

SCB

Judgement Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

SUIT NO. E. 249 OF 2001

BETWEEN	CYNTHIA COWELL	CLAIMANT
AND	VIVIAN WATKIS	DEFENDANT

Keith Bishop instructed by Keith Bishop & Co. for claimant.

Mrs. Jacqueline Cummings instructed by Archer & Cummings for defendant

Heard: July 1<sup>st</sup> November 22<sup>nd</sup> 2004 and December 12, 2005

JONES, J.

[1] Cynthia Cowell is annoyed. She claims Vivian Watkis has trespassed on her land, and refuses to leave. She says she is entitled to the land as executrix of the Estate of Seaford Watkis, her uncle, who had obtained Letters of Administration for the Estate of Samuel Watkis. Vivian Watkis tells a different story; he claims he is legally entitled to the land by way of inheritance or adverse possession. Vivian Watkis says that Samuel Watkis was the original owner of the land jointly with his sister Rosella Watkis. His claim to the land is through Rosella Watkis who, he says, was his great grandmother. He says that he was raised by his grandmother who lived on the land, and that he has lived there all his life. Whatever the rights and wrongs in relation to the issue of inheritance or adverse possession, plainly, little love is lost between these two family members. The nub here is entitlement to inherited property.

[2] The following facts are not in dispute:

- a) That Samuel Watkis owned land situate at Lewis District in the parish of Saint Ann.
- b) That Samuel Watkis did not live on the property alone. Other members of his family lived there throughout the years.
- c) That Samuel Watkis had three children, namely, Zipporah Watkis, Seaford Watkis and Jefta Watkis.
- d) That Seaford and Jefta had no children and were never married.
- e) That Cynthia Cowell, is the daughter of Zipporah Watkis
- f) That Samuel Watkis died intestate and was buried on the land in St Ann in August 1946.
- g) That Seaford Watkis obtained Letters of Administration for the Estate of Samuel Watkis in April 1959.
- h) That Seaford Watkis died intestate in March 1986 and that Cynthia Cowell obtained Letters of Administration for his Estate in June 1995.
- i) That Cynthia Cowell attempted to survey the land on three occasions during 1996 and 1997 but was prevented from doing so on all occasions.
- j) That in 1997 Cynthia Cowell instructed an attorney to write to Vivian Watkis and thereafter to serve him with Notice to Quit.

- k) That in 1998 Cowell sued Vivian Watkis for recovery of possession in the Resident Magistrate's Court and that the action in that court was subsequently discontinued. The present matter was commenced in the Supreme Court in June 2000.
- l) That Vivian Watkis and his relatives have been living on the land and have been living there for a considerable period of time.
- m) That Vivian Watkis caused the land to be surveyed in 1991.
- n) That Cynthia Cowell has never given permission to Vivian Watkis to live on the land.

[3] The case for Cynthia Cowell is based mainly on the documents she exhibits and the testimony she provides. She leaves the court with some unanswered questions. Her claim rests on the Letters of Administration for the Estates of Samuel Watkis and Seaford Watkis and on the fact that Samuel Watkis was her grandfather. She has never met Samuel Watkis and cannot say whether or not he had a sister named Rosella Watkis who lived on the land. She says that she does not know Vivian Watkis, nor is he related to her in anyway. However, she admits that she has never lived on the land and cannot say who lived there during Samuel Watkis' lifetime or anytime before 1994, which she says, was the first time that she visited the land. She also cannot say how long Vivian Watkis has been living on the land nor can she say whether or not his occupation was interrupted or continuous.

[4] Vivian Watkis has made a more compelling case in terms of his evidence. He also leaves the court with some unanswered questions. He says that Samuel Watkis was

married to Jane Watkis who lived on the land and predeceased her husband. From this evidence, it can be inferred that she was not the mother of his children. This inference is supported by Cynthia Cowell who says that her grandmother was Rebecca Watkis. It is curious that Vivian Watkis does not know of any one by the name of Rebecca Watkis and Cynthia Cowell does not know Jane Watkis and has never heard of her. Further, Vivian Watkis says that Rosella Watkis had three children, one of whom was his grandmother, Melvina Wisdom. Melvina had a number of children including his mother Agatha Martin. Cynthia Cowell admits to having met Melvina but denies that they are related although she admitted that she knew that Melvina was living on the land in Lewis District.

