

No. 55 of 2018
IN THE LAND COURT OF GUYANA

LAND REGISTRATION DISTRICT: Parika

BLOCK: VII

ZONE: Right Bank Essequibo River

PARCEL: sub parcel A of parcel 1791

In the matter of an application by Bhagwattie Aziz, Michael Aziz and Eon Aziz under the Land Registration Act .

Before: Nicola Pierre, Commissioner of Title

Appearances: Ms. Keshia Chase for the Applicants
Mr. Sase Gunraj for the Parika Neighbourhood Democratic Council
Ms. A. Murphy Goodman for the Guyana Lands and Surveys
Commission

Trial dates: September 17, October 21, 22, November 26, 2019

Decision of Nicola Pierre, Commissioner of Title

The Proceedings:

1. Bhagwattie Aziz, Michael Aziz and Eon Aziz (‘the applicants’) applied to be registered as proprietors of sub parcel A of parcel 1791, Block: VII, Zone: Right Bank Essequibo River, part of Parika, to which they claim to have acquired possessory title.
2. The Guyana Lands and Surveys Commission objected on the ground that parcel 1791 is a portion of a railway reserve owned by the Government and cannot be acquired by prescription.
3. The Mora-Parika NDC objected on the grounds that the parcel is a reserve under the control of the NDC, that the Applicants were never in occupation (para 10) and, that the applicants have received ‘various types of permission from the …NDC in relation to the said sub-parcel’ (para 11).
4. I visited the site on 21 August 2019 and the trial was had 17 September, 21 and 22 October and 26, November, 2019.

Conclusion:

5. I dismiss the application because the applicants have failed to prove that they have been in adverse possession of sub parcel A of parcel 1791 for more than thirty years prior to 30 March, 2011.

The Law:

6. To be entitled to be registered as proprietor of sub parcel A of parcel 1791, the applicants must prove that they have been in sole open undisturbed adverse possession of it for 12 years if the owner is a private individual, or for thirty years before 30 March 2011, if it is Government or State land.

Issues:

7. The issues to be determined are:

- Is ‘sub parcel A’ Government or State land?
- Have the applicants been in sole open possession of it for more than thirty years if it is State land, or more than 12 years if the owner is a private individual?
- Have the applicants been in adverse possession of it?

The Evidence and my Analysis:

Is ‘sub parcel A’ Government land?

8. The applicants apply for sub parcel A of parcel 1791 and rely on a sketch plan COS – 748 [Ex C] as defining sub parcel A. Memo 1 of that sketch plan defining sub parcel A refers to Plan 21425 as defining parcel 1791. Plan 21425 was not tendered. COS– 748 shows sub parcel A to be north of and adjacent to parcels 188, 189, 190. Parcels 188, 189, 190 are defined on Plan 15525 [Ex R]. Plan 15525 is the index map of Block VII, Parika, and defines parcels 1–908. On that index map the area directly north and adjacent to parcels 188, 189, and 190 is labelled parcel 179. The Report of the Registrar of Lands issued 21 August, 2018 informs that parcel 179 had been mutated and that Parcel 1791 is one of the smaller parcels carved out of the former parcel 179. I conclude therefore that sub parcel A of parcel 1791 is a portion of former parcel 179.
9. The Registrar’s reports state that there is no person or entity registered as proprietor of parcel 1791 or of the former parcel 179.
10. On Plan 15525 [Ex R] the Block VII, Parika, index map, parcel 179 is shown to contain portion of the remnants of the ‘West Demerara Railway to Vreed-en-Hoop’.
11. I find that Parcel 179 comprises the Parika portion of the old West Demerara to Vreed-en-Hoop Railway. That is clear from the plan 15525 [Ex R] and from my site visit at which I observed that a piece of the applicants fence was *on* the old railway itself.

12. I find that the Demerara Railway Company sold all its assets including the railways and land to the Government of the Colony of British Guiana in 1921 [Railways Purchase Ordinance Cap 262] and that those assets vested in the Government [s.13 (2)], and that those assets included 1914 Transports to the 100 foot wide piece of land on which its railway was sited running through Parika and Hydronie [Schedule E].
13. I hold that to Government of Guyana had legal title to the former parcel 179. Therefore Sub-parcel A of parcel 1791, which is a portion of former parcel 179, is Government Land.
14. The Government of Guyana is however not the registered owner under the Land Registry Act Chapter 5:02 and therefore did not benefit from the immunity from limitation periods conferred on registered proprietors by section 110 of that Act. Possessory title to parcel 179 or portions of it, could therefore be acquired by adverse possession.
15. Prior to 2011 the law provided that title to Government or state land may be acquired by 30 years adverse possession. The law was changed by Act No. 6 of 2011 which provided that from 30 March 2011, State and Government land ‘shall not be acquired by prescription through adverse possession.’ This amendment to substantive rights is not retroactive and cannot take away possessory title that has already been acquired, but means that in order create a possessory title the entire thirty year period of adverse possession of government land must have been completed before 30 March 2011.

For how long have the applicants been in sole open occupation of sub parcel A?

