

2016 - HC - DEMERARA - CIV - P - 702

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

(DECLARATION OF TITLE)

In the matter of Lot 'M' also shown as Public Open Space on Plantation # 17947 being parts of Lots 44, 45, 46 and 47 North section, Section F, La Grange Village, situate on the West Bank of Demerara, Guyana, the said lot 'M' containing an area of 0.137 (nought decimal one three seven) of an acre and is shown, laid down and defined on a Plan by L.L. Rutherford, Sworn Land Surveyor, dated 13th day of July, 2016, and recorded in the Guyana Lands and Surveys Commission on the 9th day of August, 2016, as Plan No. 64725.

-and-

In the matter of the Title to Land (Prescription and Limitation) Act, Chapter 60:02

-and-

In the matter of a Petition by Nafeeza Khan for a Declaration of Title.

Before: Nicola Pierre, Commissioner of Title and Judge of the Land Court

Appearances: Mr. M. A. Nandlall for the Petitioner
Mr. L. Amsterdam for the Opposer

Trial dates: October 15, 29, 2018, January 4, 2019.

Decision of Nicola Pierre, Commissioner of Title

The claim:

1. Nafeeza Khan ('the petitioner') claimed Lot 'M' ('the land') part of Lots 44, 45, 46 and 47 North section, Section F, La Grange, on the west bank of the Demerara River, on the basis of her and her predecessor's occupation of it for more than 12 years, without consent and with the required animus. The La Grange/Nismes Neighbourhood Democratic Council filed an opposition alleging that Lot M is a reserve.

Conclusion:

2. For the reasons set out below I find that the land is not a reserve and that the petitioner has acquired possessory title to it.

The Law:

3. To succeed in an application for a declaration of title by way of prescription under section 3 of the Title to Land (Prescription and Limitation) Act, Chapter 60:02, the petitioner must prove that she had for more than 12 years, held sole possession of the claimed land with the intent to hold it, and that the possession was adverse to, and without the consent or agreement of, the person(s) legally entitled to it. She must also establish that the land is not excluded from prescriptive acquisition by section 3(2) of the Act, or, that section 3(2) does not apply to her claim.
4. The opposer must prove its allegation that the land is subject to section 3(2) of the Act.

Issues:

5. The facts and issues to be determined were:

- a) Was the petitioner in sole possession of Lot M for more than 12 years?
- b) Did she demonstrate an intent to hold the property?
- c) Was her possession without consent or agreement, and adverse to the person(s) legally entitled?
- d) Is the land excluded from prescriptive acquisition by section 3(2) of the Act?

The Evidence and my Findings:

Sole undisturbed possession for more than 12 years:

6. The petitioner says her grandfather purchased the land from ‘the Samaroos’ in the 1970’s, and that her father occupied it in 1980, built a house and poultry pens on it, fenced it, and resided on, and controlled it until 2013 when he gifted it to her and handed her possession and control. She says she, and her parents before her, have had open sole exclusive undisturbed possession of the land since 1980 without consent or agreement. She denies that Lot M is a ‘reserve’ in the control of the opposer.
7. Isaac Bhagwandin, Chairman of the La Grange/Nismes NDC admits that he does not know when the house on the land was built. He admits that when he joined the council in 1994 the petitioner and her family were already in occupation of the land and that they had previously erected a house and pens on it, and partly fenced it. He also admitted that prior to 2016 he did not send them an ‘official’ notice to remove or take them to court seeking possession of the land.
8. On the evidence led I find as a fact that the petitioner and her predecessors were in sole exclusive undisturbed possession of the land from at least 1994 to 2016.

Intent to hold:

9. A petitioner must have an intent to hold the property: *Thakur v Ori* CCJ 11/2017. An intention to hold is discerned from an aggregate of acts of occupation. Did the petitioner consistently treat the land as an owner would, having regard to the nature of the property? *Bisnauth v Shewpersaud* [2009] CCJ 8, *Lord Advocate v Lord Ballantyre* (1978) 4 App Cas, *Powell v McFarlane* (1979) 38 P&CR 452.
10. The evidence led establishes that the petitioner and her predecessors lived on the land, fenced it, reared livestock on it for more than twenty years. Those are the acts of an owner of a semi-rural house lot and are indicative of an intention to hold the property. The petitioner has proved on a balance of probabilities that she and her predecessors had the requisite animus, an intent to hold the land, for more than 12 years.

