

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

(Sub-Registry, San Fernando)

Claim CV 2008-02264

BETWEEN

CHITRANJAN GAYADEEN otherwise

BOOCHAN GAYADEEN

1st Claimant

RAMANAND GAYADEEN otherwise

RAMANAN GAYADEEN (as Legal Personal Representatives of Mynee Gayadeen,
Deceased)

2nd Claimant

AND

BALWANT (CAPIL) GAYADEEN

1st Defendant

CARONI (1975) LIMITED

2nd Defendant

BEFORE THE HONOURABLE JUSTICE MR. GREGORY DELZIN

JUDGMENT

Appearances

Mr. Mungalsingh for the Claimants

Mr. Beharrylal leads Mr. Seunath S.C. for the Defendant

JUDGMENT

History of the matter

The Claim Form and Statement of Case were filed on 20th June 2008. The defence in this matter was filed on 30th July 2008.

At a case management conference held on 17th October 2008 it was agreed among all the parties that the issues in this case could be successfully determined by written submissions on the relevant law. It was further agreed among the parties that the issue which effectively decided the case was whether “Exhibit D” created a joint tenancy between Mynee and Balwant Gayadeen by which Caroni (1975) Limited was bound.

Subsequent to this agreement, it was then ordered by consent on the said 17th October that written legal submissions on the point be filed by both sides by 12th November 2008. All parties on this occasion confirmed that the matter would be determined by these filed written submissions, hence removing the need for a trial in the matter.

The Issues for Determination

1. Was Mynee Gayadeen’s tenancy of the premises assessed as 12 Jaipaul Street, Ste. Madeleine, converted into a statutory lease for thirty (30) years by the passage of the Land Tenants (Security of Tenure) Act 1981? In other words, did the Act apply to the said premises?

By the Claim Form filed on the 20th June 2008, it is asserted as fact that there exists an “unexpired residue of the term of thirty (30) years from 1st June 1981, created by the Land Tenants (Security of Tenure) Act 1981” with respect to premises situate at and known and assessed as 12 Jaipaul Street, Ste. Madeleine (hereinafter “the said premises).

Further, in the Statement of Case filed on 20th June 2008, it is pleaded at paragraph 4 that “As at the 1st June 1981, there was a dwelling house constructed on the said parcel of land for use as a dwelling house and the tenancy was converted to a statutory lease... for the term of thirty (30) years from the 1st June 1981, by virtue of the provisions of the Land Tenants (Security of Tenure) Act 1981.

In the claimants’ skeleton submissions filed on 12th November, 2008 it is stated that “Mynee Gayadeen was tenant from year to year for many years of the tenanted lands in which the defendant admits a dwelling house was constructed in 1976 and 1977. Here it is again submitted on behalf of the claimants that “the tenancy... was converted to a statutory lease under the provisions of the Land Tenants (Security of Tenure) Act 1981, which came into effect on the 1st June 1981.”

At paragraph 3 of the Defence filed on 30th July 2008, the defendant pleads that the dwelling house on the said premises was built between 1976 and 1977. At paragraph 5 the defendant avers that the Land Tenants (Security of Tenure) Act 1981 does not apply to the tenancy of the lands granted to him by Caroni (1975) Limited (the Second Defendant), but no further explanation or

support, legal or otherwise, is offered for this submission. No reference is made to this issue in the defendant's submissions filed on 12th November 2008.

THE LAW

The provisions of section 3 (1) of the Land Tenants (Security of Tenure) Act 1981 set out that the Act "applies to tenancies in respect of land in Trinidad and Tobago on which at the time specified in section 4 (1) a chattel house used as a dwelling is erected or a chattel house intended to be used as a dwelling is in the actual process of being erected".

Section 4 (1) of the Act provides that "... subject to this Act, every tenancy to which this Act applies subsisting immediately before the appointed day shall as from the appointed day become a statutory lease...".

Based on the evidence of the claimants and of the first defendant himself, with regard to the erection of a dwelling house on the tenanted lands by 1977, it appears that all the requisite characteristics of the said tenancy, listed in sections 3 (1) and 4 (1) of the Act, existed in relation to Mynee Gayadeen's occupation of 12 Jaipaul Street, Ste. Madeleine.

