

No. 177 of 1999

IN THE LAND COURT OF GUYANA

ESSEQUIBO

LAND REGISTRATION DISTRICT: Good Hope

BLOCK: XVIII

ZONE: Left Bank Essequibo River

PARCEL: 124

In the matter of an application by Leslie Lowe in his capacity as the Administrator as Litem of the Estates of Dorian Mendes ad Doris Lam, deceased.

-and-

No. 58 of 2014

IN THE LAND COURT OF GUYANA

ESSEQUIBO

LAND REGISTRATION DISTRICT: Good Hope

BLOCK: XVIII

ZONE: Left Bank Essequibo River

PARCEL: 124 B

In the matter of an application by Chandrika Persaud.

HEARD TOGETHER BY CONSENT.
ORDER MADE NOVEMBER 13, 2017

Before Ms. Nicola Pierre, Commissioner of Title:

November 13, 2017; January 18, 2018

Appearances:

Mr. K Bess for Chandrika Persaud

Mr. Bernard De Santos/ Ms. A. Lall for Leslie Lowe

JUDGMENT

1. Leslie Lowe is the Administrator ad Litem of Dorian Mendes and Doris Lam deceased and is substituted as applicant in application 177 of 1999 filed by them seeking a declaration of title to parcel 122, Block : XVIII, Zone: Left Bank Essequibo River, in Good Hope, Essequibo Coast, as shown on a plan by L. McGregor, Sworn Land Surveyor, dated May 12, 1987, that parcel 122 now numbered parcel 124 on LR 82 the index map of Good Hope by R.N. Drubeej, Sworn Land Surveyor.
2. Chandrika Persaud in application 58 of 2014 seeks a declaration to the eastern portion of parcel 124, which he names 124B but does not define on any diagram or plan.
3. Chandrika Persaud and Leslie Lowe each filed an opposition to the other' s application.

4. I dismiss the application 177 of 1999 by Leslie Lowe and the application 58 of 2014 by Chandrika Persaud by reason that neither have proved to my satisfaction that they are (a) entitled to any part of parcel 124 by way of adverse possession thereof or (b) entitled to be recorded as proprietors thereof by way of ownership or succession.
5. Leslie Lowe claims that he is entitled to 124 by reason firstly, that Dorian Mendes and Doris Lam own it by transport 1496 of 1953 and secondly, that they had also been in long and sole possession of parcel 124. In her 1999 affidavit Dorian Mendez had said that she was in control of the parcel and rents the land to Garville Jeffrey.
6. Chandrika Persaud claims that since 1983 he has been in possession of the part of parcel 124 that he names 124B, and had built a house on it but moved that house in 2005 when asked by the Pomona Good Hope NDC to temporarily relocate it so that the land could be used by BK International Inc to store materials to be used in the construction of the Supenaam Stelling.
7. The western portion of Parcel 124 is occupied by the Transport and Harbours Department. It contains the Supenaam Stelling at which the roll on roll off ferries plying the Parika to Supenaam route dock. The

eastern portion of parcel 124 is occupied by B.K. International Inc, a local company, which according to the evidence led was engaged in the construction of the stelling in or around 2006 to 2011.

8. Neither Transport and Harbours Department nor the company B.K. International Inc took part in the proceedings although they were served with copies of the applications by registered post in September 2017 and January 2018.

Leslie Lowe' s claim based on Transport 1496 of 1953

9. In order to be entitled to be recorded as proprietor of parcel 124 based on the document of title, namely transport 1496 of 1953, Leslie Lowe must prove that:

- 1) He the person deriving title under transport 1496 of 1953; AND
- 2) That parcel 124 is the same as lands held under transport 1496 of 1953, OR
- 3) that he is entitled to parcel 124 by way of a re-allotment of lands to ensure the persons claiming title under transport 1496 of 1953 retain acreage in Good Hope commensurate with that held vide that transport; AND

4) No one else has been in possession of parcel 124 adverse to his interest for more than 12 years.

