

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE  
CIVIL JURISDICTION

BETWEEN:

ROMANIE GOUVEIA

Plaintiff

-and-

1. DISHON GIBSON
2. RUDOLPH GIBSON

Defendants

Jointly and Severally

The Honourable Justice Navindra A. Singh, Puisne Judge

Ms. Alana Lall representing the Plaintiff

Mr. Naresh Poonai representing the Defendants

**Delivered July 13<sup>th</sup> 2020**

RULING

BACKGROUND

The Plaintiff is the owner of a parcel of land known as and situate at Parcel 412, Zone L.B.E.R., Block XVIII under Certificate of Title No. 146 of 2013 [**Exhibit “A”**].

The First Named Defendant [FND] is the son of the Second Named Defendant [SND].

The Plaintiff alleges that the SND directed the FND to destroy a part of one of her fences on Parcel 412, which he did, by pulling out 20 wallaba posts and cutting the barbed wire attached to the posts on October 19<sup>th</sup> 2014.

The Defendants denied this allegation in their pleadings and by way of a Counterclaim contend that the Plaintiff fraudulently obtained title to Parcel 412 and claim that they are the lawful owners and occupiers of Parcel 412.

### **ISSUE I**

Can the Defendants challenge the validity of the Plaintiff's title in this action?

### **FACTS**

Historically, Thomas Sue-Enn-Sue purchased Lot 19 from James Superson and then held title to the said Lot 19 by Transport No. 376 of 1925 [County of Demerara - British Guiana][Exhibits "T15", "T16" and "T21"]. At that time Lot 19 was shown on a plan dated July 25<sup>th</sup> 1866 by SLS William Chalmers.

Thomas Sue-Enn-Sue then applied under the Land Registry Ordinance for a declaration of title which would essentially have been first registration of title to the said Lot 19 based on his Transport on September 27<sup>th</sup> 1966 by way of Application No. 36 of 1966 [Demerara] [Exhibits "T17", "T18", "T19" and "T21"].

This Application must have been as a result of Land Registry (Registration Areas) Order No. 27/ 1966A which designated Good Hope a Land Registration Area for which ownership is evidenced by a Certificate of Title.

In that Application the twenty-one lots that comprised Lot 19 were given parcel numbers as designated and shown in a sketch Plan No. X1314 dated December 24<sup>th</sup> 1971 by SLS D. A. Chang-Yen. At that stage, it would appear that one of the twenty-one lots were numbered Parcel 373 on that Plan.

A first Order was made in favour of Thomas Sue-Enn-Sue in his Application No. 36 of 1966 [Demerara] on August 16<sup>th</sup> 1972 based on the sketch Plan No. X1314 [Exhibit “B1 - B2”].

This was followed by a Final Order in the said Application on October 10<sup>th</sup> 1976 by Commissioner of Title Mr. L. Lennox Perry, however, the Final Order was based on a [Final] Plan No. 17023 dated July 10<sup>th</sup> 1976 by SLS D. A. Chang-Yen in which Parcel 373 was renumbered Parcel 248.

For unknown reason/s a Certificate of Title was never issued to Thomas Sue-Enn-Sue subsequent to the that Order being granted.

Through inheritance, whereby Eric Sue-Enn-Sue inhereited the property from his father Thomas Sue-Enn-Sue and then devised it to the Plaintiff, the Plaintiff acquired ownership of Lot 19 and title was conveyed to her via Transport No. 376 of 1925 whereby she was issued Transport No. 73 of 2000 [County of Essequibo] [Exhibit “T24 - T26”].

The Plaintiff applied under the Land Registry Act for a declaration of title, which was essentially application for first registration of title to the said Lot 19. At that time Plan No. 28122 by SLS R. N. Durbeej dated July 4<sup>th</sup> 1995 was being used, and on that Plan, Parcel 248 was renumbered and identified as Parcel 412. [Exhibits “T1”, “T4”, “T5” and “T6”].

It is noted that Parcel 412 has also been represented as Parcel 370 on a sketch Plan No. X-468 dated May 12<sup>th</sup> 1987 by SLS L. F. McGregor [Exhibit “T47 - T49”].

In summary, Parcel 412 is a portion of land of a larger area of land which was known as and described as Lot 19 of Plantation Good Hope, Essequibo Coast. The said Lot 19 comprised of twenty-one lots of which Parcel 412 was one of the lots, though not described as when it was part of Lot 19 and in fact, only described as “Parcel 412” on Plan No. 28122 by SLS R. N. Durbeej dated July 4<sup>th</sup> 1995.

The Plaintiff during the pendency of her Application also filed an Opposition to all other Applications for declarations of title to Parcel 412 [**Exhibits “T7”, “T8”, “T9” and “T10”**].

