

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2013-02980

BETWEEN

MAURICE GONSALVES

Claimant

AND

ALBERT CHARLES (Deceased)

Substituted by

**GARVIN CHIMMING
(Pursuant to the Order of Seepersad J, date October 13, 2014)**

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Appearances:

1. Mr. J. Toney and Mr. H. Toney for the Claimant
2. Mr. C. Blaize and Mrs. M. Blaize for the Defendant

Date of Delivery: July 25, 2017

DECISION

1. Before the Court for its determination is the Claimant's claim by virtue of which the following relief is sought:
2. The Claimant seeks a declaration from the Court that by virtue of Deed No. 23189 of 1980 he is the owner in fee simple of that parcel of land (hereinafter called the disputed parcel of land) more particularly described in the First Schedule of the said Deed No. 23189 of 1980 as –

“ALL SINGULAR that parcel of land situated at Matura formerly in the Ward of Turure but now in the ward of Matura in the island of Trinidad comprising FOUR ACRES more or less originally forming part of the ‘Alta Gracia’ Estate and lately forming part of “La Juanita” Estate abutting on the North and West by lands at one time of Vincent Scipion at a later date of Pedro Scipion but now of Thomas Vivien Guy on the South upon the Toco Main Road on the East upon the Matura River which parcel of land is formerly described in the Schedule to Deed registered as No. 11312 of 1977”.

 - a) An order restraining/prohibiting the Defendant and his/agents from entering upon and/or cultivating and/or occupying and/or trespassing on the disputed parcel of land.
 - b) Such further and/or relief as the Court deem just,
 - c) Costs.
3. The action was initially instituted as against Mr. Albert Charles who died after the matter was listed before the Court and references in this judgment to the Defendant relate to Mr. Albert Charles.

The Claimant's Plead Case

4. The material particulars of the Claimant's case are as follows:
 - i. By virtue of deed of conveyance dated 4th day of December, 1980 and registered in the protocol of deeds for the year 1980 as No. 23189 of 1980, the Claimant became the owner in fee simple of ALL AND SINGULAR that parcel of land situate at Matura formerly in the Ward of Turure but now in the Ward of Matura in the island of Trinidad comprising FOUR ACRES more or less originally forming

part of the “Atla Gracia” Estate and lately forming part of “la Juanita” Estate abutting on the North and West upon lands at one time of Vincente Scipion at a later date of Pedro Scipion but now of Thomas Vivien Grey on the South upon the Toco Main Road on the East upon the Matura River which parcel of land is formerly described in the Schedule to Deed registered as No. 11312 of 1977 (the said land).

- ii. In or about 1980 Mr. Irvin Augustine, the then overseer of the lands, showed the claimant all the boundaries of the said land. These boundaries were identified by a wire fence extending towards an adjacent river, plants and a small drain going down towards the said river and separating the lands then occupied by the deceased Mr. Charles.
5. In or about 1988 the Claimant instructed his then attorney-at-law Mr Douglas Mendes to prepare a report on the title for the said land. The Claimant pleaded that the Defendant thereafter objected to the boundaries of the said land as were identified. In support of his objection the Defendant enclosed a copy of Ward Sheet C 18 of 1986 and a copy of a registered Deed NO. 19348 of 1976 by which he sought to establish ownership of the said land.
6. In November 1988, the Claimant commissioned a survey of the said land by Ali Deonanan and Associates to establish the boundaries of the said land. The boundary to the west was identified by the wire fence which was previously identified by Mr Augustine and shown to the Claimant.
7. The Claimant migrated to Canada late 1988 and thereafter he visited the said land at least once per year from 1989-2011. He arranged for land taxes to be paid and for the said land to be cutlashed from time to time by one Gilbert Clark. Arrangements were also made to have his brother in law visit the said land three to four times per year.
8. In or about 2009 the Claimant instructed his surveyor Ali Deonanan and Associates to undertake another survey the said land but they were unable to conduct this survey as they were accosted by Mr. Charles.

