

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT VINCENT AND THE GRENADINES

SVGHCVAP2023/0001

BETWEEN:

VENDIE MC CAUL

Appellant

and

GAILON MATTHEWS

Respondent

Before:

The Hon. Mr. Trevor M. Ward	Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini	Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence	Justice of Appeal

Appearances:

Mr. Richard Williams with Mr. Art Williams for the Appellant.
Mrs. Patricia Marks-Minors appearing amicus curiae for the Respondent.

2026: May 4;
July 30.

Civil appeal – Real property – Possessory Title – Adverse Possession – Exclusive and undisturbed possession – Evidence of single building with multi-family structural units – Statutory requirements under section 6 of the Possessory Titles Act – Evidence of permissive occupation by a licensee – Inferences drawn from documentary evidence – Appeal against findings of fact – Principles governing appellate interference with findings of fact - Filing of supplementary affidavit evidence on appeal without leave – Development of land under sole direction of appellant

The appellant, Ms. Vendie Mc Caul, applied to the High Court under the Possessory Titles Act for a declaration of possessory title to a parcel of land comprising 7,343 square feet situated in Belair, Saint George, Saint Vincent and the Grenadines. In support of her application, the appellant adduced evidence that she had enjoyed exclusive, undisturbed, and continuous possession of the land for a period of twenty-four years.

The appellant traced her root of possession to her now deceased father, Mr. Alpheus Mc Caul, who had occupied the land since 1936, built a family home thereon in 1940, executed a Statutory Declaration of title in 1996, and subsequently conveyed his entire

interest to the appellant via a Deed of Gift in 1997. The application was opposed by the respondent, who filed an appearance but failed to file evidence or otherwise participate in the substantive proceedings below.

The trial judge dismissed the application, finding that the appellant had failed to establish exclusive and undisturbed possession for the statutorily prescribed twelve-year period with the requisite intention to possess the land as owner. The trial judge's decision was heavily grounded on three distinct findings. First, an examination of the submitted survey plan led the judge to conclude that there were 'two houses under construction' on the land, a detail she found that the appellant and her witnesses had failed to satisfactorily account for. Second, the learned judge identified discrepancies between the names of the adjacent occupiers listed in the historical 1996 and 1997 deeds and those listed on the present application and survey plan, concluding that the appellant had failed to link the land described in the deeds with the land surveyed. Third, the learned judge found that the appellant's voluntary disclosure of a deceased brother who had previously resided on the land raised ambiguities that put the court on notice that an intestacy or a statutory trust for sale might arise under sections 31 and 47 of the **Administration of Estates Act** ("the Act"). The appellant challenged these findings on appeal.

Held: allowing the appeal, setting aside the judgment of the learned judge in the court below, and granting the declaration of possessory title, that:

1. Where a trial judge has reached a conclusion on primary facts, an appellate court will generally be slow to interfere. However, an appellate court will interfere with a finding of fact if it is satisfied that the conclusion arrived at is plainly wrong or where there is a material error in the judge's process of reasoning such as a material error of law, or the making of a critical finding of fact which has no basis on the evidence, or a demonstrable misunderstanding of relevant evidence. Additionally, in cases where the evidence before the judge is on affidavit with no cross-examination, an appellate court's degree of reluctance to interfere is less if the judge erred in principle in his findings or if his decision was clearly or blatantly wrong.

Shaheel Jagroop by his next friend Fabian Jagroop v Lucretia Johnny administratrix of the estate of Gregory Johnny and Velina Johnny SLUHCVP2023/0023 (delivered 15th October 2025, unreported) followed; **Ikana Holdings, S. De R. L. et al v Putney Capital Management Ltd et al** BVIHCMAP2021/0027 (delivered 24th January 2022, unreported) followed.

