

COMMONWEALTH OF THE BAHAMAS

2020

IN THE SUPREME COURT

CLE/Gen/qui/01078

Common Law & Equity Division

IN THE MATTER OF ALL THAT piece parcel or acreage of land containing 66.00 Acres and being a portion of Crown Grant F-19 to Thomas Hodgson situate 400 feet west of the Main Public Road and one of the Islands of the Commonwealth of The Bahamas and which said piece parcel approximately 3,500 feet North of the Public High School in Pinders in the Mangrove Cay in Andros of land has such position boundaries markers and dimension showed in the plan colored Pink

AND

IN THE MATTER OF The Quieting Titles Act, 1959

AND

IN THE MATTER OF the Petition of Harry Saunders, Lynward Saunders and Andymore Saunders

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

Appearances: Ms. Sonia Timothy for the Petitioner

RULING

CARD-STUBBS J.

Introduction

1. By Petition filed October 29, 2020 the Petitioners Harry Saunders, Lynward Saunders and Andymore Saunders 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 Statue Laws of The Bahamas “the Act”.
2. The Property is described in the Petition as follows: -

“ALL THAT piece parcel or acreage of land containing 66.00 Acres and being a portion of Crown Grant F-19 to Thomas Hodgson situate 400 feet west of the Main Public Road and one of the Islands of the Commonwealth of The Bahamas and which said piece parcel approximately 3,500 feet North of the Public High School in Pinders in the Mangrove Cay in Andros of land has such position boundaries markers and dimension showed in the plan colored Pink”
3. The Petition was supported by the Affidavit of Petitioners, Harry Saunders, Lynward Saunders and Andymore Saunders filed 25 November 2020. A Plan and Abstract were also filed. An amended Plan was subsequently filed on September 29, 2022.
4. The Notice of Petition and accompanying documents were advertised and served on relevant parties in accordance with a Court Order made on the 21 April 2021 and verified by the Affidavit of Compliance filed 8 November 2022.
5. A copy of the Notice of Petition and the Amended Survey Plan was affixed to the property in accordance with a Court Order made on 21 April 2021.
6. There were no Adverse Claimants in these proceedings.

The Case of the Petitioners

7. The Petitioners aver that they are the sons of the late Henry Saunders and claim their possession to the subject property through inheritance as their late father has been in undisturbed possession of the subject land from 1954.
8. The Petitioners aver that their father was a farmer and fisherman who built his house and resided on a portion of the subject property until the house was partially destroyed by a hurricane.
9. The Petitioners further averred that during the time their father lived on the land, he cultivated fruit and vegetables on the subject property and continued such farming until becoming ill in 2019.
10. The Petitioners in support of their entitlement lodged an Affidavit of Executor of Andymore Jeffrey Saunders. The Affiant produced and exhibited the birth certificates of the children of the late Henry Saunders verifying the relationship between them and the deceased. A copy of the Will of the deceased and a copy of the Grant of Probate were also exhibited.

Petitioner's Abstract of Title

11. The Petitioners filed an Abstract of Title. The essence of same is captured in the following table:-

No.	Document
1.	In 1954 The late Henry Saunders moved onto the subject property having undisturbed possession.
2.	Sometime after 1954, the late Henry Saunders built a home on the subject property.
3.	The late Henry Saunders resided on the property and during that time cultivated fruits and vegetables on the subject property until he became ill in 2019.
4.	8 September 2020- Sworn Affidavit of Hubert King
5.	8 September 2020- Sworn Affidavit of Moses Pennerman

Supporting Evidence

12. The Petition is supported by the Affidavits of Hubert King and Moses Pennerman.

Hubert King

13. Mr. King avers that he is aware of the subject property which is located in Pinders, Mangrove Cay and that he was a friend and neighbour of Henry Saunders in the settlement of Mangrove Cay. He stated that in 1954 the late Henry Saunders built a home on the property and remained in undisturbed possession until taking ill in 2019.
14. He further averred that the late Henry Saunders during his time on the property grew peas, corn, potatoes, cabbage, oranges, mangoes, coconut and sapodilla.
15. He also stated that he only knew the late Henry Saunders to be the owner of the property.

Moses Pennerman

16. Mr. Pennerman avers that he is aware of the subject property which is located in Pinders, Mangrove Cay. He stated that he was a friend and neighbour of Henry Saunders in the settlement of Mangrove Cay and that in 1954 the late Henry Saunders built a home on the property and remained in undisturbed possession until taking ill in 2019.
17. He further averred that the late Henry Saunders during his time on the property grew peas, corn, potatoes, cabbage, oranges, mangoes, coconut and sapodilla.
18. He also stated that he only knew the late Henry Saunders to be the owner of the property.

Oral Testimony and Visit to Locus

19. The Petitioner and Affiants were examined by the Court on the evidence provided in their Affidavits.
20. The Court conducted a visit to the site.
21. The Court spent some time walking much of the property along its boundaries and via pathways pointed out by the Affiants. During the visit there was visible evidence of previous occupation on a part of the subject land as well as some evidence of older fruit trees. While much of the land appeared to be in an overgrown state, the Court was satisfied from an examination of the affiants at the locus and from an assessment of the markers on

the property that the land appears to have been in the undisturbed possession of the late Henry Saunders as averred and has been, since the death of Henry Saunders, in the control of his children, including the Affiants.

22. The pathways and boundary markers examined were in alignment with the amended survey plan.

DECISION

23. The Petitioners claim ownership in fee simple of the subject land by virtue of possessory title and through their deceased father, Henry Saunders who died testate and resided on the property from 1954 until 2019.

24. 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).

25. 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."

26. 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.”

27. The Petitioners must satisfy the Court they were in open, undisturbed and continuous possession of the property exceeding the period of twelve (12) years in order to prove the sufficiency of their claim to ownership.
28. By the evidence led, the deceased had taken possession of the property from 1954. During his time on the property, he built a home, where he resided and planted fruit trees throughout the property. The evidence is also that he raised a family there. Mr. Saunders died testate. The petition is brought by 3 of his children for the benefit of the estate.
29. The Affidavit of Executor Andymore Jeffrey Saunders avers that on May 27, 2021 he received a Grant of Probate in his father’s estate and that the property was to be shared among the children. The will of Henry Saunders is exhibited to the Affidavit. The informal description of the land in the Will appears to represent the parcel of land as seen by this court and which forms the subject matter of this petition.
30. The Court is satisfied that the late Henry Saunders had been in open, undisturbed and continuous possession of the property since 1954. Given the foregoing, I am satisfied that the deceased not only had the intention to possess, but did possess the land, and remained in occupation of same until 2019.

Conclusion

31. In the circumstances, I am satisfied that the Petitioners have proven open, undisturbed and exclusive possession on the parcel of land since 1954. I am further satisfied that the evidence provided by the affiants were consistent with observations made during the visit to the locus.

32. Therefore, the Court is satisfied that the deceased enjoyed open, undisturbed exclusive possession of the property entitling the property to be claimed by the estate of the deceased.

ORDER

33. 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 amended Plan filed therewith do issue to the Petitioners for the benefit of the estate of Henry Saunders.

Dated the 7th day of August 2024

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

Carla Card-Stubbs

Justice