

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**HCA No. 915 of 2001**

**BETWEEN**

**DOROTHY BAXAM**

**Plaintiff**

**AND**

**JOSEPH LA MOTTE**

**Defendant**

Before the Honourable Justice Peter A. Rajkumar

**Appearances:**

Mr. Douglas for the Plaintiff

Mr. Ottley for the Defendant

**JUDGMENT**

**Facts**

The Plaintiff's claim is for possession of a parcel of land known as Lot 66, Sangre Grande ("the said lot"). The said lot is described as:

*"All and singular that certain piece or parcel of land situate in the Ward of Manzanilla in the Island of Trinidad shown as Lot no. 66 of the general plan of the Wallen Vale Estate measuring 100 feet along the eastern and western boundary lines and bounded on the north by a space 3 feet wide reserved for a drain, on the south by a road reserved 33 feet wide, on the east by lands formerly of Peter Picton but now of Marlay and Company Limited, and on the west by Lot no. 65 of the said Wallen Vale Estate."*

The Plaintiff, Dorothy Baxam, claims to derive title from the following matters:

- (1) The said lot was purchased by Christopher Alleyne in 1948 and this is reflected in Deed of Conveyance between Trinidad Co-operative Bank Limited and Christopher Alleyne registered as No. 4811 of 1948.
- (2) By Deed of Mortgage registered as No. 4812 of 1948 made between Christopher Alleyne of the One Part and Beulah Madoo of the Other Part, the said lot was mortgaged to Beulah Madoo by Christopher Alleyne.
- (3) On 29<sup>th</sup> August 1952, Christopher Alleyne died leaving a Will dated 17<sup>th</sup> July 1952 appointing his wife Annie Alleyne sole executrix and beneficiary of his estate.
- (4) On 27<sup>th</sup> November 1952, probate of the Will dated 17<sup>th</sup> July 1952 of Christopher Alleyne was granted to his widow and sole beneficiary Annie Alleyne in proceedings No. L-534 of 1952.
- (5) By Deed of Release registered as No. 5665 of 1953 and made between Beulah Madoo of the One Part and Annie Alleyne as executrix of the estate of Christopher Alleyne, Beulah Madoo released the said lot from the mortgage aforesaid.
- (6) On 17<sup>th</sup> April 1965, Annie Alleyne also called Annie Mitchell was lawfully married to one Commizion Joseph Henry.
- (7) On 24<sup>th</sup> September 1973, the said Annie Henry (Annie Alleyne)(Annie Mitchell) died intestate. Letters of administration of her estate were granted to Commizion Joseph Henry on 25<sup>th</sup> October 1974.
- (8) The said lot was included in the inventory filed in the application for the said letters of administration which is registered in the Protocol of Estates as No. L-888 of 1974.

- (9) By Deed of Assent dated 28<sup>th</sup> November 1974 and registered as No. 16261 of 1974, the said Commizion Joseph Henry as legal personal representative of the estate of Annie Henry (Annie Alleyne and/or Annie Mitchell) assented to the vesting of the said parcel of land to himself in his personal capacity.
- (10) Commizion Joseph Henry died on 18<sup>th</sup> June 1980. By his Will dated 8<sup>th</sup> April 1980, he appointed the Plaintiff Dorothy Baxam as the sole executrix and beneficiary of his estate.
- (11) On 9<sup>th</sup> July 1999, probate of his Will was granted to the Plaintiff, which grant was registered as No. L-1860 of 1998. It should be noted that under this Will he left all his property to the Plaintiff but did not specifically identify the said lot (property) or specifically bequeath the said parcel of land.
- (12) By Deed of Assent dated 22<sup>nd</sup> October 1999, the Plaintiff as legal personal representative of the estate purported to assent to the vesting of the said parcel of land to herself in accordance with the provisions of the Will of the said Commizion Joseph Henry. It is pleaded that this Deed of Assent was registered as No. 22094 of 1999.

It should be noted that the Deed of Assent registered as No. 22094 of 1999 does not in fact vest the said parcel of land in the Plaintiff. It purports to vest three parcels of land but none of those parcels is the subject parcel. The Plaintiff acknowledges this. The Plaintiff also acknowledges that Annie Alleyne failed to vest the said parcel of land in herself.