10. Leslie Lowe tendered the court order dated January 7, 2013, appointing him Administrator ad Litem of the estates of Dorian Mendes and Doris Lam [Ex A] and transport 1496 of 1953 [Ex B] by which Doris Lam and Dorian Mendes hold the E1/2 of lot 12 Good Hope as shown on a plan by W. Chalmers and an undivided $\frac{1}{2}$ of an undivided $\frac{1}{20}$ share in the balance of Plantation Good Hope, except the areas marked B, C, and E on the said plan. He has proved that his predecessors owned land in Good Hope and that he represents those entitled to their property.
11. The next issue to be considered is whether parcel 124 is the same as lands held under transport 1496 of 1953, or whether he is entitled to parcel 124 by way of a re-allotment of lands to ensure the persons claiming title under transport 1496 of 1953 retain acreage in Good Hope commensurate with that held under their transports.
12. Prior to 1966 lands in Good Hope were held under the transport system administered under the Deeds Registry Act Chapter 5:01. In 1966 Good Hope

was designated a registration area subject to the Land Registry Act, Chapter 5:02, by way of ministerial order 27 of 1966A.

13. The Land Registry Act, Cap.5:02, at section 17 grants the assigned Minister power to designate areas of land in Guyana “Registration” areas to be subject to the land title system set out in that Act, under which titles to land and dealings with land are recorded and administered by the Registrar of Lands, and there is no advertisement of transfers in the Official Gazette, as opposed to the transport system under which private land is traditionally held in Guyana. This process of designating an area a Land Registration area and bringing it into the Land Registry system is set out in Part IV of the Act and referred to as ‘First Registration.’”
14. Once an area is designated a Land Registry Area the area must be surveyed and a plan of it drawn (s.21). The plan is an index map and must divide the land into parcels (lots) and a number must be assigned to each parcel and be endorsed on the plan. The Commissioner of Lands and the Registrar of Lands have copies of the index map of every designated land registration area and all records and declarations of title must refer to that plan and the assigned parcel number. That Index map is the fundamental land identifier upon which the Register of Titles is based.

15. Plans dividing Good Hope into parcels were prepared by sworn land surveyors Mr. Chang-Yen in 1971 and 1976 and Mr. McGregor in 1987, but none were accepted as the final or index plan of Good Hope. No final plan of Good Hope was recorded until 30 years after the area was designated a registration area. The final plan accepted as the index map was a plan prepared by R. N. Durbeej, Sworn Land Surveyor on April 7, 1995, recorded in the Guyana Lands and Surveys Commission as Plan numbered 28122, and at the Land Registry as Plan numbered LR 82.
16. The parcel in contention here, parcel 122 shown on a sketch plan X468 by L. McGregor, dated May 12, 1987, is the same parcel of land as parcel 124 shown on the Final Plan LR 82 for Good Hope dated July 4, 1995, drawn by R. N. Durbeej.
17. Sections 22, 23 and 24 of the Land Registry Act provide for the registration of existing documents of title when an area is brought under the Land Registry Act. Section 18 of the Act dictates that on the Minister designating the area a registration area, the Commissioner of Title shall publish a notice inviting people claiming title to land in that area on any basis, including by way of existing title, inheritance, purchase, or adverse possession, to submit an application to the Commissioner to record their existing title or for a declaration of title

to the land claimed. Sections 20 and 21 provide that the Commissioner shall be provided by the Registrar of Deeds with a report of all land titles in the area and by the Commissioner of Lands with a plan of the area. The Commissioner of Title then has an overview of the existing ownership, entitlement to, and physical layout and occupation of land in the area.

