

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. 2017-02265

BETWEEN

HUGH GABRIEL

Claimant

AND

ADRIENNE MARIA HINDS

Defendant

Before the Honourable Madam Justice Margaret Y Mohammed

Dated the 22nd October, 2018

APPEARANCES:

Mr. Phillip A. Wilson instructed by Ms. Cherry-Ann Pottinger Attorneys at law for the Claimant.
Mr. Delroy S. Burris instructed by Ms. Janelle K Benjamin Attorneys at law for the Defendant.

JUDGMENT

1. The Claimant claims that he is the owner of a three bedroom concrete dwelling house and is in possession of both the house and land located at L.P G552 Eastern Main Road D’Abadie¹ (“the disputed property”).

¹ The disputed property consists of a piece or parcel of land comprising one lot, more or less, of land bounded on the North by a drain reserve, on the South partly by an access road and partly by lands now or formerly of Cora Stoute, on the East by lands now or formerly of Theresa Victor and on the West by lands now or formerly of Cora Stoute along with the house thereupon.

2. The Defendant contends that she is the paper title owner of the disputed property by virtue of a Deed of Gift dated the 10th March 2016 and registered as DE201700578808 (“the Deed of Gift”).

The Claimant’s case

3. The Claimant contends that he is the owner of the disputed property and has been in undisturbed possession of the disputed property for seventeen (17) years. He asserts that for the last five decades the disputed property has been in possession by his uncle Mr. Knaggs Edwards (“Mr. Edwards”) until his death in 2000 and then exclusively by the Claimant. Mr. Edwards lived on the disputed property since the Claimant was nine (9) years old and the Claimant is now sixty-five (65) years old. Mr. Edwards lived in the front bedroom of the house which he built and rented the other two bedrooms to tenants who shared the kitchen and bathroom facilities.
4. The Claimant contends that neither him nor his uncle paid rent to anyone and they always treated the disputed property as their own. Mr. Edwards fenced the disputed property, conducted repairs on the house, and planted fruit trees and maintained the surroundings. The Claimant asserted that he was also involved in the repair and maintenance of the disputed property even prior to his uncle’s death. Mr. Edwards always paid the T&TEC and WASA bills and his NIS pension was also addressed to the disputed property.
5. Upon the death of Mr. Edwards, the Claimant claimed that he took full possession of the disputed property and began renovation works on same. He contends that he expended \$7,000.00 to change the roof, flooring and to repair the electricals. He also continued to rent the disputed property. He occupied the disputed property without paying rent to anyone and has been occupying it as the owner. He has been responsible for the maintenance of the disputed property and always paid the WASA and T&TEC bills in his uncle’s name. From 2005, the Claimant claimed that he planted on the disputed property with cashew trees, sugar cane, coconut trees, cane and bananas for his personal consumption.
6. In 2016, the account holder of the T&TEC bills was changed to the Defendant’s name and the WASA bill was changed into one Michael Layne some years prior.

7. The Claimant asserted that in or around 2011, an application was made by Dennis Layne and Jerome Layne to bring the disputed property under the provisions of the Real Property Ordinance. The Claimant resisted the granting of the application and he sent a letter dated 25th March 2011 to the Acting Examiner of Title at Registration House notifying her of his interest in the disputed property and requested that the application be halted. An investigation was conducted by the Ministry of Legal Affairs and the Claimant was interviewed by a field officer but he has heard nothing further about the said Real Property Ordinance application.
8. By letter dated 14th December, 2012, an attempt was made to evict the Claimant from the disputed property by someone acting on behalf of the estate of Alexander Layne. The letter referred to an outstanding WASA bill in excess of \$12,000.00. Upon enquiries at WASA's offices it was discovered that this bill was for a different address and customer. The Claimant's Attorney at Law responded to the letter requesting title documents to the disputed property to be produced and to cease the threats made to his tenants but no response was made to the letter.
9. Following the threats made at the disputed property on December 2012, the Claimant's tenants left the disputed property and as a result, the Claimant suffered loss of income. On 3rd February 2013, in an attempt to settle the claims over the disputed property, the Claimant wrote to the relatives of the "Layne's" requesting a meeting but no response was made to the letter.
10. In August 2016, the Defendant in the company of unknown persons entered the disputed property without the consent of the Claimant and his tenants, Garth Moore and Solome Superville and made threats. In October, 2016, the Claimant's tenants, Mr. Moore and Ms. Superville complained that there was no electricity on the disputed property. He made enquiries at T&TEC and he was informed that the name on the account was changed and the disconnection was as a result of non-payment of the bill. The tenants paid the arrears of the bill and the electricity supply was restored.
11. In December 2016, the Claimant and the tenants entered into an oral agreement for the sale of the disputed land. On 16th May 2017, the Defendant accompanied by one WPC Selena and policeman entered the disputed property and served a letter on his tenant Mr. Moore which requested them to vacate the chattel house on the disputed property within fourteen days (14) of receipt of the letter.

