

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. G-011 OF 1987

BETWEEN	GREEN VALLEY ESTATES LIMITED	PLAINTIFF
A N D	CARL LAZARUS	FIRST DEFENDANT
A N D	THE REGISTRAR OF TITLES	SECOND DEFENDANT

Mr. Michael Hylton and Miss Allison Dunkley instructed by Messrs. Myers, Fletcher and Gordon for the plaintiff.

Mr. Donald Gittens and Miss Pamela Gayle instructed by Messrs. Thwaites, Fairclough, Watson and Daley for first defendant.

HEARD: JUNE 27, 28 AND 29, 1990,
APRIL 22, 23 AND 24 AND
JULY 30, 1991.

CORAM: MORRIS, J. (AG.)

This is an action in which the plaintiff claims against the defendants:

1. A declaration that the plaintiff is the registered proprietor of and is entitled to possession of the lands referred to in Surveyor's Plan dated November 1st, 1984 prepared by Richard A. Haddad, which lands are the subject of an Application by the first defendant (Application #A88797) pursuant to Section 28 of the Registration of Titles Act.
2. A declaration that the lands referred to in the said Plan are comprised in Certificate of Title registered at Volume 168 Folio 95, and that the plaintiff is the registered proprietor of those lands.
3. An injunction to restrain the second defendant from issuing a registered title to the first defendant pursuant to the said Application #A88797.
4. An injunction to restrain the first defendant from trespassing upon the plaintiff's land comprised in Certificate of Title registered at Volume 168 Folio 95 or from dealing or purporting to deal with the said lands.
5. Damages for Trespass.
6. Costs.

The defence is a denial of trespass and an averment that the land in

dispute has been acquired by adverse possession by the predecessors in title of the first defendant.

In 1986 plaintiff purchased certain lands comprised in Volume 168 Folio 95 of the Register Book of Titles known as Green Valley Estate from Mrs. Gloria Cumper, the daughter of the late William Carpenter, a Commissioned Land Surveyor. Mrs. Cumper, being the Executrix of her late father's Will acquired these lands by transmission, and this fact has been duly registered.

These lands are situated on the slopes of the Blue Mountains with a portion in St. Andrew and the remainder in St. Thomas. Mr. William Campbell is a shareholder and director of Plaintiff Company and has been familiar with these lands having grown up in the area.

The first defendant is claiming approximately 19 acres, part of Green Valley. According to Mr. Campbell this piece of land has never been fenced off or cleared in any way. It appears that during his lifetime the late Mr. Carpenter had sold parcels of this land to various persons, some of which have been the subject of registered titles. Plaintiff therefore bought what has been described as the mother title comprising the remainder of lands Exhibit 1.

The purchase price was over Eight Hundred Thousand Dollars (\$800,000.00) and involved two separate acreages. The sum of Five Hundred Thousand Dollars (\$500,000.00) was paid for one portion while the other portion has been the subject of a Court action - George Beckford vs. Gloria Cumper S.C.C.A. No. 38/86. The portion claimed by first defendant is part of land represented by Exhibit 3.

By letters dated 16th March, 1986 and 7th April, 1986 application was made to the Land Development and Utilisation Commission for its Approval for the sale of approximately 150 acres of agricultural land being the remaining lands contained in Certificate of Title registered at Volume 168 Folio 95. This Approval was given on 30th April, 1986. First defendant applied for Registered Title for 19 acres 39.4 roods which he described as land part of Green Valley - Exhibit 2. This Application was numbered A88797 and referred to a plan No. 186215 - Exhibit 3.

On looking at the second page of plan part of Exhibit 1 an area of land has been delineated and marked A88797 at the elbow of the Green River. The shape of land represented in Plan Exhibit 3 corresponds to shape of land referred to as A88797 and is bounded on the east by the Green River and on the west by

Parochial Bridle Track to Tweedside. In addition, first defendant testified - "It came to my knowledge land I was buying was part of larger property. I knew property as Green Valley". It is therefore common ground that the land in dispute forms part of Green Valley property. All the witnesses agree that the land in question slopes steeply from the road down to the river and that it is at present ruinate or woodland.

The sole issue for determination is whether the first defendant's predecessors in title acquired the disputed land by adverse possession under the Limitation of Actions Act.

The first witness called by the first defendant was Mr. Bertie Dixon who testified that he was born in 1912 in Mavis Bank and grew up there. He knows Green Valley property and knew Mr. William Carpenter. The land first defendant is claiming used to be called Moneymusk by George Wilson, also called Bow Saroo, whom he knew from 1944. Wilson bought the land in 1944 and built a wooden house on it. He cut timber and built railway sleepers called polleen which he sold. Regarding Alice Barrett I quote from his evidence:-

"I knew Alice Barrett. She lived with Wilson at Mavis Bank at her home. He would also go to his place at Moneymusk on Green Valley Estate". (Emphasis supplied)

He admitted signing Voluntary Declaration Exhibit 5 but could not recall how he had come to do so. He agrees that Moneymusk is part of Green Valley and stated that sometimes George Wilson stayed at his (George Wilson's) house and at other times at Alice Barrett's house. This has a very important bearing upon the question of the validity of the document put in evidence by first defendant as evidencing the sale of the disputed land.

