

No. 51 of 2015
IN THE LAND COURT OF GUYANA

LAND REGISTRATION DISTRICT: Hampton Court

BLOCK: XXI

ZONE: Essequibo Coast

PARCEL: 176

In the matter of an application for registration of title by adverse possession of parcel 176, block XXXI; Zone Essequibo Coast; being part of Plantation Hampton Court, by Chitraka Boodram and Pooran Sookram.

Before Ms. Nicola Pierre, Commissioner of Title:

October 16, 2017.

Appearances:

Mr. Sohan Poonai for the applicants

REASONS FOR DECISION

1. Chitraka Boodram and Pooran Sookram (“the applicants”) on March 31, 2015, filed application numbered 51 of 2015, seeking a declaration of title to Parcel: 176, block XXXI, zone: Essequibo Coast, part of plantation Hampton Court, on the ground of their adverse possession of it.

2. The application came on for hearing on October 16, 2017. I dismissed the application because the applicants did not prove to my satisfaction that they had been in open occupation adverse to the interest of the registered proprietor or his successors within the meaning of the Land Registry Act, Chapter 5:02 and the Title to Land (Prescription and Limitation) Act, Chapter 60:02.

3. Chitraka Boodram is the sister of Dindiall Persaud and daughter of Kalkaprasaud. Kalkaprasaud is the registered proprietor of parcel 176. Chitraka Boodram claims that her father Kalkaprasaud, who died in 1985, had in 1984 “made a free and voluntary gift in writing” to her brother Dindiall Persaud of parcels 64 and 176 Hampton Court, and that Dindiall had in 1985 then gifted parcel 176 to her and Pooran Sookram. She claims that immediately on receiving the gift she and Pooran Sookram commenced occupation and control of parcel 176, cleared it of bushes and weeds, kept it in a habitable state, paid all rates and taxes due and have retained exclusive possession of it since.

4. Dindiall Persaud swore an affidavit in support on March 31, 2015, corroborating Chitraka Boodram’s statements. Girdheran Singh of lot 142 Hampton Court and Darshan Shewcharran of lot 246 Hampton Court, both swore affidavits on October 12, 2017, deposing that everyone at Hampton

Court knew that Dindiall Persaud had been given parcel 64 and parcel 176 Hampton Court by his father, that Dindiall had given parcel 176 to his sister Chitraka Boodram, that the applicants cleaned and maintained the land, and that they therefore supported the application for a declaration of title.

5. The applicants relied on a largely illegible photocopied document attached to the affidavit sworn by Chitraka Boodram on October 12, 2017, which they asserted was the Deed of Gift of parcels 64 and 176 made by Kalkaprasaud in favour of Dindiall Persaud. Dindiall Persaud had himself relied on that document in application 42 of 2015 in which he applied for a declaration of title to parcel 64 on the ground of his adverse possession of it. In application 42 of 2015 I found that that document did not vest in him any interest in parcel 64, by reason that:

- (i) The transfer of registered land occurs on the filing of a transfer: s. 64(1) of the Land Registry Act, Chapter 5:02. Immediately on the filing of the transfer the property vests in the transferee: s. 76. Dindiall Persaud had no legal interest in the property because no transfer was filed.

- (ii) The document he relied upon was not a deed because it was not signed and executed in the presence of two witnesses, and duly proved and filed as of record in the registry: Section 17(1) Deeds Registry Act, Chapter 5:01, nor was it notarially executed: s. 14 of the Civil Law of Guyana Act, Cap. 6:01. Therefore, Dindiall Persaud had no beneficial interest in the property as no trust arose: Lambert v. Caldeira (1970) 18 W.I.R. 15; June-Ann Little v. Leroy Cort, GLR 2001- 2002, 257, at 262.
6. By reason that the document Dindiall Persaud relied on was not a valid deed of gift, he had no legal or beneficial interest in the property to gift to Chitraka Boodram. In application 42 of 2015 I found that his entry onto parcel 64, as I now find in relation to parcel 176, was pursuant to an invalid deed of gift.
7. When a person takes possession of land under an invalid gift, time runs in their favour from the date of entry: N. Varada Pillai v. Jeevarathnammal, Privy Council, 1920 BOMLR 444; vol 38 MLJ 313. If Dindiall Persaud made an effective entry onto parcels 64 and 176 in 1984 then time may have run in his favour against Kalkaprasaud until his death in 1985, then against his successors post 1985.

8. Any entry by Chitraka Boodram and Pooran Sukhdeo (“the applicant’ s) by way of invitation of Dindial Persuad transferred to them the rights he accumulated as a person in adverse possession. A squatter can tack his occupation onto the years of an immediate predecessor who had less than 12 years in possession, and rely on their combined 12 years occupation: *Vijay Kumar v. Sukhdeo et al*, Civil Appeal No. 95 of 2001, [2003–2004] GLR 111.
9. Where the Court is satisfied that the right of every other person to recover land or any undivided or other interest in land has expired or been barred and the title of every person to the land has been extinguished, title to the land may, be acquired by 12 years sole and undisturbed possession, user or enjoyment not taken or enjoyed by fraud or by some consent or agreement expressly given for that purpose – section 3 of the Title to Land (Limitation and Prescription) Act, Chapter 60:02.
10. Section 110 of the Land Registry Act, Chapter 5:02, specifically provides that there is no limitation against a registered proprietor. However, by virtue of section 107, section 3 of the Title to Land (Prescription and Limitation) Act, Chapter 60:02, applies, and a Commissioner of Title may make a declaration of title to registered land in favour of someone who

satisfies the requirements of section 3 of Chapter 60:02, provided that the person registered as proprietor does not prove his title and object to the grant (s.108 of Chapter 5:02). Unlike in the transport system, title to registered land is not extinguished until the applicant is actually registered as owner pursuant to the court's declaration (s. 109).

