REF/ 2018/0056

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

JEEHAN AL-MUFACHI

APPLICANT

and

MOHAMMED JALAL UDDIN KHAN

RESPONDENT

Property Address: Land adjoining 15 South Street, Enfield

Title Number: AGL389546

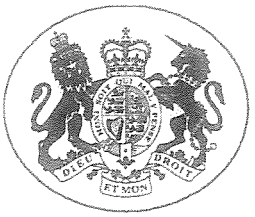
ORDER

The Tribunal orders that the Chief Land Registrar do give effect in part to the application of the Applicant for alteration of title number AGL389546 by removing from that title the area on the southern part thereof occupied by a shed the outline of which is shown on the title plan to title number P25786 and the land lying between the western side of the shed and the boundary with title number AGL343025 and by adding those areas to title number P25786 but otherwise do cancel the application.

Dated this 1st May 2019

Michael Michell

BY ORDER OF THE TRIBUNAL



[2019] UKFTT 0380 (PC)

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RESPONDENT

Property Address: Land adjoining 15 South Street, Enfield

Title Number: AGL389546

Before: Judge Michell

Sitting at: 10 Alfred Place, London

On: 17th January 2019

Applicant Representation: In person
Respondent Representation: Mr Zeeshan Mian, counsel, instructed by J Stifford, Solicitors

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DECISION

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1. The Applicant, Miss Jeehan Al-Mufachi applied to HM Land Registry on 23rd June 2017 for alteration of title number AGL389546 pursuant to paragraph 5 of Schedule 4 to the Land Registration Act 2002 by closure of that title and the restoration of the land in that title to title number P25786. The Respondent, Mr Mohammed Khan objected to the application and the matter was referred to the Tribunal for determination.

2. Miss Al-Mufachi has lived as a tenant of the ground floor flat at 13 South Street since December 2000. Mr Khan lives at 15 South Street. He was first registered as proprietor of 15 South Street on 17th January 2000 under title number NGL122803. 13 South Street is an end terrace house on the south side of the street. 15 South Street is a mid-terrace house. It is attached on its eastern side to 13 South Street. The houses have gardens which run south. Parallel to the relevant part of South Street and to the south of it there is another street of terraced houses called Allens Road.

3. There is a strip of land ("the Strip") running west-east that runs between, on the northern side, the rear gardens of houses on the south side of South Street (being numbers 13 to 47 South Street) and on the southern side, the rear gardens of houses on the north side of Allens Road (being numbers 14 to 52 Allens Road). The Strip at its western end leads off an unnamed road that runs between South Street and Allens Road. The eastern end of the Strip adjoins the western boundary of the rear garden of 54 Allens Road. All the Strip was once registered under title number P25786.

4. In June 2014 Miss Al-Mufachi applied under Schedule 6 to the Land Registration Act 2002 to be registered as proprietor of part of the Strip on the ground that she had been in possession of it since 2003. The part of the Strip the subject of this application was the part of the Strip to the rear of 13 South Street and to the rear of 15 South Street. Miss Al-Mufachi supported her application with a statement in from ST1. In that statement, Miss Al-Mufachi stated that Enfield Borough Council wrote to her on 13th October 2003 declining he request for them to tidy the Strip on the grounds that it was private land; that she then removed the rubbish using potato sacks to carry the rubbish to the local dump; that she had entirely cleared the area behind 13 and 15 South Street by March 2004; and that since then she had continuously grown fruit and vegetables on the land she had cleared. The application was rejected by HM Land Registry because Miss Al-Mufachi was not at the date of her application in possession of the area occupied by the shed. On 14th May 2015 Miss Al-Mufachi applied to be registered with title to the part of the Strip behind 13 South Street on the grounds that she had been in adverse possession of that part since 2003. On 24th February 2016 Miss Al-Mufachi's application was granted in part and the part of the Strip behind 13 South Street was removed from title number P25786 and registered under a new title number AGL343025. The application did not succeed as to the part behind 15 South Street. Miss Al-Mufachi was registered as proprietor.

