



[2018] UKFTT 0059 (PC)

REF/2016/1057/8

PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002

BETWEEN

MANJIT SINGH DHALIWAL

APPLICANT

and

(1) ARIF HASAN
(2) SUCHA SINGH

RESPONDENTS

Property Address: Land located between 26 and 28 Whitby Road, Slough SL1 3OP

Title Number: BK471034

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place, London WC1E 7LR

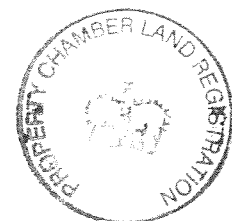
On: 21st November 2017

ORDER

IT IS ORDERED THAT the Chief Land Registrar shall give effect to the Applicants' application in Form FR1 dated 18th September 2015.

Dated this 22nd day of December 2017

Owen Rhys



BY ORDER OF THE TRIBUNAL



[2018] UKFTT 0059 (PC)

REF/2016/1057/8

**PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002**

BETWEEN

MANJIT SINGH DHALIWAL

APPLICANT

and

**(1) ARIF HASAN
(2) SUCHA SINGH**

RESPONDENTS

Property Address: Land located between 26 and 28 Whitby Road, Slough SL1 3OP

Title Number: BK471034

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 21st November 2017

Applicant representation: Mr Carl Brewin of Counsel
1st Respondent representation: In person
2nd Respondent representation: In person

DECISION

1. By an application dated 18th September 2015, the Applicant applied in Form FR1 for first registration of a strip of unregistered land that lies between two registered titles. This has been allocated title number BK471034, and I shall refer to it as “the Strip”. There are two objections, the first by the 1st Respondent, Arif Hasan, on 2nd June

2016. Mr Hasan is the registered proprietor of 28 Whitby Road, which lies immediately to the west of the Strip. The second was made by Sucha Singh, the 2nd Respondent, on 13th September 2016. He is the registered proprietor of 26 Whitby Road, which lies to the east of the Strip and is registered under title number BK309030. Whitby Road runs in an east-west direction and nos. 26 and 28 lie on the north side. The basis of the application was that the Applicant had been in adverse possession of the Strip since 1985, and was able to establish more than the 12 years' possession required under the Limitation Act 1980. The dispute was referred to the Tribunal on 1st December 2016.

2. Neither objector claims the Strip for himself. They simply deny that the Applicant has been in adverse possession of the Strip for the required period. Mr Singh purchased 26 Whitby Road in 1974. Mr Hasan purchased 28 Whitby Road in 2007. Mr Brewin, who appears for the Applicant, approaches the case in this way. He submits that the Applicant would succeed if he is able to show any continuous 12-year period when his client was in adverse possession of the Strip. That would have had the effect of barring the (unknown) paper owner's title under section 17 of the Limitation Act 1980. Unless a subsequent squatter has, in turn, barred the Applicant's title, he remains entitled to be registered as proprietor of the Strip.
3. The law relating to the acquisition of title by adverse possession is settled and Mr Brewin referred me to the leading case of Pye (Oxford) Ltd v Graham and Anor [2002] UKHL 30. The Applicant must prove exclusive factual possession coupled with the necessary intention to possess. Intention to possess is generally, but not invariably, inferred from proof of factual possession. Exclusive factual possession was considered by Slade J in Powell v McFarlane (1977) 38 P & CR 452 at 470-71, in a passage expressly approved by the House of Lords in the Pye case and generally regarded as the most comprehensive definition:

“(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. 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."

THE APPLICANT'S CASE

4. The Applicant's case is as follows. In 1985 he took over a garage situated at 27a Whitby Road, which is more or less opposite the Strip. He says that he cleared the Strip, and began to use it as a garden, and also to park vehicles, and to store machinery and other items. He completed the purchase of 27a Whitby Road in late 1986, and in 1987 erected a gate to the front of the Strip. In 1990 he purchased a house next door to the garage premises and began to live at 27 Whitby Road in around 1990. In January 1993 Slough Borough Council ("the Council") served an enforcement notice on the Applicant for breach of planning control. The alleged breach consisted of use of the land for the storage of vehicles in connection with the Applicant's car repair business carried on at 27a Whitby Road. He appealed the notice, unsuccessfully. In the Inspector's decision letter dated 20th May 1993, it was recorded that the Applicant had "*stated in his letter to the Council of 24 August 1992 that he had used the land for the temporary parking of vehicles in connection with his business for eight years. In his statement of facts in this appeal he acknowledges the same basic point. I am satisfied, on the balance of probabilities, from the Council's evidence as to the past history of the site, that the land has also been used for the longer term stationing of vehicles, that is the storage of vehicles, in connection with the business.*" According to his evidence, he was convicted of an offence, and was fined £500, but appealed, and apparently the Council then withdrew the notice.
5. The Applicant ceased to live at 27 Whitby Road in 1995 and began to rent it out. However, he continued to run the garage business at 27a Whitby Road until 2003, using the Strip for the same purposes. He says that he has always kept at least one vehicle on the Strip since the garage business came to an end. In 2007 Mr Hasan bought 26 Whitby Road. According to the Applicant, he fenced off part of the rear of the Strip and incorporated it into his garden.

MR HASAN'S CASE

6. He bought 28 Whitby Road in 2007. He says that there were no fences at that time between his rear garden and the Strip. He says that he cleared the overgrowth from the rear of the Strip, and enclosed the rear part of the Strip within his garden. He has produced photographs showing the Strip divided by a fence just behind one of the Applicant's parked vehicle. He erected a small shed on the Strip just behind this fence. He says that he remained in possession of this part of the Strip until late 2011, when the Applicant broke up the shed and took down the fence. He also says that the Council required the Applicant to remove his scrap cars from the Strip in 2014, and he entered into possession of the Strip for a few months. However, the Applicant then brought other cars and parked them on the Strip.

