

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Cv. No: 2009-02923

BETWEEN

EVELYN NOEL

CLAIMANT

AND

DINANATH SHARMA

1ST DEFENDANT

NYLA SHARMA

2ND DEFENDANT

(By her next friend DINANATH SHARMA)

BEFORE THE HONOURABLE MADAM JUSTICE DEAN-ARMORER

APPEARANCES

Mr. Samuel Saunders, Attorney-at-Law for the Claimant.

Mr. Peter Wharton, Attorney-at-Law for the Defendants.

JUDGMENT

Introduction

1. This is an action for possession of a parcel of land situate at L.P. No.844 Eastern Main Road, Damarie Hill, Guaico, Sangre Grande, in the Ward of Turure (“the disputed land”).
2. The Claimant, Evelyn Noel, was the common law wife of Lawrence Horatio St. Louis (deceased) for about twelve (12) years. The deceased purchased four (4) lots of lands in or about November 1964 and October 1967 respectively from one, Balroop Neebar.

3. Sometime in the year 1967, the deceased and the claimant went into occupation of the four (4) lots of lands. Lawrence Horatio St. Louis died on the 25th of August, 1968 leaving the claimant in occupation of the four (4) lots of lands. The lands were never conveyed to the deceased.
4. The first and second named Defendants, Dinanath Sharma and Nyla Sharma became the owners of the parcel of land by virtue of Deed of Conveyance registered as No. DE2001 0087 0705 and dated the 29th of September 2000, between First Citizens Bank Limited. Being a minor, the second defendant Nyla Sharma, is represented in this action by her father and next of friend, Dinanath Sharma pursuant to ***Part 23 of the Civil Proceedings Rules 1998.***

Procedural History

5. On the 12th of August, 2009 the claimant filed both a Claim Form and Statement of Case seeking the following relief:
 - “(a) *A declaration that the Claimant is the owner of and entitled to possession of All AND SINGULAR that piece or parcel of land comprising ONE LOT more or less situate at L.P. No.844 Eastern Main Road, Damarie Hill...*
 - (b) *Damages for trespass to the disputed lands*
 - (c) *Possession of the disputed lands*
 - (d) *An injunction restraining the Defendant whether by himself, his servants and or agents or any of them however from entering and*

*or/remaining upon and or continuing in occupation of the
disputed lands*

*(e) An order that the Defendant do break and remove the concrete
fence standing on the disputed lands*

(f) Costs”

6. The Defendants filed their Defence on the 14th of October, 2009. There was no Counterclaim attached to the Defence.
7. Two witnesses testified on behalf of the Claimant, they were, the claimant Evelyn Noel and Jennifer Emmanuel-Bascillo. Their witness statements were filed on the 30th of September, 2010.
8. Three witness statements were filed on behalf of the defendants they were, the first defendant, Dinanath Sharma, Kumar Persad, Nazim Mohammed and Simon Gosyne. Of these, only the defendant and Kumar Persad submitted for cross-examination. Their witness statements were each filed on the 29th of September, 2009.

Evidence for the Claimant

9. In her witness statement, the claimant testified that, she was a retired café owner and lives in the United States of America.
10. In or about the year 1957, the claimant gave evidence that, she began a common law relationship with Lawrence Horatio St. Louis (deceased). Their relationship lasted for a period of twelve (12) years. Mr. Louis died on the 25th of August, 1968.

11. The union brought forth six (6) children namely Jemma Andrea Noel, Annette Pearly Noel-David, Debbie Frederica Noel, Rena Regis Noel (deceased), Hans Lawrence Noel and Franz Wilfred Noel.
12. The claimant testified that the deceased purchased four (4) lots of land from Balroop Neebar. The first two (2) lots were purchased in November, 1964, while the remaining two (2) lots were later purchased in September, 1967.
13. According to the claimant, the first two (2) lots were purchased by the deceased with a loan borrowed from the Bank of London and Montreal and of Port of Spain. In or about September 27th, 1965, the deceased duly paid the final installment on the loan to the said Bank. In or about January, 1967 the deceased caused the first two (2) lots to be surveyed by licensed surveyor Mr. Phil Douglin.
14. The claimant testified that the other two (2) lots of lands were purchased by the deceased in September, 1967. The two (2) lots of lands were being sold for the sum of \$3,000.00. However, at the time in question the deceased did not have the money to pay for the lands. It was agreed between the deceased and Mr. Neebar that the deceased would sign a promissory note for the total sum of \$3,000.00 together with interest. These were agreed to be paid by the deceased by monthly installments.
15. In or about the 27th day of September, 1967, the deceased and the claimant went to the Royal Bank of Canada for the signing of a promissory note which was prepared by the Bank. The deceased, in the presence of the claimant, signed a promissory note for the sum of \$ 3,697.88 in favor of Balroop Neebar promising to pay Mr. Neebar the total sum by an installment of \$1,290.88 on the 27th of October, 1967 and the balance by monthly installments of \$100.00.

