

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2009-04135

BETWEEN

GOOMTIE GOSINE

CLAIMANT

AND

GOMATEE GOSINE also called JASSODRA GOSINE

RAMESHWAR GOSINE

DEOKIE GOSINE

SHIVPERSAD GOSINE

DEFENDANTS

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Mr. Maharaj holds for Mr. Mohammed

For the Defendants: Mr. Martin George

Date of Delivery: 29th May, 2012

DECISION

HISTORY OF THE PROCEEDINGS

- [1] On the 15th June, 2009, the Claimant instituted proceedings¹ against the Defendants herein seeking to set aside Deed No. 6966 of 1963, by which that the Defendants claim title owners to the property situate at L.P. 333 Eastern Main Road, Tunapuna (“the subject property”). She claimed that the Defendants have no legal title to the subject property and the said Deed disclosed no root of title or title in law. Jones J. dismissed the claim on the 8th October, 2009 and the Claimant was ordered to pay the Defendants’ costs.
- [2] The Claimant made an oral application for an *ex parte* injunction² against the Defendants on the 6th November, 2011. The injunction was granted by Ventour J. on the undertaking that the Claimant file a Notice of Application, Claim Form, Statement of Case and Affidavits by the 9th November, 2009. The Claimant failed to comply with this Order and the injunction was discharged on the 9th November, 2009 with costs awarded to the Defendants. To date neither of these orders for costs has been satisfied by the Claimant.
- [3] Thereafter, this action was commenced by the Claimant on the 9th November, 2009 against the Defendants for a Declaration that the Claimant has acquired title to the subject property by adverse possession and an Order that the Defendants’ title has been extinguished thereby.

¹ CV2009-02124

² CV2009-04139

- [4] On the same day, Tiwary-Reddy J. granted an interim injunction, *inter alia*, restraining the Defendants from evicting the Claimant and/or her family from the subject property. Thereafter, by a Notice of Application filed on the 16th November, 2009, the Defendants sought to discharge the injunction. The Application was granted on the 4th March, 2010.
- [5] The Decision of Tiwary-Reddy J. was appealed³ by the Claimant on the 4th March, 2010. The Court of Appeal reinstated the Claim and remitted it to be heard before another Judge on the 22nd March, 2010.
- [6] On the 9th December, 2011, the parties agreed that the issue of whether the Claimant had obtained title to the subject premises by adverse possession of same and had thereby extinguished the Defendants' title to the property by determined by written submissions. Accordingly, I ordered that the parties make written submissions on whether the Defendants' title to the subject property has been extinguished by the Claimant's adverse possession of same.

SUBMISSIONS

○ CLAIMANT

- [7] The Claimant filed her submissions on the 30th January, 2012 wherein she argued that her claim to adverse possession of the subject property began to run from late 1992 when the Defendants were deprived of the rents they

³ Civ. App. No. 53/2010

were entitled to pursuant to **SECTION 4(a)**⁴ of the **REAL PROPERTY LIMITATION ACT, CHAP. 56:03**. She submitted that time ran until the 29th October, 2010 when the Counterclaim was filed.

[8] The Claimant submitted that she has been in possession of the subject property for some eighteen (18) years and the Defendants are therefore barred from recovering the premises in accordance with **SECTION 3** of the **REAL PROPERTY LIMITATION ACT** and their title to the subject property has been extinguished pursuant to **SECTION 22**⁵ of the **REAL PROPERTY LIMITATION ACT**. In support of this, the Claimant cited the cases of Grace Latmore Smith v David Benjamin⁶ and Grace Latmore Smith v Patrina Benjamin & Kenneth Baptiste⁷.

○ **DEFENDANTS**

[9] The Defendants filed their submissions on the 6th March, 2012 wherein they argued that there is no basis for a Claim for adverse possession by the Claimant as the latter never entered the subject property adverse to the title holders. The Defendants contended that Claimant came onto the subject property with the license, permission and consent of the Deceased

⁴ The right to make any 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 disposed, 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.

⁵ At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action or suit respectively might have been made or brought within such period shall be extinguished.

⁶ Civ. App. No. 67 of 2007

⁷ Civ. App. No. 68 of 2007

and his family; there was a house already in existence and she shared occupancy with the Deceased's family including the Defendants.

[10] In support of this, they cited the case of **Facchini v Bryson**⁸ where Lord Denning opined:

"In all the cases where an occupier has been held to be a licensee there has been something in the circumstances, such as a family arrangement, an act of friendship or generosity, such like, to negative any intention to create a tenancy."

Further, in **Goomti Ramnarace v Harrypersad Lutchman**⁹, Lord Millet opined:

"Adverse possession is possession which is inconsistent with and in denial of the title of the true owner. Possession is not normally adverse if it is enjoyed by a lawful title, or with the consent of the true owner."

EVIDENCE

[11] There is no dispute between the parties that the Claimant entered the subject property by consent in or about late 1966 when she married Shivnarine Gosine ("the Deceased"), the brother of the Defendants herein.

○ CLAIMANT

⁸ [1952] 1 TLR 1386, 1389

⁹ [2001] 59 WIR 511, 514

[12] The Claimant deposed in her Affidavit filed on the 9th November, 2009 that in 1988, the only occupants in the subject property were herself, the Deceased and their children, as the Deceased's parents had died and his siblings had left the subject property and moved into their own homes. Thereafter, the Deceased and herself remained in undisturbed possession and occupation of the subject premises without any permission or license. Further, that they have been renting out a portion of the subject property and collecting the rent for their own personal use. In addition, she deposed that the Deceased was the Pundit for the Temple located on the subject property and as a result they maintained the property.

