CHAPTER 669
QUIETING TITLE

Part I. General Provisions

Part II. Structure Position Discrepancies

Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCP rule 81(b)(3).

Case Notes

Act 73, L 2003, by declaring accreted land to be "public land" and prohibiting littoral owners from registering existing accretion under chapter 501 and/or quieting title under this chapter, permanently divested a littoral owner of his or her ownership rights to any existing accretions to oceanfront property that were unregistered or unrecorded as of the effective date of Act 73 or for which no application for registration or petition to quiet title was pending; thus, Act 73 effectuated a permanent taking of such accreted lands without just compensation in violation of article I, §20 of the Hawaii constitution. 122 H. 34 (App.), 222 P.3d 441 (2009).

Act 73, L 2003, by declaring accreted land to be "public land" and prohibiting littoral owners from registering future accretion under chapter 501 and/or quieting title under this chapter, did not effectuate a taking of future accreted lands without just compensation in violation of article I, §20 of the Hawaii constitution where plaintiffs had no vested right to future accretions to their oceanfront land that may never materialize. 122 H. 34 (App.), 222 P.3d 441 (2009).

"PART I. GENERAL PROVISIONS

Note

Sections 669-1 to 669-8 designated as Part I by L 1997, c 131, §3.

§669-1 Object of action. (a) Action may be brought by any person against another person who claims, or who may claim adversely to the plaintiff, an estate or interest in real property, for the purpose of determining the adverse claim.

(b) Action for the purpose of establishing title to a parcel of real property of five acres or less may be brought by any person who has been in adverse possession of the real property for not less than twenty years. Action for the purpose of establishing title to a parcel of real property of greater than five acres may be brought by any person who had been in adverse possession of the real property for not less than twenty years prior to November 7, 1978, or for not less than earlier applicable time periods of adverse possession. For purposes of this section, any person claiming title by adverse possession shall show that such person acted in good faith. Good faith means that, under all the facts and circumstances, a reasonable person would believe that the person has an interest in title to the lands in question and such belief is based on inheritance, a written instrument of conveyance, or the judgment of a court of competent jurisdiction.

(c) Action brought to claim property of five acres or less on the basis of adverse possession may be asserted in good faith by any person not more than once in twenty years, after November 7, 1978.

(d) Action under subsection (a) or (b) shall be brought in the circuit court of the circuit in which the property is situated.

(e) Action may be brought by any person to quiet title to land by accretion; provided that no action shall be brought by any person other than the State to quiet title to land accreted along the ocean after May 20, 2003, except that a private property owner whose eroded land has been restored by accretion may also bring such an action for the restored portion. The person bringing the action shall prove by a preponderance of the evidence that the accretion is natural and permanent and that the land accreted before or on May 20, 2003. The person bringing the action shall supply the office of environmental quality control with notice of the action for publication in the office's periodic bulletin in compliance with section 343-3(c)(4). The quiet title action shall not be decided by the court unless the office of environmental quality control has properly published notice of the action in the office's periodic bulletin.

As used in this section, "permanent" means that the accretion has been in existence for at least twenty years. The accreted portion of land shall be considered within the conservation district. Land accreted after May 20, 2003, shall be public land except as otherwise provided in this section. Prohibited uses are governed by section 183-45. [L 1890, c 18, §1; RL 1925, §2757; RL 1935, §4390; RL 1945, §10451; am L Sp 1949, c 46, §1(a); RL 1955, §242-1; am L 1959, c 52, §1; am L 1967, c 258, §1; HRS §669-1; am L 1972, c 90, §12(a); am L 1973, c 26, §2; am L 1979, c 157, §3; am L 1983, c 222, §1; am L 1985, c 221, §3; gen ch 1985; am L 2003, c 73, §5; am L 2012, c 56, §3]

Cross References

Constitutional provisions, see Const. art. XVI, §12.
Venue, see §603-36.

Rules of Court

Applicability of HRCP, see HRCP rule 81(b).

