



[2022] JMSC Civ. 32

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2006HCV04374

BETWEEN	PIXLEY BROWN	1ST CLAIMANT
AND	SYBIL FENDER	1ST DEFENDANT
AND	ANTHONY BRYAN O/C HUDJOE	2ND DEFENDANT

IN OPEN COURT

Mrs Tana'ania Small-Davis QC, and Ms Monique Hunter instructed by Livingston Alexander & Levy for the Claimant

Dr Garth Lyttle and Mrs Renee Malcom- Robertson instructed by Garth E. Lyttle & Co for the Defendants.

Heard: June 2nd and 3rd 2021 **Delivered:** March 21, 2022

Adverse Possession – What constitutes adverse possession – Claim for declaration based on adverse possession – Claimant in actual possession of the property – Constructive notice of the Claimant's occupation of the property – Operation of the Limitations of Actions Act – Section 3, 4a and 30 of Limitation of Actions Act

SONIA BERTRAM LINTON, J

BACKGROUND

[1] This claim was brought by Mr Pixley Brown who avers that he entered into a written lease agreement with Mr Ishmael Fender on April 1, 1982 for a period of five (5) years. The Claimant says that Mr Fender told him that he could build on the land located at Maryland District, Woodford P. O., St. Andrew (hereinafter the “Maryland property”). He says that the deceased also assured him that nobody could take him off. As a result, he built a two (2) bedroom house on the land over a two-year period. Approximately 4 to 5 years after the house was completed he built a stonewall at the front of the property to maintain it and protect it from further damage that was being caused by flooding.

[2] Mr Brown says that he stopped paying the lease with the permission of Mr Fender in 1990. He then continued to occupy the property undisturbed until the Second Defendant started construction on the Maryland property in 2005 and his fruit trees and coffee valued at \$99, 200.00 were destroyed. The Claimant was also served a Notice to Quit on November 16, 2005. Since 2005, he asserts that the Defendants have been harassing him in an attempt to get him off the land. As a result, he initiated a claim against the First and Second Defendants on December 7th 2006.

THE CLAIM

[3] Mr Pixley Brown in his Amended Claim Form filed on March 6, 2007 sought certain declarations. These are:

(1) A declaration that the Claimant is the owner of the land at Maryland

District Woodford St. Andrew, bordered as follows:

ON THE NORTH- By National Water Commission property

ON THE SOUTH- By the National Works Agency property

ON THE WEST- By the National Water Commission property

ON THE EAST- By Unis Taylor's property

- (2) A declaration that the Claimant is entitled to possession of the land;*
- (3) An injunction against the Defendants to restrain and prohibit them or either of them from entering or otherwise trespassing on the said land;*
- (4) An injunction against the Defendants or either of them from constructing or continuing the construction of any house, building or structure on the land;*
- (5) Damages for trespass;*
- (6) Costs;*
- (7) Any other relief*

THE DEFENCE AND COUNTERCLAIM

- [4]** The Defendants deny that the Claimant is the owner of the Maryland property. They aver that Mr Brown was a tenant of Mr Ishmael Fender who died in 1999 at which point he stopped paying rent. As a result, they assert that Mr Brown became a statutory tenant and did not adversely possess the Maryland property. Only one quarter of an acre of the land was leased to the Claimant, yet he is claiming one half an acre which would amount to all the land that was owned by the deceased.
- [5]** The Second Defendant denies entering the land in or about November 2005 and destroying trees belonging to the Claimant valued at \$99,200.00. Mr Bryan does not believe that the land belongs to the Claimant. He says he did not harass Mr Pixley Brown, he only asked the Claimant to vacate the land due to his non-payment. However, they deny that Mr Pixley Brown enjoyed undisturbed

possession since 1990. They also state that the Claimant faced protest from the First Defendant when constructing his house on the land.