12. By letter dated 24th May 2017, the Claimant wrote to the Defendant and threatened to commence legal action if the Defendant did not cease her behaviour. There was no response to the letter.
13. The Claimant instructed his attorney at law to conduct a search of the land registry at the Registrar General's office since the "eviction notice" cited a deed number. The search revealed a Deed of Assent was done in 2015 in the name of Dennis Layne. There were two subsequent deeds, a Deed of Rectification and the Deed of Gift vesting the disputed property in the Defendant.
14. On 30th May 2017 at around 3:00 p.m. the Defendant and two other persons, including a uniformed police officer entered the disputed property without the consent of the Claimant.
15. On 31st May 2017 around 8:15 a.m. the Claimant sent a letter through his attorney at law to the Defendant demanding that she cease all acts of trespass and intimidation tactics. On 11:00 a.m. on the same day, the Defendant or through her servants/agents broke through the chained gate of the disputed property and entered along with a work crew from T&TEC and removed the electricity meter from the disputed property.
16. On 17th June 2017, the Defendant together with her agents, a bailiff and armed police officers forcibly broke down the gate to the disputed property, entered it, and demanded that the tenants vacate the premises.
17. The Claimant contends that he has suffered damage to the disputed property as a result of the Defendant's actions.
18. The Claimant also contends that the Grant of Probate in the estate of Alexander Layne raises the questions which may impact the Defendant's title namely:
 - (a) The Will displayed in the grants allegedly made in 1968 bears the heading "Republic of Trinidad and Tobago". Republic status was achieved for Trinidad and Tobago in 1976. This raises doubt as to the date of construction of the said Will.
 - (b) Reference was made in the Grant to the state of plight due to the Will being kept folded in an envelope but there is no indication that a reconstructed Will was to be

substituted in the Grant. The typescript and font used in the Will were not available in 1968. This raises doubt as to the authenticity of the 1968 Will.

(c) The Deeds generated after the Grant was approved also reveal doubt as to the parcel or plot of land in question:

(i) The Schedule to the Deed of Assent made in October 2015 (“the Deed of Assent”) describes a parcel or plot of land of 858.9 sq. metres; bounded on the North by a drain reserve and on the South partly by an access road and partly by lands now or formerly of Cora Stoute, on the East by lands now or formerly of Theresa Victor and to the West by lands now or formerly of Cora Stoute.

(ii) This was followed by a Deed of Rectification, in December 2015, (“the Deed of Rectification”) some two months later in which the parcel or plot of land described in the Schedule was of one lot more or less bounded on the North by lands now or formerly of C. Cleaver on the South by a reserved space and on the East and West by Crown lands.

(iii) The Deed of Gift describes the disputed property as in the Schedule to the Deed of Assent.

19. The Claimant contends that the Deeds generated from the Grant of Probate identified no root title. Further, the Deed of Gift became effective only upon registration in March 2017 and she had no right to claim ownership prior to or since registration since the Claimant had accrued requisite time to claim adverse possession to the disputed property.

20. Based on the aforesaid facts the Claimant instituted the instant action against the Defendant seeking the following orders from the Court:

(a) Declaration that the Claimant has accrued possessory title of the disputed property by virtue of section 3 of the Real Property Limitation Act².

(b) Declaration that the Defendant’s title of the disputed property had been extinguished under Section 22 of the Real Property Limitation Act.

² Chapter 56:03

- (c) An injunction restraining the Defendant whether by herself, her servants, agents, contractors and/or any other person, from trespassing, by any means, on the disputed property until further order.
- (d) An Order to maintain the status quo thereby allowing the continued occupation and use of the disputed property by the Claimant, his servants and/or agents, pending the application to bring the said property under the Real Property Act.
- (e) Costs.

The Defence

21. The Defendant contends that she is the paper title owner to the disputed property by virtue of the Deed of Gift from her Deceased father, Mr. Dennis Layne. The Defendant states that Mr. Edwards was a statutory tenant of her grandfather who was the title owner Mr. Joseph Alexander Layne, also called Joseph Layne also called Alexander Layne. Mr. Edwards thirty (30) year tenancy expired in 2011 since neither Mr. Edwards nor his beneficiaries would have served a notice of intention to renew the said tenancy. As such, the Defendant contends that the Claimant cannot accrue any rights under the Real Property Limitations Act as the requisite time under the Real Property Limitations Act only began to run from 2011 when the statutory tenancy ended.
22. The Defendant also denies that the Claimant has ever been in occupation of the disputed property. Approximately five (5) months after the death of the Mr. Edwards, the Defendant's father commissioned a valuation report dated 18th September 2000 from Mr. Ronald Browne, Valuator, which cited the general state of disrepair of the chattel house. Another valuation report dated 4th January 2007 from G.A. Farrell and Associates again confirmed that the disputed property was in a state of disrepair. During the site visit for the Valuation Report of 2007 the property was occupied by an 'old lady and her son' but the Defendant did not acquire their names.
23. The Defendant contends that the attorney at law's letter dated 14th December 2012 and the WASA bill in the name of "Michael Layne" were not an eviction notice but a warning to the Claimant to

desist from renting the disputed property and to inform the Claimant of the outstanding WASA bill which needed to be cleared within a specific period.

