Privy Council Appeal No. 30 of 1990

Ruth Browne *Appellant*

v.

St. Clair Perry *Respondent*

FROM

THE EASTERN CARIBBEAN COURT OF APPEAL OF ANTIGUA AND BARBUDA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH OCTOBER 1991

Present at the hearing:-

LORD KEITH OF KINKEL
LORD TEMPLEMAN
LORD GOFF OF CHIEVELEY
LORD BROWNE-WILKINSON
SIR MAURICE CASEY

*[Delivered by **Lord Templeman**]*

In 1971 the appellant, Mrs. Browne, purchased property described as No. 14 Sutherlands from John Rowan Henry. In 1972 the respondent, Mr. Perry, purchased property described as No. 16 Sutherlands from Mr. Henry. Unfortunately no contemporaneous title deeds or plans are now forthcoming. In 1972 Mrs. Browne constructed a wooden house on what she believed to be the site of No. 14 and she has lived there ever since. In 1975 there came into force the the Registered Land Act 1975 which provided for the registration of land, for the issue of land certificates and for the identification of registered land by means of plans prepared and kept at the Land Registry. On 27th July 1979 the title of Mrs. Browne to 14 Sutherlands and the title of Mr. Perry to 16 Sutherlands were registered. On 29th August 1980 there was issued to Mr. Perry a Land Certificate which certified that he was the proprietor of 16 Sutherlands approximately 0.15 acres in extent. In 1983 the Land Registry carried out a cadastral survey for the purpose of identifying lands at Sutherlands.

The trial judge found as a fact that when Mrs. Browne went into occupation of land at Sutherlands in 1972 she "mistook lot 16 for her lot 14", that she discovered her mistake in 1983, and that in the same year she admitted to Mr. Perry's father that she had

after Mrs. Browne went into possession of No. 16 in 1972. Their Lordships are unable to agree. The trial judge rightly based his judgment on the facts proved at the trial that the acknowledgement had been given in 1983. In the light of the evidence an amendment of the pleading could not have been resisted but such an amendment would have been mere pedantry. Moe J. held however that steps taken by Mr. Perry to obtain his land certificate between 1975 and 1979 constituted an assertion by him of his right to lot 16 and this assertion stopped the time which was running against him before that date. Between the date of the assertion of his right (1975 at the earliest) and the filing of the writ in 1986 is not sufficient time to bar his proceedings for recovery of the lot. Their Lordships are unable to agree that the steps taken by Mr. Perry to obtain a land certificate constituted any interruption of the adverse possession which Mrs. Browne was enjoying. If the Act of 1883 applied, Mr. Perry was debarred by section 2 from bringing an action to recover No. 16 more than twelve years after his right to bring such an action accrued in 1972 in the absence of any acknowledgement in writing during the period of limitation.

The question is whether, as Redhead J. held, different considerations apply to registered land under the Registered Land Act 1975 so that the oral acknowledgement given by Mrs. Browne in 1983 enabled Mr. Perry to bring an action to recover No. 16 within twelve years after that date.

Part IX of the Registered Land Act 1975 is headed "Prescription" and section 135 so far as material provides that:-

> "(1) The ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of twelve years: ..."

Mrs. Browne went into peaceable and open possession without the permission of Mr. Perry in 1972 and so remained for a period of twelve years and more so that under section 135(1) she acquired ownership of No. 16 unless her possession was interrupted prior to 1984. An interruption of possession is defined by section 136 in these terms:-

> "(6) Possession shall be interrupted -
>
> (a) by physical entry upon the land by any person claiming it in opposition to the person in possession with the intention of causing interruption if the possessor thereby loses possession; or

(b) by the institution of legal proceedings by the proprietor of the land to assert his right thereto; or

(c) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted."

The provisions of section 135(6)(c) of the Registered Land Act 1975 dealing with an acknowledgement produce the same results as the provisions of the Act of 1883 incorporating the United Kingdom Act of 1833. The only difference is that the Act of 1833 is expressed to apply only to an acknowledgement in writing whereas section 136(6)(c) of the Act of 1975 does not indicate whether an acknowledgement includes an oral acknowledgement. There is no definition of an acknowledgement in the Act of 1975. There are therefore two possible constructions of section 136(6)(c). The reference to "any acknowledgement" must either be a reference to an acknowledgement "in writing" or a reference to an acknowledgement "whether or not in writing". On behalf of Mr. Perry counsel urged that since section 136(6)(c) referred to "any acknowledgement" in contrast to the Act of 1883 which referred to "some acknowledgement ... given in writing ..." and the Act of 1833 which referred to "any acknowledgement ... in writing", the legislature must have intended by the Act of 1975 that possession of registered land should be capable of being interrupted by a mere oral acknowledgement. Their Lordships have concluded that the legislature in 1975 could not have intended to make such a radical alteration of the law, an alteration applicable only to registered land, simply by failing to define expressly the expression "acknowledgement".

The ownership of land is liable to be bitterly disputed. It is conceded that between 1883 and 1975 adverse possession of land in Antigua could not be interrupted by an oral acknowledgement. If an oral acknowledgement were allowed to constitute an interruption litigation would be encouraged and litigants would dispute what was said, by whom and to whom. A dispossessed owner has his remedy; adverse possession must be peaceable and open. The dispossessed owner has twelve years in which to discover the existence of adverse possession and twelve years from the date of the first entry into adverse possession in which to bring an action. If the dispossessed owner obtains during the twelve year period an oral acknowledgement of his title, he can insist on that acknowledgement being reduced to writing and in default can institute proceedings. Once an acknowledgement has been reduced to writing, there is certainty about the words used and the court need only decide whether the words which have been

written amount to an acknowledgement. There is no room for fraud, mistake or failure of memory. The written word speaks for itself. These were the cogent reasons for the law between 1883 and 1975 providing that adverse possession of land could only be interrupted by a written acknowledgement; these reasons are equally applicable to registered land since 1975.

If the legislature had thought in 1975 that in the prevailing social and other conditions in Antigua it was right to provide that adverse possession should be capable of being interrupted by an oral acknowledgement this reform would logically be required for unregistered land as well as registered land. If the legislature had intended that there should be a difference between registered land and unregistered land and had intended to make a difference by providing for the first time that an oral acknowledgement should be sufficient to interrupt adverse possession then that intention could and would have been made abundantly clear in the Act of 1975. In any event any introduction of oral acknowledgements would have required careful consideration in the drafting of transitional provisions to cope with cases where an oral acknowledgement had been given before 1975 and where an oral acknowledgement had been given after 1975 in respect of land which was not registered until after the date of the acknowledgement. The actual intentions of the legislature cannot of course be ascertained. But their Lordships decline to construe section 136(6)(c) to include an oral acknowledgement in view of the legislative history of the matter, the cogent reasons for excluding oral acknowledgement and the fact that the Act of 1975 failed to indicate clearly that an oral acknowledgement should constitute an interruption of adverse possession.

Accordingly their Lordships will humbly advise Her Majesty that this appeal should be allowed and the action by Mr. Perry dismissed. The costs of Mrs. Browne before the Board and before the courts below must be paid by Mr. Perry.