[13] She further deposed that the Deceased died in April, 2009 and shortly thereafter, the First-named Defendant informed her that she had to vacate the subject premises as the Defendants herein were the owners of the subject property by virtue of Deed No. 6966 of 1963.

○ **DEFENDANTS**

[14] The Affidavit evidence on behalf of the Defendants was deposed to by the First-named Defendant on the 16th November, 2009 wherein she denied that:

- i. The Claimant and the Deceased were in sole occupation of the subject premises since 1988;
- ii. The Claimant and the Deceased maintained the subject property and stated instead that it was herself and siblings who gave the

Deceased monies to maintain the subject property and the Temple thereon; and,

- iii. The Claimant was asked to vacate the subject property but merely asked that she have reverence for the subject property as one of the oldest Temples in Trinidad & Tobago was situated thereon.

[15] The First-named Defendant deposed that she has lived on the subject property for most of her life in two (2) rooms that she built thereon. She left the subject property briefly in 1988 to attend to a medical emergency involving her son but returned in 1992 and stayed in the premises until 1997. During this period, she travelled frequently to Canada but always stayed in the two (2) rooms on the subject premises whilst in Trinidad.

[16] In or about 1992, the Claimant and the Deceased started to rent out portions of the subject property and used the income for their own personal use. The Defendants approached the Claimant and the Deceased informing them that it was improper to personally use the rental income and it should instead be used for the maintenance of the Temple. The Claimant and Deceased did not comply and as a result, the Defendants instituted an action¹⁰ for, *inter alia*, accounts of the rental income received. However, the Deceased soon after died and the matter has since been in abeyance.

[17] Sometime in 1997, the First-named Defendant deposed that she went to assist her daughter at her home and stayed there for some time. During

¹⁰ CV No.2009-01034

this period, the Claimant and Deceased took possession of the two (2) rooms in the subject property and prohibited her from entering the property. However, she still continued to open the Temple daily and attended to its general maintenance.

ANALYSIS

[18] The concept of adverse possession is rooted in the theory that the basis of title to land in law is possession. The fact of possession gives a title to the land which is good against all persons except one who has a better right to possession. The effect of adverse possession is that a person who is in possession as a mere trespasser or 'squatter' can obtain good title if the true 'owner' fails to assert his superior title within the requisite statutory period.¹¹

[19] There has been a voluminous amount of case-law on the subject of what acts amount to adverse possession. The general conclusion arrived at is that a person claiming title by adverse possession must show either dispossession of the owner of the land or discontinuance or abandonment of possession by him followed by possession by the claimant.¹²

[20] In **J.A. Pye (Oxford) Ltd. v Graham**¹³, Lord Browne-Wilkinson opined:

"The question is simply whether the defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner."

¹¹ Gilbert Kodilinye, Commonwealth Caribbean Property Law, p. 243

¹² J.C.W. Wylie, The Land Laws of Trinidad and Tobago, p. 597, para. 25.11

¹³ [2002] 3 WLR 221, para. 36

His Lordship went on to state that in order to establish legal possession to the land two elements¹⁴ must be satisfied:

- i. A sufficient degree of custody or physical control of the land (“factual possession”);
- ii. An intention to exercise such custody and control on one’s own behalf and for one’s own benefit, *i.e.* the *animus possidendi*.¹⁵

[21] Further, it is necessary to establish the possession of the land for the required period of time under statute. **SECTION 3** of the **REAL PROPERTY LIMITATION ACT** provides:

“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 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 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.”

[22] A review of the factual history of the parties shows that the Claimant has been living on the subject property in excess of forty-five (45) years since her marriage to the Deceased in 1966; remaining on the subject property even after the death of the Deceased in 2009. However, there is nothing

¹⁴ *Ibid.*, para. 40

¹⁵ David Elvin & Jonathan Karas, *Unlawful Interference with Land*, p. 88, para. 1-097

before me to suggest that the Claimant was in occupation of the subject premises without the consent and/or permission of the Defendants, *i.e.* adverse to the registered owners of the subject property.

[23] Further, the Defendants attested to residing on the subject property from time to time and have produced documentation to show that they have been maintaining the property. In absence of evidence to the contrary, I conclude that the Claimant was occupying the subject property with the consent of the Defendants until the relationship started to deteriorate in or about 1992. Notwithstanding this, the Claimant and the Deceased, who were alive at the time, were not asked to vacate the subject property but merely to occupy the property in a manner befitting the legacy of the latter's father.

[24] Therefore, the Claimant does not satisfy the criteria laid out above in **J.A. Pye (Oxford) Ltd. v Graham**¹⁶ nor has she been in occupation of the subject property for the requisite sixteen (16) years as prescribed by statute.

CONCLUSION

[25] In the circumstances, I order that:

- i. The Claimant's claim is dismissed;

¹⁶ *Op. cit.*

- ii. The Claimant to pay the Defendants' costs in this matter and all outstanding sums due and owing from previous Orders of the Court, to be assessed in default of agreement;
- iii. The Claimant, her servants and/or agents, heirs and dependents to vacate and deliver up possession of the subject property situate at L.P. 33 Eastern Main Road, Tunapuna within three (3) months of the date of this Order.

JOAN CHARLES

JUDGE