

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. S-205 of 2016

Claim No. CV 2014-04517

Between

IRMA BRAZEL

Appellant

And

HERMAN HENRY

Respondent

Panel: A. Mendonça, J.A.

A. Yorke-Soo Hon, J.A.

V. Kokaram, J.A.

Appearances:

Mr. Shastri Ramtahal appeared on behalf of the Appellant

Mr. Navindra Ramnanan appeared on behalf of the Respondent

REASONS

Delivered by A. Mendonça, J.A.

1. On July 28, 2020 we dismissed this appeal. We now reduce to writing our reasons for so doing.
2. This is an appeal from the Trial Judge's judgment on a claim by the Respondent for adverse possession of the property located at No. 26 Darneaud Street, Gasparillo (the subject property) and a counterclaim by the Appellant for possession of the subject property.
3. The Respondent's pleaded case is that he has been in exclusive, continuous and uninterrupted possession of the subject property since 1983. During this period, he treated the subject property as his own without permission from the purported title owner. His grandfather, Percival Henry, constructed a wooden house on the subject property where he lived with his family and the Respondent. Percival Henry sold the subject property to Benjamin Phillip in 1983. The Respondent, his mother, Gloria Henry, and his grandmother, Susanna Henry, continued living on the subject property cultivating short crops and cleaning it. At no time did anyone, including the Appellant, interfere with the Respondent's possession of the subject property.
4. The Respondent sought, *inter alia*, a declaration that he is entitled to the possession, use and enjoyment of the subject property, and a declaration that the right, title and interest of the Appellant in the subject property was and stands extinguished by operation of law by reason of and consequent upon his sole exclusive and adverse possession for a period exceeding 30 years.
5. In the Respondent's reply and defence to counterclaim, he contends that the sale of the subject property by Percival Henry to Benjamin Phillip in 1983 occurred while Percival Henry was married to his grandmother, Susanna

Henry, and without consideration of the occupation and equitable interest of Susanna Henry in the subject property.

6. He further contends that Susanna Henry and her family, including the Respondent and his mother, never vacated the subject property after it was sold to Benjamin Phillip in 1983.
7. In 1985, the Appellant's predecessor in title, Benjamin Phillip, commenced High Court proceedings intituled No. S2289 of 1985 (the 1985 proceedings) against the Respondent's mother for possession of the subject property. Susanna Henry was joined as a party to those proceedings in 1987. The 1985 proceedings were withdrawn in 1995.
8. In the 1985 proceedings, the Respondent's mother contended in her defence that "she is in possession of the subject property by her mother (the Respondent's grandmother) who is in possession and is entitled to possession of the same she having equity therein coupled with the right of the lawful wife in possession of the matrimonial home." Similarly, Susanna Henry contended, *inter alia*, that the Respondent's mother was in lawful occupation and/or possession of the subject property through and by Susanna Henry's rights and/or equities in the subject property.
9. The Respondent's evidence is that he was born on June 17, 1956 and lived on the subject property with his mother, Gloria Henry, grandparents, Percival and Susanna Henry, his sister, uncles and aunts. In 1971, the Respondent together with his mother and sister left the subject property and moved to Marabella to live. In 1977, they returned to Gasparillo and rented a property next to the subject property for approximately five years.
10. Percival Henry left the subject property in 1982 and the Respondent, his mother and his sister returned to occupy the subject property in 1983 with Susanna Henry. The Respondent's evidence is that he always knew that Percival and Susanna Henry owned the subject property. In 1985, the

Respondent found out that the subject property was sold to Benjamin Phillip when the said Benjamin Phillip commenced the 1985 proceedings against his mother. Susanna Henry was joined as a party to those proceedings in 1987. The 1985 proceedings were withdrawn in 1995.

