

**BARBADOS**

[Unreported]

Suit No: CV1081 of 2007

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT OF JUSTICE  
CIVIL DIVISION**

**BETWEEN**

**CLYTIE ALLEYNE** - **PLAINTIFF**  
**(Administratrix and as such  
Personal Representative of the  
Estate of Fitzherbert Alleyne, deceased)**

**AND**

**MARGOT ALLEYNE** - **DEFENDANT**

**Before The Honourable Madam Justice Maureen Crane-Scott, Q.C.,  
Judge of the High Court(ag)**

**2007: October 11; November 6**

**Mr. Freundel Stuart in association with Ms. Debra Gooding for the  
Plaintiff**

**The Defendant in person and unrepresented**

## DECISION

- [1] **Crane-Scott J:** This is an application brought by the Plaintiff, Clytie Alleyne, the duly appointed administratrix and personal representative of the estate of Fitzherbert Alleyne, deceased pursuant to Order 92 of the Rules of the Barbados Supreme Court for the recovery of possession of all that land situate at Nursery No. 1, Four Roads in the parish of St. Philip together with the dwelling house thereon.
- [2] The application is brought on the grounds that:
- (i) the property forms part of the estate of Fitzherbert Alleyne, deceased;
  - (ii) as administratrix of the estate of the said Fitzherbert Alleyne the Plaintiff is being impeded in her ability to administer the said estate; and
  - (iii) the Defendant is in occupation of the said property without the Plaintiff's licence and/or consent.
- [3] Order 92 r. 1 of the Rules provides that:
- “Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.”
- [4] Rule 3 provides that the application must be supported by an affidavit showing the Plaintiff's interest in the land and the circumstances in which the land has been occupied without licence or consent and in which the plaintiff's claim to possession arises.

[5] The originating summons was supported by an affidavit of the Plaintiff, Clytie Alleyne filed on September 26, 2007. The Plaintiff deposed in paragraphs 2 to 8 as follows:

- “2. That the property the subject matter of this suit forms part of the estate of the said Fitzherbert Alleyne, deceased.
3. That the said property the subject matter of this suit was also the subject of a dispute before this Honourable Court in the suit entitled No 2090 of 1995. The father of the Defendant was the Defendant in those proceedings.
4. That resolution of the issues was never achieved since the Defendant therein died before the issues could be finally determined by this Honourable Court.
5. That the Defendant herein being the daughter of the Defendant named in Suit No 2090 of 1995 has now taken possession and assumed occupation of the property without my licence and/or consent.
6. That I caused a letter dated 4 November 2005 to be sent by my attorney-at-law to the Defendant inviting communication in order to deal with outstanding issues. A copy of that letter is hereto annexed and marked “B” for identification.
7. That there has been no response from the Defendant either by herself or through an attorney-at-law.
8. That the continued occupation of the property by the Defendant is impeding my ability to properly administer the estate of the deceased.
9. That over and above occupying the property without my licence and/or consent the Defendant has been indulging in hostile and provocative behaviour like blocking the entrance to my dwelling house by closing the gate that facilitates ingress and egress.
10. That since the Defendant cannot establish that she is a tenant holding over after determination of a tenancy but has in fact remained in occupation of the premises without my consent and/or licence I am urging this Honourable Court to grant the relief which I am claiming”

**The Defendant's Evidence:**

- [6] The Defendant was served with notice of the proceedings and appeared for the hearing. She informed the Court that she had not retained an attorney-at-law and would be representing herself.
- [7] After ascertaining that the Defendant had read the affidavit of Clytie Alleyne in support of the application, the Defendant was sworn and gave oral evidence as follows:

“My father died in 2004. He was Fitzherbert Glenville Alleyne, the son of Fitzherbert Alleyne, deceased who was my grandfather.

I visited my father's attorney-at-law, Mr. Lemuel Rawlins, who advised me to return to Barbados to take possession of my father's house. On August 24, 2004, I returned to Barbados and obtained the keys of the house from Clytie Alleyne.

My father has five children and fourteen grandchildren. My son has been visiting Barbados since he was five years of age. He always refers to the house as “grandfather's house.”

My father had been paying land taxes on the whole estate since the 1970's. I started to pay the land taxes for the land for the whole estate from October 2004.