On October 8<sup>th</sup> 2012 Commissioner of Title Mr. Rabindra Rooplall granted title to the Plaintiff to Parcel 412 in Application 121 of 1999 and on May 29<sup>th</sup> 2013 the Plaintiff was issued Certificate of Title No. 2013/ 146 to Parcel 412.

The SND testified that he had also applied for a declaration of title to Parcel 412 and the Plaintiff had opposed that application.

At that time he had also applied for a declaration of title to Parcel 411 which has been granted.

The SND has a house on Parcel 411 with a water tank shed attached to the house which partially encroaches on Parcel 412. The SND also has a small wooden pen on Parcel 412.

The Plaintiff testified that the SND had withdrawn his application for a declaration of title to Parcel 412 during the hearing of the applications in the Land Court.

The SND denies this, however, he is unable to state what is the current status of that application.

## **LAW**

### **Section 24 of the Land Registry Act; CAP 5:02 of the Laws of Guyana**

24. The Commissioner shall determine who is entitled to each and every parcel of unregistered land in the area and shall -

- (a) record all documents of title to unregistered land in respect of which he is satisfied -
  - (i) that the person claiming ownership under any such document is the person or derives title through the person named in the document;
  - (ii) that no other person is able to establish title to the land by possession adverse to the title of the claimant.

**Application by Alvin Bishop** [Application No. 135 of 1999] [Land Court of Guyana; Unreported - January 12<sup>th</sup> 2018]

## **ANALYSIS**

If the SND is to be believed then it is clear that both the Plaintiff and the SND applied for a declaration of title to Parcel 412 and they were both before the same Land Court at the same time and both parties were represented by Counsel.

In fact, based on his testimony he was represented in the Land Court by the same law firm that represents him in this action, yet still he was unable to tell the Court the status of his application for Parcel 412, moreover, his Attorney did not seek to lead any evidence with respect to the status of such an application nor tender the

application into evidence despite the fact that he testified that he is in possession of the application.

A proper analysis of this evidence and conduct of the SND must lead to only two possible conclusions;

- I. The SND did not in fact apply for a declaration of title to Parcel 412 as the Plaintiff testified, or
- II. His application was dismissed and the same time that the Plaintiff's application granted.

If the SND did not in fact apply for a declaration of title to Parcel 412 then he cannot be allowed to launch an attack on the Plaintiff's title in this action since the Land Court would have been the proper and convenient forum to deal with any competing claims to Parcel 412 at the time that it was hearing the Plaintiff's application.

This is not a case where the Plaintiff approached the Court and secured title without the knowledge of the SND and then sometime later he discovers that she secured an award from the Court.

The SND testified that he was in Court when the Plaintiff was there and based on the evidence before this Court, the Land Court was dealing with all of the applications pertaining to Good Hope cumulatively.

In fact the SND testified that he knew while the matter was extant in the Land Court that the Plaintiff had applied for Parcel 412.

Further, it would indeed be unacceptable for him to have applied for a declaration of title to Parcel 411, the parcel next to Parcel 412 and not apply for a declaration

of title to Parcel 412 at the same time if he believed he had a legitimate claim to title to Parcel 412 and then try to impugn her title in her action against him for trespass.

If the SND did file an application for a declaration of title to Parcel 412 and his application was dismissed and he was dissatisfied with such a decision then his redress lied in an appeal of such an Order of the Court.

He certainly cannot challenge such an award through this action since the issue would be *res judicata*, especially considering that the SND testified that the Plaintiff had filed an Opposition to his application for a declaration of title to Parcel 412 which would obviously mean that for her to succeed in her application, any application that he filed pertaining to the same Parcel would have been determined by the Court.

Bearing in mind that her application was determined in 2012, the Court finds it highly improbable that the SND has an application pending concerning Parcel 412.

In either of these scenarios the SND's claim that the Plaintiff obtained title by fraud must fail.

Notwithstanding this, it must be made clear that despite the wording of the Plaintiff's application to the Land Court, to wit, an application for a declaration of title, the Plaintiff was effectively applying for first registration of title.

**Section 24 (a) of the Land Registry Act** provides the procedure to be applied by the Commissioner of Title when dealing with registration of title where a person holds a document of title.

The Court finds the judgement of Commissioner of Title Nicola Pierre in **Application by Alvin Bishop** @ paragraphs 8 - 10 to be instructive on the process laid out in the Land Registry Act with respect to registration of title where a person holds a document of title.

In this regard, based on the evidence in this case, the Plaintiff applied to have a title registered and therefore upon production of that title, the onus would be on any person opposing her Application to establish that they had acquired title to the land by possession adverse to the title of the Plaintiff.

The evidence with respect to the fact that the Plaintiff legitimately obtained Transport to the land is accepted by the Court.