2. Did the First Defendant become a joint tenant of the said premises?

By paragraphs 5 and 6 of the Statement of Case the claimants assert that a dispute has arisen between the Claimants and the first Defendant as to whether there was an absolute assignment by

the deceased Mynee Gayadeen of the statutory lease to herself and the first defendant as joint tenants which upon her death on the 7th September 1992 would enure solely to the benefit of the first defendant by the process of jus accrescendi. The Claimants assert that the assignment was incomplete in the following circumstances:

Mynee Gayadeen deceased, in the absence of valuable consideration and by way of gift, requested the Landlord Caroni (1975) Limited to have her tenancy converted to a joint tenancy between herself and the First Defendant and to have a tenancy agreement on behalf of Mynee Gayadeen and Balwant Gayadeen approved and completed. The application was approved by the Second Defendant, Caroni (1975) Limited, on the 1st December 1989, but same was not completed.

Pursuant to the said request and approval, Caroni (1975) Limited prepared a tenancy agreement dated 1st December 1989 between itself of the one part and the said Mynee Gayadeen and the First Defendant of the other part.

During her lifetime Mynee Gayadeen failed and/or refused to execute the said agreement dated 1st December 1989 and Caroni (1975) Limited continued receiving rent from her up to the year 1992 when she died.

The claimants continue in the Statement of Case that the First defendant, Balwant Gayadeen, on the 25th November, 1992, after the death of Mynee Gayadeen on the 7th September 1992, unilaterally signed the said agreement dated 1st December 1989, and now claims to be the sole and absolute owner of the statutory lease of the said parcel of land by successorship.

The claimants assert that the said assignment of the statutory lease was incomplete by virtue of Mynee Gayadeen's failure and/or refusal to execute the agreement dated 1st December 1989 during her lifetime, and the Landlord continuing to accept rent from her until she died, in the context that it was a voluntary assignment.

By another agreement dated the 19th August 1993, Caroni (1975) Limited purported to let the said parcel of land to the First Defendant from year to year.

The relevant documents forming the basis of the defendant's claim to being a joint tenant is referred to as exhibit "D" along with the tenancy agreement dated 1st December 1989.

The exhibit referred to as "D" is a "House Lot Transfer Application". In part A of exhibit "D" is set out a request by the now deceased Mynee Gayadeen made on the 10th May 1989 to have the tenancy "converted into a joint tenancy between myself and Balwant Gayadeen". The Claimants submit that this must be construed as a *request* for the consent of the landlord, Caroni, to the *proposed* assignment of the tenancy by the deceased to the defendant and herself as joint tenants and does not amount to an assignment or transfer of the tenancy, which assignment/transfer was never done.

Part B of exhibit "D" contains an application by the deceased and the first defendant to be placed on the records of Caroni as joint tenants of the tenancy held by the deceased and makes reference to a tenancy agreement being thereby forwarded on behalf of Mynee Gayadeen and Balwant Gayadeen for approval by Caroni Limited. This tenancy agreement referred to at Part B of exhibit "D" was dated 1st December 1989 and purported to create a new tenancy commencing on the 1st July 1989 and continuing thereafter from year to year.

The claimants submit that the request in Part B of exhibit “D”, to be placed on Caroni’s records as joint tenants and the forwarding of a tenancy agreement, which they further submit created a new tenancy, is inconsistent with the request contained in Part A of “D” for conversion of the existing tenancy to a joint tenancy. It is submitted by the claimants that two *conflicting* requests were approved by the Manager Lands and Legal Department of Caroni.

The claimants further submit that this purported new tenancy agreement was incomplete as it was executed by Caroni on the 1st December 1989 but remained unexecuted by the purported tenants; the deceased and the first defendant during the deceased’s lifetime. In fact, this tenancy agreement was only executed by the first defendant on the 25th November 1992, *after* the deceased’s death on the 7th September 1992, and remains incomplete in its purported creation of a joint tenancy as it was never executed by the deceased.

Finally, it is submitted by the claimants that the transfer/assignment of the tenancy/statutory lease by the deceased must have been by deed, and this was never done despite the intentions expressed in exhibit “D”. It is further submitted that exhibit “D” is wholly ineffective in creating a joint tenancy of the defendant and the deceased.

On the basis of the claimants’ submissions, Caroni (1975) Limited continued to receive yearly rent from the deceased only and issued receipts in her name up to her death in 1992 thereby acknowledging the deceased as its tenant. There is no evidence of payment of rent by the first defendant as joint tenant despite the fact that the new tenancy agreement recites the commencement of the new agreement as the 1st July 1989. The only evidence of payment of rent by the first defendant is two receipts issued in 2003 and one issued in 2008.

