

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2008-00409

BETWEEN

WINSTON SMART

CLAIMANT

AND

ERROL RAMDIAL

FIRST DEFENDANT

AND

BOONIRAM RAMDIAL

SECOND DEFENDANT

AND

STELLA RAMDIAL

THIRD DEFENDANT

AND

CHANARDAYE RAMDIAL

FOURTH DEFENDANT

BEFORE THE HONOURABLE MADAME JUSTICE M. DEAN-ARMORER

APPEARANCES:

Mr. Beresford Charles for the Claimant.

Ms. Leandra Ramcharan for the Defendants.

JUDGMENT

Introduction

1. In this action, the Claimant seeks to recover from the Defendants vacant possession of four and one half acres of land situate at Coalmine Sangre Grande as well as damages for trespass. The Defendants resist the action on the ground that the Claimant's title to the property has been extinguished by virtue of the fourth Defendant's continuous and undisturbed occupation of the property for more than sixteen years. The Fourth Defendant therefore counterclaims, seeking, inter alia, a declaration that she has acquired a possessory title to the property by virtue of her adverse possession, an order that she be vested with the title to the land and damages for trespass.

Proceedings

2. The Claimant initiated these proceedings by way of a Claim Form and Statement of Case filed on the 28th December 2006. An Amended Claim Form and an Amended Statement of Case were later filed on the 12th July 2006.
3. In response, the first, second and third Defendants filed a joint defence to the claim on the 19th March 2007. The fourth Defendant filed her defence and counterclaim on the 22nd November, 2007.
4. The Claimant relied on the testimony of his wife Cynthia Smart and on his own testimony. The witness statements of both the Claimant and the Claimant's wife, Ms. Cynthia Smart, were both filed on the 30th January, 2008.
5. The Defendants filed two (2) witness statements in support of their defence and the counterclaim of the fourth Defendant. The first Defendant's witness statement was filed on the 21st April 2008. The fourth Defendant's witness statement was filed on the 23rd April 2008.

6. During the trial, the witnesses for both the Claimant and the Defendants were cross-examined on their witness statements. It is to be noted that the Second and Third Defendants did not give evidence in this matter.

Facts

1. In the instant Claim there is no dispute that the Claimant and his father in law, George Peterkin purchased the subject lands in 1978 as tenants in common and that Mr. Peterkin was the sole occupier of the subject lands between 1978 and the date of his death on 2nd February, 1979. The Claimant continued to reside in Diego Martin and to practice as a pharmacist, firstly in his own business and later as the employee of another pharmacist.
2. Secondly, it has been accepted by Ms. Smart who testified for the Claimant that the fourth Defendant, Chanardaye Ramdial worked for Mr. Peterkin by providing meals for him.
3. Beyond these facts, there has been no agreement between the parties. In respect of the intervening years between 1979 and 2006 when the Claim was filed, the Court encountered a haze of events in respect of which there were contradicting accounts by the respective parties, with only one item of documentary evidence to provide any concrete assistance in resolving the issues of fact.
4. In 1979, Mr. Peterkin died. His relatives never obtained Letters of Administration of his estate. The subject property remained undivided and un-administered with the Claimant in sole possession.
5. It is the Claimant's contention that prior to his death, Mr. Peterkin had entered into an agreement with the First Defendant, who would look after the property in exchange for reaping a portion of the produce. The Claimant himself was uncertain as to the terms of this arrangement and readily admitted that he had no personal knowledge of the arrangement.

