

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2007-01279

Between

**MAJID ABDUL KADIR
AND
MARTY KADIR**

Claimants

AND

PAUL KATWAROO

Defendant

Before the Honourable Mr. Justice Gregory Smith

Appearances:

Mr. H. Ramnath for the Claimants

Mr. G. Raphael for the Defendant

REASONS

INTRODUCTION:

1. This is an action for possession of land. The Claimants are the title holders of the land in question. The land in question (the larger parcel) is said to comprise of one acre and twenty-four perches. The Claimants say that the Defendant's father was the tenant of one lot of land out of the larger parcel of land. They also allege that the Defendant originally occupied one lot of land out of the larger parcel. The Claimants allege that the Defendant unlawfully began to occupy five more lots of out of the larger parcel from about four to six years prior to this action.

2. The Defendant says he was the tenant of six lots of land out of the larger parcel. He says that he had been a tenant of these six lots since 1973. He says that he offered the land rent for these six lots to the Claimants when they became the owners of the same in 1983, but the Claimants refused to accept the rent offered. The Defendant has not paid any rent since 1983. As a consequence of this non-payment of rent for more than 17 years, the Defendant claims that he is now entitled to the six lots of land as an adverse possessor of the same.

3. The issue for decision in this case is whether the Defendant has proved that he has been in continuous, undisturbed possession of the six lots of land and without paying rent for them for over seventeen years. If not, what portion of land has he occupied for the said seventeen years without paying rent?

4. I find on a balance of probabilities that the Defendant has proved his continuous and undisturbed possession for over 17 years and without paying rent for two of the six lots of land that he claims. He had abandoned his possession of four of the six lots. Accordingly, I make orders to protect his right to the two lots and to give the Claimants possession of the other four lots.

ANALYSIS:

5. By virtue of the joint effect of sections 3 and 4(a) of the Real Property Limitation Act Ch. 56:03, a tenant can acquire a possessory title to the land he occupies if he does not pay the rent for sixteen years after the rent became due. In the present matter, the Defendant alleges that he held a yearly tenancy of the six lots of land. After the non-payment of rent for one year, he could begin to be in adverse possession of the six lots he allegedly occupied. After a further sixteen years of non-payment of rent the Defendant could have acquired a possessory title to the six lots he allegedly occupied. Therefore, after 17 years of non-payment of rent, the Defendant could have acquired possessory title to the six lots he allegedly occupied. However, the Defendant had to prove continuous possession or occupation of the lands he claims to have tenanted. If he did not occupy the land (or a part thereof) continuously, he would have abandoned his tenancy of the land (or part thereof). Having abandoned the land (or part thereof) he would no longer be able to claim continuous and undisturbed possession of the same.

In the present matter there was only one witness for the Claimants, namely, the Second Claimant. The Defendant alone testified on his behalf. Having heard the evidence, I find that the Defendant is a more credible witness than the Second Claimant. Nevertheless, the Defendant had to prove his claim of continuous and undisturbed possession of the six lots for the requisite 17 years. His evidence only established continuous and undisturbed possession of two of the six lots of land he claims.

I will now set out my reasons for these findings.

6. The Second Claimant's evidence showed that she was not familiar with this land. She acquired title in 1983 and only mentioned one visit to the land around this time and another one in 2007.

Her evidence also contained the following material inconsistencies.

Firstly, she claimed that the Defendant's father was the tenant of a lot of land. She changed this to say that it was the Defendant who was the tenant. Later still, she claimed she did not know who was the tenant. In fact, I recorded nine different answers from the Second Claimant as to who was the tenant.

Secondly, the Second Claimant alleged that there was only one house on the larger parcel. Later, she stated that there were two houses there. Later again she stated that she couldn't remember if there were two buildings on the land.

Thirdly, the Second Claimant in cross-examination flatly denied that the Defendant ever sent rent to her; but there was a letter in evidence from her former attorney at law whereby that attorney was returning the Defendant's cheque for rent which the Defendant had sent to the Claimants.

Fourthly, at paragraph 11 of her witness statement the Claimant stated that the Defendant had abandoned the tenancy and had vacated five lots of land. In cross-examination she stated that she could not remember stating this.

The Second Claimant's evidence was not credible.

7. On the other hand, the Defendant proved his familiarity with the land. He was born in 1937 and gave a history of the of the land stretching back to 1941. He was a more credible witness than the Second Claimant. However his evidence revealed the following weaknesses.

Firstly, the Defendant stated in paragraph 5 of his Defence that he built his house on two lots of the land. He also remembered that he signed a certificate of truth at the end of his Defence. In cross-examination, he was clear that he built his house on one lot of land and used another lot as a kitchen garden.

Secondly, the Defendant was clear that he had fenced around two lots of land. These were the lots with his house and the kitchen garden. He gave conflicting evidence about fencing the other four lots. He said in cross-examination that he fenced two sides of the four lots; later he said he fenced three sides of these four lots. In re-examination however, he stated that the difference between the two lots he had and the other four lots was that the first two lots were fenced. Therefore, when he alleged that he fenced his land since in the 1970s (see paragraph 14 of his witness statement), the Defendant was probably referring to the two lots of land.

Thirdly, the Defendant alleged that he had been cultivating five lots of land since he started renting them (see paragraph 12 of his witness statement). However, when he

was asked in re-examination about the cultivation of the five lots, the Defendant stated that he planted certain short crops in his kitchen garden in the lot behind his house but he only planted fruit trees randomly on the other four lots.

Fourthly, the Defendant alleged in cross-examination that the six lots were originally swampy rice lands and that he backfilled these lands with soil some time after he rented the six lots. However, the Defendant failed to identify the time when he backfilled these six lots. This is detrimental to his case, for if he backfilled the land before 1983 while he was admittedly a tenant, this would be irrelevant to his claim for a possessory title to the six lots which is based upon continuous and undisturbed possession after 1983.

8. While the Defendant was a more credible witness than the Claimant, he still had the onus of proving continuous and undisturbed possession of the six lots for seventeen years on a balance of probabilities. I find that he has proved this continuous and undisturbed possession of the two lots that he fenced from since the 1970s without paying rent for the same.

He has failed to prove any continuous occupation of the other four lots at any time after 1983 when his claim for possessory title began. His random planting of fruit trees in an open area (the four lots) can hardly be described as proof of occupation of the same. Neither does his backfilling of the four lots at some indeterminate time prove his continuous occupation of the four lots.

9. In the circumstances, I make the following orders:

- (i) It is declared that on the counterclaim the Defendant is entitled to possession of two (2) lots of land which is enclosed by chain link wire fence with respect to property described in Deed #4461/83.
- (ii) The Claimants do transfer title to the Defendant of the said two (2) lots of land referred to in (i) above.
- (iii) The Claimants do have possession of the four (4) lots of land to the rear of the parcel of land as mentioned in paragraph (i) hereof.
- (iv) There be liberty to apply.

Further, since each of the parties have succeeded in parts of their respective cases and failed on parts of their respective cases, I order that each party is to bear their own costs.

Dated this 22nd day of June 2009

Mr. Justice Gregory Smith
JUDGE