THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. S047 of 2018
Claim No. CV2015-02904

Between

(1) SHAFFIATH ALI
(2) ROSATINE ALI

Appellants

And

(1) JULIET ABRAHIM
(2) NANDRAM SOOKHAN
(3) THE COMMISSIONER OF STATE LANDS
(4)NANDRAM SOOKHAN
(as the Appointed Representative of the Estate of Gowtan Canaan)

Respondents

Panel: P. Moosai J.A.

V. Kokaram J.A.

J. Aboud J.A.

Appearances:

Mr. Rennie Gosine instructed by Ms. Katrina Rampersad for the Appellants.

Ms. Tara Thompson instructed by Mr. Joel Roper for the First Respondent.

Ms. Alana Rambaran for the Second and Fourth Respondents.

Date of Delivery: Tuesday 29 March 2022

I have read the judgment of Kokaram J.A. and I agree.

……………………………………………….
Prakash Moosai
Justice of Appeal

I too have read the judgment and I also agree.

……………………………………………….
James C Aboud
Justice of Appeal

JUDGMENT

1. It is unfortunate that the parties in this appeal were unable to amicably resolve this land dispute. Juliet Abrahim[1] and Nandram Sookhan are lessees to large acres of agricultural land known as Lots 140 and 141 located in Gran Couva. The Appellants, Shaffiath and Rosatine Ali ("the Alis") claim an entitlement to those lots by adverse possession. Both have everything to gain in their respective claims. Equally, they both have everything to lose. Hopefully after delivering this judgment there may still be an opportunity for the parties to find a middle ground.

2. These parcels of land are in the central region of Trinidad known colloquially as a "bread basket region". It was where the popular sugar cane crop once dominated this landscape with cane farmers cultivating and supplying this raw material to the sole sugar manufacturer, Caroni 1975 Limited ("Caroni Ltd"). When Caroni Ltd closed its doors around 2009, some of its vast tracts of land known as "Caroni lands" were sub-divided, became the subject of VSEP[2] packages and leased to employees of Caroni for their loyal and dedicated service. So it was for both Ms. Abrahim and Gowtan Canaan former employees of Caroni Ltd[3] who eventually received their own 30 year lease of approximately 2 acre parcels, Lots 140 and 141 respectively, in fulfilment of Caroni Ltd's promise to them in their VSEP packages.[4]

3. However, by the time they were introduced to these lots in 2011 they also

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[1] Hereinafter referred to as Ms. Abrahim

[2] Voluntary Separation of Employment Package

[3] Nandram Sookhan is the appointed Legal Personal Representative of the Estate of Gowtan Canaan

[4] See letter dated 18th August 2008 from Caroni (1975) Limited to Ms. Juliet Abrahim exhibited "B" to the witness statement of Juliet Abrahim filed 29th September 2017, page 523 of the Record of Appeal

See letter dated 18th August 2008 from Caroni (1975) Limited to Mr. Gowtan Caanan exhibited "N.S.2" to the witness statement of Nandram Sookhan filed 29th September 2017, page 565 of the Record of Appeal

encountered the Alis who claim to be in adverse possession of approximately 5 acres of Caroni lands which they say also includes Lots 140 and 141. The Alis contend that since 1975 they had been cultivating this 5 acre parcel of land to cultivate sugar cane for Caroni Ltd and short crops for their own sale in the Port of Spain market. The trial judge determined that there was insufficient evidence to prove the Alis' claim. The Court found that the Alis only used the lands periodically for agriculture and that they were not able to sufficiently identify the parcel of land to which they claim an entitlement.

4. The onus is on the Alis to demonstrate that the trial judge was plainly wrong in arriving at the decision that their claim to adverse possession was not made out. The exercise of demonstrating adverse possession of an area of land is extremely fact sensitive. The difficulty in this claim lay primarily in the Alis' ability to properly identify the lands they claimed to have occupied for over 16 years. The proper identification of land which was being "adversely" possessed is inextricably linked to the elements of factual occupation and an intention to possess, both critical aspects of proof in these claims. While there was evidence of the Alis' historical usage of land in that area for the statutory period, their evidence of specific use of Lots 140 and 141 must be cogent and compelling to extinguish the Respondents' title to those lands as lessees of Caroni Ltd.

5. Lots 140 and 141 were open, arable tracts of land. The Alis claimed to have been in physical occupation of a larger portion of land of approximately 5 acres whose boundaries are irreconcilable with Lots 140 and 141. The Eastern boundary of the Alis approximately 5-acre parcel was not enclosed by any visible or obvious physical markers such as hedges, walls, or trees. The survey plans of Lots 140 and 141 were not conducted as an "occupational survey" of the Alis' area of occupation. There is no evidence of any objective connection between the Alis' occupation of a larger undefined 5 acre parcel with Lots 140

and 141 save for the Alis' own self-serving statements with respect to a survey which ought properly to be the subject of expert evidence.