5. On 20th September 2016 Mr Khan applied to be registered as proprietor of the part of the Strip to the rear of 15 South Street on the grounds that he had been in adverse possession of that part since 2000. There was no objection to his application and it was granted. The part of the Strip to the rear of 15 South Street was removed from title P25786 and registered under title number AGL389546. Mr Khan was registered as proprietor with title absolute.

6. The land remaining in title P25786 is landlocked in the sense that no part of it adjoins a public highway. It can only be accessed with the permission of an adjoining landowner Unless it is accessed over AGL389546, it can only be accessed via one of the narrow passages between 16 and 18, 28 and 30 and 52 and 54 Allens Road or 31 and 33 South Street. It is not known if there is any right of access to the Strip over any of those passages.

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7. Miss Al-Mufachi's application to alter the register AGL389546 by closing title number AGL389546 and restoring the land in the title to title number P25786 was made on the grounds that Mr Khan had not been in possession of the entirety of the land in that title for a period of ten years prior to the date of his application. At the hearing Miss Al-Mufachi stated that she did not claim to have been in adverse possession of the land in the title herself. Her case was that Mr Khan had not been in possession for a period of ten years prior to the date of his application for registration

8. After Miss Al-Mufachi had made her application for alteration of the register, Miss Al-Mufachi took a transfer of the land in title number P25786. It appears from a letter written to Miss Al-Mufachi by the transferor that he did not know he was the registered proprietor of P25786 and was not aware of the applications to register parts of it made by Miss Al-Mufachi and by Mr Khan. Miss Al-Mufachi was registered as proprietor of P25786 on 10th May 2018.

Alteration of title

9. For Miss Al-Mufachi's application to succeed, she must satisfy the requirements of Schedule 4 to the Land Registration Act 2002. Under paragraph 5 of Schedule 4 the registrar may alter the register for the purpose of correcting a mistake. Therefore, Miss Al-Mufachi must show that there is a mistake on the register. Paragraph 6(2) provides

> "No alteration affecting the title of the proprietor of a registered estate in land may be made under paragraph 5 without the proprietor's consent in relation to land in his possession unless

(a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or

(b) it would for any other reason be unjust for the alteration not to be made."

There is no dispute that the land the subject of the application is and was at the date of the application in the possession of Mr Khan. Mr Khan erected a fence along the western boundary of AGL389586 in April 2017 and from then on, the disputed land has been plainly in his possession. Accordingly, Miss Al-Mufachi must show on the balance of probabilities that Mr Khan caused or substantially contributed to the mistake on the register by fraud or lack of proper care. She did not argue that there was some other reason why it would be unjust for the alteration not to be made.

10. Paragraph 1 of Schedule 4 to the Land Registration Act 2002 provides

"(1) 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"

Evidence

11. Ms Al-Mufachi's evidence was that she started to clear the land behind 13 South Street in 2001. Her clearing efforts intensified in 2003 and she said that between 2003 and 2004 she cleared the land behind 15 South Street. In 2004 she planted several varieties of vines in the land behind 13 South Street. Miss Al-Mufachi said that Mr Khan saw that she had cleared the area behind 15 South Street and asked her if he could use that area. Miss Al-Mufachi said that she did not see any harm in allowing Mr Khan to use it. Miss Al-Mufachi said that Mr Khan approached her while she was in the area behind South Street and asked her if it would be ok if he used the land behind 15 South Street. Miss Al-Mufachi told Mr Khan "Yes". In 2006 Mr Khan put up fences to enclose part of the land behind 15 South Street as part of his garden. The fence on the west side was a black wooden fence. The area enclosed did not extend as far as the boundary with 16 Allens Road to the south. There was an area between that boundary and the new southern fence erected by Mr Khan. Miss Al-Mufachi said that she used that area to keep her compost bins and to access the area of land behind 17 South Street. Miss Al-Mufachi said in her Statement of Case (the contents of which she confirmed in her oral evidence) that the fence along the western side was in line with the boundary between 16 and 18 Allens Road. In 2011 Mr Khan took down the southern fence and erected a shed on the land running up to the border with 16 Allens Road. There was an

area beside the western end of the shed that was not fenced off from the land behind 13 South Street. Miss Al-Mufachi denies that the black fence had extended along this area. Miss Al-Mufachi placed her compost bin in the gap between the north-west corner of the shed and the end of the black fence and it remained there until June 2015. Miss Al-Mufachi put mesh netting along the fence panels that ran from the south-western corner of the shed along the northern boundary of the houses in Allens Road. The mesh ran up to the corner of the shed. Miss Al-Mufachi used this mesh to support runner beans she grew in that area.