2. A trial judge has a duty to evaluate the evidence as a whole and cannot arbitrarily disregard relevant components of the record. This is particularly true where the omission concerns affidavit evidence that directly clarifies the court's own expressed apprehensions. In this instance, the learned judge erred by failing to consider the appellant's supplemental affidavit confirming that the structure was a single building with two units. Crucially, the legal requirement for exclusive and undisturbed possession under section 2 of the Act does not dictate that a dwelling must be a single-family home.

Section 2 of the **Possessory Titles Act Cap 328** applied.

3. In an unregistered land system, textual land descriptions in historical deeds act as snapshots of occupancy rather than absolute, permanent identifiers. The identity of adjoining occupiers is descriptive rather than constructive of the boundaries themselves and changes in neighbouring occupation over time do not necessarily indicate that the parcel of land being claimed has changed. Furthermore, when a survey plan is authenticated by the Chief Surveyor under section 6 of the Act, it carries a strong statutory presumption of physical accuracy regarding the dimensions and location of the plot.

Section 6 of the **Possessory Titles Act Cap 328** applied.

4. The operation of statutory trust under the **Administration of Estates Act** requires, as an absolute condition precedent, that the asset in question forms part of the estate of the intestate at the time of their death. The appellant's father conveyed his entire interest to the appellant during his lifetime, and therefore the property could not pass into his estate. Furthermore, the brother's occupation did not affect exclusive possession because occupation by a licensee or person occupying with the claimant's consent constitutes possession by the claimant and is not inconsistent with exclusive possession.

Sections 31 and 47 of the **Administration of Estates Act Cap 486** considered; Section 2 of the **Possessory Titles Act Cap 328** applied.

JUDGMENT

- [1] **CENAC-PHULGENCE JA:** This decision concerns an appeal against the judgment¹ of the court below dated 7th November 2022 on an application for possessory title of a parcel of land comprising 7,343 square feet situated in Belair, Saint George, Saint Vincent and the Grenadines ("the land") made by the appellant, Ms. Vendie Mc Caul in which the learned judge dismissed the appellant's application.

Preliminary Issue

- [2] At the hearing of this appeal, there was no appearance for or on behalf of the respondent by counsel on record. Mrs. Patricia Marks-Minors appeared amicus curiae for the respondent. The respondent had previously filed a notice of opposition to the appeal on 2nd February 2025. The respondent did not file any skeleton arguments but quite bizarrely filed an affidavit on 30th April 2026 to 'inform the Court of certain facts which allegedly have not been disclosed by the

¹ SVGHPT2021/0031 (delivered 7th November 2022, unreported) ("Judgment in the court below").

appellant and which she thought she should bring to the Court's attention in the interest of justice'.

- [3] As the Court would have indicated, this was most unprecedented and the filing of the affidavit was an attempt to place new evidence before the Court in circumstances where no leave had been obtained. Absent an application for permission to adduce fresh evidence on appeal, the affidavit was improperly filed and could not be considered by the Court. Consequently, the affidavit of the respondent was struck out. Furthermore, because no skeleton arguments had been filed on behalf of the respondent, Mrs. Marks-Minors was not permitted to address the Court in her amicus capacity.

Background Facts

- [4] In her application for possessory title filed on 26th August 2021, the appellant's evidence was that she had enjoyed exclusive possession of the land for twenty-four (24) years. The land had been conveyed to her by her now deceased father by Deed of Gift No. 358 of 1997 ("the Deed of Gift"). Her father had acquired his title by Statutory Declaration No. 3625 of 1996 ("the Statutory Declaration").
- [5] The respondent filed an appearance on 11th October 2021 opposing the application but did not participate further in the proceedings in the court below.
- [6] The appellant's application for possessory title was made pursuant to the **Possessory Titles Act** ("the Act").² The Act provides for the grant of a declaration of possessory title to an applicant who establishes that he/she has been in adverse possession of land. To be entitled to such a grant, an applicant must prove on a balance of probabilities that he/she has been in factual possession of an exclusive and undisturbed nature of a piece of land for a continuous period of twelve years or more accompanied by the requisite intention to possess the land as owner.³

² Cap 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

³ Section 2 defines adverse possession and section 3 deals with the application for declaration of possessory title.

