

THE REPUBLIC OF TRINIDAD AND TOBAGO

In the High Court of Justice

San Fernando

Claim No. **CV2007-03732**

Between

BRIAN JOHN

Claimant

And

GEORGE FOX

Defendant

Before the Honourable Madam Justice Margaret Y. Mohammed

Dated the 20th day of July 2015

Appearances:

Mr. Kingsley Walesby for the Claimant

Mr. Lemuel Murphy for the Defendant

JUDGMENT

1. The instant action was commenced in December 2004 by the Claimant against his step father, the Defendant where he sought the following reliefs:
 - (a) An injunction restraining the Defendant, himself, his servants and/or agents or otherwise from threatening and/or cursing, harassing, interfering or annoying the Claimant his servants and /or agents at his home at Christian Village Calcutta Settlement No. 1 Freeport or at any other place he may be.

- (b) An injunction restraining the Defendant, himself, his servants and/or agents or howsoever from entering or remaining at the Claimant's home at Christian Village Calcutta Settlement No. 1 Freeport.
- (c) An injunction restraining the Defendant, himself, his servants and/or agents or otherwise from building or constructing any structure adjoining the Claimant's house at Christian Village Calcutta Settlement No. 1 Freeport.
- (d) A declaration that the Claimant is entitled to 1 ½ acres of land upon which he has lived, planted and occupied for more than 20 years undisturbed.
- (e) Damages.
- (f) Aggravated and /or exemplary damages.
- (g) Interests.
- (h) Costs.

2. The Claimant's case is on or about 1978 his mother used money she obtained from the sale of a property in La Pastora Santa Cruz to construct the dwelling house ("the dwelling house") situated at Calcutta Settlement No 1. Christian Village Freeport ("the land"). At that time she shared a common law relationship with the Defendant. The dwelling house was built on the land belonging to Christina Fox, the Defendant's mother and was used as a home for the Claimant and his other 5 siblings. Sometime in the 1980's the Claimant began to plant about 1 -1 ½ acre of land at the back of the house with crops. He also planted a number of fruit trees and reared animals on the said land. Over the years the Claimant's siblings left the dwelling house and the land with his mother leaving in 1990 and the Defendant shortly thereafter. Subsequently the Claimant rebuilt the roof, rewired and painted the dwelling house and maintained the land. The Defendant returned to Trinidad in 2004, forcibly entered the dwelling house and was abusive to the Claimant and his family.

3. The Defendant's position was set out in his Defence. He averred that the Claimant started living on the dwelling house and the land in 1982 but that he has not been in continuous occupation of the dwelling house. He pleaded that in 1982 he commenced

renovation of a tobacco barn which was on the land and that it was converted into a three bedroom house which is the dwelling house in which the Claimant and his family lived. He denied that the Claimant's mother contributed to the conversion of the barn into the dwelling house. He admitted that he left the dwelling house in 1989 for Canada. He averred that the Claimant was evicted from the dwelling house in 1985 and that he only returned after 1989 when the Defendant left for Canada. He admitted that some steel work was done to the dwelling house but he denied that the roof was rebuilt, that the dwelling house has been rewired or has been repaired or the lawn was replanted. His position was the fruit trees on the land were planted by his family. He denied that the Claimant protected the land from squatters but instead averred that his brother Charles Fox managed the land and planted crops. Other family members constructed homes on the land and another brother Winston Fox monitored the land after Charles Fox passed away. He counterclaimed for a declaration that he is the owner of the dwelling house, mesnes profits, interest and costs.

4. Although the Defendant made many assertions in his Defence and Counterclaim he did not call any witnesses to support his assertions and his counterclaim. The only evidence came from the Claimant and his witnesses, Ms. Susan John, Mr. Kamaral Khan and Mr. Vivian Prebhoodial. I found that Mr. Khan was not a witness of truth since he admitted that he did not read the witness statement before he signed it. He also admitted that he signed his witness statement on the first occasion he visited the Claimant's attorney's office and that it was at the Claimant's request he attended his attorney's office to sign his witness statement. He stated in his witness statement that he knew the Defendant but during cross-examinations he stated otherwise and at paragraph 9 of his witness statement he stated that the land which the Claimant took care of around his home was one acre but during cross-examination he stated that it was about two lots.
5. Further, while I appreciate that Mr. Prebhoodial passed away before the trial, I attached little weight to the contents of his witness statement since the statements made therein were not tested in cross-examination.

