

COMMONWEALTH OF THE BAHAMAS

2018/CLE/qui/00433

IN THE SUPREME COURT

Common Law and Equity Division

IN THE MATTER OF the Quieting Titles Act, (Chapter 393)

AND

IN THE MATTER of ALL THAT piece and parcel or tract of land situate in the Settlement of Salt Pond in the Island of Long Island one of the islands of the Commonwealth of The Bahamas comprising 50.38 acres being a portion of the tract of land known as “ Armstrong” now claimed by the Estate of Charles Alexander Fox and which said Estate comprises a portion of original Crown Grant D-182 to Alice Thompson and also a portion of an original Crown Grant D-156 to Martin Jollie and bounded approximately Eight Hundred Feet (800) of the Eastern side of Queens Highway in the said settlement of Salt Pond Long Island which said piece parcel or tract of land has such position boundaries shape marks and dimensions as are on a survey plan and thereon coloured pink

AND

IN THE MATTER OF the Petition of Mark Anthony Fox

Before: Her Ladyship The Honourable Madam Senior Justice Deborah Fraser

Appearances: Mr. Lessiah Rolle for the Petitioner

Hearing Date(s): 19th July, 2023
Closing Submissions: 6th December, 2023

JUDGEMENT

FRASER, SJ

[1.] By a Petition filed on 17th April, 2018 and an amended Petition filed on August 24th, 2018 the Petitioner Mark Anthony Fox has requested this Court to investigate the title and determine whether a Certificate of Title should be granted to him under the **Quieting Titles Act, Ch. 393**, Statute Law of The Bahamas, hereafter referred to as “**The Act**”.

[2.] The Petition filed on the 24th day of August, 2018 was supported by the Affidavit of the Petitioner filed on the 24th day of August 2018. An amended plan and Abstract of Title was also filed on March 9th, 2023 the Notice of Petition and the necessary documents were advertised and served on the relevant parties pursuant to a Court Order dated 21st day of November, 2018. The Crown thereafter withdrew its Adverse Claim by Notice of Withdrawal filed on March 28th 2023. The matter proceeded uncontested after the Court satisfied itself that all directions of the Court had been complied with.

[3.] The Property, the subject of this action consist of all that piece, parcel or lot of land consisting of 50.38 acres being a portion of the tract of land known as “Armstrong”. Such land consist of a portion of the original Crown Grant D-182 to Alice Thompson and also a portion of an original Crown Grant D-156 to Martin Jollie and bonded approximately 800ft off the eastern side of Queens Highway in the settlement of Salt Pond on the Island of Long Island. Such land being more specifically described on a plan filed on August 24th. 2018.

Issue

[4.] The issue is whether the Petitioner has established to the Court sufficient acts to prove possession of the subject property.

The Petitioner’s Abstract of Title

[5.] The Abstract of Title of the Petitioner is laid out as follows:

- i.** In 1791 – Crown Grant of 585 Acres to Martin Jolly – Department of Lands and Survey - Grant D 82
- ii.** On 15th April 1847 – Commutation of 585 Acres to Henry Harding - Department of Lands and Survey – Book A3 @ 253
- iii.** On 13th March 1865 John James Harding (Legal Heir in Estate of Henry Harding) conveyed 20 Acres to Joseph Fox

- iv. On 4th January 1866, John James Harding (Legal Heir in Estate of Henry Harding) conveyed 30 Acres to Elizabeth Fox (wife of Joseph Fox).
- v. On 9th May 1918 Joseph Fox by Deed of Gift conveyed 500 Acres to his children Elijah Fox, Mary Bullard, and Euphemia Moree and Grandsons Joseph Henry Bullard and Percy Fox as joint tenants.
- vi. On 25th March 1940 Elijah Fox conveyed 500 Acres to his children Charles Alexander Fox, Susanna Knowles, Percy Fox, and Ellen Fox and grandson Joseph Elijah Fox as joint tenants.
- vii. On 31st May 1963 Charles Alexander Fox willed 500 Acres to his children Charles William Fox, Hilda Kathleen Fox, Susana Knowles, Joseph Elijah Fox, John Fox, Harry Fox, and Cecil Fox and grandchildren Iva Burrows and X Fox, as joint tenants.
- viii. On 13th September 2004 Joseph Elijah Fox willed his property to his children including Mark Anthony Fox (Petitioner) as executor.

Supporting Evidence

[6.]The Petition is supported by the Affidavits of Mark Anthony Fox, Chester Fox, Peter Fox, Andrew Fox and Vaklev Bastian.

