



[2017] JMSC Civ 28

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2013HCV05414**

<b>BETWEEN</b>	<b>KEITH SEIVWRIGHT</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>DENNIS SEIVWRIGHT</b> <b>(Executor for the Estate of Alice Seivwright)</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

**Miss Kimberly Bowen and Miss Georgia McFarlane instructed by Gloria Brown and Co. appeared for the Claimant.**

**Miss Khadine Colman instructed by Colman and Associates appeared for the Defendant.**

**Heard: 24<sup>th</sup> and 26<sup>th</sup> January and 23<sup>rd</sup> February 2017**

**Property Law – Proprietary Estoppel – Adverse Possession – Exclusive Possession – Actual Possession – Sufficient Unequivocal Acts of Ownership – Whether a mere notice interrupts possession of property**

**L. PUSEY J**

[1] Alice Seivwright owned a great deal of land in Trelawny. Her son Keith Seivwright says that she gave him a piece of this land in 1980. The land was then under sugar cane cultivation. In about 1985, the cane was reaped and he went into possession of the land and exercised undisturbed and continuous possession since then. He now claims two (2) acres of land that he says was given to him and he has been in possession of from about 1985.

- [2] Miss Alice's executor, her son, Dennis Seivwright, refutes this narrative. He says that Miss Alice did allow her sons including Keith to work and occupy various tracts of land but did not part with her ownership of the land. Mr. Dennis' position is fortified by Miss Alice's will. In her will she leaves property to several relatives including Mr. Keith. However, it is the wording of the gift that Mr. Dennis indicates supports his position. Miss Alice identifies the remaining land as amounting to "six and one quarter acres" and bequeaths to Mr. Keith "... a similar one half acre of land to include the portion he now occupies".
- [3] Mr. Dennis argues that Miss Alice only gave Mr. Keith a house spot and on death merely gives him that spot and some surrounding land. Part of the argument put forward by Ms. Colman who appeared for him is that Miss Alice disposed of five (5) acres of land by specific gifts and left the remainder to Mr. Dennis. If Mr. Keith does in fact have two (2) acres instead of one-half, then it would disadvantage the other beneficiaries. It must be noted that upon the courts questioning, it was said that no actual survey was done to ascertain the amount of land identified.
- [4] Mr. Dennis' opposition is further fortified by the fact that, by a letter dated February 1, 2000, Miss Alice had communicated with Mr. Keith through her lawyer. The attorney indicated that:

*"She has instructed me to write to you and ask you to vacate all the lands you occupy as part of her property at Hyde aforesaid save and except that area which you occupy as your private dwelling. She had asked me to point out to you that the other areas are her land and that you occupy them without her permission and consent."*

It was argued that this letter disproves Mr. Keith's assertion that the land had been given to him. It is also asserted to deny the application for adverse possession.

- [5] Mr. Keith acknowledges that he received the letter. He states that he went to the lawyer's office and told him that he was paying tax on the land. He says that Mr.

Barrett, the attorney, indicated that Mr. Dennis had not told him that Mr. Keith was paying tax for the land.

- [6] Mr. Keith had other documentation in support of his claim. He exhibits notices of change of possession forms signed by him and Miss Alice in 1995. These forms are used to notify the land valuation department of the change of possession for taxation purposes. He also exhibited a land survey document. This document not only outlines the boundaries of the land claimed by him but it indicates that Miss Alice was informed of the pending survey.
- [7] The fact that the survey was done leaves a strong inference that there was no objection by Miss Alice to the survey. Mr. Keith's attorneys contend that this conclusion when coupled with the averment on the survey that Miss Alice did not attend the survey leads to a further inference that she acquiesced or consented to the ownership of two (2) acres.
- [8] Miss Alice died in 2009. Sometime after, Mr. Keith was informed of the terms of the will which restricted him to half acre of land. He was then served with a notice to survey the land and he objected. He eventually filed an action claiming a declaration that the two (2) acres of land are his property.
- [9] Both Mr. Keith and Mr. Dennis gave affidavits and were cross examined on their affidavit. Mr. Keith was insistent that he was given the land by Miss Alice. He mused that he did not know why his mother would change her mind from the two (2) acres. He also denied that he was challenging the will of Miss Alice. He had supporting witnesses.
- [10] Sydney Melbourne deponed to an affidavit but was unavailable at the hearing and therefore his evidence was not relied upon.
- [11] Mr. Delroy Anderson who was made available for cross examination by telephone, said in his affidavit that as a contractor for the Long Pond Sugar Company he was contracted to harvest and load cane trailers to transport cane

to the factory on behalf of Mr. Keith. He did this in the 1990s to the best of his recollection. He indicates that the land was fenced on the southern and northern ends but the boundary with his brother's land was delineated by a coconut tree. Additionally, he confirms that the land was cultivated in fruit trees and flowers. He also estimated the property as being about two (2) acres in total.

