

**Claim No. CV2016-02979**

BETWEEN

**VERONICA GILBERT**

**Claimant**

AND

**SAMUEL LAYNE**

**Also called LENNY MAINGOT**

**First Defendant**

**LYNETTE MAINGOT**

**Second Defendant**

**Before the Honourable Madam Justice Carol Gobin**

Date of Delivery: 14 March 2022

Appearances: -

Mr Anthony Manwah Attorney at Law for the Claimant

Mr Keston Mc Quilkin instructed by Wayne Smart Attorney at Law for the Defendants

**REASONS**

1. This matter was heard on 21<sup>st</sup> May 2018. At the close of the evidence and after I had given Counsel on both sides, but moreso Counsel for the Claimant, to address me. I dismissed the claim with costs, and made a further declaration that on the evidence the Claimant was not found to have been in actual possession, far less undisturbed and exclusive possession of the plot of land which was the subject of the proceedings. I considered it necessary to make the further declaration because the Claimant indicated her intention to bring the lands under the Provision of the Real Property Act. I gave oral reasons for my decision, I rejected the evidence of the Claimant and her witnesses that she had been in continuous and undisturbed possession of the lands in question.
2. The parties to the action are siblings. The Claimant, Veronica Gilbert is the sister of the first named Defendant Samuel Layne. The proceedings were never served on the second named Defendant. The lands which are the subject of this claim measure approximately two lots and form part of a larger parcel comprising ten acres which is known as Lot 57 Madras Settlement. The paper title to Lot 57 was vested in the grandmother of Ms Gilbert and Mr Layne, one Amelia Maingot, who had inherited

it upon the death of her father Joseph Benjamin Daniel. She had obtained a Grant of Letters of Administration of his estate on 7<sup>th</sup> December 1973.

3. Amelia Maingot died in October 1989. The Claimant did not dispute the allegation that her grandmother died testate. A copy of her (Amelia's) Will which was produced in evidence disclosed that the testator had sought to make provision for several family members with bequests of plots of specified sizes from what remained of Lot 57. Mrs Maingot's estate has not been administered to date but her Will made no provision for the Claimant.
4. Prior to her death, by Deed of Gift dated 13<sup>th</sup> April 1977 Amelia conveyed approximately one acre of the subject lands to Ann Jones and Jennifer Jones. The Claimant did not identify the exact location of the Jones' parcel. The Jones' who are paper title holders were not joined as parties to the proceedings, there was therefore no question of a declaration as against them as to their interest in Lot 57.
5. In July 2015 the Claimant had the subject lands surveyed in preparation for her Real Property Ordinance application by a licensed surveyor Mr Ragoo. He produced a plan which was approved by the Director of Surveyors on 18<sup>th</sup> April 2016. The plan showed structures on the land. For the proceedings it was amended to specifically identify a site (marked x) which measured approximately two lots upon which it was alleged the Defendant wrongfully entered and began to erect a structure sometime about August 2016. It was this alleged action on the part of Mr Layne that led to the filing of these proceedings.
6. The Claimant's case was founded on an assertion that she had been in exclusive possession of the 10 acre parcel, she had been dealing with it and treating it as if she were the owner and that the Defendant had entered without her permission on two lots and had started to build a house. She claimed inter alia damages for trespass, and possession of the two lots shown as X, as well as injunctive relief.
7. The issue I had to determine was essentially one of fact. The Claimant had to establish that she had been in actual possession of the plot marked X and that the Defendant's action in entering and building had amounted to an unlawful ouster of possession. At the close of the evidence, I found that the Claimant failed to establish that she had been in possession of Plot X (and I her attorney accepted that she had in any case produced no evidence of possession, occupation, control of that particular portion of Lot 57. It was necessary for her to prove this fact specifically. She not being the paper title

holder could not rely on constructive possession as a paper title holder would be entitled to do. Counsel's concession was sufficient to put an end to her claim. But there were further findings on the evidence.