16. According to the claimant, the promissory note was secured by a life insurance policy in favor of the deceased by British American Insurance Limited. The claimant and the deceased began occupying the lands in or about the year 1967. According to the claimant, one (1) lot located on the eastern side, was occupied by on Ursula Emmanuel who was a tenant on the land.
17. The claimant maintained that after she and the deceased began occupying the four (4) lots of lands, they started planting crops on the lands except the lot that was occupied by Ms. Ursula Emmanuel. The claimant testified that they planted crops such as corn and pigeon peas. In addition, fruit trees such as mangoes and avocados were also planted.
18. Following the death of the deceased, the claimant stated she took over the three (3) lots of lands and continued cultivating the lands on a short term basis in an effort to supplement her income. She also ran a café and also managed the mechanic garage. The claimant maintained that she visited the lands once on a weekly basis.
19. In or about the year 1983, the claimant gave evidence that she stopped cultivating the lands but continued collecting rent from Matthew Emmanuel, the son of Ursula Emmanuel.
20. In or about the year 1984, the claimant gave her daughter, Annette Noel permission to construct a board house one (1) of the lots of lands. The claimant's daughter then began constructing a board house on one (1) of the lots. The claimant testified that it was within that said year she notice that one, Victor Rose started occupying the disputed lands. The claimant testified that a meeting with Victor Rose led to him verbally abusing her.

21. The claimant stated, she instructed her Attorney to write to Mr. Balroop concerning the occupation of the lands by Mr. Rose. The letter was sent to Mr. Balroop, however, the claimant did not receive a reply.
22. The claimant's evidence is that Mr. Rose continued his occupation on the disputed land. He broke down the board house that her daughter started and began constructing a shed with the materials that were being used by her daughter.
23. According to the claimant, she, along with her children, would visit the disputed lands every weekend and pick fruits from the fruits trees. She maintained that on each occasion she visited the disputed lands, she would confront Mr. Rose about his occupation.
24. In or about the 26th of August, 1987, the claimant testified that Mr. Rose filed a summary complaint against her and her children for larceny. The matter came up for hearing on the 21st of October, 1987 but was later dismissed for the non – appearance of Mr. Rose. Following the dismissal of the complaints, Mr. Rose abandoned the disputed lands and did not return.
25. The claimant testified that she caused a chain linked fence to be erected on the disputed lands after the departure of Mr. Rose. She testified that she left an opening in the fence for her tenant to gain access. She also gave Ms. Jennifer Emmanuel permission to tie her animals on the disputed lands.
26. The claimant testified that in or about September, 1988, she received a letter from Attorney-at-law for Mr. Neebar Balroop concerning her occupation of the disputed lands. Be that as it may, the claimant continued to occupy the disputed lands and continued also to permit Ms. Jennifer Emmanuel to tie her animals on the lands.

27. The claimant is uncertain as to whether the deceased paid the sum reflected in the promissory note to Mr. Neebar. The claimant petitioned the Administrator General's office for a waiver of the State's right in respect of the deceased's estate. In or about the year 1997, the claimant caused Licensed Surveyor, Mr. Michael Bocaud to have the disputed lands surveyed with the intention of bringing the lands under the provisions of the Real Property Ordinance (RPO).
28. In or about December 2007, the claimant received a copy of Mr. Neebar's Deed and also the Deed of the defendants. It was upon perusing Mr. Neebar's Deed; the claimant discovered the lands were sold to Mr. Rose by Mr. Neebar. The claimant testified that it was also while perusing the defendants Deed; she discovered that the defendants were registered as the legal owners of the disputed land.
29. The claimant was cross-examined by learned counsel, Mr. Wharton. The claimant was cross-examined as to a letter which was sent on behalf of her children from Malcolm Milne the vendor, Mr. Neebar.

