



[2021] JMSC Civ 38

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2017HCV01242

BETWEEN	KIKALOMA INGRAM	CLAIMANT
AND	VENTLEY JAMES	DEFENDANT

IN CHAMBERS

Ms Petrina Williams instructed by Zavia Mayne & Co. for the Claimant

Mrs Judith Cooper Batchelor and Miss Sarah-Elizabeth Dixon instructed by Chambers Bunny & Steer for the Defendant

Claim for declaration of entitlement to property by ‘Adverse Possession’

Heard: July 14, 21 and 28, 2020 and February 18, 2021

LINDO, J.

Background

- [1] The property which is the subject of this claim is described as ‘All that parcel of land part of Cumberland Pen known as Passagefort being part of Independence City in the parish of Saint Catherine being Lot numbered 466’. It is comprised in Certificate of Title registered at Volume 1127 Folio 687 of the Register Book of Titles. The property consists of a single storey, single family dwelling house. The civic address is 29 Hallandale Drive West, Passagefort, Portmore, Saint Catherine.
- [2] The background to the case and the ownership of the property dates back to 1976 when Mr James and his wife Margie purchased the property. The Transfer No.

341968 dated 18th February, 1976, is noted to Ventley Noel James and Margie Fay James, as joint tenants.

- [3] Ms Ingram a Nail Technician resides at the property with her children. She contends that she resided at the property with her mother from she was a child, her mother has since died, and she has remained in sole, undisturbed possession of the property from 2003.

The Claim

- [4] On April 11, 2017, Ms Ingram filed a Fixed Date Claim Form which she later amended. The Amended Fixed Date Claim Form was filed on December 11, 2018. Ms Ingram claims the following:

1. *A declaration that the Claimant, KIKALIMA (sic) INGRAM is the owner by way of adverse possession and is entitled to possession pursuant to Section 85 of the Registration of Titles Act of ALL THAT PARCEL OF LAND located at Lot No. 466 Hallandale Drive West, Passage Fort, Portmore, in the parish of Saint Catherine.*
2. *An order that the Registrar of Titles issue a new certificate of title to the Applicant and amend the registered (sic) Book of Titles to reflect the said KIKALOMA INGRAM as the legal owner of ALL THAT PARCEL OF LAND located at Lot No. 466 Hallandale Drive West, Passage Fort, Portmore, in the parish of Saint Catherine.*
3. *In the alternative, an Order that the Defendant compensate the Claimant for improvements made to ALL THAT PARCEL OF LAND located at Lot No. 466 Hallandale Drive West, Passage Fort, Portmore, in the parish of Saint Catherine.*
4. *Such further and/or other relief as the Honourable Court deems just.*

- [5] The claim is supported by her affidavit filed on the 11th day of April, 2017. She states that she began living at the property in the 1980s with her mother and two sisters and that her mother died in 1997, her eldest sister moved from the property in 1999, and in 2003 her other sister left the property. She adds that since 2003

she has been living alone at the property with her three children and she has exercised all acts of ownership over the property and her possession has been “open and undisturbed”.

- [6] She also states that she has carried out major improvements to the property and these were done at her sole expense “*on the basis that [she] was treating the property as [her] own.*”

The Defendant’s Case

- [7] On September 9, 2019, Mr Ventley James filed an affidavit in response to the claim. To this affidavit he exhibited copies of the following: the registered title to the property, receipt showing payment for property taxes in 2012, valuation report dated June 12, 2012, unsigned letter dated July 12, 2012, notice to vacate premises dated December 17, 2012, and receipt dated December 3, 2012, showing payment in respect of ‘Bailiff’s fee serving notice to quit’ and receipt for ‘legal fees on account suit recovery of possession’.
- [8] He states that the property was purchased by his former wife, Marjie, and himself, with the assistance of a mortgage, which was discharged in 1994 and that in 1988, while living overseas, along with Marjie, they allowed Pansy, the sister of Marjie, and her three children to occupy the property until they were ready for it and they did not ask her to pay rent. He says while overseas, they called Pansy on several occasions and asked her to vacate the property.
- [9] Mr James says he returned to Jamaica in 1996, wanted to move into his house and Pansy was made aware. He adds that Pansy died in or around 1997 and he went to the house, before her funeral, and was accused of causing her death by telling her that he needed the house.
- [10] He denies that since 2003 the Claimant has exercised acts of ownership over the property and says he did not give her any permission to do any improvements and that she said something to him about renovations and he told her she could not do

anything without his permission. He also says he has been paying property taxes and has spoken to her several times about leaving his house and had his attorney write to her to ask her to leave.

