

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 629
CS 99/2019

In the matter between

GLOBAL SUPPLY CENTRE (PTY) LTD
(Basil Hoareau)

Plaintiff

and

JOEL JEAN
(rep. by first Karine Dick and subsequently Nichol Gabriel)

Respondent

Neutral Citation: *Global Supply Centre (Pty) Ltd v Jean* (CS 99/2019) [2020] SCSC 629 (7 September 2020).

Before: Twomey CJ

Summary: Acquisitive prescription (uscapion) – Evidence does not support uninterrupted occupation as outlined by Article 2229 of the Civil Code

Heard: 23 July 2020

Delivered: 7 September 2020

ORDER

- a. A mandatory injunction is issued compelling the Defendant to within six months herewith demolish any structure he has erected and to remove the plants planted on Parcel V9559, failing which the Plaintiff can have them removed at the Defendant's cost.

 - b. A prohibitory injunction is issued against the Defendant, personally or against his agents whomsoever from trespassing or encroaching on Parcel V9599.
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JUDGMENT

TWOMEY CJ

The Pleadings

- [1] The Plaintiff, the proprietor of Parcel V9559 at Beau Vallon, Mahé, by a Plaint dated 28 June 2019 prayed the Court *inter alia* for orders that the Defendant pay damages in the sum of SR500,000, and be compelled to demolish structures he had erected on the Plaintiff's land and remove plants he had cultivated there. The Plaintiff averred that the structures and the plants had been placed on his land illegally and without its consent.
- [2] In his Statement of Defence, the Defendant raised a point in *limine litis*, namely that he had acquired the property by prescription by virtue of having been in occupation of Parcel V9559 for more than 22 years. On the merits, he averred that he had erected a one-bedroom house and cultivated Parcel V9599 without any interruption or knowledge of the proprietor of the land for 22 years.

The Evidence

- [3] The Plaintiff called Vinu Gopal, its General Manager for the past 14 years, who testified that the Plaintiff had purchased the land on 15 May 2017 from a company, Sarah Limited. No permission had been granted to the Defendant to build on or cultivate the land. Mr. Gopal stated that the Defendant was illegally occupying part of Parcel V9559 and that he wanted the plants and structure removed so that the company could begin its planned project. The company would not be pursuing its prayer for damages if the Defendant vacated the land.
- [4] In cross-examination, Mr. Gopal accepted that he had not gone on site when the land was purchased to verify if anyone was living on the property, but had conducted a title search at the Land Registry.
- [5] The Plaintiff also called Mr. Yannik Radegonde, a land surveyor, to give evidence. He testified that he had surveyed Parcel V9559 and found part of it fenced off and he had difficulty entering that part of the property. There was a house built there with blocks and corrugated iron with fishing nets fencing it off from the rest of the property. He prepared a report of his findings and the topographical survey plan.

- [6] On the survey plan, he had highlighted the encroachment on the land by a house and agricultural activities, namely livestock, bananas and root crops. The extent of the encroachment was 2236 square meters with the house comprising 7,000 square meters. He explained that the livestock consisted of goats and cows. There were two dirt road accesses to the encroachment. The property was adjacent to the Beau Vallon Berjaya Hotel.
- [7] The surveyor also referred to a GIS plan taken in 2011, which indicated that the structures had not been erected on the land then. He denied, in cross examination, that the red coloured structures on the GIS plan was of the corrugated iron structures built by the Defendant. He indicated that from the plan it was clear that the corrugated iron was just lying on the ground. This was also clear after its comparisons to the PUC pump station on the land and the adjacent car park for Beau Vallon Hotel.
- [8] The Defendant testified that he did not own property but he was currently living on land belonging to the Plaintiff. He had been living there for 22 years. He confirmed that he was cultivating crops and kept cows, goats and chickens, to make a living. He had not known who the owner of the land was.
- [9] He explained that he had finished school having trained as a mechanic and worked with Sullivan for some time. He had then decided to start his own business and had approached the government for some land. At the time he was experiencing family difficulties having lost his mother and his siblings emigrating. He then helped his friend who had a car rental on land adjacent to the property he is presently occupying. After his friend left having sold the land to Mrs. Oliajee, he stayed on and started clearing the land further. There was a store on Parcel V 9559, which he occupied. He worked hard clearing the land and reclaiming it from the marsh.
- [10] He constructed a boundary wall on the land to stop drug addicts coming onto the land. He reclaimed more land and erected a cow and goat shed. He obtained an electricity connection. He had been in possession of the land for an uninterrupted and continuous period of 22 years.