24. The Defendant states that her agent Marlon Daire, attended a meeting on her behalf in response to a letter dated the 3rd February 2013 where the Claimant made demands for the payment of \$60,000.00 to leave the disputed property.
25. The Defendant contends that at all material times, she as the owner and agent of Mr. Dennis Layne has since the death of Mr. Edwards took several steps to assert her right as title owner to the disputed property by constantly visiting the property, issuing letters of notice to the tenants, retaining Bailiffs to assist with eviction procedures and commissioning Valuation reports. She denies issuing any threat to Solome Superville and denies that the disputed property belongs to the Claimant.
26. The Defendant contends that she entered the disputed property as the paper title owner and does not need consent from the Claimant and/or that of persons illegally occupying her premises. She denies that she broke through the chain gate of the disputed property and avers that as she is in possession of a registered Deed of Gift to the disputed property, she approached T&TEC and instructed them to remove the meter from the disputed property as she was in the process of arranging for the chattel house to be demolished so that a new building will be constructed.
27. The Defendant did not file any counterclaim.
28. The issues which arise for determination are:
 - (a) Does the Deed of Assent provide the Defendant with the requisite paper title to the disputed property?
 - (b) Was the Claimant's uncle, Mr. Edwards in possession of the disputed property as a statutory tenant?
 - (c) If not was the Claimant in continuous undisturbed possession of the disputed property for more than 16 years?

29. At the trial, the Claimant gave evidence on his behalf and he also called two witnesses Mr. Moore and Mr. Salome Superville. The Defendant alone gave evidence on her behalf.

Does the Deed of Assent provide the Defendant with the requisite paper title to the disputed property?

30. It was submitted on behalf of the Claimant that the circumstances surrounding the Defendant's title which is the Deed of Gift is sufficient to excite the Court's suspicion of her title and no weight should be given to it. It was argued that searches at the various Registries did not reveal a root of title for the Deed of Assent from which the Defendant's paper title evolved. As such the Defendant cannot rely on her title document. In support of this submission the Claimant relied on the learning in **Lennox Jobe v Willie Williams and Klint Ryan**³ which cited Smith J (as he then was) in **Randolph Murray v Hendrickson Biggarts**⁴.
31. It was also submitted on behalf of the Claimant that there were the irregularities and suspicious circumstances surrounding the 1968 Will of the Defendant's Deceased grandfather Joseph Alexander Layne ("the 1968 Will"), which undermines the Deed of Assent from which the Defendant derives title. Counsel argued that the 1968 Will was allegedly drawn up in and executed in 1968 which could not have been created in computer script and that it was headed "Republic of Trinidad and Tobago", a status was only achieved in 1976, some eight years after the writing of the 1968 Will.
32. Counsel for the Defendant submitted that the legitimacy of the 1968 Will of the Defendant's should be disregarded, as a court of competent jurisdiction had assessed it and subsequently granted probate to it. Further, the Defendant has satisfied the court that she is the title owner of disputed property despite the search on title which did not show a Root of Title.
33. In **Randolph Murray**⁵ Smith J (as he then was) in February 2005 took the position that a Plaintiff who seeks possession of land from a Defendant must prove his own title to the land

³ CV 2010-01509

⁴ HCA T101 of 1996

⁵ Paragraph 7

strictly. He must set out all the links in his title showing a good root of title and establishing that he is the owner of the land. Kokaram J in **Lennox Jobe** at paragraph 8 in a decision delivered in March 2012 adopted the position of Smith J (as he then was).

34. However in the 1969 Privy Council case of **Ocean Estates Ltd v Pinder**⁶ Lord Diplock stated at page 25:

“Where questions of title to the land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party C can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20 year period of continuous and exclusive possession by the trespasser.

In the present case where the defendant made no attempt to prove any documentary title in himself or in any third party by whose authority he is in occupation on the land it would have been sufficient for the plaintiffs to rely upon the conveyance of the land to himself of March 30th, 1950; for where a person has dealt in land by conveying an interest in it to another person there is a presumption, until the contrary is proved that he is entitled to the estate in the land which he purported to convey. In fact, however, the plaintiffs went further than was strictly necessary. They proved the devolution of title going back through a series of intervening conveyances to the conveyance of the fee simple in the land by Mrs. Key to the Chipper Orange Co. Ltd of May 3, 1937.”
(Emphasis added)

35. The Court of Appeal in this jurisdiction in January 2015 approved and acknowledged the applicability of **Ocean Estates** in this jurisdiction in **Xavier Goodridge v Baby Nagassar**⁷. In that case Mendonca JA concluded at paragraph 26 that:

⁶ [1969] 2 A.C.19

⁷ Civil Appeal No: 243 of 2011

“Where question of title arise in litigation the Court is concerned with the relative strengths of the title proved by the rival claimants. A claimant, who relies on his documentary title to obtain possession of land against a trespasser who does not seek to prove any documentary in himself, although he has adduce some evidence of ownership of the lands, need not adduce evidence of title to the lands for the same period as may be required of a vendor by a purchaser under a contract for sale of lands under section 5 of the CALPA [Conveyancing and Law of Property Act]. The claimant may rely on the presumption referred to by Lord Diplock. As the claimant may succeed even though he need not strictly prove his title for the same period as may be demanded by a purchaser of lands, it follows that he need not set out such a title in his pleadings.”