[11] He adds that in 2012, Ms Ingram said she wanted to purchase the house and he caused a valuation to be done and offered the property to her for \$6.8m, but she did not take up the offer and in December 2012, he had his attorneys send her a notice to quit. He says he took steps to recover possession of the property, they went to court on several occasions and that in 2016 he took out proceedings in the Saint Catherine Parish Court for recovery of possession and got very ill and was unable to continue without help. He states further that he decided to withdraw his application at the Parish Court because of the lengthy delays and wanted to restart at the Supreme Court and the Claimant served the instant claim on him.

[12] He also says he is unable to locate original receipts and documents as they have been misplaced.

The Issue

[13] The sole issue in this case is whether Ms Ingram has exercised such control over the property to the exclusion of the title holders that she has dispossessed them of their interest in the property.

The Trial

[14] At the trial, the affidavits of the parties stood as their evidence in chief and they were cross examined.

Claimant's Evidence on cross examination

[15] Ms Ingram stated that she knew Mr James when she went to the court in Spanish Town and that she knew of Margie, but that she was not aware they gave her mother permission to live at the property.

- [16]** She said she was born in 1979 and was about 8 or 9 when she went there to live with her mother and siblings and that she did not, at any time think her mother owned the house. She then said she discovered her mother did not own the house in 1999 when her sisters moved out.
- [17]** She denied ever being served with a notice to quit, denied that a valuator came to the house to do a valuation and also denied ever thinking of purchasing the property. She said prior to going to court in Spanish Town, no one had spoken to her about leaving the property and she had not heard that they were living at the property with the consent of Mr and Mrs James.
- [18]** Ms Ingram said that after her mother died, Mr James did not visit the house. When asked if she had a discussion with anyone about compensation for work she said she did on the house, she said that was when he took her to court. She also said before then, she did not think she deserved compensation for any work she did. She said her sister and herself were paying the property taxes up to 2017, and she had no proof, but agreed that in 2012, property taxes were paid by Mr James.
- [19]** She said she was not served with a summons to attend court and that it was “taped to the grill at the house” and that when she went to court, it was the first in her life she was seeing Mr James, and she had never spoken to him or any agent of his before that time.
- [20]** She also gave evidence in cross examination that one of her sisters died in 2013, while she was living at the house, and that she did not know her aunt, Mrs James well, and discovered that Mr James was part owner of the property in 1999, when she started paying the bills. She said her mother never discussed how she came to be living at the house and she was never curious about how she came to be living there. She insisted that she got no notice to quit, and stated that she did not know if her mother ever paid rent to Mr or Mrs James. She also indicated that she is unable to say whether her mother and siblings were there with the permission of Mr James.

Defendant's Evidence on cross examination

[21] When cross examined, Mr James said he had no proof in writing of the agreement for Pansy to occupy the property in the 80s and admitted that since 1988 he has done no renovations or maintenance work on it. He said Ms Ingram indicated that she did improvements on the property and he did not know whether or not that was true but he told her not to do so. He stated that he became blind in 2006 when he got a stroke.

[22] He admitted that she took over the property as if she was the owner and said that she did not ask his permission to do anything and that the conversation he had with her about the need for permission to do renovations was on the phone. He then said that she did not say anything about renovation and later admitted that, where, in his affidavit, he said this, the information is incorrect.

[23] He stated that he believed he paid taxes before 2012 and when it was suggested to him that he paid in 2012, only, he said he believed he paid some of them. He also said Ms Ingram told him she paid taxes and he denied that the only reason he paid taxes in 2012 was because he had plans to sell the property. He also said he has paid property taxes since then but has no proof, as he has to look for them.

[24] He said Richard Nevers was the attorney who was corresponding with Ms Ingram about the property and he repeated that he had plans to sell the property and asked Ms Ingram if she wanted to buy it. When asked if he also had plans to live there, he said he had not completely made up his mind, as he and his wife discussed it, he wanted to live there but she did not plan to come back and she wanted to sell it to take care of medical bills.

[25] He admitted that it was not Ms Ingram who approached him about selling the property, but that it is true that she offered to purchase it and that the valuation he caused to be done was because he and Margie decided to sell it. He then insisted that Ms Ingram had a conversation with him about purchasing the property and said that as she was living there for so long it was fair to give her the choice of

buying it. He said he was not present when the valuator went to the premises and agreed that several persons came and although Ms Ingram did not want to let them in, she eventually did, and the valuation was done.

