THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL NO. CA S003/2016
CLAIM NO. CV 2014-00564

BETWEEN

CHERYL LAWRENCE

Appellant/Claimant

AND

EDAN K PROPERTIES LIMITED

Respondent/Defendant

PANEL: G. Smith J.A.

A. des Vignes J.A.

M. Wilson J.A.

Date of Delivery: Friday 30 October, 2020.

APPEARANCES:

Mr. F. Scoon instructed by Ms. F. Sandy appeared on behalf of the Appellant

Mr. F. Hosein instructed by Mr. R. Thomas appeared on behalf of the Respondent

I have read the judgment of Smith J.A. I agree with it and I have nothing to add.

……
A. des Vignes

Justice of Appeal

I too, agree.

……..

M. Wilson

Justice of Appeal

Delivered by G. Smith J.A.

INTRODUCTION

1. The Appellant in this case was one of three claimants who alleged that they were entitled to certain parcels of land by reason of their adverse possession of the same in excess of 16 years.

2. The Respondent was the current paper title holder of the land. The Respondent denied the claims of this Appellant and counterclaimed for possession of the land that the Appellant occupied.

3. At the hearing of this action, the trial judge declared that the Appellant was indeed entitled to succeed on her claim for adverse possession of the land that she occupies. However, the trial judge decided that the Appellant was only "**entitled to remain in occupation and possession of the house spot she occupies**."[1] The trial judge then deemed this area to be "**one lot of land, that is, 5000 square feet more or less**...".[2] The trial judge also ordered that this Appellant and the Respondent were to bear their own costs of the action.

4. The Appellant has appealed the trial judge's findings only as to: (A) the extent of the land she is entitled to occupy (namely, 5000 square feet of land); and (B) the order for costs.

5. I find that:
    A. There was credible evidence before the trial judge that the Appellant was in occupation of an area of land that measured 150 feet in length by 50 feet in width, or 7500 square feet.
    By failing to have regard to this evidence, the trial judge erred.

[1] See paragraph 29 of the trial judge's written judgment in **CV2014-00564 Cheryl Lawrence and ors v Edan K Properties Limited.**
[2] *Supra*

In these circumstances, I find that the Appellant is entitled to occupy 7500 square feet of land measuring 150 feet in length by 50 feet in width. The actual dimensions of this parcel of land are to be determined as set out in paragraph 24 hereunder.

B. The Appellant succeeded in her claim for possession of the land and the Respondent failed in its defence of the Appellant's claim. There was no reason why costs should not follow the event. At the very least, I find that while the Appellant did not succeed in obtaining the 10,000 square feet of land that she claimed, she did succeed on the major part of her claim and she should be awarded 70% of her costs.

ANALYSIS

6. The Respondent has not appealed the trial judge's findings. Therefore, there are only two issues on this appeal. As I stated at paragraph 4 above, they are:
    A. The extent of the land that the Appellant is entitled to occupy; and
    B. The costs of the high court action and of this appeal.

ISSUE A: ***The extent of the land that the Appellant is entitled to occupy***

7. The land in question is situated at Paltoo Trace Extension, South Oropouche, Trinidad.

8. The Appellant claims that she has been in occupation of 10,000 square feet of land at Paltoo Trace Extension since around 1981. She alleges that before her occupation on her own behalf, her stepfather used to cultivate the land and that he had also built a small wooden hut on the land, measuring about 8 feet by 10 feet. Specifically, she alleges that her stepfather grew several short crops like corn and cassava on the land to supplement their subsistence and he constructed the wooden hut which she occupied from around 1981. The Appellant continued the occupation of her stepfather

and over time rebuilt, renovated and repaired the wooden hut so much so that it is now a substantial concrete structure.

9. The Respondent is the paper title holder of the land since 2006. The Respondent obtained its title from one Myrtle Partap. The Respondent alleges that the Appellant is a bare squatter. It alleges that Myrtle Partap, its predecessor in title, had successfully prosecuted a claim for possession against "squatters" on the land. The Appellant and other squatters refused to vacate the premises. In fact, the Appellant had also bought separate proceedings against Myrtle Partap for (inter alia) trespass to the same parcel of land and the house on it. However, this action had been dismissed for want of prosecution.

   (It is interesting to note that the Respondent annexed an affidavit of the Appellant in those prior proceedings against Myrtle Partap as part of her witness statement).

   The Respondent therefore alleges that the Appellant has no right to be on the land in question and counterclaimed for possession of the land occupied by the Appellant.

