

[2019] UKFTT 0016 (PC)

REF/2017/0752

**PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE UNDER
THE LAND REGISTRATION ACT 2002**

BETWEEN

**ALICE ELIZABETH MILLER
AND
DAVID GOODFELLOW**

APPLICANTS

and

OLUBUNMI FAUSAT AJOSE-ADEOGUN

RESPONDENT

**Property Address: Land between 77 and 75 South Road, South Ockendon RM15 6NS
Title Number: EX947587**

Before: Judge Adrian Jack

**Sitting at: 10 Alfred Place, London WC1E 7LR
On: 15 November 2018**

Applicant Representation: Ms Miller in person
Respondent Representation: Mr Lawson, solicitor

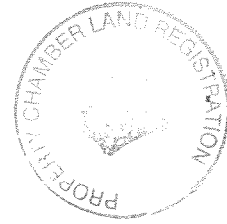
ORDER

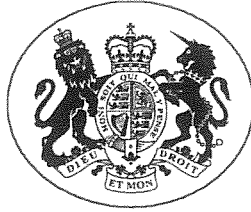
1. The Tribunal directs the Chief Land Registrar to cancel the FR1 application dated 2nd May 2017.

2. An accompanying letter gives directions regarding costs.

Dated this 20th day of November 2018

Adrian Jack
BY ORDER OF THE TRIBUNAL





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REASONS

Procedural background

1. By an FR1 application dated 2nd May 2017 the applicants applied for registration of title to land adjacent to their home, 77 South Road, South Ockenden RM15 6NS, which I describe below. The claim is based on adverse possession since at least 1975. They had earlier on 6th December 2016 lodged an ADV1 application, but this was

withdrawn in favour of the FR1 application. The respondent, who is the registered title-owner of 75 South Road, had on 22nd December 2014 lodged a caution against first registration against the land. The dispute between the parties could not be resolved. On 8th August 2017, the Chief Land Registrar referred the dispute to the Tribunal.

2. I inspected the property on 14th November 2018. The inspection of the disputed land was in the presence of Ms Miller on the one hand and Mr Adose-Adeogun and his wife on the other. Mr Lawson, the respondent's solicitor, was not present. Immediately before the inspection I had walked around the block and seen the lanes at the back of the houses fronting onto South Road.
3. The Tribunal heard the matter on 15th November 2018. Ms Miller appeared on behalf of herself and her husband, the other applicant. Mr Lawson appeared on behalf of the respondent. Since the matters on which the applicants relied to prove adverse possession pre-dated the ownership of any of the current parties, no live evidence was adduced. Instead the parties made submissions based on the two statutory declarations which were in evidence and on the evidence from the site inspection.

The disputed land

4. South Road (also known as the B186) runs roughly north-south. 77 South Road, the applicants' property is an end-of-terrace house, built according the plaque on it in 1903. 75 South Road is also an end-of terrace house. Its age is more difficult to assess, but probably dates from the inter-War period. The block on which 75 and 77 stand is bounded on the north by Brandon Groves Ave and at the south by Mar Road.
5. At the back of the houses fronting South Road are two lanes, each wide enough for a single car to pass, one coming from Brandon Groves Avenue, the other from Mar Road. (The Land Registry plan suggesting that there is only one lane, a foot-path, is insofar inaccurate.) It may be that at some point in the past the lanes constituted one lane going the whole distance from the north to the south, but in their current configuration they slightly overlap. It is possible on foot to cross from the one lane to the other but not in a motor car. All the houses fronting onto South Road have erected garages at the back of the properties and rely on the two lanes for access to and from the garages. Many also have a gate for access to and from the lanes.
6. The historic evidence from the statutory demands shows that the disputed land is part of what was originally an alleyway going from South Road to the lane or lanes at the back. The alleyway, insofar as it was in the backgardens of 75 and 77, was in 1975 or somewhat earlier divided by the then-owners down the middle by a wooden fence. It is probably around this time that the owners erected garages at the back, because the garages encroach on what would have been the alleyway. The owner of 75 kept a gate at the back of 75's garden next to the wooden fence for access to the lane, but the respondent has recently blocked that gate.
7. The disputed land is the part of the alleyway nearest to South Road. Until recently the wooden fence down the middle of the former alleyway extended to a point near half way down the length of the two houses. The then owner of 77 seems to have put gate across at that point. By contrast the then owner of 75 put his gate at the back of his

house. More recently the owner of 77 has replaced the part of the wooden fence which runs from 75's old gate to the front with a brick wall. At the front a brick wall with a sturdy gate has been erected. Still more recently, after the dispute between the parties blew up, the respondent erected a brick wall and gate on his side of the middle line, so that there is now a brick wall from the side of the building on 77 to the side of the building on 75. The applicants accept that the respondent was within his rights in doing that.