6. In our view, having carefully considered the submissions of both parties and reviewed the evidence and the trial judge's reasons, we find that the trial judge failed to assess the entirety of the Alis' evidence. However, in our view, despite that criticism, he was not plainly wrong in arriving at the conclusion that the Alis were unable to sufficiently prove the exact dimensions of their area of occupation for the purposes of adverse possession of Lots 140 and 141.

7. The issues for determination in this appeal and our findings in relation to them are summarised for convenience as follows:

   (a) Whether the trial judge erred in taking into account and attaching disproportionate weight to an exhibit, namely, Caroni Ltd's Survey Sheet filled out by Mrs. Ali, which was introduced for the first time in the proceedings on the day of the trial ("Exhibit "A"").

   Finding: The trial judge erred in admitting Exhibit "A" into evidence and in attaching a disproportionate amount of weight to it or failed to consider it in the context of the other available evidence of possession.

   (b) Whether there was any corroboration of the Alis' evidence of their physical occupation of the said 5-acre parcel of land with an intention to possess it for their own use for the relevant period of 16 years from 1982.

   Finding: While the trial judge erred in concluding that the Alis only used the lands periodically by (a) failing to take into account the evidence of the Alis' witnesses; (b) failing to properly consider the documentary evidence before the Court; and (c) placing undue

reliance on the evidence of the Respondents which post-dated the relevant period of occupation necessary to prove adverse possession, taken altogether, however, the Alis evidence failed to identify the exact area of their continuous occupation or to prove to the necessary standard that it corresponded with Lots 140 and 141.

(c) Whether the lands were properly identified for the purpose of making a claim for adverse possession.

Finding: While on a balance of probabilities the Alis can prove continuous occupation for the relevant period of 16 years of land in the general area proximate to Lots 140 and 141, they were unable to properly identify the boundaries of their "approximate 5 acre" or smaller parcel.

8. For the reasons set out in this judgment the appeal will be dismissed.

Core Facts

9. The Alis' pleaded case was that they were entitled to a parcel of land comprising approximately 5 acres situate along the Gran Couva Main Road at the La Phillipine/Caracas Estate, in the Ward of Montserrat between Bridge No. 1 and Bridge No. 2 and bounded on the North by the Savonetta River, on the South by another river, on the East by lands occupied by Dolly Mohan and on the West by the Gran Couva Main Road.

10. The Alis are farmers and claimed to have used that parcel of land in their own right from 1982 until 2011 when Ms. Abrahim and Mr. Sookhan asserted their claims to the lands. While the Alis first "cleared and planted" the land for their neighbour, Mr. Paras Balram Goolcharan, who cultivated it in 1975, that arrangement ended in 1982 when Mr. Goolcharan became a foreman at Caroni Ltd.

11. The Alis continued to cultivate the lands for their own purposes from 1982. They claim to have cultivated 4 acres with sugar cane which was sold to Caroni Ltd. On the remaining acre they planted short crops such as bodi, melongene, tomatoes and carailli which they sold at the Chaguanas market.

12. The Alis do not have their own survey of their area of occupation of 5 acres. There was a survey of Lots 140 and 141 said to be conducted by Caroni Ltd. as part of its regularization exercise in 2007. It is only then that the Alis contend that their lands were depicted at Lots 140 and 141. Lot 140 comprises 2.174 acres and Lot 141 comprises 2.608 acres. They contend that the "extra acre"[5] became a road reserve as shown on the survey. The Alis claimed that they continued to occupy these plots even after the survey was conducted.

13. Ms. Abrahim and Mr. Canaan made frequent requests from Caroni Ltd for the identification of their plots which were promised to them in their VSEP packages. After several years they were finally allocated Lots 140 and 141. Those plots became the subject of leases to Ms. Abrahim and Mr. Canaan by Caroni Ltd. By Deeds of Lease registered as Deed Nos. DE201102841322D001 and DE201102781537D001 dated 2nd June 2011 and 6th June 2011 respectively Ms. Abrahim and Mr. Canaan have 30-year leases on the lands which the Alis claim form part of their 5-acre parcel. Mr. Canaan passed away and the unexpired term of this lease was assented to his brother Nandram Sookhan, the LPR of his estate.

14. Ms. Abrahim, Mr. Canaan and Mr. Sookhan only became familiar with the area in 2011 prior to the leases being made and at that time they claim not to have seen the Alis cultivating the land. It was only in 2015 that they noticed some cultivation of peppers and short crops by the Alis which sparked this dispute. They also sought in their counter claim to declare themselves to be the true

[5] The "extra acre" is in reality .218 acres (2.174 + 2.608 = 4.782 acres)

owners of the respective lots and injunctive relief.