### **The Plaintiff's Case**

The Plaintiff contends that:

- (1) Despite Annie Henry not having the legal ownership of the said lot, she was the beneficial owner in equity by virtue of the devise in the Will of Christopher Alleyne.

- (2) The Defendant's father, his predecessor in occupation of the said lot recognised and acknowledged that Annie Alleyne was the owner as his father George Mitchell obtained her permission to construct the dwelling house on the said lot.
- (3) The Defendant acknowledges Annie Henry to be the owner of the said lot by his pleading where he alleges that the land was a gift from Annie Henry to his father and family.
- (4) The Plaintiff, although not the legal owner of the said lot, is in equity beneficially entitled to the said lot.
- (5) The Plaintiff/Claimant is entitled to a grant of letters of administration with the Will annexed, of the estate of Christopher Alleyne as
  - (i) the Plaintiff is the sole executor and beneficiary of the estate of Commizion Henry
  - (ii) who in turn was the surviving spouse of Annie Henry.
  - (iii) Annie Henry herself was the sole executor and sole beneficiary of the estate of Christopher Alleyne.
  - (iv) Therefore, to the extent that the said parcel of land reverted to the estate of Christopher Alleyne (Annie Alleyne not having vested the said parcel of land in herself), the Plaintiff would still be in a position upon making the necessary applications to have the said parcel of land vested in herself.

The Plaintiff therefore claims an order for possession of the said land from the Defendant and claims in proceedings, originally filed in 2001, that the Defendant is and has been in unauthorised occupation of the said parcel of land for approximately four years. The Plaintiff relies upon a letter of 30<sup>th</sup> July 1999 written by the Plaintiff's

Attorneys at Law giving the Defendant two months' notice to quit and deliver up possession of the parcel of land to the Plaintiff.

### **The Defendant's Case**

The Defendant, while admitting the Plaintiff's paper title, asserts that:

- (1) He was born in 1970 in a house on the said parcel of land;
- (2) Annie Alleyne or Annie Mitchell up to her death in 1973 was the owner of the land on which the house in which he lives was built;
- (3) Annie Mitchell was the sister of George Mitchell who was the father of the Defendant;
- (4) George Mitchell obtained permission from his sister Annie Alleyne to build a property on the subject land and she in fact gifted the plot of land to him.

### **Facts in Common**

It is clear therefore that:

- (1) The Plaintiff asserts her title via Commizion Henry;
- (2) Commizion Henry derived his title from Annie Alleyne;
- (3) Annie Alleyne (Annie Mitchell) who derived her title from Christopher Alleyne was the aunt of the Defendant.

### **Issue**

The only issues, therefore, are:

- (1) Whether the Defendant is entitled to raise the issue of the extinction of the title of the Plaintiff or her predecessors in title by virtue of the real property limitation ordinance; and/or

- (2) Whether or not the Defendant can raise an estoppel against the Plaintiff by virtue of an equitable interest acquired either by himself or his predecessors in title to the said parcel of land.

### **Equitable Estoppel and the Pleadings**

The Plaintiff contends that the Defendant cannot resist her claim to possession because insofar as the Defendant claims an equitable estoppel, he had not pleaded (or there remains no admissible evidence), that his father George Mitchell spent any monies to construct the dwelling house on the said lot of land.

It is alleged that the evidence shows only that he was the builder of the house and that such an allegation of proprietary estoppel/promissory estoppel is not sustainable either as a matter of pleading or evidence, as there is neither, to show that George Mitchell acted in any way to his detriment by expending money on the house built on the said lot.

Further, it is contended that the Defendant has not pleaded particulars of any expense or detriment suffered by him and further there is no evidence that the house on the said lot was owned by the said George Mitchell.

I deal with these as follows:

- (1) The Court can infer as a matter of logic and common sense that a builder of a house would have expended monies to build that house.
- (2) The Court can infer as a matter of logic and common sense that George Mitchell would obviously have acted to his detriment by expending monies on that property if in fact the fruits of that expenditure were to be denied to him.
- (3) While it may be desirable, it is not necessary in the circumstances of this case for the Defendant to plead particulars of any expense or detriment suffered by George Mitchell. It is inherent in the nature of the application that the

Defendant, if possession is granted against him in respect of the said house and land, would suffer detriment and, in fact, significant detriment. The plaintiff cannot therefore claim to be taken by surprise.

