THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2018-00588

BETWEEN

MOONILAL SEEPERSAD

FIRST CLAIMANT

JAIKISHAN MOONILAL

SECOND CLAIMANT

AND

BOB SOOGRIM

FIRST DEFENDANT

CHANARDAYE SOOGRIM

SECOND DEFENDANT

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Mr. Rennie K. Gosine instructed by Ms. Katrina Choon for the Claimant

Mr. Zeik Ashraph instructed by Mr. Ravi Diptee for the Defendant

Date: 4th October, 2019

JUDGMENT

Preliminary

1.This case involves a claim that the two parties were in occupation of the same parcel of land at the same time. Resolution of the dispute involves the court making findings of fact relating to possession of the land in dispute; both versions cannot be true and there is no middle ground. The court has to come down on one end of the spectrum.

2.The main issue for the court's determination is whether the claimants have been in physical possession of the lands that are in dispute.

Evidence

Claimants' case

3.The first claimant is the father of the second claimant. The first claimant has been residing in Canada since 1994. It is alleged that the claimants and their predecessors in title have been in continuous possession of All and Singular that parcel of land situate in the Ward of Siparia in the Island of Trinidad comprising approximately 38,068 square feet and bounded on the North by lands occupied by Liloutie Samaroo, Shirley Samaroo and Harold Samaroo on the South by lands belonging to the Defendant on the East by lands occupied by Umrao and Donald Soonilalsingh and on the West by access road (herein after referred to as "the said lands").

4.In or about 1960, the first claimant's father "purchased" the said lands on good will from Moorali. The first claimant's father cultivated the lands from 1960 with a variety of short crops. In 1964, the first claimant's father signed a document giving the first claimant two parcels of land. One of the two parcels belonged to "Usine Ste. Madeline" which parcel, the claimants allege is the said lands, the subject of this dispute.

5.The first claimant cultivated the said lands continuously over the years that followed. The second claimant was born in 1970. From the time he first knew himself, his father was cultivating the said lands. As he grew older the second claimant became more and more involved in the cultivation of the said lands. He would cutlass, reap crops and tie out the animals on the said lands.

6.In 1996 the first claimant migrated to Canada.

7.The second claimant continued to work the land as before. In 2007 the second claimant became employed on a full time basis at the Penal/Debe Regional Corporation. Thereafter, he worked the land less and often times he did so after work.

8.In 2007, a road was constructed that now marks the southern boundary of the said lands.

9.In 2011 the claimants allege that the defendants entered the said lands and cut down jamoon, pomerack and guava trees. The defendants were summoned to the Magistrate's Court but that matter was dismissed on a judicial point. In 2012, the second claimant was on the said lands reaping peas when the first defendant and his father entered onto the lands and chased the second claimant away.

10.In 2018, the first defendant again entered the said lands and began doing works therein.

Defendants' case

11.The defendants contend that their father and his predecessors in title have been in continuous possession of a parcel of land that includes the said lands since 1944. The defendants say that their grandfather was a tenant of the then owners of the said lands, St. Madeline Sugar Company Limited (England) (a

division of Caroni Limited). Following their grandfather's death in 1955, the defendant's father took over the lands and planted sugarcane thereon. In 1966, Caroni Limited informed the defendants' father that the land was sold to Sieunath Maharaj. The defendants' father then became a tenant of the said Sieunath Maharaj. By Deed registered in 2001, Sieunath Maharaj transferred a parcel that included the said lands to the first defendant and his father.

12. By Deed registered in 2012, the second defendant became part owner of the said parcel of land that included the said lands.

13. The defendants defend this claim by asserting that neither the claimants nor their predecessors in title were in possession of the said lands.

The Law

14. In a case of adverse possession, to cause the time to run and continue running, the Claimants must prove that they were in possession for a continuous period of sixteen (16) years in accordance with Section 3 of Real Property Limitation Act Chapter 56:03:

> "3. 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."

15. Lord Brown-Wilkinson explained at paragraph 40 in the case of *J.A. Pye (Oxford) Ltd. & Anor. V Graham & Anor.* [2002] 3 WLR 221 that to be in possession the squatter must demonstrate not only factual possession through physical control and custody, but also the intention to possess the land:

> "… there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control ("factual possession"); (2) an

intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess"). What is crucial is to understand that, without the requisite intention, in law there can be no possession.

