

**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**2020/CLE/qui/00493**

**IN THE MATTER OF** a parcel of Land being situate on the Western side of Rupert Dean Lane and containing 6,105 square feet in the Southern District of the Island of New Providence one of the Islands of the Commonwealth of The Bahamas

**AND**

**IN THE MATTER OF** the Quieting Titles Act, 1959

**AND**

**IN THE MATTER OF** the Petition of Nellie Marshall and Isadora Maynard

**Before:** The Honourable Justice Carla D. Card-Stubbs

**Appearances:** Mr. Rodger L. Minnis for the Petitioner

**JUDGEMENT**

## **CARD-STUBBS J.**

[1.]By Petition filed 28 May 2020 the Petitioners Nellie Marshall and Isadora Maynard petitioned the court that title to the property described below be investigated, determined and declared by an issuance of a Certificate of Title under the Quieting Titles Act 1959 Chapter 393 of the Statute Laws of The Bahamas “the Act”.

[2.]The Property is described in the Petition as follows: -

ALL of that parcel of Land comprising a total area of 6,105 square feet in the Southern District of the said Island of New Providence and bounded NOTHWARDLY by the property of Ona Marshall and running thereon 102.40 feet, EASTWARDLY by Rupert Dean Lane and running thereon 59.95 feet, SOUTHWARDLY by the property of Pam Burrows and running thereon 106.06 feet, WESTWARDLY by the property of Mr. Lockhart and running thereon 57.59 feet.

[3.]The Petition, filed 28 May 2020, was supported by the Affidavit of the Petitioners. A Plan and Abstract of title were also filed.

[4.]The Notice of Petition and accompanying documents were advertised and served on relevant parties in accordance with a Court Order made on the 13 November 2020 and verified by the Affidavit of Compliance filed 13 October 2022.

[5.]A copy of the Notice of Petition and Plan was affixed to the property in accordance with a Court Order made on 13 November 2020.

[6.]There were no Adverse Claimants in these proceedings.

### **The Petitioners’ Case**

[7.]The Petitioners averred that their parents, Noral and Elizabeth Stubbs, moved onto the subject property in the latter part of 1952. At the time, there were seven (7) children of the marriage, but they are the only two surviving.

[8.]Mrs. Marshall averred that she was about seven (7) years old when she first moved onto the property with her parents and left the property in 1963 after getting married. Mrs. Maynard avers she moved on the property about 1952 and left 7<sup>th</sup> June 1963 after getting married.

[9.]The Petitioners both stated that the last person to live on the property was their mother before she died in 1995.

[10.] The Petitioners stated that after the death of their mother, their brother Wilfred began to maintain the property which consisted of two other buildings in addition to where their mother lived and he, with their concurrence, leased it to tenants. After the death of the Petitioner's brother 2005, the Petitioners took over the maintenance of the property.

[11.] The Petitioners then gave Uma Marshall, who resides on property adjacent to the subject property, permission to plant trees on the property in order to prevent persons from dumping on the land.

[12.] Mrs. Marshall also averred that during the years she would pay to have the property cleaned and would visit the property every so often. She stated that she stayed in touch with Ms. Uma Marshall during that time and would receive from her fruits off the trees she planted.

[13.] The Petitioners also aver that they believe that their father genuinely purchased the subject property from Mr. C. Weir and produced a receipt purporting to be evidence of same. However, they are unable to find any title deeds for the property.