36. The position as articulated by Mendonca JA is that the documentary title of an owner of land is sufficient to prove title. There is no need to adduce evidence of title to the land as is required be required of a vendor by a purchaser under a contract for sale of lands under section 5 of the CALPA. Therefore, **Xavier Goodridge** altered the position in **Randolph Murray and Lennox Jobe** that the paper title owner must also prove a good root of title.
37. The Claimant testified that since he was not provided with proof of ownership of the disputed property, he then instructed his attorney at law to conduct a search of the property at the Probate Department of the High Court Warden’s Office Arima and the Registrar General. His attorney at law presented him with copies of documents filed in the estate of Joseph Alexander Layne and the Deed of Gift in the name of the Defendant. He referred to “H.G. 18” in his witness statement which was a copy of the Deed of Gift and which was annexed to his Statement of Case. He also referred to “H.G. 23” which was annexed to his Statement of Case and which was a copy of all the documents filed in the application for the Grant of Probate for the Estate of Joseph Alexander Layne also called Joseph Layne also called Alexander Layne (deceased).
38. The Defendant’s evidence in chief⁸ was that the disputed property to which she holds title was owned by her deceased grandfather Alexander Layne also called Joseph Layne also known as Joseph Alexander Layne. According to the Defendant, her grandfather had two surviving

⁸ Witness statement of Adrienne Maria Hinds filed 9th March 2018

children at the time of his death Dennis Layne and Rosalie Layne both of whom are deceased and that her grandfather made the 1968 Will devising all his possessions to her father, Dennis Layne and her aunt Rosalie Layne. At the time of her aunt's death, her father and her aunt were beneficially entitled to the properties left by her grandfather's Will as joint tenants. Upon her aunt's death her father, Dennis Layne became the sole owner of these properties and that one such property is the disputed property. She stated that due to financial constraints, the Deed of Gift was registered in 2017.

39. In cross-examination, the Defendant was questioned if she looked over the documents pertaining to the disputed property following the death of her father. She replied she did not. She said that she was not aware that her grandfather passed title to her father in the disputed property but she was aware her grandfather owned the disputed property and that the disputed property was occupied by Mr. Edwards.
40. The Defendant agreed that in order to show title in the disputed property she is relying on the Deed of Gift and the Deed of Rectification. According to the Defendant there are the only two deeds in relation to the disputed property. When questioned on her father's eyesight before he died, she stated that her father was seeing fine just before he died. In a number of documents referred to her by Counsel for the Claimant during cross-examination pertaining to the Deeds, she read that her father was unable to sign the documents due to his visual impairment.
41. The Defendant stated that she was aware her father made an application to bring the disputed property under the Real Property Ordinance.
42. In my opinion the Defendant has discharged her burden by adducing sufficient evidence in the Deed of Assent to demonstrate that she acquired the disputed property. There was no application by the Claimant to set aside the Deed of Gift. On the face of the Deed of Gift the Court can presume that the Defendant's father had an interest in the disputed property which he conveyed to her.

Was the Claimant's uncle, Mr. Edwards in possession of the disputed property as a statutory tenant?

43. It was submitted on behalf of the Defendant that the Claimant's uncle, Mr. Edwards was a statutory tenant of the disputed property and since he failed to serve a notice of renewal on in 2011, his statutory tenancy expired.
44. The Claimant's position was that his uncle did not pay rent for the disputed property.
45. Section 2 of the Land Tenants (Security of Tenure) Act⁹ ("the Act") defines a tenant as "any person entitled in possession to the land under a contract of tenancy, whether express or implied, and whether the interest of such person was acquired by original agreement or by assignment or by operation of law or otherwise; and includes a tenant at will and a tenant at sufferance and "Tenancy" shall be construed accordingly". In the same section a chattel house is defined as including "a building erected by a tenant upon land comprised in his tenancy with the consent or acquiescence of the landlord and affixed to the land in such a way as to be incapable of being removed from its site without destruction".
46. Section 4 of the Act provides for the conversion of tenancies existing at the time before commencement of the Act which was 1st June 1981 to statutory tenancies. It provides that:
- "4 (1) Notwithstanding any law or agreement to the contrary but subject to this Act, every tenancy to which this Act applies subsisting immediately before the appointed day shall as from the appointed day become a statutory lease for the purposes of this Act.
- (2) A statutory lease shall be a lease for thirty years commencing from the appointed day and, subject to subsection (3), renewable by the tenant for a further period of thirty years.
- (3) In order to exercise the right of renewal on or before the expiration of the original term of the statutory lease.

⁹ Chapter 59:54

(4) Upon service of the notice by the tenant under subsection (3), the statutory lease shall be deemed to be renewed for a period of thirty years subject to the same terms and conditions and to the same covenants, if any, as the original term of the statutory lease but excluding the option for renewal.”

47. The Claimant’s evidence was that he enquired of the “Laynes” why they told his tenants to leave the house. He said that they claimed that his uncle used to pay rent and he had stopped. According to the Claimant this was the first time he heard that his uncle, Mr. Edwards paid rent to anyone. He informed them that he needed some evidence as he was in charge of the disputed property and he needed to protect his uncle’s interest but they became hostile and abusive towards him.
48. The only evidence to support the assertion of a statutory tenancy by Mr. Edwards of the disputed property was from the Defendant. The Defendant stated in her witness statement that she knew a tenant as “Edward Snaggs” and that he died in 2000. She admitted during cross-examination that during the search of her father’s documents she did not find any receipt of “Mr. Edward Snaggs” paying rent. She agreed that she has not produced any documents to show that “Mr. Edward Snaggs” was a tenant.
49. In my opinion the Defendant’s evidence that the Claimant’s uncle was paying rent was self-serving since there was no documentary evidence to support her evidence and there was no corroborating evidence from any other witness. As such there was insufficient evidence to support the Defendant’s position that Mr. Edwards was a statutory tenant of the disputed property.

If not, was the Claimant in continuous undisturbed possession of the disputed property for more than 16 years?

