

Date: 20131127
Docket: 12/85
Citation: *Ring v. Newfoundland and Labrador*, 2013 NLCA 66

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

BETWEEN:

CARMELITA RING

APPELLANT

AND:

HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR

RESPONDENT

Coram: Welsh, White and Harrington JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (G) 201201G4699 (2012 NLTD(G) 141)

Appeal Heard: October 9, 2013

Judgment Rendered: November 27, 2013

Reasons for Judgment by Welsh J.A.

Concurred in by White and Harrington JJ.A.

Counsel for the Appellant: Joseph F. Boulos

Counsel for the Respondent: Philip Osborne

Welsh J.A.:

[1] Carmelita Ring applied under the *Quieting of Titles Act* for a declaration that she is the owner in fee simple of a parcel of land located on St. Thomas Line, Paradise. Her claim was opposed by the Crown. The trial judge dismissed Ms. Ring's application on the basis that she failed to prove the necessary adverse possession as against the Crown.

BACKGROUND

[2] The land in question is a parcel of approximately four acres which is a portion of a ten acre parcel originally sold to Joan Dillon by deed of conveyance dated June 8, 1972. There was no Crown grant in respect of the larger parcel. The deed of sale to Ms. Dillon recites that Patrick Lawlor had been in possession of the larger parcel for at least twenty years prior to his death in 1933.

[3] By deed of conveyance dated May 1975, Ms. Dillon sold the four acre parcel to Ms. Ring and her husband, Mr. Newman. In 1996, as part of a divorce settlement, Mr. Newman conveyed his interest in the four acre parcel to Ms. Ring.

ISSUES

[4] At issue is whether the trial judge erred in:

- (1) concluding that the period necessary to claim adverse possession as against the Crown is the twenty years immediately prior to January 1, 1977;
- (2) his analysis of the evidence of adverse possession;
- (3) refusing to determine the claim of adverse possession as of 1972 when the property was sold to Joan Dillon; and
- (4) refusing to take account of the quieting of the adjacent Tweeddale parcel in 1986.

ANALYSIS

[5] It is uncontested that the parcel of land at issue is Crown land unless Ms. Ring can establish that she is entitled to a certificate of title in respect of that parcel based on adverse possession. Section 13(3)(b) of the *Quieting of*

Titles Act, RSNL 1990, c. Q-3, provides for a certificate of title to be granted as against the Crown:

A certificate or conveyance ... may be made against the Crown where the judge is satisfied, following proper service of the application by the applicant on the Minister of Environment and Lands and after affording the Crown an opportunity of making representation and of being heard,

...

(b) that subsection 36(2) of the *Lands Act* applies to the lands affected by the application.

[6] Section 36 of the *Lands Act*, SNL 1991, c. 36, abolishes adverse possession as against the Crown subject to specified exceptions. Sections 36(1) and (2) provide:

(1) Notwithstanding a law or practice to the contrary, no period of possession of Crown lands after December 31, 1976, counts for the purpose of conferring upon a person an interest in the lands so possessed unless the period is permitted to count as against the Crown for the constitution of that interest under or by virtue of an Act of the province, or as a condition of a grant, lease, licence or other document validly made or issued by or on behalf of the Crown under that Act.

(2) The period of possession of Crown lands prior to January 1, 1977, which would, by the application of the law pertaining to the acquisition of an interest in land based upon open, notorious and exclusive possession existing prior to the enactment of this section, have been necessary to confer upon a person an interest in that land is considered to be, and always to have been, 20 continuous years.

(Emphasis added.)

Prior to amendment of the Act in 1976, the period of time required to establish adverse possession as against the Crown was sixty years.

[7] Sections 36(3) and (4) provide for the Lieutenant-Governor in Council or the minister, respectively, to issue a grant for lands that “have been in continuous use for agricultural, business or residential purposes or for a purpose referred to in section 9 [public purposes such as a school] for a 20 year period immediately prior to January 1, 1977” (emphasis added).

Limitation of twenty years to years immediately prior to January 1, 1977

[8] The trial judge concluded that, under section 36(2), the twenty continuous years of possession must be those immediately prior to January 1, 1977, and that “nothing which occurred in this case prior to 1 January 1957 is material to the issue” (2012 NLTD(G) 141, 328 Nfld. & P.E.I.R. 119, at paragraph 21).

[9] In reaching this conclusion, the trial judge relied on the decision in *Ball v. Day* (1982), 38 Nfld. & P.E.I.R. 365 (NFCA). Morgan J.A., for the Court, explained:

[8] The amending statute of 1976 makes it an offence for any person to enclose, mark off or take possession of any Crown land, without permission, after the 1st day of January 1977 and provides that no period of possession, except in prescribed circumstances, on or after January 1, 1977, counts for the purpose of conferring upon any person an interest in the land so possessed. By s. 134B(2), to which the trial judge referred, the prescriptive period for acquiring an interest in Crown land by adverse possession is reduced from 60 years to 20 years. I agree with the trial judge that s. 134B(2) operates retrospectively but only to the extent that the 20 year period referred to in that section means the 20 year period immediately prior to the 1st day of January, 1977 and the claimant is still in possession. It does not operate to revive the title of one who held possession for less than 60 years and abandoned possession before January 1, 1977. Other than changing the prescriptive period from 60 years to 20 years, s. 134B(2) does not change the law obtaining with respect to claimants of land by adverse possession.