9. The Claimant further pleaded that in or about July 2011 he received information that sometime between July 1st and July 25th 2011, Mr. Charles and /or his agents trespassed on the said land. As a result on or about July 27th, Mr Augustine, the Claimant's agent visited the lands and reported to the Claimant inter alia, that he had observed a tractor on the said land.
10. On or about July 27, 2011 the Claimant instructed his attorney-at-law to write to Mr. Charles to the effect that it was reported that he had trespassed onto the said land by placing a tractor on same and that he should desist from such or any further trespass.
11. On August 2, 2011 Mr. Charles responded stating that the said tractor was on his property and that he had occupied same for 36 years.

The Defendant's Pleaded Case

12. The material particulars of the Defendant's case are as follows:
 - i. The Defendant stated that he was the owner and person in possession of all and singular the parcel of land comprising 7.902 hectares and bounded on the East by Mathura River, on the West by lands of De Frietas David Baldwin Limited, on the South by the Toco Main and on the North by the Mathura River. The Defendant acquired title to his lands by virtue of Deed dated the 21st of April 1976 and registered as NO. 19348 of 1976 and that he has been in occupation and possession of the said lands since 1971.
 - ii. The said land formed part of a cocoa estate purchased by the Defendant and at all material times the Defendant occupied and used the coca house on the western part of the land to process cocoa picked from trees planted on the remaining portion of the lands, which extended from the cocoa house on the west to the Matura River on the east. On certain parts of the lands along the Toco Main road, the Defendant said he planted short term crops.

- iii. The Defendant denied the Claimant's paper title to the said land and further denied that the Claimant's land is located as referred to by him at paragraph 2 of his Statement of Case and shown on a copy of a Survey Plan attached which was exhibited as "H" to the Statement of Case.
13. The Defendant further denied that there was any wire fence or "Rio" plants or any small drain on the said land so as to delineate the existence of any boundary.
14. The Defendant pleaded that he never allowed the Claimant or anyone else onto the property to occupy the said land or any part thereof and categorically denied that any one acting on behalf of the Claimant over cutlashed or cleaned same.
15. The Defendant acknowledged receiving the letter from Mr. Douglas Mendez in 1988 and indicated that he was fully aware where the boundaries were and objected to the 1988 survey plans provided by the then Attorney at Law for the Claimant and he asserted that at no point in time prior to the carrying out of the survey was he given notice that a survey was going to be conducted on his property.
16. The Defendant said he was a stranger as to whether the Claimant visited the said land but categorically denied that there was any attempt to occupy the said land which was inconsistent with his use and occupation of same.
17. The Defendant further denied that any person by the name of Gilbert Park or any person at all ever came on to any part of the said land and cutlashed or cleaned any part thereof.
18. He also denied that Richard Hubbard or anyone acting on behalf of the Claimant came onto any portion of the said land to carry out any act of possession on same.
19. The Defendant stated that, as far as he was aware, no one from Deonanan and Associates ever visited the land nor did he have any conversation with any employee of the said firm with

respect to any survey of the said land. The Defendant affirmed that he had always been in occupation and control of the entire area of land claimed by the Claimant.

Alternatively, the Defendant pleaded that even if the Claimant did have title to the said land any such title would have been extinguished by virtue of his adverse possession of same for a period in excess of 16 years.

Issues

The issues to be determined are as follows:

- i. Whether the Claimant has established that he has legal title to the said land or whether the said land forms part of the Defendant's land.
- ii. Whether the Claimant's right to bring an action against the Defendant for trespass is extinguished by virtue of the Defendant's adverse occupation of the said land for a period in excess of 16 years pursuant to the provisions of Sections 3 and 22 of the Real Property Limitation Act Chp. 56:03.

The Evidence

20. The gist of the Claimant's evidence was as follows:

- a. He purchased the land in 1980. At that time on the western of the land he saw a house, he never inspected the house or made any queries about it and there was cocoa planted adjacent to this house.
- b. The land that was cultivated with the cocoa was adjacent to him.
- c. Another boundary of his land was the river.
- d. In 1980 there was a wire fence on the land; however it did not cover the entire boundary line.
- e. In or around 1988 he did a survey of the land to establish the boundaries.
- f. He sent a letter to Mr. Charles informing him of these boundaries, to which Mr. Charles objected.