Law Journals and Reviews

Adverse Possession Against Unknown Claimants Under Land Court and Quiet Title Procedures. 2 HBJ, no. 2, at 4 (1964).

Adverse Possession and Quiet Title Actions in Hawaii -- Recent Constitutional Developments. 19 HBJ, no. 1, at 59 (1985).

Beach Access: A Public Right? 23 HBJ, no. 1, at 65 (1991).

Public Beach Access: A Right for All? Opening the Gate to Iroquois Point Beach. 30 UH L. Rev. 495 (2008).

From Sea to Rising Sea: How Climate Change Challenges Coastal Land Use Laws. 33 UH L. Rev. 289 (2010).

The Wash of the Waves: How the Stroke of a Pen Recharacterized Accreted Lands as Public Property. 34 UH L. Rev. 525 (2012).

Case Notes

Downstream owners may acquire water rights by adverse use against upstream owner who has never used upstream owner's rights during prescriptive period. 441 F. Supp. 559 (1977).

Count of complaint did not allege the necessary elements of a quiet title cause of action, where plaintiffs cited no authority for their argument that defendant mortgage loan servicer's actions sending bills and demanding payment, constituted an estate or interest in real property, as necessary to state a claim under this section. 901 F. Supp. 2d 1253 (2012).

If plaintiff's theory was that defendant mortgage loan servicer wrongfully asserted a cloud on the title by threatening to foreclose when defendant's ownership interest had been terminated, plaintiffs' claim was barred by the tender rule; plaintiffs failed to allege that they paid off the note or were prepared to tender all amounts owing. 901 F. Supp. 2d 1253 (2012).

Moving defendants were entitled to judgment as a matter of law, where plaintiffs had not presented any evidence indicating that they were able to tender the outstanding amount on their loan. 911 F. Supp. 2d 916 (2012).

Par. (a): Statutory remedy under this chapter compared with equitable remedy. 46 H. 1, 373 P.2d 710 (1962).

Essentials of adverse possession in cases involving cotenants. 52 H. 537, 481 P.2d 109 (1971).

When evidence as to adverse possession is clear and undisputed, question becomes one of law. 55 H. 30, 514 P.2d 572 (1973).

Actual possession of part of a parcel of land, under a deed purporting to convey the whole of the parcel, is constructive adverse possession to all of the parcel not in possession of another. 57 H. 64, 549 P.2d 740 (1976).

Exclusivity of possession is essential to claim of adverse possession. 57 H. 172, 552 P.2d 77 (1976).

Burden is on plaintiff to prove title, and if plaintiff fails, not necessary for defendant to make any showing. 58 H. 106, 566 P.2d 725 (1977).

Payment of taxes is only one factor to be considered in the determination of adverse possession. 58 H. 362, 569 P.2d 352 (1972).

Though courts have not sanctioned use of section to quiet title to water per se, it may be used to quiet title to real property with appurtenant riparian water rights. 65 H. 641, 658 P.2d 287 (1982).

Claimants failed to establish prima facie case of hostile and exclusive possession for entire twenty-year period where evidence of actual notice to other claimants insufficient and time period of possession unclear. 86 H. 76, 947 P.2d 944 (1997).

Where claimant failed to rebut presumption that claimant's possession of property remained permissive by providing evidence that claimant or claimant's predecessor-in-interest converted possession from permissive to hostile, claimant failed to prove it was entitled to the fee simple interest in the property based on adverse possession. 90 H. 289, 978 P.2d 727 (1999).

Appeals court erred in determining that summary judgment was proper in quiet title action for subject property where, viewed in the light most favorable to defendants, there were genuine issues of material fact as to whether a cotenancy existed among plaintiff and defendants and, if a cotenancy did exist, whether plaintiff acted in good faith towards its cotenant. 114 H. 24, 155 P.3d 1125 (2007).

In a quiet title action, defendant cannot set up title in stranger to defeat claim. 1 H. App. 573, 623, P.2d 885 (1981).