Trial Judge's Findings

15. At the trial Mr. and Mrs. Ali gave evidence both as to actual occupation and intention to possess the large 5-acre parcel as defined by them. They were supported by two witnesses who were allegedly familiar with the fact of their cultivation over many years: Mr. Jonathan Jogiesingh and Mr. Dill Narine Dookrie. For the Respondents only Mr. Juliet Abrahim and Mr. Nandram Sookhan testified on their own behalf with respect to seeing the Alis for the first time after obtaining their deeds for their lots. The Commissioner of State Lands offered no evidence at the trial.

16. The trial judge accepted that the relevant date of occupation by the Alis commenced in 1982. There was no dispute in this appeal that this would have been the relevant commencement period for a claim of adverse possession. The trial judge found that the Alis had not demonstrated continuous usage and occupation with the intention to possess in their own right.[6] However, there was no evidence from any of the Respondents as to their knowledge of these lands during that period of time and certainly not before 2009. It was a matter therefore for the trial judge to assess the credibility of the Alis and the quality of their evidence to demonstrate usage and intention.

17. The trial judge dismissed the claim for the following main reasons:

    (a) That the Alis did not furnish the Court with any documentary evidence

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[6] Section 3 of the Real Property Limitation Act provides:

> "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."

that they were in possession of the subject lands by engaging in agriculture since 1982. In cross examination it was asserted that there were receipts for equipment, fertilizer, seeds or plants for the relevant period which were not produced.

(b) Court Exhibit "A" was signed by Mrs. Ali in 2009 and 2010. She specifically referred to lands only in Freeport as being under her control. This documentary evidence was inconsistent with her oral testimony.

(c) The Alis in a letter to Mr. Saunders[7] dated 5th February 2015 indicated that they were in occupation of Caroni lands with consent which was inconsistent with their case.

(d) Ms. Abrahim was found to be a forthright and truthful witness. The Court accepted her evidence and found as a fact that when she first went in the vicinity of the subject lands in early 2011, that the lands were not cultivated. The Court also found as a fact that she saw first signs of cultivation later in 2011 when she observed the presence of some pepper trees.

18. In this context, the trial judge rejected the Alis' evidence and concluded that:

> "27….The Court felt that it is more likely than not that the Claimants periodically used these lands for agriculture but such use cannot give rise to an entitlement to same. The Court was also not satisfied that the Claimants adequately identified the parcels of land to which they claimed an entitlement. The pleaded case expressly outlined 5 acres more or less but there is written correspondence on their behalf that spoke definitively of a 4 acre parcel of land. While it is entirely possible for persons to identify lands by boundaries, the difference between 4 acres and 5 acres is

[7] Then attorney at law for Ms. Abrahim

substantial and the Court was not satisfied that the Claimants adequately identified the boundaries of the land that they claimed to be in possession of.

28. For the reasons outlined the Court found that the Claimants did not discharge the burden of proof placed upon them. The Court was not satisfied on a balance of probabilities that they have been in possession of the lands for the requisite period of time for the doctrine of adverse possession to operate and the Court therefore dismissed the Claimants' claim."

19. The trial judge also dismissed the counter claim but gave no reasons for doing so.[8]

Overturning the Trial Judge's Findings of Fact

20. The Court of Appeal will overturn a trial judge's finding of fact when the trial judge has gone "plainly wrong". It does not mean that Court of Appeal sitting in the benefit of hindsight should simply feel confident to make another decision. It means that the decision under appeal must be shown not to be one open to any reasonable trial judge to find. There must be a logical analysis of the evidence in the trial judge's findings and if not, the Court of Appeal is required to identify a mistake in the trial judge's evaluation of the evidence that is sufficiently material to undermine the trial judge's conclusions. See **Beacon Insurance Co. Ltd v Maharaj Bookstore Ltd** [2014] UKPC 21 and **The Attorney General v Anino Garcia** Civil Appeal No.86 of 2011.

21. In this case while we have identified a number of errors in the trial judge's assessment of the evidence, we have also encountered the troubling difficulty in the Alis' case of their inability to prove the exact area of their continuous

[8] By Notice of Withdrawal and Discontinuance filed 30th June 2021 the Second and Fourth Respondents withdrew their cross appeal against the trial judge's dismissal of their counter claim.

occupation for the purpose of proving their claim in adverse possession. While the trial judge impermissibly took into account Exhibit "A" and failed to give credit to the Alis' witnesses' evidence of continuous usage of land for over 16 years, none of them could sufficiently identify the area under cultivation or its objective or spatial nexus with Lots 140 and 141.

The Impermissible Use of Exhibit "A"

22. Exhibit "A" ought not to have been admitted into evidence. Even if it was, the trial judge placed a disproportionate amount of weight on the document to the extent that it became a dominating feature in the Court's conclusion that the Alis failed to prove any intention to possess land in the Gran Couva area.

