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NO 4A

In the Supreme Court of Bermuda

CIVIL JURISDICTION 1978 No. 124

THE MINISTER OF PUBLIC WORKS Plaintiff

and

JOHN DARRELL

Defendant

Mr. Robin McMillan for the Plaintiff
Mr. Vaucrosson for the Defendant

Before: The Honourable Mr. Justice Robinson

J U D G M E N T

1. In this action the Minister of Public Works (hereinafter called the Plaintiff) seeks against the Defendant, John Darrell

- (1) a declaration that the Plaintiff has absolute title and complete beneficial interest in land at Southampton Parish in these Islands; and
- (2) an injunction restraining the Defendant by himself or his servants or agents or howsoever otherwise from entering upon the said land in any way at all.

2. The land in question is a portion of a tract of land in Southampton Parish aforesaid upon which the Heron Bay School and its playgrounds are sited.

3. The Plaintiff alleges that the Defendant has on divers dates entered upon the land asserting title thereto in his father George Wellington Darrell; and that on 26th October 1977 the Defendant entered the land and damaged fencing which the Plaintiff had had erected by tearing it down, and that the Defendant persists in trespassing upon the land despite being requested not to do so.

4. The Plaintiff's case is that the land upon which the Defendant persists in trespassing belongs to the Plaintiff in his capacity as Minister of Public Works on behalf of the Bermuda Government and in support of his case the Plaintiff has produced a considerable number of deeds and a vesting statute, showing the transfers at one time or another of separate parts of the whole tract of land behind Heron Bay School and ultimately devolution to the Bermuda Government, the latest of which (Exhibit 16) was executed in 1952.

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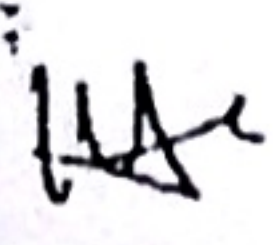
5. The Plaintiff has also put in evidence certified copies of Orders of this Court dated respectively the 16th May 1974 and the 22nd July 1978 showing that the Defendant's father George Darrell has been restrained by this Court from entering upon the Government of Bermuda's land south of the Heron Bay School as shown on plan 4/9/63 attached to one of the Orders which comprises all the land shown on "Exhibit 2A" edged in various colours.

6. Since the above mentioned Orders are operative against George Darrell and the Defendant is the lawful Attorney of George Darrell, his father, as appears from a Power of Attorney by Deed Poll dated 22nd February 1977 (which the Defendant has exhibited), those Orders are sufficient in themselves to dispose of the Defendant's allegations of title in his father and the Defence he has pleaded; for as the Attorney of his father he can be in no better or different position with respect to the title to any land than or from his father under the Agency arising by virtue of the said Deed Poll.

7. The Plaintiff presumably has been obliged to take this action because while the Orders cover the position where the Defendant purports to act in right of his father, George Darrell, they do not affect the Defendant where he purports to act in his own right in asserting any entitlement to enter upon the land in question, and that being so, some difficulty may arise in the enforcing of those Orders in deciding when the Defendant might be acting in his own right as distinct from acting in right of his father.

8. By his Defence the Defendant has alleged that the Plaintiff is not the owner and occupier of the land in question, which he claims as belonging to his father, and says that the Plaintiff was not entitled to fence the said land; he admits pulling down the fences saying he did so under the authority of his father's title to the land.

9. No documents have been produced by the Defendant to substantiate his claim either showing ^{title in} his father or grandfather through whom the Defendant seeks to assert a right to be on the land; in fact the Defendant says neither his father nor himself can show any title deeds even for the house property whose title is not in this dispute in this case.

10. The Defendant has produced three Certificates of Birth which are  dates of birth of himself, his father and his grandfather, but those Certificates are not proof of the title in any of them of any land and are useless for any such purpose.

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11. Any information which the Defendant has had at all as to the whereabouts of any deeds that would establish title in himself or his father, is shown to be second-hand and unreliable; said the Defendant "I have no deeds because they were placed in an office, and we never got them back. I was not there, I was told about it."

12. However the Defendant also gave evidence that over a period of some years his family lived in a house nearby which is still owned by his father, and that on a portion of the land north of what was the boundary line of the property formerly of the Bermuda Railway Company Limited, his father and his grandfather had cultivated a garden, the cultivated area being between the said Railway Company's property and the southern-most cliff-face of a cutting made by the Department of Public Works for the purposes of providing additional playgrounds for the infants at the Heron Bay School, which cutting is shown as the more southerly on the plans "Exhibit 2A".

13. From the evidence as to such cultivation given by the Defendant it is not certain for how long or at what times the same took place nor whether it was continuous, with or without permission of anybody, though the Defendant testified that his family had done many things on the land; that there had been during the 1940's an American Camp on the land; and that he had grazed goats and cows on the land until about 1957 when he was married.

14. From these acts, uncertain as to time and duration and as to the terms upon which they were enabled, the Defendant purports to set up a title in his father or himself.

15. There may be in some circumstances a presumption of seisin from evidence of actual possession of a house or a field or farm or as in this case, a cultivated garden or grazing land, but I have not been able to find an authority for extending the application of any such presumption to the larger tract of land reaching up to the hilltop (next north of the Sunnyside Park area) of the land of the Government, which the Defendant also claims, particularly in the absence of any evidence of a sufficiently continuous occupation as would justify holding that there was sufficient possession to displace the Plaintiff's right to the land which is the subject of this action.

16. To my mind in order for the Defendant to successfully defend this action he must show such open notorious continuous exclusive possession or occupation of such parts of the land as would constructively

apply to all or any parts of such land as are claimed by him and operate to extinguish the title of the Plaintiff or the true owner, and give the Defendant a statutory title under and by virtue of the relevant statute of limitation, in this case the Crown Claims

17. The onus of proving such continuous possession and occupation lies squarely on the Defendant who alleges it and in my judgment the quality of whatever use there may have been of part of the land in question by or on behalf of the Defendant's father or himself has not been proved in this case so as to establish any claim of right on the part of the Defendant sufficient to justify holding that the Plaintiff's entitlement to the land in question has been displaced.

18. There is no substance in the Defence nor in the claims made by the Defendant and therefore judgment will be entered for the Plaintiff with costs.

19. I also order

- (a) a declaration in terms of sub-paragraph 1 of paragraph 6 of the Amended Statement of Claim; and
- (b) an injunction restraining the Defendant by himself or his servants or agents or howsoever otherwise from entering upon the Government land shown in Exhibit 2A in any way at all.

Walter N.H. Robinson
WALTER N.H. ROBINSON
PUISNE JUDGE

12/4/79