- g. The plan dated 1988 stated there is a wire fence extending along one entire side of the land.
- h. Between 1980 and 1988 he visited the land once or twice a year
- i. He migrated to Canada late 1988.
- j. He thereafter made arrangements with Mr. Gilbert Clark of Matura to have his land cleaned by cutlassing it from time to time.
- k. He first learnt that the Defendant was claiming ownership of the said land, when Richard Hubbard had a conversation with the Defendant in 2009 and reported back to him.
- l. In 2009 he instructed Deonanan and Associates to undertake a survey of the land but they were unable to complete the survey because they were accosted by the Defendant.
- m. In July 2011 he reviewed information that the Defendant trespassed onto the said land on 27th July, 2011 and a tractor was placed upon same. In 2013 he observed a portion of the land was planted with short crops.

Cross Examination

- 21. Under cross – examination the Claimant stated that in 1980 at the time of the purchase the wire fence was not along the entire boundary on the western side of the land and that the cocoa trees were not on the said land and he further said that the river was the eastern boundary of the said land.
- 22. Mr. Gonsalves did not accept that the entire property was cultivated in cocoa and he challenged the Defendant’s assertion of possession and control of the said land and he disagreed with the suggestion that the Defendant was in continuous control and possession of the said land from 1980.

Assessment of the Claimant's evidence

23. The Court was impressed with this witness and found that his responses were direct and that his evidence in cross examination was generally consistent with the information contained in his witness statement. The Court, having seen and heard the witness on a balance of probabilities formed the unshakable view that he was a forthright witness of candour. His testimony was unshaken and there was no credible basis upon which the Court could disregard same. The Court also found that his evidence as to boundaries of the land was compelling. The witness said that the wire fence which he saw in 1980 partially ran long a boundary to the said land. The Court noted that this aspect of his evidence was not consistent with the Survey Plan in so far as the plan indicated that the wire fence ran along the entire western boundary. The Court did not have the benefit of the surveyor's evidence and preferred the Claimant's evidence that it only ran along part of the boundary and felt that it was more probable to conclude that the surveyor made an error or incorporated the 'Rio' that also ran along the said boundary as being a fence.
24. The Court also found the Defendant's objection to the boundaries was not a circumstance that established that he was in possession of same and the Court accepted the Claimant's evidence that he was told by Richard Hubbard in 2009 that Mr. Charles was claiming the said land.

Richard Hubbard

25. This witness stated interalia that:
- i. He visited the said land twice to three times a year.
 - ii. On these visits he would usually just drive by.
 - iii. Every time he visited the bush was more or less at same level.
 - iv. From his visits he gave evidence that the lands were unoccupied
 - v. In or around 2009, he saw a wood mill being operated on Mr. Charles's portion of land which is adjacent to the said land and due to his interest in wood work, he stopped and spoke to Mr. Charles.

- vi. From this conversation with Mr. Charles he learnt that there was a property dispute as Mr. Charles laid claim to the said land.
26. Under cross examination the witness said that his assessment of the land as to whether it was occupied was made from the road and he accepted that he did not traverse upon the land after he had walked through the property with the Claimant in 1989. His evidence was that the land was visible from the Toco Main Road and he said that he met Mr. Charles in 2012. This latter statement contradicted his evidence in chief where he said that he had met Mr. Charles in 2009. The witness categorically denied that the Defendant prevented him from entering the lands in 1992 and he said there were T&TEC lines on the land and he assumed that T&TEC maintained the bush in the vicinity of the lines.
 27. The Court noted that although people may make genuine errors in relation to dates they could generally recall events and felt that this witness evidence in relation to events was not contradicted. Having seen the witness, the Court in its view that he was a witness of truth and he instilled in the Court a feeling that he was a frank and forthright witness.

