



[2017] UKFTT 0886 (PC)

REF/ 2016/ 0512 & 0513

PROPERTY CHAMBER, LAND REGISTRATION DIVISION  
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

PAUL MARTIN WREN

APPLICANT

and

(1) JOHN RIGLER  
(2) EDINGTON PARISH COUNCIL

RESPONDENTS

Property Address: Land on the East side of Edington Road, Edington

Title Number: ST323297

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ORDER

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The Tribunal orders that the Chief Land Registrar do cancel the application of the Applicant, Paul Martin Wren dated 29 September 2015 to be registered as proprietor of the land shown edged red on the plan accompanying his application form FR1 dated 23<sup>rd</sup> September 2015.

Dated this 22<sup>nd</sup> November 2017

*Michael Mitchell*

BY ORDER OF THE TRIBUNAL







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**RESPONDENTS**

**Property Address: Land on the East side of Edington Road, Edington**

**Title Number: ST323297**

**Before: Judge Michell**

**Sitting at: Taunton Magistrates Court**

**On: 10<sup>th</sup> October 2017**

**Applicants Representation: Mr Peter Gregory for himself and his co-Applicants**

**Respondent Representation: In person**

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**DECISION**

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*APPLICATION FOR FIRST REGISTRATION BASED ON ADVERSE POSSESSION-  
WHETHER FACTUAL POSSESSION- WHETHER INTENTION TO POSSESS-*

**Cases referred to**

*Powell v McFarlane (1977) 38 P and CR 452*

*Prudential Assurance Co Ltd v. Waterloo Real Estate Inc [1999] 2 EGLR 85 at 87*

*J A Pye (Oxford Ltd) v Graham [2003] AC 419*

1. Mr Wren has applied for first registration of a field on the edge of the village of Edington in Somerset ("the Land"). His application ("the Application") is dated 29<sup>th</sup> September 2015. Mr Wren made and withdrew a similar application in respect of the same piece of land in 2010. His application is opposed by Mr Rigler, who lives very close to the Land and by the Edington Parish Council. The Parish Council has itself made an application to be registered as proprietor of the Land. It claims that title has descended to it from overseers of the poor who took the Land under an enclosure award. The Parish Council's application is awaiting the determination of Mr Wren's application and has not been referred to the Tribunal. The Parish Council's application is not one I have to decide on this occasion.

The Land

2. The Application relates to an area of land adjoining the road near Nidon Bridge on the edge of Edington. Edington is a village on the Somerset levels. I inspected the Land on the afternoon before the hearing. The Land is accessed through a gate just to the north of the bridge and on the east side. It is a long wedge-shaped piece of land, bound on all three sides by ditches. A road runs alongside the west side of the ditch that runs along the west side of the Land. The Land lies at a lower level than the road such that at the time of my inspection, it was possible to see into the Land from the road. I was accompanied on the view by Mr Wren, Mr Rigler, and representatives of the Parish Council. The gate had been opened before my inspection. There was a large chain and padlock on the gate. The Land itself was heavily overgrown with nettles, brambles, rushes and other weeds. For this reason most of the inspection was carried out from the adjoining road. It is clear that the Land has not been cultivated for some time. The metal frames for two poly-tunnels can be seen on the Land as well as two small sheds. Mr Wren pointed out a wooden frame where he said he had grown black currants and also a horse-chestnut tree (about 15' high) which he said he had planted.

He also pointed out the site of a pond that he said he had dug. The pond itself was not visible because of the amount of vegetation on the Land.

3. It is common ground that the Land was used by Mr Gerald Smith from November 1969 until 2000. Mr Smith said in his witness statement that he went into occupation of the land with the blessing of the Parish Council and that he believed the Parish Council to be the owners of the land. It is also common ground that Mr Smith showed Mr Wren the Land and that Mr Wren went onto the Land for the first time at the suggestion of Mr Smith. There is a dispute about what Mr Smith said to Mr Wren about the ownership of the Land.

#### The Evidence

4. Mr Wren accepts that since 2010 he has allowed the Land to become overgrown. His evidence is that he has enjoyed sole use of the Land since 1999. He put two sheds on the land. He stored a tractor and some equipment in the sheds. He erected a poly-tunnel. He had a moveable pig sty on the Land, which he removed in May 2010. He had kept goats tethered on the Land and had at some time kept pigs, geese, quail and chicken on the Land. The pigs were kept in pens on the Land. He had planted fruit trees and daffodils on the Land. He maintained the Land by trimming until 2012 when his tractor was vandalised. In recent times he had put a beehive on the Land. He had not maintained the Land since 2012. He said in cross-examination that there had been periods when he had “allowed the land to lie fallow” but at these times he had still used the Land for storage. When it was put to Mr Wren in cross-examination that there had been no apparent use of the Land for the last 3 or 4 years, Mr Wren said that over those years there had still been the sheds containing some things belonging to him and also the poly-tunnel standing on the Land. Mr Wren said since his tractor had been vandalised, he had been to the Land about once a month or maybe less.