THE CLAIMANT'S EVIDENCE

I. Pixley Brown

- [6] The Claimant was sworn and identified his witness statement which was allowed to stand as evidence in chief. His evidence is that the property was initially leased to him but sometime afterwards Mr Ferron Fender, the son of Mr Ishmael Fender told his father to stop collecting rent from him. At the time when he was paying rent the deceased's wife Mrs Sybil Fender was not there. He said he wanted to buy the land but Mr Ishmael Fender did not have a title to the property so he could not sell it to him.
- [7] As a result, at the end of 1982 Mr Brown said he built a two (2) bedroom structure with a dining room, kitchen and bathroom and constructed a fowl coop and a pig pen. He denied that he was only given permission to construct a shed to sell produce. The house was constructed before Mr Fender died in 1999 and the Claimant denied receiving notice to leave the property. In 2005 Mr Anthony Bryan started to construct a house about half ($\frac{1}{2}$) mile from the Claimant's house. Mr Brown says he never removed anything from the property neither did he take any steps to leave the property.
- [8] Under cross examination he said that he paid rent until 1990 when Mr Ishmael Fender told him to stop based on instructions from his son, Mr Ferron Fender. He said that Mr Bryan's house is at the foundation stage and when he started building on a part of the land Mr Bryan did not say anything to the Claimant. Mr Brown's evidence is that he did not supply Mr Bryan with any hose or water to assist with the construction. Mr Brown said he had his lawyer write Mr Bryan when he started building in 2005 but they did not pay attention to said letter. As a result, Mr Brown planted some trees. He admitted to stopping Mr Bryan from building any further on the land but denied removing him from the land.

[9] Mr Brown's evidence is that he has not paid property taxes but he did not quarrel with Mrs Sybil Fender or the children.

II. Jisreal Fender

[10] Mr Jisreal Fender was sworn and identified his witness statement which was allowed to stand as his evidence in chief. His evidence is that he is the younger brother of the deceased Mr Ishamel Fender. His evidence is that Mrs Sybil Fender is the wife of the deceased and Anthony Bryan otherwise called Hudjoe is the grandson of the deceased. Mr Jisreal Fender said that the deceased leased the land to the Claimant and gave him permission to build and occupy the land behind his back. As a result, the Claimant's house was built before his brother died. Mr Ishmael Fender got the land from National Water Commission. To his knowledge, the deceased did not run the Claimant from the land.

[11] He said he was the one who drew the sketch that was attached to his witness statement because he knows where the boundaries for the land are. However, he said it did not contain any measurement as he did not measure it. When shown the diagram and asked about the 184ft, 140ft and the 200ft he said he did not know who put those there. So it was obvious to the Court that someone else had amended the document.

THE DEFENDANT'S EVIDENCE

II. Sybil Fender

[12] Mrs Fender was sworn and identified her witness statement which was allowed to stand as evidence in chief. Her evidence is that there was a quarrel between her and the Claimant over the land as he did not pay the lease. She said she did not know the amount for the lease because the Claimant stopped paying before her husband died but she did not know if he stopped paying in 1990. The disputed land

was left for the deceased's five children. However, she did not know of any document that could prove that the deceased had actually owned the land. She said the deceased's father gave him the land.

- [13] Her evidence is that she was not there when the deceased pointed out the boundaries to the Claimant or told him that he could build on the land. She was not present when the deceased went with the Claimant to the Lawyer's office in relation to the sale of the land. When she told the Claimant to get off the land she said he did not listen. In 2005 she gave Anthony Bryan permission to build on the land but she did not remember who cut down the trees and she did not receive any valuation for the trees from the Claimant that he said were cut down.

II. Anthony Bryan

- [14] Mr Anthony Bryan was sworn and identified his witness statement which was allowed to stand as evidence in chief. Paragraphs 5, 6 and 7 of his Witness Statement were struck out on the basis of containing hearsay evidence. His evidence is that he was not there when the deceased and the Claimant spoke about the land or the boundaries. He did not agree that the Claimant completed his house in the 1980s. Mr Bryan said that no notice to quit was served on the Claimant after he began construction on the land. He said that the Claimant was served at a meeting about his construction prior to him commencing any building.
- [15] Mr Bryan's evidence is that he was only aware of one letter from the Claimant's lawyers to stop construction and he said there were numerous interference with the Claimant's use of the land before his time, so his intervention was not the first. He also said he has no knowledge of the land being transferred to anyone and he could not say whether there was a will which spoke to anybody's entitlement in the land.

III. Janine Fender

- [16] Ms Janine Fender was sworn and identified her witness statement which was allowed to stand as her evidence in chief. Her evidence is that she was not present when the deceased (her father) spoke to the Claimant about the boundaries or gave him instructions to build on the land. She said the land was left by the deceased for all his children and that the problem is not related to all the land but limited to the section which the Claimant occupied.