23. On the morning of the trial a supplemental list of documents was filed by Ms. Abrahim which consisted of: Caroni (1975) Limited Survey Sheet- Agricultural Land Tenancy No. 4144 dated 29th August 2010 and Data Collection Form-Former Agricultural Tenancies: Caroni (1975) Limited-Tenancy No. 51503 dated 27th April 2009. These documents were served on the Alis' attorneys minutes before the trial started. Counsel for the Alis objected to the documents. Counsel for Ms. Abrahim indicated that the documents were in the possession of Caroni Ltd and despite their attempts to obtain the documents to disclose it on time, they only received it two days before the trial. The documents were tendered into evidence as court Exhibit "A" and the matter was stood down for Counsel for the Alis to speak to them about the documents.[9]

24. In cross examination, Mr. Ali was shown that in the documents, his wife selected "No" in a box that stated "other land ownership details." He also noted that the address for the land location was Taitt Off Mission Road in Freeport consisting of 1.5 acres. Mr. Ali testified that the land referred to as

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[9] See pages 13-16 of the Supplemental Record of Appeal

being owned was his wife's land in Freeport and not in Gran Couva.

25. In cross examination, Mrs. Ali contended that her cane contract with Caroni Ltd dealt with all of her lands. However, when she was shown the Exhibit "A" documents which identified her land in Freeport she stated that she could not remember why she stated "no" to the question if she was occupying any other land and she did not know why she stated that. When questioned why she did not inform Caroni Ltd in this survey sheet about the other Gran Couva lands she stated that Caroni Ltd knew about the lands she occupied.

26. Exhibit "A" appeared to be a questionnaire generated by Caroni Ltd. However, the trial judge had given clear orders for standard disclosure to be given on or before 31st March 2017.

27. The filing of the supplemental list in January 2018 was made pursuant to rule 28.12 Civil Proceeding Rules (1998) ("CPR") which provides for a continuing duty to disclose documents which comes to the attention of the parties.[10] It also requires the party to immediately notify every other party when the documents come to their notice. While there is no rule requiring an application to be made for the filing of a supplemental list, there is a danger in the Court accepting belated excuses and evidence from the bar table as to the background to the disclosure of the documents when the documents are actually being relied on or produced at the trial. It is more so dangerous to accept such oral evidence from attorneys in the context of rule 28.13. CPR.

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[10] Rule 28.12 states:

> "Duty of disclosure continuous during proceedings
> 28.12 (1) The duty of disclosure in accordance with any order for standard or specific disclosure continues until the proceedings are concluded.
> (2) If documents to which that duty extends come to a party's notice at any time during the proceedings that party must immediately notify every other party and serve a supplemental list of those documents.
> (3) The supplemental list must be served not more than 14 days after the new documents have come to the notice of the party required to serve it.

28. Rule 28.13 CPR provides that a party cannot **rely on or produce any document** at the trial which was not disclosed prior to the date for the disclosure of documents as ordered by the court.[11] While there may be a continuous duty to disclose Exhibit "A", **the reliance and production** of that document at trial is different from its mere disclosure to the party that it exists. In this case rule 28.13 CPR imposes the express sanction against the Respondent in **relying on and producing** a document which was not disclosed prior to March 2017. Accordingly, as correctly conceded by attorney for Ms. Abrahim, an application for relief from sanctions ought to have been made to file a supplemental list of documents if the intention was to use those disclosed documents at trial.

29. In that context it was unfair and did not give effect to the overriding objective to spring such a document on a party on the morning of the trial which turned out to be critical to the Court's analysis.

30. Those days of tactical advantage are long gone. The entire purpose of standard disclosure is consistent with the overriding objective of ensuring that litigation is conducted with "cards face up" and not to encourage trials by ambush. If there is a growing practice of parties unexpectedly producing new documents to the other party on the morning of a trial without a proper application to do so, it is neither in keeping with the philosophy of the new rules nor is it a proper construction of the obligation to disclose documents pursuant to rules 28.12 and 28.13 CPR. In **The Chairman, Alderman, Councillors and Electors of the Region of Tunapuna/Piarco v Daryl Daniel** Civil Appeal No. P227/2020 it was noted:

> "17. Importantly, the pillars of the overriding objective of equality, proportionality, economy and fairness (see Part 1.1 CPR) underpin the

[11] Rule 28.13 (1) states:

> "28.13 (1) A party who fails to give disclosure by the date specified in the order may not rely on or produce any document not so disclosed at the trial."

disclosure process. It seeks to achieve a proportionate use of the party's resources both in limiting the scope of disclosure and keeping it under the court's active management. It reduces the cost of disclosure in making the process simpler such as by the filing of lists with certificates without the requirement to file an affidavit verifying the list. It maintains equality of arms and procedural justice by ensuring litigation is conducted with "all cards face up on the table", reducing surprises at trials and allowing parties to evaluate the strengths and weaknesses of their cases and encouraging settlement through advance knowledge and sharing of documentation and information in the possession of the parties. In **Davies v Eli Lilly & Co** [1987] 1 WLR 428, Lord Donaldson MR noted at 431:

> "In plain language, litigation in this country is conducted "cards face up on the table." Some people from other lands regard this as incomprehensible. "Why" they ask, "should I be expected to provide my opponent with the means of defeating me?" The answer, of course, is that litigation is not a war or even a game. It is designed to do real justice between opposing parties and, if the court does not have all the relevant information, it cannot achieve this object."