Defence Counsel's argument that no Will was produced by the Plaintiff proving that she inherited the land is disingenuous in light of **Exhibit "T24 - T26"**, which [Transport] was never challenged by the Defendants.

Her evidence that there was a trial and she testified in Land Court is unchallenged, and thereafter she was awarded title.

The evidence shows that there were other applications before the Land Court for Parcel 412.

It is therefore clear that other persons attempted to show that they had acquired title to the land by possession adverse to the title of the Plaintiff but none were able to establish such claim in accordance with the provisions of **Section 24 (a) of the Land Registry Act**.

There is no allegation of fraud against the Commissioner of Title and it must be presumed that all that was required to be done in accordance with the law was done by the Commissioner of Title.

In this regard Defence Counsel's submissions on adverse possession are irrelevant and again the allegations of fraud must fail.

Further and in any event the Court does not believe the Defendants in their testimony that the water tank shed was straddling Parcel 412 for the past 22 years.

Upon an examination of **Exhibits "R1 - R2"** the Court finds that the wood and the zinc sheets from which the shed is constructed are very new, definitely not 22 years old, in fact the Court believes that it was probably not more than 1 year old when the photographs were taken in 2014.

In addition the Court observes that the area under the shed is concrete whereas the area under or around the house is dirt.

The Court found the Plaintiff to be a truthful witness and believes her testimony that the pen and shed were placed there sometime in 2013.

In this regard, the Court finds that in any event the Defendants nor any of them in their sole capacity ever occupied Parcel 412 other than as trespassers.

The Court does not accept the SND's assertion that he was unaware of the Parcel numbers issued on SLS Durbeej's plan, implying that he may not have been aware that the Plaintiff was applying for Parcel 412 because he knew it as Parcel 370 for the following reasons;

I. He is well aware that he received title to Parcel 411 which is the number for that Parcel under SLS Durbeej's plan.

II. Under cross examination his testimony was:

*"I applied same time for 411 and 412.*

**Q:** *When did you first become aware that Ms. Gouveia was applying for 412?*

**A:** *I know she was applying when I was in Court but I had applied since 1996."*

Based on these instances of the SND's testimony coupled with the fact that the SND nor his Attorney-at-Law seem to conveniently not have information on any application he may have filed with respect to Parcel 412, the Court finds that the SND is not a truthful witness.

### **CONCLUSION**

The Defendants cannot challenge the validity of the Plaintiff's title in this Action. Notwithstanding this, the Court finds that the Plaintiff did not obtain Certificate of Title 2013/ 146 by fraud and so in any event the Defendants' Counterclaim was bound to fail.

### **ISSUE II**

The Plaintiff's claim for special damages for trespass and unlawful damage to property.

## **FACTS**

The Plaintiff claimed the cost of building a fence around the perimeter of Parcel 412 and the costs of repairing that fence after the Defendants damaged it as special damages.

Counsel for the Plaintiff conceded that the Plaintiff would only be entitled to the costs of repairing the fence as special damages. The Plaintiff testified that this costs was \$159,900.00 and she provided a receipt for such payment for repairing the fence [**Exhibit “J” and “K”**].

The Defendants denied the claim of damages to the fence in their pleadings, however, during the course of the trial the FND testified that he did uproot fence posts while the SND testified that he though he saw uprooted fence posts but had no knowledge of how that happened.

## **CONCLUSION**

The Court finds that the FND has clearly accepted that he deliberately caused damage to the Plaintiff's fence and as such the FND is liable for such damage.

The Court accepts the Plaintiff's evidence as proof of the quantum of monies that she expended in repairing the fence.

## **ISSUE III**

The Plaintiff's claim for general damages for trespass.

## **FACTS**

The FND testified that he did uproot some of the Plaintiff's fence posts.

The SND testified that he built a water shed encroaching on to Parcel 412 which is owned by the Plaintiff.

### **CONCLUSION**

The Court finds that the Defendants are liable in damages for trespass to the Plaintiff's property situate at Parcel 412.

Based on the foregoing, the Defendants' Counterclaim is hereby dismissed.

The Court awards the sum of \$159,900.00 as special damages and \$350,000.00 as general damages for trespass and unlawful damage to property to the Plaintiff against the FND.

The Court awards the sum of \$350,000.00 as general damages for trespass to property to the Plaintiff against the SND.

Under **section 25 of the High Court Act; CAP 3:02** of the Laws of Guyana the Court further orders that the SND do remove such parts of the water shed that extends from Parcel 411 and encroaches on Parcel 412, Block XVII, Zone L.B.E.R. within 14 days of the date of this Ruling failing which the Plaintiff is hereby authorised to remove same and recoup the expense for so doing from the SND.

The Court awards costs to the Plaintiff against each Defendant in the sum of \$150,000.00.

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Justice N. A. Singh