Remarks made by Clarke LJ in Lambeth London Borough Council v Blackburn (2001) 82 P & CR 494, 499 ("It is not perhaps immediately obvious why the authorities have required a trespasser to establish an intention to possess as well as actual possession in order to prove the relevant adverse possession") provided the starting point for a submission by Mr Lewison for the Grahams that there was no need, in order to show possession in law, to show separately an intention to possess. I do not think that Clarke LJ was under any misapprehension. But in any event there has always, both in Roman law and in common law, been a requirement to show an intention to possess in addition to objective acts of physical possession. Such intention may be, and frequently is, deduced from the physical acts themselves. But there is no doubt in my judgment that there are two separate elements in legal possession. So far as English law is concerned intention as a separate element is obviously necessary. Suppose a case where A is found to be in occupation of a locked house. He may be there as a squatter, as an overnight trespasser, or as a friend looking after the house of the paper owner during his absence on holiday. The acts done by A in any given period do not tell you whether there is legal possession. If A is there as a squatter he intends to stay as long as he can for his own benefit: his intention is an intention to possess. But if he only intends to trespass for the night or has expressly agreed to look after the house for his friend he does not have possession. It is not the nature of the acts which A does but the intention with which he does them which determines whether or not he is in possession."

16. The necessity of these elements of possession and its application in this jurisdiction were confirmed by Bereaux J.A. in the Court of Appeal in Civil Appeal No: 86 of 2009 *Paul Katwaroo v Majid Abdul Kadir and Anor.*

17. The relevant intention that must be proved by the squatter is not his "intention to own" the land he is upon, but only his "intention to possess". This is substantiated at paragraph 42 of J.A. Pye [supra]:

> "42. In the Moran case (1988) 86 LGR 472, 479 the trial judge (Hoffmann J) had pointed out that what is required is "not an intention to own or even an intention to acquire ownership but an intention to possess". The

> Court of Appeal in that case [1990] Ch 623, 643 adopted this proposition which in my judgment is manifestly correct. Once it is accepted that in the Limitation Acts, the word "possession" has its ordinary meaning (being the same as in the law of trespass or conversion) it is clear that, at any given moment, the only relevant question is whether the person in factual possession also has an intention to possess: if a stranger enters on to land occupied by a squatter, the entry is a trespass against the possession of the squatter whether or not the squatter has any long term intention to acquire a title."

18. Once possession for sixteen (16) years together with the requisite intention is proven on a balance of probabilities, the legal title to the possessed property will be extinguished pursuant to Section 22 of Real Property Limitation Act Chapter 56:03:

> **"**22. 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."

19. There is also the issue of successive squatters. The case of *Kenneth Lashley v Patricia Marchong and Anor* Civil Appeal No 266 of 2012 where Jones J.A. stated the position of joint or successive squatters:

> "[62] It is clear on the law that the interest of a squatter even before the statutory period has elapsed is transmissible and if that squatter is succeeded in possession by one claiming through him who holds until the expiration of the statutory period the successor has as good a right to the possession as if he himself had occupied for the whole period: Halsbury's Laws of England.
>
> [63] Indeed relying on the authority of the case of Willis v Earl Howe [1893]2 Ch. 545 Megarry states "If a squatter is himself dispossessed the second squatter can add the former period of occupation to his own as against the true owner. This is because time runs against the true owner from the time when adverse possession began, and so long as adverse possession continues unbroken it makes no difference who continues it. But as against the first squatter, the second squatter must himself occupy for the full period before his title becomes unassailable."

> [64] Nichols LJ in Mount Carmel Investments v Peter Thurlow put it this way: "If squatter A is dispossessed by squatter B, squatter A can recover possession from squatter B and he has 12 years to do so, time running from his dispossession. But squatter A may permit squatter B to take over the land in circumstances which, on ordinary principles of law, would preclude A from subsequently ousting B. For example, if A sells or gives his interest in the property, insecure as it may be, to B."
>
> [65] This is not, strictly speaking, a case of successive squatters. In the instant case the occupation of the appellant and his mother were not adverse to each other. They occupied the premises jointly. This was a case of a single possession exercised by them jointly. Under ordinary principles of law therefore the right of the survivorship would operate. Accordingly the appellant would be entitled to include the period of his joint occupation with his mother in computing the time."

20. The parties to this claim agree on the law applicable to their dispute. I am certain that the parties also agree that if the claimants are able to prove possession in the circumstances in which they allege, that would be sufficient to satisfy the element of possession with the intention to possess to the exclusion of all others.