31. The danger in this practice is demonstrated in this case where such a document is introduced without parties having the opportunity to address them in preparing their case. It is then likely to be misunderstood as witnesses are not given a proper opportunity to explain the document or to place it in the proper context in light of the parties' case or the other evidence which was previously filed. It must be noted that the parties would have prepared for the trial on the basis that the parties had before them all the relevant documents for use at the trial.

32. It is no excuse that the attorney did not apply for an adjournment as the

philosophy of trial date certainty was to obviate the necessity for such adjournments and for parties to co-operate with the Court to give effect to the overriding objective. Not only did the trial judge admit it into evidence but placed undue emphasis on this exhibit to discredit the Alis. He stated:

> "24. The Court found that these documents were particularly instructive. When one looked at the documents in Court Exhibit 'A', they were signed by Mrs Ali in 2009 and 2010 and she specifically referred to lands only in Freeport as being her under her control. In the section of the form which specifically asked whether or not she was in possession of any other lands, she said no. In cross examination on this issue, she stated that she didn't know why she said that on the form. Mr and Mrs Ali testified that Caroni Limited would not entertain the purchasing of cane unless it was certain as to where the raw material was coming from and it was always Mr Ali's understanding that though not annually, Caroni Limited would conduct surveys to ascertain where the cane was planted. He also said that when one supplied Caroni Limited with cane, the tonnage would be recorded and although he accepted that he would have receipts and documents in his possession in relation to the payments made by Caroni for the cane, none of that information was put before the Court. The documentary evidence before the Court namely the form signed by Mrs Ali in Court Exhibit 'A' was inconsistent with her oral testimony."

33. However, the document properly construed simply demonstrated that the Alis were in possession of another parcel of land in Freeport which was subject to an agricultural tenancy. Taken in its proper context, the fact that the Alis had another parcel of land under cultivation should not be conflated to discrediting their story that they did have under cultivation lands in Gran Couva. To assess their evidence as to their occupation of lands in Gran Couva required an analysis of the other evidence in this case, namely, correspondence from

Caroni Ltd, the statutory declaration of Mr. Goolcharan[12] and the corroborating evidence of the witnesses Mr. Jogiesingh and Mr. Dookrie. Indeed, it was never put to those witnesses that the cultivation of cane which they observed at the Gran Couva property was in fact at the Freeport property. Neither was it submitted in the Court below that the use of land in 1982 to 2008 was in relation to the lands in Freeport and never in Gran Couva.

Assessment of the Alis' evidence on Adverse Possession

34. Taking the Alis' evidence as a whole it demonstrated that while they were able to establish a continuous presence in that area of Gran Couva for a continuous period of 16 years they were unable to identify their actual occupation corresponding to Lots 141 and 140.

35. Both parties accept that the onus is on the Appellants to establish factual possession and an intention to possess. See **JA Pye (Oxford) Ltd and another v Graham and another** [2003] 1 AC 419. They also accept that the relevant limitation provision is section 3 of the **Real Property Limitation Act Chap. 56:03** which sets out the relevant 16 year limitation period for actions for the recovery of land against an illegal occupant.[13] The question of a 30 year limitation period was not pursued in this appeal. The relevant period of occupation was from 1982 to 1998. The onus lay on the Alis to prove that they were in continuous possession of approximately 5 acres of land which included Lots 140 and 141 with the requisite intention for that period until 1998. If they

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[12] See page 279 of Record of Appeal, the statutory declaration of Mr. Goolcharan that he was cultivating lands between Bridge No. 1 and Bridge No. 2 along the Gran Couva Main Road since 1978 as a squatter. He also declared that he surrendered the land to the Alis since 1982 and he was aware that they were cultivating that land up to the date of his declaration in August 2011.

[13] "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."

were able to do so on the evidence, Caroni Ltd's title to those lands would have been extinguished in 1998 and it was incapable of leasing those lots to Ms. Abrahim and Mr. Canaan in 2011.

36. What constitutes possession of any particular piece of land must depend upon the nature of the land and its capable use. Acts of user which may imply possession vary with each case. As observed in **Roberts v Swangrove Estates Ltd and others** [2007] EWHC 513 (Ch):

> "The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow with a due regard to his own interests – all these things, greatly varying as they must, under various conditions, are to be taken into account in determining the sufficiency of a possession."

37. The Alis needed to prove that they had been dealing with the land in question as an occupying owner might have been expected to deal with it. Factual possession must be sufficiently clear that, if the owner was present on the land, he would appreciate that the squatter was dispossessing him.