50. Section 3 of the Real Property of Limitation Act¹⁰ 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 (i.e. 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.
51. The law will presume that the paper title owner, in this case the Defendant was in actual possession and with the right to possess of the disputed land. At paragraph 40 in **J A Pye (Oxford) Ltd v Graham**¹¹ the House of Lords approved the following statement from **Powell v Mc Farlane**¹²:
- "(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner. (2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ('animus possidendi')."
52. According to the learning in **J A Pye (Oxford) Ltd v Graham** the two elements necessary for legal possession are (a) a sufficient degree of physical custody and control ("the factual

¹⁰ Chapter 56:03

¹¹ [2013] 1 AC 419

¹² 39 P&CR 470

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”).

53. In **Bligh v Martin**¹³, Pennycuick J opined at page 811 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.”

54. Slade J in **Powell v Mc Farlane** described “factual possession” as¹⁴:

“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”.

55. Slade J in **Powell v Mc Farlane**¹⁵ 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”.

¹³ [1968] 1 WLR 804 at 811 F

¹⁴ [1977] 38 P& CR 452 at page 470-471

¹⁵ [1977] 38 P&CR 452 at page 470

56. It was argued on behalf of the Claimant that his uncle Mr. Edwards was in possession of the disputed property since around 1961 until 2000 and after he died in 2000, the Claimant continued in possession of the disputed property. As such the Claimant argued that he has been in continuous possession of the disputed property for over 16 years
57. The Defendant submitted that the Claimant has never lived or was in physical occupation of the disputed property; the Claimant failed to demonstrate that he exercised total control of the disputed property to the exclusion of others as he failed to establish that the alleged tenants in occupation of the disputed property up to and subsequent to his uncle's death continued their tenancy with his consent; he failed to establish the existence of a tenancy since the death of Mr. Edwards and that since the death of his uncle Mr. Edwards he failed to produce evidence that he was in control or interacted with the disputed property between the years 2000-2007. As such the Defendant submitted that the Claimant's action must fail.
58. The issue of adverse possession is a question of fact and the onus is on the Claimant who has asserted ownership by adverse possession to prove such matters. In determining the version of the events more likely in light of the evidence the Court is obliged to check the impression of the evidence of the witnesses on it against the: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions. (**Horace Reid v Dowling Charles and Percival Bain**¹⁶ cited by Rajnauth-Lee J (as she then was) in **Winston Mc Laren v Daniel Dickey**¹⁷).
59. In determining the credibility of the evidence of a witness the Court of Appeal in **The Attorney General of Trinidad and Tobago v Anino Garcia**¹⁸, took the position that any deviation by a Claimant from his pleaded case immediately calls his credibility into question.
60. For the Claimant to succeed with his claim he had to demonstrate that his uncle Mr. Edwards and later he went into possession of the disputed property with the intention to treat it as their own at least 16 continuous years before the action was instituted.

¹⁶ Privy Council Appeal No. 36 of 1897

¹⁷ CV 2006-01661

¹⁸ Civ. App. No. 86 of 2011 at paragraph 31

61. The Claimant's evidence in chief¹⁹ was that he shared a close relationship with his uncle, Mr. Edwards. He visited his uncle at the disputed property from the age of nine since his uncle assisted his mother financially with his and his siblings' upbringing. He stated that his uncle was living in a shack at first but because his uncle was a builder, he fashioned concrete blocks from cement and gravel and used those blocks to construct the house. When his uncle first moved to the area there were no electricity and water and his uncle eventually installed those utilities on the disputed property. After building the house, his uncle rented out two bedrooms at the back of his house. His uncle fenced the disputed property with chain link fence and planted fruit trees like coconut, bananas and orange trees for his personal use. When he retired his uncle's NIS pension was sent to the disputed property.
62. According to the Claimant, uncle died in 2000 and he continued seeing about the tenants. At the time of his uncle's death there were two tenants in the disputed property and another one moved into the vacated room at the back of the house. He continued to carry out repairs on the disputed property such as changing the floor boards and maintaining the yard. The Claimant said that over the next few years he continued to repair house on the disputed property. He changed the roof, replaced the flooring and rewired the house. He maintained the yard, planted sugarcane, cashew and replaced fruit trees. He also collected rent, paid utilities and sorted out issues with the tenants.
63. On two occasions, the Laynes brought police to the disputed property and informed the tenants that they needed to leave the disputed property as they, the Laynes, were the owners of it. Some tenants were intimidated and left the property. In December 2012, he received a letter from an attorney at law acting on behalf of the estate of Alexander Layne claiming that there was an outstanding WASA bill of over \$12,000.00 owed for the disputed property. Thereafter, a crew from WASA visited the disputed property to disconnect the water supply. He visited the disputed property and showed them his up to date receipts. He discovered that the service address was a property occupied by members of the Layne family at the corner of Recreation Road and Eastern Main Road. He then wrote to the Laynes on February 2013 since he received phone calls and messages from his tenants that the Laynes had over the years threatened to

¹⁹ Witness statement of Hugh Gabriel filed 9th March 2018

evict them. He was eventually contacted by gentleman who stated that he represented the Laynes but he did not provide any proof of ownership.