- [7] The sole issue identified by the learned judge in relation to the application before her was whether the appellant was entitled to a declaration of possessory title of the land.
- [8] The evidence before the court below as set out by the learned judge was that prior to the commencement of the appellant's possession of the land in 1997, her father, Alpheus Mc Caul ("Mr. Mc Caul") was in possession from 1936. Mr. Mc Caul built a house on the land in 1940 which served as the family home for many years. In 1996, Mr. Mc Caul purported to confer title to the land to himself by way of the Statutory Declaration.
- [9] In 1997, Mr. Mc Caul transferred his 'interest' in the land to the appellant by way of the Deed of Gift and since that time the appellant maintained the building on the land as her home and made significant repairs to it until it was damaged and rendered uninhabitable. The appellant's evidence was that her brother Godfred Matthews ("Mr. Matthews") had lived in the house until 2007 with her permission until he moved to his own home. Mr. Matthews died in 2016.
- [10] The learned judge found that the appellant had satisfied the formal requirements of the Act.⁴ However, the learned judge rejected the appellant's assertions that she had been in adverse possession of the land for a period of twelve (12) years or more and found that the appellant had failed to establish that she had enjoyed exclusive and undisturbed possession of the land for the relevant period with the intention of owning it.
- [11] Consequently, the learned judge ordered that the appellant's application for a declaration of possessory title of the subject land be refused.
- [12] The appellant challenges this decision and has advanced seventeen grounds of appeal which give rise to the following five main issues:
- (1) Ground 1 - Whether the learned judge erred in her interpretation of the definition of adverse possession when she stated that adverse

⁴ Paragraph [5] of the Judgment in the court below.

possession rests on the factual underpinnings of actual occupation of the land?

- (2) Ground 2 - Whether the learned judge erred in finding that there were two houses on the land and not taking into account the evidence of the appellant which was before the court?
- (3) Ground 3 - Whether the learned judge erred in finding that the appellant failed to make a link between the description of the northern and southern boundaries of the land in the schedule and the land depicted on survey plan G63/113 and consequently failed to establish her claim to adverse possession?
- (4) Ground 4 - Whether the learned judge erred in finding that a statutory trust could have arisen under the Administration of Estates Act?
- (5) Ground 5 - Whether the learned judge erred in taking into account irrelevant considerations?

[13] These five issues will ultimately answer the overarching question of whether the learned judge erred in that she took into account and gave inappropriate weight to matters which were not relevant to the main issue before her for determination – that is, whether or not the appellant had been in adverse possession of the land for the statutorily prescribed period and in finding that the appellant had failed to establish that she enjoyed exclusive and undisturbed possession of the land.

[14] In relation to issue 1, the appellant rightly conceded at the hearing that this ground would not be pursued as it was quite clear that the learned judge had applied and considered the right principles of law in relation to adverse possession and section 2 of the Act.

