

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO. 9/2003

**BEFORE: THE HON. MR. JUSTICE DOWNER J.A.
THE HON. MR. JUSTICE BINGHAM J.A.
THE HON. MR. JUSTICE WALKER J.A.**

**BETWEEN LASCETA BUCKLEY PANTON APPELLANT
A N D CARLTON LINDSAY RESPONDENT**

Garth McBean of Dunn Cox instructed by **Rowe, McDonald and Co.** for the appellant

Mrs. Jacqueline Samuels- Brown instructed by **Yvonne Ridguard** for the Respondent.

June 2,3,4, 2003 and April 2, 2004

WALKER, J.A.:

By a plaint lodged in the Resident Magistrate's Court for the parish of Portland in 1996 the appellant (as plaintiff) filed an action against the respondent (as defendant) claiming damages for trespass to land and injunctive relief to restrain the respondent from committing further acts of trespass to land registered at Volume 1072 Folio 824 of the Register Book of Titles (hereinafter referred to as "the land"). The appellant claimed to be the equitable owner of the land by virtue of an agreement for the sale of the land which was executed on July 13, 1982 by herself as purchaser and the personal representatives of the estate of Aston Panton,

deceased, and Edna Panton, the devisee of the land under the will of the deceased, as vendors. Up to the time of commencement of the appellant's action the land was registered in the name of Aston Panton, and remains so today. The action was defended by the respondent who pleaded that he used the land with the permission of his mother, Dorothy Simpson, to whom the land had passed from her grand-mother, Jane Simpson, who in turn had acquired the land through adverse possession. In due course the action was tried by the learned Resident Magistrate who in the final analysis gave a judgment in favour of the respondent. It is from that judgment that the present appeal is taken.

The legal context in which this appeal is set is not in doubt, the crucial question being whether the appellant established sufficient possession to bring her action for trespass to land and for consequential injunctive relief. The question is similar to one with which their Lordships' Board was faced in **Ocean Estates Ltd. v Norman Pinder** (1969) 2 A.C. 19. In the present case the judgment of the Resident Magistrate rested on a finding that Jane Simpson acquired title to the land by adverse possession. Nearly a century ago in delivering the judgment of the Board in **Perry v Clissold** (1907) A.C. 73 Lord Macnaghten said at page 79:

"It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and

assert his title by process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title."

For present purposes the relevant statute is The Limitation of Actions Act, paragraph 3 of which prescribes 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."

And section 30 provides as follows:

"**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."

In the present case the facts disclose that the land was acquired by Aston Panton on April 23, 1971. Aston Panton who was the former husband of the appellant (the parties were divorced on July 23, 1971) later died in 1977. Under his will the land passed to his sister, Edna Panton. On July 13, 1982, the appellant contracted to purchase the land as aforesaid. At that time Jane Simpson occupied the land. Jane Simpson later died in

1995, and was buried on the land to the knowledge, if not with the consent, of the appellant. On the finding of the Resident Magistrate Jane Simpson occupied the land "at all material times" and "was always in sole continuous and undisturbed possession of same until her death in 1995". The Resident Magistrate also found that Jane Simpson had acquired the land by adverse possession, time having begun to run as from the date of the appellant's "purported acquisition of the land, that is 1982".

On this appeal, Mr. McBean for the appellant, submitted that consequent upon the contractual agreement of July 13, 1982 the appellant became the equitable owner of the land which was never acquired by Jane Simpson by adverse possession for the following reasons which Counsel submitted represented intervening assertions of ownership on the part of the appellant:

- (1) two notices to quit and deliver up possession of the land were issued by the appellant and served upon Jane Simpson, the first in 1983 and the second in 1989;
- (2) the land was enclosed by a barbed wire fence;
- (3) evidence that "in the 60s to the 70s" or "from the late 60s to the latest 1971", Aston Panton was accustomed to park his motor vehicles on the land.

As to (1) above, the Resident Magistrate found that two notices to quit and deliver up possession of the land were served on Jane Simpson

as aforesaid. Be that as it may, there is the highest authority for the proposition that service of a notice to quit without more cannot suffice to stop time running for limitation purposes within the legal concept of adverse possession: see **Goomti Ramnarace v Harrypersad Lutchman** (2001) 59 WIR 511, a decision of the Judicial Committee of the English Privy Council. It follows, therefore, that mere service of these notices was incapable of halting the running of the period of 12 years after which time Jane Simpson could claim to have acquired a possessory title to the land. But Mr. McBean argued that there was more. He prayed in aid of the appellant's case the presence of a barbed wire fence by which the land was enclosed. On this aspect of the matter the Resident Magistrate expressed his finding in the following terms:

"That the one-strand barbed wire fence so steadfastly claimed by the plaintiff to have been run by her around the disputed land was controverted in her cross-examination. I find that proffered claim, projected no doubt as an assertion of ownership over the disputed land by her, was completely impugned."

However, the existence of this fence availed the appellant nothing since neither the appellant nor any other witness was able to say by whom or when it was erected. Lastly, as something more, Mr. McBean relied on evidence that Aston Panton, the appellant's predecessor in title to the land, was accustomed to park his motor vehicles on the land and to use the land as a ramp in the course of his trucking business. While it is true

that the Resident Magistrate found that this was so, the fact of the matter is that this activity of Aston Panton pre-dated his acquisition of legal title to the land in 1971 and so could not be interpreted as an assertion of his ownership of the land. Moreover, there was no evidence that Mr. Panton used the land in any way after 1971, or that he, himself, ever went into possession of the land between 1971 and 1977 when he died.

Before this court Mrs. Samuels-Brown for the respondent argued in the alternative a proposition that Jane Simpson could possibly be considered as having been a tenant at will of Aston Panton. The Resident Magistrate found that Jane Simpson had been in de facto possession of the land for many years prior to Aston Panton's acquisition of the land in 1971. It is to be recognised that Jane Simpson's continued possession of the land after 1971 was not referable to any legal relationship between herself and Aston Panton. Of that there was absolutely no evidence. A tenancy imports a legal relationship and a person cannot become a tenant at will unless from all the surrounding circumstances an intention in the parties concerned to create legal relations is discernible: see **Goomti Ramnarace v Harrypersad Lutchman** (*supra*). On the facts and circumstances of the present case I would, therefore, conclude that Jane Simpson was never a tenant at will of Aston Panton.

Finally, Mrs. Samuels-Brown submitted by way of a Counter-Notice of Appeal that for the purpose of determining the contentious question of

adverse possession the Resident Magistrate should properly have found that time began to run from April 23, 1971 (the date on which Aston Panton first acquired registered title to the land) and not from 1982 (the date of the appellant's "purported acquisition of the land"). There is much force in this submission and I accept it. The evidence which the Resident Magistrate accepted showed that Jane Simpson had occupied the land since "the 1950s" and up until her death in 1995. In the words of the appellant, herself:

"I know Jane Simpson. I agree that Simpson lived on the land in dispute in the '50's and '60's'. She lived there as well in the '70's. She also lived there in the 1980's. She lived there up until 1995 the year of her death. She had left there for a time. She lived in a house up to her death in 1995. The house was there up to 1995."

All the evidence preponderated in favour of a finding of continuous, undisturbed possession of the land by Jane Simpson over the period of "the 1950s" to 1995.

In the final result I would dismiss this appeal with costs fixed at \$15,000.00.

DOWNER, J.A.

I agree.

BINGHAM, J.A.:

I agree.