Possession adverse and without consent or agreement:

11. The petitioner says that her grandfather bought the land from the ‘Samaroos during the late 1970’s’ and lived on it since 1980. The opposer did not contest that allegation. Isaac Bhagwandin confirms that a Samaroo owned the land and tendered Transport 379 of 1974 [Ex M] for lots 44,45,46,47 Section F, La Grange, in the name of Rukmin Samaroo. Rookmin Samaroo commissioned a plan subdividing her lots 44 through 47 in 1977 [Ex G]. The uncontested evidence is therefore that the petitioners predecessors went into occupation more than thirty years ago.
12. Where a purchaser who has paid the purchase price in full enters into possession pursuant to an agreement for sale he enters into possession as of right and time begins to run in his favour on his entry: *Narine v Natram* [2018 CCJ 1].

13. This application is not contested by any Samaroo, any private owner of the land, anyone deriving title from the private owner, or anyone at all, on the ground of non-payment of the purchase price and the petitioner and her predecessors have had possession for more than thirty years.
14. As a consequence I find that it is more likely than not that the petitioners predecessors paid the purchase price for the land in full and took possession of it pursuant to an agreement of sale.

Is the land excluded from prescriptive acquisition by section 3(2) of the Act?

Where is the land? The description 'Lot M':

15. There are two lots of land in the area labelled 'M'. There is transport 868 of 1990 for 'sublot M' in the name of Cecil Samaroo [Ex E]. On that transport the typewritten lot label is defaced and "M" is inserted in handwriting. That transport says the land to which it relates, handwritten "sublot M", is shown on a 11 November, 1977 plan by N.R. Samuels.
16. The petitioner claims land labeled Lot "M" on her plan 64725 [Ex C] and as 'Public Open Space' on plan no. 17947 dated 11 November, 1977 by N. R. Samuels.
17. Exhibit G is a plan by N. R. Samuels, dated 11 November, 1977, numbered 17943, which shows a division of lots 44,45,46,47, Section F, La Grange into smaller house lots. The plan was commissioned by Rookmin Samaroo.
18. I find that the petitioner was referring to plan 17943 [Ex G] when she said plan 19747. I find that the plan referred to in transport 868 of 1990 is the same plan 17943 [Ex G].

19. On the plan 17943 [Ex G] sublots L and M are separated by two intervening lots one labelled 'Public Open Space' and one labelled 'Reserved for Future Access'.
20. The lot labelled 'Public Open Space' contains 0.137 acres as does the land claimed by the petitioner, and the petitioner in defining the land she claims identifies that it is this land shown as "Public Open Space".
21. Why 'Lot M'? the petitioners mother Bhagmania tendered a Guyana Power and Light Invoice which records her address as "M Samaroo Scheme La Grange".
22. I find that the lot labelled Public Open Space on plan 17943 [Ex G] is commonly referred to as Lot M by the petitioner, her predecessors, and Guyana Power and Light Inc., a provider of a public utility.
23. I also observe that the two lots are similarly but differently labelled. *Sublot* M, which is so labelled on the plan, and *lot* M which is labelled public open space. Although uncomfortably similar, particularly because the lands are in such close physical proximity, those are different labels.
24. I find that the petitioner has clearly defined the land she claims, so that it is capable of being the subject of a declaration by the court.

Is the 'Public Open Space' also called 'Lot M' which I call the 'the land' a reserve?

25. Section 3(2) of Title to Land (Prescription and Limitation) Act, Chapter 60:02, prohibits the acquisition of reserves by prescriptive title. This section is enacted to apply to proceedings filed after March 2011.
26. The evidence is that the land and the adjoining area labelled 'Reserved for Future Access' are both used as house-lots and have been so used for more than 20 years. They

are fenced and have houses on them. They have been residentially and exclusively occupied for more than 20 years. Therefore neither of the lots were ever treated as a reserve. The evidence is that the Samaroos, owners of the area and commissioners of the plan, sold the land Lot M to the petitioner's predecessors.