10. In his very brief reasons, the trial judge at paragraph 19 found that "...**it is clear that the... (Appellant) was in possession of the lands before 1998. How long before, is uncertain. It clearly is not from 1981 as she says."**

11. With respect to the hotly contested issue of the extent of the Appellant's occupation, I repeat in its entirety the reasons of the trial judge at paragraphs 22 to 25 of his decision:

> **"22. What, however, is not proved is the extent of the occupation that she claims.**
>
> **23. In her 2000 claim she said she was in possession of 1 ½ lots. She says she is in possession of roughly two lots now. The most she can properly claim for now is 1 and a 1/2 lots since the time has not run for a larger plot.**

24. From the cross examination by Mr Hosein it is clear that she has exaggerated her occupation. The planting and existence of numerous fruit trees claimed by her is not supported by the evidence. At best there seems to be a couple coconut trees close to the house.

25. The claimant also did not adduce a survey plan showing the extent of her occupation."

12. From this analysis, the trial judge concluded that the Appellant was only entitled to a house spot, consisting of 5000 square feet of land.

13. In the case of **CA 116/196 Carol Ettienne v Thelma Ettienne** at page 8, de la Bastide CJ stated that:

"An appellate court ought not to upset a trial judge's finding of fact simply because the appellate court would have come to a different conclusion. Due weight must be given to the advantage which the trial judge has as a result of being able to see and hear the witnesses give their evidence and to form an impression from that of their credit-worthiness. For his finding to be upset there must be some demonstrable flaw in the process by which he reached it. It may be for instance that he drew an inference which was not justified or failed to draw an inference which was. <u>Another ground on which the appeal court may interfere is that the trial judge failed to take account of some relevant piece of evidence or to appreciate its proper significance</u>, or conversely that he took into account something which he ought not to have taken into account or attributed to it a significance which it did not rightly have. It is with those principles in mind that one must examine what the learned trial judge did or did not take into account in reaching his finding and the route by which he arrived there." (my emphasis)

14. In the present matter, the trial judge did not consider or appreciate certain relevant evidence when coming to his conclusion that the Appellant was only entitled to a house spot measuring 5000 square feet of land. Specifically, there was no real analysis of the credibility of the witnesses or of the evidence led on this issue save and except for a statement that the Appellant "**exaggerated her occupation**".[3] However, the precise nature of that exaggeration is not explained. This omission of the trial judge is significant in the sense that there must have been some aspects of the Appellant's evidence which were credible to the trial judge. This evidence entitled her to succeed on her case over the evidence led by the Respondent.

    Further, the trial judge stated that he accepted the evidence of Myrtle Partap and Godfrey Alexis, who were called by the Respondent to give evidence on its behalf. However, we were not told which, if any, aspects of their evidence supported his findings on the extent of the Appellant's occupation.

15. On a more careful consideration of the evidence led, I have noted three areas of evidence which support the conclusion that the Appellant occupied an area of at least 7500 square feet of land. They are:
    i. The uncontested evidence of the occupation of the land by the Appellant's stepfather.
    ii. Statements and/or admissions in prior proceedings which emanate from the evidence of Myrtle Partap.
    iii. The case that was put to the Appellant in cross-examination.

(i) The uncontested evidence of the occupation of the land by the Appellant's stepfather

16. The uncontested evidence from the Appellant is that she continued the occupation of her stepfather. As I indicated before, the Appellant stated that her stepfather planted short crops on the land in question to supplement his family's subsistence and he also built an 8 feet by 10 feet board house there.[4] In cross-examination, the Appellant accepted the suggestions made by Counsel for the Respondent that the area occupied

[3] See paragraph 24 of the trial judge's written judgment in **CV2014-00564 Cheryl Lawrence and ors v Edan K Properties Limited.**

[4] See paragraphs 6 and 7 of the Appellant's witness statement.

by her stepfather was approximately 1 ½ lots of land.[5] (A lot of land has an area of 5000 square feet; a 1 ½ lots is 7500 square feet.) This evidence was apparently not considered by the trial judge in coming to a decision on the extent of the Appellant's occupation.

(ii) The statements in prior proceedings

17. As part of her witness statement, Myrtle Partap (whose evidence the trial judge accepted as "**critical**"[6]) annexed documents from the prior action that this Appellant had brought against her. Among those documents was an affidavit of the Appellant in the prior action where the Appellant stated that her claim was for a parcel of land 150 feet long and 50 feet wide.[7] In addition to buttressing the Respondent's case that the Appellant did not occupy 10,000 square feet of land, the affidavit was an admission against the Appellant's claim for 10,000 square feet of land. As an admission, it is a piece of evidence of some weight. This evidence was not considered in its proper context by the trial judge in coming to a decision on the extent of the Appellant's occupation of land.

(iii) The case put to the Appellant

18. In the cross-examination of the Appellant, Counsel for the Respondent specifically put a case to the Appellant that the dimensions of the land that she occupied was 150 feet by 50 feet.

