

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2010/0252

BETWEEN:

NIGEL JOSLYN
of McCarthy

CLAIMANT

-AND-

EDWARD JOSLYN
of 8806 Ave, Brooklyn, NY 11236/1211

DEFENDANT

Appearances: Mr Andreas Coombs holding for Mr Carlyle Dougan Q.C. for the Claimant, Mr Sten Sargeant for the Defendant.

2015: May 20
Jul. 13

JUDGMENT

BACKGROUND

[1] **Henry, J.:** This case involves a dispute for ownership of land between Nigel Joslyn and Edward Joslyn, nephew and uncle respectively. From the pleadings and affidavits filed in this matter, the parties accept that the disputed land, situated at McCarthy is registered in the name of Ruth Constance deceased, who was Nigel Joslyn's grandmother and Edward Joslyn's mother. Edward Joslyn is the Administrator of Ruth Constance's estate having been granted Letters of Administration on August 12th 2010. Nigel Joslyn brought this action in July 2010 and seeks declarations that he has for several years been in exclusive,

uninterrupted and undisturbed possession¹ of the disputed land and that Edward Joslyn is thereby estopped from challenging or denying his rights to it. He also seeks an injunction restraining Edward Joslyn from entering or interfering with the disputed land or his possession and use of it.

- [2] Edward Joslyn refutes Nigel's Joslyn's claims and has counterclaimed for an injunction to restrain him from entering the disputed lands. He seeks a declaration that Nigel Joslyn is estopped from initiating any further litigation against him in respect of Ruth Constance's estate. When the matter was set down for status hearing in May, the parties were invited to make oral submissions on the effect of sections 31 and 47 of the Administration of Estates Act² ("the Act") on Nigel's Joslyn's claim to adverse possession. Nigel Joslyn submitted that his claim is not affected by section 31 because he is making that claim in his own right and not as a beneficiary of Ruth Constance's estate. Edward Joslyn argued that pursuant to section 31 of the Act, from the date of Ruth Constance's death, her estate³ was vested in the Honourable Chief Justice and held subject to a statutory trust. He submitted further that after Letters of Administration are extracted, Edward Joslyn holds the disputed land on a statutory trust for sale in accordance with section 47 of the Act.

ISSUE

- [3] The sole issue to be determined is whether Nigel Joslyn's or Edward Joslyn's respective pleadings disclose a legal basis on which to maintain an action for adverse possession or injunction?

¹ In essence, he is claiming adverse possession.

² Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

³Including the disputed land.

ANALYSIS

Does Nigel Joslyn's or Edward Joslyn's statement of case respectively disclose a legal basis on which maintain an action for adverse possession or injunction?

[4] The Act declares who is authorized to deal with an estate's property before it is completely distributed. It provides that an intestate's estate remains vested in the Honourable Chief Justice until Letters of Administration are extracted;⁴ and during that time it is deemed to be presumptively held on a trust for sale for the benefit of the beneficiaries.⁵ Once appointed, an administrator holds the property on statutory trust for sale.⁶ A beneficiary who before Letters of Administration are extracted, occupies property which forms part of an intestate's estate, is deemed to hold it on a constructive trust for the other beneficiaries.⁷ It follows therefore

⁴ Ibid. at section 31 which states:

"31. Where a person dies intestate, his real and personal estate, until administration is granted in respect thereof, shall vest in the Chief Justice in the same manner and to the same extent as in similar cases in England it vests in the President of the Family Division."

⁵ **Earnshaw and others v Hartley [2000] Ch. D. 155.**

⁶ Ibid. at section 47 (1) which states:

"47 (1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives-

(a) As to the real estate, upon trust to sell the same; and ..."

⁷ See **James v Williams [1999] 3 All E. R. 309 at 315 h & j and 316 a**, where **Aldous LJ** commenting on a similar scenario, examined the definition of "trust" and "trustee" as defined in the section 68 (17) of UK Trustee Act 1925 and concluded that a co-beneficiary could not acquire adverse possession against his co-beneficiaries to property which passed on intestacy. He summarized the relevant facts and concluded as follows:

"In the present case, William junior knew that the grandfather had purchased the house and that on his death the grandmother had acquired his interest. He also knew that the grandmother had died intestate. In those circumstances, he could not have believed that he alone was entitled to the property. He must have known that the plaintiff was entitled to a share. If he had taken out letters of administration, then he would have become a personal representative and would have taken on the duties incident to that office. The result, in my view, would have been that there would have been a trust within the definition of s 68 of the Trustee Act 1925 and he would have owed a fiduciary duty to his sisters. It is the fact that letters of administration were not taken out, that makes it possible for the defendant to contend that no fiduciary duty was owed. ..."

that co-beneficiaries' interests cannot be extinguished through adverse possession by another beneficiary. Mr Nigel Joslyn concedes that a co-beneficiary is unable to acquire an interest by adverse possession in such circumstances. He argues that he did not become a co-beneficiary in Ruth Constance's estate until his mother's demise. He contends that he therefore could and did acquire title to the subject land by adverse possession.