[26] He said he offered to sell Ms Ingram the property by a letter, and he did not sign it but he personally gave it to her. When pressed, he said he told her he was offering to sell the house to her, but just had the discussion on the phone, and she did not respond to him. He agreed that the notice to quit was through his attorney and said he had no proof that the notice to quit was served on her. In further response to Counsel he said he did not know what a notice to quit was. He disagreed that he withdrew the application to recover possession of the property in the Parish Court because he had no evidence and said he intended to start the matter again.

[27] Mr James indicated that since 1997 he has been to the property, as he lives close and he has to pass there. He then agreed that between 1997 and 2016 he has not been to the property. When it was suggested to him that it took him 21 years to go to court, he said he tried from in the 90s, and when asked if the valuation was done in 2012, and he had a conversation with Marjie in 2013, whether that would be correct, he said he did not 'quite remember' the actual date, but in 2016 he spoke to her about selling the property.

The Submissions

[28] Counsel for the parties provided written submissions to the court on the law relating to the subject matter, and in support of their client's position. I will not restate them but will make reference to such aspects as I see necessary to indicate my reasons for the decision arrived at.

The Law and Application

[29] **Section 85 of the Registration of Titles Act**, the law pursuant to which the claim for a declaration is said to be made, states as follows:

“Any person who claims that he has acquired a title by possession to land which is under the operation of this Act may apply to the Registrar to be registered as the proprietor of such land in fee simple or for such estate as such person may claim”

- [30] There is however no evidence presented to the court to show that Ms Ingram has made an application to be registered as proprietor of the property.
- [31] For a successful application to be made to acquire title to property by adverse possession, the authorities clearly establish that the applicant must demonstrate a sufficient degree of factual possession and intention to possess, (*animus possidendi*), to prove clear and unequivocal possession of the property to the exclusion of all, including the paper owner. An applicant must show open, continuous and undisturbed possession for the prescribed period without acknowledging the title of the true owner. (See **JA Pye (Oxford) Limited and Ors. v Graham & Another** [2002] UKHL 30)
- [32] According to Lord Walker, in the Privy Council case of **Wills v Wills**, (2003) 64 WIR 176, which approved and applied the case of **Pye**, the expression “adverse possession” now means *“that sort of possession which can with the passage of years mature into a valid title that is, possession which is not by licence and is not referable to some other title or right”*
- [33] The issue in the case of **Pye**, was whether the Claimant’s action had been barred by the **Limitation Act 1980** which provided that no action to recover land could be brought after the expiration of twelve years from the date on which the right of action accrued. Lord Hutton expressed the view that if a squatter does everything which an owner of the relevant land might be expected to do, that will normally be viewed as establishing that intention, unless the Claimant with the paper title can adduce evidence pointing to a contrary conclusion.
- [34] Factual possession signifies an appropriate degree of physical control. It must be a single and exclusive possession although it is possible for two or more persons, simultaneously, to acquire title in common or jointly, by adverse possession, since

there can be a single possession exercised by or on behalf of several persons jointly. (See: **Powell v Mcfarlane** (1977) 38 P&CR 452).

- [35] In **Powell v McFarlane**, *supra*, it was pointed out that the question of what constitutes exclusive control, depends on the circumstances of the case. Slade J, expressed *animus possidendi*, thus:

“The intention in one’s own name and on one’s own behalf to exclude the world at large, including the owner with the paper title in so far as is reasonably practicable...”

- [36] **The Limitations of Actions Act, Sections 3 and 30**, are applicable to the instant case, as submitted by both Counsel. The sections provide as follows:

“3. No person shall make entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same”

30. At the determination of the period limited by this Part to any person for making an entry, or bringing an action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished.

- [37] These two sections show that if the true owner of property fails to assert his title to the property and it is possessed by another, the true owner may lose his right to recover the property if the person has been in possession and occupation for at least twelve years.

- [38] In the case of **Recreational Holdings (Jamaica) Limited v Lazarus and the Registrar of Titles** [2014] JMCA Civ 34, Morrison JA (as he then was) at paragraph 55 of the judgment, stated, *inter alia*:

“... ‘adverse possession cannot be claimed by a person whose possession was obtained and continued by virtue of the consent, grant or otherwise from the true owner ...’. The important factor on all the authorities is that ... in order to ground a claim for adverse possession, must be (i) inconsistent with and in denial of the title of the true owner; and (ii) such that the owner is entitled to recover possession against the squatter.”