18. Section 22 then imposes a duty on people with interests in land in the area by mandating that “every person who claims title to any unregistered land in the area under a document of title shall apply to have that document recorded.” Section 24 of the act states that the Commissioner shall record any existing documents of title if she is satisfied “(i) that the person claiming ownership under any such document is the person or derives title under or through the person named in the document; and “(ii) that no other person is able to establish title to the land by possession adverse to the title of the claimant.”
19. The applications to record existing title or secure a declaration of title, are to be made within the time specified in the section 18 notice, in the case of Good Hope presumably in 1966, but section 22(3) provides that “the commissioner may permit any person to make an application out of time upon such conditions as he thinks fit. In Land Court practice

every application for a declaration of title to a parcel of land in Good Hope (or in any registered area) is treated as a First Registration application if there is no person registered as proprietor of that parcel in the records at the Land Registry. This applies to applications like Leslie Lowe's made in 1999, thirty years after the area was designated a land registration area, which application is being heard in 2017, fifty years after the area was declared.

20. There is no person registered as proprietor of parcel 124, block XVIII, zone LBER, part of Good Hope, in the Register of parcels and titles in Good Hope kept by the Registrar of Lands. This application was therefore treated as an application for First Registration as a proprietor.
21. Leslie Lowe claims that he is entitled to parcel 124 because he holds transport 1496 of 1953 [Ex B] which is title to the E1/2 of lot 12 of "A" Good Hope and an undivided $\frac{1}{2}$ of an undivided $\frac{1}{20}$ share in the balance of Plantation Good Hope, except the areas marked B, C, and E, all shown on a plan of Good Hope by W. Chalmers.
22. A perusal of the plan by William Chalmers dated July 25, 1866 and the plan by R.N. Durbeej numbered LR 82 [Ex K], makes it clear that parcel 124 as laid down by Durbeej was not a part of lot 12 laid down by

Chalmers in the area marked "A" on his plan. Leslie Lowe is therefore not entitled to parcel 124 on the basis of it forming part of a specific lot he holds by transport. He is however the holder of an undivided $\frac{1}{2}$ of an undivided $\frac{1}{20}$ share in the balance of Plantation Good Hope, except the areas marked B, C, and E on Chalmers plan.

23. Twenty proprietors in Good Hope held individual residential lots with an accompanying undivided interest in the agricultural lands. Land Court in recording titles of the original transport holders did so by re-allotting lands commensurate to the acreage of the existing interest as held by transport. If a person held by transport one acre of residential land and ten acres of agricultural land, that person is entitled to be allotted residential parcels amounting to one acre and agricultural parcels containing 10 acres. This was the course taken in Good Hope as is evidenced by the 1972 decision of the Honourable L. Lennox Perry, Commissioner of Title and Judge of the Land Court, who in application 36 of 1966 made an order recognizing the transported interest of one Thomas Sue-en-Sue to residential lot 19 and a $\frac{1}{20}$ th share in agricultural lands at Good Hope by declaring in his favour title to 27 parcels of land whose combined acreage equaled the acreage Thomas held by transport.

24. Section A comprised 21 lots of slightly varying sizes amounting to a total of 17.26 acres. The E1/2 of lot 12 contained approximately 0.41 of an acre. The remaining lands of the said plantation which excluded "B", "C" and "E" and a strip of land acquired by the colony of British Guiana for roads and a terminus as shown on a plan dated July 31, 1919, by W Y. Lord, Government Surveyor, is agricultural lands of approximately 812 acres. A 1/40 share is therefore 20.3 acres approximately. The total acreage in Good Hope that can be claimed by people deriving title under Transport 1496 of 1953 [Ex B] is 20.71 acres.
25. Is Leslie Lowe entitled to parcel 124 or any other lands as part of a re-allotment to ensure a total acreage commensurate with any transport entitlement he may have? Dorian Mendes and Doris Lam, according to the Register of Titles for Good Hope are the registered proprietors of 32 residential parcels of land in Good Hope, namely, parcels 32, 33, 34, 35, 36, 37, 229, 230, 232, 314, 348, 349, 350, 351, 377, 438, 447, 457, 458, 459, 490, 491, 492, 494, 509, 511, 520, 528, 538, 540, 632, 683. This was not disclosed in the application.
26. From the information presented to me I am unable to determine the total acreage they possess in Good Hope by virtue of ownership of those 32 parcels and how they came to be owner of them, whether by claims of

inheritance, or by adverse possession, or by purchase from a registered proprietor. In any application to be recorded as proprietor of parcels on the basis of ownership of the lands in transport 1496/1953, Leslie Lowe must disclose the acreage he already holds or has been awarded on the basis of that document so that the remainder of his entitlement may be calculated. There is insufficient evidence to find that they are entitled to be recorded as proprietor of parcel 124 or any other lands in Good Hope by way part of a re-allotment to ensure a total acreage commensurate the with their 20.71 acres transport entitlement.