38. In assessing the evidence of the Alis, the trial judge noted that even though the Alis stated in their witness statements that they were in possession of the subject lands, they did not furnish the Court with any documentary evidence to support their contention. The only evidence before the Court was their oral evidence that they were in possession. The document which they adduced from Caroni Ltd where they were paid money did not refer to any time period in the 1980s and 1990s but was around 2003 and showed that sugarcane was purchased from the Alis. He found that if they had a strong feeling of entitlement to the subject lands and were in actual occupation, this should have been reflected in the documents in Exhibit "A".

39. The trial judge failed to assess all the available evidence. First, he failed to

identify the relevant period of occupation for adverse possession was the period commencing 1982 to 1998. Any acts of the Respondents or observation made by the Respondents in 2011 and beyond are largely irrelevant as by that time if the Alis had a continuous presence until 1998, the title would have been extinguished.

40. Second, the testimony of the witnesses for the Alis was uncontradicted with respect to actual use of land by cultivation for the relevant period. With respect to the Alis' their evidence were largely unimpeached that they were cultivating the lands since 1982 in their own right both for cultivating cane and short crops.

41. Mr. Jogiesingh testified that he was familiar with the subject lands comprising 4 acres and had known the Alis to be in occupation of certain lands since the early 1980s. He observed Mr. Goolcharan and the Alis doing large scale planting on the subject lands to sell at the market. He observed tomatoes, cabbage, cucumber, melongene, patchoi and other short crops on the subject lands. When Mr. Goolcharan became a foreman he stopped going on the lands and the Alis began to plant sugar cane during crop time on the majority of the lands. He used to work with them on the lands occasionally. He testified that when Caroni Ltd closed down and large scale sugar cultivation ended in 2006, the Alis cultivated the lands with fruit trees and other short term crops. By then he stopped visiting the subject lands regularly but would still assist the Alis whenever they needed help on the subject lands. Two months prior to giving his witness statement, he saw the subject lands were fully planted with bearing fruit trees.

42. Mr. Dookrie testified that he was also familiar with the subject lands. He observed Mr. Goolcharan and the Alis planting crops on the subject lands. When Mr. Goolcharan stopped going on the lands in 1982, the Alis began planting sugar cane on the majority of the lands which they sold to Caroni Ltd.

When Caroni Ltd closed down, the Alis planted the lands with more fruit trees. Two weeks prior to his witness statement he observed that the subject lands were fully cultivated with fruit trees. He testified that he always knew the Alis to be in control of the lands.

43. They were not discredited in cross examination.

44. Third, it is not necessarily fatal to a claim for adverse possession if there are no corroborating receipts for pesticides and other agricultural products. The Court must assess the quality of the evidence and in this case the documentary evidence that was produced. The documents demonstrated an assertion of title for a 4-to-5-acre parcel consistently in Gran Couva from 1982:

    - Letter dated 20th May 2008- The Alis wrote to EMBD informing them that they were in undisturbed and peaceful occupation of the lands comprising 5 acres for over 20 years and would like to work out a lease arrangement.

    - Letter dated 15th February 2011- The Alis wrote to Caroni Ltd setting out their occupation of approximately 5 acres of land in Gran Couva for the past 30 years.

    - Letter dated 17th May 2011- The Alis wrote to EMBD to inform them that they have been in peaceful use and occupation of 5 acres of land in Gran Couva for more than 32 years and have continuously cultivated the said parcel of land.

    - Letter dated 24th February 2015- The Alis wrote to the Commissioner of State Lands informing him that they have been in occupation of 4 acres of land since 1978 and were promised that the lands they occupied would have been regularized and a Deed of Lease prepared in their favour.

- The statutory declaration of Mr. Goolcharan demonstrated at best the use of the lands for agriculture by the Alis.[14]

45. Fourth, the Alis' admission that Caroni Ltd was the owner of the lands or that they considered themselves licensees of Caroni was not fatal to their claim. See **JA Pye Ltd v Graham**. The intention required to prove a claim for adverse possession is one to possess not to own. "An admission of title by the squatter is not inconsistent with the squatter being in possession in the meantime."[15] In the context of this case occupiers of land whether licensees, squatters, tenants were all entitled to have their occupation regularized by Caroni Ltd. There was no evidence of any licence or tenancy for this area of land to the Alis and they continued to maintain their "squatter" status in their correspondence with EMBD to obtain a lease.

