



[2013] JMSC CIV. 130

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2004 HCV 01352

BETWEEN ADRIAN FORBES 1st CLAIMANT
(By next Friend
A minor by Next Friend Rohan
Christopher Wong)

AND TOSHANA FORBES 2nd CLAIMANT
(in her own right , and
As Representative of the Estate
Everald Washington Forbes, Deceased)

AND ELAINE JACKSON- FORBES 3rd CLAIMANT

AND CALVIN GOLDMAN - FORBES 1st DEFENDANT

AND MAUREEN FORBES 2nd DEFENDANT

Ms. Audre Reynolds instructed by Bailey Terrelonge Allen for 2nd and 3rd Claimant

Mr. Sheldon Codner instructed by Lightburn & Hamilton for 1st Defendant

Heard on: 2nd and 3rd November, 2010 and 20th September, 2013

Limitations of Actions Act – Dispossession or Discontinuance-Extinguishment -Effects of breach of mortgage agreement - Factual Possession – Intention to possess.

Joint tenancy -Death of Joint Tenant –Survivorship – survivor interest extinguished prior to death.

Civil Procedure Rule 68.4.6 - Administration ad colligenda bona defuncti,

CAMPBELL J.

Background

[1] The 1st and 2nd Claimants, Adrian and Toshana, respectively, are the children of the deceased, Everald Forbes and his wife , Elaine, the 3rd Claimant. The deceased was a Sergeant, in the Jamaica Constabulary Force. He was killed in

an automobile accident in 2003. The 1st and 2nd Defendants, Calvin and Maureen respectively, are the siblings of the deceased.

- [2] The deceased, whom I shall call Everalld and his wife Elaine, met in 1983 and cohabitated from about 1986. Their daughter, Toshana was born on the 21st December 1985 and her brother, Adrian in 1988. The couple was married in 1996. On the 25th July 1986, the property, the subject of the dispute was purchased by way of a mortgage loan, from the National Housing Trust. The purchased premises was registered and transferred into the joint names, of Everalld and his brother Calvin on a joint tenancy.
- [3] Everalld died on the 15th July 2003. At the time of her husband's death Elaine was incarcerated in the United States of America, having gone there in 2002, and would not be released before July 2004. The mortgage loan was discharged from the proceeds of a life insurance policy, being held by National Housing Trust, on the life of the Everalld.
- [4] Shortly after the death of Everalld, his sister Maureen, sought to have, the children, the 1st and 2nd Claimants, relocated from their home at Lignum Avenue. On the 31st July 2003. Elaine, issued an authorization of guardianship to Rohan Wong, her first born to have full custody and guardianship of the two children, whilst she was absent from Jamaica. He was authorized to have the children live with him.
- [5] On the 26th September 2003, Mr. Herbert Hamilton, Attorney –at-Law, on behalf of Calvin Forbes, who was described in the notice as the proprietor of 36 Lignum Avenue, Ebony Vale, issued a notice to quit, to Mr. Rohan Wong to deliver up possession of the premises on the 31st October 2003. Mr. Calvin Forbes, stated “That as surviving joint tenant I am the sole owner of the said property by the right of survivorship.” To that end on the 29th January, 2004 I entered into an agreement for the sale of the property to our sister Sybil Young who resided in the United States of America.
- [6] On the 10th June 2004, Mr. Justice D. McIntosh, ordered that;

An emergency grant(grant ad collagenta bona) be made to the Toshana Forbes on the basis that the assets of the deceased, is in danger of being dissipated and she wants to preserve the assets until further representation is granted. That the third respondent, (National Housing Trust) be restrained from releasing the Certificate of title for the property situated at 36 Lignum Avenue, Ebony Vale, Spanish Town. Orders were granted directed at the Calvin Forbes and Maureen Forbes restraining them from removing the children from the property or

disposing of, dealing or transferring the property in anyway. The orders were granted for a period of 20 days.