6. Based on the pleadings the following issues arose for determination:
 - (a) Is the Claimant entitled to a declaration to the 1 ½ acres of the land by virtue of his occupation?
 - (b) Did the Defendant create an expectation in the Claimant that he would obtain an interest in the dwelling house and did the Claimant act on any expectation to his detriment?
 - (c) Who should get possession of the dwelling house- the Claimant or the Defendant?

Disposition

7. I have concluded that the Claimant is not entitled to a declaration to the 1 ½ acres of the land since he failed to prove that he was in continuous uninterrupted possession of it for 16 years prior to the institution of the instant action in 2004. Even if he did, he has failed to join all the other parties who would be adversely affected if such a declaration is made. Secondly, the Claimant has failed to satisfy the Court that the Defendant promised him the dwelling house. However, he has satisfied the Court that he has made a contribution to the dwelling house and as such he has acquired an equitable interest in it. At best the Claimant's equitable interest is valued at \$20,000.00. The Defendant also failed to prove that he is the owner of the dwelling house but I have found that he has an unquantified equitable interest. Lastly, it is unconscionable to grant possession of the dwelling house to either party. In light of the relationship between the two parties and the history of the matter I order that each party bear his own costs.

Is the Claimant entitled to a declaration to 1 ½ acres of the land by virtue of his occupation?

8. Section 3 of the Real Property of Limitation Act Chapter 56:03 prevents the paper title owner from the right to recover lands either by action or entry within 16 years from the

time when the right to bring the action or make an entry first accrued. Section 22 provides that where after the expiration of the limitation period prescribed by section 3 (ie 16 years) the person entitled to do so has not brought an action or made an entry for the recovery of the land his right and title to the land shall be extinguished. The conjoint effect is the person making the claim extinguishes the right of the title of the paper title owner to the land at the end of the statutory period. Time stops running when the owner either makes an effective entry on the land or takes legal proceedings.

9. The Claimant's case is that by virtue of his undisturbed possession of the dwelling house and the land since 1989 the right of the Defendant to make an entry to recover the dwelling house and the land is barred and his title has been extinguished.

10. It is settled law in this jurisdiction that the guidance in the English House of Lords decision in **J A Pye (Oxford) Ltd and anor, v Graham and anor (2002) WLR 221** on the two elements necessary for legal possession is applicable. They are (a) a sufficient degree of physical custody and control ("the factual possession") and (b) an intention to exercise such custody and control on one's own behalf and for one's own benefit ("an intention to possess").

11. In **Bligh v Martin** [1968] 1 WLR 804 at 811 F, Pennycuik J opined that

"(1) Possession is a matter of fact depending on all the particular circumstances of a case. In very many cases possession cannot, in the nature of things, be continuous from day to day, and it is well established that possession may continue to subsist notwithstanding that there are intervals, and sometimes long intervals, between the acts of user."

12. The onus is on the party claiming possessory title, in the instant case the Claimant, to prove, on a balance of probability that he was in continuous possession for the 16 years from 1989. He must prove the two elements of factual possession and the intention to possess.

13. Slade J in **Powell v Mc Farlane** described factual possession as¹:

“Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances of the case in particular, the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so”.

14. Slade J in **Powell v Mc Farlane**² described the “necessary intention to possess” as:

“3. ‘intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow”.

15. I was not persuaded that the Claimant has been in factual possession and /or the necessary intention to possess the land from 1989 until November 2004 which is when the Defendant re-entered for the following reasons. Firstly, the Claimant’s evidence was when he was 18 or 19 years old which was in the mid 1980’s he started to plant the land with crops such as melongene, tomatoes, ochro, peppers, bodi and cucumbers which he

¹ [1977] 38 P& CR 452 at page 470-471

² [1977] 38 P&CR 452 at page 470

sold at the Chaguanas market. He also stated that he reared animals on the land without any input and /or consent from the Defendant. He sought to paint a picture that he undertook these activities by himself to demonstrate that he took control of the land exclusively. However, his evidence was contradicted by his witness, Susan John who stated that she understood that the planting of the land, the rearing of animals and the operation of a poultry farm which was on the land was a family effort and the Defendant was an integral part of it. In my view, the Claimant's evidence was exaggerated and deliberately misleading and Susan John's evidence was more plausible since the family was still living on the land and the Claimant alone could not have reared animals and maintained the land during 1990 to 2004 whilst he was working full time at MTS and after at TT Post. In my view the aforesaid activities the Claimant sought to rely on were not performed solely by him but it was a family effort.