The Defendant's evidence

28. Mr. Garvin Chimming testified and indicated interalia that:
 - i. The deceased bought and took possession of the entire estate (approximately 103 acres) in the early 1970's.
 - ii. The deceased obtained a deed for the land.
 - iii. As far as he knew the said land belonged to his father.
 - iv. The said land was never loaned, leased or sold.
29. During cross- examination the witness testified that his deceased father Mr. Charles paid for the property which he bought from one Sheila Lucein and that the lands are described in Deed No. 19348 of 1976. He said he understood that the lands comprised 97-103 acres and he also stated that he had seen Deed No. 19348 of 1976 before and that the total amount of lands in the Schedule to that Deed amounted to 83 acres. He further said that the said land was

approximately 8 acres and he was unable to give cogent evidence as to the boundaries of same.

30. The Court noted that this witness provided very formal evidence and although his evidence in cross examination was generally consistent with his evidence in chief, it was evident to the Court that he had no direct knowledge as to the extent and nature of his father's alleged occupation of the said land.

Archibald Rocke

31. This witness testified and said interalia that:
- i. He was aware that that the defendant purchased property which includes the said land around 1971.
 - ii. He assisted the Defendant in farming the land for 12 years and was unaware as to the exact boundaries of the land but described that they cultivated from the river, straight up to the back of the house.
 - iii. He stated that he was aware that after the Defendant purchased the land he cultivated same with different crops and always maintained the said land.
32. While this witness appeared to be credible it was evident that he did not know the exact boundaries of the said land and the Court paid little regard to this witness' testimony.

Court Ordered Report

33. At the end of the evidence, the Court elected to appoint an expert pursuant to Part 33 of the CPR so as to provide an opinion as to whether the said land was part of the lands described in the schedule to the Claimant's Deed of Conveyance 23189 of 1980 or whether same fell within the lands described in the schedule of the Defendant's Deed. The Court felt that this evidence could assist in the resolution of the issues before it having regard to the Defendant's assertion that that said land fell within the boundaries of the lands that he had purchased. As a consequence of the Court's order Mr. Burton Williams was appointed as a Surveyor and he generated a report. At paragraph 13 of his report he opined as follows:

“13. After a thorough examination of the earlier stated documents (earlier in his report he mentioned the documents he looked at in his exercise) I have concluded that the disputed parcel of land does fall within the parcel of land described in the Schedule of the Claimant’s Deed (No. 23189 of 1980)”.

34. Neither party elected to cross examine Mr. Burton and his report was tendered before the Court.

The Law

35. In the case of **Ocean Estatic Ltd. V Norman Pinder (1969) 2 A.C. 19**, The Board of the Privy Council stated at pages 24 and 25:

“...Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A 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 a 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 was made as a trespasser a plaintiff who can prove any documentary title to 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.”

36. In **Civil Appeal No. 84A of 1985 Allan Brammer vs Herbert Volney** the Appeal court was called upon to make a determination as to the actual location of the land referred to in the Respondent’s Deed. The court made the following observation.

“What would be the position if the clear terms of a deed, describing the boundaries of land conveyed with the specific number of superficial feet stated therein, could be displaced by the oral testimony of persons wholly unqualified to determine boundaries and who as in this case, have deliberately refrained from having the boundaries

determined by a person professionally qualified so to act. The proposition only has to be stated for its manifest unwholesomeness to become patent.”

37. The Court went on to state as follows:

“When a Court is asked to determine ownership of land as in this case (the disputed area of 312 sq. ft.) the process used by the court has three stages:

- 1. The identification of the title i.e., valid documents which evidence the ownership of the land if such exist,*
- 2. the construction of these title documents in order to ascertain the value thereof and*
- 3. the application of the determination to the physical property on the ground.”*

38. **Halsbury’s Laws of England Vol.3 3rd Edition** at paragraph 674 states that:

“ It is always a question of fact whether a parcel of land is contained in the description of the land conveyed by deed or not....”

Law as it relates to Adverse Possession

39. The well-known authority of **JA Pye (Oxford) Ltd v Graham (2002) 3 All ER 865** sets out the applicable criteria for adverse possession. According to **JA Pye**, a claim to title by adverse possession is comprised of two crucial elements: factual possession and intention to possess (animus possidendi). Factual possession signifies a degree of exclusive physical custody and control and the question of whether the acts of the squatter are sufficient to meet this must depend on the circumstances of the case. The intention to possess means *“an intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with paper titleso far as is reasonably practicable and so far as the processes of the law will allow.”*: JA Pye supra, Lord Browne- Wilkinson, paragraph 43.