- [11] In cross-examination, he was asked how old he was, to which he replied 35 years. He stated that he had been to the Polytechnic but could not remember which year he had graduated. He then stated that he had not worked for Sullivan but only did odd jobs for him. He stated that he was from St Louis but had grown up at Beau Vallon in the area where his house presently was although he had gone to school at Belonie. He had been taking care of his cousin's daughter while living with his grandmother at St. Louis.
- [12] In cross-examination, he also changed his narrative stating that his first job was at UCPS and then Herman Maria's workshop and then Sullivan's. He stated that he wasn't employed in those places as such but worked with his stepfather there. He accepted that he had finished secondary school then went to the Polytechnic.
- [13] He stated that he was born on 1 August 1989 and that he first occupied Parcel V9559 in 1997. Counsel for the Plaintiff in cross-examination pointed out to him that he would only have been 8 years old at the time of occupation if his story was true. It was further pointed out to him that he had stated that he had gone to see Mrs Bastienne to see if he could obtain land from the government and that Mrs. Bastienne had only started working for the government in 2004 which meant that he could only have occupied the land subsequently and that he had not been there for the length time he stated he was.
- [14] He stated that he could not remember when he had occupied the land but it was after he had left school at the age of 17. He maintained that he had been in possession of the property for more than 20 years.
- [15] The Court pointed out to Counsel for the Defendant that if the Defendant's narrative was correct it would mean that he took possession of the land when he was 13 years old and as a minor his defence of acquisitive prescription could not stand.
- [16] At this stage Counsel for the Defendant indicated that a judgment by consent would be entered. However, this was later withdrawn and the Defendant engaged new Counsel to continue his case.
- [17] In this endeavour he called a witness, Danny Perault from Beau Vallon. The witness testified that he lived on Parcel V883 and that there had been nobody living on Parcel

V9559, which had belonged to the government and then to Mrs. Oliajee. The government had subsequently acquired the land. No one occupied it and they had played there as children while the Defendant was living with him.

[18] He had helped the Defendant clear the land as no one knew whom the land belonged to. That had been in 1994. Several people had tried to buy the land but had not succeeded.

[19] The witness stated that it was after he had moved out of Oliajees' land that the Defendant moved into his house. The Defendant had converted the store on the land into a garage and eventually into his home. Mr. Perrault stated that he had left the place in 2014 but could not remember when the garage had been built.

[20] No closing submissions have been made in this case.

Issue to be decided

[21] The only issue to be decided by the Court is whether the Defendant has acquired ownership of part of Parcel V9559 through long possession. This in fact was the plea in *limine litis* raised by the Defendant – that he had been in occupation of the land for more than 22 years.

The Law

[22] The Civil Code provides in Article 712 that ownership may be acquired by prescription.

[23] Acquisitive prescription (*uscapion*) is the acquisition of a property right through the effects of possession over time as outlined by Article 2229 which provides that to acquire by prescription, possession must be continuous and uninterrupted, peaceful, public, unequivocal and by a person acting in the capacity of an owner.

[24] Acquisitive possession of land without title, is possible after twenty years, by virtue of Article 2262 of the Civil Code.

Acquisitive prescription in the present case

[25] It is clear from the evidence that the Defendant could not have occupied the land he claims to have done either for at least twenty years or as an adult.

[26] His evidence in court has been contradictory and evasive, as has that of his witness Mr. Perrault. When asked about dates the Defendant's memory seems to be dim and when challenged about the fact that his age now does not support his averment in his Statement of Defence that he has occupied the land for 22 years he gave no cogent answer for the court.

[27] The time line for the twenty years he alleged he had occupied the land is full of discrepancies. He could also not have lived in St. Louis and Beau Vallon simultaneously with his grandmother and Mr. Perrault's family. The timeline provided by Mr. Perrault is also full of contradictions. Neither can be trusted to stating the truth. Their evidence is therefore worthless and is disregarded by the court.

[28] There is little point exploring any further elements to this case when the Defendant has restricted his defence to *uscapion* of over 22 years when this is clearly not made out by the evidence.

My decision

[29] I find that the Plaintiff has made out its case both on the documentary and oral evidence. In the circumstances, I grant the relief he has claimed and pursued, namely the injunction compelling the Defendant to remove the structures he has erected and the plants he has planted and prohibiting him or his agents from trespassing or encroaching on Parcel V9559. I bear in mind that my decision will impact negatively on the livelihood and living arrangements of the Defendant and make allowances for these matters

My Orders

[30] I therefore Order that:

- a. A mandatory injunction issue compelling the Defendant to within six months herewith demolish any structure he has erected and to remove the plants planted on Parcel V9559, failing which the Plaintiff can have them removed at the Defendant's cost.

- b. A prohibitory injunction issue against the Defendant, personally or against his agents whomsoever from trespassing or encroaching on Parcel V9599.

Signed, dated and delivered at Ile du Port on 7 September 2020.

M. Twomey
Chief Justice