IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2015HCV01055

BETWEEN	**VALERIE HALL**	**CLAIMANT**
AND	**DAVID PITTER** **(In his capacity as Referee of Titles)**	**RESPONDENT**
AND	**THE REGISTRAR OF TITLES**	**RESPONDENT**

Registration of Titles Act –

Mr. Norman Hill QC instructed by Samuels & Samuels for the Claimant.

Mrs. Tanesha Rowe-Coke instructed by the Director of State Proceedings for the Respondents.

Heard: 18th November 2016.

IN CHAMBERS

CORAM: BATTS J

[1] This matter concerns an application to bring land under the operation of the Registration of Titles Act. The Respondents have refused the Claimant's application. The Claim is filed pursuant to section 156 of the Act, and question for this court is whether the refusal to register was justified.

[2] Section 156 of the Registration of Titles Act reads,

“If, upon the application of any owner or proprietor to have land brought under the operation of this Act, or to have any transaction or transmission registered or recorded, or to have any certificate of title, foreclosure, order or other document, issued, or to have any act or duty done or performed which by this Act is required to be done or performed by the Registrar, the Registrar shall refuse to accede to such application, or if such owner or proprietor shall be dissatisfied with the direction upon his application, given by the Referee, it shall be lawful for such owner or proprietor to require the Register or Referee, as the case may be, to set forth in writing, under his hand, the grounds of his refusal, or the ground upon which such direction was given; and such owner or proprietor may, if he think fit, at his own costs, summon the Register or Referee, as the case maybe, to appear before a Judge to substantiate and uphold the grounds of his refusal, or of such direction as aforesaid; such summons to be issued under the hand of a Judge, and to be served upon the Registrar or Referee six clear days, at least before the day appointed for hearing the complaint of such owner or proprietor.

Upon such hearing the Registrar or Referee or his counsel shall have the right to reply, and the said Judge may, if any question of fact be involved, direct an issue to be tried to decide such fact, and thereafter the said judge shall make such order in the premises as the circumstances of the case may require, and the Register shall obey such order, and all expenses attendant upon such proceedings shall be borne and paid by the applicant, or other person preferring such complaint,

unless the Judge shall certify that there was no probable ground for such refusal or direction as aforesaid."

[3] The cumbersome language of the statute notwithstanding, it is clear that I am empowered, if there is an issue of fact arising, to direct a trial of that issue. If not I am entitled to issue an Order as the circumstances of the case may require. The applicant is to bear the cost of the proceedings unless I certify that there was no probable ground for the refusal to register.

[4] The documentation for my consideration is contained in two bundles filed respectively on the 12th February 2015 and 23rd February 2016. Each party also filed written submissions and authorities. These were supported by oral submissions before me. The Respondents reduced my task by indicating at the commencement of the hearing that the arguments contained in paragraphs 11 to 19 of their Written Submissions were abandoned. In effect, therefore, the sole basis of support for the Respondents' decision was that the evidence provided by the Claimant to the Referee was insufficient to establish her entitlement to a registered title.

[5] It is therefore necessary to examine the evidence placed before the Referee of Titles by the Claimant who applied for registered title of unregistered land. Her "Application to Register" [page 19 Judge's Bundle] is in the form of a Declaration executed before a Justice of the Peace and states:

1. That I am the owner in fee simple in possession in ALL THAT PARCEL OF LAND situated and lying and being in the said parish of ST. Andrew known as part of Golden Hill containing by survey Six Thousand nine Hundred and Eighty-One Square meters and sixty six hundredths of a square meter of land (6981.66) m^3 and butting and bounding as appears by the plan thereof dated the 24th February, 2011 prepared by Anthony B. Prendergast esq. Commissioned Land Surveyor

and bearing survey Department Examination No. PE 350641 dated 22nd May, 2011 marked with the letter 'A' and lodged herewith.

2. That the land including all buildings and other improvements thereon is of the value of Three Hundred Thousand Dollars ($300,000.00) and no more.

3. That the deeds, documents and other evidence on which I rely in support of my title to the said land are set forth in the Schedule hereto and to the best of my knowledge, information and belief there are no deeds, documents, or other evidence invalidating my title to the said land.

4. That I am not aware of any mortgage or incumbrances affecting the said land or that any other person hath any estate or interest herein at Law or in equity in possession, remainder, reversion, contingency or expectancy.