12. On 2nd June 2015 Mr Khan erected a new fence, which ran to the boundary with the houses in Allens Road. Miss Al-Mufachi said that in doing so, he destroyed vines growing on her land. Miss Al-Mufachi took down that fence on 8th June 2015. Mr Khan then brought proceedings in the County Court claiming an injunction against Miss Al-Mufachi. Miss Al-Mufachi gave an undertaking to the court and the proceedings were settled. In April 2017 Mr Khan re-erected a fence along the line of the fence he erected on 2nd June 2015.

13. In support of her application made in June 2014 under Schedule 6 for registration of part of the land in title P25786, Miss Al-Mufachi provided two witness statements to HM Land Registry. One is dated 20th June 2014 and was made by Mr Alan Miller. Mr Miller stated that he is an ex-partner of Miss Al-Mufachi; that he and Miss Al-Mufachi cleared the land behind 13 and 15 South Street in 2003 and that since that date Miss Al-Mufachi had been using that area continuously to grow fruits and vegetables. The other is dated 21st June 2014 and was made by Mr Jason O'Connor who gave his address as 13a South Street. He said that Miss Al-Mufachi cleared up the land behind 13 South Street in 2003 and since that date had been using the land continuously to grow fruits and vegetables. Miss Al-Mufachi produced those witness statements in these proceedings but she did not call Mr Miller or Mr O'Connor to give evidence.

14. Mr Khan gave evidence Mr Khan said that when he purchased 15 South Street, there was no fence between his garden and the land in question. There was a lot of rubbish on the land. The rubbish was piled about 3 or 4 feet high. Mr Khan said that he decided in 2003 to clear the rubbish. With the help of his sons he cleared the rubbish over the period from 2003 to 2006. The rubbish was taken away in 5 skips (Mr Khan said 4 skips in his witness statement but in his oral evidence, he said it was 5). Mr Khan said that he erected the black fence on the western side of the land he was using. The fence was aligned with the boundary

between 13 and 15 South Street. He used all the land for growing fruits and vegetables. Mr Khan erected a shed on the land in 2011. This shed was on part of the land he had cleared. He said that in the course of erecting the shed, about 1.5 meters of the black fence at its end was broken down. Mr Khan did not repair that fence because of "financial restraints". He said that Miss Al-Mufachi then "cleared out" the area between the shed and the former line of the black fence and used it to place her compost bin. Mr Khan said that he did not object to Miss Al-Mufachi placing her bin there. On 2nd June 2015 Mr Khan erected a new fence in the place of the black fence running all the way to the rear boundary with the houses in Allens Road. He said that this fence was aligned with the boundary between 13 and 15 South Street. He denied that this fence was on a different line from the black fence. That fence was knocked down by Miss Al-Mufachi on 8th June 2015. Mr Khan then re-erected the fence in April 2017. Asked whether he had asked Miss Al-Mufachi for permission to use the land behind 15 South Street, Mr Khan said that he could not remember if he asked anyone for consent. He said that Miss Al-Mufachi said to him he could clear his side and she would clear her side.

15. Mr Khaled Sharif gave evidence. He lives at 33 South Street. He married Mr Khan's daughter on 12th April 2011. His evidence was that in 2011 the shed had been built and Mr Khan was using the land in front of the shed for growing fruits and vegetables. He could not give any evidence of what the area was like before the shed was erected.

16. An aerial photograph taken in 2003 shows the Strip, including the areas behind 13 and 15 South Street to be covered in dense vegetation, except for a small area close to the fence dividing it from the garden of 13 South Street. The rear garden of 15 South Street can be seen to run a little further south than the rear fence line of the garden of 13 South Street.