## Law

### (a) Title

I follow the established law that unless a Defendant is in possession of land with the consent of a Plaintiff, a Plaintiff who seeks possession of land from a Defendant must prove his title to the land strictly. He must set out all the links in his title, showing a good root of title and establishing that he is the owner of the land. In a claim for possession, a Plaintiff succeeds on the strength of his own title and not on the weakness of the Defendant's title. See the case of *Murray v Biggott* before the Honourable Justice Gregory Smith, paragraph 7, *High Court Action No. T-101 of 1998* wherein he refers to the case of *Charles v Singh, Civil Appeal No. 50 of 1960*, *Ramdhan v Solomon, High Court Action No. 522 of 1975* and *Man Hong v Singh, High Court Action No. 1278 of 1980*.

In that case, he notes at paragraph 9:

*“A specific devise in a Will followed by the relevant deed of assent can be a good root of title but not so a general devise in a Will. See Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 42, paragraph 148.”*

At paragraph 10 of the *Murray* case, the Honourable Justice Smith found:

*“In the present matter the first deed of assent was prepared pursuant to a grant of administration to Maurice Murray and is not good root of title. The second deed of assent purports to be prepared pursuant to a grant of executorship, and to the Will of Maurice Murray, but significantly, it does not recite that it was made pursuant to a specific devise in such a Will, nor was the Will brought into evidence to prove that the grant to the plaintiff was pursuant to any specific devise in the Will. As such the second deed of assent by itself is not a good root of title.”*

*“A deed of assent is prepared without a search of title and is a document which assumes a previous instrument of title. By itself, it is not a good root of title.”*

Even if the Plaintiff in this case seeks to rely upon inter alia a title rooted in a deed a assent, as noted previously the deed of assent does not in fact vest the said property as originally pleaded. Further, however, even if it did, that would not constitute a sufficient root of title.

In that case, the Honourable Justice Smith found that the relevant root of title had to be deduced for 30 years and the issue in that case was whether the two deeds of assent which the plaintiff produced in proof of his title to the land could be considered a good root of title (paragraph 8).

In this case, the Plaintiff’s root of title is the conveyance by Deed No. 4811 of 1948. However, as the Plaintiff acknowledges, that root is defective in that (1) Annie Alleyne did not vest the said property in herself and (2) the Plaintiff did not vest the said property in herself.

While the Plaintiff has therefore shown an interest in the property, and an interest capable of being converted into a legal title, she has to succeed on the strength of her own title and not on the weakness of the Defendant’s title.

### **Adverse Possession**

The Plaintiff further claims that the Defendant’s claim for extinguishment of the legal title by reason of adverse possession is not sustainable on the pleadings in that it is pleaded that George Mitchell occupied the land with the permission of Annie Henry and not as a squatter adverse to Annie Alleyne’s proprietary rights.

The fact is, however, that Annie Alleyne died in 1973 and there is evidence in the bundle of documents before the Court that a letter was written dated 12<sup>th</sup> November 1973 to Cecilia La Motte, the mother of the Defendant, which reads as follows:

*“Estate of Annie Henry, Deceased*

*We have instructions from Mr. Commizion Joseph Henry, the lawful widower of the above-named Deceased who died on 24<sup>th</sup> September 1973 intestate, to prepare his application to the Court for a grant of letters of administration of her estate. We are informed by our client that you occupy premises situated at Alfonso Street, Sangre Grande, and we write to inform you until further notice.” [sic]*

In fact, there is also a further letter on 9<sup>th</sup> June 1980 as follows:

*“We are acting in this matter for Miss Dorothy Baxam, the sole executrix named in the last Will of the Deceased and we have her instructions to prepare her application to the Court for a grant of probate of this Will. We are informed by our client that you occupy a house of the Deceased at Alfonso Street, Sangre Grande, and we write to inform you that all rents, taxes, etc., now due by you and to become due are payable to Miss Baxam against her receipt until further notice.”*

In 1973, the letter of 12<sup>th</sup> November 1973 at paragraph 2 refers to instructions from Commizion Joseph Henry that the Defendant’s mother occupied premises situated at Alfonso Street, Sangre Grande. Again, the Defendant being born in 1970, it can be inferred by the Court (and this corroborates the Defendant’s own evidence) that the Defendant would have been born at the said premises or lived there very shortly after his birth.