40. In **Asher v Whitlock**, Cockburn C.J. said: “*But I take it as clearly established, that possession is good against all the world except the person who can show a good title*”
41. In **Powell v McFarlane [1977] 38 P & CR 452**, the basic principles relating to the concept of possession under English law as summarized by Slade J at pages 471-472 is as follows:

“(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”).

*(3) Factual possession signifies an appropriate degree of physical control. It must be single and conclusive 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, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. “What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants”: *West Bank Estates Ltd. v. Arthur [1967] AC 665, 678, 679; [1966] 3 WLR 750, PC, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession**

of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession....

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.

(4) The animus possidendi, which is also necessary to constitute possession, was defined by Lindley MR, in Littledale v. Liverpool College [1900] 1 Ch 19, as “the intention of excluding the owner as well as other people.” This concept is to some extent an artificial one because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that the animus possidendi involves the 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.

The question of animus possidendi is, in my judgment, one of crucial importance in the present case. An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. This, in my judgment, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. The position, however, is quite different from a case where the question is whether a trespasser has acquired possession. In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If

his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the owner requisite animus possidendi and consequently as not having dispossessed the owner.”

42. Under the provisions of **The Real Property Limitation Act Chapter 56:03**;

Section 3 provides that

“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 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.”

Section 22 provides that

“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.”

43. In **CV 2007-3190 Samaroo v. Ramsaroop** the Court opined that it does not have to be satisfied that as against the world, the Claimant has a good title but the Court only has to be satisfied that as between the parties to the Claimant’s entitlement to possession is better than those competing for it.

44. In Goodridge **v Nagassar Civil Appeal No. 243 of 2011** at page 11 para. 26 Mendonca JA, in concluding that the decision of the Privy Council in **Ocean Estates Case** is binding on the

Court of Appeal of Trinidad and Tobago and applying the reasons of Lord Diplock of the said *Ocean Estates Case* (supra) stated as follows:-

“..... A Claimant who relies on his documentary title to obtain possession of land against a trespasser who does not seek to prove any documentary title in himself, although he has to adduce some evidence or 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 of sale for lands under Sec. 5 of the CALPA As the Claimant may succeed even though he may not strictly prove his title for the same period as demanded by a purchaser of lands, it follows that he may not set out such a title in his pleadings.....”

45. The relevant law on the requirements for adverse possession was summarised by Aboud J in **Thompson & Jahi v The Incorporated trustees of the Ethiopian Church of Trinidad and Tobago & Ors CV 2007-02417 (Trinidad and Tobago High Court)** at paras 67-73 as follows:

“67. To establish a claim of adverse possession it is essential to prove that the possession was open (nec clam), peaceful (nec vi) and adverse (nec precario). Additionally, it is a requirement that it is accompanied by an animus possidendi, that is, an intention to enjoy possession to the exclusion of the paper owner or the world. A combination of these requirements would constitute uninterrupted and undisturbed possession of the land, thereby rendering a possessory title to the occupier and extinguishing the paper title of the legal owner.

68. In the well-known case of **Powell v Mc Farlane** Slade J outlined the basic conceptual principles of possession:

(i) In the absence of evidence to the contrary, the owner of land with 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.

(ii) 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”);

(iii) Factual possession signifies an appropriate degree of physical control.

(iv) The animus possidendi, which is also necessary to constitute possession, was defined by Lindley M R in **Littledale v Liverpool College (1900) 1 Ch. 19** at p 23 as “the intention of excluding the owner as well as other people.”

69. As to what constitutes factual possession, Mr Justice Mendonca in **Latmore Smith v Benjamin CA Civ App 67/2007** said this: “...for there to be possession under the Limitation Act there must be the absence of consent of the paper title owner, or, where relevant, his predecessor in title, factual possession, and an intention to possess”. These elements are not disjunctive, but must all be proven to the required standard.