Color of title is not indispensable to prove title by adverse possession if the other necessary elements are shown to exist and are not explained. 2 H. App. 1, 625 P.2d 378 (1981).

Possession of property to fence by occupier who believed the fence marked occupier's boundary line constituted adverse possession. 2 H. App. 234, 629 P.2d 1151 (1981).

Savings clause in 1973 amendment requires application of prior law's ten-year period of limitations in adverse possession case. 3 H. App. 11, 639 P.2d 1119 (1982).

Article XVI §12 of the Hawaii constitution does not bar adverse possession claims to more than five acres of land where claim matured prior to November 7, 1978; this section is a reasonable construction of article XVI, §12. 91 H. 545 (App.), 985 P.2d 1112 (1999).

Claimant established prima facie case of adverse possession where claimants built, operated and leased slaughterhouse for over fifty years, erected signs designating property, and placed and maintained fences around property. 91 H. 545 (App.), 985 P.2d 1112 (1999).

Publicly recorded conveyances evidencing the existence of a cotenancy in land may render a cotenant's belief that he or she had no reason to suspect the cotenancy's existence not objectively reasonable. 91 H. 545 (App.), 985 P.2d 1112 (1999).

Where earliest point at which plaintiffs' alleged prescriptive easement could have begun to accrue was 1986, the year plaintiff-wife purchased the fee on the property, plaintiffs failed to meet the twenty-year prescriptive period set forth in subsection (b). 97 H. 305 (App.), 37 P.3d 554 (1999).

Cited: 907 F. Supp. 2d 1165 (2012); 73 H. 297, 832 P.2d 724 (1992).

Cases prior to adoption of the Hawaii Rules of Civil Procedure.

An admitted valid interest need not be submitted to jury. 10 H. 507 (1896). Probate proceedings. 20 H. 653 (1911). Admissions by former pleadings. 22 H. 51 (1914). Defendant cannot defeat by claim of title in stranger. 22 H. 465 (1915). Prescription vs. lost grant. 25 H. 357, 365-370 (1920), aff'd 272 F. 856 (1921). Sufficiency of evidence jury waived. 29 H. 250 (1926). Pedigree. 32 H. 1 (1931).

Equitable remedy does not affect right to pursue this statutory remedy to quiet title. 10 H. 507 (1896). Equitable remedy available. 12 H. 12 (1899); 15 H. 308 (1903); 20 H. 638 (1911); 21 H. 196 (1912).

Statutory remedy is not limited to persons in possession. 10 H. 507 (1896); 14 H. 365 (1902). As to equitable remedy. See 9 H. 555 (1894); 18 H. 415 (1907); 22 H. 510 (1915). Mortgagee, after default, may bring action. 15 H. 52 (1903); 32 H. 323 (1932). One in possession claiming fee simple under will may maintain action against one who, under the same will, claims remainder in fee under certain contingencies. 22 H. 233 (1914). When plaintiff has failed to show title, whether defendants may litigate disputed title amongst themselves. 22 H. 644 (1915).

Judgment in statutory action. 11 H. 512 (1898). Judgment may include award of possession and be enforced by writ of possession. 14 H. 365, 368 (1902). Whether unexecuted judgment for possession stays statute of limitations. 14 H. 365 (1902). Incumbent on plaintiff to prove title; if plaintiff fails, it is unnecessary for defendant to make any showing; only possible judgment is dismissal. 22 H. 465, 466 (1915), aff'd 240 F. 97 (1917); 25 H. 246 (1919). Abatement, prior action of ejectment. 31 H. 71 (1929). See 37 H. 234 (1945).

Par. (b): Action based on adverse possession not in rem as to persons who can be found. 50 H. 201, 436 P.2d 752 (1968).

" **§669-2 Defendants; unknown persons.** (a) Any person may be made a defendant in the action who has or claims, or may claim, an interest in the property adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the issues involved therein.