[7.]The following persons gave evidence at the hearing on the 19th July 2023:

I. Mark Anthony Fox (Petitioner) – gave evidence that:

- i. He is 64 years of age and the great great grandson of Joseph Fox who died on the 4th May 1919 and the grandson of Charles Alexander Fox, he is the son and heir of Joseph Elijah Fox (Supplemental Affidavit of Mark Anthony Fox filed 17th July 2023 @ para 5 and Abstract of title)
- ii. He was advised and verily believe that his great great grandfather went into peaceful undisturbed occupation and possession of the subject land sometime in 1900 (Supplemental Affidavit of Mark Anthony Fox filed 17th July 2023 @ para 5 and abstract of title).
- iii. He along with his parents and grandparents planted coconut and other fruit bearing trees and did seasonal farming on the subject land (Supplemental Affidavit of Mark Anthony Fox filed 17th July 2023 @ para 7)

- iv. Upon the death of his father Joseph Fox in 2004 he continued in open peaceful undisturbed occupation and possession of the subject land to current date. (Supplemental Affidavit of Mark Anthony Fox filed 17th July 2023 @ para 8)
- v. He planted moringa, mango, neem, papaya, coconut and other fruit bearing trees on the subject land. (Supplemental Affidavit of Mark Anthony Fox filed 17th July 2023 @ para 9)
- vi. Upon becoming an adult, he relocated to New Providence but returned annually to Long Island to check on the subject land.
- vii. He is now retired and resides adjacent to subject land at Salt Pond, Long Island, The Bahamas.
- viii. He never abandoned the property nor was he ever molested as it relates to him being in possession of the subject land.

II. Peter Fox gave evidence that:

- i. He is 49 years of age and resides at Salt Pond, Long Island, The Bahamas all his life.
- ii. Late Joseph Fox was his uncle.
- iii. He is well acquainted with the subject land.
- iv. He knows that the Petitioner's ancestors occupied the subject land growing fruit bearing trees such as coconut trees.
- v. In the past there were 'track roads' through the subject property.
- vi. He claims no interest in the subject property.
- vii. Knows that the Petitioner has been living in Long Island for the past 12 or more years.

III. Chester Fox gave evidence that:

- i. He is 63 years of age and has lived at Salt Pond Long Island all his life.

- ii. Late Joseph Fox was his uncle-in-law.
- iii. He knows that the Petitioner occupied the subject land by planting seasonal and fruit bearing trees such as coconut trees.
- iv. Some coconut trees still exist on the properties.
- v. He never saw anyone other than the Petitioner working the subject land.
- vi. He knows that there is a rock wall forming the western boundary of the subject property.
- vii. He knew that Uncle “Joe” worked that portion of the subject property closer to the sea.
- viii. Claims no interest in subject land.

IV. Andrew Fox – deemed an Expert Witness in this case gave evidence that:

- i. He is a Licensed Surveyor having Registration no. 072.
- ii. He surveyed the subject land and produced the Amended Plan dated May 2018 filed in the matter herein.
- iii. During the course of his surveying the subject land he saw coconut and other fruit bearing trees.
- iv. He claims no interest in the subject land.

V. Vaklev Bastian – gave evidence by affidavit sworn on 15th day of November 2023 that:

- i. He has been a Drone Videographer/ Photographer for five (5) years.
- ii. He attended Salt Pond Long Island on September 30th, 2023 in the presence of the Petitioner Mark Anthony Fox and Andrew Fox, a surveyor and took aerial photographs of the said property.

[8.] He produced Photographs of the property depicting some coconuts trees, a white stone-wall and survey markers. He gave evidence to Court after the visit of the locus to identify the

abovementioned items in the photographs taken by him in this matter. He identified three markers in the photographs. The evidence of the surveyor, Mr. Andrew Fox also was that only three of the five markers were visible, as the other two could have possibly washed away due to coastal erosion. The two markers identified were the South East and North East markers marked in green on the plan.

[9.] All of the witnesses (other than the Petitioner) who gave evidence in this matter stated under oath that they did not hold any interest in the said property.

Submissions

[10.] Counsel for the Petitioner submits that the Court's jurisdiction to determine the application and issue the Certificate of title is under the **Quieting of Titles Act, Ch. 393**. The evidence of Chester Fox supports the Petitioner's claim that he has been in sole peaceful, undisturbed occupation and possession of the subject land for more than 12 years since retiring from his job in New Providence. The subject property has been in the possession of the Petitioner and his ancestors since 1919 based on documentary evidence. Documentary title to the property appears to be in the Fox family. Further, there has been no adverse claims to the Petitioner's Petition that has been advertised.

[11.] According to the learned author Gilbert Kodilinye in **Commonwealth Caribbean Property Law 2nd edn at p. 260**:

"In order to succeed in a claim for adverse possession the Claimant must show positively that the true owner has gone out of possession of the land that he has left is vacant with the intention of abandoning it. The mere fact that the paper owner is shown to have made no use of the land during the period does not necessarily amount to discontinuance of possession.