Evidence of Jennifer Bascillo

30. Ms. Emmanuel-Bascillo testified that she was 51 years old and lived at No. 844 Eastern Main Road, Damorie Hill, Sangre Grande. She is the daughter of Ursula Emmanuel. Mrs. Bascillo testified that her mother was a tenant to one (1) lot of lands previously owned by Balroop Neebar.
31. According to Mrs. Bascillo, in or about the year 1967, Mr. Neebar visited the claimant, the deceased and also visited her mother, Ursula Emmanuel. In the presence of Mrs.

Bascillo, Mr. Neebar confirmed to her mother he was no longer the landlord of the disputed lands because the deceased had purchased the lands.

32. Ms. Bascillo evidence is that, Mr. Neebar outlined to her mother, in her presence, the rents should be paid to the deceased. Following that meeting, the rents were paid to the deceased and after his death, her mother continued to pay rent to the claimant.
33. Ms. Bascillo testified that the claimant and Mr. Louis (deceased) planted crops on the lands and also planted fruit trees on three (3) lots of lands. She also testified that the claimant and the deceased, Mr. Louis visited the lands once every week. The claimant continued cultivating the lands even after Mr. Louis's (deceased) death in 1968.
34. In or about the year 1984, the claimant's daughter, Annette Noel, began construction of a board house on one (1) of the lots. Soon after, Mr. Rose began occupying the disputed lands and later broke down the board structure. The materials from the board house were later used by Mr. Rose for the construction of a shed which he started using for the sale of agricultural produce.
35. Mrs. Bascillo testified that the claimant confronted Mr. Rose about his occupation of the disputed lands. However, the claimant and her children still visited the lands once every week to pick fruits. In or about the year 1987, Mr. Rose vacated the disputed lands.
36. Mrs. Bascillo confirmed that testimony of the claimant that a chain linked fence was constructed on the disputed lands after Mr. Rose left the lands. An entrance was left on the fence for access to her mother's tenanted lot. In or about the year 1987, Ms. Bascillo was given permission by the claimant to rear her animals such as cattle and goats on the three (3) lots of disputed lands. Matthew Emmanuel is now the tenant of the one (1) lot which was originally rented by her mother.

Evidence for the Defendant

37. The defendant testified that by Deed of Conveyance dated the 29th of September, 2000 made between himself and the second defendant, Nyla Sharma of one part and First Citizens Bank Limited of the other part, he purchased the disputed parcel of land.
38. The defendant gave evidence that before he purchased the disputed land; he inspected the land and did not see any buildings on it. He also observed that there were no vegetables on the land and neither was there a chain linked fence surrounding the disputed land. He observed that there were grasses on the land and since then, has tried to keep the land cleared of them.
39. The defendant was cross-examined by learned counsel, Mr. Saunders. Whereas the defendant presented himself as a truthful witness, he was not equipped to assist the Court, since he had no knowledge of the land prior to his purchase of it in 2000. Accordingly, the defendants' response to the majority of the questions was a plea of ignorance as to what was put to him. For example: The defendant was asked whether he had been told that the lands were owned by Mr. Neebar. The defendant responded by saying that he did not know. Another example, the defendant was asked whether Matthew Emmanuel was a tenant of the claimant. The defendant was not aware. Significantly however, the defendant admitted that Mr. St. Louis had died in 1968. It was then that it was put to the defendant that the claimant then went into occupation of the four (4) lots of land including the disputed land. The defendant was not able to contradict this suggestion.
40. Mr. Simon Gosyne is a Police Officer and lives at No.35 Eastern Main Road, Valencia. Mr. Gosyne testified that while carrying out his duties as a police officer in the year 1990, he would frequently pass the area where the disputed land is located.

41. According to Mr. Gosyne, during the times he worked in the area, there were no buildings on the disputed land; neither was there any fence surrounding it.

Law and Submissions

42. Counsel for the Claimant submitted that the claimant has been in possession of the disputed land from in or about the year 1967 and has thereby fulfilled the 16 years required by the law. It is counsel's submission that time began to run against Mr. Neebar from that time.

43. Counsel further submitted that the claimant's continuous and uninterrupted possession of the four (4) lots of lands including the disputed lot, led to the extinguishment of Mr. Neebar's title in or about the year 1983. As a result of his title being extinguished, Mr. Neebar could not have legally conveyed his interest to Mr. Rose, when the disputed land was sold to him.