17. An aerial photograph taken in 2006 shows an area behind 15 South Street laid to grass and incorporated into the garden of 15 South Street. A path is shown running from the building down the middle of the garden to a clear straight line. The line appears very similar to fences shown in the photograph. There is a gap between this line and the building at the northern end of the garden of 16 Allens Road. That building appears to be the same as the building shown at the rear of 16 Allens Road in the aerial photograph taken in 2003. The area between the line and that building is open to the land behind 13 South Street and to the part of the Strip behind 17 South Street. The fences on the west and east side of 15 South Street had

been extended to run down to the white line visible in the photograph but the fences do not appear to run as far as the rear of the shed at the rear of 16 Allens Road. The photograph does appear to show that it would have been possible to have passed between the land at the rear of 13 South Street and the land at the rear of 17 South Street without passing over the land enclosed as part of the garden of 15 South Street.

18. An aerial photograph taken on 19th July 2013 shows the shed erected by Mr Khan to the rear of 15 South Street. The photograph is not clear enough to show the fence between the land at the rear of 13 South Street and the land at the rear of 15 South Street.

Findings

19. I do not accept that Miss Al-Mufachi cleared the area behind 15 South Street. I prefer the evidence of Mr Khan that he did so. To have cleared the area behind 13 South Street and to have cleared the area behind 15 South Street would each have been substantial undertakings. The aerial photograph dated December 2003 shows that only a small part of the area behind 13 South Street had been cleared by then and no part of the area behind 15 South Street. I consider it highly unlikely that Miss Al-Mufachi could have cleared the whole of the area behind 13 South Street and the whole of the area behind 15 South Street with the help only of Mr Miller and using potato sacks to carry away the rubbish, in the relatively short period between December 2003 and March 2004. Miss Al-Mufachi's counsel put it to Mr Khan that the rubbish was piled 6 feet high. Mr Khan thought that it was 3 or 4 feet high. Mr Khan's evidence that he cleared the area behind 15 South Street with the help of friends and relations, filling a number of skips and over a period between 2003 and 2006 is much more likely to be true. Further, it is unlikely that Miss Al-Mufachi would have cleared all the area behind 15 South Street by March 2014, used it for growing fruit and vegetables until 2006 and then not objected when Mr Khan fenced most of the area behind 15 South Street into his garden in 2006. Miss Al-Mufachi did not call either Mr Miller or Mr O'Connor to give evidence. What Mr Miller says in his witness statement must be inaccurate because the aerial photograph dated December 2003 does not show that the area behind 13 and 15 had been cleared. It is further inaccurate because Miss Al-Mufachi did not use the area behind 15 South Street for growing vegetables, except a small area by the rear fence used for the growing of runner beans. As neither Mr Miller nor Mr O'Connor gave oral evidence, I do not place any wait on the contents of their statements. It is more probable that Miss Al-Mufachi cleared the

area behind 13 South Street and that Mr Khan cleared that part of the area behind 15 South Street that he enclosed in 2006.

20. I do not accept that Mr Khan occupied the land he enclosed in 2006 with the licence or consent of Miss Al-Mufachi. He did ask Miss Al-Mufachi if she had any objection to his enclosing that area but that did not amount to his asking for consent. Neither he nor Miss Al-Mufachi would have thought in 2006 that Miss Al-Mufachi had any standing to give or refuse consent to is using that area.

21. I accept the evidence of Miss Al-Mufachi that Mr Khan did not occupy the whole of the land behind 15 South Street in 2006. The aerial photograph taken in 2006 shows that he did not do so. There is a clear visible distinction in the photograph between the area enclosed by him as part of his garden and the narrow area beyond running up to the shed at the back of 16 Allens Road.

22. Mr Khan erected his shed not on land enclosed by him in 2006 but on the land to the south of that, being the area between the fence he put up in 2006 and the rear of the shed at the back of 16 Allens Road. That is apparent from a comparison of the aerial photograph taken in 2006 with those taken in July 2013 and April 2015.

23. I do not accept the evidence of Mr Khan that the black fence he erected in 2006 ran down to the boundary of the houses in Allens Road. The 2006 aerial photograph shows that it did not. Further, a photograph produced by Mr Khan and said by him to have been taken in 2011 or 2012 shows the black fence ending at a fence post roughly in line with the front of the shed. The shed appears to be more than 1.5 metres in depth. The post gives every indication of having been the end of the fence. It follows that I do not accept Mr Khan's evidence that a 1.5 metre part of the black fence at its southern end was knocked down when the shed was erected. The aerial photograph taken in 2006 shows that there was then no fence in that location to be knocked down. Further, it is not credible that Mr Khan would not have put a fence that had been knocked down back up again for reasons of "financial constraint". Putting up the fence could have been achieved at minimal expense.

