was purchased since February 1978, a period of over 25 years ago, by her Husband Hermus Connor, a

Seaman. This purchase was effected in the sum of \$8,270. The defendant consequently produced in evidence a Barclays Bank Passbook in the joint names of Hermus Connor and his mother Hermia Connor, showing the withdrawal of the said sum of \$8,270 on 20th February 1978. The defendant further said a receipt which was issued from Balcombe Investment Ltd, the lawful owner of the land at the time, evidencing payment of the sum of \$8,270 was unfortunately misplaced. There is no evidence of it. Can this Court, accept this evidence of purchase?

- [15] There is evidence that the defendant entered into possession of the said parcel of land, and has remained in uninterrupted possession of the said parcel of land for quite a considerable length of time. This evidence remains uncontradicted when one looks at the evidence of the claimant. The Claimants evidence shows that at the time when she purchased the said parcel of land, she knew that the defendant was in occupation of same. The claimant told this Court that she was aware the defendant was claiming the land and this was even before she commenced paying for the land in 1997; Knowledge which she herself was in possession of, coupled with what her brother, who was at the time a Member of Parliament for the District had told her.
- [16] On the other hand, the defendant in her evidence explained to the Court the reason why she never obtained a Title Deed for the land in issue, which she said she had been occupying for years. The explanation was as advised by her Lawyer at the time, Mr. Joel Pitt, to the effect that because of a dispute amongst the Balcombe brothers, he was unable to prepare a Deed of Conveyance for her with respect to the said parcel of land. It is interesting to note that the defendants evidence was supported by the evidence of Mr. Joel Hudson Pitt a Barrister-at-Law of some 25 years call to the Bar.
- [17] Mr. Pitt confirmed the defendants evidence, that there was in fact a dispute between the Balcombe brothers, and also that he had acted as Solicitor for James Lucky Balcombe, one of the said brothers, who had offered to buy the shares of his brother Benedict Balcombe. James Balcombe died, but not before selling a parcel of the said lands to the defendants husband, which had been surveyed by one Marcus Creese, at the instance of

James Balcombe. Mr. Pitt further testified, that he made efforts over the years to have a deed prepared for the defendant's husband as shown in the affidavit prepared by him Mr. Joel Pitt on behalf of Ms. Hermia Connor, the mother of the defendants husband.

- [18] In the said affidavit, which is in evidence, Hermia Connor set out the circumstances under which the parcel of land in issue was purchased. The said Affidavit was attached to a letter prepared by Mr. Joel Pitt and forwarded to Mr. Sam Commissiong who had by then been appointed Chairman of the Board of Directors for Balcombe Investments Limited.
- [19] Flowing from the above, it was posited by the Learned Counsel for the Defendant Mr. Olin Dennie, which position I agree with, that the Balcombe title to the said land had been extinguished since about the year 1990, and therefore they could not lawfully pass title in the said land to the Crown after February 1990, to be precise. I also agree with the defendants Counsel when he asserts that there is no evidence as to when and if the Crown acquired a Deed for the said land and if the Defendant was ever dispossessed of possession by the Crown.
- [20] The Claimant on the other hand simply based her claim on a letter received from the Cabinet of the Government of St. Vincent and the Grenadines, informing her daughter about the terms and conditions for the purchase of some crown land. Subsequently she came into possession of a Deed conferring ownership of the said parcel of land to her. It is not in dispute that since 1989 both claimant and defendant have been having problems over the said parcel of land.
- [21] What is again noteworthy is the evidence from Ena O'Neal who at one time cultivated some of those lands owned at the time by the Balcombes. She said she remembered the defendants husband Hermus Connor taking a piece of the lands and on challenging him he threatened her with a cutlass. She did say Hermus took the lands without permission, but I would say she is in no position to say whether Hermus took the lands with permission from the Balcombe's or not.

[22] It is evident that the claimant is in possession of a Deed Conferring ownership of the parcel of land to her, long after the defendant claims she asserted ownership to the same piece of land after paying \$8,270 for the said parcel in 1978. There is also evidence, not in dispute, that the defendants asserted their possession of the said land by cultivating it, building a pig pen on it, and also by fencing the said lands long before the claimant secured her Deed to the said land in 1989 or 1990 thereabouts.

[23] Even though there is no evidence of the payment of the sum of \$8,270 by the Defendant for the purchase of the said land, except for the bank book exhibited showing the withdrawal of the said sum by the defendants husband and her mother-in-law, I am inclined to accept that evidence as the truth, having regard to the evidence of Mr. Joel Pitt to this Court. During Mr. Pitts evidence to the Court I observed his demeanour. He struck me as being sorry for the inconvenience and embarrassment caused, not only to the defendant, whose story he confirmed in every material particular, but also to the claimant who he stated he had known since his infancy, and whom he had represented at one time in another transaction. In all probability, and having regard to all the circumstances of this case, I accept the evidence of the defendant and his witness Mr. Pitt as the truth.

{24] Coupled with this is the evidence from the claimant that she knew the defendant was in occupation of this parcel of land, when she purchased it.

[25] **The Law**

Section 17 of the Limitation Act Cap. 90 of the Laws of St. Vincent and the Grenadines Revised Edition 1990 states as follows:-

"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."

Lord Macnaghten, in giving the decision of the Privy Council in *Perry v Clissold* [1907] AC 73 at 79 had this to say –

"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 this case, his right is forever extinguished, and the possessory owner acquires an absolute title".

[26] The evidence in this case clearly shows that the Defendant was in both factual possession and had the requisite intention to possess same; (*animus Possidendi*). I agree with Learned Counsel for the defendant when he stated in his submission that when the Crown purported to take possession of the said lands at Grand Sable from the Balcombes, the title of the Balcombes to the said land had already been extinguished, and in that case the Balcombes could not properly and legally pass title in the said land to the Crown – see the Case of *Keung v Kung Kwok Wai David and others* (Hong Kong) 1997.

[27] I reiterate as done earlier, that there is no evidence presented in this Case to show how the Crown attained title to the land in issue. The evidence by both the claimant and the defendant in this matter is that the parcel of land in question was owned by the Balcombes and that being the case, it is clear that the Balcombe's title to the land was extinguished since about the year 1990. It follows, like night follows day, that the Balcombe's could not lawfully pass title in the said land in issue to the Crown after 1990. There is also no evidence to show when and if the Crown acquired a Deed for the said land, or if the Defendant was dispossessed of possession by the Crown.

[28] I find I cannot sustain the claimants arguments as posited by her Learned Counsel Mr. Carl Glasgow. It is clear that the defendants possession of the said land was adverse, that is to say inconsistent with and in denial of the right of the landlord to the premises.

Order

Having considered all the facts and circumstances of this case, and on a balance of probabilities, the claimants claim is dismissed in its entirety, and I find for the defendant on her counter claim. In that regard –

- (1) This Court declares that the defendant is entitled to possession of the said parcel of land;
- (2) This Court declares that the Claimant is not the lawful owner of the said parcel of land;
- (3) That Deed Number 83 of 1999 is hereby cancelled;
- (4) A perpetual injunction to restrain the Claimant whether by herself, her Servants and/or Agents from entering upon the said parcel of land and from exercising any acts of ownership in respect of the said parcel of land is hereby granted. The claimant is to pay the Defendants costs in the sum of \$4,000.

Frederick V. Bruce-Lyle
High Court Judge