46. Despite these shortcomings in the trial judge's assessment of the evidence, there were a number of features of the Alis' evidence which threw doubt on their ability to prove that they actually occupied Lots 140 and 141 for the requisite period. In cross examination they admitted that they in fact had three areas of land under cultivation, one in Gran Couva and two others in Freeport. They also had no documents from Caroni Ltd save for the letter which corroborated their supply of cane to Caroni Ltd. The letter admittedly under cross examination did not only refer to cane from Gran Couva and was a material departure from the Alis' pleaded case. They were not aware of the

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[14] The Statutory Declaration of Paras Balram Goolcharan dated 22nd August 2011 [See S.A.1] state at paragraphs 1, 2 and 3:

> "(1) That I have been a Farmer/Gardener for a number of years and have been cultivating Caroni (1975) Ltd lands at the La Phillipine/Caracas Estate in the Ward of Montserrat, between Bridge #1 and Bridge #2 along the Gran Couva Main Road, Preysal Couva since 1978.
> (2) That at that period in time I had been classified as a "SQUATTER."
> (3) That, since I was unable to continue cultivating this said parcel of land, I readily surrendered or given permission to Mr. Shaffiath Ali and Mrs. Rosatine Ali to take occupation and cultivate the said parcel of land since 1982."

[15] **JA Pye (Oxford) Ltd and another v Graham and another** [2003] 1 AC 419, paragraph 46

actual acreage of the land said to be occupied by them, they claimed to have receipts for the sale of cane from the subject lands but failed to disclose it. The Caroni Ltd letter was not corroboration that 4 acres or 5 acres in Gran Couva was under their cultivation. Their supporting witnesses only referred to the Alis' land being 4 acres in size.

Identification of the Parcel

47. The burden is on the person in possession to prove his claim that he was in possession of an identifiable area of land and had the intention to possess. In **Inez Charles-Sergeant v The Attorney General & Anor** CV2017-00876 it was noted:

> "17. The evidence to be adduced to prove adverse possession must be logical, cogent and compelling. A typical aspect of the requirement to demonstrate such cogent evidence is the need to clearly demarcate the disputed land. This must not be left to speculation or guesswork for the Court to manufacture boundaries. The user must establish through tell-tale signs of usage the actual dimensions of the land being occupied."

48. A high standard of proof is required from a squatter. The Court will require clear and affirmative evidence of factual possession and intention to possess: "If his acts are open to more than one interpretation and he has not made it perfectly clear 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 requisite *animus possidendi* and consequently as not having dispossessed the owner."[16] The importance of boundaries is therefore quite relevant for any person seeking to claim a possessory title by adverse

[16] **Powell v McFarlane** (1977) 38 P & CR 452, page 472

possession.

49. In **Jourdan's, Adverse Possession**[17] the learned authors noted at paragraphs 9-106 and 13-30:

    "9-106 In order for a squatter's actions unequivocally to indicate an intention to possess land, that land must be clearly demarcated from other land which the squatter does not possess. The Courts have consistently treated the cultivation of land as amounting to possession, provided that there is a clear boundary marking out the extent of the land cultivated."

50. It cannot be left to the Court to speculate as to the identity of the parcel land that is the subject of a claim for adverse possession. In **Port of London Authority v Tower Bridge Yacht & Boat Co Ltd** [2013] EWHC 3084 Mann J noted:

    "If you cannot point out what land you are claiming adverse possession of, you cannot get a declaration that you are entitled to anything in particular…"

51. In **Robert Gormandy and Shaun Sammy v Trinidad and Tobago Housing Development Corporation** Civil Appeal No S375/2018 and P376/2018 it was noted:

    "62. In **Jobs v Alexander** Civil Appeal No.75 of 1987, Hamel Smith JA noted that the lack of precision with which the location of the parcel of land was fixed and the inconsistencies in the evidence of the Claimant's witnesses made it difficult to arrive at any findings of adverse possession.

    63. While therefore evidence of actual possession is a question of fact to be determined in each case based on the peculiarities of the land in

[17] Adverse Possession, Stephen Jourdan 2nd Edition (2010)

question, the onus always remains on the occupier to prove his acts of possession and the defined area of usage. Where he seeks to assert even a claim of "constructive possession" the area of land must be clearly demarcated or undisputed."……

52. In **Port of London Authority v Paul Mendoza** [2016] UKFTT 00887/ Ref 2011-0751 Mark J noted:

> "53. If a person is clearly and openly in adverse possession of an area of land an incorrect claim to a greater area does not prevent an application from being successful in respect of the more limited area, provided that that area can be defined with reasonable precision."[18]

53. While the Alis can prove their continuous presence in the locality of Gran Couva for over 16 years, the difficulty for them is that they were unable at the trial to prove their area of occupation with reasonable precision or more pointedly, that the land they occupied was in fact Lots 140 and 141.