    For completeness, I cite the relevant evidence:

    "Q: And I am suggesting to you that you never occupied 10,000 sq.

    ft of land.

    A: I always had it.

    Q: You only occupied 150 x 50 feet

    A: I always had it fenced around..."[8]

[5] See pages 21 and 23 of the Transcript of the Appellant's cross-examination.
[6] See paragraph 10 of the trial judge's written judgment in **CV2014-00564 Cheryl Lawrence and ors v Edan K Properties Limited.**
[7] See the Witness Statement of Myrtle Partap at paragraph 10, annexure "MP 3".
[8] See page 74 of the Transcript of the Appellant's cross-examination.

19. Although not as forceful as the uncontradicted evidence of the Appellant's stepfather's occupation, and the statement of admissions against the Appellant, this evidence is of some weight. Presumably, Counsel would not put a case to a witness unless he had specific instructions. Specifically, the instructions were that the Appellant occupied (whether as a squatter or otherwise) an area of 150 feet by 50 feet, that is, 7500 square feet of land.

    Further, this case that was put to the Appellant suggests and corroborates the other evidence of the Appellant's occupation of a parcel of land measuring 150 feet in length by 50 feet in depth (7500 square feet) and the trial judge ought to have considered it in coming to his decision on the extent of the Appellant's occupation of the land.

20. The Respondent argues that this evidence of the case put to the Appellant should be read down merely to suggest that the Respondent was suggesting that the Appellant's claim could not be credible as it related to the 10,000 square feet of land which the Appellant, even on her case, never occupied.

21. While this is a possible interpretation, (i) it goes against the plain way the case was put; and (ii) it is more consistent with Myrtle Partap's evidence in the affidavit of the Appellant and the admission against the Appellant's case. In any event, this evidence was not explained or considered by the trial judge so that the Respondent's interpretation is as speculative as the finding of an occupation of 5000 square feet of land.

22. Therefore, having regard to the omission of the trial judge to consider: (i) the consistent evidence of the occupation by the Appellant's predecessor (her stepfather); (ii) the statements in the prior proceedings (with an admission against the Appellant's interests); and (iii) the case put to the Appellant, I am of the view that there was ample evidence to support a finding that the Appellant is entitled to occupy 7500 square feet of land at Paltoo Trace Extension, South Oropouche, the land on which her current home stands.

23. However, because of the way the case was presented, it is necessary to give some indication as to the way that this area of land is to be measured on the ground.

24. The Appellant failed to lead precise evidence on this issue and I propose to grant her the occupation that is the least intrusive on the rights and title of the Respondent.
    In the circumstances, I order that the Appellant's house is to be accommodated in the 7500 square feet area of land. Part of her house has frontage on Paltoo Trace Extension, and assuming that a 50-foot frontage on Paltoo Trace Extension could encompass her house and its curtilages, then she is to have this 50-foot frontage. The depth of the land would measure 150 feet.
    If, however, this 50-foot frontage on Paltoo Trace Extension is not enough to encompass her house and its curtilages, then she should have 150-foot frontage on Paltoo Trace Extension and a 50-foot depth of land.

ISSUE B: *Costs*

25. The Respondent had mounted a robust defence of the Appellant's case and lost. The Appellant succeeded on her claim but not on the entirety of the case that she presented. In those circumstances there was no valid reason why costs should not follow the event. However, the Respondent should be given credit for so much of the defence that resulted in a diminution of the Appellant's claim.
    I am of the view that the Appellant should have been awarded 70% of her costs.

26. The Appellant got no award of damages in her favour and she has not appealed that order. She has only obtained an order, tantamount to a declaration, of her entitlement to the ownership of a parcel of land. In these circumstances, I would treat the claim as a claim that is not one for a monetary sum which pursuant to Part 67.5(2)(c), would be treated as a claim for $50,000.00, upon which the prescribed costs would be $14,000.00. The Appellant's costs of the trial would be assessed as 70% of $14,000.00 or $9,800.00.

CONCLUSION

27. The Appellant's appeal is allowed. It is declared that the Appellant is entitled to 7500 square feet of land which she occupies at Paltoo Trace Extension, South Oropouche, such land to have the dimensions of 150 feet in length and 50 feet in breadth and to be measured as stated in paragraph 24 of these reasons.

28. The Respondent is ordered to pay to the Appellant:
    i. the Appellant's costs of the trial assessed in the sum of $9,800.00; and
    ii. the Appellant's costs of the appeal determined at 2/3 of $9,800.00, that is, $6,533.00.[9]

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G. Smith

Justice of Appeal

[9] See part 67.14 of the Civil Proceedings Rules, 1998 (as amended).