The Claim

[7] On the 21st June 2004 the 1st and 2nd Claimants filed a Claim Form and a Notice of application for an interim injunction. The Claim Form sought, the following orders:

- (1) An injunction restraining the Defendants and/or their servants or agents whether acting by themselves, their servants and/or agents or otherwise or however) from removing the said claimants from the said property.
- (2) An Injunction restraining the Defendants and/or their servants or agents (whether acting by themselves, their servants and /or agents or otherwise or howsoever) from disposing of, dealing with in any way, or transferring property situated at Lot 446 on the plan of Ebony Pen and being all the land comprised in Certificate of Title registered at Volume 1216 Folio 217 of the Register Book of Titles into any other name.
- (3) A declaration that Everald Washington Forbes, is entitled to full legal and beneficial interest in the property situated at Lot 446 Ebony Vale and being all of the land comprised in Certificate of Title registered at Volume 1216 Folio 217 of the Register Book of Titles by virtue of the Intestate Estates and Property Charges Act .
- (4) An Order that the First Defendant effect a transfer of his interest in the said property in the names of the Claimants.
- (5) If the First Defendant should neglect, fail or refuse to execute the said transfer, that the Registrar of the Supreme Court deem powered to effect the said transfer on his behalf.
- (6) Costs
- (7) Such other orders as this Honourable Court deems just in the circumstances.

Interim Injunction

[8] The Claimant's applied for an interim injunction which sought:

- (1) The First and/or Second Defendants be restrained (whether acting by themselves, their servants and/or agents or otherwise or however) from removing the said Applicants /Claimants from the property situated at 36

Lignum Avenue, Ebony Vale, Spanish Town in the parish of St. Catherine being registered at Volume 1216 Folio 217 of the Register Book of Titles.

- (2) The First and/or Second Defendants be restrained (whether acting by themselves, their servants and /or agents or otherwise or howsoever) from disposing of, dealing with in any way, or transferring the said property.
- (3) The Respondents /Defendants be restrained until the hearing of this suit from any dealing with the certificate of Title registered at Volume 1216 Folio 217 of the Register Book of Titles.

On the 8th July 2004, Mr. Justice Jones granted the orders in terms.

Claimants Case

- [9] The Claimants are alleging that in 1986, Everalld and Elaine, then cohabiting in rented premises were desirous of purchasing their own house. They did not together qualify for a loan from the National Housing Trust because of insufficient points. Elaine was an informal commercial importer, she had no points. The couple negotiated with his brother Calvin, to use his points with the National Housing Trust to facilitate their obtaining a mortgage loan from the National Housing Trust. It was agreed that Calvin would have no interest in the property and his only input would be the use of his points. There was an agreement to pay Calvin, Four Thousand Dollars for the use of his points. On the 25th July 1986, they obtained the loan and the property, Lot 446 Ebony Vale Housing Scheme was eventually transferred into the names of Everalld and Calvin Forbes as joint tenants. The registered title for the property was not available and as such the Transfer and Mortgage were not effected until October 1994. Everalld was solely responsible for paying all the mortgage payments. Calvin Forbes made no payments towards the mortgage loan, and never acted as owner of the property.
- [10] It was submitted on behalf of the claimants, that Everalld Forbes was in exclusive possession since July 1986 when he moved into the premises, and that Calvin Forbes had never lived in the house or asserted any rights of ownership. He had not “stepped foot” in the said premises at any time between the time he migrated to the United States in April 1989 and 2004, when he returned. Further, that it was clear from the evidence that any interest which Calvin may have had in the said premises was extinguished. That adverse possession continues and is passed on from Everard Forbes to his wife and children who continued to be in possession.

The First Defendant Case

- [11] Calvin Forbes denies any agreement with his brother and his wife, that he should have no interest in the property, for the use of his points. He has made contributions in accordance with the agreement with his brother for each to pay one half of the monthly mortgage payment. Contributions were firstly, by way of deductions from his salary and later, by remittances after he had relocated to the United States. He visited the home often whilst in Jamaica spending weekends and school vacations there. That as surviving joint tenant he is the sole owner of the said property by the right of survivorship. He has not abandoned the property.
- [12] Counsel for the defendant submitted that the applicable law is the law of joint tenancy. Interests passes to others by 'jus accrendi.' A joint tenant may become entitled to nothing or all by the operation of survivorship. The 1st Defendant and his brother were registered as owners of the land in fee simple. Property mortgaged to National Housing Trust, (ex 6). Everald Forbes died, and the mortgage discharged on October 2003. Not in dispute that up to the death of Everald Forbes, no change in title of property has been made. There was no agreement between Calvin Forbes, the 3rd Claimant and the deceased that Calvin Forbes would remove his name from the title.
- [13] In respect of the contention of adverse possession the Claimant has not established that the first Defendant has been dispossessed within the meaning of the authorities which clearly sets out the requirement of proof. The Claimant's reliance on **Wills v Wills [2003] UKPC 84** is misplaced. The cases establish the following:
- (i) time does not begin to run against the owner of land so as to extinguish the right thereto unless it has been established he has been dispossessed of the land, or
 - (ii) he has discontinued his possession of the land, and that in either event some other person in whose favour the period of limitation can run is in adverse possession of the land. There then runs against the 'true' owner, the time adverse possession is taken of the land.
- [14] The onus of proving that the true owner is dispossessed is on the party who alleges it. The difference between dispossession and discontinuance of possession was expressed by Fry J. in **Mais v Boxham** at page 539. The mere fact that the true owner does not make use of the land does not mean he has discontinued possession. To establish discontinuance, it must be shown positively that the true owner has gone out of possession of the land he has left it vacant with the intention of abandoning it. See **Leigh v Jack Vol 5 Exchequer Division 264**, Cockburn J. The highest it can be put is that, if the squatter is