54. First, the pleadings clearly demarcated the parcel of land that was said to have been continuously occupied by the Alis in Gran Couva. This is also repeated in the Alis' witness statements. That parcel of land is described as comprising approximately 5 acres situate along the Gran Couva Main Road at the La Phillipine/Caracas Estate, in the Ward of Montserrat between Bridge No. 1 and Bridge No. 2 and bounded on the North by the Savonetta River, on the South by another river, on the East by lands occupied by Dolly Mohan and on the West by the Gran Couva Main Road. This description, however, does not

[18] On appeal in **Port of London Authority v Paul Mendoza** Appeal Number UT/2016/0029 [2017] UKUT 0146 (TCC) the Court held that the Appellants were not successful in challenging the judge's finding of factual possession of the smaller area of land but that there was insufficient evidence for the judge to make a finding on intention to possess.

correspond to the boundaries of either Lots 140 or 141 as described in the deeds of lease[19]. Further, Counsel for the Alis admitted that the survey plan of Lots and 140 and 141 do not show the Savonetta River as the Northern Boundary nor is there another river as the Southern Boundary. No attempt was made by Counsel for the Alis either in the Court below or before this Court to amend its pleadings to clarify the proper boundaries of the area being claimed by them.[20]

55. Second, the contemporaneous letters written by the Alis and on their behalf vacillated in setting out the acreage of their actual occupation as between 4 acres or 5 acres of land.

56. Third, the Alis did not conduct a use and occupation survey of their lands in Gran Couva nor is there a sketch of the lands prepared by them in these proceedings that is referrable to any existing survey. The only reference points on the ground used by the Alis to define their occupation were Bridges No 1 and No 2 along the Couva Main Road which are not reflected in the survey plan in these proceedings. No one was able to identify in their testimony the location of those bridges in relation to Lots 140 and 141.

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[19] Lot 140 is described in Deed of Lease dated 2nd June 2011 as "All and Singular that certain piece or parcel of land situate in the Ward of Montserrat in the Island of Trinidad comprising ZERO POINT EIGHT SEVEN NINE NINE HECTARES (0.8799 ha.) bounded on the North by a Road Reserve 11.0 meters wide on the South by State Lands on the East by Lot No.141 and on the West partly by State Lands and partly by a Road Reserve 11.0 meters wide and which said piece or parcel of land is delineated coloured pink and shown as Lot No. 140 on the General Plan marked "A" annexed to Deed of Lease registered as No. DE201102158101D001."

Lot 141 is described in Deed of Lease dated 6th June 2011 as ""All and Singular that certain piece or parcel of land situate in the Ward of Montserrat in the Island of Trinidad comprising ONE POINT ZERO FIVE FIVE SEVEN HECTARES (1.0557 ha.) bounded on the North by a Road Reserve 11.0 meters wide on the South by State Lands on the East partly by a Road Reserve 11.0 meters wide and partly by State Lands on the West partly by State Lands and partly by Lot. No. 140 and partly by a Road Reserve 11.0 meters wide and which said piece or parcel of land is delineated coloured pink and shown as Lot No. 141 on the General Plan marked "A" annexed to Deed of Lease registered as No. DE201102158101D001."

[20] See pages 29-33 of the transcript of the proceedings before the Court of Appeal

57. Fourth, the survey conducted by Caroni Ltd was objected to by the Alis and was done for the purposes of allocating lands to beneficiaries of VSEP packages and not to show any area of occupation by the Alis. There is no evidence as to the circumstances in which this survey was commissioned or prepared. No expert was called to identify or clarify the boundaries with reference to the markers of the Alis of the two bridges and the Savonetta River. More importantly, the survey plan is the product of an expert. There is no evidence as to the surveyor's intention in conducting the survey, any observation of his as to the Alis' alleged occupation of any portion of lots 140 or 141, nor was he asked to search for any of the Alis' "markers" of occupation of the two bridges. In light of the requirement of Part 33 CPR in the admission and use of expert reports, it will be ill advised for a Court to rely on the testimony of a lay person's conclusions or opinions with respect to an expert's survey plan.

58. Fifth, the dimensions of the approximate 5-acre parcel in the claim and Lots 140 and 141 are irreconcilable. Even if a declaration is given in terms of the relief sought, how will that affect the title to Lots 140 and 141? It was admitted by Counsel for the Alis that the Northern or Southern boundary of Lots 140 and 141 is not a river. In fact, the Savonetta River is further to the East of both lots. The Western boundary is indeterminable as it is uncertain where the lands of Dolly Mohan was situated. While the Couva Main Road appears as partly the Eastern boundary of Lot 140, that main road is a long road travelling North to South and is the boundary for a larger parcel of State lands.

59. Sixth, neither of the witnesses for the Alis were able to point out the boundaries for the land which was consistent with Lots 140 and 141. They could not say that the Respondents were actually laying claim to the same land that they saw the Alis cultivating over the many years.

60. Finally, the statutory declaration of Mr. Goolcharan did not provide any

dimensions or boundaries of the parcel of land which was cultivated by the Alis.

Conclusion

61. We have given anxious consideration as to whether a smaller portion of land than that sought in the declaration should be granted, however, there is insufficient evidence to identify the actual coordinates or the parcel said to be occupied by the Alis and their relationship with Lots 140 and 141.

62. The appeal is therefore dismissed.

63. We will hear the parties on costs.

Vasheist Kokaram
Justice of Appeal