[5] Vivian Watkis states that a part of the land was sold by Samuel Watkis to persons unknown and that Samuel's wife, Jane, sold another part of the land to Charles McKenzie. He says that he is living on and is the owner of the part of the land that was sold to Charles McKenzie. He says that after his grandmother, Melvina Wisdom, died the land was put up for sale by the Eastern Saint Ann People's Co-operative Bank for an outstanding mortgage in the name of Charles McKenzie. His grandmother was making the payments after he, Charles McKenzie, died. He visited the bank, paid off the balance and exhibits a receipt from the repayment of the mortgage.

[6] Cynthia Cowell describes the land in question to be approximately five acres, while the survey commissioned by Vivian Watkis states that the land is less than one acre. The discrepancy could be the result of the sales of land referred to by Vivian Watkis. However, he has not provided any proof of the sales. Also, since it is obvious from Vivian Watkis' case, that he knows all of his neighbours, his assertion that he does not know who the rest of the land was sold to is hard to accept.

[7] Vivian Watkis further alleges that at the time of his death, Samuel Watkis no longer owned any part of the land. This, he says, is as a result of the sale of the land to persons unknown and also to Charles McKenzie. Vivian Watkis produces an indenture from Jane Watkis to Charles McKenzie but was unable to say how Jane was able to sell the land, as she was never reputed to be the owner. Further, although Vivian Watkis asserts that the land has always been less than an acre as far as he is aware, he is not in a position to dispute Cynthia Cowell's assertion that the land owned by Samuel Watkis was in fact five acres. His evidence was that he planted crops on the land and has been paying the land taxes at least since the time of his mother's death in 1977. He says that he has been paying them since 1964.

[8] In support of his case, Vivian Watkis produces a number of witnesses who have each known the land for more than fifty years. These witnesses testify that Seaford Watkis never lived on the land, nor has he exercised any rights of ownership or control over the land. Their testimony finds support in the documents exhibited by Cynthia Cowell in which Seaford Watkis' address is given as in the parish of Kingston & Saint Andrew and not in St Ann. The witnesses testify that rights of ownership and control over the land were exercised by Melvina Wisdom, then by her daughter, Agatha Martin, and now by Vivian Watkis. They say that Vivian Watkis and his family before him had erected buildings on the land and that he had even provided a home for a member of the community who had become homeless.

[9] On the other hand, Cynthia Cowell contends that the witnesses called by Vivian Watkis all have an interest to serve. She says that their evidence should be treated with

caution, as all with the exception of one are relatives of Vivian Watkis and they either live on the land now or have lived on the land at some time.

[10] From these facts, the central issue to be decided is -- notwithstanding Cynthia Cowell's claim as executrix in the Estate of Seaford Watkis -- whether or not any right she may have to recover possession of the land is barred by the Limitation of Actions Act? A decision on this point will resolve the issue of who has superior title; whether either party is liable for trespass; and whether the innocent party may recover damages for that trespass.

[11] Section 3 of the Limitation of Actions Act provides that no person may bring an action for the entry and recovery of possession of land after twelve years from the time at which the right of entry and recovery accrued. The effect of the statute is that the true owner of land who has not enforced his rights within twelve years will be barred from making any claim against a person in adverse possession and his title will be extinguished. The person in adverse possession will have the best claim to the land and, accordingly, will be able to obtain title by registration or by simply remaining in possession. In the recent case of **J A Pye (Oxford) Ltd & Another v Graham & Another**, the House of Lords once again revisited the issue of adverse possession. Lord Hope of Craighead stated that<sup>1</sup>:

"The context is that of a person bringing an action to recover land and who has been in possession of land but has been dispossessed or has discontinued his possession. His right of action is treated as accruing as soon as the land is in the possession of some other person in whose favour the limitation period can run. In that sense, and for that purpose, the other person's possession is adverse to his...Once possession has begun, as in the case of the owner of land with a paper title, who has entered into occupation of it; his possession is presumed to continue. But it can be transferred from one person to another,

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<sup>1</sup> [2003] 1 A.C. 419 at pp. 445- 446

and it can also be lost when it is given up or discontinued. When that happens, possession can be acquired by someone else. The acquisition of possession requires both intention to take or occupy the land "animus" and some act of the body "corpus" which give effect to that intention. Occupation of the land alone is not enough, nor is an intention to occupy which is not put into effect by action....If the evidence shows that the person was using the land in the way one would expect him to use it if he were the true owner, that is enough."