aware of a special purpose for which the paper owner uses or intends to use the land and the use made by the squatter does not conflict with that use, that may provide some support for a finding as a question of fact that the squatter had no intention to possess the land in the ordinary sense but only an intention to occupy it until needed by the paper owner.

- [15] In order for adverse possession to succeed, the Claimant must establish, the use of the land is inconsistent with that of the true owner coupled with the intention to exclude not only the true owner, but to the world at large. The additions to the premises were made on account of the growing family. The improvements were to make the deceased and his family more comfortable. The use thereof was consistent with that originally contemplated by the 1st Defendant. See **Archer v Georgianna Holdings 12 JLR 1421**

Analysis

- [16] Section 3 of the Limitation of Actions 18 provides:

'No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or bring such action or suit shall have first accrued to some person through whom he claims, or if such right have not accrued to any person through whom he claims then within twelve years next after which the time to make such entry, or bring such action or suit shall have first accrued to the person making or bringing the same.'

- [17] The Claimants contend that the right of entry of the Defendants accrued as of July 1986, from which time according to the Claimants, Everard Forbes and his family have been in exclusive possession. There has been no challenge raised to the 25th July 1986, being the date of the loan agreement. However, the formalization of the mortgage agreement was on the 30th December 1988 (See exhibit 6). Counsel for the defendant says the right of entry would have started in 1996 and the period ended in 2003. It is unchallenged that the basis of entry for both parties has its origin in the Loan Agreement.

Mortgage Agreement

- [18] The mortgage contains the terms of repayment of the mortgage loan, insurance and costs ancillary to the provision of the mortgage. It was executed on the 30th December 1988. The Borrowers named in the agreement are Everard and Calvin, both of Lot 466 Ebony Pen Housing Scheme. The following clauses of the mortgage I consider relevant, to the resolution of this matter.

Clause 1,

'covenants agreements stipulations and obligations herein contained and expressed to be made by the Borrower shall be deemed to be made by each of such persons jointly and severally and they shall be deemed in Clause 7 to Mortgage to the Mortgagee all their respective estates and interests in the mortgaged premises...'

Clause 2A of the mortgage, states that:

'the first installment shall be payable on the first day of the second month after the month in which the principal sum would have been advanced by the mortgagee to the Borrower and each succeeding installment shall be payable at the expiration of one calendar month after the day on which the previous installment shall have become payable hereunder.'

Clause 2D,

'To pay on the date to each and every month hereinbefore stipulated for payment of the Principal sum and Interest a sum equivalent to one twelfth of the amount of the annual premium payable from time to time on the policies referred to at paragraphs (b) and (c) hereof which sum shall be retained by the mortgagee and applied by them in the payment of such premiums.'

Paragraphs (b) and (c) referred to in Clause D are, 'Mortgage protection insurance on the life of the Borrower and Peril Insurance Policy, to keep insured all buildings and erections on the Mortgage premises, respectively.'

Clause 4 (iv),

'The Mortgagee may from time to time under the power of distress conferred on the Mortgagee under the Registration of Titles Act recover and reimburse himself all interest due and payable hereunder and all costs and expenses incurred by the exercise of such power.'

- [19] Compliance with the terms of the mortgage loan may indicate whether the Borrower is desirous of continuing the mortgage loan. Possession in respect of joint possession is single and exclusive. The law in relation to joint possession diverges from the law in England. The judgment in **Wills v Wills** after examining S.14 of the Limitations of Actions Act 1881, at paragraph 16 states:

'The laws of Jamaica and England have since diverged in some important respects. Under the English 1925 property legislation every type of co-

ownership of land must now take effect behind a trust for sale. The effect of that is (broadly speaking) that co-owners hold the legal estate as trustees and cannot obtain title by possession against one of themselves.'