The Factual possession required must have characteristics similar to those for a claim to an easement by prescription, viz, the possession must be open (nec claim), peaceful (nec vi), and adverse (nec precario). Furthermore, factual possession must be accompanied by an animus possedendi that is an intention to enjoy possession to the exclusion of the paper owner."

[12.] Finally, it is submitted that if there was any other documentary or possessory title to the subject land it has been extinguished by the Petitioner's current possession and occupation for more than twelve (12) years.

The Law

[13.] Section 3 of the Quieting Titles Act (Chapter 393) hereinafter referred to as the Act provides that:

“3. Any person who claims to have any estate or interest in land may apply to the court to have his title to such land investigated and the nature and extent thereof determined and declared in a certificate of title to be granted by the Court in accordance with the provisions of the Act.”

[14.] The Court pursuant to section 8 of the Act conducted an investigation. Section 8 of the Act provides:

“(1) The court in investigating the title may receive and act upon any evidence that is received by the court on a question of title, or any other evidence, whether the evidence is or is not admissible in law, if the evidence satisfies the court of the truth of the facts intended to be established thereby.

(2) It shall not be necessary to require a title to be deduced for a longer period than is mentioned in subsection (4) of section 3 of the Conveyancing and Law of Property Act or to produce any evidence which by the Conveyancing and Law of Property Act is dispensed with as between vendor and purchaser, or to produce or account for the originals of any recorded deeds, documents or instruments, unless the court otherwise directs.

(3) The evidence may be by affidavit or orally or in any other manner or form satisfactory to the Court.”

[15.] Section 17(1) 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.

[16.] The Petitioner further grounded his claim on the Limitation Act, Ch. 83 , Sections 16(3), and 24(1) which provides as follows:

“16 (3) No action shall be brought by any person to recover any land after the expiration 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 . . .”.

24 (1) For the purposes of this Act, a right of action to recover land shall not accrue and shall not be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”).

[17.] Sub-section 2 of Section 24 of the Limitation Act states-

“(2) Where under the foregoing provisions any right of action to recover land is deemed to accrue on a certain date and no person is in adverse possession of the land on that date, the right of action shall not accrue unless the land is thereafter taken into adverse possession, in which case the right of action shall be deemed to accrue at the commencement of the adverse possession.”.

[18.] The period of limitation is applicable to all suits in which the claim is for possession of land.

[19.] Finally, the Court has power under the Quieting Act to declare by Certificate of Title that the Petitioner is the legal and beneficial owner in fee simple in certain cases. Section 16 of that Act provides as follows—

“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.”*

[20.] To be successful in this claim the Petitioner who is seeking to prove the sufficiency of his claim to ownership must satisfy the Court that he was in open undisturbed and continuous possession of the property exceeding the period of twelve (12) years. He must

show actual possession following the dispossession of any other person claiming to be owner or discontinuous possession of that person.

[21.] The Court conducted a visit on the 8th September 2023 to the site and there was no evidence of occupation of the land by any persons. There were no structures of any kind on the property. During the visit, there was shrubbery, some evidence of coconut trees on portions of the property, a pathway and a rock wall. At the site, one stake was pointed out to the Court. This was due to the fact that it was impossible for the Court to traverse the entire boundary of the land due to the rough terrain and the sea waves from the Ocean. The aerial photographs taken by Vaklev Bastian, a drone videographer/ photographer on 30th September 2023 captured several photographs of the property including a white stone- wall, two additional surveyors' markers, as well as several coconut and fruit bearing trees. The evidence of the witnesses in this matter is that the land in question was land farmed by the ancestors of the Petitioner.

[22.] On visiting the subject land, the Court noted there was no evidence of any persons occupying the land. The Petitioner's ownership of the subject land is uncontested. The Court also observed at the locus that the posting of Notices on the land were not conspicuously posted and out of an abundance of caution ordered that the same be exhibited in public view for the sight of persons traversing the road adjoining the property. Finally, the Court ordered that the Petitioner post additional notices at all of the local government offices in the vicinity. Such directions have been complied with.

Conclusion

[23.] The Court is satisfied after hearing the Petitioner and the witnesses called in this matter, the examination of the documentary evidence and a visit of the locus that the Petitioner has given sufficient notice of his claim to the public. The Petitioner has also proven the sufficiency of his claim, and enjoyed for the requisite period undisturbed, exclusive possession of the property.

[24.] The Court hereby grants a Certificate of Title to the Petitioner in respect of all that piece and parcel of land more specifically described in the Plan filed on August 24th 2018.

Dated the 10th day of June 2024

Her Ladyship Deborah Fraser

Senior Justice