70. In relation to the question of what acts of the possessor amount to exclusive physical control, Lord Walker, sitting recently in the Privy Council in **Anthony**

Armbrister and Anor v Marion E Lightbourne and Anor [2012] UKPC 40,
said this at p 31 of the judgment:

*“The clearest statement of the law is in the speech of Lord Browne-Wilkinson in **J APye (Oxford) Ltd v Graham [2002] UK HL 30, [2003] 1 AC 419,** with which the rest of the House agreed. Lord Browne-Wilkinson (at para 41) approved the principles stated by Slade J in **Powell v McFarlane (1977) 38 P & CR 452, 470-471:***

‘The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, 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 had been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else had done so.’

71. In **Pye** Lord Brown Wilkinson also said this at paragraph 43:

"The requirement is of an 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".

72. In **Jnm Pty Ltd v Adelaide Banner Pty Ltd [2009] VSC 327** Mr. Justice Byrne sitting in the Supreme Court of Victoria said this at page 5:

*“27. As Gillard J observed in **Riley v Penttila [1974] VR 547** at 561, the acts of the claimants implying dispossession necessary to establish a possessory title must be considered with reference to the peculiar*

circumstances of the case. These will include “the character and value of the property, the suitable and natural mode of using it, having regard to all the circumstances, and the course of conduct which the proprietor might be reasonably expected to follow with due regard to his own interests...”.

28. *A very relevant indication of adverse possession is enclosure...*

29. *Adverse possessors must show possessory acts; to adopt the expression of Slade J, they must show that they have used the disputed strip as “an occupying owner might have been expected to deal with it and that no one else has done so”. They must exercise this dominion over the whole of the land unless they can rely upon the doctrine of constructive possession, namely, that the circumstances are such that possession of part indicates possession of the whole.”*

73. *Later on in his judgment Byrne J discussed the concept of constructive possession. He said this:*

“37. The **Lord Advocate v Lord Blantyre (1879 4 AC 770)** concerned a claim for adverse possession of foreshore land fronting a navigable tidal river. The point was raised as to the fact that the claimant’s act of ownership did not extend to the whole of the 700 acres in dispute. Lord Blackburn disposed of this contention by observing that acts of the claimant tending to prove possession as owners of part may tend to prove ownership of the whole “provided that there is such a common character of locality as would raise the reasonable inference that if the Barons possessed one part as owners they

possessed the whole, the weight depending on the nature of the tract, what kind of possession could be had of it and what the kind of possession proved was”.

46. The case of **Higgs v Nassauvian Ltd [1975] AC 464** concerned a claim for adverse possession of about 105 acres on the Island of New Providence in the Bahamas. The advice of the Privy Councillors was given by Sir Harry Gibbs. The point at issue was whether farming of parts of the land in rotation over many years established adverse possession of the whole. After quoting the passage from the speech of Lord Blackburn in Lord Blantyre’s case, Sir Harry observed that the principle is not applicable to a question of undefined and disputed boundaries. The rule will apply only where the whole of the land, of which the acts of dominion of the adverse possessor relate to part only, is sufficiently defined by fence or physical barrier or otherwise.
47. In **West Bank Estate Ltd v Arthur [1967] AC 665** the disputed land was a mile long strip whose width varied from 100 yards to 30 yards. The respondent claimed adverse possession of this strip, asserting that it had used part of it for cultivation purposes. The Privy Council rejected this contention but went on to consider a further argument offered by the appellant. This was directed to the adverse possessor’s contention that a dam to the north of the disputed land constituted the boundary of this land. The Privy Council accepted the finding that this was not an agreed boundary. The lack of a defined boundary meant that the claimant had to establish actual possession of the whole of the disputed land and the principle of constructive possession had therefore no role to play.
48. Similar principles were outlined by Justice Smith (as he then was) in the case of **Poyer v De Freitas Claim No. CV 2005 – 00632 at pages 17-19.**