8. The sidewall of the building on 75 is not exactly parallel to the sidewall on the building of 77. Rather the distance between the two buildings is slightly wider nearer the road. Although the original brick dwarf wall on the disputed land has recently been removed, its foundations can still be clearly seen. This wall runs from the back corner of 77 (where it still stands) towards the road at a narrow angle, so as to be parallel with the sidewall of 77. About half way down the disputed land, the dwarf wall extends by a brick-width south. It is common ground that this dwarf wall (including the modest brick-width extension) is the boundary between the respondent's paper title and the disputed land. It is common ground that the boundary of the paper title of 77 is the sidewall of 77.
9. The disputed land is therefore the land bounded to the east by the parties' respective brick walls, to the north by the former brick dwarf wall, to the south by the sidewall of 77 and to the west by the footpath running along South Road.
10. The respondent and the applicants' immediate predecessors-in-title, Peter Goodfellow and Katie Marcus, paved the disputed land. As part of the paving, a number of blue bricks were laid dividing the north part of the disputed land from the south part. The reason for this was to delineate a more convenient place for 77 to park cars without interfering with 75 access to and from its garden. Historic photographs show that 77 parked cars randomly across the disputed land. Neither party suggested to me that this demarcation had any legal significance. No party suggested that it evidenced any form of compromise agreement.
11. Near the roadway is a manhole which gives access to the sewer which serves 73, 75, 77 and 79 South Road. It was common ground that all four property owners potentially required access to that manhole in the event of blockages, but Ms Miller said that she would be happy to allow access and in any event, it had been she and her husband who had rodded the sewer periodically at their own expense.
12. After the dispute between the parties arose, the respondent erected a new dwarf wall along the middle line of the disputed land, just to the north of the line of blue bricks. This wall has since been damaged (Ms Miller says Mr Ajose-Adeogun crashed his car into it). It is not suggested that this dwarf wall has any legal significance to the issues in the current case. (If the applicants establish their title, they may of course have some claim for trespass.)

The statutory declarations and my findings of fact

13. Peter Braithwaite, who was the owner of 75 South Road between 1975 and 1989, made a statutory declaration dated 12th September 2017. Despite his being able to be traced as recently as last year, he was not summonsed to give live evidence. This is

particularly surprising given that the statutory declaration is given in support of the applicants' case and has presumably been prepared at their request.

14. Mr Braithwaite says: "Since and prior to 1975 the occupants of 77 South Road have used the land adjacent to 77 South Road as a driveway. [They] have continuously and exclusively used the land as a driveway as was the standing agreement between the owners/occupiers of 75 South Road and 77 South Road since and prior to 1975. The right-of-way was divided between the two properties... prior to 1975, so as 75 had a widened garden and 77 had a driveway adjacent to the property... The occupants of 75 South Road have had access on foot to move their bins from their rear garden to South Road and this has never been withheld by the occupants of 77 South Road."
15. Mr Braithwaite does not deal with the manhole to the sewers.
16. The other statutory declaration is dated 3rd April 2009 and is made by Alan George Mitchell. He and his wife were the owners of 73 South Road from 1984. When he ceased to live there is unclear. He says: "In or about 1991 the then owners of 75 and 77 South Road erected a fence [which follows the line of the applicants' brick wall and the old garden gate of the respondent]... Prior to the erection of the fence... the then owner [of 77] had used the [disputed] area... for parking of vehicles... [T]he occupation of [the disputed] land... has been in continuous full and free and undisturbed possession and enjoyment of it to the exclusion of all other parties without any acknowledgement of the title of any other person to it or any part of it..."
17. Mr Mitchell does not comment on the use of the disputed land for access to and from 75's back garden or on the manhole to the sewer.
18. My site inspection shows that 75 would have regularly used the disputed land for taking its bins out onto South Road and for external access to the back garden of 75. The statutory declaration of Mr Braithwaite supports this. Mr Mitchell does not mention the point, but I do not consider that his statutory declaration is inconsistent with such use. He simply has not directed his mind to use of the disputed land for access to and egress from 75's garden. The photographs show that there was no clearly demarcated place for 77's cars until the agreement between the respondent and Peter Goodfellow. There was no clearly demarcated part of the disputed land used by 75 for moving the bins or getting access to and from the garden.

The law

19. The key issue in this case is whether the applicants have been able to establish that they and their predecessors in title have established that they had adverse possession of disputed land. Their possession must be "single and exclusive": *Jourdan & Radley-Gardner on Adverse Possession* (2nd Ed, 2011) at para 7-35. Where more than one person has possession that possession must be joint possession. It is not possible for different people to have several possession of the same land. Thus in the current case, the key question becomes whether the applicants and their predecessors shared possession with the respondent and his predecessors-in-title. (Or for that matter whether they shared possession with all the owners of 73, 75 and 79, who may have accessed the sewer.) If the applicants and their predecessors-in-title shared possession with the respondent and his predecessors-in-title, then they cannot assert adverse

possession against the respondent. Any claim to adverse possession would need to be brought by the applicants and the respondent jointly (and potentially by the owners of 73 and 79 as well).

20. Ms Miller sought to overcome this difficulty by saying that she and her husband (and their predecessors-in-title) had had “dominant” possession. The evidence does show that their possession was more intensive than anyone else’s, but that is not the test in law. The test is one of “exclusivity”.
21. In my judgment, the applicants have failed to show that they had exclusivity at any time from 1975 onwards. At all times, I find on balance of probability the owner of 75 used the disputed land. This use was unlikely to be heavy use. Having access to the back garden and using the disputed land for taking bins out from the back is, however, not *de minimis* (i.e. so small it can be ignored). As Mr Braithwaite describes it, it was a shared use of the disputed land. This conclusion is unaffected by the fact that the owners from time to time of 75 and 77 agreed this arrangement. This merely shows that they were jointly in possession of the disputed land.
22. No evidence was adduced as to the use of the manhole cover by others, so that point would not have barred a successful claim by the applicants.

Conclusion

23. The applicants’ claim fails.

Dated this 20th day of November 2018

Adrian Jack

BY ORDER OF THE TRIBUNAL



