
Lise Church (Executrix of the Estate of Graziella Horeau)

Plaintiff

versus

Bernadette Boniface

Defendant

Heard: 2nd June 2016

Counsel: John Renaud for plaintiff

Elvis Chetty for defendant

Delivered: 27th July 2016

JUDGMENT

M. TWOMEY, CJ

- [1] The Plaintiff applied to the court for an order that the Defendant vacate premises at Glacis owned by the heirs of Graziella Hoareau.
- [2] The Plaintiff testified that she was one of eleven heirs. Her father had given permission to the Defendant to live in the house for which she paid rent of SR 100 monthly which she had continued to pay after her father's death in 1984 but had subsequently refused to continue paying.

- [3] On a visit to the land at an unspecified time she saw the defendant building a new house in place of the old one. She had asked her not to do so and had first sought a writ *habere facias possessionem* in 2010. Her sister had also applied for an eviction order in 1986 which she claimed had been successful but was unable to produce the said order.
- [4] She had complained to the Ministry of Land Use and Habitat about the Defendant illegally building a house on the land but no action had been taken.
- [5] The Defendant in her Statement of Defence and Counterclaim stated that she had lived on the land for over twenty years and had been in possession of the land continuously, uninterruptedly, peacefully, publically and unequivocally and had acted in her capacity as the owner of the property.
- [6] In court she testified that she had been living on the land for thirty years. She had previously been living with her mother on the Plaintiff's land but had subsequently moved out and built her own house further up on the Plaintiff's land without anyone's permission. She had lived on the premises with her husband, since passed away, and her two children, one aged twenty-four and the other aged seventeen from their birth.
- [7] The Defendant denied ever appearing before the Rent Board to defend an application for her eviction but admitted that she had defended an application for a writ *habere* against her by the Plaintiff.
- [8] The Defendant called Mr. Ravi Valmont, a land surveyor who testified that he had carried out a survey of the land in issue. The Defendant's house was built on the Plaintiff's land, namely parcel H8694 but encroached on neighbouring land (Parcel H1962) to a small extent.
- [9] It is not disputed that the Defendant has lived on the land for well over twenty years. In order for the Plaintiff to succeed in her prayer for an order that the Defendant vacate the premises she must prove that the defence of *uscapion* on the part of the Defendant has no merit.
- [10] For such a defence to succeed in law the following elements of possession must be proved according to the provisions of Article 2229 of the Civil Code which states in relevant part:

...possession must be continuous and uninterrupted, peaceful, public, unequivocal and by a person acting in the capacity of an owner.

- [11] The notion of *uscapion* contained in the provision above provides for prescription, that is, acquisition by long usage. It confers a legal right onto the person who has acquired the property through an illegal act. The state of being in possession of land for more than twenty years raises a presumption in favour of the possessor of the property. That presumption is explained in Article 1350 of the Civil Code which provides in relevant part:

A legal presumption of law is the presumption which a particular law applies to certain transactions or to a certain fact such as:

...

2nd The case in which the law declares that ownership or release results from certain specific circumstances;

...

- [12] For the presumption to succeed in translating the Defendant's act of occupation into a legal right, the five conditions contained in the law that is in Article 2229, must be present. The Plaintiff has attempted to show that the Defendant's occupation of the land had been with the permission of her father but had neither been continuous nor peaceful. However, although she claims that an eviction order was sought against the Defendant in 1984, she has been unable to corroborate this fact. The Defendant has not been challenged in her evidence that she has been in possession of the land for over 30 years.

- [13] The evidence before the court is that the first court case against the Defendant was brought in 2010, some twenty-four years after the defendant's occupation of the land.

- [14] Further, although the Plaintiff claims that the Defendant first came on the land with the permission of her father she has been unable to show that her father was in a position to give such permission not being the owner of the land or whether the Defendant as she has testified

built her house without permission further up the mountain some years later but still more than twenty years before this action was brought.

- [15] The land surveyor has testified that the Defendant has established herself on the land. She has built a house, a pigsty and a shed. The buildings are not new. The Defendant crosses land of neighbours to reach her family. She has overtly exercised her right of possession over the land.
- [16] The fact that the five conditions of Article 2229 are met establishes a property right in favour of the Defendant.
- [17] In terms of Article 2262 of the Civil Code, the Defendant having lived continuously and uninterruptedly, peacefully, publicly, unequivocally and as person acting in the capacity of owner the Defendant has acquired prescriptive title to the property on which she lives.
- [18] The Defendant's Counterclaim for a declaration that she be declared the owner of the land on which her house stands together with the surrounding cartilage therefore succeeds.
- [19] In the circumstances, the Plaintiff's claim is dismissed and I make the following order:

1. The Defendant is declared the owner of the parcel of land on which her house stands. Such parcel of land is to include a cartilage to the extent of 560 square meters as designated on the site plan marked Exhibit D1 as made by R. Valmont dated 19th February 2016. The land so described is to be extracted from Parcel H8694 and registered in the Defendant's name.
2. The costs of the subdivision is to be borne by the Defendant.

- [20] I make no order as to the costs of this suit.

Signed, dated and delivered at Ile du Port on



M. TWOMEY
Chief Justice