Neutral Citation No. [2014] NIQB 134 | *Ref:* **MOR9487**

Judgment: approved by the Court for handing down | *Delivered:* **22/12/2014**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

ON APPEAL FROM THE COUNTY COURT DIVISION OF

ARMAGH AND SOUTH DOWN

BETWEEN

DEANE BELFORD

As personal representative of the estate of

JOHN DALE RAYMOND SANDFORD deceased

Appellant/ Defendant

and

IVAN GLASS

as personal representative of the estate of

WILLIAM ROBERT JACOB SANDFORD Deceased

Respondent/ Plaintiff

MORGAN LCJ

[1] This is an unfortunate family dispute concerning the title to a piece of ground comprising 0.384 hectares at Drumanphy Road County Armagh. The title is unregistered. The site consists of some ground suitable for growing a small number of apple trees and a listed tower which is in need of renovation and maintenance. Planning permission for a dwelling has been refused and it is common case that the site has little monetary value and may even be a liability having regard to the listed status of the tower. The family have always referred to the site as "the Stump" and that is how I shall describe it when referring to it further. Mr Sheil appeared for the appellant and Mr Sands for the respondent. I am grateful to both counsel for their helpful oral and written submissions.

Background

[2] The parties to this action are Deane Belford, the daughter and personal representative of John Dale Raymond Sandford deceased ("Roy") and Ivan Ernest Glass the personal representative of William Robert Jacob Sandford deceased ("Bill"). Roy and Bill were brothers and the Sandford family were farmers in County Armagh. In 1954 Roy and Bill's father purchased a farm at Kilmore about 5 miles from the Stump. In the same year Bill purchased the Stump which until then had been owned by the Atkinson family. At that time it was adjacent to something over 20 acres of farming land owned by Adelaide Sandford who was the boys' aunt.

[3] Roy was an electrician by trade. He married in 1954 and bought a farm at Cantilew Road, close to the Stump, from his father. He then farmed those lands and the lands owned by Adelaide Sandford which he rented. Between 1956 and 1959 Roy lived in Canada and rented out his farming lands. Bill remained with his father on the farm at Kilmore and eventually took over that farm before passing it on to his own son.

[4] Roy died in 2006 and Bill in late 2011. Prior to Bill's death the dispute about the ownership of the site emerged. Bill made an affidavit in connection with the dispute in March 2011. He said that when he purchased the property it was in fair enough condition and useful to store apples from time to time. He did not use the rest of the site for anything. Over time it became impracticable to use the Stump as a store because the apple boxes got too big and he could not get them through the windows. At that stage farmers were starting to build gas stores for apples.

[5] He said that about 40 to 50 years ago, suggesting sometime in the 1960s, Roy asked him for a key to the door of the Stump as he wanted to use the tower and plant apple trees on the site. Bill agreed as he no longer had an everyday use for it and it was too far from his home to be convenient for him. He said that he helped Roy to plant the apple trees. He also said that over the years he put new stairs in and did some maintenance but having regard to the state of the building if that occurred it was a very long time ago indeed. Bill retained a key to the Stump, as did Roy.

[6] Thereafter Roy continued to use the property for storage and the growing of a small number of apple trees until he retired from farming as a result of deteriorating health in or about 2000. It is common case that the site was not particularly well kept whereas other lands owned by Roy were well maintained. Roy did, however, carry out some re-fencing work and claimed a single farm payment in respect of his occupation of the site. The brothers and their families assisted in each other's farming enterprises by assisting with silage cutting and storing apples in their respective gas stores. Each was also involved in poultry rearing. There was some

dispute between the witnesses about the extent to which they had differences of opinion or arguments but I am satisfied that their differences were no more than those that one would expect to find within families and I do not regard that evidence as material to the decision in this case.

[7] One of the peculiarities of this case is that the will of the boys' father who died in 1982 purported to leave the Stump to Roy. That will, which was admitted to probate in 1987, was made in 1956. It also appears that another property not owned by the father was bequeathed in the will. It is common case that those who lived and worked in the vicinity of the Stump believed Roy to be the owner of the site. Bill was an executor of his father's will.

[8] The tower on the Stump was listed in July 1994 and all of the correspondence in respect of it was dealt with by Roy. In 2000 Roy let out his farming lands for grazing and started selling sites for dwelling houses. One site was adjacent to the Stump and a portion of the Stump site was required for sight lines. Roy executed a statutory declaration dated 24 October 2002 in which he declared that he was the owner of the relevant lands and referred to his father's will which bequeathed the property to him. He declared that since his father's death he had been in sole and undisputed possession of the lands and had planted apple trees and sprayed and harvested the trees without dispute. He stated that there had never been, to his knowledge, any claim which would in any way prejudice his title to the lands and he had never acknowledged any right of any other person to the lands.

[9] In April 2002 Roy's daughter, with his permission, made a planning application to build a dwelling house on the site. In her application she disclosed that her father was the owner. None of this was known to Bill. It also appears that in or about that time Roy consulted solicitors about pursuing the regularisation of his title to the site and he signed an affidavit on 28 October 2003 for the purpose of establishing title by long user although it was not witnessed by the solicitor.