- [39] The onus of proving acquisition by adverse possession is on the person asserting such a possessory title and therefore Ms Ingram needs to satisfy the court on a balance of probabilities that the registered title holders were dispossessed by her.
- [40] Ms Ingram has been on the property from the 1980s. She is a child of the person to whom I find, permission was given to reside there. She is said to have attained the age of majority in 1999. Although she has sought to evince an intention to own the property, that intention would have to be complemented by a corresponding period of at least twelve years of continuous, factual possession. In that regard, it was submitted on her behalf that she would have been “in open undisturbed and unmolested occupation” from 1999, after the death of her mother.
- [41] It is clear that Ms Ingram continued to use the property for the same purpose as intended by the Defendant when her mother was allowed to reside there. There is no clear evidence from Ms Ingram of the mental element which would tend to establish that she did not believe, or that she no longer believed, that Mr James and his wife owned the property.
- [42] I find on a balance of probabilities that there was in place, a family arrangement in which the sister of one of the joint registered proprietors was allowed to reside at the property with her children. The grant of exclusive possession of a property in such an arrangement has been held to confer no more than a licence on the occupant (See: **Errington v Errington & Woods** [1952] 1 KB 290).
- [43] I therefore find on the evidence, that the mother of Ms Ingram, was given a licence to occupy the property under the arrangement between herself and Mr James and his former wife, Margie, as they were family members. Although it is not denied that Ms Ingram started living at the property as a child along with her mother and siblings, she has not given any clear evidence as to the circumstances under which she came to be residing there, and has said she never had any conversation with her mother or siblings with regard to same. I believe the evidence of the Defendant that her mother was permitted to live there by himself and his former wife. While

Pansy had possession under those circumstances, such possession would not have had the requisite ingredients to establish that she was occupying “adverse” to the registered title holders.

[44] It would follow therefore, that a person, such as the Claimant, occupying in circumstances where possession was given in a family arrangement cannot acquire title by adverse possession (See: **Cobb v Lane** [1952] 1 All ER 1199).

[45] However as the Claimant was a minor at the time she started residing there and no evidence has been led from which I can find that she was “part and parcel” of that arrangement, as has been suggested, I find that the licence granted to her mother would have come to an end at her death. Additionally, I have no reason to doubt the evidence of Mr James that prior to Pansy’s death he tried to recover possession from her or that he went to the property at the time of her death and was accused of causing her death by telling her he wanted the house.

[46] Ms Ingram and her siblings remained on the property after the death of her mother. Her continued occupation of the property in my view, would be that of a squatter and as such, she could have ‘dispossessed’ Mr James and his wife, provided the requisite time had elapsed and she could show factual, single and exclusive possession, as well as the intention to possess. I agree with her Counsel that the computation of time for her to make a claim for adverse possession, time would start to run in 1999.

[47] Her evidence is that in 2003 her other sister left the property. However, it was under cross examination, that Ms Ingram disclosed that there was another sibling who was also living at the property with her mother, and who remained there until 2013, when she died. I therefore find that from the time her mother died to at least 2013, when her sibling died, she was sharing occupancy with others. It would therefore not be until 2013 that Ms Ingram would have been in sole and exclusive possession of the property.

- [48] There is no evidence presented by the Claimant to show that her occupation up to 2013 was single and exclusive possession, exercised by her siblings and herself, jointly, for themselves and on their own behalf without regard for the interest of the title holders and there is no evidence as to her state of mind that demonstrates an intention to possess the property for her own use and benefit and to share it with her sister or sisters for that matter. I therefore find that it would not be until 2013 that Ms Ingram would have been in sole and exclusive possession of the property so that she could have brought an application for a declaration that she had dispossessed Mr James and his wife.
- [49] An issue during the trial was whether there had been oral communication between Pansy and Mr James, and between the Claimant and Mr James subsequently. In cross examination, Mr James stated that he asked Ms Ingram if she wanted to purchase the property. She consistently denied that she had ever had any discussion with Mr James indicating that the first time in her life she was seeing him was when she went to court and that she had never spoken to him. I however, reject her evidence that she had no interaction with the Defendant in relation to the purchase of the property.
- [50] I find on a balance of probabilities that there were discussions between himself and Ms Ingram in relation to the sale of the property to her, and that a valuation of the property was done by AC Realty Company on June 9, 2012. (See Exhibit VJ3).
- [51] I do not find that the Defendant's failure to take any steps towards having his interest recognized before 2012, when he had the notice to quit served on her, shows any indication that he was relinquishing his interest in the property.
- [52] In **Ocean Estates Ltd v Pinder** [1969] 2 AC 19, Lord Diplock, at paragraph 25 noted as follows:

“the slightest acts by the person having title to the land or his predecessors in title, indicating his intention to take possession are sufficient to enable him to bring an action for trespass against a defendant entering upon the land without any title...”