[14.] In the Amended Abstract of Title of the Petitioners, Nellie Marshall and Isadora Maynard, aver:-

[15.] **Petitioner's Abstract of Title**

No.	Document
1.	In 1952- Mr. and Mrs. Noral Stubbs moved into the subject property with their seven (7) children, including the Petitioners.
2.	1 <sup>st</sup> June 1976- Noral Stubbs died, leaving his wife and seven (7) children surviving him. All of whom continued to reside, undisturbed, on the subject property.
3.	3 <sup>rd</sup> March 1995-Elizabeth Stubbs, the widow of the said Noral Stubbs (deceased), died.
4.	1995-2020- The subject property was initially rented out to tenants that proved to be less than hygienic, so much so that the homestead had to be demolished. Fruit trees and vegetables were planted to keep the weeds and rodents out. The property was also fenced in to keep out trespassers and persons from dumping garbage on the said property.
5.	2020- The said lot remains vacant save for the fruit trees and seasonal vegetables thereon.
6.	18 <sup>th</sup> March 2020- Sworn Affidavits of Nellie Marshall and Isadora Maynard.

## Supporting Evidence

Shirley Rolle (nee Lewis)

[16.] Mrs. Rolle avers that she grew up through Rupert Dean Lane with her parents and siblings. Her immediate neighbors to the North were the Fernanders and the house North were Stubbs. She knows the Petitioners as girls of the Stubbs family.

[17.] Mrs. Rolle recalls that Ms. Marshall began taking care of the property on the other side of the Stubbs property and that a fence was erected around the yard.

John Mark Rolle

[18.] Mr. Rolle avers that he grew up through Rupert Dean Lane before moving to Grand Bahama sometime in 1985. He attests that he remembers a wooden structure as the main house with a smaller wooden structure at the back. By the time he returned from Freeport in 1992, the structure was demolished, and the property was fenced in.

[19.] Since his return from Freeport, he has seen nothing unusual with the property save for Ms. Marshall, owner of the other side of the property tending to plants and fruit trees in the yard. He further stated that he is familiar with the faces of the Stubbs family, but not the names. However, since the death of Mrs. Stubbs, he doesn't recall them coming around as frequently.

Virginia Outten

[20.] Ms. Outten avers that she has been a resident of the Bain and Grants Town community since birth. She further averred that she and one of the Petitioner's, Nellie Marshall, attended school together. She stated that she later got married and moved out of the neighborhood some 40 plus years ago.

[21.] She indicated that the Stubbs family became known to her because Ms. Elizabeth Stubbs used to bake and sell bread from her residence on Rupert Dean Lane.

[22.] She is aware that after Mrs. Stubbs died in 1995, one of her sons became the caretaker for the property and that after a few years the property was demolished. Since then, she has seen no activity on the property except for the fact that it is now fenced in, and fruit trees are growing on it.

Donald E. Thompson (Surveyor)

[23.] Mr. Thompson is the Proprietor of Donald E. Thompson & Associates. In March of 2020 he was instructed to survey a lot of land situate on Rupert Dean Lane. He indicated that the said lot of land was approximately 6,105 square feet and situate on the Western side of Rupert Dean Lane and approximately One Hundred and Ninety-five (195) feet South of Ferguson Street.

[24.] He averred that he placed two (2) survey monuments on the Northern boundaries of the said lot and discovered two (2) survey monuments on the Southern boundaries of the said lot.

[25.] He further avers that he identified neighboring property owners from inquires within and a search of the records of the Department of Land and Surveys. An amended plan was filed in the subject matter with the Surveyor General's signature affixed thereon.

### **Oral Testimony and Visit to Locus**

[26.] The Petitioner and Affiants were examined by the Court on the evidence laid in the various Affidavits. A Survey plan (amended plan) No. 6065NP dated 2<sup>nd</sup> March 2020 was also lodged in support of the Petition.

[27.] The Court conducted a visit to the site. During the visit the court observed a fence in yard. The yard was overgrown with bush. Some fruit trees were observed on the property.

### **DECISION**

[28.] The Court's jurisdiction to determine this application and to issue title in a satisfactory case is by way of the Quieting of Tittles Act, 1959 ("the Act"). The Act provides for the investigation of title by the Court (section 3), that thereafter the court may dismiss the application or may issue a certificate (or certificates) of title (section 17).