6. The Claimant's wife, Ms. Cynthia Smart provided more details of the arrangement claiming that her father, Mr. Peterkin had a verbal arrangement with Mr. Ramdial that Mr. Ramdial would work the land "*in half*," meaning that Mr. Ramdial's return for working the land would be half the produce¹. In cross-examination, it was not put to Ms. Smart that she had no personal knowledge of the arrangement, leaving it open to the Court to conclude that Ms. Smart spoke from her own personal knowledge.
7. The Claimant contended that following the death of Mr. Peterkin, Ms. Smart and her siblings, observing the property to be overgrown, entered into an oral agreement with Mr. Ramdial for his continued care of the property.
8. The Claimant admitted that his visits to the land were rare and that visits were made mainly by Ms. Smart. Ms. Smart testified that she made intermittent visits to the land with her brothers, that on these occasions the first Defendant would load up the vehicle with produce or they would reap it themselves. According to her evidence, they would always go to the home of the first Defendant in order to inform him of their presence².
9. It was the case for the Claimant that he discontinued the arrangement with the first Defendant in 1995, by delivering an Attorney's letter to him. Once again, details were provided by Ms. Smart, who testified that prior to 1995, she and her siblings became dissatisfied with the relationship with the first Defendant, who according to them had grown delinquent in honouring his obligation to provide them with produce.
10. The Claimant produced a letter dated 13th February, 1995 which was signed by solicitor, Mr. Anthony Smart. This letter was tendered in evidence and is set out hereunder in its entirety.

¹ Witness Statement of Cynthia Smart paragraph 5.

² Witness Statement of Cynthia Smart paragraph 7 & 8.

*“13th February, 1995
Mr. Errol Ramdial
Coalmine Road
Sangre Grande*

Sir

We act as attorneys-at-law for Mr. Winston Smart of Lot No. 18 Pearl Gardens who is the owner of a parcel of land at Coalmine Road, Sangre Grande comprising 4 Acres 3 Roods 7 Perches.

Our client instructs us that upon the death of his father-in-law, Mr. George Peterkin, who owned the said parcel of land with him as joint tenant, he entered into an arrangement with you for you to brush and cutlass the said parcel of land in consideration for which you would be entitled to reap the produce of the said land and to give our client a portion thereof.

Our client instructs us further that you have not delivered to him any of the produce of the said land.

Our client is no longer interested in continuing his arrangement with you in respect of the said land and in the circumstances he has instructed us to advise you that he will be terminating his arrangement with you with respect to the said parcel of land as from the 15th May, 1995. You are required in the circumstances to desist from reaping any produce on the said land and from entering into the said land after that date.”

11. Ms. Smart provided a detailed narrative of how she delivered the letter to the first Defendant. According to her, Mr. Ramdial jumped over a drain which was

situated in front of his home. He took the letter without opening it and disappeared.

12. The Claimant admits that nothing was done to give effect to the letter. There was one visit between 1995 and 1997 where Ms. Smart and her siblings, on attempting to go through the property, were intercepted by a van of police officers led by the fourth Defendant. The police officers advised them that theirs was a matter for Court.
13. Thereafter the years passed. Ms. Smart insisted that she would still visit. She would go to the land even if she could not go through the land. No steps were taken however to regain possession. In 1997, a wooden structure appeared on the land. When a second structure emerged in 2006, the Claimant took action by writing to the Defendants and eventually by serving a pre-action protocol letter.
14. The first Defendant in his evidence distanced himself from the Claimants. He claimed that he did not know Mr. Peterkin. He occasionally saw Mr. Peterkin walking with a stick and only knew of him because his wife, the fourth Defendant had been employed to cook for Mr. Peterkin.
15. Mr. Ramdial denied altogether that there was any arrangement between himself and Mr. Peterkin's children. Mr. Ramdial denied having received the letter of February, 1995 and did his utmost to create the impression that his only involvement with the property was through his wife.
16. Mr. Ramdial insisted that he was only remotely acquainted with Mr. Peterkin and did not know Mr. Peterkin's children at all. Mr. Ramdial however lacked the demeanor of a witness of truth. Moreover his strong insistence that he had no connection with Mr. Peterkin, the land or his children gave his testimony the quality of caricature and rendered it implausible.