[12] On the issue of the person in possession of the land maintaining an action in trespass, Lord Browne-Wilkinson adopted the following statement of the law by Slade J in **Powell v McFarlane**:<sup>2</sup>

"Possession of land...entitles the person in possession, whether rightfully or wrongfully, to maintain an action for trespass against any other person who enters the land without his consent unless such other person has himself a better right to possession."

[13] It is plain that a person in possession of land may sue for trespass if he has a better title to the land in question than a trespasser. Possession is proved not only by the intention to possess but by factual possession. One must treat the land as their own and exercise the incidents of ownership over the land. This does not necessarily mean that the 'adverse possessor' must have the intention to own but that he must have the intention to occupy the land and to exclude others from the land: See **Archer et ux. v Georgiana Holdings Ltd.**<sup>3</sup>

[14] In this case, Vivian Watkis is in possession of the land. It is not contested that he has been paying the taxes for the land, building on the land, determining who lives on the land, occupying the land himself and excluding outsiders from the land, including Cynthia Cowell

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<sup>2</sup> Already cited at page 432

<sup>3</sup> [1974] 21WIR 431

and her surveyors. Vivian Watkis has never sought permission to live on the land nor has he been granted such permission; his occupation has been open and adverse. According to his evidence and that of his witnesses, he has been living there and operating in the manner outlined above for more than twelve years. Cynthia Cowell is in no position to disprove his assertion that he has been in undisputed and undisturbed occupation of the land for more than twelve years. Although Cynthia Cowell has produced the Letters of Administration acquired by Seaford Watkis in relation to the Estate of Samuel Watkis, she has no evidence that any steps were taken by him in relation to the land. She has only taken steps in relation to the land after 1995. In light of all of the above, Cynthia Cowell is unable to show that she has a better title to the land than Vivian Watkis. It is irrelevant how many acres the land is actually, because any title she acquired to the land as administratrix of the Estate of Seaford Watkis, this title, has on the evidence, long since been defeated by the current occupiers of the land. Cynthia Cowell, having admitted that Vivian Watkis' grandmother had been living on the land and she not being able to prove that Seaford Watkis was living on the land or had acquired any title to the land, must fail in her claim.

[15] On the evidence of Vivian Watkis, on three occasions while he was in possession of the land, Cynthia Cowell entered onto the land in an attempt to have it surveyed. On each occasion, he refused permission. This fact was corroborated by Cynthia Cowell. In order to maintain an action in trespass, there is no requirement that there should first be proof of damage: See **Yellooly v Morley**<sup>4</sup>. Proof of actual damage would go to the amount of damages awarded. In this case, the trespass was trivial, as neither the land nor Vivian

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<sup>4</sup> [1910 27 T.L.R 20



Watkis suffered any actual damage. For that reason, the award of damages ought to be nominal.

[16] Accordingly, for the reasons I have given, there shall be a judgment for Vivian Watkis on the claim and his counterclaim in the following terms:

- a) Declarations that Vivian Watkis is the owner of the land situate at Lewis District in the parish of Saint Ann, and neither Cynthia Cowell nor the Estate of Samuel Watkis is entitled to the land.
- b) That Cynthia Cowell be restrained by injunction from entering upon the land situate at Lewis District in the parish of Saint Ann without the consent of Vivian Watkis, and from harassing or removing him and his relatives who are in occupation of the land.
- c) Damages for trespass assessed in the sum of \$50,000.00
- d) Cost to Vivian Watkis on the claim and his counterclaim in accordance with CPR 2002.