(Emphasis added.)

[10] Similarly, in *Newfoundland v. Collingwood* (1996), 138 Nfld. & P.E.I.R. 1 (NFCA), Cameron J.A., for the Court, explained:

[9] It is common ground that the Crown is deemed to be in possession of the land at Devil’s Gap unless the Crown is dispossessed and its title extinguished and that the effect of s. 134B of the **Act** is to reduce the period of time required for obtaining adverse possession against the Crown from 60 years to 20 years, immediately prior to January 1, 1977. However, except as to time, the law respecting adverse possession is unchanged by s. 134B (**Ball v. Day** (1982), 38 Nfld. & P.E.I.R. 365; 108 A.P.R. 365 at 369-370).

[11] In the instant case, the trial judge concluded:

[14] If adverse possession is to be found against the Crown it must have occurred from 1 January 1957 to 31 December 1976, inclusive (see also **Crowley v. Crowley** (1984), 51 Nfld. & P.E.I.R. 140, ... at paras 85-86).

[12] Ms. Ring submits that the trial judge erred in adopting the conclusion set out in *Ball* that the twenty years of adverse possession must immediately precede January 1, 1977. She points for support in making this submission to the more recent decision of this Court in *Gough v. Newfoundland and Labrador*, 2006 NLCA 3, 253 Nfld. & P.E.I.R. 1. For the following reasons, this proposition must be rejected.

[13] There is, in fact, nothing in *Gough* that is inconsistent with the principle set out in *Ball*. *Gough* was concerned with whether the requirements for adverse possession, being open, notorious, exclusive and continuous possession, had been satisfied on the facts of the case. Whether the twenty years of possession was restricted to those immediately prior to January 1, 1977 was not in issue.

[14] Nonetheless, Ms. Ring points to a reference to sections 36(3) and (4) of the Act in one paragraph in *Gough*. The only comment in the decision regarding those subsections was that they had no bearing on the appeal (paragraph 25). The relevance of these subsections in Ms. Ring's submission is that they contain the phrase, "a 20 year period immediately prior to January 1, 1977" (emphasis added). The submission is that, if it was intended that subsection (2) is to be similarly limited, the word "immediately" would have been included. This proposition does not withstand scrutiny.

[15] Sections 36(3) and (4) were amended in 1983 to add the twenty-year requirement where there had previously been no time limit specified (*The Crown Lands (Amendment) Act*, SN 1979, c. 44, s. 4; and *The Crown Lands (Amendment) Act*, SN 1983, c. 80, s. 6). The amendment occurred subsequent to the decision in *Ball* interpreting section 36(2). While it was, of course, open to the legislature to add the word "immediately" to subsection (2), it may be assumed that the legislators considered the statement of the law in *Ball* to be sufficient.

[16] In addition, the legislative objective of section 36 may be gleaned from the two changes made to section 134B in 1976. These were to abolish thenceforth adverse possession as against the Crown and to change the required period of open, notorious, exclusive and continuous possession from sixty to twenty years. The first of the changes, abolishing claims where possession occurred after December 31, 1976, indicates an intention by the legislature to significantly limit future claims by preventing an adverse claim from succeeding based on possession occurring after the

critical date. The second change, reduction from sixty to twenty years of possession, must be interpreted in this context. It could not reasonably be inferred that the legislature intended to make establishing adverse possession as against the Crown easier. That is the result that would follow if the claimant had only to demonstrate adverse possession for any continuous twenty rather than sixty years prior to January 1, 1977. The only reasonable interpretation consistent with the legislative intention restricting future adverse possession claims is that the twenty-year period means those years immediately preceding January 1, 1977.

[17] The interpretation of section 36(2) as set out in *Ball* is a correct statement of the law. It follows that the trial judge did not err in concluding that the twenty-year period of continuous custody required to establish adverse possession as against the Crown is the twenty years immediately preceding January 1, 1977.

The evidence of adverse possession

[18] Ms. Ring submits that the trial judge erred in his findings of fact regarding the evidence adduced to establish adverse possession. The submission is that the judge made findings without sufficient evidence or that he failed to give proper weight to, or did not take into account, particular evidence.

[19] It is well established that this Court will interfere with findings of fact of a trial judge only where palpable and overriding error is demonstrated. That standard is not met in this case. It is clear from the trial judge's decision that he reviewed the evidence taking care to give reasons for why he accepted particular evidence. He considered the evidence in the context of each of the criteria for establishing adverse possession. While Ms. Ring submits that the trial judge should have reached different conclusions, she has not provided a basis on which to set aside the findings of fact.