64. The Claimant also testified that in August 2016, he was informed by the tenant on the disputed property Mr. Moore that his common law wife Ms. Solome Superville was at home with the children when the Defendant and unknown persons entered the disputed property and issued threats about what would happen if they did not leave the disputed property. In October 2016, Mr. Moore informed him that they had no electricity. He soon discovered that the T&TEC account had been changed to the Defendant and the electricity was disconnected due to non-payment of the bill. In December 2016, he decided to claim the disputed property under adverse possession since he has accumulated sixteen (16) years as he was tired of the harassment from the Defendant. By this time, Mr. Moore and Ms. Superville were the only tenants at the disputed property. In May 2016, Mr. Moore informed him that he was served a notice to leave the disputed property.
65. In cross-examination the Claimant explained that he was not solely in charge of the upkeep of the disputed property since the 1970s but he was always there with his uncle assisting him in the upkeep of the disputed property.
66. The Claimant was referred to a letter he wrote in 2013 which he annexed as "H.G15" and to the lines "*I don't want ownership of this parcel of land legally or otherwise if I know that the land legally belongs to you. I will give up all rights immediately except adequate compensation for the house I saw my uncle built from bricks he fashioned for himself.*" When questioned that all he wanted was compensation for the house, he stated "No." He did not agree that he made a demand for \$65,000.00. However, when questioned again that he wanted some money, he agreed.
67. The Claimant also stated that he rented the disputed property to Mr. Garth Moore for \$200.00 around 2000. However, when questioned that in his witness statement he stated that Mr. Moore was in occupation of the premises for twelve years which would approximate to the year 2004, he indicated that he could not remember the exact year.

68. The Claimant did not agree that Mr. Moore moved into an abandoned house on the disputed property in 2007 nor that he made an agreement with Mr. Moore in 2007 to live in the house. He agreed that he made an agreement to sell the disputed property to Mr. Moore providing the outcome of the instant matter.
69. The Claimant stated that he collected rent every month from his tenants. He was directed to a rent receipt which stated the rental figure as \$600.00 even though he previously stated he collected \$200.00. He stated that both figures were correct.
70. He was referred to an undated letter written on his instructions by his then attorney Ms. Dana Estrada to a Ms. Chasseau and to the line *“My client has been in occupation of the subject parcel of land since the year 1980 to date.”* He agreed that this statement was not true. He was referred to the following as well *“My client together with Mr. Edward Knaggs his uncle (who is now deceased) has been solely responsible for the upkeep and maintenance of the parcel of land situate at the Corner of the Eastern Main Road and Recreation Road”*. He also agreed that this statement was not true and that the statement *“Mr. Gabriel has been in undisturbed possession of the said parcel of land for over thirty years and this situation is causing him great distress and concern”* was also not true.
71. The Claimant denied that he abandoned the disputed property after his uncle died. He maintained that his uncle fenced the disputed property and not him and it was not true that he did not have interest in the disputed property and only wanted money for the chattel house. He admitted that he promised to sell the disputed property to his tenants (Mr. Moore) when the matter is finished.
72. Mr. Moore testified in his evidence in chief²⁰ that he has been living at the disputed property since 2004. When he moved in he lived at a room in the back of the house. At that time there were two other tenants living there; a lady and her son in the front portion of the house and a man called Horace and his family lived in the room on the side of the house. According to Mr. Moore, two years after moving in, three individuals visited the disputed property and took pictures of the house and yard. He demanded that they leave since he was renting from the

²⁰ Witness statement of Mr. Garth Moore filed 9th March 2018

Claimant. In 2010, after his girlfriend Ms. Solome Superville moved in with him, she informed him that they were served with an eviction notice by a policewoman. He gave the notice to the Claimant since he was the landlord. Sometime after, he saw three people; the man mixing the concrete, an elderly man and the Defendant on the pavement in front the house. He realized they were blocking the draining for the yard and he told them they could not do that. The Defendant responded. He called the Claimant and had a conversation with him. The Claimant later called him and informed him that he had dug most of the rubble and removed it and he had made a report to the Arima Police Station.

73. Mr. Moore also testified that in October 2016, when he returned home there was no electricity. He called the Claimant to enquire if he was in arrears but the Claimant informed him that he paid the T&TEC bill directly from his account and he could not be in arrears. When he checked on it, he was informed that the account was changed from Mr. Edwards to the Defendant. The Claimant directed him to pay the bill which he did and the electricity was reconnected and he continued to pay the bill.
74. According to Mr. Moore, in April 2017, when he arrived home, there were two police officers, the Defendant, a man and a child. The police informed him that they were there to serve an eviction notice. He told them that he paid rent to the landlord and the female police officer threw the document at his feet and left. In 2017, the disputed property had no lights and he realized that the meter was missing from the wall on the house. In May 2017, a Bailiff visited the house along with other persons and informed him that they were there to evict them. There were two police officers, two men whom he knew and two other men. He informed them that the gate was locked and that he had to call the landlord. As he was going inside to get his phone, he heard a noise and saw that they had pushed down the gate and were in the yard. He began taping what was happening and after a while they left shortly.
75. In cross-examination Mr. Moore stated that he moved unto the disputed property in 2005. He paid rent for the disputed property since he moved in and the last time he paid rent was in 2017 in the sum of \$450.00. The least amount of rent he paid was \$250.00 and he paid rent on the 1st of every month to the Claimant in cash.