Appellate Approach to Findings of Fact

- [15] In the main, the grounds of appeal challenge the learned judge's findings of fact and therefore the Court is mindful of the prohibition and caution against substituting its findings for those of the trial judge. Where the trial judge has reached a conclusion on the primary facts, it is only in rare cases that an appellate court will interfere with those findings. An appellate court will only interfere with a finding of fact made by a trial judge if it is satisfied that the conclusion arrived at is plainly wrong.
- [16] In **Shaheel Jagroop (by his next friend Fabian Jagroop) v Lucretia Johnny (administratrix of the estate of Gregory Johnny and Velina Johnny)**,⁵ the Court outlined the well-known circumstances in which an appellate court would interfere. It is where it is possible to either identify a material error in the judge's process of reasoning such as a material error of law, or the making of a critical finding of fact which has no basis on the evidence, or a demonstrable misunderstanding of relevant evidence. If the question is simply one of judgment as to the appropriate weight to be given to the relevant evidence, the appellate court must be satisfied that the judge's conclusion cannot reasonably be explained or justified.
- [17] In other words, the appellate court should only interfere where the decision under appeal is one that no reasonable judge would have reached. In **Ikana Holdings, S. De R. L. et al v Putney Capital Management Ltd et al**,⁶ the Court stated that in cases where the evidence before the judge was on affidavits and there was no cross-examination of the deponents, an appellate court's degree of reluctance to interfere is less. In such cases, the appellate court will have regard to the judge's evaluation of the evidence and his findings of fact and will only interfere with the judge's findings of fact based on his evaluation of the evidence if he erred in principle in his findings or if his decision was clearly or blatantly wrong and also if this Court having carried out its own evaluation of the evidence, can legitimately differ from the judge's conclusions. However, the

⁵ SLUHCVP2023/0023 (delivered 15th October 2025, unreported) at paragraph [31].

⁶ BVIHCP2021/0027 (delivered 24th January 2022, unreported) at paragraph [27].

Court did go on to caution that an appellate court ought not to substitute its own findings simply because it disagrees with the judge's findings.

[18] The above statements of principle are well-known, and I am guided by them.

Challenge to Judge's Findings

[19] I will now address the challenges to the learned judge's findings of fact.

Ground 2 – Whether the Learned Judge erred in finding that there were two houses on the land and not taking into account the evidence of the Appellant which was before the Court?

[20] The appellant complains that the learned judge concluded that there were two houses on the land having looked at the survey plan whereas the appellant had only mentioned one house. She also complains that the learned judge made this finding but did not afford her the opportunity to address the matter.

[21] The learned judge's conclusion on the appellant's application was significantly impacted by her finding that there were two houses on the land and that the appellant had only accounted for one house.

[22] At paragraph [15] of the judgment in the court below, the learned judge found that the survey plan depicted two structures identified as houses under construction and that neither Ms. Mc Caul nor her witnesses had addressed the fact of the existence of any structure other than her house which was under construction. At paragraph [16], the learned judge observed that the supporting affidavits did not expressly account for the existence of a second house under construction. The learned judge alluded to the fact of the existence of 'another building under construction on the subject land' which was 'depicted on the survey plan'. In her conclusion, the learned judge stated that no satisfactory explanation had been advanced regarding the use or occupation of the other 'house under construction' on the land.

[23] The learned judge also stated that the appellant had been invited to address this aspect of the case and had failed to do so, 'a detail which could not be ignored'.

- [24] In the transcript of the delivery of the decision, the learned judge said:
- “One of the issues which stood out was the fact that the survey presented by the applicant depicts the survey plan which is G63/113, depicts three building[s], which the legend of the survey plan, states, refers to ‘houses, house under construct.’ So that was reflected to the court and demonstrated to the court that there are two houses under construction on the subject land. That was one of the matters which the applicant was required to address in their submissions.”⁷
- [25] The appellant submitted that by the order dated 27th June 2022,⁸ (“the June 2022 Order”) the learned judge never invited her to address the issue of the existence of two houses on the land, although in the preamble to the order, the judge did state that ‘the supporting affidavit of the applicant does not expressly account for the second house under construction on the subject property’.
- [26] It was this statement in the June 2022 Order which prompted the appellant to file a supplemental affidavit on 27th July 2022 (“the supplemental affidavit”).⁹
- [27] The June 2022 Order required the appellant to ‘file skeleton arguments ... addressing the legal implications which arise under the Administration of Estates Act ... in relation to the statutory declaration on which the applicant partially relies to establish her entitlement to the grant of a declaration of possessory title in circumstances where the subject property included real property which devolves by law in accordance with the reference act.’
- [28] It is clear that the June 2022 Order did not require the appellant to address the issue of the two houses but by way of the supplemental affidavit, she sought to bring some clarity to the court’s obvious concern. The appellant stated that she had retained the services of Kross Designs to draw the plans for the proposed property which is ‘one building which contains two units’ and she exhibited the approved plans to her affidavit.

