



[2018] UKFTT 444 (PC)

**PROPERTY CHAMBER
FIRST –TIER TRIBUNAL
LAND REGISTRATION DIVISION**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY
LAND REGISTRATION ACT 2002**

REF/2017/0846

BETWEEN

Razia Din

Applicant

and

Yasmin Akhtar Mustafa Abbas

Respondent

**Property Address: Land at the rear of 174 Trinity Street, Huddersfield, HD1 4DX
Title Number: YY76485**

Judge Colin Green

ORDER

It is ordered that:

- (1) the Chief Land Registrar give effect to the Applicant's application in respect of title number YWE4253 only as if the Respondent's objection of 6 July 2017 had not been made;
- (2) no order as to costs.

Dated this 11 day of July 2018

Colin Green

By order of the Tribunal





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Respondent

**Property Address: Land at the rear of 174 Trinity Street, Huddersfield, HD1 4DX
Title Number: YY76485**

Judge Colin Green

**At: Huddersfield Magistrates Court
On: 3 July, 2017**

Applicants Representation: Syeda Din

Respondent Representation: No appearance or representation

DECISION

Introduction

1. This matter arises from an application by the Applicant under Schedule 6 of the Land Registration Act 2016. The Applicant is the registered proprietor of the leasehold title to 176 Trinity Street (YK17209) and the freehold title (WYK576355). The Respondent is the registered proprietor of the leasehold title to the adjoining property, 174

(YWE4253) and freehold title (WYK694992). The properties form part of a terrace block. At the rear runs a passageway which provides access to the properties. The land the subject of the application, which has been allotted the provisional title number YY76485 (“the Disputed Land”), is a rectangular area forming part of the title to 174 adjoining a wall which separates 174 and 176 and is the site of part of a former outbuilding which has been demolished. The Disputed Land is shown coloured blue on the plan at page 119 of the hearing bundle.

2. I had the benefit of a site inspection on the afternoon before the hearing. On the morning of the hearing an email was received from the Respondent which provided:

“As explained in a text message send to Miss Din, and for it to be forwarded to the Judge, due to ill health, I am unable to attend the hearing. I send my apologies and in the circumstances rather than to delay the matter any further I am happy for the matter to proceed in my absence as everything I wanted to clarify and say has been stated in my Statement of Case.”

I saw the text message, which was in the same terms, and spoke with the Respondent on the Applicant’s daughter’s mobile phone, when she confirmed the contents of the same. Accordingly, I proceeded with the hearing in the Respondent’s absence. It was nevertheless still necessary for the Applicant to establish her case to my satisfaction. Throughout the proceedings, the Applicant has been represented by her daughter, Syeda Din (“Miss Din”).

Title history

3. Both properties were built in the latter part of the Nineteenth century. By a lease dated 20 April 1872, 174 and 176 were demised for a term of 999 years from 29 September 1869. The lease was split by separate assignments of 174 and 176 on 30 December 1920. As regards 176, the leasehold title was first registered on 17 November 1964. Mohammed Sadiq was registered as the proprietor on 17 February 1977, and Mohammed Din (his brother and the husband of the Applicant) on 2 November 1978. After her husband’s death, the Applicant was registered as proprietor on 19 September 1991. The freehold title to 176 was first registered on 14 June 1964, and on 25 September 1995 it was acquired by the Applicant, who was registered as proprietor.

4. In respect of 174, the leasehold title was first registered on 19 February 1969 and the freehold title on 14 June 1994. The Respondent was registered as proprietor in respect of both titles on 2 December 2014, when she purchased 174.

The Applicant's case

5. Miss Din identifies two issues.

- 5.1. The Disputed Land should have been included within the title to 176 from first registration. There is no application for alteration of the register in respect of any of the titles under Schedule 4 to the 2002 Act. Nor is it clear that any mistake was made on first registration as none of the pre-registration title deeds are available. In addition, a Schedule 6 application is made on the footing that the title in respect of which adverse possession is claimed is a correct title. Therefore, I do not consider that I can consider this part of the Applicant's case.

- 5.2. Adverse possession under the provisions of Schedule 6.

Schedule 6

6. Paragraph 1(1) of Schedule 6 provides that

"...a person may apply to the registrar to be registered as the proprietor of a registered estate in land if he has been in adverse possession of the estate for the period of ten years ending on the date of the application."

The Applicant's application was made in Form ADV1 on 10 November 2016 and supported by a Form ST1 made by Miss Din which claimed adverse possession of the Disputed Land since the purchase of 176 in 1977.

7. Paragraphs 5(1) to (4) of Schedule 6 provide:

"(1) If an application under paragraph 1 is required to be dealt with under this paragraph, the applicant is only entitled to be registered as the new proprietor of the estate if any of the following conditions is met.