16. Secondly, the Claimant's evidence was when he moved from La Pastora to the land in the mid 1970's there were very few fruit trees and that he planted the fruit trees and maintained them. However, again Susan John contradicted this evidence since she agreed during cross-examination that there were fruit trees on the land when they moved from La Pastora to live on the land. I accept that Susan John's evidence on this matter was more plausible than the Claimant's since he was a young man when he moved there.
17. Thirdly, the evidence on the size of the land the Claimant claimed he planted exclusively was unclear from the evidence of his witnesses. The Claimant and Susan John stated that he planted 1 ½ acres of land. However, during cross-examination when Susan John was questioned about the size of the land that was planted, using the dimensions of the courtroom it was clearly far less than one acre as asserted by the Claimant.

Did the Defendant create an expectation in the Claimant that he would obtain an interest in the dwelling house and did the Claimant act on this expectation to his detriment?

18. The Claimant pleaded that his mother spent \$15,000.00 in the construction of the dwelling house and that she told him that he could take care and keep it if she does not return to Trinidad. I understood the Claimant's pleading to be he acquired an equitable interest in the dwelling house by virtue of the doctrine of proprietary estoppel.

19. In **Fulchan v Fulchan**³ Rajkumar J re-stated the law on proprietary estoppel as :

“ If A under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a court of Equity will compel B to give effect to such expectation.”

Taylor Fashions Ltd v Liverpool Victoria Trustee Co. Ltd Per Oliver cited in Snell's Principles of Equity 31st Ed. Para 10-16”

20. There was no evidence that the Defendant promised, encouraged or even created any expectation in the Claimant that he would acquire any interest in the dwelling house. The Claimant admitted during cross-examination that after the Defendant left the dwelling house in 1989 he remained in communication with him and he maintained a cordial relationship with the Defendant. In 1993, he wrote to the Defendant, who was in Canada, to obtain his permission for the electricity to the dwelling house to be restored and for the bill to be placed in his name. The Claimant admitted that before 1993 the electricity bills were on the Defendant's name, that the WASA bills are still in the Defendant's name and that he has never paid any house tax for the dwelling house. The Claimant knew that the land belonged to the Defendant's mother and he also knew that the Defendant had some interest in the dwelling house since he knew that he had to contact him to obtain his permission for the electricity restoration to the dwelling house. It was not the Defendant who contacted the Claimant to restore the electricity or even encouraged him. In my view there is nothing in the Defendant's actions which demonstrated that he led the Claimant to believe that if he expended funds on the dwelling house that he would acquire an interest in it.

³ CV 2010-03575

21. There was absolutely no evidence that the Claimant's mother promised him the dwelling house and that it was based on this promise he acted to his detriment by making repairs to it. Further there was no credible evidence that the Claimant's mother spent \$15,000.00 on the construction of the dwelling house in the mid 1970's since the Claimant admitted that he was about 11 or 12 years old at that time and he was not part of the family discussions with his mother on her involvement in the construction of the dwelling house. The Claimant's evidence was that he lived in the dwelling house from the mid 1970's with his mother, the Defendant and his siblings until 1988 when his mother left and in 1989 when the Defendant left. After that he continued to live in the house with his sister, Susan John and his brother Desmond John. Susan John said she left in 1992 and by 2008 Desmond John left the dwelling house. The Claimant admitted that he did not contribute financially to the construction of the dwelling house since he was attending school during the time it was being built.
22. However, I accept that the Claimant did some renovations and repairs to the dwelling house. He stated that he rebuilt the roof with steel, rewired the house for electricity, cast the yard, painted the house, plumbing work and planted and maintained the lawn. During cross-examination he stated that he spent about \$20,000.00 on materials for the roof. He gave no other evidence on the sums he spent on the other items. His evidence on the repairs to the dwelling house was corroborated in part by Susan John who admitted during cross-examination that the Claimant changed the roof and did work on the ceiling both on the inside and outside of the house.
23. While I accept that the Claimant did not have any documentary evidence to support the sum of money he expended on the said work, this evidence was not challenged and was supported by Susan John. I agree that it was starved of details but on a balance of probabilities I accept that while he was not promised any interest in the dwelling house by the Defendant, he did expend his own funds on it which gave him an equitable interest in the dwelling house.

Who should get possession of the dwelling house- the Claimant or the Defendant?