- [5] Mr Nigel Joslyn's mother Gwendolyn Joslyn and Edward Joslyn are brother and sister. Ruth Constance was their mother. They are accordingly entitled to proportionate shares in their mother's estate under the Act.⁸ It appears from the record that Gwendolyn Joslyn died in 1996.⁹ Mr Nigel Joslyn filed this claim 14 years later on July 16, 2010. By that time, Mr Nigel Joslyn and his siblings

William junior knew that he was not solely entitled to the property. He took it upon himself to take possession of the property as if he owned it and assumed responsibility for its upkeep. In my view he was under an equitable duty to hold the property for himself and his sisters. Looking at the state of affairs as at the grandmother's death, the law envisaged that the property would be held upon a statutory trust for the children. It would be inequitable to allow William junior ..., to take advantage of his decision not to take out letters of administration and to act as if he was the owner with the full knowledge that he was not... Each case will depend upon its own facts. But, in my view, this is a case where there was a constructive trust."

Note: the definition of "trust" in section 68 (17) of the UK Trustee Act 1925 is similar to that section 2 of the Trustees Act Cap. 494 of the Revised Laws of Saint Vincent and the Grenadines, 2009 which provide respectively:

"'Trust' does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expression "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and "trustee" where the context admits, includes a personal representative, and "new trustee" included an additional trustee..."

"2. In this Act, unless the context otherwise requires-

"trust" does not include the duties incident to an estate conveyed by way of mortgage; but with this exception **"trust"** and **"trustee"** include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person."

⁸ See section 62 (c) of the Act.

⁹ See paragraph [6] of Judgment of Joseph (Ag.) dated August 6, 2009 which is exhibited to the Defence filed on April 19, 2011.

became entitled to Gwendolyn Joslyn's share of Ruth Constance's estate. They had become beneficiaries of Ruth Constance's estate on Gwendolyn's death.

[6] As beneficiaries, they are restricted from alienating any portion of the estate through adverse possession. Nigel Joslyn is thereby precluded from asserting any right, title or interest in the subject land by adverse possession. Furthermore, Nigel Joslyn's previous application in 2009, for a declaration of possessory title was dismissed because the learned judge found that "he was not in exclusive possession of the land for 12 years".¹⁰ He and Edward Joslyn were the parties in that matter and his claim to adverse possession was the sole issue. The principle of *res judicata* prohibits Nigel Joslyn from re-litigating that issue. He is seeking to do so in this suit and that is not permissible. For all of these reasons, I find that Nigel Joslyn's statement of case does not disclose a legal basis on which maintain an action for adverse possession or injunction.

[7] Mr Edward Joslyn was sued in his personal capacity. He has since obtained Letters of Administration in Ruth Constance's estate. No order has been made substituting or adding him as a party in his representative capacity. His claim for an injunction, as administrator of his mother's estate is not sustainable. I accordingly find that his statement of case does not disclose a legal basis on which to support such a claim.

[8] Nigel Joslyn's persistence in pursuing a claim for a declaration of adverse possession in light of the earlier decision on the identical issue is to be frowned upon. It does not appear that he has appealed that decision but nonetheless he evinces an intention to circumvent the order of the court. This is to be discouraged in the strongest terms. This is an appropriate case in which to restrain him from filing any further claims against Mr Edward Joslyn, dealing with this subject matter.

¹⁰ See **Judgment in Civil Claim No. 1 of 2009** at para. [34], per Joseph, Monica (Ag.).

ORDERS

[9] It is accordingly declared and ordered:

1. Nigel Joslyn's statement of case does not disclose a legal basis on which maintain an action for adverse possession or an injunction. It struck out and is dismissed.
2. Edward Joslyn's statement of case does not disclose a legal basis on which maintain an action for an injunction. It struck out and is dismissed.
3. Nigel Joslyn is restrained from filing any claim in the High Court against Edward Joslyn seeking a declaration that he acquired an interest by adverse possession in land situated at Cartes, Mc Carthy described and delineated in Survey Plan G2685.
4. Nigel Joslyn shall pay Edward Joslyn prescribed costs of \$5,250.00 pursuant to CPR 65.5 (1) and (2).

.....
Esco L. Henry
HIGH COURT JUDGE