(2) The first condition is that—

- (a) *it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the applicant, and*
- (b) *the circumstances are such that the applicant ought to be registered as the proprietor.*
- (3) *The second condition is that the applicant is for some other reason entitled to be registered as the proprietor of the estate.*
- (4) *The third condition is that—*
 - (a) *the land to which the application relates is adjacent to land belonging to the applicant,*
 - (b) *the exact line of the boundary between the two has not been determined under rules under section 60,*
 - (c) *for at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him, and*
 - (d) *the estate to which the application relates was registered more than one year prior to the date of the application.”*

Paragraph 12 of ST1, which has been marked with an “X” states:

“Should a person given notice under paragraph 2 of Schedule 6 to the Land Registration Act 2002 require the application to be dealt with under paragraph 5 of that Schedule, the facts supporting my reliance on one or more of the conditions set out in that paragraph are as follows:”

Miss Din provided the following text:

“It would be unconscionable due to an equity by estoppel: for the registered proprietor of 174 Trinity Street to seek to dispossess Mrs Razia Din and Mrs Razia Din ought in the circumstances to be registered as proprietor. Reliance is based upon the fact that Mrs Razia Din has excluded the world at large, by placing a Honda Civic on the partial land in question. And other factors mentioned in section 11 of this form.

Mrs Razia Din is for some other reason to entitled to be registered as proprietor on the part land in question. Reliance is based upon the fact the duration of the residence since 1977 and other factors mentioned in section 11 of this form. Undertaking repairs etc.

Reasonable belief that Mrs Razia Din has been in adverse possession of land adjacent to their own under the mistaken but reasonable belief that the Din family specifically Mrs Razia Din is the owner, exact boundary

line with adjacent land has not been determined and 176 Trinity St was registered for more than 1 year before this application. Reliance is based upon the facts mentioned in section 11 of this form and that predecessors of 174 Trinity Street, (which has changed ownership several times since 1977) no complaints were received of any manner regarding the use of the partial land in question, undertaking repairs and maintenance.”

It is clear therefore, that reliance was being placed on each of the three conditions in paragraph 5.

8. The Respondent served a Form NAP dated 27 June 2017 on 5 July 2017, accompanied by a document headed “GROUNDS OF OBJECTION”. Paragraph 5 of NAP consists of three boxes, with the following text adjoining:

“Place ‘X’ in the appropriate box(es). See Practice Guide 4 for further information.”

The Respondent placed an “X” in the box “I object to the registration on the grounds stated in panel 6”, but the other two boxes are blank, specifically the second box: “I require the registrar to deal with the application under paragraph 5 of Schedule 6 to the Land Registration Act 2002”.

9. The Land Registry case summary dated 11 September 2017 states at paragraph (f) that the Respondent by notice to the registrar required that the application be dealt with under paragraph 5 of Schedule 6, and paragraph (g) states that the Applicant claims to have met the third condition at paragraph 5(4) of Schedule 6. I am not bound by the case summary, and clearly, paragraph (g) is wrong as the first and second conditions were also being relied on. Possibly misled by the case summary, Miss Din prepared the Applicant’s Statement of Case and skeleton argument on the basis that not only would at least 10 years adverse possession have to be proved but in addition, at least one of the three paragraph 5 conditions would have to be established.
10. Fundamentally, it is matter for the parties to agree or disagree on the issues in a case, providing the Tribunal with a road map of what must be determined, and not for the Tribunal to raise issues which are undisputed or fall outside the issues in dispute. There are exceptions to this, however. The Tribunal cannot proceed on the basis of an erroneous point of law, and it must be satisfied that it has jurisdiction to determine the issues placed before it. In this case, the manner in which Form NAP was completed

raises the issue of whether the Respondent has actually required any of the Schedule 5 conditions to be made out. If not, the Applicant will not be required to establish anything beyond 10 years' adverse possession. I do not consider this is a matter I can overlook.

11. Accordingly, on the evening prior to the hearing, I provided the parties by email with a copy of *Hopkins v. Beacon* [2011] EWHC 2899 (Ch), a decision of Mr. Justice Voss on an appeal from the Adjudicator to the Land Registry (the predecessor to the Land Registration Division of the Property Chamber). The decision provides guidance concerning the above statutory provisions and forms and how they should be construed, and is binding on me.
12. In that case, after reviewing the relevant authorities, it was held that the substantive requirement was that the registrar was informed that the person serving the notice wished the matter to be dealt with under paragraph 5, and that marking the relevant box with an "X", although desirable, was not a mandatory requirement. The notice and any accompanying documents should be read as a whole to determine whether they left a reasonable recipient in no doubt that the registrar was required to deal with the application under paragraph 5.
13. In this case, the grounds of objection accompanying Form NAP are split into two parts. The first – "Events" – does not contain anything which challenges or is directed to any of the matters set out in respect of the paragraph 5 conditions in paragraph 12 of the ST1 (quoted above). The second section ("Conclusion") does contain passages in which it is suggested that on the occasions when title was transferred, the title plan should have alerted the relevant persons that the apparent boundary wall on the ground, which runs in a straight line, does not correspond to the very different boundary at the relevant point on the title plan, and that other properties in the vicinity have a similarly shaped rear boundary. This might be taken to amount to a challenge to either the Applicant having a belief that the boundary was in a straight line, or the reasonableness of any such belief, under the third condition of paragraph 5. Nevertheless, taking the document as a whole, including the failure to check the relevant box, and that there is nothing that addresses the other two conditions, I do not think that this is enough to leave a recipient of the notice in no doubt that a request was being made in respect of paragraph 5. Accordingly,