The claims of entitlement by way of prescription

27. 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.

28. “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* (CA 91/2000) GLR 31.
29. The petitioner must prove that his occupation was open and adverse – “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” ’ *Trustees, Diocese of Guyana v. I. E. McLean* (1939) LRBG 182 Langley J.

Chandrika Persaud’ s claim

30. Chandrika Persaud claims possession of 124B, the eastern portion of parcel 124, which is occupied by B.K. International Inc. The Supenaam Stelling is located on the western portion of Parcel 124. The occupation of the Transport and Harbours Department and B.K. International Inc is clear on the site and from the evidence of Mr. Vishtek Brandon, Sworn Land Surveyor, that evidence including “Internal Memorandum” dated July 20, 2017, [Ex L], sketch plan COS-545 by Colin J. H . Bowen, Sworn Land Surveyor [Ex 0], and the 2017 Google image photograph capture of parcel

124 with the superimposed parcel boundaries from the index map LR 82 [Ex P].

31. Chandrika Persaud claims that Dorian Mendes and Doris Lam have never been in occupation of parcel 124. He says that he has long used parcel 24 to graze his cattle in large numbers, and traversed across it to get to his boat on the Essequibo. He further says that he had built a house on parcel 124 for his son but had relocated it temporarily at the request of the Pomona Good Hope Neighbourhood Democratic Council who sought his permission to grant to BK International the use of the eastern part of parcel 124 to store the materials for the construction of the Supenaam Stelling on the west of parcel 124.
32. Chandrika Persaud has taken steps to enforce his claims of possession by way of proceedings 339-W of 2012 [Ex H 1-5], an action by him against B.K International Inc and Showkat Ali, the Chairman of the NDC, seeking possession of parcel 124.
33. Leslie Lowe claims that Chandrika Persaud never had a building on parcel 124 but that he had grazed his cows on the reserve dividing his home from parcel 124 and had crossed the land to get to his boat on the Essequibo River.

34. Chandrika Persaud has not offered any supporting or corroborating evidence of having had a house on parcel 124. Grazing cattle is not by itself an act sufficient to found adverse possession: Smith and Others v. Martins Executor (1899) 16 Juta 151; Dularie v. Stanton (Guyana) 1431 of 1974; Powell v. Macfarlane (1977) 38 P&CR 633. Regularly crossing a piece of land gives rise not to ownership of the whole land but to an easement, a right of way, of passage across the land. The filing of the action 339-W of 2012 [Ex H 1-5], against B.K International Inc and Showkat Ali, is evidence of his intention to possess but in itself not evidence of his actual open occupation for the relevant period.
35. I am not satisfied that Chandrika Persaud has been in 12 years sole and undisturbed possession, user or enjoyment of parcel 124 or any part thereof, within the meaning of section 3 of the Title to Land (Limitation and Prescription) Act, Chapter 60:02.
36. Even if Chandrika Persaud had proved exclusive possession for the prescribed period his application must fail because he has not provided any measurement, acreage, plan or diagram defining the area he claims to have occupied. There is insufficient information to enable the boundaries of the area he allegedly occupied to be described in an order of court: Hope v Hope (1960) LRBG 104.