Astley Henderson testified that he sold land in dispute to first defendant. He lived at Sheldon which adjoins Green Valley across the Green River, a tributary of the Yallahs River which forms the border of St. Andrew and St. Thomas. He reared goats which used to trespass on land of George Wilson and Alice Barrett at Moneymusk. After the death of George Wilson, Alice Barrett continued in charge of the property. He asked her to rent the land to him but she refused saying she preferred to sell it. He then bought the land paying for it over a period from 1973 to 1977 - Exhibits 14a - i. According to him it was George Wilson who called the land Moneymusk but the documents evidencing sale are strangely silent as to this fact, with the exception of Exhibit 14f.

The land in dispute was pointed out to him as 19½ acres. However, Exhibit 15, property tax receipt to Alice Barrett indicates 38½ acres at Green Valley.

Mr. Oswald Edwards was formerly employed to Mr. William Campbell to look after Green Valley property but he left because in his own words - "the property causing trouble". He subsequently went to work for first defendant to supervise coffee farm. He knows the disputed land as Honeymusk, having grown up in the area. He knew Alice Barrett and testified that she used to go and come between land and her home at Mavis Bank.

Originally, his role was to get buyers for Rev. Thomas, the representative of Mrs. Cumper. He was also an agent for Mr. Haddad, the surveyor who carried out all the surveys connected with this matter.

First defendant testified that he needed lands to farm coffee and eventually bought the disputed land from Astley Henderson. He got Mr. Haddad to carry out survey which produced 19½ acres although he was under the impression he was purchasing 38 acres. Astley Henderson showed him receipts and he saw the foundations of a house site in the land. It was Mr. Haddad who pointed out to him that land in dispute was part of Green Valley, registered proprietor being Mrs. Gloria Cumper.

Mr. Gittens submitted inter alia that the absence in the Inventory in Estate William Augustus Carpenter of any mention of lands at Green Valley meant that all the lands had been disposed of prior to grant of Probate. The answer to that is to be found firstly in the recital of transmission in Exhibit 1 and secondly, Section 130 of the Registration of Titles Act. He also submitted that it was up to the Plaintiff to prove how much land was left on the mother title and where it was. Having regard to the foregoing, that is not an issue in the case.

Mr. Hylton's submissions are written and form part of the record.

In my view, the first question to be decided is this:

Did George Wilson acquire the disputed land by adverse possession?

Secondly, if so, did Alice Barrett acquire these rights?

It is only if the second question can be answered in the affirmative that it would become necessary for me to determine whether Astley Henderson had acquired these rights which could be transferred to first defendant.

The discrepancies in the evidence of the witnesses called by the first defendant have been highlighted by Mr. Hylton and I do not find it necessary to repeat them here.

The evidence relied on by the first defendant to establish "adverse possession" is as follows:-

- (a) George Wilson had a three apartment wooden house on the land between 1946 and 1951.
- (b) He cultivated a small area of the land and grazed animals on it for an indeterminate period.
- (c) Astley Henderson paid taxes on the land between 1972 and 1985.

I accept the evidence as to (a) and (b) but make no finding as to (c).

FINDINGS TO FACT

1. The disputed area of land is part of the Green Valley property which forms part of the mother title Exhibit 1.
2. George Wilson had a three apartment wooden house on the land between 1946 and 1951.
3. He cultivated a small portion of the land and grazed animals on it for an indeterminate period.
4. He cut timber and built and sold railway sleepers.
5. Land has remained ruinate since 1951 and has never been fenced off.
6. Astley Henderson acquired land from Alice Barrett.
7. First defendant acquired land from Astley Henderson.

In the case of George Beckford v. Gloria Cumper supra, a claim of adverse possession in respect of other lands part of Green Valley registered at Volume 168 Folio 95 - Exhibit 1 failed. In the course of the judgment the cases of Leigh v. Jack (1879) 5 Ex. D 264, Williams Brothers Direct Supply Stores Ltd. v. Raftery (1958) 1 Q.B. 159; Archer v. Georgiana Holdings Ltd. (1974) 21 W.I.R. 431 and 12 J.L.R. 1421 were considered and established:-

- i. The onus which rests upon the person setting up adverse possession to show -
 - ii. Actual possession by the person claiming.
 - iii. Clear evidence of an intention on his part to dispossess the registered proprietor and assert actual ownership rights over property.

iv. Affirmative and unequivocal discontinuance of ownership by the registered proprietor.

On the most favourable view of the first defendant's case there is no evidence of an intention on the part of George Wilson to dispossess the registered proprietor and assert actual ownership rights over disputed land. This is so because the acts relied on fall far short of achieving this. On the question of discontinuance of ownership by the registered proprietor, Wright J.A. in *George Beckford v. Gloria Cumper* cited a quotation from *McLeod v. McRae* made in *Des Barres v. White* (1842) 14 Can. S.C.R. at page 586 -

"Whereas twelve years' non-collection of rent from a tenant occupying a house will militate against the owner of the house twelve years' non activity on ruinate land or woodland would not necessarily produce the same effect".

I therefore hold that the acts of George Wilson relied on to establish a claim for adverse possession were insufficient to bring this about. In any event, they did not continue for the statutory period. Consequently, the claim of the first defendant fails.

I hereby grant the Declarations sought by the plaintiff in paragraphs 1 and 2 of the Statement of Claim as well as the injunctions prayed in paragraphs 3 and 4.

Costs to the plaintiff to be agreed or taxed.