THE SUBMISSIONS

The Claimant's Submissions

- [17] The Court has considered the witness statements as well as taken note of the written submissions of the Claimant but only the main points will be summarized for the purposes of this judgment. In relation to the issue of adverse possession counsel for the Claimant referred to **sections 3 and 30 of Limitation of Actions Act**. These sections of the Act simply prevent the right to recover possession of the land either by entry or action after 12 years have elapsed. It was also submitted that in cases of unregistered land the paper owner's title can be extinguished thus leaving the squatter with possessory title based on their possession.
- [18] She also referred to numerous authorities on the law of adverse possession all of which will not be reproduced here. ***Powell v McFarlane (1977) 38 P&C. R 452*** was used to emphasize that adverse possession includes the intention to exclude the world at large so far as the law will allow. In ***J A Pye (Oxford) Ltd and Another V Graham and Another*** the House of Lords ruled that the Defendants had established both factual possession and an intention to possess to the exclusion of others which are needed to prove adverse possession. On the authority of this case Counsel submitted that the position of the law is that the owners of registered

and unregistered land can be displaced if they lack the necessary vigilance to do something however slight to interfere with or negative the acts of the person attempting to acquire adverse possession.

[19] Citing the authority of *Powell v McFarlane (supra)*, it was submitted that the Claimant entered the land in 1982 which was evidenced by the lease agreement and he stopped paying the rent and lived there rent free for many years. The First Defendant, Mrs Sybil Fender stated that Mr Brown did not pay any money before Ishmael Fender died. However, this statement was in contradiction of her witness statement which said, the Claimant stopped paying rent in 1999. Therefore, the Claimant's evidence would seem to be establishing that he was in possession the Maryland property without regard to the person he believed to be the paper owner at the time and on terms outside of the original agreement for lease payment. The court notes however that just being there and not paying the lease is not sufficient to start time running for adverse possession, because there were circumstances that were outlined that intervened and caused a change in the relationship between the parties. Also, the Second Defendant states that the Claimant paid rent until 1999 but was unable to provide proof. It was submitted that the Court accept the evidence of Mr Brown that after 1990 he did not pay any rent to any member of the Fender family for his continued occupation of the land.

[20] Moreover, the Claimant between 1990-2005 lived on the Maryland property with his family. He controlled what happened on the land including how it was developed and maintained. All of which Counsel states that Mr Brown did openly without disturbance. The Claimant also used the entire land and not just the quarter of an acre like the Defendant's asserted. Counsel submits that Mr Brown's possession fits squarely into the definition of physical possess as outlined by Slade J in *Powell v McFarlane (supra)*.

[21] *Powell v McFarlane (supra)* was also important in relation to determining the importance of the Claimant's intention to possess the land. This case clearly illustrated that it was not necessary for the Claimant to prove that he had an

intention to own or acquire ownership of the land. What is relevant is Mr Brown's intention to exclude the world at large for his own benefit which he did. From 1990 onwards Mr Brown did not regard anyone except himself as the owner of the Maryland property and he continues to treat it in that manner. It is the Claimant's case that these actions were unequivocal and should only be interpreted as his intention to exclude the world from the property.

[22] It is submitted that the Claimant satisfied the requirements necessary to grant him title via adverse possession. He had sole physical possession from 1982 and he started to treat with the Maryland property as his own from as early as 1990 and enjoyed exclusive possession which extinguished any claim that Ishmael Fender may have had prior to his death.

[23] On the issue of proprietary estoppel, it was submitted that after 1990 the Claimant and the deceased entered discussion about the deceased's intention to sell the land to him. This was evidenced by their visit to an Attorney at Livingston Alexander & Levy who they retained to prepare the relevant documents for sale which was delayed because Mr Fender did not have a proper title to the land. Counsel submits that this as well as Mr Brown's construction of the house on the property that he initially leased imputes that there was a representation or promise made to him on which he relied. His reliance was indicated by the fact that he cleared the land and constructed a permanent structure between 1982 to 1985 which he occupied until 2005 thus no one can take him off the land. If he were to leave now all his actions based on his reliance on what Ishmael Fender told him would have been to his detriment. Also, there is no reliable evidence that the Defendants objected to Mr Brown building a structure on the land. The Court notes here that the very act of the claimant attempting to purchase the land from the deceased was an outright acknowledgment that he did not have any claim of right to the land based on any agreement or attempted purchase and certainly an acknowledgement that the owner was the deceased and was not prepared to let go of the property without an exchange of value.