24. After the shed was erected Mr Khan was not in possession of the area to the west of the shed. He accepts that Miss Al-Mufachi used this area to store her compost bin. Further, I accept that Miss Al-Mufachi used this area to grow runner beans. Photographs in evidence

clearly show the black mesh against the fence on the boundary with the houses in Allens Road. In photographs taken after 8th June 2015 when Miss Al-Mufachi had taken down most of the fence erected by Mr Khan 6 days earlier, the mesh can be seen on both sides of the part of the fence erected by Mr Khan that remains standing. This shows that the mesh was in position before Mr Khan erected the fence on 2nd June 2015.

Conclusions

25. Miss Al-Mufachi has shown that there is a mistake on the register. Mr Khan should not be shown as the registered proprietor with title absolute of the area of land occupied by the shed and the area beside it up to the boundary of the land owned by Miss Al-Mufachi. Mr Khan was not in possession of the whole of that area at the date of his application for registration and had not been in possession of the area occupied by the shed before 2011. It follows that he had not at the date of the application been in possession of these areas for a period of at least ten years. It follows that his application for registration in so far as it related to these areas should not have been granted.

26. Miss Al-Mufachi has not shown there is a mistake on the register as regards the land to the north of the shed. This land was enclosed by Mr Khan in 2006 and used as part of his garden. He did not occupy that land as licensee of Miss Al-Mufachi. Mr Khan's application to be registered with title to what is now AGL389546 was made in September 2016. Miss Al-Mufachi has not shown that the fence erected by Mr Khan was not erected until after September 2006. Miss Al-Mufachi has not shown that Mr Khan was not in possession of this area for a period of at least ten years prior to the date of his application.

27. For Miss Al-Mufachi's application to succeed to correct the mistake on the register, she must show that Mr Khan caused or substantially contributed to the mistake through fraud or want of proper care. Mr Khan did cause or substantially contribute to the mistake through fraud or want of proper care because his solicitors sent to HM Land Registry a statement of truth in support of the application dated 16th September 2016 in which it was stated that Mr Khan was in exclusive possession of the land the subject of the application and had been since 2000. The statement was plainly made by the solicitors as agents for Mr Khan. There was no suggestion that they did not have Mr Khan's authority to make the statement and send it to HM Land Registry. Further, Mr Khan did not inform HM Land Registry that he did not fenced the area occupied by the shed in 2006, that the shed had not been erected until 2011 or

that he was not using the area beside the shed. In not doing so, Mr Khan did not take proper care in his application. Had Mr Khan told HM Land Registry at the time of his application in 2016 that he had not fenced the area occupied by the shed in 2006 and that the shed was not erected until 2006 and that Miss Al-Mufachi had been using the area beside the shed since 2011, his application would not have succeeded in so far is it related to the area occupied by the shed and the area to the west of the shed.

28. I shall direct the Chief Land Registrar to give effect to the application of Miss Al-Mufachi in part by removing the area occupied by the shed and the area adjoining the shed on its west side from title number AGL 389546 and to restore that area to title number P25786.

29. My preliminary view is that Mr Khan should pay 50 per cent of the costs of Miss Al-Mufachi. Miss Al-Mufachi has succeeded only in part on her application. It would not be just to award her all her costs. Any party who wishes to submit that some different order should be made as to costs should serve written submissions on the Tribunal and on the other party by 5pm on 14th May 2019.

30. Miss Al-Mufachi in her skeleton argument and in her written closing submissions has asked the Tribunal to give her other forms of relief, including an award of financial compensation. The Tribunal has no jurisdiction in this case other than to make a direction to the Chief Land Registrar as to how he is to deal with the application for alteration of the register and to award costs. It cannot give the other relief claimed by Miss Al-Mufachi.

BY ORDER OF THE TRIBUNAL

Michael Michell

DATED THIS 1st May 2019