With respect to paragraph 5 of the affidavit of Clytie Alleyne, I state that she gave me the keys to the house. She knew I was there because she gave me the keys to the house.

With respect to paragraph 9 of the affidavit of Clytie Alleyne, I state that I have never blocked her from entering the property.

As regards, paragraph 10 of the affidavit of Clytie Alleyne, I state that I was given permission to occupy the house.”

- [8] Under lengthy cross-examination by Mr. Stuart, the Defendant stated:

“As far as I know, the house in which I live belongs to my father as advised by the lawyer Lemuel Rawlins. When I said earlier that the house was “grandfather’s house”, I was referring to my son’s grandfather, namely my father, Fitzherbert Glenville Alleyne.

Yes, I am aware that Clytie Alleyne made application to the Court to administer the estate of my grandfather, Fitzherbert Alleyne, deceased and obtained a grant of Letters of Administration with the will annexed.

Yes, I am also aware that my grandfather made a will and that he did not leave the land to my father.

At the time of my father’s death I was living in the United States of America. I came to Barbados for the funeral. When I came in for the funeral I stayed in the house. All my father’s children and his grandchildren stayed in the house.

After the funeral, I had to go back home to the States to give notice to my employer that I was leaving my job to return to Barbados. When I returned to Barbados in 2004, I obtained the keys from Clytie Alleyne who had changed the locks.

My father’s possessions were in the house on my return to Barbados. I returned to Barbados to look after my father’s affairs. I paid the land taxes and his outstanding bills. I entered the house using keys handed to me by the Plaintiff, Ms. Clytie Alleyne. Never once did she say I was a trespasser or a squatter.

I was instructed by my attorney-at-law to take possession of the house in view of the outstanding Court cases involving my father. I came home to Barbados to take possession of the house since my father was in possession of the house for over twenty years.

Ms. Alleyne was aware that I was returning to Barbados to take possession of the house. I never paid rent to Ms. Alleyne for the house. My father never paid rent for the property to anyone before his death.

I am aware that the Plaintiff does not want me to occupy the house. When my grandfather died the land went to my two aunts Muriel and Winifred. I agree that in his will my grandfather did not leave the property to my

father. After my aunts died, the next in line was Leigh who lived in the Bahamas. I agree that the house was not left for my father according to my grandfather's will.

In relation to paragraph 9 of the affidavit of Clytie Alleyne, it is not true that I closed the gate which leads to the house. My sister closed the gate. I agree that the gate is used by all residents of the property to access their properties.

I received the letter dated November 4, 2005 which is referred to in the affidavit of Clytie Alleyne as "Exhibit B", but I did not look at the letter."

**The Plaintiff's Submissions:**

- [9] In urging the Court to grant the order for possession, Counsel for the Plaintiff Mr. Stuart submitted that the Plaintiff's case for possession had been made out having regard, *inter alia*, to the fact that Defendant had in her oral evidence admitted that she is not a tenant and never was and further, that she was aware that the Plaintiff "wanted her off the property". In view of this, he submitted, the Defendant was in occupation without the Plaintiff's licence or consent.
- [10] Mr. Stuart also contended that on the basis of the evidence before the Court, it was also clear that the Defendant's late father through whom she claims a right, did not have a right to the property. According to Mr. Stuart, during her oral testimony, the Defendant herself had advised the Court that the property had not been left to her father but to her father's two sisters and then to a brother in the Bahamas. Against that background, he asserted that the Plaintiff had a right to the order for possession as prayed.

**The Defendant's Submission:**

- [11] The Defendant insisted that the Plaintiff was aware that the Defendant was going to occupy the house on her return to Barbados and that the keys had been handed over to her on that basis.

**The applicable law:**

- [12] The scope and application of Order 92 of the Rules has been judicially considered in the Barbadian case of *Joan Nall v. Henry Cox* [Unreported] H.C. B'dos Civil Jurisdiction No. 718 of 1987. In Nall's case Chief Justice, Sir. Denys Williams observed that:

“...the corresponding order in the English Rules of the Supreme Court, Order 113, covers two distinct states of fact, the first being that of some person who has entered into occupation of the land without the licence or consent of the person entitled to possession or any predecessor in title of his and the second being that of the person who has entered into occupation of the land with a licence from the person entitled to possession of the land or any predecessor in title of his but who remains in possession without the licence or consent of the person entitled to possession or any predecessor in title. This view of the scope of the Order was confirmed by the Court of Appeal in *Greater London Council v. Jenkins* [1975] 1 All E.R. 354 in which Lord Diplock said (at p. 356) that Pennycuick V.C. [in *Bristol Corpn v. Persons Unknown* [1974] 1 All E.R., 593] pointed out that it is clear beyond peradventure that the Order applies to cases where a person who is alleged to be a trespasser was previously on the premises by licence.”