[24] The Defendants also stated that the Claimant did not complete the construction of the house until after Mr Ishmael Fender's death. However, the surveyor's diagram done in 1991 showed Mr Brown's house erected on the land.

[25] On the issue of trespass counsel referred to **George Rowe v Robinson**

Rowe [2014] JMCA Civ 46 which at paragraph 15 said:

"The law regarding trespass to land does not require a person complaining of a trespass to be the owner of that land. Trespass to land consists of interference with possession. The person claiming possession may be mistaken as to his ownership of the property but would still be entitled to maintain an action for trespass against another."

[26] Also in **J A Pye (Oxford) Ltd v Graham (supra)** Lord Browne- Wilkinson at paragraph 32 quoted Slade J's opinion on trespass where he stated that:

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

[27] Based on the authorities discussed counsel submitted that Mr Bryan and Mr Ferron Fender trespassed on the Claimant's land in 2005 when he entered and began clearing the land for construction without his permission. Furthermore, in an effort to further assert his sole right to the land, Mr Pixler Brown sought and obtained an injunction preventing any further interference from the Defendants or their agents.

[28] The case of **Stoke-on-Trent City Council v W & J Wass Ltd 1988 WL 623599** illustrates the principle that where a plaintiff suffers loss to his property he can recover damages *"equivalent to the diminution in value of the property or right."* Therefore, the Claimant who suffered damage to his property should be able to recover the extent of the loss. Mr Brown provided the Court with proof of the damage to his property via the valuation report prepared by Valuator C. Abrahams on December 9 2005 which stated the sum of \$99,200.00. which he should be

compensated in damages for especially given that the Defendants did not contest the report.

[29] In concluding the Claimant's case counsel stated that he had acquired the land by adverse possession having occupied it for at least 15 years from 1990-2005 without paying rent and treating it as his own with the intention to exclude all others from the land. In addition, the Defendants trespassed and destroyed his crops and should be held liable for these actions. Based on these submissions, counsel submits that the Court should grant the Claimant the reliefs sought in the Claim.

The Defendants' Case

[30] Counsel submitted that the Claimant only leased one quarter acre of the Maryland property. After Mr Ishmael Fender passed in 1999 the Claimant deliberately stopped paying rent to the Fender family and initiated action in the Court to seek a declaration that he acquired ownership via adverse possession.

[31] The Defendants' case is that the Claimant supported Mr Anthony Bryan's construction by supplying him with hose and water to assist with the mixing of the cement for the construction. Mr Pixley Brown did not protest the Second Defendant's construction until he received the Notice to Quit in 2005, after which he stopped Mr Bryan from any further building.

[32] Thereafter, the Claimant sought an order from the Court to declare him as the owner for more than what was the 25,500 square feet initially leased to him. This would mean that the Claimant is claiming an additional half acre and 3420 square feet of the adjoining neighbour's land. On this basis counsel submits that Mr Pixley Brown did not produce credible and honest evidence to convince the Court that he met the legal requirements to acquire the land through adverse possession.

[33] The Defendants also say that the Court reject the Claim that Mr Bryan was a trespasser and order Mr Pixley Brown to pay up the lease money and have the Second Defendant's case proceed to assessment of damages.

[34] ISSUES

1. *Whether Mr Brown enjoyed open and undisturbed possession of the disputed Maryland property from 1990 to 2005 thus entitling him to claim ownership by adverse possession?*
2. *If he is entitled to claim adverse possession, how much of the Maryland property did Mr Brown acquire?*
3. *Did the Second Defendant trespass on the portion of the property occupied by the Claimant when he entered it in 2005 to commence construction?*
4. *Whether the two-bedroom house constructed by Mr Pixley Brown on the Maryland property belongs to him or the Estate of Mr Ishmael Fender?*

THE LAW AND ANALYSIS

The Ambit of Adverse Possession

[35] The locus classicus of *Ramnarace v Lutchman* [2001] 1 W LR 1651, 1654 at *paragraph 10* states the general position on adverse possession as follows:

“Generally speaking, adverse possession is possession which is inconsistent with and in denial of the title of the true owner. Possession is not normally adverse if it is enjoyed by a lawful title or with the consent of the true owner.”