- [20] In Jamaica, pursuant to S.14 of the Limitations of Actions Act, one joint tenant who has been in possession of the entirety, for his own benefit, shall not be deemed to have been in possession for the benefit of the other joint tenant. Everald's possession of the property is not Calvin's possession.
- [21] The evidence of Calvin is that he visited from time to time and may have spent weekends and school vacations, at Ebony Pen, before he migrated. This is challenged strongly by the Elaine and the children. What has been unchallenged is that, there were no visits by Calvin, from 1989 to his return in 2004. In order to determine the date from which Calvin's right of reentry accrued, there needs to be identified, the date from which the Defendant discontinued or was dispossessed of his interest in the premises. (See Section 4 of the Limitation of Actions Act.)

Dispossessed or Discontinued Possession

- [22] An adverse possession of the land which causes time to run in favour of the adverse possessor will result in the paper owner's right of action accruing. (See **JA Pye (Oxford) Ltd. v Graham [2003] 1 A.C.419** at paragraph 69) the question therefore becomes was the Calvin dispossessed of the premises? or did he discontinue possession on his own evidence?, Calvin's occupation of the premises, consists of the visits he made at weekends and during vacation from school. The evidence is that he taught at a school in the parish of St. James. Both brothers were bachelors at the time of acquisition of the Ebony Vale property, there is no evidence of either owning any other property. Calvin lived with his mother in St James, according to Elaine. The disputed premises was located in the parish of St. Catherine. Calvin had no keys to the house, there is no evidence of any room or facility in that house being reserved for him. He had no clothing or other personal belongings there. His position was not unlike Myra in **Will v Wills** (supra)
- [23] In the case of **Wills v Wills**, a case from Jamaica, the Privy Council, found that the paper owner had discontinued or abandoned her possession of the premises. Lord Walker of Gestingthorpe, examined three cases, including **Archer v Georgianna Holdings Ltd. (1974) 21 WIR 431** which their Lordships found "relied heavily" on the English decision of **Leigh v Jack** which was referred to as the 'now controversial decision of the Court of Appeal in England.' Lord Walker, found that the cases were correct on their special facts. The Lord

Walker's judgment noted that, all of the cases stressed the importance in considering the extent and character of the land in question, the use to which it had been put, and other uses to which it could be put. The judgment qualified the decision in **Archer**, using the clear guidance given in **Pye** and cautioned that those cases should be read in light of **Buckinghamshire County Council v Moran [1990] CH 623** and the even more important decision of **Pye**, in which Lord Browne-Wilkinson, said:

'The suggestion that the sufficiency of the possession can depend on the intention not of the squatter but of the true owner is heretical and wrong.'

- [24] The 'extent and character' of the premises at Ebony Vale, consisted of a dwelling house, which had a mortgage loan, which largely regulated its use and occupation. Both Calvin and Everald had joint and several obligations to perform if they were to maintain the right to possession of the premises, pursuant to the obligations under the mortgage agreement. Calvin said in his witness statement that he paid his one half portion of the monthly mortgage payment by way of salary deductions, from his employment as a teacher.
- [25] In cross-examination, he was shown an undated letter from the National Housing Trust which stated 'Mortgage payments were made by Everald Forbes via salary deductions. Payments were received monthly from his employer Ministry of National Security.' Calvin still maintained that the Ministry of Education, 'took monthly payments' of one hundred and seventy dollars (\$170), from 1986 to 1989 from his salary. The original monthly installment, as provided by the mortgage and the schedule attached, is five hundred and seventy five dollars and fifty five cents (\$575.55). His monthly payment even if made and I find as a matter of fact that it was not, would not have constituted a one-half share of the monthly payment which was due.
- [26] In answer to Counsel, Calvin said he was not aware that it was being maintained that his brother was the only one who paid the mortgage. He was confronted with the affidavit of Elaine Forbes, filed and dated 2nd December 2008, where at paragraph 10, she says 'that all mortgage payments were made by salary deductions from the Ministry of National Security' and his response in an affidavit of the 17th December 2008. He then conceded he was aware from 2008, some two years prior to the trial of the allegations, that Everald was solely responsible for the monthly payments. He then asserted that he had written to National Housing Trust, and they never responded. Pressed about the whereabouts of that letter, he said, he had left that letter when he went to the United States, and he would now have to go and find it. I found Mr. Calvin Forbes to be less than frank, and lacking in credit. Wherever his evidence conflicted with the evidence of

the Claimant's, I preferred the Claimant's evidence. Of his period of sixteen years in the United States, his evidence in cross-examination, is that contributions were remitted via Federal Express or Western Union. The period of non payments of the mortgage would be from July 1986 until his departure in 1989. The mortgage agreement stipulates that breach in respect of payments, would allow for immediate repossession of the premises.