76. Mr. Moore explained that he went to live on the disputed property through a friend of his family who made arrangements with the Claimant for him to move in. He got access to the disputed property through his friend who spoke to the Claimant since his friend was living there at the time. After he moved in, he spoke to the Claimant and he entered into a rental agreement where he paid rent and other bills. He accepted that for the rent he was paying (\$450.00) he would not be able to rent a property with a good standard of living and which provided for water, electricity and the basic necessities.
77. Mr. Moore admitted that the Claimant promised him that he would eventually sell the disputed property to him. He stated that he paid the bills and maintained the disputed property. However, he explained that renovations to the disputed property such as the rewiring and changing of floor boards were done by the Claimant. He stated that the Claimant visited the disputed property whenever he called him, to collect rent and when the people were harassing him.
78. Ms. Solome Superville in her evidence in chief²¹ stated that she has been living at the disputed property since 2009. In 2010, she was served with an eviction notice by a woman police. She gave the notice to Mr. Moore to give to the Claimant since all their dealings with the disputed property were done with the Claimant. One year later during the July-August vacation, three men who were already in the yard told her something and she became afraid.
79. According to Ms. Superville, in May 2017, she and Mr. Moore were returning home around 7:00pm when they met two police officers in uniform, the Defendant and a man. They stopped them at the pavement and one of the officers, WPC Selena informed them that they came to serve an eviction notice. They indicated to them that they were tenants. One of the police officers threw the notice at Mr. Moore's feet and said that the documents were served. Two weeks later, when they came home from work, the gate was damaged, there were no electricity in the house and the meter box was missing.
80. Ms. Superville also testified that about another incident on Saturday 17th June, 2017 where, a bailiff Brian Smith and other persons including police officers, visited the disputed property and indicated that he had an order from the Court to evict them. He told them to open the gate

²¹ Witness statement of Solome Superville filed 9th March 2018

but she did not have the key to the gate. The men forcibly pushed their way into the yard. Fifteen minutes later, one of the plain clothes policemen received a phone call. They then left the disputed property.

81. In cross-examination, Ms. Superville confirmed that her common law husband, Mr. Moore paid rent in the sum of \$350.00 every month to the Claimant who collected it at the disputed property. She was aware that her husband agreed last year to purchase the disputed property from the Claimant in the sum of \$30,000.00. She stated that the agreement was not made during the instant matter and that she was aware the Defendant was trying to get them out of the disputed property. She maintained that her husband and the Claimant, maintained the disputed property and that the Claimant did repairs to the flooring and he re-wired the house during the time she lived in the house.
82. The Defendant testified that she knew a person named “Mr. Edwards Snaggs” was in possession of the disputed property. “Mr. Snaggs” died on or about April 2000. She also knew there were fruit trees and short crops on the disputed property and that the chattel house on the disputed property was getting old from wear and tear due to age.
83. According to the Defendant, upon the death of “Mr. Snaggs”, her father who was one of the Executors/Beneficiary under the 1968 Will, sanctioned a valuation report of the disputed property. During the site visit and throughout the period when the valuation was conducted there was no one in occupation of the house or the disputed property. In 2006, she visited the disputed property and there was an elderly woman on it. She enquired from the woman who authorized her to be on the disputed property but the woman could not give a reasonable explanation. The Defendant told her she needed to find a place to live and she agreed.
84. The Defendant testified that in January 2007, she sanctioned a valuation report from GA Farrell and Associates of the disputed property with the consent of her father. She visited the disputed property and the elderly woman was still there. While the valuations were being conducted, she noticed another person living in one of the rooms in the house at the back of the disputed property, whom she now know is Mr. Moore. She met Mr. Moore after and she had a conversation with him concerning his status on the disputed property but Mr. Moore was hostile

towards her and he told her he was not taking any instructions from her because she was not his landlord.

85. The Defendant testified that she subsequently served notice to all persons in occupation of the disputed property to leave through her attorneys but received no response. In 2013, the elderly woman vacated the disputed property with her son but Mr. Moore refused to vacate. The Defendant said that she was served a letter from attorneys of the Claimant that she was disturbing his tenants and to desist from doing so since the house belonged to his uncle, "Mr. Snaggs".
86. According to the Defendant, sometime after 2013, the Claimant delivered a letter requesting a meeting to discuss him paying off for the house. Her father refused to entertain any discussions with the Claimant since he was not familiar with the Claimant and he did not know what rights the Claimant had to the house. She stated that in the said letter the Claimant did not have any interest in ownership of the disputed property but to the house which was occupied by the deceased "Mr. Snaggs".
87. The Defendant also stated that she continued to engage Mr. Moore to have the disputed property. In 2015, with the assistance of her brother in law Marlon Daire and her uncle Charles Hinds, she hired a truck and attempted to level a drop/gap in front of the disputed property to allow vehicular access. However midway during the work, Mr. Moore came out of the house and verbally abused her. In order to prevent an altercation they left but upon returning at a later date she saw that the works carried out were dug up. Again Mr. Moore was asked to vacate the disputed property.
88. Upon receiving title documents in 2017, the Defendant stated that again she issued a notice to Mr. Moore to vacate the disputed property within a stipulated time frame but Mr. Moore refused to leave. She then engaged the services of a Bailiff Brian Smith to attend the matter. However, upon visiting the disputed property with a police officer, they decided against the removal since Mr. Moore was very hostile. The officers left without removing Mr. Moore and his family.

