

POSSESSORY TITLE

(Adverse Possession for a period of limitation)

AND

STATE LANDS

Presenter

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ARGUMENTS ADVANCED

Arguments advanced would be

- (1) Legal based on the law
- (2) *Philosophical based on an analysis of the question “Is State Lands a superior title to Freehold Interest in Land?”*

Legal argument based on the law

Main questions to be answered

- (1) Does the Real Property Limitation Act apply to state lands
- (2) *Does Limitation by itself create rights*

Apparent conventional position

Legislation

- STATE LAND (REGULARISATION OF TENURE) ACT CHAPTER 57:05
- ACT NO. 25 OF 1998
- *“(2) Nothing in this Act affects the operation of—*
 - *(a) the Real Property Act with respect to the bringing of State Land under the provisions thereof;”*

Apparent conventional position

THE LAND ADJUDICATION ACT, 2000

16. (1) In preparing the adjudication record, where the Adjudication Officer is satisfied that—

“

- (b) a person who without a documentary title
- is in open and peaceable possession of a
 - parcel of land other than a parcel which is
 - State land and has been in such possession
 - whether by himself or through his duly
 - authorised agent or his predecessors in
 - title for a period of thirty years or more, he
 - shall declare the title of such a person to be
 - absolute and record it as such;

Land Adjudication (Amendment) Bill

- Section 16 – open and peaceful possession of State land
- for 30 years – award of absolute (freehold) title

What is Possessory title

- Firstly it must be understood that anyone who is in occupation of land “*has title against the whole world save and except a person with a superior title*”
- In the case of freehold land the statement translates into “*anyone in occupation of land has title against the whole world save and except the paper title owner*”
- If the paper title owner’s interest is extinguished the statement then translates into “*anyone in occupation of land has title against the whole world.*”
- *It is this condition of the lack of a person who can make a claim to having a superior title relative to an occupier that establishes the essence of title by possession.*

What is Possessory title

- Possessory Title = Adverse possession + Limitation period + extinguishment of paper title owner's interest
- Adverse possession involves the co-existence of two essential elements, namely;
 - (1) the assumption of actual physical possession, and
 - (2) Animus possidendi) *'the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title in so far as is reasonably practicable and so far as the processes of the law will allow'*.

What is Possessory title

- To succeed in a claim based on adverse possession the Claimant must show (1) factual possession of the land for sixteen years and (2) The animus possessendi, that is, the intention to exclude the world.” (Per Deyalsingh J.A. Lyder v De Freitas H.C.A. 1310 of 2001 at pages 20 and 21
- “The law of title through possession is grounded in the Real Property Limitation Act

How does the Real Property Limitation Act operate

CHAPTER 56:03

REAL PROPERTY LIMITATION ORDINANCE ; does two main things

(1) Sets limitation period

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

(2) Extinguishes rights of the paper title owner

- **22.** At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.

Does the Real Property Limitation Act apply to State lands ?

- THE ATTORNEY GENERAL vs . ERICHE AND OTHERS. (1894) 1Trin. L.R. 19
- “in my opinion the law of limitation of' actions, relating to real property does not apply to the crown unless such law is made to apply to the Crown by Ordinance. There is no such Ordinance in this Colony.”

Does the Real Property Limitation Act apply to State lands ?

CHAPTER 3:01 INTERPRETATION ACT

- **6.** (1) No written law binds or affects in any manner the State or the State's rights or prerogatives unless it is expressly stated in the written law or it appears by necessary implication that the State is bound by the written law.

Under the corresponding legislation in the United Kingdom i.e.
THE LIMITATION ACT 1939

Section 30 provides as follows;

- “(1) Save as in this Act otherwise expressly provided and without prejudice to the provisions of section 32 thereof, this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects.....”
- There is no corresponding provision in our RPL act.

Does the Real Property Limitation Act apply to State lands ?