24. The Claimant submitted that since he has established that he has an equitable interest in the dwelling house and the Defendant has failed to establish that he is the owner or has any legal or equitable interest in it, the Court should find that the Claimant has a superior right and/or interest in it and should make a declaration of ownership or possession of the dwelling house in the Claimant's favour.
25. Although the Defendant pleaded a counterclaim for possession of the dwelling house, he adduced no evidence to prove his claim. The Claimant admitted during cross-examination that when the dwelling house was being built both his mother and the Defendant were working and that the Defendant may have contributed to its construction. Susan John stated that the Defendant contributed to the construction of the dwelling house and he household while the family lived in the dwelling house. It was clear that the Claimant was not solely responsible for the construction of the dwelling house and he sought to exaggerate his contribution since the Claimant's mother, the Defendant and the Claimant's siblings made contributions to the dwelling house during the period they lived there. Based on the Claimant's evidence and the evidence of Susan John the Defendant did make a contribution to the construction of the dwelling house but there was no evidence of the extent of the Defendant's contribution. Therefore while the Defendant had an equitable interest in the dwelling home it was unquantified.
26. In **Gillett v Holt**⁴ the Court held that the Claimant established his claim to equitable relief and it had to decide what was the appropriate form that it should take. Robert Walker LJ at paragraph 839 stated:

“Since Mr. Gillett has established his claim to equitable relief, this court must decide what the most appropriate form is for

the relief to take. The aim is, as Sir Arthur Hobhouse said in *Plimmer v Wellington Corporation* (1184) 9 App Cas. 699, 714, to “look at the circumstances in each case to decide in what way the equity can be satisfied.” The

⁴ [2001] Ch 210

court approaches this task in a cautious way, in order to achieve what Scarman L.J. in *Crabb v Arun District Council* [1976] CH. 179, 198, called “the minimum equity to do justice to the plaintiff.” The wide range of possible relief appears from *Snell’s Equity*, 30th ed. (2000), pp 641-643.”

27. In that case the approach the Court took was to ascertain the maximum extent of the equity and then form a view “as to what is the minimum required to satisfy it and do justice between the parties.”

28. In **Jennings v Rice**⁵ Walker LJ cautioned against giving property to a party where the money spent on the property is disproportionate to the value of the property. The court suggested another means of compensating the party. He stated:

“But if the Claimant’s expectation are uncertain, or extravagant, or out of all proportion to the detriment which the Claimant suffered, the court can and should recognize that the claimant’s equity should be satisfied in another (and generally) more limited) way.”

29. Sir Henry Brooke in **Knowles v Knowles**⁶ cautioned that:

“While recourse to the doctrine of estoppel provides a welcome means of effecting justice when the facts demand it. It is equally important that the courts do not penalize those who through acts of kindness simply allow other members of their family to inhabit their property rent.”

30. I have found that both the Claimant and the Defendant each has an equitable interest in the dwelling house. In the Claimant’s case his interest, based on his evidence is \$20,000.00 for repairs and in the Defendant’s case it was unquantified since his contribution was in the construction of the dwelling house. There was no evidence of the value of the dwelling house at the time either prior to the repairs or even after it. In my

⁵ [2002] EWCA Civ 159 paragraph 50

⁶ [2008] UKPC 30

view to grant the Claimant possession of the dwelling house would be disproportionate to his equity since it would deprive the Defendant from his unquantified equitable interest in the dwelling house. Likewise to grant the Defendant possession of the dwelling house would also deprive the Claimant of his equitable interest.

Postscript

31. This was a matter involving two parties who were family members and who lived in the dwelling house from the mid 1970's to 1989. They appear to have limited means and they have both failed in obtaining the relief each has sought the court to order. It is unfortunate that my findings on possession of the dwelling house have not brought finality to the matter between the parties. Neither party sought an order for the sale of the dwelling house and for the proceeds to be distributed accordingly and therefore it would not be appropriate to make such an order at present. In my view, this was an appropriate matter to engage some form of alternative dispute resolution to bring a solution to the problem between the parties. I therefore urge them to strongly consider this course to resolve the division of their equitable interest in the dwelling house.

Order

32. The Claimant's action is dismissed.

33. The Defendant's counterclaim is also dismissed.

34. The Claimant is entitled to an equitable interest in the dwelling house in the sum of \$20,000.00. The Defendant is entitled to an unquantified equitable interest in the dwelling house.

35. Each party to bear his own costs.

Margaret Y Mohammed
High Court Judge