8. The Claimant relied on a broad assertion that she had been in possession and occupation of the 10 acres and had been "treating and dealing with same as her own." That claim was easily rejected for the following reasons:-

1. The plan submitted drawn by the Claimant's surveyor showed structures which had been erected and occupied by other family members including the Defendant, between the period 1980 and up to 2012 (before the construction on plot X in 2016). In no case had any of the other relatives sought the Claimant's permission. She admitted that under cross-examination. That admission was a significant departure from her pleaded case under reply in which she said at para (2) of reply and had a devastating impact on her credibility.
2. First, if it were true, this should have been pleaded as part of her conduct as owner of the land. It was only when the occupation of other family members without her permission or objection on her part was raised in the defence that she pleaded in reply:-

"The Claimant avers that she was in sole possession of the land and subsequently gave permission to 6 persons to construct their houses thereon". I repeat, she admitted under cross-examination that no one asked her permission.
3. The Claimant's own son Everal Layne, who built his own house on Lot 57 in 2004, confirmed that it was the Defendant, his uncle not his mother, who indicated the spot on which he could build. His mother, he said, was not in control of the land.
4. The Claimant's witness Thomas Yearwood confirmed that over the years, five or six houses were constructed by the "Claimants' extended family members". He was clear that he knew nothing about anyone giving anyone "permission" to build. This did not assist the Claimants' case.
5. I rejected Mr Yearwood's evidence of Amelia Maingot saying in 1977 that she was placing the Claimant, her granddaughter in charge of the 10 acre parcel of land. While he did not say where the conversation took place but given that the parties agreed the Claimant erected her first structure on the lands in 1982. I do not find it credible that some 10 years before her death, Amelia would have put her "in charge of the lands". But in any case, putting anyone in "charge of the lands "does

not indicate an intention to make her the owner of the lands. Amelia Maingot's Will which was made in December of 1978 indicated a decision a year later to give the Claimant nothing.

6. The evidence established that there were tenants on the lands, the last being one Dookie who paid rents or a portion of the lands which was under cultivation. The Claimant sought to support her claim of her control over the said lands by relying on the fact that they paid rent to her. On the evidence I find that if rent was paid to the Claimant it was through a family arrangement and for convenience. I infer from her failure to produce receipts which she may have issued, that the receipts would not have supported her claim that she personally, was the landlord.
7. Further the Claimant's admission that Dookie left the lands because Samuel told him to leave provided further confirmation that the Claimant was not in control. Her inability even to identify the area of the tenants' cultivation was significant.
8. The cross-examination established that the Claimant paid water rates and for supply of electricity for her own house, and not for all the lands. The payment of Land and Building Taxes for the several years she provided is not evidence of continuous possession. On two occasions the Land and Building Taxes were paid by another member of the family. The Defendant gave an explanation as to how the Claimant came to be paying the rates and taxes. He was told of an arrangement by his cousin Michael Murray. While the statements were not evidence as to the truth of them I was minded to attach some weight to them. On the evidence I believe that family members, the original members and their children were aware of their entitlement under the Will and that they treated the lands as their family inheritance from which they could benefit when they needed to in the absence of a formal grant of probate or of a subdivision to give effect to the terms of the Will.
9. Mr Layne and his witness accepted that they did visit the Claimant and indicate the intention to build on the parcel X on 01<sup>st</sup> August 2016. I accept that it was to inform her, not to seek permission. Against the Claimant's own evidence that in previous cases no one sought permission, this is credible. The Claimant gave no evidence of having raised any objection to any of the previous construction nor of occupation by any of the family members. The Defendant and the family member for whom he was making the arrangement for the location of her building spot were acting consistently with how family members had acted before. They did not need the

Claimant's permission. I accept that their visit to her was no more than a courtesy and to invite her to "throw an eye "on the site as she was able to do so.

9. My observations about weakness in the Claimant's case were drawn to the attention of Counsel. His submission in response did not change my assessment that the case had not been established, there having been no evidence of possession or control of Plot X in particular and when it was clear that other family members were in possession of their own structures and surrounding areas, had been so for several years, and the Claimant had stated in her evidence that they had taken their spots and built without her permission.
  
10. I accepted the case of the Defendant on a balance of the probabilities and made the orders I considered appropriate. Based on my findings I did not consider that the Claimant should be allowed to present a different case to the Registrar General, if she decided to attempt to bring Lot 57 under the provisions of the Real Property Ordinance.

**Carol Gobin**

**Judge**