in order to succeed on the application, only 10 years adverse possession on the part of the Applicant needs to be established.

The Applicant's evidence

14. The Applicant has difficulty in reading and speaking English and therefore I asked that an interpreter read through to her in Punjabi the whole of her Statement of Case, which she confirmed as her evidence. The interpreter also translated during my questioning of the Applicant to clarify certain parts of her evidence.
15. In summary, the material parts of the Applicant's evidence, together with information which can be derived from documents, are as follows.
 - 15.1. She has lived at 176 since it was purchased by her husband's brother in 1977, together with her sister and her husband (Mohammed Sadiq) and the Applicant's children.
 - 15.2. In 1977 the rear of 176 and 174 were separated by a stone wall, which remains in situ apart from a section which was removed by the Respondent's workmen adjoining the Disputed Land. The stone wall runs in a straight line from the rear of the houses to the passageway. It is clear from the current filed plans to the freehold and leasehold titles of 176, as well as older filed plans (presumably based on Ordinance Survey plans) that at one time the Disputed Land was part of the site of an outbuilding, which formed part of 174. It is a reasonable inference that the assignments of the leasehold title in 1920 demarcated the boundary between 174 and 176 at this point by reference to the shape of that outbuilding. At some later date, before 1977, the outbuilding was demolished and either the existing stone wall dividing the properties extended to the passageway, or an entirely new wall erected, again in a straight line to the passageway. It is likely this was by way of agreement between the then owners of the two properties, but nothing more is known concerning events pre-1977.
 - 15.3. At the time of the 1977 purchase, the rear of 176 consisted of a lawn and flowerbeds, with the Disputed Land forming part of the grassed area, up to the stone wall. This area was used for recreational purposes, hanging out washing

and barbecues. Subsequently, the grass and flower beds were removed, and the area tarmacked to provide the children with a recreational area. When the tarmac began to fall into disrepair, concrete was laid in its place and the rear garden used as a parking area. According to the replies to the Land Registry's survey requisition, the concrete has been in place for over 18 years.

- 15.4. In October 2016, part of the stone wall adjoining the Disputed Land was removed at the Respondent's direction, as part of the works she was having carried out at the rear of 174, to provide access to the rear of her property over the Disputed Land at a less acute angle from the passageway. It is this that gave rise to the current dispute and the Applicant's application. For some time, a motor vehicle has been parked on the Disputed Land, in order to prevent any further work being carried out or the Respondent gaining access over the land.
- 15.5. The Applicant says that over the years the stone wall has been repaired and maintained as required, although she was somewhat vague about the details of this when I questioned her
16. By her own admission, the Respondent was not in a position to challenge the bulk of the above, as she did not purchase 174 until 2014. I accept the account provided by the Applicant.

Adverse Possession

17. As a matter of law, the Applicant must establish, for at least the requisite period of 10 years prior to making the application, that (1) she was in possession of the Disputed Land, that is: that she had a sufficient degree of single and exclusive physical custody and control of the Disputed Land, and (2) that she had an intention to exercise such custody and control on her own behalf and for her own benefit, see: *Pye v. Graham* [2002] UKHL 30.
18. What acts constitute a sufficient degree of exclusive physical control will depend on the circumstances of the case, the nature of the land and the manner in which land of that kind is commonly used or enjoyed.

“...what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so.”¹

19. The intention that must be shown is:

“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 if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.”²

As to the evidence required to establish the intention, as Lord Hope put it in *Pye* at paragraph 71:

“The important point for present purposes is that it is not necessary to show that there was a deliberate intention to exclude the paper owner or the registered proprietor...The only intention which has to be demonstrated is an intention to occupy and use the land as one’s own... So I would hold that, if the evidence shows that the person was using the land in the way one would expect him to use it if he were the true owner, that is enough.”

20. In the light of my findings as set out above, I consider that having regard to the use to which the area of land at the rear of 176 could be put, and the treatment of all such land including the Disputed Land in the period of 10 years prior to the application, the Applicant was in adverse possession of the Disputed Land throughout that period.