11. The Respondent's sister, uncles and aunts all left the subject property over time. The Respondent remained on the subject property with his mother and grandmother. His mother died on June 30, 2000 and the Respondent remained on the subject property with his grandmother, Susanna Henry. She died in 2012.
12. He contends that he has been in possession and continuous, undisturbed and uninterrupted occupation of the subject property without permission from the paper title for a period exceeding 16 years. He has been living in the dwelling house constructed by his grandfather, cleaning the land and planting short crops on the subject property.
13. Prior to the death of his grandmother in 2012, the Respondent was not aware of the Appellant and had not seen or spoken to her.
14. The Appellant defended the claim. Her case is that she is the owner entitled to the possession of the subject property by virtue of deed dated December 30, 1999 and registered as number 2000018620BF.
15. The Appellant averred that by virtue of deed registered as number 5845 of 1983, Percival Henry conveyed the subject property to Benjamin Phillip. On November 17, 1982 Percival Henry executed a document in the following terms:

"RECEIVED from BENJAMIN PHILLIP the sum of THIRTY THOUSAND TWO HUNDRED DOLLARS on account of the purchase price of a parcel of land situate at Darneaud Street, Gasparillo, sold to him this day. The balance is \$800.00 which is to be paid on or before the 31st December, 1982. I will give up possession of the house thereon on or before the 31st January, 1983."

Benjamin Phillip paid all monies due and owing for the subject property and Percival Henry and his family vacated the subject property. Benjamin Phillip then took possession of the subject property and allowed a friend to live there. Sometime in 1999, Benjamin Phillip's personal friend died and by virtue of deed number 2000018620BF Benjamin Phillip conveyed the subject property to the Appellant.

16. The Appellant further averred that sometime in 2003, Susanna Henry approached the Appellant and Benjamin Phillip seeking to rent the subject property as it was vacant. The Appellant created a monthly tenancy for Susanna Henry with rent in the sum of \$200.00 per month. Susanna Henry was always in arrears of her rent. In 2014, it came to the Appellant's knowledge that Susanna Henry had died and that her family members were in occupation of the subject property.
17. The Appellant counterclaimed for, *inter alia*, possession of the subject property.
18. The Appellant gave evidence consistent with her pleadings.
19. In his analysis of the Appellant's evidence, the Trial Judge noted at paragraph 9:

"Neither Susannah Henry, nor the claimant, nor his mother therefore was allegedly in occupation. In fact she testified under oath that she met with Susannah, in the presence of Benjamin Phillip. Susannah allegedly asked her to be allowed to be a tenant of the subject premises. She in turn alleges that she agreed and that she told Susannah, whom she had never met before, to pay what she could afford. This was in respect of the subject premises, which, though transferred to her in 1999, she had never visited before. Susannah told her she could afford to pay \$200.00 per month. She agreed to accept that alleged rent. Yet Susannah was allegedly inconsistent in paying even that rent, for over 9 years."

20. The Trial Judge correctly checked his impression of the Respondent against the contemporaneous documents. He referred to the 1985 proceedings and found:

- “a) In the light of those High Court proceedings instituted in 1985 it is exceedingly likely that, as recovery of possession was being sought against Susannah Henry’s daughter Gloria Henry, and then Susannah herself, that they, together with the Claimant, were in possession at that time hence the reason for litigation against them by Benjamin Phillip.
- b) It is far more likely than not that Susannah Henry, Gloria Henry, and the claimant all continued to reside on the subject premises, and in the case of Susannah Henry, that she never left those premises, and was in occupation therefore in 1983 when the purported deed to Benjamin Phillip was executed.
- c) In light of the earlier proceedings commenced to evict the Claimant’s mother and then subsequently grandmother, from the subject premises, it is inconceivable that the defendant would have rented those very premises to Susannah Henry in 2003 as she claims.
- d) On a balance of probabilities that allegation is indeed a clumsy fabrication.”

21. The Trial Judge held that Susanna Henry was in occupation adverse to that of the Appellant and her predecessors in title, and that the Respondent was in occupation of those premises for a period exceeding 16 years together with her. The Trial Judge dismissed the Appellant’s counterclaim and granted the Respondent, *inter alia*, a declaration that the right, title and interest of the Appellant in the subject property was and stands extinguished by operation of law.

22. The core issue in this appeal is whether the Appellant’s title to the subject property has been extinguished by operation of the Real Property Limitation Act Chap. 56:03 (RPLA).