⁷ Hearing Bundle Vol. 1 filed on 19th March 2024, pg. 37 at lines 15-21.

⁸ Ibid, pg. 81.

⁹ Ibid, pg. 143 at paragraph 8.

- [29] A trial judge has a duty to evaluate the evidence as a whole and cannot arbitrarily disregard relevant components of the record. This is especially true when an omission concerns affidavit evidence that directly clarifies the court's own expressed apprehensions. A perusal of the learned judge's judgment reveals that there was no reference to the supplemental affidavit at all which gives rise to the inference that she would not have had the benefit of the appellant's clarification and would not have factored this into her decision. In failing to consider this evidence which would have been highly relevant to the application, the learned judge fell into error.
- [30] When one examines the proposed plans as exhibited by the appellant, they reveal one structure with two units connected by a common garage space and not two separate structures. The learned judge referred to the survey plan G68/82¹⁰ and found that this showed two houses. However, this finding was clearly influenced by the fact that the abbreviation 'H.U.C.' which in the Legend to the plan was shown to mean 'House under construction' appeared twice on the structure shown. However, the appellant's supplemental affidavit would have clarified the position. It is also clear from the survey plan that there is one structure on the property but with two units. Crucially, the legal requirement for exclusive and undisturbed possession under section 2 of the Act does not dictate that a dwelling must be a single-family home.
- [31] The above is further supported by the Report and Valuation¹¹ which was exhibited to the appellant's affidavit in support of her application, and which would have been before the learned judge. In that report it states that there is on site '**a structure** that is under construction' (emphasis added).
- [32] The evidence which was before the learned trial judge could not have led to a conclusion that there were two houses on the land. The learned judge therefore erred in so finding and would have erroneously concluded that the appellant had not accounted for a second house on the land which ultimately influenced her final conclusion and refusal of the appellant's application for possessory title.

¹⁰ Hearing Bundle Vol. 1 filed on 19th March 2024, pg. 51.

¹¹ Ibid, pg. 54.

- [33] This misapprehension of the facts also then led the judge to a consideration of matters relating to the **Administration of Estates Act**¹² which the appellant has also taken issue with, and which will be addressed below.

Ground 3 – Whether the Learned Judge erred in finding that the Appellant failed to make a link between the description of the Northern and Southern Boundaries of the land in the Schedule and the land depicted on Survey Plan G68/82 and consequently failed to establish her claim to Adverse Possession?

- [34] The appellant contended that the learned judge based her final decision on the fact that the appellant had not provided any clarification regarding the discrepancies between the description of the northern and southern boundaries in the statutory declaration and the survey plan, yet she was never asked to specifically address this matter.
- [35] The appellant submitted that the learned judge erred in concluding that there was imprecision or some discrepancy in the delineation and demarcation of the land and further in failing to ascertain or conclude that the boundaries in the Statutory Declaration were the same as those in the appellant's application.
- [36] At paragraph [8] of her judgment, the learned judge noted that the schedules to the Statutory Declaration and Deed of Gift describe the land as being bounded on the north by lands in possession of Banfield John, on the south by land in the possession of Gerald Caddle, on the east by a ravine and on the west by a road. The learned judge observed that this mirrored the description of the land in the appellant's application but pointed out two differences, one of which was that the adjoining lands on the north and south were said to belong to St. Clair Conliffe and Stella Matthews respectively.
- [37] The learned judge having cited this difference in the northern and southern boundaries, found that neither the appellant nor any of her witnesses had

¹² Cap 486 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

accounted for any connection between the previously stated owners in possession, John and Caddle and Conliffe and Matthews who were stated in the appellant's application as the current owners in possession. The learned judge found that she was unable to ascertain and/or conclude that the northern and southern boundaries in the Statutory Declaration and Deed of Gift were the same and further that she was unable to conclude that the 'other' house under construction fell within the boundaries of the land.¹³