Further, it is clear from the letter of 9<sup>th</sup> June 1980 (headed Estate of Commizion Joseph Henry, Deceased) that the Plaintiff sought to collect rents from the Defendant’s mother in 1980. It is clear also that as at 9<sup>th</sup> July 1980 the Plaintiff knew that Cecilia La Motte, the Defendant’s mother, occupied a house at Alfonso Street, Sangre Grande. It is also clear that in 1980 the Defendant would have been 10 years old. The Court therefore accepts his evidence that he probably would have been living on the said property with his mother in 1980.

In those circumstances, I accept the Defendant’s evidence that he has in fact been in occupation of the said premises together with his parents since at least 1973 and his parents probably before then.

I find that up to 1973 that possession was with the permission of Annie Henry either because:

- (a) Annie Henry allowed them to occupy the said premises; or
- (b) Annie Henry had already given the said premises to the Defendant's father.

I accept the evidence of Domingo La Motte that Dorothy Baxam came to live on the compound in 1974 after his aunt Annie Alleyne died. The letter of 12<sup>th</sup> November 1973 suggests that the occupation by the Defendant's mother of the premises at Alfonso Street was contemporaneous with or may even have pre-dated the coming on the scene of the Plaintiff.

I further infer from the letter of 9<sup>th</sup> July 1980 that no rents were paid by the Defendant's parents as there are no rent receipts in evidence before me and there is no evidence that any rents whatsoever were paid. This is consistent with the Defendant's contention that the occupation of the premises at Alfonso Street was a family arrangement and one for which rent was not required. What the letter of 1980 does reveal is that the Plaintiff expected the Defendant's mother to pay rent to her.

I note the dicta of the Privy Council in *Ramnarace v Lutchman 59 WIR 511*, albeit in relation to a tenancy at will that:

*"It is the deliberate policy of the legislation that the title of owners who allowed others to remain in possession of their land for many years with their consent but without paying rent or acknowledging their title should eventually be extinguished."* [paragraph 12]

And:

*"The limitation period for an action to recover land is 16 years, and the period starts when the right to bring the action first accrues to the person bringing the action or someone through whom he claims."* [paragraph 9]

The occupation by the Defendant's mother after the issue and receipt of that letter in 1980 without paying rent was adverse to the claim of the Plaintiff and in fact amounts to a non-recognition of the Plaintiff's title to the said property. I find that such adverse occupation by the Defendant's mother and then by the Defendant subsisted from 1980 to the present. These proceedings commenced in 2001, 21 years later, by which time the Plaintiff's title such as it was, was extinguished.

### **The Plaintiff's further contentions**

The Plaintiff also claims that the Defendant's allegation that Annie Henry gave the lot of land to George Mitchell is not sustainable because the Conveyancing and Law of Property Act provides that there can be no conveyance of land except by deed of conveyance executed by the owner thereof. It is clear, however, that the law has moved on from this. The Court can give effect to the creation of rights over land, including a loose gift of property, if other elements of proprietary estoppel or promissory estoppel exist.

The Plaintiff also contends that as the Defendant admitted that neither he nor any member of his family applied for or was granted letters of administration of his father's estate, there can be no transfer of any proprietary rights, including rights of adverse possession.

The Court considers that it is not necessary that one obtains a grant of letters of administration of a parent in order for any right acquired by adverse possession to transfer to a child of that deceased parent. In any event, however, as I have found, the Defendant has been living on the said premises for his entire life. He in his own right is able to raise the issue of the acquisition of title by adverse possession by his parents and their children, of which he is one.

The Plaintiff also claims that there was no dispossession of Cecilia La Motte, the Defendant's mother, who continued in possession of the said lot until her death in 1998. However, the Defendant does not need to prove that he dispossessed his mother. What is required to be proved is that the Defendant's mother dispossessed the Plaintiff. I find that she did so dispossess the Plaintiff since at least 1980 and that is sufficient for the Defendant who lived with his mother, together with his mother and the beneficiaries of the estate of his mother and father, to extinguish the Plaintiff's rights by adverse possession.