5. That the said land is being occupied by me.

6. That the names and postal addresses so far as are known to me of the occupants and owners of all lands contiguous to the land are as follows:

NORTH: By lands owned or in possession of the National Works Agency 110 Maxfield Avenue Kingston 10, in the parish of St. Andrew (main road leading from Above Rocks to Stony Hill).

WEST: By lands owned by or in possession of Mrs. Lorna Bailey Rhone, Stony Hill Post Office in the parish ofSt. Andrew and B Smith Stony Hill Post Office St. Andrew.

EAST: By lands owned by or in the possession of Estate John Hall c/o Wayne Harris Stony Hill Post Office in the parish of St. Andrew.

SOUTH: **By lands owned by or in the possession of Estate Henry Gayle c/o Hillary Gayle of Stony Hill Post Office in the parish of St. Andrew.**

7. **That the names and postal addresses so far as are known to me of the owners of all lands contiguous to the said land are as stated in paragraph six (6) hereof.**

AND I DIRECT that Certificate of Title be issued in the name of Valerie Hall Executive Secretary of Golden Hill, Stony Hill Post Office in the parish of St. Andrew."

[6] Attached as Schedules to the application were (a) A plan prepared by A. B. Prendergast Commissioned Land Surveyor bearing examination number PE 350641 and (b) Statutory Declarations by Valerie Hall, Owen Malcolm and Lester Savage, all sworn to on the 28th October, 2011.

[7] The Claimant filed before the Registrar another Statutory Declaration dated the 4th June 2013. This presumably being a response to the requisition by the Referee of Titles dated 26th January 2012. A valuation Report of Mr. L.C. Latouche JP was attached to that Declaration. In response to a further requisition, dated 26th July 2012, the Claimant filed a further Declaration dated the 10th September, 2012.

[8] It should be noted that the Referee of Titles' refusal of the Claimant's application is contained in a document dated 31st October, 2012. It reads,

"I have read the further declaration of the applicant and must commend her Attorney at Law for his industry and the help that he has sought to give me in resolving the issues that arise in this application. However, the authorities referred to are not new to me, and with due

regret, I do not find that they can assist me very much to get to the root of the matter.

Having perused the supplemental declarations of the applicant, it is now quite clear that the applicant is not claiming title to the land based on a gift, nor is she claiming to be registered as the fee simple owners of the land. She declares that she is entitled to claim in equity on the said land." It seems that she is basing that claim on the evidence that in 1986, Arthur Matthews pointed out the boundaries of his land to her, put her in possession and then left the land and went to reside at her house. She cared for him until his death in 1988. She says that by so doing, he discontinued his possession, and limitation time began to run in her favour from 1986. However, by placing the applicant in possession, does not mean that the owner was giving or transferring ownership to her. Assuming all that she has said is factual and correct, the two years possession that she enjoyed in the lifetime of Arthur Matthews between 1986 and 1988 could not bestow on her the absolute ownership to the land that she is claiming to the total exclusion of these who would be legally entitled to share in the estate of the deceased. Possession may by limitation ripen into a root of title, if it is shown that the title of the true owners and those entitled under him, has been extinguished. There is no evidence of the identity of the person on whom the legal estate of the deceased, devolved on and vested in his death. Thirty years have not elapsed since the death of the deceased, and so it could be that the title of such a person has not been extinguished. Any equity that she may claim could only relate to her possession

and not to absolute ownership at law or in equity. I stand by the comments I made in my memo dated 26th July, 2012. This application is refused." [emphasis is as contained in original text].

[9] On or about the 25th March 2013 the Referee of Titles issued a document entitled "Grounds for Directions." This was in response to the Claimant's letter dated 29th July 2013 requesting reasons for the refusal. The Referee's reasons are as follows:

> "**In the instant case there are numerous lacunae in the evidence presented to establish the applicant's claim as the fee simple owner of the land, subject of the application. There is no documentary or other evidence that proves who is the fee simple owner. It does not appear that any effort was made to obtain evidence in that regard. The applicant seems to be labouring under the impression that Arthur Mathew is the fee simple owner, but there is no evidence, documentary or otherwise, that established his title to the land.**
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> **The applicant claims that she is in possession of the land pointed out to her by Arthur Matthews but there is no evidence that identifies that land with the land delineated in the surveyor's diagram.**
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> **The applicant has failed to prove the possession that she claims. There is no evidence that she has exercised all or any of these customary acts of the owner in possession of the land: for example living on the land, cultivating it, bushing it, reaping the rents and profits for her own use and benefit, fencing the land to keep out the owner and others, paying the taxes and other**

outgoings. These are the acts that would be adverse to the title of the true owner and would be evidence of the applicant's intention referred to as, *animus possidendi*. The only evidence of her entry on the land is at the time she claims that Arthur Matthews pointed out the boundaries to her. It is not clear when it is that time began to run in her favour for purposes of the limitation period. She entered the land in 1986 with the consent of Arthur Matthews, and she said she "continued in possession" after his death in 1988, but there is no evidence of the time when she formed the *animus possidendi*, for time to begin to run in accordance with the provisions of the Act.

If the applicant and the supporting declarants had satisfied me of the applicant's continuous quiet and undisturbed possession of the land described in the application instrument and delineated by the surveyor's diagram, for a period of thirty years, then despite the fact that the fee simple owner had not been identified, I would have concluded that she had acquired a title as the fee simple owner of the land.

Subject to all other evidential matters being satisfied I would have approved the application."

In submissions before me Counsel for the Respondents advanced much the same grounds for upholding the refusal to issue a Title to the Claimant.

[10] Having carefully considered the evidence placed before the Referee and his reasons for refusal, I have come to the conclusion that Title ought to have be issued to the Claimant. My reasons can be shortly stated.

[11] The evidence before the Referee of Titles is that the Claimant was put in possession by the owner of the land. He put her there as a quid pro quo for her looking after him until he died. The evidence is that she has remained in possession. This evidence comes not only from the applicant. Mr. Lester Savage, a supporting declarant, was present when the owner handed the land to her. He also had known the land for 60 years and could attest to the fact that Mr. Arthur Matthews lived, farmed and owned it. He stated also,

> "That I have seen the said Valerie Hall in open and undisturbed possession of the land exercising total proprietary rights thereover from the said year when the said Arthur Matthews placed her in possession thereof until the present issue."

[12] Mr. Owen Malcolm, the other supporting declarant was also present when the owner of the land put her in possession. He two knew that the land had been owned and occupied by Mr. Matthews. He also swore,

> "That I have seen the said Valerie Hall in open and undisturbed possession of the said land exercising total proprietory rights thereon from the said year 1986 when the said Arthur Matthews placed her in possession thereof until the present time."

[13] It is the law that a possessory title may be established even though the Claimant's possession is not "adverse" to the interest of the owner. In other words, it is not necessary to show that the actions of the Claimant in relation to the land was inconsistent with the owner's use or intended use of the land. Furthermore, when considering the animus possidendi it is the intent of the Claimant that is decisive. The following authorities support these propositions ***J A Pye (Oxford) Ltd. v Graham*** [2003] 1 AC 419, 433-4; ***Myra Wills v Elma Roseline Wills PCA*** No. 30 of 2002; ***Recreational Holdings 1 (Jamaica) Ltd. v Lazarus*** [2016] UKPC 22 PCA No 0085 of 2015. In the last mentioned case the words of the Board at Para 35 of the judgment are worthy of repetition.

> "34. In passing the Act in 1888 Parliament was deciding how best to allocate risk in circumstances where an innocent purchaser buys land subject to unregistered rights of adverse possession. It decided that the risk of failing to secure title should be allocated not to the adverse possessor, but instead to the innocent purchaser who should be confined to his right to damages against his vendor for breach of contract. In the article which the Board has already praised at Para 131 above, Dr. Barnett writes:
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> > '4. From a practical point of view, the major qualification of the principle of indefeasibility [of the registered title] is the possessory title. This is especially so, because of the number of landowners who have migrated, the shortages and high cost of good agricultural or building land, the widespread squatting on lands which prevails throughout Jamaica, and to highly developed techniques of capturing land. Section 70 contains the relevant statutory provision."

[14] There was abundant, unchallenged evidence before the Referee that the Claimant was put in possession. Her state of mind clearly was that the land was hers. This is so because she agreed to, and did, take care of the owner, being the person who put her in possession, on that basis. It is clear that she was there for the requisite period. The Referee's emphasis on a need to prove "dispossession" or acts "adverse to the owner or such as to dispossess him" do not arise on the facts before the Referee.