(b) Unknown persons may be made parties as provided by the rules of court, if:

(1) It shall be shown by the complaint that there are or may be persons unknown, claiming by, through, or under any named person; or

(2) Other facts shall be shown by the complaint giving rise to an actual controversy between plaintiff and persons unidentified or whose names are unknown.

(c) In any action brought under section 669-1(b):

(1) There shall be joined as defendants, in addition to persons known to have an adverse interest, the adjoining owners and occupants so far as known.

(2) If all persons interested who are known or can be joined as provided by subsection (b) have been made parties, the summons in addition to being directed to such parties, may be directed to unknown persons generally and in such case, after service upon the persons summoned, known and unknown, the court shall have jurisdiction to proceed as though all persons interested were in being and personally served, but any adjudication shall, as regards a defendant served pursuant to section 669-3, affect only the property which is the subject of the action except as provided by section 634-23.

(d) In any action brought under section 669-1, the State may be joined as a defendant only when:

(1) It is an adjoining property owner and the same is alleged by the plaintiff; or

(2) The party asserting the claim can demonstrate, by a title search prepared at the party's own expense by an

abstractor, that the State has a clear and specific interest in the subject matter of the suit which is adverse to the plaintiff's claim, and a copy of the title search is furnished to the State without cost, together with the complaint.

(e) In any action brought under section 669-1, the office of Hawaiian affairs shall be joined as a defendant, by service upon the office of Hawaiian affairs, when:

(1) The land claimed by the plaintiff is kuleana land; and

(2) The plaintiff has reason to believe that an owner of an inheritable interest in the kuleana land died intestate or died partially intestate and there is or was no taker under article II of the Hawaii uniform probate code.

For purposes of this subsection, "kuleana land" means that land granted to native tenants pursuant to L 1850, p. 202, entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges", as originally enacted and as amended. [L 1890, c 18, §2; RL 1925, §2758; RL 1935, §4391; RL 1945, §10452; am L Sp 1949, c 46, §1(b); RL 1955, §242-2; HRS §669-2; am L 1972, c 90, §12(b); am L 1977, c 154, §1; gen ch 1985; am L 1987, c 283, §63; am L 1991, c 177, §2]

Case Notes

Cases prior to adoption of the Hawaii Rules of Civil Procedure.

Not essential to make parties all persons who claim interest. 10 H. 507 (1896).

Cross-complaint against codefendants is doubtful pleading where defendant sets up defendant's own title and fails to ask affirmative relief against them. 25 H. 246, 250 (1919).

All necessary parties may be defendants and have jury trial. 28 H. 1 (1924). See also 4 H. 131 (1878).

Cited: 32 H. 323, 324 (1932).

" **§669-3 Notice by publication or registered mail.** In any action brought under section 669-1(a) or (b), unknown persons and any known persons who do not reside within the State or cannot after due diligence be served with process within the State may be served as provided by sections 634-23, 634-24, and 634-26; provided that section 634-23(3) notwithstanding, service by publication in any action brought under section 669-1(a) or (b) shall be made in an English language newspaper published in and having a general circulation in the circuit in which the action or proceeding has been instituted, and if the action or proceeding has been instituted in any circuit other than the first circuit, service by publication shall also be made in an English language newspaper having a general circulation in the State. Publication shall be made in such manner and for such time as the court may order, but not less than once in each of four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated herein unless a different time is prescribed by order of the court. A copy of the summons also shall be posted upon the real property concerned in the action or proceeding. [L 1959, c 52, pt of §2; Supp, §242-2.1; HRS §669-3; am L 1972, c 90, §12(c); am L 1976, c 183, §4; am L 1983, c 222, §2]

Cross References

Publication, how made, see §601-13.

Rules of Court

Proof of publication, see RCC rule 11.

Case Notes

Where action is under §669-1(a), what provision for publication. 46 H. 1, 373 P.2d 710 (1962).