The Plaintiff contends that there was no response to the letters of 9<sup>th</sup> July 1980, 19<sup>th</sup> July 1994 and 19<sup>th</sup> July 1999 and if a person were really claiming some

proprietary interest in the said lot of land, he would respond denying the claim and asserting his or her own claim.

There is no evidence that the letters were ever responded to. I find, however, that failing to respond to those letters was not inconsistent with the Defendant subsequently asserting that he in fact had the right to occupy the premises. He would have had no need to respond to such a letter if he were confident in such a right.

I agree with Counsel for the Plaintiff that the payment of electricity and Water and Sewerage Authority bills and land and building taxes by the Defendant do not by themselves support a claim for title to the land by adverse possession. However, I find in this particular case it makes no difference to my findings.

I do not accept that the reason Annie Alleyne did not assent to the vesting of the said lot of land in herself was because of the understanding that she gave full control of that subject parcel of land to the Defendant's father. It would have been a simple matter for her to have vested that property directly in the Defendant's father if that were the case. Again, however, I find this makes no difference to my conclusion.

**(b) The effect of Adverse Possession on the Defendant**

I refer to the case of *Margaret Jack Roberts v the Attorney General and Satnarine Maraj, Civil Appeal No. 2 of 2006* and the statement by the Honourable Justice of Appeal Hamel-Smith at page 3 that:

*“While the effect of Section 22 of the Act is that the true owner’s right and title to the said lands are extinguished after the stated period, that circumstance does not automatically vest the legal title in the person claiming to have possessory title.”*

And at page 4:

*“The end result would be that the appellant had what is loosely referred to as a possessory title, the benefit of which permitted them to remain in possession of the lands and nothing more. No legal title would vest in her or her family. The title or, for the use of a better word, right could be best described as an imperfect titles.”*

Page 4:

*“The Real Property Act, Ch. 56:02, makes specific provision for dealing with imperfect title.”*

Page 5:

*“Section 18 deals specifically with possessory titles in that before any certificate of title is issued an applicant must prove to the Court that the requisite notice has been posted on the lands in question. When the lands are brought under the provisions of the Act the applicant acquires an indefeasible title to the lands.*

*This is the only known provision in the law to obtain legal title to any lands in Trinidad and Tobago where a person has an imperfect title as in the instant appeal.”*

**(b) Proprietary Estoppel**

I agree with Counsel for the Plaintiff that Annie Alleyne’s conduct would have encouraged George Mitchell, the Defendant’s father, to rely on same and to build a house for himself and his family on the land at his expense. See the Decision of this Court in *High Court Action No. 1621 of 2002, Raj Mahabir v Radhika Mangatoo*.

I find further that:

- (1) The circumstances under which a dwelling house was erected on the said parcel of land gives rise to an estoppel;
- (2) The estoppel has the hallmarks of proprietary estoppel;
- (3) The estoppel would be satisfied by the vesting of the entire parcel of land and dwelling house thereon in the children of George Mitchell;

I note, however, that all the children of George Mitchell are not before the Court.

I find that when the respective titles of the Plaintiff and the Defendant are weighed in the balance, the Defendant’s title is far stronger comprising as it does

- (1) a claim by virtue of promissory estoppel/proprietary estoppel,
- (2) the extinction of the title of the Plaintiff by operation of law.

I do not have sufficient evidence, therefore, as to the devolution of the estate of George Mitchell to grant a declaration that the Defendant himself is the beneficial owner of the subject parcel of land or to direct the Registrar to transfer the subject lot of land to the Defendant as claimed in the Defendant's counterclaim.

However, I do have sufficient evidence to dismiss the Plaintiff's claim for an order for possession.

Accordingly, I dismiss the Plaintiff's claim. Although I dismiss the Defendant's counterclaim, I order that the Plaintiff do pay the costs of the Defendant certified fit for Advocate Attorney as the Defendant has successfully defended himself against the Plaintiff's claim for possession.

I commend Counsel for the assistance provided to the Court and in particular for the diligence shown in the preparation of written submissions.

**Peter A. Rajkumar**  
**Judge**