[38] This finding in relation to the alleged boundary discrepancy like the finding in relation to the two houses on the land provided the basis for the learned judge's final determination that she was unable to find that the appellant was entitled to a declaration of possessory title. At paragraph [31] of the Judgment in the court below, the basis for this final determination is provided as follows:

"Suffice it to say that Ms. Mc Caul has provided adequate testimony to support her assertions that through the acts of her agent, she occupied a portion of the land at Belair as described in the Schedule to the Statutory Declaration and Deed of Gift. However, she has failed to make a link between the description of that land in those Schedules and the land depicted on survey plan G63/113."

[39] It is to be noted that the survey plan being referred to is G68/82 and not G63/113, the latter being the survey plan for the land occupied by Stella Matthews.

[40] When one looks at the schedules to the Statutory Declaration¹⁴ and Deed of Gift,¹⁵ it is correct that the northern and southern boundaries show different persons in possession of the land from those shown on the survey plan.¹⁶ The learned judge appeared not to have considered that the Statutory Declaration and Deed of Gift were made in 1996 and 1997 respectively and would have reflected the persons in possession at that time. The identity of adjoining occupiers is descriptive rather than constructive of the boundaries themselves

¹³ See paragraphs [9] and [32] of the Judgment in the court below.

¹⁴ Hearing Bundle Vol. 1 filed on 19th March 2024, pg. 61.

¹⁵ Ibid, pg. 65.

¹⁶ Ibid, pg. 59.

and changes in neighbouring occupation over time do not necessarily indicate that the parcel of land being claimed has changed.

- [41] Another material consideration would be that Saint Vincent and the Grenadines does not have a registered system of land and as the appellant rightly pointed out in submissions, it would be impossible to know who owns a particular piece of land by deed reference alone. Also of importance is the fact that almost twenty-five years would have passed since the making of the statutory declaration in 1996 and it would only be reasonable to conclude that the occupiers of the adjacent lands to the north and south of the land would have changed over the years.
- [42] In an unregistered land system, textual land descriptions in historical deeds act as snapshots of occupancy rather than absolute, permanent identifiers. Over a twenty-five-year horizon, land changes hands through sale, inheritance or simple occupation. To demand that an applicant trace the complete chain or title or identify for every adjacent neighbour to explain a nomenclature shift would erect an extra-statutory barrier to applications under the Act. The historical continuity is therefore maintained not by the names of the neighbours but by the physical boundaries of the parcel itself.
- [43] Most important is the fact that the learned judge failed to have regard to the fact that the appellant exhibited a survey plan which showed the land she claimed to be in possession of and the occupiers of land at all its boundaries.
- [44] An examination of the survey report which was exhibited to the application¹⁷ clearly shows that the surveyor took note of the persons in possession of adjoining lands and reflected those as St. Clair Conliffe to the north and Stella Matthews to the south.
- [45] Section 6 of the Act requires that the application be accompanied by a plan of the piece of land authenticated by the signature of the Chief Surveyor. The

¹⁷ Survey Order No. P43/2021 - Hearing Bundle Vol. 1 filed on 19th March 2024, pg. 71.

section gives the court the discretion to reject a plan that in its opinion does not contain sufficient detailed information relating to the piece or parcel of land. There is no indication by the judge that there was any issue with the survey plan presented.

[46] When a plan is authenticated by the Chief Surveyor under section 6, it carries a strong statutory presumption of physical accuracy regarding the dimensions and location of the plot. By aligning the historical natural boundaries: the ravine on the east and the road on the west, with the mathematical boundaries on survey plan G68/82, the physical identity of the land was conclusively bridged. The minor variation in neighbouring names was a natural consequence of time, not an identity defect.