23. Counsel for the Appellant, Mr. Ramtahal, argued the appeal on two grounds namely, (i) the Trial Judge's assessment of the evidence as to whether the Respondent was in possession of the subject property, and (ii) whether Susanna Henry could adversely possess the subject property because she claimed to be in possession through and by her rights and/or equities in the subject property.
24. The first ground of appeal challenges the Trial Judge's findings of facts. Before this Court may set aside a trial judge's finding of fact it must be satisfied that the Trial Judge was plainly wrong in coming to that finding. What that means has been explained in the case of **Beacon Insurance Company Limited v Maharaj Bookstore Limited [2014] UKPC 21**, para 12 as follows:

"12... It has often been said that the appeal court must be satisfied that the judge at first instance has gone "plainly wrong". See, for example, Lord Macmillan in *Thomas v Thomas* at p 491 and Lord Hope of Craighead in *Thomson v Kvaerner Govan Ltd* 2004 SC (HL) 1, paras 16-19. This phrase does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts: *Piggott Brothers & Co Ltd v Jackson* [1992] ICR 85, Lord Donaldson at p 92. Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings of fact which he did in the face of the evidence as a whole. That is a judgment that the appellate court has to make in the knowledge that it has only the printed record of the evidence. The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions. Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence: *Choo Kok Beng v Choo Kok Hoe* [1984] 2 MLJ 165, PC, Lord Roskill at pp 168-169."

The effect of this is that we must identify a mistake in the Trial Judge's evaluation of his evidence that is sufficiently material to undermine his conclusions.

25. The submissions made by Mr. Ramtahal essentially turn on the absence of documentary evidence to establish possession of the subject property for the period 1983 to 2002. According to the Respondent's evidence, in 1983 the Respondent, his mother, and his sister moved onto the subject property to live with his grandmother, Susanna Henry. The year 2002 is significant as the Appellant's case is that in 2003 Susanna Henry approached her and Benjamin Phillip to rent the subject property as it was vacant.
26. Mr. Ramtahal highlighted that the letters and correspondence adduced by the Respondent in support of his contention that he had been living on the subject property commence in 2003 and submitted that the Respondent lived at the subject property from 2003 to 2014.
27. The fact of the matter is that the Respondent is not required to corroborate his oral evidence by the production of documentary evidence. The absence of documentary evidence to support the Respondent's occupation from 1983 is not a material omission that would lead inevitably to the conclusion that the Trial Judge should not accept the Respondent's evidence.
28. It is significant to note that in relation to the documentary evidence which Mr. Ramtahal identified, reference is made to two documents dated prior to 1983, namely a receipt dated December 17, 1981 and a receipt dated February 13, 1982. The Respondent's address is identified as "Darneaud Street, Gasparillo", which is the same street as the subject property. According to the Respondent's evidence, at that time he was not in possession of the subject property. The importance of these two documents is that they support the Respondent's evidence that he was living in a property next to the subject property at the time. This would serve to support his credibility in the eyes of the Trial Judge, and in the end the Trial Judge ultimately accepted the Respondent's evidence.

29. There was also the evidence of the 1985 proceedings. These proceedings were brought by the Appellant's predecessor in title, Benjamin Phillip, against the Respondent's mother and Susanna Henry, for the possession of the subject property. The pleadings filed in those proceedings supported the Respondent's evidence as to possession of the subject property. This is another reason why the Trial Judge must have felt assured in accepting the evidence of the Respondent as to his possession of the subject property.
30. Mr. Ramtahal questioned whether the witnesses who supported the Respondent's claim, one of whom may be regarded as an independent witness, in the sense that he was not related to the Respondent, were self-serving and sufficiently independent. We find that the Trial Judge was in the best position to assess their credibility and he accepted their evidence.
31. All in all, we cannot fault the Trial Judge or find any fault in his assessment of the evidence to say that he was plainly wrong to accept the evidence led on behalf of the Respondent.
32. This brings us to the next ground of appeal, that is, whether Susanna Henry could adversely possess the subject property because she claimed to be in possession through and by her rights and/or equities in the subject property.
33. It appears from the Trial Judge's findings at paragraph 20 (above) that he treated the possession of the subject property by the Respondent, Susanna Henry and Gloria Henry as joint possession. Joint possession is a single possession exercised by or on behalf of several persons jointly¹ and the title acquired is held by the squatters as joint tenants².
34. Mr. Ramtahal's submission was insofar as Susanna Henry claimed that she occupied the property as of right in the 1985 proceedings, she could not be in

¹ Powell v McFarlane (1977) 38 P & CR 452

² Adverse Possession, Stephen Jourdan second edition (2011), para 20-68

adverse possession because she could not have the necessary intention to possess which she needed to establish to be in adverse possession. This was because Susanna Henry claimed that she had an equitable interest in the subject property and entitled to occupy the subject property as of right. Mr. Ramtahal relied on the case of **Hyde v Pearce [1982] 1 All ER, CA 1029** in support of this proposition.