[36] The Jamaican appeal case of *Perry v Baugh, Wilson et al* [2018] JMCA Civ.12 draws on this authority and says at paragraph 16:

*“16. In **Wills v Wills [2003] UKPC 84**, their Lordships in the Privy Council provided much guidance in this area of the law. Their Lordships explained that what a successful squatter obtains is a possessory title. They stated, at paragraph [17] of the judgment, that the term “adverse possession” is “a convenient shorthand for the sort of possession which can with the passage of years mature into a valid title”.*

[37] These cases make it clear that the role of the Court in the case at bar is to determine based on the evidence whether Mr Pixley Brown on a balance of probabilities has occupied the Maryland property as a squatter in a manner inconsistent with the true owner which can cause him to acquire a valid title.

Issue 1: Whether Mr Brown enjoyed open and undisturbed possession of the disputed Maryland property from 1990 to 2005 thus entitling him to claim ownership by adverse possession?

[38] When dealing with a case where a party is claiming to acquire the right to a possessory title in relation to land, the starting point is the ***Limitations of Actions Act. Sections 3,4(a) and 30*** state as follows:

“3. No person shall make an 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 some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then 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.”

4.(a) The right to make an entry or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say...

30. At the determination of the period limited by this Part to any person for making an entry, or bringing any 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.”

[39] The abovementioned sections of the Act states that a proprietor of land whether registered or unregistered, can lose his right to recover possession of that land because of a lapse of time. That is where someone who is not the owner of the land acquires the right to a possessory title by virtue of being in possession for a period of at least 12 years. It is for this Court to weigh the evidence to see whether the Claimant has occupied the Maryland property for at least 12 years thus extinguishing the right of the original owner from which he had gotten a leasehold.

[40] The case of **J A Pye (Oxford) Ltd and Another v Graham and Another [2003] 1 AC 419** explores the concept of possession for the purposes of acquiring a possessory title. At paragraph 40 Lord Browne-Wilkinson quoted Slade J at pp 470-471:

"(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in

particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."

- [41] Based on **J A Pye (Oxford) Ltd and Another (supra)** it is clear that Mr Brown must have had some degree of physical control and exclusive possession in order to claim title by adverse possession. The case does state that generally it may not be possible for a person hoping to claim by adverse possession to claim if they possessed at the same time with the true owner. However, it also emphasizes that the real way to know is by exploring the circumstances of each case to determine factual possession.
- [42] The owner Mr Ishmael Fender died in 1999 and until his death there is no evidence that he revoked the permission given to the Claimant to live on the Maryland property. The Claimant's evidence even indicates that Mr Ishmael Fender gave him permission to stop paying rent and permission to build on the land in or around 1990. Therefore, the time for adverse possession could not have started to run from 1990 as the Claimant is saying. Even if 1999 when Mr Ishmael Fender died is proposed as when time would have started running, it is more believable that his family members and certainly the deceased man's wife who was residing on the property tried to get the Claimant to leave which could be interpreted as revocation of the Claimant's permission to occupy.
- [43] **J A Pye (Oxford) Ltd and Another (supra)** also explores the degree of physical control and exclusive possession. It is arguable that Mr Brown may have exercised what would be deemed some degree of physical control over the one quarter acre Maryland property. This is indicated by the fact that he built a two-bedroom house on the land and constructed stonewalls 4-5 years later to protect it from flood waters and to maintain his occupation of the property. The Claimant's actions were done for him to make himself comfortable in his occupation and could not be

viewed as an act of ownership with the owner and those that had put him in possession in the first place living right next door. Furthermore, these actions of the Claimant cannot be viewed in isolation of the permission that the owner Mr Ishmael Fender gave him to do these things. The fact of having to get permission at all speaks to the fact that he knew that the place was not his. Therefore, while he may have proven that he had some degree of physical control, he has not satisfied this Court that he had exclusive possession and was taking steps to exclude the owners and any beneficiaries from 1990 to 2005.

[44] At paragraph 37, of **J A Pye (Oxford) Ltd and Another v Graham and Another (supra)** Lord Wilkinson also said:

“It is clearly established that the taking or continuation of possession by a squatter with the actual consent of the paper title owner does not constitute dispossession or possession by the squatter for the purposes of the Act. Beyond that, as Slade J said, the words possess and dispossess are to be given their ordinary meaning.”