[29.] Section 17 of the Act provides:-

“After the court has completed the hearing of an application made under section 3 of this Act it may —

- (a) dismiss the application;
- (b) dismiss the application and grant a certificate of title in the form prescribed by section 18 of this Act to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act;
- (c) grant a certificate of title in the form prescribed by section 18 of this Act to the petitioner;
- (d) grant separate certificates of title in the form prescribed by section 18 of this Act to the petitioner and to any person who shall have filed an adverse claim in accordance with the provisions of section 7 of this Act in respect of the whole or separate parts of the land described in the petition. (2) The court may give one certificate of title comprising all the land described in the petition, or may give separate certificates of title as to separate parts of the land.”

[30.] The Petitioner seeking a Certificate of Title by way of adverse possession must prove exclusive occupation to the property in excess of the 12 years. Section 16 (3) of The Limitation Act (1995) provides:-

“No action shall be brought by any person to recover any land after the expiry of twelve years from the date on which the right of action accrued to such person or, if it first accrued to some other person through whom such person claims, to that person: Provided that, if the right of action first accrued to the Crown and the person bringing the action claims through the Crown, the action may be brought at any time before the expiry of the period during which the action could have been brought by the Crown or of twelve years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires.”

[31.] The court has power to declare by Certificate of Title that a Petitioner is the legal and beneficial owner in fee simple in certain cases. Section 16 of the Act provides:

“Without limiting the generality of the provisions of section 3 of this Act, the court shall have power to declare by a certificate of title in the form prescribed by section 18 of this Act that the petitioner is the legal and beneficial owner in fee simple of the land mentioned in the petition in any of the following circumstances —

- (a) where the petitioner has proved a good title in fee simple to a share in land and has proved such possession as, under the Limitation Act, would extinguish the claim of any other person in or to such land;
- (b) where the petitioner has proved such possession of land as, under the Limitation Act, would extinguish the claim of any other person in or to such land;
- (c) where the petitioner has proved that he is the equitable owner in fee simple of land and is entitled at the date of the petition to have the legal estate conveyed to him.”

[32.] The Petitioners, in order to prove the nature of sufficiency of their claim to ownership, must satisfy the Court they were in open, undisturbed and continuous possession of the property exceeding the period of twelve (12) years.

[33.] There must be actual possession as well as an intent to possess. Possession may be joint or vicarious. It is a transmissible interest. This well-known principle is stated in Halbury’s Laws of England, 2021, Volume 68, paragraph 1191 thus:

“While a person who is in possession of unregistered land without title continues in possession, then, before the statutory period has elapsed, he has a transmissible interest in the property which is good against all the world except the rightful owner, but an interest which is liable at any moment to be defeated by the entry of the rightful owner; and, if that person is succeeded in possession by one claiming through him who holds until the expiration of the statutory period, the successor has then as good a right to the possession as if he himself had occupied for the whole period. “

## CONCLUSION

[34.] The Court by its review of the evidence is satisfied that the Petitioners have proven open, undisturbed and exclusive possession on the parcel of land well in excess of 12 years. I accept the evidence of the Petitioners and the affiants that the Petitioners' family have been in continuous possession of the land since 1952. I accept the evidence that the Petitioners grew up on the property and that since 2005 the Petitioners have themselves jointly possessed and taken control of the property. They fenced the property and have maintained the property. They are recognized as the owners of the property and the evidence is that neighbor and affiant, Ula Marshall, planted fruit trees on the property with their consent.

[35.] The Court is further satisfied that the evidence provided by the affiants were consistent with observations made during the visit to the locus.

## ORDER

[36.] The order and direction of this Court is THAT:

A Certificate of Title in the prescribed form in respect of the land described in the Petition and shown on the Plan filed therewith do issue to the Petitioners.

Dated the 25<sup>th</sup> day of March, 2024

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs', with a stylized flourish at the end.

Carla D. Card-Stubbs  
Justice