35. The ratio of **Hyde v Pearce (supra)** is that the possession of a contracting purchaser is not adverse, because he cannot be evicted after the contractual completion date so long as the contract remains specifically enforceable. In that case, the plaintiff asserted his right to continue in possession pursuant to the contract of sale and not otherwise. Cumming-Bruce LJ stated that the quality of possession alleged by the plaintiff “was that of purchaser under a contract for sale with equitable rights”. The Court of Appeal held that the plaintiff was not in adverse possession.

36. In **Hyde v Pearce (supra)** the facts necessary for the Court to conclude that the plaintiff had a contractual right to occupy the property were established before the Court. Conversely, the allegations contained in the 1985 proceedings have not been established. The Respondent led no evidence in relation to Susanna Henry’s claim that she had an equitable interest in the subject property. Those allegations in the pleadings remained unproven. In our view, the Appellant cannot rely on the pleadings in the 1985 proceedings or in this claim to say that Susanna Henry occupied the subject property under a basis of a right to be there because those facts were not established.

37. Further discrediting the Appellant’s submission and reliance on **Hyde v Pearce (supra)**, the authors of *Adverse Possession*, second edition (2011)³, after quoting Templeman LJ in his judgment, proceeded to state at para 28-38:

³ *ibid*

“That suggests that a squatter who claims to be lawfully entitled to remain in possession cannot be in adverse possession until he abandons his claim. However, if that is what Templeman LJ meant, he was plainly wrong. It is clearly established that a squatter can be in adverse possession even if he claims, and believes, that he has the right to be in possession.”

38. It is well settled that a person claiming to be in possession of lands so as to bar a claim for possession of the lands by the owner and extinguish his title as provided for in section 22 of the RPLA must establish that he has been in factual possession of the lands and that he has the necessary intention to possess.
39. The intention to possess is an intention to exercise such custody and control on one’s own behalf and for one’s own benefit. The intention can be established by the person in possession demonstrating that he used the lands in a way one would expect him to use them if he were the true owner (see Lord Hope in **JA Pye (Oxford) Ltd v Graham [2001] Ch 804**) at para 71).
40. If, as is the case, the person in possession can establish the necessary intention to possess if he demonstrates that he has used the lands as one would expect him to do as if he were the owner, then believing himself to be the owner is entirely consistent with the intention to possess. (See **Goberdhan-Watts v Boodoo & Anor Civil Appeal No. P014 of 2016** and **Bannerman Town, Millars and John Millars Eleuthera Association v Eleuthera Properties Ltd [2018] UKPC 27.**)
41. So regardless of the pleadings in the 1985 proceedings and the Respondent’s reply and defence to counterclaim that Susanna Henry claimed or believed she had a right in the subject property, that does not support the contention that she could not have had the necessary intention to possess.

42. Therefore, on the basis of the Trial Judge's analysis of the evidence and judgment, Susanna Henry was in occupation of the subject property from 1983 to 2012 by which time she would have long dispossessed the Appellant. The legal title to the subject property would have been extinguished by 1999. From 2012 onwards the Respondent remained in possession. There is no legal title vested in the Appellant by which she can claim possession of the subject property.
43. The Trial Judge treated the possession of the Respondent, his mother and grandmother as joint possession, but it would have made no difference to the Appellant's claim if the Trial Judge treated their possession as successive. Successive possession occurs because 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. 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 (see **Lashley v Marchong & Honore Civil Appeal No. 266 of 2012**). On this analysis also the title of the Appellant and her predecessors in title would have been extinguished in 1999 by the possession of the Respondent's grandmother and the Appellant's claim to possession could not succeed.
44. The Trial Judge's finding that the possession by Susanna Henry, the Respondent's mother and the Respondent was one of joint possession reinforces the case for the Respondent. Accordingly, following the deaths of Gloria Henry and Susanna Henry, the Respondent is entitled to possession of the subject property.

45. For these reasons, we dismissed the appeal. In relation to costs, we ordered the Appellant to pay the Respondent's costs of the appeal in the amount of \$9,333.33.

Dated this 9th day of September, 2020

A. Mendonça, J.A.

A. Yorke-Soo Hon, J.A.

V. Kokaram, J.A.