5. Mr Wren said that he had kept the gate into the Land padlocked since 2010. Prior to that there had not always been a gate and when there was a gate, it had not been kept locked.

6. Mr Rigler gave evidence. He lives at Wayside Cottage, Nidon Lane, Edington. His house is across the road from and approximately 130 metres to the south of the Land. He passes by the Land on the road frequently and can see into it. He accepted that Mr Rigler had in the past used the Land for “some spasmodic horticulture” and also for a time kept geese, pigs and a goat on the Land. However, he said that the animals were not securely fenced in

and that the goat escaped from time to time. He believed the use of the Land for any of these activities ceased well before the beginning of 2010 and that the Land had since been overgrown and appeared to be abandoned. The poly-tunnel had not been used for several years.

7. The Council called Mr Anthony Heale to give evidence. He is a farmer who farms Corndean Farm, Edington. His farm includes the field adjoining the Land on the eastern side of the Land. Mr Heale's evidence was that he maintained the ditch between the two fields. He has been aware of what was happening on the Land both from farming the adjacent field but also because he frequently drove past the Land on his tractor. From the seat of his tractor, it is very easy to see into the Land. Mr Heale's evidence was that the Land had been totally neglected for the five years prior to the date of his witness statement (being November 2016). In the past, Mr Heale had been accustomed to walk across the Land to check on his animals in the adjacent field. It has not been possible for him to do so in recent times because of the unkempt state of the Land.

8. The Council produced witness statements from a number of other witnesses but did not call those witnesses to give evidence. These included a witness statement from Mr Gerald Smith, who had used the Land from 1969 until 2000. Mr Smith asserted in his witness statement that he was "technically still the tenant of the land". There was no evidence to support this assertion. There was no evidence that Mr Smith had paid any rent since 2000 and had in any way acted as if he remained a tenant of the Land. The statements of the other witnesses do not add any significant evidence to that given by the witnesses who gave oral evidence.

#### The Law

9. Section 15 of the Limitation Act 1980 provides as follows:

"15(1) No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

(6) Part I of Schedule 1 to this Act contains provisions for determining the date of accrual of rights of action to recover land in the cases there mentioned."

10. Section 17 of that Act provides

“Subject to—

(a) section 18 of this Act;

at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished”.

Section 18 deals with settled land and land held on trust and is not relevant.

11. Schedule 1, paragraph 1 to the Limitation Act 1980 provides as follows:

“Where the person bringing an action to recover land, or some person through whom he claims, has been in possession in the land, and has while entitled to the land been dispossessed or discontinued his possession, the right of action, shall be treated as having accrued on the date of the dispossession or discontinuance.”

12. Schedule 1, paragraph 8, provides:

“(1) No right of action to recover land shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as ‘adverse possession’) and where under the proceeding provisions of this Schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.

(2) .....

(3) ... ..

(4) For the purpose of determining whether a person occupying any land is in adverse possession of land it shall be not assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter’s present or future enjoyment of the land.

This provision shall not be taken as prejudicing a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case."

13. Thus, the right of action to recover the land is barred under the Limitation Act 1980 whenever 12 years have elapsed from the time when any right of action accrued. It does not have to be a period immediately before an action is brought. When the right of action to recover the land is barred, the title of the person formerly having the right to bring the action is extinguished.

14. The question to be answered when considering whether a person occupying land is "in adverse possession" for the purpose of Schedule 1 paragraph 8 to the Limitation Act 1980 is

"...whether the Defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner... Beyond that... the words possess and dispossess are to be given their ordinary meaning."

(per Lord Browne-Wilkinson in *J A Pye (Oxford Ltd) v Graham* [2003] AC 419 at paragraphs 36, 37).

15. Legal possession is comprised of two elements:

- (1) A sufficient degree of physical custody and control ("factual possession"); and
- (2) An intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess"). "What is crucial is to understand that, without the requisite intention in law there can be no possession. Such intention may be, and frequently is, deduced from the physical acts themselves." (*ibid* paragraph 40).

16. Factual possession has been described as follows:

"It signifies an appropriate degree of physical control. It must be a single and [exclusive] possession... Thus an owner of land and a person intruding on that land



without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think 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.”

per Slade J in *Powell v McFarlane* (1977) 38 P and CR 452 at pp. 470-471, cited at paragraph 41 in *J A Pye (Oxford) v Graham*.