[10] Bill's son said that Roy and Bill got on well. I broadly accept that he was correct about this. He said that he knew that Roy approached his father about selling the Stump site but that his father had told Roy that he was not keen on selling it. Bill did not refer to this conversation in the affidavit he prepared in 2011. If it was worth the weight which is now being placed on it as evidence of acknowledgement it is very surprising that this conversation was excluded. I accept that it is likely that the brothers had some conversation about Roy selling off sites after deciding to give up his farming enterprise but on the balance of probabilities I find that there was no acknowledgement of Bill's title by Roy.

[11] On the balance of probabilities I am satisfied that Bill always considered himself the owner of this site which was the first piece of property bought in his own name. He at all times retained his key to the tower. As a result of the conversation referred to in paragraph 5 above Roy's use was with his permission. Ms Belford doubted that the conversation took place but it seems to me highly unlikely that Bill would have failed to appreciate in the 1960s that the land occupied by Roy included his site. All parties agreed that the tower was viewed as an important landmark in the vicinity. Ownership of it had a certain standing attached to it. The reasons he gave for allowing Roy thereafter to use it seemed sensible. I am satisfied, therefore, that the conversation asserted by Bill broadly took place as he described.

[12] I conclude that it is likely that by the time of his death in 2006 Roy also believed that he was the owner of the property. I am satisfied that he recognised that his user was with permission until his father's death in 1982. I consider that the fact that his father bequeathed it to him led him to believe that he was entitled to the site. That would have been reinforced by the fact that this was the only piece of land bequeathed to him by his father whereas Bill got the Kilmore farm. The absence of title deeds would not have been of concern as the unavailability of such deeds for unregistered parcels of this nature is not uncommon. In light of the will I consider it likely that he placed little weight on the informal arrangement by which permission had been given by Bill. I would not wish to suggest, however, that the devising of the Kilmore farm to Bill indicated any unfairness to Roy. Just 2 years before the making of the will his father had disposed of the Cantilew Road farm to Roy.

[13] Things came to a head after Roy's death. Bill's grandson, Conor, asked Roy's daughter for the key to the Stump in order to view it. He was finishing at school and had an interest in archaeology which he later studied. Roy's daughter was unwilling to provide the key. Conor and Bill eventually got in using an old key retained by Bill. Thereafter relationships within the family deteriorated to the point where Roy's daughter was bound over to keep the peace as a result of an incident involving Conor. These unfortunate proceedings commenced in November 2010.

Consideration

[14] Roy's personal representative contended that Roy had established a possessory title to the Stump which cannot now be defeated by Bill's paper title by reason of more than 12 years continuous adverse possession (see Article 21 of the Limitation (Northern Ireland) Order 1989 (the 1989 Order)). Paragraph 8 of the First Schedule to the 1989 Order provides:

> "8.—(1) No right of action to recover land is to be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run (in this paragraph referred to as "adverse possession")."

[15] The concept of possession for these purposes was considered by the House of Lords in J A Pye (Oxford) Ltd v Graham [2003] 1 AC 419. At paragraph 36 and 37 Lord Browne-Wilkinson set out the proper approach to interpretation.

> "36 Many of the difficulties with these sections which I will have to consider are due to a conscious or subconscious feeling that in order for a squatter to gain title by lapse of time he has to act adversely to the paper title owner. It is said that he has to "oust" the true owner in order to dispossess him; that he has to intend to exclude the whole world including the true owner; that the squatter's use of the land has to be inconsistent with any present or future use by the true owner. In my judgment much confusion and complication would be avoided if reference to adverse possession were to be avoided so far as possible and effect given to the clear words of the Acts. The question is simply 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.
>
> 37 It is clearly established that the taking or continuation of possession by a squatter with the actual consent of the paper title owner does not constitute dispossession or possession by the squatter for the purposes of the Act. Beyond that, as Slade J said, the words possess and dispossess are to be given their ordinary meaning."

[16] In the same case Lord Hope said that only one person can be in possession at any one time. Exclusivity is the essence of possession. Applying those principles to this case I consider that Bill was in possession until his father's death and Roy's occupation was permissive. Mr Sheil submitted that the disclosure of the father's will altered the nature of Roy's possession or that it did so at least from the grant of probate in 1987.

[17] I do not accept that submission. There is no evidence of any alteration in the nature of the permission given by Bill to Roy either in 1982 or 1987 or later. Where the unilateral permission continues the user by another will not be adverse (See BP Properties v Buckler (1987) 55 P & CR 337). It might have become adverse if Roy had indicated to Bill that he was no longer occupying on foot of the permission but in his

own right. There is, however, no evidence of any such assertion. I do not accept that the error in the father's will about his ownership of the Stump is sufficient on its own to alter the nature of Roy's continuing possession. Although Bill was the executor of the father's will there is no indication that there was any acknowledgement by him of any right to the site on foot of the will and no such claim is advanced in these proceedings.

Conclusion

[18] For the reasons given I consider that the appeal must be dismissed. It is most unfortunate that this family dispute could not have been resolved without resort to litigation.