MR SINGH'S CASE

7. Mr Singh purchased 26 Whitby Road in 1974. He says that his family made some use of the Strip, as a play area and as an access to his garage. He has made inquiries over the years with a view to tracing the paper owner of the Strip. He has produced correspondence from his solicitors in 1987 which relates to this. He even placed advertisements in local newspapers to try and find the owner. In 1992 he applied for planning permission to build a double garage on the Strip – the Applicant did not lodge any objection. He says that *"I was never able to build the garage because Mr Dhaliwal... kept removing the notice off my fence pole..."* He does not deal with the period between 1992 and 2011, when he recalls the occasion when the Applicant removed Mr Hasan's garden shed and the trouble that ensued.

THE EVIDENCE

8. The Applicant and Mr Hasan relied on their Statements of Case, which they verified on oath. The Applicant had also made a witness statement which he verified. They were each questioned on their statements. Mr Sucha Singh did not attend the hearing. His son represented him, but he had not made a witness statement and was not able to give evidence. It seems that his father is elderly and frail and it is for that reason that he did not attend, but the consequence is that there is no evidence as such from him. His Statement of Case does not bear a signed Statement of Truth.

9. The disclosed documents prove the following:
 - a. In July 1991 an enforcement notice was served on the Applicant in respect of his premises at 27 Whitby Road.
 - b. In February 1992 an enforcement notice was served on the Applicant in respect of his use of 27 Whitby Road.
 - c. On 11th November 1992 the Council granted Sucha Singh conditional planning permission to erect a double garage on the Strip.
 - d. In January 1993 an enforcement notice was served on the Applicant in respect of the Strip.
 - e. In January 1995 the Council refused a Mr H Saund planning permission to park vehicles on the Strip.

10. The Applicant gave evidence as to his claimed use of the Strip since 1985. As I have explained, although Mr Sucha Singh in his Statement of Case challenges this, he did not himself give evidence. Mr Hasan did not arrive on the scene until mid-2007, and cannot therefore give evidence as to the Applicant's use of the land before that date. In the circumstances, therefore, the Respondents are not in a position to put forward their own evidence to rebut the Applicant's case, at least as regard the period between 1985 and 2007. Of course, I cannot simply accept the Applicant's evidence as true in all respects. I must subject it to a critical eye, and have regard both to the known background facts and to the inherent probabilities. The burden of proof is upon him to establish adverse possession.

11. With that caution in mind, I reach the following findings of fact:
 - a. The Applicant began to park and store vehicles on the Strip in 1985, in connection with his garage business at 27a Whitby Road.
 - b. At this time, the Strip was fenced off from the adjoining houses 26 and 28 Whitby Road.
 - c. He erected a gate to the front of the Strip in or around 1987.
 - d. He continued to park at least one vehicle on the Strip throughout the period prior to 2007.
 - e. Although Mr Singh and Mr Saund made planning applications in respect of the Strip, there is no evidence that they were ever in possession of it.

- f. The Applicant remained in exclusive factual possession of the Strip until at least 2007, a period of some 22 years.
- g. The Applicant had an intention to possess the Strip for at least that period of time.

12. In reaching these conclusions, I have largely accepted the Applicant's evidence. In doing so, however, I have had regard to certain unchallenged facts. In particular, the enforcement notice served in 1993 was based on the very use of the Strip that the Applicant now claims. The Inspector accepted the Applicant's statement that he had been using the Strip for some 8 years, and this seems to have been consistent with the Council's own evidence. The planning dispute in 1993 was independent of any claim to adverse possession, and I see no reason why the Applicant should have fabricated this evidence. It is also apparent from various photographs that have been produced – for example, the Google photographs taken in or around 2003 – that cars have been parked or stored on the Strip over a lengthy period of time. In considering whether the acts of the Applicant amount to adverse possession, I am bound to take into account the nature of the land in question. The Strip is essentially a piece of waste ground sandwiched between two dwellings, and in my judgment the acts of the Applicant are the sort of acts that an occupying owner would carry out.

13. Equally, the actions of the Applicant that the Respondents complain about – the removal of Mr Hasan's shed and fence, and the removal of the notices connected with Mr Singh's planning application – are the actions of an aggressive squatter who considers himself to be in possession. These demonstrate an intention to possess.

14. In my judgment, therefore, the Applicant obtained a title to the Strip by adverse possession some time in the late 1990s. It is not necessary to consider the hotly disputed evidence concerning the actions of Mr Hasan, and in particular whether he interrupted the Applicant's period of possession. The fact is that the Applicant had acquired a good title by the time that Mr Hasan arrived at 28 Whitby Road.

15. For what it is worth, I have considerable sympathy for the position of the Respondents. Undoubtedly, the activities of the Applicant have been antisocial and prejudicial to the appearance of the neighbourhood. The long-term parking of semi-derelict vehicles on a strip of land in a residential street amounts to a nuisance, in the

lay sense if not the legal sense. However, the Tribunal's task is to decide whether the claim to adverse possession has been made out, and the ramifications of that are not directly relevant to that decision.

16. I shall therefore direct the Chief Land Registrar to give effect to the Applicants' application in Form FR1 dated 18th September 2015.

Dated this 22nd day of December 2017

Owen Rhys

BY ORDER OF THE TRIBUNAL