- The STATE SUITS LIMITATION ACT as amended.
- Sets the Limitation period of 30 years for the bringing of an action by the State to recover its lands.
- Unlike the RPL there is no provision in the legislation for the extinguishment of the rights of the State

Does the Real Property Limitation Act apply to State lands ?

- DIFFERENCE?
- ONE CAN BE REVIVED THE OTHER CANNOT

HOW TIME MAY START RUNNING AFRESH

- Time may start running afresh in cases where there has been an acknowledgement or part payment.
- With respect to private lands, acknowledgement or part payment will be of no effect and will not revive the paper title owner's interest in the land if made after the statutory Limitation period has passed.

Acknowledgement

- Time starts afresh from the date of a written and signed 'acknowledgement made by or on behalf of' the adverse possessor of the landowner's title.'

Philosophical argument

Questions to be answered:

“What type of title is State Lands?”

“Is State Lands a superior form of title to Freehold Interest in Land?”

Is State lands of a nature that is capable of being extinguished?

What is State lands

England's Feudal Land Tenure

- The concept behind feudal land tenure stems back to Medieval times where all land and property was considered to be property of the Crown. The crown would grant land to lords who would then dole out portions of their land to lesser tenants in exchange for services, who in turn divided it among even lesser tenants.
- The English Real Property Commissions of 1828-33 recommended the retention of the principle that all land was vested in the crown because it was built on a system to provide services especially military for the King. They did recommend that there be an amalgamation of the different types of tenure with the same rules and customs. Nothing happened concerning these recommendations until the 1925 reforms
- We have therefore inherited the fundamental principle that the State is the ultimate owner of the land in its fullest sense and the private individual merely has an interest in the land granted to him by the State

What is State lands

- A private individual has an interest in land. Freehold or leasehold
- By freehold we mean the **Fee simple absolute in possession**. E.g State Grant
- The Leasehold will be an interest for a definite term of years. E.g State Lease
- The Lease hold will come to and end at the determination of the term.
- The Freehold can come to an end when any of the successive fee simple owners dies intestate without leaving an heir.
- Once this happens the State has a right of escheat.

What is State lands

the State's right of *escheat*.

- Under this principle, whenever a landowner died without leaving an "heir" who could succeed him," his land escheated to his immediate superior owner
- on the death of a freehold owner intestate (without a will) and without an heir, his land escheated to the State as the ultimate owner

Definition of Escheat

- A proceeding whereby the state, by virtue of its sovereignty, steps in and claims the real and or personal property of a person who dies intestate leaving no heir
- Escheat is based on the Latin principle of *dominion directum* as was often used in the feudal system when a tenant died without heirs or if the tenant was convicted of a felony or treason.
- In feudal England, escheat was a privilege exclusively given to the king. The law established a hierarchy of heirs who stood in line to inherit the estate. If there was no living person of a designated class to inherit, the king took the property by escheat.

What is State lands

CHAPTER 1:01

CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND
TOBAGO ACT

8.

- (2) Any property which, immediately before the appointed day, is liable to escheat or to be forfeited to Her Majesty for the purposes of the Government of Trinidad and Tobago, shall, from the appointed day, be liable to escheat or to be **forfeited** to the State.

- State's right of escheat is of very limited application in Trinidad and Tobago because it has been largely displaced by the concept applicable to personal property, i.e., the right of the State to take, by way of succession, such goods as have become **bona vacantia**.

- (*J.C.W.WYLIE Laws of Trinidad and Tobago*)

What is State lands

Administration of Estates Act Chapter 9:01
section **26C**. Provides;

- *“ In default of any person taking an absolute interest under the foregoing provisions, the estate of the intestate belongs to the State as bona vacantia.”*
- Succession is the passing of a decedent's property to his or her heirs. Escheat is not treated in law like succession; the two concepts are completely separate.
- It is clear that the States rights in land is different to that of a freehold interest in land and it is submitted that State's rights in land is a superior interest to that of the Freehold rights.
- It is further submitted that in principle and in the absence of legislation to the contrary, the State's rights cannot be extinguished.



THE END