- [12]** In cross examination, Mr. Anderson indicated that he had known Mr. Keith to be on that land for over fifty (50) years, but he was unable to say how he came into possession of the land.
- [13]** Mr. Bryan Chin stated in his affidavit that in the 1980s he owned and operated trucks and he was familiar with the land where Mr. Keith built his house. He said the land was first a cane piece then it became a garage and was converted into a house. He asserted that Mr. Keith planted cane at first then raised cows and farmed crops on the land. He said the property had a concrete fence at the front and a wire fence along two (2) of the remaining boundaries.
- [14]** In cross examination Mr. Chin indicated that he did not know how Mr. Keith came in possession of the property.
- [15]** Mr. Dennis was also adamant in his evidence. He stated that his mother knew how to transfer land and had done it on many occasions. He said that Miss Alice did not give Mr. Keith land but rather only allowed him to build a house on her land. Mr. Dennis said that he heard his parents give Mr. Keith permission to build on the land. He also confirmed that the land claimed by Mr. Keith is visible from the Seivwright family home where the parents lived. He denies that there are fruit trees on the land and contends that his mother could not have received the notice from the surveyor.
- [16]** The evidence of Michael Seivwright was not relied upon, as he was not available for cross examination.

- [17] Miss Colman for Mr. Dennis argued that there was no deed or written instrument for the gift claimed by Mr. Keith. She then pointed out that adverse possession cannot assist Mr. Keith because he claimed that he was put in possession of the entire two (2) acres claimed by him, by Miss Alice. Since Mr. Keith was not contesting the will and was insistent that he had been given the land by Miss Alice he would have to stand or fall on the principle of proprietary estoppel that he claimed.
- [18] Miss Colman pointed out that proprietary estoppel lies where one person acts to his detriment acting on a belief which was known and encouraged by the owner of the property, that he has or is going to be given a right over the owner's property. But she argues that Miss Alice neither made a representation to Mr. Keith nor is there any evidence that Mr. Keith acted to his detriment. I understand Ms. Colman to infer that merely growing crops on the property would not be considered an act to Mr. Keith's detriment. The house that he built is included in the one half acre that has been bequeathed to him.
- [19] Miss Bowen who addressed before Miss Colman had modified her arguments to rely on the adverse possession of the additional one and a half acres of land. She said that Mr. Keith had been in exclusive possession of the land for over twelve (12) years without permission. She abandoned the claim of proprietary estoppel for the additional land.
- [20] She cited **J A Pye (Oxford) Ltd & Ors v Graham & Anor** [2002] UKHL 30 confirming that to succeed in terms of adverse possession a person needed to establish physical custody and control and an intention to possess on one's own behalf and for one's own benefit. Mr. Keith had actual possession of the land, according to Miss Bowen. He fenced all the sides, save and except for the section that belonged to his brother which was marked by a coconut tree, he planted things on it and he grazed and raised cows there.

- [21] According to Miss Bowen's argument the letter from Mr. Roy Barrett attorney purporting to act for Miss Alice, ironically, confirms the fact that the possession of the additional land was without Miss Alice's permission. When pressed by the court as to whether the notice from the attorney interrupted the possession, she cited **Goomti Ramnarace v Harrypersad Lutchman** [2001] UKPC 24 for the principle that a mere notice to the person in possession without further action does not disturb the possession.
- [22] Miss Bowen goes on to emphasise that Mr. Keith showed a clear intention to possess in that he had the land surveyed and notified Miss Alice of that survey. He had the change of possession and he exclusively paid the taxes.
- [23] The court is persuaded by Miss Bowen's argument that Mr. Keith was in possession of all the land and the possession of the additional land was adverse to Miss Alice. However, Miss Colman's objection of the manner of his entry on to the land still stands. If Miss Alice had put him in possession how then could it be adverse?
- [24] I am of the view that the answer is provided in the Privy Council decision of **Pottinger v Raffone (Jamaica)** [2007] UKPC 22. In that case Mr. Pottinger started to bush and maintain lands near his home originally for the purpose of security. He then developed an interest in purchasing the land and sought to buy the property. He entered negotiations with the owners and even had a sale agreement drafted. The Board pointed out that a squatter seeking to purchase the property was not inconsistent with having exclusive possession.
- [25] Therefore, despite the way in which Mr. Keith came into possession, even if he held the view that the entire parcel of land had been given to him by Miss Alice, the evidence shows that he exercised ownership adverse to Miss Alice's rights. In those circumstances he acquired title to the entire two (2) acres. It is clear that he was only permitted to possess the half acre and he extended his possession to the additional lands.

**[26]** Therefore, the court declares that the claimant, Mr. Keith Seivwright, is entitled to be registered as proprietor of all that parcel of land part of Hyde and Gibraltar in the parish of Trelawny as described in the Claim Form.

### **ORDERS**

**[27]** In the result, and for the reasons stated above, the Court granted the following Declarations and Orders:

1. A declaration that the Claimant is entitled to be registered as the proprietor of all that parcel of land part of Hyde and Gibraltar in the parish of Trelawny being part of the lot numbered One Hundred and Twenty-One on the plan of Hyde and Gibraltar aforesaid deposited in the Office of Titles on the 16<sup>th</sup> day of August, 1944 and containing by survey 2 acres 0 roods and 1.8 perches (square metres) of the shape and dimensions and butting as appears by the plan bearing Survey Department Examination Number 222000 compiled by D.A. Scott, Commissioned Land Surveyor from survey conducted on the 9<sup>th</sup> day of April, 1991 and being part of the land comprised in Certificate of Title registered at Volume 565 Folio 29.
2. An injunction restraining the Defendant by himself or his servants and/or agents or transferees from selling, disposing, mortgaging or otherwise dealing with or entering into any agreement to deal with the land registered at Volume 565 Folio 29 until further orders by the Court or unless the dealing relates to the transfer of the said land to the Claimant or his transferees.
3. Costs to the Claimant to be taxed if not agreed.