Resolution of the Issues

49. The Court found as a fact that the Claimant acquired title to the lands described in the schedule to Deed No. 23189 of 1980 and that the boundaries of the piece of land he acquired as was shown to him and that the piece of land pointed out to him was shallow and in ‘lastro’ and clearly visible from the Toco Main Road. Towards the western end of the piece of land there stood a dwelling house and towards the eastern end close by was the Matura River and there was an electricity power line metal tower on the piece of land. Adjacent to the land there was what appeared to be a cocoa plants and a long line of tall green shrubs called ‘Rio’ or “boundary bush”. A wire fence and ‘Rio’ clearly separated the uncultivated land that was overgrown with bush from the neighbouring piece which was a well maintained cocoa estate.
50. The Court on a balance of probabilities found that the Claimant was able to properly demarcate the piece of land that he purchased and given that his title to same was not in dispute, he is entitled to recover possession from anyone not having a claim characterised by a better title, right or interest. The Court on the evidence found that the Claimant exercised dominion and control over the land he acquired and he visited same and made arrangements for the said land to be monitored after he migrated.
51. The Defendant asserted that he was in actual possession of the said land without the permission and/or consent of the Claimant for a period in excess of 16 years and so the Claimant’s right, title and/or interest in same has been extinguished pursuant to the provisions of the Real Property Limitations Act. Ch. 56:03.
52. He who asserts must prove and so the onus was on the Defendant to establish on a balance of probabilities that he was been in continuous possession of the said land for the requisite period. To so do the Defendant had to establish (a) factual possession of the land for a period of 16 years before the institution the instant action and (b) the animus possidendi, and the evidence had to convince the court on a balance of probabilities that his control of the land was characterised by an intent to exclude all other persons including the owner with the paper title.

53. On the evidence adduced, the Court is not satisfied that the Defendant demonstrated that he had the required degree of possession, control or occupation of the disputed land nor was it established that Mr. Charles cultivated the said land.
54. Mr. Charles' son was unable to identify the boundaries of exact parcel of the land that he contends his father occupied and he adduced no cogent or clear evidence as to the extent and nature of the deceased's occupation. The Defendant's evidence failed to establish the requisite degree of factual possession and it was not established that continuous dominion was exercised over the said land so as to exclude the Claimant. The Court accepted Mr. Hubbard's evidence and found as a fact from 1998-2009 there was no evidence to suggest that the said land, which was clearly visible from the main road, was under cultivation or in Mr. Charles's possession.
55. The evidence as to cultivation was vague and given that the boundaries of the said land were not clearly demarcated by either a fence, physical barrier or otherwise, the contention of farming parts of the land (which the Court rejected), could not, even if that assertion was accepted, establish an entitlement to the said land.
56. The Defendant also pleaded that the said land was bought in 1971, this assertion was not consistent with the evidence before the Court and conflicted with Mr. Williams' opinion that the said land is the land described in the Claimant's Deed. The Court therefore found as a fact that the said land forms part of the Claimant's land as described in the schedule to Deed No. 23189 of 1980. Further the assertion by the Defendant as to ownership contradicted the position in relation to adverse possession. In any event the Court found as a fact that the Defendant was not in continuous possession of the said land for the required period of 16 years prior to the commencement of the instant action.
57. Accordingly, the Court is of the view and hereby orders that the Claimant is entitled to vacant possession of "**ALL AND SINGULAR** that parcel of land situate at Matura formerly in the Ward of Turure but now in the ward of Matura in the island of Trinidad comprising **FOUR ACRES** more or less originally forming part of the 'Alta Gracia' Estate and lately forming part of 'La Juanita' Estate abutting on the North and West by lands at one time of Vincente

Scipion at a later date of Pedro Scipion but now of Thomas Vivien Guy on the South upon the Toco Main Road on the East upon the Matura River which parcel of land is formerly described in the Schedule to Deed registered as No. 11312 of 1977”.

58. The Heirs and/or his servants and/or agents of Mr. Albert Charles are hereby restrained from entering upon and/or cultivating and/or occupying the said land.
59. The parties shall be heard on the issue of costs.

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FRANK SEEPERSAD
JUDGE