17. Mr. Ramdial while being cross-examined contradicted his wife's testimony. Mrs. Ramdial, the fourth Defendant, had testified that she had cultivated the land to a high degree of cultivation. By contrast, Mr. Ramdial, when asked whether it was honest of his wife to take crops from the land replied that the land was "woodland" and "big bush". This answer was in the face of his earlier answer in cross-examination that he had planted bananas, portugals and limes on the land.
18. It was suggested to Mr. Ramdial in cross-examination that he was contradicting his own testimony-in-chief in his witness statement. In his witness statement filed on 21st April, 2008 Mr. Ramdial had testified that he never received "...any documents relating to the land other than those which pertain to this action...". Under cross-examination Mr. Ramdial stated that he received a letter from Mr. Smart's lawyer in 2006. In my view, Mr. Ramdial did not contradict himself in this way, since the 2006 letter in fact pertained to the Claim.
19. Learned Attorney-at-law, Mr. Charles put to Mr. Ramdial that he received a letter in 1995 from attorney-at-law for the Claimant. In response Mr. Ramdial avoided answering the question and re-asserted that he did not "*know them ...*".
20. Mrs. Chanardaye Ramdial, the Fourth Defendant, like her husband worked hard to maintain the impression that she was not acquainted with Mr. Peterkin's children. She told the Court that Mr. Peterkin had hired her to cook for him in 1976. It was her testimony that after Mr. Peterkin's death she continued to cultivate the land and remained in undisturbed possession when the Claim was brought.
21. Mrs. Ramdial's testimony was fraught with contradictions. The most significant contradiction was in relation to her allegation that she had paid land and building taxes for the years 1980 to 1995, but that these were destroyed by a fire at her home. In her witness statement, Mrs. Ramdial stated:

“In the late 1990s, the tax receipts for the years 1980 to 1995 which were paid by me were destroyed in a fire at my home in Coalmine Road, Sangre Grande”.

Under cross-examination however, Mrs. Ramdial admitted that from 1976 to the present, her house remained the same. She agreed that there had been no earthquake or other damage. When confronted with her witness statement, Mrs. Ramdial admitted that it was not true and stated that the “*land*” was destroyed by fire.

She added further:

“My house never had fire. It is the land...”

Learned attorney-at-law, Mr. Charles asked the specific question:

“No tax receipts destroyed...”

Mrs. Ramdial agreed. The Court found this contradiction to be very damaging to Mrs. Ramdial’s credibility.

22. Mrs. Ramdial also contradicted herself in that she attempted to convey the impression that she was not acquainted with Mr. Peterkin’s children. Under cross-examination however, Mrs. Ramdial responded in the affirmative when asked whether she had a good relationship with Mr. Ramdial’s children.

Findings of Fact

23. The first issue of fact that arises for the Court’s resolution is whether Mr. Ramdial had entered the land pursuant to a verbal agreement with Mr. Peterkin and whether the agreement was continued with the children of Mr. Peterkin after the latter’s demise.
24. In resolving this issue, the Court is assisted only by witness statements of the Claimant and his wife as tested in cross-examination and by the denials of Mr. and Mrs. Ramdial, also in their witness statements as tested in cross-examination. There is no contemporaneous documentary evidence. Because of the inherent

contradictions in the evidence of both Defendants, the Court is inclined to prefer the evidence of the Claimant.

25. The second issue of fact is whether the letter of the 13th February, 1995 was delivered to the First Defendant. Once again there is no contemporaneous documentary proof of delivery of the letter to Mr. Ramdial. Ms. Smart for the Claimant asserts that the letter was delivered. Mr. Ramdial denies that it was. The balance tilts against the Defendants because of the contradictions in their testimony and the damage occasioned to their credibility by the contradictions. Moreover, Ms. Smart provided a detailed account of how the letter was delivered. This is contradicted only by a bald denial of any acquaintance with Mr. Peterkin's children. Accordingly, I accept and find as a matter of fact that Ms. Smart delivered the letter of the 13th February, 1995 to the First Defendant. Further, I find as a fact that neither the First nor the Fourth Defendants protested or contradicted the contents of the letter. One long period of silence ensued, interrupted only by an incident with police officers who advised the parties to go to Court, advice not acted upon until 2006.
26. Having found as a fact that the letter of the 13th February, 1995 had been delivered to the First Defendant, several inferences became inevitable. The first is that the Defendants accepted the letter. If the contents of the letter were untrue and there had been no arrangement with Mr. Peterkin or his children, it would have been reasonable to expect some response by the First Defendant asserting his ignorance of any arrangement and demanding that the situation be clarified. From the silent acceptance of the First Defendant, the Court infers that the contents of the letter were true and the Defendants opted simply to lie low and hope that nothing would happen.
27. In fact, nothing happened. Ms. Smart's visit to the property some years later prompted Mrs. Ramdial to fetch the police. However, neither side, and the