- [13] It was evident from her oral testimony that the Defendant feels she is entitled to the house and has a right to possession which is superior to that of the Plaintiff. Her perceived entitlement is apparently based on a claim to adverse possession of the house by her late father “for over twenty years” coupled with the fact that he had been paying taxes on the whole estate since the 1970's. She also stated that she had herself also started to pay land taxes for the whole estate since October 2004.

- [14] It has, however, been held that the payment of parochial taxes in the name of an individual coupled with possession of premises for the requisite period is in no way conclusive as to rights of ownership in property, but are both factors which, must be taken into account together with all the circumstances of each particular case in determining whether the Statute of Limitations has begun to run. [See per Collymore, C.J. in *Scantlebury v. Young* [1952] 1 Barb. L.R. 23]
- [15] Having regard to the evidence, the Court is satisfied that, just as obtained in the **Scantlebury case** (*cited above*) this is a case where a family relationship existed between the parties who are no strangers to each other. The evidence clearly establishes that the Defendant was well aware that the house in question had not been left for her late father under her grandfather's will. She was also aware that the Plaintiff had made application to the Court to administer the estate of the Defendant's grandfather, Fitzherbert Alleyne, deceased and had obtained a grant of Letters of Administration with the will annexed.
- [16] Despite the Defendant's assertion that both her late father and herself paid land taxes on the property, the Court is in no position to make a final determination in these proceedings as to whether the alleged occupation of the premises by the Defendant's late father "for over twenty years", coupled with the alleged payment of land taxes by him since the 1970's, are factors which will defeat the Plaintiff's *prima facie* right to possession as the duly appointed administratrix and personal representative of the deceased's estate.
- [17] In this regard, no independent evidence was adduced by the Defendant during her oral testimony which would have corroborated the Defendant's claim that her father (through whom she claims a

right superior to that of the Plaintiff) had at the time of his death in 2004 obtained a right to the property by adverse possession. Furthermore, the Court is aware that the question of the Defendant's father's claim to adverse possession of the premises is also the subject of a legal dispute in separate proceedings No. 2090 of 1995 which are still pending before the High Court.

[18] Having considered the evidence which was adduced in these proceedings, together with the submissions for the respective parties and the applicable law, the Court finds the following facts, namely:

- (a) That on her return to Barbados in August 2004 following the death and burial of her father, the Defendant obtained the keys to the house from the Plaintiff in her capacity as the duly qualified administratrix and personal representative of the estate of Fitzherbert Alleyne, deceased;
- (b) In so doing, the Defendant was aware and had clearly acknowledged that the Plaintiff, as the duly qualified administratrix and personal representative of the said estate, was the person in charge of the house, and more importantly, was the person whose consent and permission was necessary to facilitate the Defendant's legal occupation of the premises;
- (c) That the Defendant paid no rent to the Plaintiff for such occupation and was neither a tenant nor a tenant holding over after the termination of the tenancy;
- (d) That the Defendant has been in occupation of the premises since August 2004 as a mere licensee;

(e) That the Defendant has admitted that she is aware that the Plaintiff had withdrawn her permission to her remaining in occupation of the premises and that she “wanted her off the premises”.

**Disposal:**

- [19] In the light of the foregoing findings of fact, the Court is satisfied that Defendant is currently a trespasser of the premises and that accordingly, the Plaintiff is entitled to the order for possession as prayed.
- [20] The Defendant shall vacate the premises occupied by her at Nursery No. 1, Four Roads in the parish of St. Philip on or before March 1, 2008.
- [21] The Plaintiff shall have her costs certified fit for one attorney-at-law to be agreed or taxed.

**Maureen Crane-Scott  
Judge of the High Court(ag)**