11. If the applicants claim is accepted, then as at 1985 they were in possession for a few months adverse to the interest of Kalkaprasaud and after his death in 1985, supposedly adverse to the interest of his heirs or successors.
12. "The right to acquire by prescription is founded on negligence of the owner in not protecting his interests against strangers in possession:" Trustees v. McLean. Possession is never adverse if it can be referred to a lawful title: Thomas v. Thomas (1855) 2 Kay & Johnson, 79. On the face of it, a person claiming land registered in their fathers' name, as a gift from a brother, is not "a stranger in possession" who doesn't rely on "lawful title".
13. Kalkaprasaud, who died in 1985, is the registered proprietor of parcel 64. The Land Registry Act at section 2(2) defines 'Registered

proprietor' to include his executors, administrators, successors, transferees. The word "successor" can mean beneficiary, descendant or heir, especially when included in a list that specifically makes separate and distinct reference to administrators, executors, and transferees, the last of which is by definition a successor *in title*.

14. There is no mention in the application of whether he left a will or whether anyone was appointed executor or administrator of his estate, or whether he had a wife who predeceased or survived him or any children other than Chitraka and Dindiall.
15. A 'successor' of a registered proprietor is immune to limitation. Time can never run against him. (s. 110) of the Land Registry Act, Chapter 5:02, Notice of the application must be served on him: 107(5). The existence of an application does not prevent someone claiming under or through the registered proprietor being registered as proprietor (107(9); If he objects to the grant of title the application must be dismissed. (s.108). Successors must be named and served. To do otherwise would be to subvert the intention of ss.108 - 110 of Chapter 5:02.
16. If Kalkaprasaud died intestate, his estate including parcel 176, fell to be divided 1/3 to his surviving spouse (of whom there was also no mention

in the application) and 2/3rds to his children equally. This means that Dindiall and now Chitraka may be claiming against a mother and siblings who may have an interest in parcel 176 and who may be entitled to oppose pursuant and against whom as successors there is no limitation.

17. It is incumbent on the applicants to include in their application all material facts, “a fact which has some bearing on the main in the petition and which is material to the relief claimed. …(which) goes to the root of the matter:” Garraway v. Williams, 81 WIR 293. The existence or non-existence of a personal representative and or heirs, is a material fact in claiming adverse possession of property belonging to your deceased father, because you are alleging that you occupy adverse to their interest, and they are entitled to notice of your application.
18. He who alleges must prove. “The onus is on the Petitioners to prove their case to the satisfaction of the Commissioner on a balance of probabilities” - Boston Dey et al v. Komal Persaud Ramdhanny et al Yvonne Gilgous, GLR 31 at p.44, Kissoon JA.
19. The applicants have not established whether or not there were any successors of Kalkaprasaud. That makes it impossible for a court to

determine that they occupied 'adverse' to Kalkaprasaud or his executors, administrators, successors, transferees.

20. The applicants must not only name any surviving heirs of Kalkaprasud but must prove they have ousted them. Ouster is proved by possession adequate to found prescription AND "a deliberate defiance by the respondent of the other co-owner's title to the land" : Joyce Natalie Whyte v. Bebe Amena Ali, Civil Appeal No. 13 of 1975 Guyana (unreported)
21. In Trustees, Diocese of Guyana v. I. E. McLean (1939) LRBG 182 Langley J said that petitioners must prove "open, actual, undisturbed occupation of a definite area adversely to the true owners of the estate, so open that the owners would know of it." In proof the applicants relied on a plan numbered 58072 dated February 11, 2014, by Colin J.H. Bowen, Sworn Land Surveyor, which depicts parcel 176 as a "VACANT." The applicants have not built upon, cultivated and/or pastured animals on parcel 176. It is "vacant." There is no "sufficient visible proof of occupation. (Smith v. Martins Executor (1899) 16 Juta 151, Trustees v. Mc Lean).
22. There is evidence of fencing to the north and south boundaries of the land which adjoin other parcels, but no fencing on the boundary adjoining the road to the east nor the reserve to the west. That evidence coupled

with the word “vacant” makes it more likely than not that the fences to the north and south are those of the neighbors, not of the applicants.

23. The acts of occupation they allege are weeding and clearing and payment of rates. There was no evidence presented of payment of rates exhibited to either the original affidavit in 2015 nor the supplementary in 2017, despite the Land Registry Rules requiring that the application be accompanied by “any documents or other evidence relied on by the applicant in support of his application and a numbered list of all documents and plans submitted.

24. The applicants have fallen short even of the standard of occupation required when claiming adverse possession of land against strangers. Their occupation is not “open, actual, undisturbed occupation . . . so open that the owners would know of it,” much less an ouster or “a deliberate defiance by the respondent of the other co-owners title to the land.”

25. I therefore dismissed the application on October 16, 2017, on the ground that the applicants did not prove to my satisfaction that they had been in open occupation adverse to the interest of the registered proprietor or his successors within the meaning of the Land Registry Act, Chapter

5:02, and the Title to Land (Prescription and Limitation) Act, Chapter
60:02.

A handwritten signature in blue ink, appearing to read "N. Pierre". The signature is written in a cursive style with a large initial "N" and a long, sweeping underline.

Ms. Nicola Pierre,
Commissioner of Title,
January 22, 2018.