17. What is required for the intention to possess is the intention to exclude the whole world, including the true owner of the paper title, from the land so far as is reasonably practicable and so far as the processes of the law will allow – see per Slade J. in *Powell v. McFarlane* above. The intention must not only be the subjective intention of the squatter but the squatter must also show by his outward conduct that he has such an intention. The intention must be manifested by unequivocal action – see *Prudential Assurance Co Ltd v. Waterloo Real Estate Inc* [1999] 2 EGLR 85 at 87. The use of the land must be such that the true owner, if he took the trouble to be aware of what was happening on his land, would know that the squatter was in possession

“It would plainly be unjust for the paper owner to be deprived of his land where the claimant had not by his conduct made clear to the worlds including the paper owner, if present at the land, for the requisite period that he was intending to possess the land” – per Peter Gibson LJ in *Prudential Assurance Co Ltd v. Waterloo Real Estate Inc* [1999] 2 EGLR 85 at 87

#### Findings

18. I do not find that Mr Gerald Smith remained the tenant of the Land after 2000. His assertion in his witness statement that he did so was not supported by any oral evidence. Further, there was no evidence that Mr Smith tendered or paid any rent from 2000 or that rent was demanded of him or that he in any way acted as if he remained the tenant or that the Council treated him as or acknowledged him to be their tenant from 2000.

19. I find that Mr Wren has not had factual possession of the land for a period of 12 years so as to bar the title of the paper owner. Prior to 2010 he did not have exclusive physical control of the land. On his own evidence, there was not always a gate to prevent access onto the Land. When there was a gate, it had not been locked. Further, Mr Wren did not deal with the land generally as an occupying owner would deal with it. I accept Mr Rigler's evidence that Mr Wren's use of the Land was "spasmodic". I find that Mr Wren used the Land for the various different activities of grazing and keeping animals, growing some crops and some storage but these uses were intermittent and when considered together and having regard to the size of the Land, it cannot be said that Mr Wren had factual possession of the Land.

20. From 2010, Mr Wren did nothing of any consequence on the Land and so cannot have been said to have been using it as an occupying owner would have used it. His acts of storing some things in the sheds, given the size of the Land and the small size of the sheds in comparison, cannot amount to factual possession of the Land as a whole. The placing of a beehive on the Land is too insignificant an act to amount to factual possession. In substance, Mr Wren did not use the Land as an occupying owner would have used the Land.

21. Further, I find that Mr Wren did not up to 2010 manifest by unequivocal action an intention to possess the Land. His intermittent activities up to 2010 would not have been sufficient to have made clear to the paper owner an intention to possess the Land. Mr Wren has not established that he had the intention to possess the Land for any period of 12 years prior to the date on which he made his application.

#### Conclusions

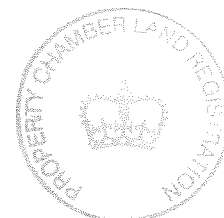
22. Mr Wren has not established that he was in adverse possession of the Land for any period of 12 years prior to the date of the Application. Accordingly, Mr Wren has not established that he is entitled to be registered as proprietor of the Land and his Application must fail. I shall direct the Chief Land Registrar to cancel the application.

23. My preliminary view is that it would be just to make no order for costs in this case. Though the normal order made by the Tribunal as to costs is that the unsuccessful party is ordered to pay the costs of the successful party, I am not presently minded to think such an order would be appropriate. As appears from the bundle prepared for the hearing by the Council, the Parish Council thought that the hearing would be about whether it had a good

paper title to the Land. Its' Statement of Case and the witness statements it collected are concerned principally with this question. As I said above, this is a matter that was not before me. It may be the subject of other proceedings if HM Land Registry accepts the Council's application to be registered as proprietor of the Land (as to which there must be a real issued given the paucity of evidence presented on this subject by the Council) and if there is an objection to the application, which is accepted by HM Land Registry as not being groundless. It would be difficult to distinguish between the costs incurred by the Council in the course of the current proceedings in preparing to deal with the real issues that were before me and the costs of preparing to argue that the Council was the paper title owner. In any event, as the Council chose not to instruct professional representatives, its costs are likely to be low. Mr Rigler's Statement of Case addressed the issue of ownership of the paper title to the Land as well as the issues of whether Mr Wren was in possession. His costs also are likely to be very low. In the circumstances, my preliminary view is that it would be just and proportionate to make no order as to costs. Any party, who wishes to submit that I should make some different order as to costs, must serve written submissions on the other parties and file the same with the Tribunal by 4pm on 7<sup>th</sup> December 2017.

BY ORDER OF THE TRIBUNAL

*Michael Michell*



DATED THIS 22<sup>ND</sup> NOVEMBER 2017

