

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

(DECLARATION OF TITLE)

In the matter of lot 216 Rulite Avenue, Blueberry Hill, being a portion of Block "E", Plantation Christianburg, situate in the county of Demerara, in the Republic of Guyana, the said lot being defined and shown on a plan by Patrick F. Murray, Sworn Land Surveyor, dated 9th day of August, 2017 and recorded in the Guyana Lands and Surveys Commission on the 31st day of August, 2017, and numbered 67319.

-and-

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

-and-

In the matter of the Rules of the High Court (Declaration of Title) Chapter 3:02, Laws of Guyana

-and-

In the matter of the Petition by CLEVE CORDEL SAMUEL HALLEY of University of Southern Caribbean, St. Joseph, Maracas, Trinidad and Tobago and currently resident at Lot 81 Sunflower Avenue, Eccles, AA, Esat bank, Demerara, for Prescriptive Title to the hereinbefore described property

Before: Nicola Pierre, Commissioner of Title

Appearances: Mr. K. Khan for the Petitioner

Trial dates: September 16, 2019

Decision of Nicola Pierre, Commissioner of Title

The Proceedings:

1. Cleve Halley ('the petitioner') filed the petition dated 29 May 2018, in which he claimed to have acquired possessory title to lot 216 Rulite Avenue, Blueberry Hill, Block "E", Plantation Christianburg, Demerara. The petition came on for hearing unopposed.

The Evidence:

2. The petitioner testified, and I believe, that he is the sole child of Clifton Halley. Clifton Halley owned the property by way of transport 1540 of 1977 [Ex G]. Clifton Halley died on 2 September 1991, a bachelor, intestate [Ex D Death Certificate].
3. The petitioner says that since Clifton Halley's death the property has been in the his possession and control. He is assisted in the care and maintenance of it by his mother Claudette Williams, who supports his application for a declaration of title to the property. They pay the rates [Ex E 1-6], and maintained the property vacant until renting it recently.

The law

4. To establish that he has acquired possessory title the petitioner must prove on a balance of probabilities that he has been in sole open possession of the property claimed for more than 12 years with the required intent, and without the consent or agreement of, the person(s) legally entitled to it.
5. Before making a declaration of title in favour of a petitioner the court must be satisfied that the right of every other person to recover the property has been barred [section 3 of the Title to Land (Prescription and Limitation) Act Cap 60:02]. The right of action

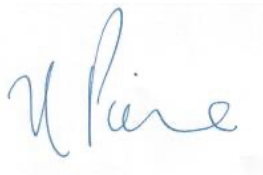
to recover land does not accrue unless and until adverse possession is taken of the land. As a general rule, possession is only adverse if the owner is entitled to recover possession from the squatter. The petitioner must prove that he is a squatter or someone in whose favour the period of limitation can run [section 10].

Analysis

6. On the intestate death of Clifton Halley, a bachelor, the petitioner Cleve Halley, as his sole descendant became entitled to the property by operation of section 5 of the Civil Law of Guyana Act , Chapter 6:01.
7. If he is the person solely entitled to the property his possession is not adverse because he has every legal right to possession, his possession is referrable to lawful title: *Thomas v. Thomas* (1855) 2 K & J 79.
8. The petitioner is therefore not someone in whose favour time can run.

Conclusion:

9. The petitioner has failed on a balance of probabilities to establish that he is a person in whose favour time can run, to establish that his possession was adverse to the person legally entitled. As a consequence on 16 September, 2019, I dismissed his petition.

A handwritten signature in blue ink, appearing to read "N. Pierre", is written on a light-colored rectangular background.

November 19, 2019.
Nicola Pierre, Commissioner of Title.