- [53]** Mr James has shown an intention to take possession of the property even prior to the death of Pansy and I believe it to be true that he was accused of causing her death by seeking to take possession of the property.
- [54]** However, the conduct of the parties appears to have been relaxed over the years, with Mr James offering to sell the property to Ms Ingram and not taking any steps to eject her until December 2012, and then sought recovery of possession through the court, which he later abandoned.
- [55]** I bear in mind that Mr James appeared to be confused as it relates to dates and time, whether he spoke to the Claimant by telephone and whether he personally handed her a letter indicating that he was offering the property for sale to her and for what sum, but I have no reason to doubt his evidence that there were discussions between the Claimant and himself in relation to the sale and purchase of the property as well as to whether renovations could be made to the property, and no evidence has been presented from which I can find, on a balance of probabilities, that he had any intention to part with possession of the property. I have noted his advanced age and the fact that he is blind and does not hear very clearly.
- [56]** Although I found the Defendant's evidence to be inconsistent especially in relation to the reason for a valuation of the property to be done, which I find to be immaterial, and he was unable to give clear dates, and indicated that he did not know what a notice to quit was, I find on a balance of probabilities that the valuation was carried out on June 9, 2012, and I accept the contents as proof that the valuator would have had to enter the house in order to obtain information in relation to the state of the interior of the building and in particular, the condition of the cupboards. I therefore also reject the evidence of the Claimant that no valuator came on the premises.
- [57]** I prefer and accept Mr James' evidence in relation to the circumstances surrounding the case and find that Ms Ingram failure to disclose from the outset

that she resided at the property with one of her siblings up to 2013, affects her credibility. Additionally, I do not believe that she was never served with the notice and neither do I believe that she was seeing Mr James for the first time when he took her to court. I note also that the only issue taken by her with regard to the letter dated July 15, 2012, relating to the sale of the property, is that she never received such a letter, and I bear in mind that the Defendant said he did not sign the letter and note that it bears no signature.

[58] Although the evidence is clear that she has lived on the property in excess of 12 years, Ms Ingram has not proved on a balance of probabilities, that she has been in sole and undisturbed possession for the requisite period as it is clear on the evidence, and I so find, that there have been acts on the part of the Defendant asserting his ownership which clearly challenged any claim she may have had to acquiring the property by adverse possession.

[59] I also find that evidence which tends to show that Mr James had no intention of parting with possession of the property was that he expressed an intention to have Pansy remove from the property and after Pansy's death, he sought to recover possession from the Claimant. The period of twelve years had not yet elapsed at the time the Notice to Quit was served on Ms Ingram, and in my view has not yet elapsed and Mr James therefore had a right to re-enter.

Conclusion

[60] Ms Ingram has failed to satisfy the court on a balance of probabilities that she has acquired the property by adverse possession. The requisite period of twelve years has not been satisfied by her. As a matter of law, she cannot claim to have dispossessed Mr James and therefore her claim fails. As such she has no right to be in possession of the property and Mr James is entitled to recover possession forthwith. I note however that there is no claim or counter claim by him for recovery of possession.

- [61] At this juncture, I must note, without making any pronouncement on it, that the claim has been brought against Mr James only, although the registered title to the property clearly indicates a transfer registered to Ventley Noel James and Margie Fay James, as joint tenants.
- [62] As an alternative, Ms Ingram is seeking an order that Mr James compensate her for all improvements made by her to the subject property. Although Ms Ingram asserts that she has made substantial improvements and has said that she paid property tax, she has not provided one iota of evidence from which this court can make an assessment of any compensation that could be awarded to her. She has not shown that she has taken any steps to quantify her expenses and as such the court cannot make an award in relation to any expenses she may have incurred.

Disposition

- [63] The Claim for declaration is refused. There will therefore be judgment for the Defendant on the claim.

Costs to the Defendant to be agreed or taxed