27. The opposer claims that the land is a reserve. The NDC has not has physical possession of the land. The evidence led is that prior to 2016 no legal attempts were made by the opposer to remove the occupants and physically create or administer the lands as a reserve, public space or access road.
28. The opposer says that lots 44 through 47 were converted into a Housing Scheme sometime after 'the month of November, 1977' (the date on the plan Ex G) and is therefore subject to the provisions of the Town and Country Planning Act Chapter 20:01. Therefore it claims, that the land, Lot M/Public open space, is a reserve within its control, and cannot be acquired by prescription.
29. The Town and Country Planning Act makes provision for the orderly development of land securing roads, sanitary conditions and amenities.
30. Part II of that Act sets out the process for creating housing schemes. A Local Authority may adopt a scheme proposed by an owner of land, in this case the owner is Rookmin Samaroo, and her November 1977 plan 17943 [Ex G] sets out a possible scheme.
31. If the Local Authority, by resolution, adopts a scheme, it 'shall' forward the adopted scheme to the Central Housing and Planning Authority (CHPA) [s. 6(4)]. The CHPA may by resolution adopt the scheme as is, or with variations. CHPA must twice publish notice in the Official Gazette and a local newspaper of its resolution to adopt. The resolution takes effect from the date of publication in the Gazette [s.7]. After the resolution is

published CHPA must submit the scheme to the Minister for approval, and if approved must publish the approval and make copies of the scheme open to public inspection [s.8].

32. The process of creating a scheme therefore requires a resolution of the NDC, a resolution of CHPA, approval of the Minister, publication of CHPA's resolution and the Minister's approval and public notice for inspection of the scheme plans.
33. The area is called Samaroo Scheme [GPL invoice Ex E], but the only evidence led that 'Samaroo Scheme' is a legal housing scheme created under the Town and Country Planning Act is the plan 17943 [Ex G].
34. No evidence was led of the NDC resolving to adopt the scheme, of the CHPA resolving to adopt the scheme, of the publication of the adoption by CHPA, of the approval of the Minister, of the publication of the Minister's approval. Ex G is at most proof of the intent of Rookmin Samaroo to create a scheme, not proof on a balance of probabilities that a scheme was created under the Act.
35. From the evidence led it appears that Rookmin Samaroo subdivided her lands and sold them off without the approval of the local authority, CHPA or the Minister. The evidence led is that a Samaroo sold the area shown on the plan as 'open public space' to the petitioner's predecessors as a house lot and that the land was never used as an 'open public space'.
36. There is no evidence that the opposer NDC or the CHPA at any time in the forty year period 1977 through 2016 administered the development of the area as envisaged by Part IV of the Act.
37. I do not believe the land, Lot M/Public Open Space, was a reserve under the Town and Country Planning Act. I do not believe the land, Lot M/Public Open Space, was ever

used as a reserve or an open public space. I find that the land was owned by Rookmin Samaroo and remained in private control by her, her successors and assigns, and was never administered as a reserve by the opposer.

Conclusion and Orders:

38. I hold that the land, Lot M/Public Open Space is not a reserve excluded from prescriptive acquisition by section 3(2) of the Title to Land Prescription and Limitation Act, Chapter 60:02.

39. I dismiss the opposition.

40. I hold that Nafeeza Khan and her predecessors have for more than 12 years, held sole possession of the land with the intent to hold it, and that the possession was adverse to, and without the consent or agreement of, the person(s) legally entitled to it.

41. I make a declaration of title in favour of Nafeeza Khan to Lot 'M' a portion of Lots 44, 45, 46 and 47, Section F, La Grange, in the La Grange/Nismes Neighbourhood, on the west bank of the Demerara River, in the county of Demerara, in the Republic of Guyana, lot M being defined on a plan dated 13 July, 2016, by L. L. Rutherford, Sworn Land Surveyor, and recorded in the Guyana Land and Surveys Commission on the 22 January, 2018, as plan 64725 and also being shown labelled 'Public Open Space' on plan 17947 dated 11 November, 1977, by N. R. Samuels, Sworn Land Surveyor.



Nicola Pierre
Commissioner of Title and Judge of the Land Court.
4 March 2019.