This section applies only to potential claimants who cannot be found; action under §669-1(b) not in rem as to persons who can be found and they must be personally served with process. 50 H. 201, 436 P.2d 752 (1968).

"   **§669-3.5 Trial when legal title in controversy.** Whenever in an action brought under this chapter the legal title is in controversy, the issue shall be triable of right by a jury. [L 1972, c 90, §12(d)]

"   **§§669-4 and 669-5 REPEALED.** L 1972, c 90, §12(f).

"   **§669-6 Disclaimer, default, no costs.** If in the action the defendant disclaims in the defendant's answer any interest or estate in the property or suffers judgment to be taken against the defendant without answer, the plaintiff shall not recover costs. [L 1890, c 18, §4; RL 1925, §2760; RL 1935, §4393; RL 1945, §10454; RL 1955, §242-4; HRS §669-6; gen ch 1985]

Case Notes

Cases prior to adoption of the Hawaii Rules of Civil Procedure.

General denial, not a disclaimer. 14 H. 189 (1902).

That each of several defendants disclaims as to some of the land does not warrant dismissal of action. 18 H. 494 (1907).

" **§669-7 REPEALED.** L 1972, c 90, §12(f).

" **§669-8 Recording of judgment.** The registrar of conveyances or the assistant registrar of the land court, as the case may be, shall receive and record or file and register every certified copy of judgment quieting title to property rendered by the circuit court under this chapter whenever the certified copy of judgment is presented to the registrar or assistant registrar for record or registration. [L Sp 1949, c 46, §1(c); RL 1955, §242-6; HRS §669-8; am L 1972, c 90, §12(e); gen ch 1985]

"PART II. STRUCTURE POSITION DISCREPANCIES

Note

Applies to all structure position discrepancies without regard to when the facts or actions giving rise to the discrepancy occurred. L 1997, c 131, §5; L 1999, c 185, §4.

§669-11 De minimis structure position discrepancies, defined. For the purposes of this part, "de minimis structure position discrepancy" means:

(1) For commercial property, industrial property, and multi-unit residential property, 0.25 feet;
(2) For all other residential property, 0.5 feet;
(3) For agricultural and rural property, 0.75 feet; and
(4) For conservation property, 1.5 feet;

between the location of an improvement legally constructed along what was reasonably believed to be the boundary line and the actual location of the boundary line based on the most recent survey. [L 1997, c 131, pt of §2; am L 1999, c 185, §2]

" **§669-12 Consequences.**

(1) A de minimis structure position discrepancy shall not be considered an encroachment or a basis for a zoning violation;
(2) No de minimis structure position discrepancy authorized under this part shall be considered as a basis for any claim of adverse possession of land. If the wall or other improvement that is affected by the

discrepancy is removed or substantially damaged or destroyed, the replacement improvement shall be constructed to comply with the most recent survey available at the time of construction of the improvement;

(3) Responsibility for maintenance and repair of an improvement within a de minimis structure position discrepancy shall be borne by the property owner who constructed the improvement or the property owner's successor in interest;

(4) Liability for any claims for injuries or damages to persons or property arising out of, or in connection with, an improvement within a de minimis structure position discrepancy shall be borne by the property owner who constructed the improvement or the property owner's successor in interest; and

(5) In the event that the property owner who constructed the improvement within a de minimis structure position discrepancy is not readily identifiable, then for purposes of this part, the owner of the improvement shall be determined to be the owner of the property upon which the improvement is substantially located. [L 1997, c 131, pt of §2; am L 1999, c 185, §3]

" **[§669-13] Restrictions as to owner of property.** This part shall not apply to any de minimis structure position discrepancy on public lands, as defined in section 171-2, or to such encroaching improvements incident to shoreline boundaries. If real property subject to this section is owned by a county, any improvement within a de minimis structure position discrepancy shall be removed at the expense of the property owner who constructed the improvement, or the property owner's successor in interest, upon notice, in accordance with the respective county procedures or ordinances. [L 1997, c 131, pt of §2]