Paragraph 5 conditions

21. Strictly speaking, given my findings above in respect of the Respondent’s NAP, and having found in the Applicant’s favour concerning adverse possession, it is not necessary for me to consider whether the Applicant can also satisfy any of the three paragraph 5 conditions. Nevertheless, I shall do so for the sake of completeness, and in case I am wrong on that point.

22. At the hearing, after considering her position, Miss Din decided not to place any reliance on the first condition.

¹ per Slade J in *Powell v. McFarlane* (1977) 38 P & C R 452, at p. 471, cited with approval in *Pye* at paragraph 42

² *Powell* at pp. 471-472, approved in *Pye* at paragraph 43

23. As regards the second condition, I was referred to the decision of *Balevents Limited v. Sartori* [2014] EWHC 1164 (Ch.), in particular paragraph 86, in which Morgan J. stated as follows:

“...the second condition (in paragraph 5(3)) would apply to a case where the applicant had been in adverse possession for 12 years before 13 October 2003 and so, under the transitional provision in schedule 12 para 18(1), had retained an entitlement to be registered as proprietor.”

In other words, if a person has been in adverse possession for at least 12 years prior to the coming into force of the 2002 Act on 13 October 2003, their entitlement under the transitional provisions contained in paragraph 18 of Schedule 12 to the 2002 Act constitutes some other reason why they are entitled to be registered as the proprietor of the estate under paragraph 5(3) of Schedule 6, even though the substantive application is under Schedule 6 and not under the transitional provisions.

24. On the evidence, I consider that there has been adverse possession for at least 12 years prior to 13 October 2003 on the part of the Applicant and if necessary, her predecessors on title. Therefore, the second condition is satisfied.
25. Concerning the third condition, paragraphs (a), (b) and (d) are clearly satisfied. Paragraph (c) provides:

“for at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him”

26. I consider that the period of at least 10 years during which the reasonable belief is required is not necessarily the same as the period of at least 10 years ending on the date of the application for which adverse possession must be established. One must first determine the period of adverse possession, which must be a minimum of 10 years ending on that date. However, although the belief must have been had during the period of adverse possession, and must have been held for at least 10 years, it does not have to be established as continuing up to the date of the application. If that were the case few, if any, applications under Schedule 6 in which the third condition was in issue could ever succeed. By the time the application is made, and for a period beforehand, the applicant knows that the title to the land in question is registered in the name of another

person, hence the application. Once they have such knowledge, necessarily: the applicant cannot believe that he or she owns the land, or such a belief cannot be reasonable. I consider that such a consequence was not intended, and it is possible to fairly construe paragraph (c) to avoid such a result. The words “ending on the date of the application” qualify the period of adverse possession, and do not apply to the period of at least 10 years during which the reasonable belief as to ownership is required. In practice, this means that an applicant under Schedule 6, where the third condition is in issue, will have to show more than 10 years adverse possession ending with the date of the application so as to establish a period of at least 10 years within that period during which they (or a predecessor) held the belief.

27. In the present case, the Applicant’s evidence was that she believed that the boundary between the rear of 174 and 176 was marked by the stone wall, which has the appearance of a boundary structure, which belief lasted from 1977 until 2016/2017, after the current dispute arose. I also consider that such belief was reasonable in all the circumstances and although a detailed examination of the filed plans would have shown otherwise so far as the Disputed Land is concerned, I accept that the Applicant did not see those plans when she acquired the leasehold and freehold titles to 176, and had no reason to think that the position was other than it appears on the ground. Given that there has been adverse possession since 1977, there is a period of reasonable belief for at least 10 years during that time.

28. As a result, I consider that the second and third conditions are satisfied.

Leasehold and freehold title?

29. The Applicant’s application under Schedule 6 is in respect of both the freehold and leasehold titles to 174. Properly understood, possession can only be adverse in respect of a title to land which confers a right to immediate possession. The freehold title to 174 is stated at item 1 of the Charges Register to be subject to the leasehold title. The possession of a trespasser cannot be adverse to a freehold title until the leasehold title ends, either by effluxion of time or for some other reason, from which point the owner of the freehold will be entitled to immediate possession. Therefore, while the lease of 174 subsists, there can only be adverse possession against the leasehold title, not the freehold. Accordingly, I consider that although the Applicant is entitled to be registered

in respect of the Disputed Land under Schedule 6 so far as the leasehold title is concerned, the freehold title to the Disputed Land will remain with the Respondent, subject to the leasehold title.

Conclusion

30. Accordingly, I will direct that effect be given to the Applicant's application in respect of the Respondent's leasehold title only, as if the Respondent's objection of 5 July 2017 had not been made.

Costs

31. Miss Din stated at the conclusion of the hearing that in the interests of neighbourliness, she did not seek an order for costs against the Respondent. I will therefore, make no order as to costs.

Dated this 11 day of July 2018

Colin Green

By order of the Tribunal