Leslie Lowe' s claim

37. Leslie Lowe' s predecessor Dorian Mendes in her 1999 affidavit said that she rented parcel 124 to Garville Jeffrey. There is no evidence of any rental to Jeffery save her statement and no evidence at all of the period of his occupation as her tenant, nor of the portion of parcel 124 he occupied. Chandrika Persaud says that portions of parcel 124 were also occupied by him and by Ivan Rago, Donnet Besham, Curtie Jones and Vincent Nicholas and that parcel 124 was never lived on nor possessed by Dorian Mendes or Doris Lam.
38. Leslie Lowe in his evidence says that his predecessors used parcel 124 as a dumpsite for their sawmill waste, and that sometime in the "late 1970' s and early 1980' s" the Government of Guyana through the Manager of Transport and Harbours had "come to an oral agreement" that for reasonable compensation Mendes and Lam would grant the government permission to build the Supenaam Stelling on parcel 124. None of these claims were made in the original application signed by his predecessor Dorian Mendes herself. No evidence of the alleged agreement was tendered.

39. The evidence led by Chandrika Persaud and Leslie Lowe is that sometime in or around 2006 the Government of Guyana caused the Supenaam Stelling to be constructed on parcel 124.
40. Leslie Lowe has further given evidence that he caused a letter to be written in September 2012 [EX E], to the Attorney General of Guyana, seeking compensation for parcel 124 on which “the Government through the Ministry of Public Works have gone ahead despite my clients’ objection to erect the ferry stelling on that parcel” .
41. In 1978 Mr. L. Lennox Perry, Land Court Judge and Commissioner of Title, made a Declaration of Title in favour of the State of Guyana to parcel 209, 210, 211, 212, 213 Good Hope as shown on the Good Hope plan by Chang-Yen, SLS, dated March 20, 1976. Parcel 213 on Chang-Yen’ s plan [Ex M] is the same land numbered parcel 124 on the index map by Durbeej LR 82 [Ex K].
42. The State of Guyana was never entered on the Register of Titles as registered proprietor against whom there is no limitation by section 110 of the Land Registry Act, Chapter 5:02. A declaration was however made as is evidenced by the notice of it published by the Land Court at page 281

of the Official Gazette of March 18, 1978 [Ex Q]. That declaration was not challenged.

43. The Land Registry Act, Chapter 5:02 at section 34 provides that anyone aggrieved by a decision of the Commissioner may appeal therefrom to the Full Court within 28 days from the date in the Gazette in which the declaration is published. There is no evidence of an appeal against the award of parcel 213/122/124 to the State of Guyana by any of Dorian Mendes, Doris Lam, Leslie Lowe or Chandrika Persaud.
44. Section 3(2) of the Title to Land (Prescription and Limitation) Act, Chapter 60:02 as amended by Act No. 6 of 2011, provides that State Land, Government Land and land owned by State entities shall not be acquired by prescription through adverse possession. This provision applies to any application made after March 30, 2012. Chandrika Persaud's application would therefore fail on this ground even if he had established exclusive possession of a defined area. Leslie Lowe's application was filed in 1999 and is not excluded by that amendment.
45. I find that it is unlikely that representatives of the Government would agree in the late 1970's and the 1980's to purchase from Dorian Mendes

and Doris Lam parcel 124 when the Court has already made a declaration in the State' s favour to the parcel in 1978.

46. I do not believe that Dorian Mendes or Doris Lam were ever in sole and exclusive possession of parcel 124. I believe the evidence of Chandrika Persaud that various people lived on and used various portions of parcel 124 at times. There is no allegation that Dorian Mendes or Doris Lam ever resided there or built anything upon it or fenced it. Leslie Lowe has not produced any evidence of the alleged tenancy of Jeffrey, the area of land Jeffrey occupied, or the agreement between his predecessors and the Government.

47. I am not satisfied that Dorian Mendes and Doris Lam were ever in sole 12 years sole and undisturbed possession, user or enjoyment of parcel 124 within the meaning of section 3 of the Title to Land (Limitation and Prescription) Act, Chapter 60:02.

48. I hereby dismiss the application 177 of 1999 by Leslie Lowe and the application 58 of 2014 by Chandrika Persaud by reason that neither have proved to my satisfaction that they are (a) entitled to any part of parcel 124 by way of adverse possession thereof or (b) entitled to be recorded as proprietors thereof by way of ownership or succession.

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,
February 26, 2018.