[45] The Fenders and Mr Anthony Bryan all gave evidence that the Claimant entered the parcel of land with the consent of the deceased Mr Ishmael Fender. Therefore, upon the authority of **J A Pye (Oxford) Ltd and Another (supra)** it is clear that the Claimant could not have dispossessed the owner, Mr Ishmael Fender from the Maryland property.

[46] The case of **Bryan Clarke v Alton Swaby Privy Council Appeal No. 13 of 2005** states that under the law of Jamaica, a person who occupies the land as a licensee cannot obtain a title via adverse possession if his licence has not been revoked. It is only at the point where the licence is revoked that time starts to run for a claim of adverse possession. Otherwise, his occupation of the land is to be ascribed to his licence.

[47] This case is applicable to the case at bar where the Claimant occupied the Maryland property by way of a lease. He later became a licensee when based on the Claimant’s evidence he received Mr Ishmael Fender’s permission to build on

the land and to stop paying rent. Surprisingly, the Claimant's evidence is quite contradictory to his claim for adverse possession which must be open, undisturbed and without permission. Mr Brown's evidence is also that he had no problem with the deceased's family until 2005 when he received a notice to quit. His evidence is that he lived and had no issues with the Fender family, while the Fenders' evidence is that they tried to get him off numerous times but he did not leave and it would sometimes result in a quarrel.

[48] On one hand, the fact that he did not receive the notice to quit until 2005 could be interpreted as extended permission from the Fender's family for him to live on the land; thus barring a claim for adverse possession. On the other hand, the family's attempts to get him off after Mr Ishmael Fender died in 1999 could be interpreted as revocation of his permission at which point time would have started to run. Even if the family's actions were deemed to be an extension of Mr Ishmael Fender's permission from 1990-2005 it still could not result in the Claimant's success in a claim for adverse possession. This is so as time does not run when permission is granted and one of the key ingredients for adverse possession is the lack of permission. Also, the revocation of the Claimant's permission to occupy the Maryland property in 1999 after Mr Ishmael's death until 2005 only amounts to 6 years which still does not meet the 12 years' requirement for adverse possession.

[49] This Court therefore finds that Mr Pixley Brown did not adversely possess the Maryland property.

Issue 2- If he is entitled to claim adverse possession, how much of the Maryland property did Mr Brown acquire?

[50] Having found that Mr Pixley Brown did not adversely possess the Maryland property this issue needs not be addressed. Mr Brown did not acquire any portion of the Maryland property via adverse possession.

Issue 3- Did the Second Defendant trespass on the portion of the property occupied by the Claimant when he entered it in 2005 to commence construction?

[51] The Claimant did not adversely possess the Maryland property thus; he has no rights to bring a claim of trespass against the Second Defendant for entering and starting construction on the Maryland property.

Issue 4- Whether the two-bedroom house constructed by Mr Pixley Brown on the Maryland property belongs to him or the Estate of Mr Ishmael Fender?

However, on the basis that Mr Pixley Brown did not prove to this Court that he adversely possessed the Maryland property: the house he constructed with the permission of the deceased does not form a part of the estate but remains the property of the Claimant and would now have to be addressed in terms of a valuation if it is to be deemed a part of Mr Ishmael Fender's estate.

CONCLUSION

[52] The evidence before this Court indicates that the Claimant, Mr Pixley Brown did not adversely possess the Maryland property as he could not prove on a balance of probabilities that his occupation was undisturbed, without permission and that he occupied with the intention to exclude the owners and other beneficiaries for a period of at least twelve (12) years. Judgment is therefore entered for the Defendants herein.

[53] The Court hereby declares as follows:

1. A declaration that the Claimant has not acquired an interest in the land and remains a statutory tenant on the said land.

2. A declaration that the Claimant never acquired possession of the entire land but was only put into possession of that one quarter acre which he was allowed to occupy by the deceased.
3. The Executor or Administrator of the estate of Mr Ishmael Fender is entitled to possession of the said lands.

Costs are awarded to the Defendants herein to be agreed or taxed.

Formal Order to be filed and served by the Defendants herein.

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S. Bertram Linton, J