[47] The learned judge's concentration on the fact that the persons shown as being in possession of the north and south boundaries of the land were now different while not focusing sufficiently on other evidence relevant to the identification of the land, led her to incorrectly conclude that the land was not properly identified.

[48] The Court is therefore satisfied that the land claimed by the appellant was sufficiently identified for the purposes of the Act. The survey plan authenticated by the Chief Surveyor, together with the survey report and the evidence filed in support of the application, provided an adequate evidential basis upon which the land could be identified notwithstanding the change in the identity of adjoining occupiers over time.

Ground 4 – Whether the Learned Judge erred in finding that a Statutory Trust could have arisen under the Administration of Estates Act?

[49] The appellant complains that the learned judge erred in concluding that there were gaps in the appellant's application concerning the unnamed deceased person and in not acknowledging and finding that the appellant's father had passed away in 2020 in the face of there being no evidence to the contrary. The appellant contends that the learned judge placed too high a burden on the appellant to prove that her father, Mr. Mc Caul died in 2020 given the fact that this was not in dispute.

- [50] The appellant also submits that the learned judge failed to determine whether the appellant's house is located within the boundaries of the land and whether it may be subject to a statutory trust under the **Administration of Estates Act**.
- [51] At paragraph [12] of the Judgment in the court below, the learned judge remarked that the appellant claimed that she had disclosed to the court who was likely to be affected by the application, that being the deceased. The judge went on to find that it was not clear whether the reference to the deceased was to her father, her brother or some other person and the appellant had not said.
- [52] It will be recalled that the learned judge had directed that submissions be filed addressing the legal implications which flowed from the provisions of the **Administration of Estates Act** which the appellant duly complied with.
- [53] At paragraph [25] of the judgment in the court below, the learned judge referred to paragraph 16 of the appellant's affidavit in support of the application and concluded that the reference there to a deceased person having an interest in the land was not referring to her father as she had claimed that he had conveyed his entire interest to her. The judge was of the view that the reference was vague and raised questions as to whether the deceased person referred to was her brother or another person and whether it related to the house under construction. She then referred to sections 31 and 47 of the **Administration of Estates Act** which as the learned judge put it placed the court on notice that a statutory trust might arise in relation to the unfinished house.
- [54] At paragraph [26] of the judgment in the court below, the learned judge made the point that until Letters of Administration are extracted, an intestate's estate remains vested in the Honourable Chief Justice, and until then, the property is presumptively held on a statutory trust for sale for the beneficiaries. The judge alluded to the fact that the appellant had been invited to address those issues and failed to do so which has been shown to be incorrect given that the appellant did file the submissions as directed.

- [55] It is apparent from the judgment that one of the gaps in the evidence identified by the learned judge was ‘the un-named deceased person’ whom she referred to as having an interest in the land.
- [56] Paragraph 16 of the appellant’s affidavit in support states:
“...I have disclosed to the Court the person who is likely to be directly affected by this application, he is deceased.”
- [57] The learned judge found that it was unclear who was being referred to. However, as submitted by the appellant, if one reads the preceding paragraphs, it is clear that the deceased person to whom the appellant was referring to is her brother, ‘Godfred Matthews (deceased)’.¹⁸ The appellant identified Godfred Matthews and states that he continued to live on the property until around 2007 when he moved to his own house on land given to him by their mother and that he died in 2016. This evidence is further substantiated by paragraph 6 of the appellant’s supplemental affidavit.¹⁹
- [58] The appellant submits that based on the affidavit and supplemental affidavit in support of her application, the only person referred to as ‘the deceased’ is Godfred Matthews and she provided an explanation as to his occupation of the house with her permission and consent and the fact that he vacated the house in 2007. The appellant, it is submitted did not state that her brother had an interest in the land. She simply disclosed him as a person who would likely be affected by her application.
- [59] Additionally, the occupation of the house by Godfred Matthews does not detract from the appellant’s claim to exclusive possession. The appellant’s evidence, which was unchallenged, was that he occupied the premises with her permission. Occupation by a licensee or person occupying with the claimant’s consent constitutes possession by the claimant and is not inconsistent with exclusive possession.