16. On my site visit on 21 August 2019 I observed that sub parcel A contained a one story concrete building. It appeared to be used as a dwelling and to be in the control of the applicants.

17. The applicants say that sub parcel A was occupied by their grandparents Bibi and Abdul Aziz, then by Bhagwattie and Badradeen Aziz, and now by them. Eon Aziz testified (2019-10-21) that ‘we have been at sub lot A of parcel 1791 for more than 30 years’ and in cross examination – ‘from my birth I am there’.
18. In proof of the occupation Eon Aziz testified that in ‘1982 the NDC gave my father permission to erect a building on sub parcel A of 1791’ and tendered an approved building elevation plan that did not refer to any parcel number [Ex F]. He also tendered a tenancy agreement [Ex H] by which he rented to Camex Restaurants Inc a ‘one flat building at Parika’ from 2013 through 2016; Guyana Water Inc invoices for a water supply to premises at ‘Parika, EBE’ issued in 2007, 2017-2018 [Ex K1-3]; Guyana Power and Light invoices billed to his sister in law Nadene Singh at a premises ‘Parika Tavern in Ferry Stelling, EBE’ in 2017-2018 [Ex L 1-2]; and a letter from GT&T informing that the applicants had telephone services at ‘lot 178 Railway Line Parika’ since 1999.
19. In cross-examination Eon Aziz admitted that his parents did not always occupy sub parcel A. He said that his parents occupied ‘where the market center is now, in front. Then they moved them where the market center was going to build and put them where we are now.’
20. Witnesses for the applicants, Budhia Rojan and Alexis Fernandes both testified that they live on parcel 179, and that the applicants have been their neighbours for more than thirty years.
21. Aleassa Peters, the overseer for the Mora Parika NDC, testified that sub parcel A of parcel 1791 is a portion of parcel 179 and that it is on the former railway embankment and is a reserve under the control of the NDC. In cross examination she admitted that there was no document conveying parcel 179 to the NDC, but that ‘records for valuation purposes show that in 1978 it was a Tata bus park.’

22. I accept the evidence of the applicants and their supporting witnesses that they have been in occupation of land in Parika in the vicinity of the stelling for a long time. The applicants have tendered utility invoices placing them at 'Parika Tavern in Ferry Stelling' and at 'lot 178 Railway Line Parika'. However it is not clear whether the applicants were in occupation for more than 30 years prior to April 2011, nor that it was sub-parcel A that they occupied the entire time.
23. Eon Aziz admits that his parents had occupied other lands in the vicinity and had been moved to subplot A when those other lands were needed for the market center. There is no evidence of when the market center was built, or the parcel or lot number of those lands.
24. Eon Azziz says he has lived on subplot A his whole life, but there is no evidence of his age.
25. I do not conclude from the available evidence that it is more likely than not that the applicants occupied sub parcel A for thirty years before 2011.

Have the applicants been in adverse possession of sub parcel A?

26. Government lands are in the control of the Guyana Lands and Surveys Commission [Guyana Lands and Surveys Act Cap 59:05, ss 2,4]. The NDC says that parcel 179 was the former railway and thereafter it was the Tata Bus Park, and was under their control. Buhdia Rojan, the applicant's neighbor and witness, says she bought her house on parcel 179 from Transport and Harbours Department.
27. In cross-examination Eon Aziz admitted that his parents did not always occupy sub parcel A. He said that his parents occupied 'where the market center is now, in front. Then they moved them where the market center was going to build and put them where

we are now.’ It is not clear who ‘they’ was, but ‘they’ clearly had control of the parcel 179 and could and did put people in occupation of it.

28. From the evidence I find that the applicants predecessors went into occupation of sub parcel A with the consent or agreement of the state entity that had possession and control of it, whether it was the NDC, the Government, or Transport and Harbours, or some other.
29. Eon Aziz in cross examination agreed with counsel’s suggestion that ‘ your parents received permission form the local authority as it then was to occupy a parcel of land in that area?’ and the suggestion that ‘It was pursuant to that permission that you have continued to occupy that parcel of land’. In re-examination he said ‘ My parents were given permission to move from where they were before to the back where they are now and we are there since then we never got notice to move or anything.
30. There is no evidence that the admitted permission to occupy was ever withdrawn, or if it was withdrawn, the date when the withdrawal occurred. The limitation period starts running when the land is in the possession of someone in adverse possession, and whether possession is adverse depends on the capacity of the occupier – whether or not she occupies on sufferance, with the consent or permission of the legal owner.
31. There being no evidence of the capacity in which the applicants occupied sub parcel A throughout their period of possession, I hold that they have not established that they were in adverse possession for the statutory period.

Conclusion

32. I hold that the applicants have failed to prove that they have been in adverse possession of sub parcel A of parcel 1791 for more than 30 years prior to 30 March, 2011.
33. I dismiss the application.

A handwritten signature in blue ink that reads "N. Pierre". The signature is written in a cursive style with a large initial "N" and a small "P".

Nicola Pierre,
Commissioner of Title .