[27] In cross- examination Calvin, said that he lived in the United States, for sixteen years, as an alien resident and for a period he was not available. He returned to Jamaica in 2004. He testified that he gave his brother \$6,000 at the time of acquisition of the property, as they were to pay one seventh of the purchase price. Shown, National Housing Trust letter of 2nd March 1987, he agreed that a deposit was not applicable to the loan. He said his brother told him that he had to pay one seventh, and he had not participated in the talks that led up to the Agreement. Elaine has also referred to a deposit being paid. He agreed in cross-examination, that the house was Everald and Elaine's family home. He had not known when they got married and significantly that when he stayed there, it was as a guest. He further admitted he never had keys for the premises, and said that the house belonged to his brother and the kids.

[28] Everald, paid all of the monthly payments according to the National Housing Trust Letter. In the absence of an agreement between, the borrowers, Everald and Calvin, this is only referable, to Everald seeing himself as the owner of the entirety of the estate. National Housing Trust recorded no payment in respect of Calvin, for the three years he was in the island, before his departure for the United States. Neither is there any evidence of renegotiations of a rescheduling of the loan payments. Calvin failure to comply with the terms of the mortgage loan is contrary to his assertions that he is the paper owner of the property.

[29] See **Lord Browne –Wilkinson** , in **Pye** ,at page 435 ,paragraph 40. Inter alia.

'In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or persons who can establish a title as claiming through the paper owner.'

[30] The actions of Calvin in not being compliant with the terms of the agreement, is evidence that is contrary to his being deemed to be in possession of the land. With Calvin's non-compliance the person with the prima facie right to possession is the National Housing Trust, but for the payment of the whole sum by Everald. Calvin would have discontinued possession of the premises, from the time

National Housing Trust had the right to invoke the powers of Sale conferred under Clause 2(xii) of the mortgage loan which allows National Housing Trust powers of sale for outstanding principal sum on installments of interest or Sinking Fund unpaid for a period of thirty days from the time it became due. Both sides and the National Housing Trust documentation accept that the loan agreement was from the 25th July 1986. However, under the mortgage, which was formalized on the 30th December 1988. (See ex6), the first payment would have been due on or about March 1st 1989. Using the provisions of the formal document, Calvin would be deemed to have discontinued possession on or around the 31st March 1989, pursuant to National Housing Trust Powers of Sale.

- [31] Counsel for Calvin relied on the case of **Archer v Georgianna Holdings**, to support the submissions on Discontinuance and Dispossession. She submitted further that 'the mere fact, that no contribution was made, cannot be deemed to be a circumstance which indicate discontinuance on the part of the title-holder.' Calvin did not ensure that deductions were made of one-half the monthly payments and transmitted to the National Housing Trust. He made no arrangements with the mortgagee, for the payments due to them whilst he would have been off the island. There were obligations he had under the mortgage, such as the preservation of good order and condition of the mortgage premises that no arrangements were made by Calvin to be compliant with. His prolonged breach of the mortgage gave National Housing Trust the right to invoke their power of sale. He never visited for sixteen years whilst in the United States. His testimony, that on the occasion of visits to the premises he was a guest. He had no key, and no furnishings, clothing or any personal effects there. In relation to his possession devoid of furnishings, he has left the house vacant, gone away from it for sixteen years with no evidence of exerting any control or dominion over it. I find that he discontinued possession from 31st March 1989.

Accrual of the right of re-entry

- [32] Calvin's right of entry or to bring an action for recovery shall first accrue at the time when, the person claiming possession was dispossessed or when he discontinued possession. See S.4 of the Limitations of Actions Act. (See also **Almarie Baker v David Rance and Cargill Brown**, unreported, Claim 2005/HCV 00159, delivered 27th August 2007 at paragraph 4.) The Claimants allege that Everald and his family had remained in undisturbed possession and exclusive possession of the premises, from the date of Calvin's discontinuance that is July 1986, well before 31st March 1989, until the service of notice to quit dated 26th September 2003. Calvin had been away and had not returned during the period from 1989 to 2004.