Claimant in particular, omitted to take any steps to obtain a Court determination as to who was entitled to the property.

28. Many questions were put to the Claimant as to his reason for neglecting to visit the property. He cited his desire to avoid confrontation. Having heard the evidence of both the Claimant and his wife however, it is my view, on a balance of probabilities, that the Claimant found it difficult to generate concern for the land, most probably because of the distance which separated his domestic and professional life from the subject property in Sangre Grande.
29. Accordingly, it is my view and I find as a fact that upon the termination of the original arrangement by the letter of the 13th February, 1995, the Defendants began a period of continuous and undisturbed adverse possession which continued until the commencement of proceedings in 2006.

Law

30. Section 3 of the **Real Property Limitation Act**³ (“the Act”) reads:

“No person shall make an entry or distress, or bring an action to recover any land or rent but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to some person through whom he claims, then within sixteen years after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.”
31. The effect of section 3 of the Act is to bar the paper owner of the property who has failed to enforce his rights from asserting his superior title against the person in adverse possession once the statutory limitation period, that is sixteen years,

³ Chap. 56:03

has expired. The paper owner's rights therefore would have been extinguished by virtue of the Act.

32. In such a circumstance, the onus is on the person claiming adverse possession, in this case the Fourth Defendant, to prove that she has been in exclusive and undisturbed occupation of the property for at least sixteen years. The Fourth Defendant must therefore prove: (1) a sufficient degree of physical custody and control ("factual possession") and; (2) an intention to exercise such custody and control on her own behalf and for her own benefit ("intention to possess").⁴
33. The possession should be adverse. It should have been acquired without the permission or consent of the paper title owner. Therefore, there cannot be adverse possession where a licence has been granted. This was confirmed by the Privy Council in *Ramnarace v Lutchman*⁵.

Decision

34. The Court has found as a fact that the first Defendant began working the land pursuant to a licence granted by a verbal arrangement with Mr. Peterkin.
35. The licence was brought to an end by the letter of the 13th February, 1995 from the Claimant's attorney-at-law to the First Defendant.
36. After that date, the Defendant's occupation of the land was adverse. I find as a fact that both the first and the fourth Defendants exerted physical control over the land and showed an intention to possess same.

⁴ JA Pye (Oxford) Ltd and Another v Graham and Another [2002] UKHL 30

⁵ (2001) 59 WIR 511

37. Their adverse possession however stopped short of the sixteen years required by the Act⁶ and therefore the Claimant at the date on which this Claim was filed was still entitled to recover possession.
38. Accordingly it is my view and I hold that the Claimant is entitled to judgment.
39. No evidence was led to support the claim for damages. This relief is therefore refused.

Orders

1. The Defendants are hereby restrained whether by themselves their servants and or agents from entering upon or remaining upon the subject land more particularly described in the Claim Form filed herein on the 28th December 2006.
2. The Defendants pay to the Claimant costs fit for advocate attorney-at-law to be quantified by the Registrar in default of agreement.

Dated this 29th day of July, 2011.

M. Dean Armorer⁷
Judge

⁶ Real Property Limitation Act Ch. 56:03.

⁷ Judicial Research Assistant – Camille Warner.
Judicial Secretary – Irma Rampersad.