21. By Amended Claim Form and Statement of Case filed on the 17th April 2018 the claimants seek, inter alia, a Declaration that they have an equitable interest and are entitled to possession of All and Singular that parcel of land situate in the Ward of Siparia in the Island of Trinidad comprising approximately 38,068 square feet and bounded on the North by lands occupied by Liloutie Samaroo, Shirley Samaroo and Harold Samaroo on the South by lands belonging to the Defendant on the East by lands occupied by Umrao and Donald Soonilalsingh and on the West by access road (herein after referred to as "the said lands").

22. The claimants also seek a Declaration that the title of the paper title holder of the said lands has been extinguished pursuant to sections 3 and 22 of the Real Property Limitation Act Chap 56:03.

Summary of Key Findings

23. After considering the evidence the court is not satisfied on a balance of probabilities that the claimants have been in actual possession of the said lands. The location of the said lands vis a vie where the defendants and their family have resided makes the claimants' proposition of their possession illogical. The defendants' father was a tenant of the said lands before he purchased it with the first defendant in 2001. Later, in 2010 the defendants' father and the first defendant sold a portion to the said lands to the second defendant. Not only did the defendants live in close proximity to the said lands, but other family members also reside in close proximity.

24. Based on the geographic and proximate location of the said lands, if the claimants were in possession as they allege, the defendants would be aware to that fact. It is difficult for the court to conclude that they would have allowed the claimants' occupation to go unchecked or unchallenged.

25. What seems the more likely scenario is that the claimants had certain "papers" from his father which caused him to believe that the said lands were owed by his ancestors. Because the said lands were largely unoccupied, the claimants were never bothered to exert whatever rights he believed he had.

26. However when the defendants attempted to install posts and fence the said lands, that caught the claimant's attention causing him to exert what he believed were his rights.

27. The claimants however, were never in actual possession of the lands and are therefore unable to successfully extinguish the title of the legal paper title holders.

28. The claimants' case against the defendants is dismissed. The court took notice of the fact that the defendants did not respond to the pre-action protocol letter served on them. In those circumstances, the claimants shall pay ¾ of the defendants' costs as prescribed in sum of $10,500.00

Reasons

29. The documentary evidence on which the claimants' rely as asserting, are not decisive of any legal issue in that regard. It is clear that whoever the first claimant and his father were dealing with, was not the legal owner of the said lands. The evidence is uncontroverted that the said lands were formally owned by St. Madeline Sugar Company Limited (England). The court is therefore satisfied that the "early cultivation" was undertaken by the defendant's predecessors and not by the second claimant's predecessors. The defendants' predecessors raised their family and built the family home on the said lands.

30. When Caroni decided to dispose of the lands they informed the person in occupation of the new owners. The person they informed was the defendants' predecessors. This information about the new owners was passed on in 1966. If as the claimants claim, the first claimant was in occupation and actively cultivating the land in 1966 and in fact up to 1996, it would seem obvious that Caroni would have provided that information to the claimants. If the defendants were not in possession of the said lands, one wonders how then were they located by Caroni to be notified of a change of ownership. A visit to the lands would have identified the first claimant if he was the person in actual possession.

31. Then there is the issue of the road constructed in 2007. The second claimant's evidence is that he was responsible for having that road constructed and completed. This seems illogical when one looks at the lay of the road. It is clear

that the road was constructed to go to the first defendant's home. It goes down the hill and veers straight towards the first defendant's home. Why would the second claimant be interested in constructing a road to the first defendant's home? No reason was proffered and the court cannot think of any logical reasons. Additionally, this road going towards the first claimant's home, has encroached on his land, according to the second claimant. But the claimant was responsible for the road, why then would he have it constructed to encroach upon his lands.

32. According the claimants' case, they did not require any additional access points as the entire frontage of the said lands bounded with the "Existing Access Road". From the lay of the land it seems that it was first defendant who was in need of the access road. It is for this reason that the first defendant constructed the new road, through lands owned by him and that it veered to the front of his home. On this issue of the construction of the road in 2012, the second claimant lacked credibility and the court found him to be lying.

