[2008] CCJ 5 (AJ)

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF THE CO-OPERATIVE REPUBLIC OF GUYANA

CCJ Appeal No CV 1 of 2007
GY Civil Appeal No. 72 of 2004

BETWEEN

TOOLSIE PERSAUD LIMITED **APPELLANT**

AND

1. ANDREW JAMES INVESTMENTS LIMITED
2. SHIVLOCHNIE SINGH (BY ORDER OF COURT)
3. THE ATTORNEY GENERAL OF GUYANA **RESPONDENTS**

Before	**The Right Honourable**	**Mr Justice de la Bastide, President**
and	**The Honourable**	**Mr Justice Nelson**
	The Honourable	**Mr Justice Pollard**
	The Honourable	**Mr Justice Wit**
	The Honourable	**Mr Justice Hayton**

Summary of Judgment delivered by the Caribbean Court of Justice on the 15th July, 2008

This appeal from the Court of Appeal of Guyana stems from a petition by Toolsie Persaud Limited (the Appellant) in which the Appellant claimed to have acquired a prescriptive title to a tract of land ("the tract") comprising areas owned respectively by Andrew James Investments Limited (the First Respondent), Shivlochnie Singh (the Second Respondent) and the State of Guyana ("the State") which was represented by

its Attorney-General (the Third Respondent). The whole tract had been the subject of a Compulsory Acquisition Order of 8th June 1977("the CAO") which appeared to have vested title to it in the State one month later. In October 1987 the State contracted to sell the whole tract to the Appellant by an agreement which conferred on the Appellant the right to take possession immediately subject to payment by the Appellant of one-third of the purchase price. The Appellant paid one-third of the purchase price upon execution of the agreement but delayed taking possession until April 1988, in order to permit a crop of special grass to be harvested by a licensee of the State.

In March 1989 the First Respondent filed a constitutional motion against the State to have the CAO and the State's acquisition of title under it of the First Respondent's area of land declared invalid. Kissoon J so declared in May 1990, and the First Respondent had title put back in its name. An appeal by the State to the Court of Appeal was dismissed in March 1995.

In November 1989 the Second Respondent filed a similar constitutional motion against the State in respect of her area of land. Taking account of the March 1995 Court of Appeal judgment in the First Respondent's favour, the Second respondent in July 1995 obtained a consent order from Trotman J declaring the CAO to be of no effect and enabling her to have title to her land put back in her name.

In January 1993 the Appellant, which was facing difficulties in developing the tract, filed its petition claiming to have acquired prescriptive title to the tract by virtue of over twelve years of adverse possession, which it compiled by tacking on to its own adverse possession the earlier adverse possession of the State.

Three issues arose.

First, did the State have the necessary intention for its possession to be adverse when that possession was based on the belief that it was the owner under a CAO subsequently declared to be invalid? The Chief Justice held not, and so dismissed the petition; but the Court of Appeal ruled that the State did have the necessary intention. The CCJ endorsed that aspect of the Court of Appeal's decision, holding that physical occupation and use of land with the intention and effect of excluding everyone else, amounts to adverse possession, whether the occupier acts in good faith, believing himself to be the owner, or in bad faith, knowing that someone else is the owner.

Second, was it possible for the State to acquire land by adverse possession ? The Court of Appeal raised this point and held that due to Article 142 (1) of the Constitution, the State could only acquire land under compulsory acquisition powers that provided for payment of compensation. The CCJ pointed out that under Article 142 (2)(a) (vi) there was a saving for the acquisition of property under the law in respect of limitation of actions. The Title to Land (Prescription and Limitation) Act

upon which the Appellant was relying, was such a law. The CCJ held that a landowner's constitutional right to prevent the State from positively taking his land from him against his will was completely consistent with a landowner losing his title if for twelve years he failed to take any action against someone who was occupying his land and excluding him from it. Limitation, the CCJ reasoned, played a vital role as a longstop in the conveyancing system, enabling defective titles to be put in order, so that legality was given to actuality. There was no valid reason for making a distinction in this context between land in the possession of the State and that in the possession of an individual or corporate entity.

Third, did a landowner's right of action to recover land acquired from him by the State under an invalid CAO only arise when the CAO was declared to be invalid by a court upon a constitutional motion brought by the landowner? The Court of Appeal thought so and therefore dismissed the petition as misconceived as the judgment in the First Respondent's constitutional motion was not obtained until May 1990 while the Second Respondent's consent order was only made in July 1995 i.e. after the filing of the Appellant's petition in January, 1993. No proceedings were ever brought to challenge the State's acquisition under the CAO of the remaining portions of the tract.

The CCJ rejected the view of the Court of Appeal and held that a landowner's right of action to recover his land arises as soon as he can bring an action in which he can claim recovery of title and possession. Thereafter, time runs against him. An action could have been brought against the State from 8th July, 1977 claiming that the CAO and the acquisition of title thereunder were invalid and requiring title and possession to be restored to the relevant landowner. After the Appellant took possession in April 1988, the action needed also to be brought against the Appellant. However, no action was brought against the Appellant by the First or Second Respondents up to the time the Appellant filed its petition. There had therefore been the requisite twelve year period (1977 to1989) during which the State and then the Appellant were successively in possession of the land.

Passing of possession from the State to the Appellant was seamless, and the possession of the Appellant pursuant to its contractual right could be added to the State's earlier adverse possession, so that there had been the requisite twelve years of adverse possession against the First and Second Respondents, and their titles were therefore extinguished. Under sections 3 and 4 of the Limitation Act the Appellant's claim to be registered was to be preferred to the State's since on expiry of the twelve year period in July 1989, the contract between the State and the Appellant was still

subsisting, so that the State would have been barred from taking possession from the Appellant.

The CCJ also pointed out that even if the Second Respondent's constitutional motion against the State had been effective to stop time running, it came too late as it was filed in November 1989, more than 12 years after the accrual of the Second Respondent's cause of action (at latest) in July, 1977.

The Appellant was therefore declared to be entitled to be registered as the owner of the First Respondent's land. However, it surprisingly transpired that the Second Respondent in September 2004 had passed title to her land by a transport in favour of a Mr. Raymond Austin, who was now recorded as the registered owner. No declaration could be made to Mr. Austin's prejudice in his absence. The Appellant, if it thought it appropriate, would have to issue separate proceedings in order to displace Mr. Austin as the registered owner.

The Appellant's petition in respect of the rest of the tract was dismissed. The State was still the registered owner of that land, no action having been brought by any of the previous owners to challenge the CAO, and possession that is referable to a lawful title can never be adverse.

The First and Second Respondents were ordered to pay two-thirds of the costs of the Appellant in the CCJ and in the courts below while the Appellant was ordered to pay one- third of the Third Respondent's costs in the CCJ and the courts below.