[20] Further, much of the evidence relied upon by Ms. Ring related to use of the land prior to 1957. As noted by the trial judge, under the current legislation, that evidence is irrelevant for purposes of assessing whether the criteria for establishing adverse possession were satisfied. Finally, Ms. Ring points to evidence that applies to periods up to the mid-1960's. This ignores the requirement to establish the criteria of possession from 1957 to 1977.

[21] In the result, there is no basis on which to disturb the trial judge's findings of fact.

Adverse possession prior to the 1976 amendment

[22] Ms. Ring submits that the criteria to establish adverse possession for sixty years were met when the property was purchased by Joan Dillon in 1972, and that, therefore, the Crown had been dispossessed at that time. However, the amendment to the legislation in 1976 clearly applied retrospectively (*Ball v. Day, supra*, at paragraph 8). In the result, at the time of her application, Ms. Ring had the onus of establishing the criteria for adverse possession for the twenty years immediately preceding January 1, 1977.

Quieting of the Tweeddale property

[23] Finally, Ms. Ring submits that the foundation for her application for adverse possession is the same as that relied upon by the Tweedales who purchased a portion of the ten acre parcel adjacent to hers. In 1986 the Crown did not contest the Tweedales' quieting of title application in respect of their parcel. Ms. Ring submits that her application should be treated the same.

[24] The trial judge concluded that Ms. Ring had the onus to establish her claim based on adverse possession when she applied to have the title quieted and that the manner in which the Tweeddale quieting was addressed by the Crown was irrelevant:

[70] In my view, there is nothing that the Crown had to do in respect of [Ms. Ring] to assert its ownership in 1986 or at any other time. The onus of proof rests squarely on [Ms. Ring], essentially as an adverse claimant, to show that she and/or her predecessors in title have ousted the Crown, the presumptive owner of the land, through adverse possession for the requisite period. She has failed to do so.

[25] Ms. Ring submits that she should be treated the same as the Tweedales despite the fact that she made her application almost twenty-five years after the Tweedales. Whether the outcome would have been different for Ms. Ring had she applied at the same time as the Tweedales is unknown. What is clear is that the Crown is not bound by a position it may have taken at a prior time. The underlying principle is described in Hogg,

Constitutional Law of Canada, looseleaf edition (Toronto, ON: Carswell, 2007), at 12.3:

... If a legislative body could bind itself not to do something in the future, then a government could use its parliamentary majority to protect its policies from alteration or repeal. This would lay a dead hand on a government subsequently elected to power in a new election with new issues. In other words, a government while in office could frustrate in advance the policies urged by the opposition.

[26] This principle applies equally to the executive branch of government and to changes in policy, whether made by the same or a different government. It was open to the Crown to take different positions in determining how to respond to the quieting of titles in the case of Ms. Ring and the Tweedales.

[27] Further, insofar as estoppel may apply as against the Crown in particular circumstances, the principle is not engaged in the instant case. There is no evidence that the Crown ever represented to Ms. Ring that she would be treated the same as the Tweedales or that an application to quiet her title would not be contested as authorized under the *Lands Act*.

[28] Ms. Ring also submits that there was an onus on the Crown in 1986 to advise her when the Tweedales sought to quiet their title. There is no basis to support this proposition. As stated by the trial judge, the responsibility to seek a quieting of the title for her parcel lay with Ms. Ring. Section 25(1) of the *Lands Act* does provide that, where an adverse claim is made, the minister may serve a notice setting out the Crown's interest. However, the triggering event is an adverse claim coming to the minister's attention. Section 25(1) provides:

Where the minister is made aware of an adverse claim with respect to lands that the minister believes are Crown lands, the minister may serve a notice on the adverse claimant ... informing the adverse claimant that the minister claims the lands in question as Crown lands.

Section 27 provides:

Where an adverse claimant makes an application under section 25, he or she shall immediately serve notice of the application on the minister.

[29] These provisions do not envision that the minister will give notice of the Crown's interest in property to anyone other than the adverse claimant. This would not include adjacent properties such as, in this case, Ms. Ring's.

[30] It follows that the trial judge did not err in determining that the Tweedale quieting was irrelevant to Ms. Ring's application.

Costs

[31] Ms. Ring believed over many years that she had full title to the property, based on a deed she received when she bought the parcel from Joan Dillon and on which she paid property taxes. In the circumstances, the equitable result is to require the parties to bear their own costs in this Court and in the Court below.

SUMMARY AND DISPOSITION

[32] In summary, the interpretation of section 36(2) as set out in *Ball* is a correct statement of the law. The trial judge did not err in concluding that the relevant period of time to establish adverse possession as against the Crown is the twenty years immediately preceding January 1, 1977. Further, Ms. Ring has provided no basis on which to set aside the trial judge's findings of fact. Finally, the trial judge did not err in concluding that Ms. Ring had the onus of establishing her claim of adverse possession and that the Crown's decision not to contest the Tweedale quieting was irrelevant.

[33] Accordingly, I would dismiss the appeal. The parties will bear their own costs in this Court and in the Court below.

B. G. Welsh J.A.

I Concur: _____

C. W. White J.A.

I Concur: _____

M. F. Harrington J.A.