- [33] Did Everald have the requisite possession for the period of twelve years before the commencement of the action? Lord Browne –Wilkinson, in **Pye** adopts Slade J definition of possession, said at 470. In **Powell v Mc Farlane and Anor 38 P&CR 470**

“It will be convenient to begin by restating a few basic principles relating to the concept of possession under English Law:

(i) ‘In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or persons who can establish a title as claiming through the paper owner.’

(ii) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (‘animus possidendi’)”

Factual Possession

- [34] Everald and his family have been on the land from 1986 to the time of trial, a period of 24 years. Everald during this period; has paid the mortgage payments property taxes, and insurance on the property. He has made substantial alterations to the property, which required the consent of the mortgagee. That modification was done in 1992, by obtaining two loans totaling One Hundred and Thirty Thousand Dollars (\$130,000.00) from St. Catherine Credit Union. This sum was well in excess of the amount of the mortgage that was used to purchase the property, One Hundred Thousand Three Hundred and Forty Nine Dollars and Thirty Eight Cents (\$100,349.38). The alterations and changes were to make the house more comfortable for Everald and his family. These modifications were coming some six years after the acquisition of the property, during which period he had single handley paid all the installments at the time when Calvin would have been away from Jamaica for three years. There is no evidence of any consultation between the brothers about this modification of the property.

- [35] Everald actions demonstrate an intention to exercise a level of physical control and custody of the premises which leads to the conclusion that he was an occupying owner of the disputed lands in its entirety. He did not consult with Calvin, about the modification. The acquisition is only referable to an occupier who intends to possess the premises as owner. Everald’s wife’s response to the suggestion of relocation of her children consequent to her husband’s death is instructive of the family’s intention to exclude all incursions on their home. The

Claimants have established that Calvin had discontinued possession of the premises and that the claimant had been in adverse possession from the date of Calvin's discontinuance up to trial.

Joint Tenancy

- [36] Counsel for Calvin submitted that even if Calvin made no contribution and was never in occupation, his joint tenancy cannot be defeated. I cannot accept that submission. Calvin's interest had been extinguished by the adverse possession of Everald. Calvin had discontinued possession from 31st March 1989. Everald had possession adverse to Calvin interest for a period of twelve years from 31st March 1989. That adverse possession continued to the time of trial. Everald would have acquired possession in or around April 2001, before his death in 2005. He was therefore capable of disposing of it by will or by operation of intestacy prior to his death.

Locus Standi

- [37] The Court has power to grant orders pursuant to Rule 68.4.6, which provides, that, 'an application for an emergency grant may be made to the Registrar and must be supported by evidence on affidavit setting out the grounds of the application.' The learned authors of **Tristamand Coote Probate Practice, Twenty- Eight Edition at page 584**, paragraph 25.173 states:

"Application maybe made for a grant of administration ad colligenda bona defuncti, owing to the impossibility, in special circumstances of the case, of the court constituting a general personal representative in sufficient time to meet the necessities of the estate. It is now more than usual, in appropriate cases, to obtain wider powers by invoking the powers conferred by S.116 of the Supreme Act 1981."

Mr. Justice D. McIntosh granted the orders. The grant allows the court to deal with the case justly in accordance with the overriding objective of the Civil Procedure Rules.

I make the following Orders;

- [38] (i) An injunction restraining the Defendant and/or their servants or agents whether acting by themselves, their servants and/or agents or otherwise or howsoever) from removing the said Claimants from the said property.
- (ii) A declaration that the first Defendants rights to the property comprised in Certificate of Title registered at Volume 1216 Folio 217 has been extinguished by virtue of the adverse possession of the Claimants.

(iii) An Order that, the interest of the Elaine Forbes, a married woman, be determined at one-half, in the property situated at Lot 446 Ebony Vale and being all of the land registered at Volume 1216 Folio 217 of the Register Book of Titles, pursuant to the Married Women's Property Act.

(iv) A declaration that the interest of Everald Washington Forbes, deceased of Lot 446 Ebony Vale and being all of the land registered at Volume 1216 Folio 217 of the Register Book of Titles be distributed in accordance with the provisions of the Intestate Estates and Property Charges Act.

(v) That in the event of a Sale, consequent on distribution that Elaine Forbes be granted the right of first refusal.

Costs to the Claimants to be agreed or taxed.