44. Counsel for the claimant relied on the following authorities:

a. Andre Marchong v Trinidad and Tobago Electricity Commission and Ors CV 2005-00549

b. M.I.5 Investigations Ltd.v Centurion Protective Agency Limited Civil Appeal 244 of 2008

c. Sections 3 and 22 of the Real Property Limitations Act Chapter 56:03

d. Alphonse Ali Mohammed v Anthony Guerra and the Registrar General Civil Appeal No.47 of 94

45. On the other hand, counsel for the defendants submitted that the claimant's occupation of the disputed land was as a mere licensee and does not give her a right to claim title by

adverse possession. In addition, counsel submitted that the claimant's licence to occupy the disputed land was terminated by the entry into possession by Victor Rose. Counsel further submitted that, the claimant has failed to show ownership of the disputed land, either by way of a deed of conveyance or by the period (16 years) required under the statute to satisfy an adverse possession claim.

46. Counsel for the defendant relied on the following authorities:

a. *King v. David Allen and Sons Billposting Ltd [1916] 1 AC 54*

b. *Halsbury's Laws of England 4th Ed. Vol.28*

47. In determining whether the claimant has acquired title by adverse possession to the land in dispute, this Court must, consider the relevant sections of the ***Real Property Limitation Act***. Of relevance are sections 3 and 4 which set out the requirements necessary to establish a claim for adverse possession.

48. Furthermore, the principles surrounding a claim for adverse possession have been authoritatively considered by the House of Lords in ***JA Pye Oxford Ltd v Graham***¹ [2003] 1 AC419 and by the Court of Appeal in the local case ***Grace Latmore Smith v. David Benjamin***²

49. Sections 3 and 4 of the Real Property Limitation Act state:

“Section 3

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

¹ [2003] 1 AC 419

² Civil Appeal Nos.67 and 68 of 2007

accrued to any person through whom he claims, then 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 the person making or bringing the same

Section 4 (a)

The right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as is hereinafter mentioned, that is to say when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or receipt of the profits of such land, or in receipt of such rent, and shall, while entitled thereto, have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received.”

50. In *Pye v Graham*³, Lord Browne-Wilkinson outlined two (2) elements necessary to ground claim in adverse possession. They are:

“(1) A sufficient degree of physical custody and control (‘factual possession’).

(2) An intention to exercise such custody and control on one’s own behalf and for one’s own benefit (‘intention to possess’). What is

³ [2003] 1 AC 419

crucial is to understand that without the requisite intention, in law there can be no possession.”⁴

51. The decision in *Pye v Graham* was confirmed and held to be applicable in Trinidad and Tobago by the Court of Appeal in *Grace Latmore Smith v. David Benjamin*.⁵

Reasoning and Decision

52. The claimant seeks a declaration that she is the owner of and entitled to possession of the disputed land.

53. Having heard the evidence, it is my view that the following facts have been established.

- The claimant first entered the disputed land as the common-law wife of the late Lawrence Horatio St. Louis, who had agreed to purchase the lands from Mr. Balroop Neebar. It continues to be unclear whether the sale was ever completed.
- Mr. St. Louis died in August, 1968. Thereafter, the claimant continued to occupy the disputed lands.
- The claimant’s occupation of the disputed lands after 1968 was not as of right. She was not the next of kin of Mr. St. Louis. She was not his personal representative and did not become the owner of the disputed land by virtue of any bequest by Mr. St. Louis. The claimant’s occupation of the lands after the death of Mr. St. Louis was therefore by adverse possession.
- Following 1968 the claimant continued to assert rights of ownership over the land and enjoyed continued undisturbed possession for the next sixteen (16) years that is until 1984.

⁴ Per Lord Browne -Wilkinson at para 40

⁵ Civil Appeal Nos. 67 and 68 of 2007 in the Judgment of Mendoca JA

- In 1984 there was a non-legal challenge to her occupation by Victor Rose. The claimant prevailed. The first real challenge to her ownership was on the part of the defendant in 2005.
54. In my view, the claimant has proved without contradiction that she enjoyed continuous undisputed occupation for sixteen (16) years. In my view, the title of the proper owner has been extinguished and she is entitled to a declaration that she is the owner of and entitled to possession of the disputed lands. Consequentially she is entitled to an order that the defendant break and remove the concrete fence on the land.
55. Cost as prescribed \$14,000.00 the defendant to pay to the claimant.

Dated this 15th May, 2014

M. Dean-Armorer
Judge