89. The Defendant stated that subsequent to the death of “Mr. Snaggs” the house was already in a dilapidated condition and continued to deteriorate without any upgrade or maintenance from anyone over the years. She was firm in her view that to her knowledge, her father owned the land and that he paid land and building taxes on the land since 1967 up to 2009.
90. In my opinion, even if the Claimant’s uncle Mr. Edwards was in exclusive and continuous possession of the disputed property from the 1960s until he died in 2000, the chain of continuity was broken after Mr. Edwards died in 2000. The Claimant annexed an undated letter which was from his then attorney at law to the Defendant’s then representative one Ms. Chasseau. The letter was annexed as “H.G. 13”. Although undated it appeared to be written after December 2012 since it stated that it was responding to allegations made in a letter to the Claimant dated 14th December 2012. In “H. G 13” the Claimant alleged that he was in joint possession of the disputed property with his uncle in the 1980s but in cross-examination he admitted that this was not true.
91. Based on the Claimant’s own evidence he has not lived on the disputed property so his physical occupation is linked to the acts of control he exercised over it. The acts of control which the Claimant relied on was the alleged tenancy arrangement he had with Mr. Moore and certain works and maintenance he did on the disputed property. There was no evidence that any alleged tenancy which Mr. Edwards had with tenants on the disputed property were continued or renewed by him subsequent to the death of his uncle, Mr. Edwards.
92. Mr. Moore evidence in cross-examination was that he moved into the disputed property in or about the 2005. Therefore if this was one of the acts of exclusive possession which the Claimant was relying on it failed since this was well short of the statutory limit. Further, Mr. Moore stated that since moving into the disputed property he saw the Claimant conduct repairs to the roof and other areas and rewired the house. Mr. Moore’s common law wife who moved into the disputed property around 2009 said that the said repairs were done by the Claimant after she moved into the disputed property. The evidence of Mr. Moore and Ms. Superville contradicted the Claimant’s evidence in chief that he conducted repairs right after the death of Mr. Edwards and it was consistent with the documentary evidence of the Defendant in the form of Valuation Reports dated April 2000 and 2007 which was annexed to the Defence as

“A.M.H.3” and “A.M.H.4” respectively which showed that the disputed property was in a state of disrepair up to from 2000 to 2007. In my opinion, any work done to the house on the disputed property was done after 2007 and most probably after 2009 which again does not assist the Claimant in meeting the statutory time limit to succeed with his claim.

93. In any event, Mr. Moore’s consistent evidence was that he maintained the disputed property which was in stark contrast to the Claimant’s evidence who said that he was solely responsible for the upkeep and maintenance of the disputed property. In my opinion it is more plausible that since Mr. Moore was living on the disputed property he maintained it rather than the Claimant.
94. Further, Mr. Moore alleged that he paid rent of \$250.00 per month for a room, whilst the Claimant said he rented the room to the tenant for \$200.00 per month. However, the Claimant’s annexures of receipts for the year 2012 in “H.G.14” showed payments of \$300.00. Ms. Superville, Mr. Moore’s common-law wife further contradicted these claims as she said she paid \$350.00. Again these inconsistencies raised doubt on the veracity of the Claimant’s evidence as being in control of the disputed property.
95. Based on the inconsistencies and contradictions in the evidence between the Claimant and his witnesses at best the Claimant rented a room of the house on the disputed property to Mr. Moore sometime from 2005. The repairs and works to the house was done after sometime after 2009 when Ms. Superville lived on the disputed property with Mr. Moore as his common law wife. The maintenance of the disputed property was done primarily by Mr. Moore after he moved into the disputed property.
96. Therefore from the evidence on behalf of the Claimant at best he exercised some degree of control over the disputed property from 2005 when Mr. Moore moved into to disputed property and started to pay him rent. However, the degree of control was limited to collecting rent and conducting some repairs to the house sometime after 2009. As such he was not in continuous physical control of the disputed property for 16 years prior to the institution of the instant action. Further, he cannot rely on the alleged acts of possession by his uncle Mr. Edwards since that ended in 2000 and his acts only started in 2005.

97. Did the Claimant demonstrate that he had the intention to possess the disputed property to the exclusion of others? The Claimant admitted in cross-examination that his letter of 2013 to the Defendant annexed to the Claim and Defence as “H.G.15” and “A.M.H.1” respectively was to acquire what he claimed was a right his uncle had in the disputed property specifically as it related to the house. He emphatically stated that he had no interest and/or desire in ownership but to be paid some money for what he thinks is the value of the said house. In my opinion, the Claimant’s admission in cross-examination that his letter annexed as “H. G. 15” negated any intention on his part to possess the disputed property since in 2013 her was seeking compensation for the house and nothing more such as ownership of the disputed property.

Conclusion

98. The Claimant has failed to discharge the burden that he has been in continuous undisturbed possession of the disputed property for the prescribed period under Section 3 of the Real Property of Limitation Act²². It was untrue that the Claimant had been in joint possession of the disputed property with Mr. Edwards since the 1980s. Although the Claimant exercised some degree of control, this was limited to the conduct of some repairs after Mr. Moore and Ms. Superville moved in which was in 2005 and 2009 respectively and the collection of rent from Mr. Moore. Thus, the Claimant is not entitled to possession of the undisputed land and his action is hereby dismissed.

99. The Defendant is vested with the legal title in the disputed property and is entitled to possession. The subsequent Deeds which were generated following the grant in the estate of Alexander Layne constituted sufficient evidence to prove that the Defendant had acquired legal title of the disputed property.

²² Chapter 56:03

Order

100. Claimant's action is dismissed.

101. The Claimant to pay the Defendant's costs assessed in the sum of \$14,000.00 pursuant to Rule 67.5 Civil Proceedings Rules 1998 as amended.

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Margaret Y Mohammed
Judge