¹⁸ Affidavit in support of application - Hearing Bundle Vol. 1 filed on 19th March 2024, pg. 46 at paragraph 8.

¹⁹ Filed on 27th July 2022.

[60] I see no evidence which would have led to a conclusion that there were any issues of intestacy or otherwise under the **Administration of Estates Act** as the appellant's father Mr. Mc Caul transferred his entire interest in the land to the appellant in 1997.

[61] The operation of statutory trust under the **Administration of Estates Act** requires, as an absolute condition precedent, that the asset in question forms part of the estate of the intestate at the time of their death. Because Mr. Alpheus Mc Caul conveyed his entire beneficial and legal interest to the appellant via a valid Deed of Gift in 1997, the property was fully alienated during his lifetime. It could not, as a matter of law, pass into his estate upon his death in 2020. Similarly, the disclosure of the deceased brother, who occupied the property as a licensee by permission until 2007, did not introduce a competing claim of right.

[62] Given that the evidence does not support the learned judge's conclusion that there were two houses on the land, there is no question which arises with respect to any interest of any other person in a 'second house'. There was therefore no basis for a finding of a statutory trust pursuant to the **Administration of Estates Act**.

Ground 5 – Whether the Learned Judge erred in taking into account Irrelevant Considerations?

[63] Having identified the errors made by the learned judge in the assessment of the evidence, it demonstrates that these errors led the judge to take into consideration matters which were not relevant to the determination of the application which was before her.

[64] I am mindful of the principles as espoused by this Court in **Jagroop v Johnny** and applied in many cases regarding the exceptional circumstances in which an appellate court will interfere where a trial judge has reached a conclusion on the primary facts. However, in instances where a judge's conclusions are inferences drawn from an examination of documentary evidence as in this case, it has been held that this Court is in almost as good a position as the trial judge to determine the facts.

[65] Having regard to the statutory basis for the grant of adverse possession set out in the Act, the totality of the evidence adduced in the court below, legal submissions and case law advanced by counsel for the appellant both orally and in writing, the Court is satisfied that the learned judge erred and took into account irrelevant matters and did not take into account relevant evidence and arrived at a conclusion which was blatantly wrong.

[66] The errors identified by the learned judge went to the central basis upon which the application was refused. Once those errors are removed from consideration, there remained no evidential basis upon which the appellant's claim to adverse possession could properly be rejected. The unchallenged evidence before the court established that the appellant had occupied and exercised acts of ownership over the land continuously from 1997, maintained the dwelling house thereon, permitted occupation by the brother, carried out repairs and improvements and treated the land as her own. There was no evidence before the court contradicting those assertions. In these circumstances, the Judgment in the court below must be set aside.

Conclusion

[67] Given the foregoing discussion, the Court makes the following orders:

- (1) The appeal is allowed.
- (2) The judgment of the learned judge in the court below dated 7th November 2022 is set aside.
- (3) Pursuant to the provisions of the **Possessory Titles Act**, Cap 328 of the Revised Laws of St. Vincent and the Grenadines 2009, Vendie Mc Caul is adjudged to be in possession of a parcel of land situated at Belair, Saint George, in the State of St. Vincent and the Grenadines, together with all buildings thereon, measuring seven thousand, three hundred and forty-three square feet (7,343 sq. ft.), as is more particularly delineated on survey plan G68/82 which was approved and lodged at the Land and Surveys Department of the

State of St. Vincent and the Grenadines on the 5th day of February
2021 by the Chief Surveyor.

[68] I thank counsel for the helpful submissions.

I concur.
Trevor M. Ward
Justice of Appeal

I concur.
Cadie St. Rose-Albertini
Justice of Appeal

By the Court

Chief Registrar