

THE REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE
CV 2013 – 01218

Between
Bernadette Fraser
Glenda Carimbocas

Claimants

And
Audrey Armstrong

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Jerome Herrera for the Claimants

Mr Christo Gift SC for the Defendant

Date: 11 October 2018

Judgment

1. This claim concerns a valuable lot of land located in Scarborough, the capital of Tobago.
2. The claim is for possession of the land. The claimants seek a declaration that through their mother, Olive Ottley, now deceased, they have been in possession of the land since 1936.
3. Olive Ottley died in 1998. The claimants are her children. They say that Rebecca Stoute left it to Olive, her god-daughter, by a will probated in April 1936. After that Olive paid the taxes for the property. When Olive got married, she moved to Trinidad to live. This was in 1939. Before this, she stayed in a board house on the land. The claimants say Olive visited Tobago and the land often and maintained the house and the land. She had her agents pay the taxes and maintain the land.
4. When the claimants visited Tobago with Olive, they would be taken to the land and they would see the house and certain features such as a guava tree on the land. Hurricane Flora came in 1963. After that Olive came to Tobago after the hurricane and saw that the house was blown away. All that was left was the stone foundation. Olive never relinquished possession of the land. In 2008 the claimants attempted to bring the land under the Real Property Ordinance. Before this application the claimants say the defendant wrongfully occupied the land. They say that in January 2012 the defendant trespassed and had the land fenced.
5. The defendant's family owned a lot in the vicinity. The defendant on the other hand said she recognised the occupation by Olive of a parcel of land adjoining theirs. She said Olive agreed to a common boundary by a joint survey done in 1947. She therefore says that there has been no trespass and the claimants are not entitled to the land.

6. The real puzzle for the court to unravel is whether the claimants are wrong as to the location of the land they claim.
7. The will stated that Rebecca Stoute was bequeathing “my house, and the land on which the house stands, situated at the corner of Main and Robinson Streets, and also the one lot of land adjoining, facing Main Street.”
8. The assessment taxes receipt refer to ZG 156 and ZG 157. ZG 157 on the assessment roll has the description as one lot with boundaries as: North: Caroline Craig; South: M.A. Anderson; East: Robinson Street; West: Caroline Craig. This speaks of the period 1963 to 2009. Olive Ottley’s name is specifically entered.
9. Caroline Craig is listed as one lot bounded: North by Main Street; South by Rebecca Stoute; East by Robinson Street; West by Rebecca Stoute.
10. A Deed by the Administrator General to the predecessors of the defendant from August 1934 described the one lot of land as bounded on the North by Main St; on the South by lands of Rebecca Stoute; on the East by Robinson Street and on the West by lands of Rebecca Stoute. This deed passed the land of Caroline Craig to the predecessors of the defendant.
11. There does appear to be some misdescription in the various records. This relates it seems to both the will made by Stoute and the deed for purchase by the defendant’s predecessors.
12. The survey plan of 1947 in my view has to be considered to be the key in resolving these issues because the evidence suggests that it was jointly undertaken by both Olive Ottley and the Armstrongs’ predecessors. Clearly this must have been aimed at settling the issue of who was entitled to what land between the parties.

13. In this regard the will made by Rebecca Stoute cannot be taken literally. It may be that there was nothing on the Armstrong land at the time of the will. Thus she described it as referring to the corner of Main Street and Robinson Street. There was mention of the lot adjoining facing Main Street. Thus the will appeared to be concerned with the lot she had (acknowledged by the defendant) and the adjoining lot facing Main Street. There is no clear evidence of her adversely possessing the lot adjoining. However, in any event, the survey done in 1947 must have sought to clarify this dispute. That survey for all intents and purposes can be taken to have settled the matter finally.

14. A letter was written by the brother of the defendant in 1983. The claimants say this letter sought to settle the matter with the land finally. However, the contents of the letter simply acknowledge there was an issue and there was a commitment to sorting it out. The letter did not definitively one way or the other make any conclusion in respect of the land. By this time, much time had passed and neither party seemed to have done much with either lot of land to which they were entitled.

15. Egbert Smart was an important witness for the claimants. He said he looked after the land for his aunt Olive Ottley. He said on many occasions he went to the land to ensure it was cut and maintained. However, his witness statement was somewhat short on details as to how often this was done over the years and to what extent this reflected possession of the lands on behalf of Olive and her children. It may well be at times he cut both lots. But it is not obvious that these acts were acts of possession and control to be exercised adverse to the interests of the paper title owner.

16. The claimants lived their lives in Trinidad. They detail visiting Tobago from time to time and being shown the land as children. However, they themselves had no real acts of possession over the land. Their mother also did not live on the land and the evidence of her possession and control of it is slim. Their evidence cannot be ascribed too much weight because they clearly did not know of the 1947 survey.

17. There was on the whole insufficient acts of possession of the adjoining lot by the claimants to lay a claim to it. What the defendant accepted was the entitlement of the claimants to the lot next to the corner lot.

18. There was also an agreement made in 1993 where it appears the lot of land at Main and Robinson Streets was let to one Pearl Chin for a business. Mr Smart's evidence was that the tenant built a concrete structure but not on the Main Street side. This again is consistent with the land the claimants are entitled to not being the corner lot as claimed by the claimants but the lot next to it on Robinson Street. The defendant made no complaint about this. This must be consistent with the position that that lot was that to which Olive Ottley was entitled.

19. A further point is that the Administrator General conveyed the property in 1934. The survey done in 1947 was 13 years after. Even if Olive Ottley occupied the property then the title of the defendant's predecessors would not have been extinguished at that time. Again, the survey must be seen to be a significant document in this regard.

20. Further, the evidence that Olive lived in a house on the land suggests that this was not on the corner as such because the earlier will referred to the lot on which the house stood and the adjoining lot facing Main Street. As noted before she moved to Trinidad in 1939 when she got married.

21. The oral evidence led on both sides could not resolve this claim definitively. I was however, inclined to attach more weight to the evidence of the defendant as she lived in Tobago, near to the land in question and was therefore better placed to say what was done with the land and what was not. Her evidence was that the agents of the claimants were not actively engaged in maintaining the subject land over the years.

22. The result therefore is that the claimants have not shown on a balance of probabilities their entitlement to the corner lot which they claim as against interests of the defendant.
23. This really is an unfortunate mix up on the part of the claimants. It is evident that the claimants are entitled to claim in respect of a lot of land but this must be in keeping with the 1947 Prevatt survey. Accordingly the claim as framed does not succeed and is dismissed. The claimants must pay the defendant's costs on the prescribed basis in the sum of \$14,000.00 since no value was fixed to the claim and there was no costs budget set.
24. I thank the attorneys on both sides for their submissions. They referred to several cases detailing the law. I took account of these. However, in my view, this was essentially a fact driven case that required analysis of the evidence so hence the focus in this judgment on seeking to unravel the factual position concerning the land in question.

Ronnie Boodoosingh

Judge