

**SUPREME COURT OF NOVA SCOTIA**  
Citation: Prest Bros. Ltd. v. Myers, 2011 NSSC 175

Date: 20110505  
Docket: Hfx. No. 270674  
Registry: Halifax

**Between:**

**Prest Bros. Limited**, a body corporate

Plaintiff

-and-

**Gary Bruce Myers**

Defendant

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**Judge:** The Honourable Justice Robert W. Wright

**Heard:** March 21-23, 2011 in Halifax, Nova Scotia

**Written**

**Decision:** May 5, 2011

**Subject:** Land title dispute - interpretation of Will - interpretation of deed - adverse possession claim.

**Summary:** In 1973 the plaintiff acquired a deed to two remote woodland properties from grantors who held a 5/8 interest in them. Subsequently, in 1988, the defendant purported to create a competing chain of title by the execution of a warranty deed in favour of himself which he and his father signed as grantors. He attempted to bolster this with a number of quit claim deeds from various heirs of one of his great uncles which he obtained after this litigation started and under which he claimed a co-tenancy. The defendant also claimed a possessory title.

In 2006, the plaintiff commenced this action seeking the remedy of a Declaration of ownership of the lots as against the defendant. It also sought a mandatory injunction requiring him to remove a trailer from the property placed there in 2002 and to restrain

any further acts of trespass.

**Issues:**

- (1) The validity of the plaintiff's paper title;
- (2) Whether the defendant could establish sufficient acts of adverse possession to prove possessory title;
- (3) Remedies to be granted.

**Result:** After interpreting the residue clause of the Will of the defendant's great great grandfather made in 1919 and applying the presumption against intestacy, and further interpreting the words of limitation contained in a 1945 deed, the court found that the plaintiff was entitled to a Declaration that it is the owner of a 5/8 interest in the title to the subject lands.

The defendant, on the other hand, was unable to prove that he had any title to the lands whatsoever. The defendant had no valid paper title, nor was he able to establish sufficient acts of possession to prove possessory title.

Since the defendant was not a co-tenant of either property, the plaintiff was further entitled to a mandatory injunction requiring him to remove his trailer from the lands within 90 days. The court declined to extend that injunction to restraining further acts of trespass on the lands, however, since there was no evidence to indicate that the defendant would likely disregard the court's order or that the court's continuing supervision would be necessary.

The court also awarded general damages for trespass in the nominal amount of \$500 plus costs of the action.

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