[15] I am fortified in the view I take by the fact that in neither of his two requisitions viz the letters of the 26th January, 2012 and 31st October 2012, did the Referee ask for further details as to any acts of possession. He was at that stage content to accept the evidence that the claimant was put and remained in possession. The requisitions raised other issues one of which was a failure to demonstrate that the person who gave her the land and put her in possession was its true owner. This also was an error, and I say so most respectfully. The claim to a

possessory title does not require proof of who the true owner is, possession for the requisite period extinguishes the claim to ownership by any other whether that other has a common law or registered title. The requisition demonstrates that the Referee may have misapprehended the basis of the application and believed the question was whether there had been a valid gift of land. The evidence as to the "gift" was I believe, to support the state of mind of the applicant when being put in possession.

[16] The Referee when refusing the application by letter dated 31 October 2012 accepted that the applicant had been in possession. The reason for refusal at that time was twofold:

a. No documentary evidence that the person who put her in possession of the land was or had the capacity to bestow ownership.

b. The owner died and as he may have had beneficiaries under his estate who were under a "disability", the relevant period was 30 years and not 12. In my view the Referee was correct to accept the evidence that the Claimant had been placed in possession and continued in possession until the date of the application.

[17] There was and is no reason to go behind the Claimant's statement, supported by two declarants, that she was placed in possession and remained in possession.

[18] The Respondent's counsel has urged upon me that 30 years ought to be the requisite period. It seems to me that, having commenced possession in 1986, it is now 30 years possession. Furthermore, and more importantly, there is no basis to impose a 30-year limitation. The Claimant is not relying on the deceased's title being "extinguished" or the title of any alleged beneficiaries. She is saying that having been put in possession she has remained there undisturbed for 12 years and more. That suffices. There is o evidence that there exists, or

existed at the time, any Claimant to the land who was under a disability identified in the statute. The argument that such a possibility must be negatived by evidence would erode to a large degree many a 12 year limitation claim. A squatter on land, whose owner is unidentified, would be unlikely to be able to prove that at the time possession commenced, there was not someone alive under disability who had a claim to the land. It would mean that 30 years and not 12 was the relevant possessory period. The better view, is that in the absence of evidence that there exists an owner under disability the thirty-year period does not apply. On the evidence before the Referee, there is every reason to believe there were in fact no beneficiaries under the estate of Mr. Arthur Matthews. He was living alone and needed someone to care for him. The fact that he reached out to the Claimant in this way certainly suggests he had no family.

[19] Section 17 of the Limitations of Actions Act gives the person under disability the right, notwithstanding that 12 years have elapsed, to make an entry and bring an action. In other words, it seems to me, the 12 year period stands unless a person under disability comes forward before the expiration of 30 years. For these reasons, therefore the Referee ought not to impose a 30-year limitation period without evidence that there was such a person under disability who made a claim.

[20] The approach of the court in St. Vincent and the Grenadines when considering an application pursuant to the Possessory Titles Act is perhaps relevant. In the matter of an *Application for a Declaration of Possessory Title to Land* by George Byron SVGHPT 2013/0036, the applicant contrary to legal requirement failed to identify the registered owner of the land or whether anyone was capable of so claiming. Henry J treated these failures as procedural irregularities. The evidence that his possession had not been disturbed for 12 years sufficed as the legal owner's title was presumed to be extinguished. The Referee of Titles should adopt a similar approach. Having had a surveyor's report, a valuators report and evidence by 3 declarants, there was sufficient evidence to enable the Referee to conclude that the Claimant had been in possession with the

necessary intention for the requisite period. There was no probable ground for the refusal. Finally I observe that the Claimant named both the Referee of Titles and the Registrar as Respondents when Section 156 speaks of them in the alternative. No issue was made of this in argument and perhaps wisely so as it is a Counsel of Prudence who would join both. In the event and as it is the Registrar who issues titles, I have issued a direction to the Registrar.

[21] For the reasons stated above, I therefore make the following orders, and give the following directions:

a) There was no probable ground for the Referee's to issue a title to the Claimant.

b) The Registrar of Titles is directed to issue a title to the Claimant in respect of the land the subject of this Claim.

c) Costs to the Claimant to be taxed if not agreed.

David Batts
Puisne Judge