33. The court noted, with some surprise, that the claimants did not call any witnesses from in and around Suchit Trace. If as the claimants plead, they have been in possession since the 1960s one would have expected to have heard from such a witness. Rather, the claimants offered the evidence of Richie Mohess, a co-worker of his from the Penal/Debe Corporation. The gist of this witness' evidence is that he has trucked water to the said lands as a favour to the second claimant. Interestingly, the witness also testified that from Soogrim Trace one could see the said lands. The court paid a site visit to the disputed said lands. All the parties would agree, I am certain that, the said lands are not visible from Soogrim Trace. The court did not find favour with this witness and gave no weight to his evidence.

34. The second claimant's brother also gave evidence. The court believes that this witness did assist his father with the cultivation and the rearing of animals. However, the location was not on the said lands. The court accepts the evidence that the lay of this land, with its steep slope, was not favourable for the rearing of goats and cows. Further, the witness testified about a shed on the land in contradiction to the evidence of the second claimant. Of course, having a shed where one rears animals seems logical and so for this reason as well, the court is satisfied that the activities discussed by the witness occurred at a different site. The witness made a valiant effort to support his brother's case, however, the court did not attach any weight to his evidence.

35. The court believes that the second claimant was convinced that the documents he has possession of: the "receipt" dated 23rd July 1960[1] and the "receipt" dated 21st December 1964[2] gave him entitlement to the said lands. It may well be that the first claimant also was of a similar view. Those two documents; singularly or together, could not have passed any legal title to the claimants.

36. Regarding actual physical possession of the said lands, the court is not satisfied on a balance of probabilities that the claimants and their predecessors were in actual possession. The defendants' predecessors have proven interests in lands that include the said lands, make such actual possession illogical. The setting up of the family home, including where it is located would mean that every day, from 1960, the defendants and their predecessors would be seeing the claimants actually on lands owned by them. The court is not satisfied, that given normal human behaviour, they would have allowed that possession to continue unabated or unchallenged. The behaviour of the first defendant and his father as alleged by the second claimant that "…in or about February 2012, while I was picking peas on the said lands, the first Defendant and his father

[1] Marked J.M.2 and annexed to the second claimant's witness statement.
[2] Marked J.M. 3 and annexed to the second claimant's witness statement.

came unto the said lands. We had an exchange of words and the first Defendant threw a piece of wood at me. I ran for self-preservation"[3] is what seem to be reasonable and expected behaviour in the circumstances where someone alleges that there is a trespasser on one's land.

37. The second claimant, the court finds, attempted to assert what he believes was his right over the said lands when the defendants' interest in the land became obvious to all.

38. However, since the claimants were never in actual possession, and certainly not in possession for sixteen years or more, they are not able to succeed in extinguishing the legal title of the paper title owners, the defendants. There is also no evidence that the claimants were in possession to the exclusion of all others.

39. The court was satisfied of the defendants' defence. They are the paper title owners of lands that include the said lands. The defendants' presumption of possession has not been displaced. The claimants have noted what they have identified as inconsistencies or contradictions in the evidence adduced by the defendants. However the court has dismissed all these as either being explained on the evidence or as being immaterial.

40. The claimants say that the defendants were contradictory on the issue of their cultivation on the lands claimed by the claimants. However, what the defendants described is cultivation for home use and cultivation that occurred overtime for no particular use. Therefore when it occurred would be something that depends on each witness's perspective and their memory of that will vary; as it did. For that matter the neighbour's (Ms. Liloutie Samaroo)

[3] Paragraph 33 of second claimant's witness statement.

evidence on the issue of cultivation was also identified as an issue of contradiction or inconsistency. However, the lands claimed by the claimants are part of a larger parcel owned by the defendants. In the court's view the witness would have had to have a particular purpose and reason to be in a position to reliably answer those specific questions posed to her. She did not. The court also did not accept that the reason for her evidence was because her husband's brother has his own dispute with the claimants.

41. The defendants' had no burden on them, however their evidence was cogent and believable, rebutting the pleadings and evidence adduced by the claimants.

42. In the circumstances of the court's findings of facts the claimants are not entitled to any reliefs or declarations claimed by then. It is HEREBY ORDERED THAT:

    a. The claimants claim against the defendants is dismissed;
    b. The interim injunction ordered on the 21st February 2018 is hereby discharged;
    c. An injunction restraining the defendants whether by themselves, their servants and/or agents from entering, bulldozing, building and/or interfering in any way whatsoever with the claimants' use, access and occupation of the said lands; and
    d. The claimants are to pay the defendants costs as prescribed in the sum of $14,000.00.

……..

Justice Avason Quinlan-Williams

JRC: Romela Ramberran