The claimants submit that the request for transfer and its approval does not in law, amount to a transfer of the tenancy. Further, the deceased continued to be the only tenant as evidenced by receipt of rent from her only up to her death in 1992. Upon the approval of the request to transfer, the requisite transfer document was never prepared and executed. At law, it is submitted, a deed would have been required to effect the transfer.

In conclusion, it is the claimants' position that there has been no assignment of the tenancy from Mynee Gayadeen to herself and the first defendant as joint tenants by exhibit "D". Further, no joint tenancy was created by the new landlord and tenant agreement dated 1st December 1989. No consideration is alluded to or recorded or mentioned in exhibit "D" for the conversion of the tenancy into a joint tenancy, and based on this it is reasonable to conclude that what was *intended* was a gift. The intended gift remained incomplete.

At paragraph 2 of his Defence, the first defendant states that he does not admit that "both Mynee Gayadeen and the first defendant were entitled to pay the rent". He avers that Caroni (1975) Limited was deducting rent from him as shown by two receipts issued for the first time in 2003.

The first defendant avers that the deceased, Mynee Gayadeen, applied to Caroni (1975) Limited to have the tenancy made into a joint tenancy on the 10th May 1989 and the said application was granted on the 1st December 1989 by Caroni. He continues that on the 19th August 1993 Caroni (1975) Limited removed the name "Mynee Gayadeen" from the tenancy and the first defendant became the sole tenant.

It is further averred by the first defendant that the transfer was effective in accordance with Clause "M" dated the 10th May 1989 and that no consideration was requested save and except

the transfer fee. Further to this, Mynee Gayadeen, deceased, and the first defendant signed the house transfer form dated 10th May 1989.

The defendant avers that the lease granted by Caroni (1975) Limited to both Mynee Gayadeen (deceased) and the first defendant was effected by Caroni on the 1st December 1989. According to paragraph 11 of the Defence the first defendant made an application to remove the deceased's name "from the existing transfer to the Second Defendant pursuant to the death certificate of Mynee Gayadeen on the 19th August 1993" and same was granted. The first defendant finally avers that the claimants are not entitled to the reliefs requested in the Statement of Case.

The defendant submits that the document exhibited as "D" is a copy of a document generated by Caroni, and that on the face of it, it clearly indicates that it is a standard form used by Caroni (1975) Limited to effect the transfer of the tenancy of a house lot by the sitting tenant to himself and another or others as joint tenants.

Document "D"

The document "D" is divided into four parts, one of which (Part A) contains a request by the tenant to convert the tenancy being held solely by the tenant, into a joint tenancy. The sitting tenant was required to confirm that request by signing the written request in the presence of a witness who certified that it was signed by the tenant after the contents of that part of the form were "truly and audibly read over" to the tenant and after the tenant appeared perfectly to have understood same. This part of the document also shows that a transfer fee was paid to effect and process the transfer.

The second part of the form (Part B) indicates that the person who was requesting to be joined as a tenant, confirmed that request by signing this part of the form. Part B of the form states that pursuant to the request, a tenancy agreement is forwarded with the request for the approval of the landlord. That approval by the landlord would only be granted if the landlord agrees to the request. The transfer therefore, is not automatic. The form also requires the application to be signed by the tenant in the presence of a witness who ensures that both the tenant and the person being joined “perfectly understands” the impact of the document before signing.

The defendant submits that the completed and executed document “D” evidences the following.

That upon the payment of a fee which was acknowledged by transfer receipt no. 126621, there was a request by the tenant Mynee Gayadeen to convert her tenancy of the lot no. 20/16/012 to a joint tenancy between herself and Balwant Gayadeen.

Concurrently, there was a request by the said Balwant Gayadeen to create the said joint tenancy on the part of Mynee Gayadeen and himself.

The request for the transfer was approved by the Section/Area/Cultivation Manager. Caroni (1975) Limited, having agreed to the application, approved same on 1st December 1989.

The first defendant further submits that the parties to the document intended it to have legal effect. He continues that the tenancy, being a tenancy of building land, constitutes an estate in land and as such, any dealing with the said tenancy or interest in the land, to be effective, must comply with section 4 of the *Conveyancing and Law of Property Ordinance* which requires that it must be evidenced in writing and signed by the party to be charged or by some other person

lawfully authorized by him. It is further submitted by the defendant that the document “D” has been signed by the applicants and by the Company, i.e. Caroni (1975) Limited, and that it is clear as to its purpose and intent. As a result of this, both the applicants and the Company and its successors or assigns can sue and be sued on the said document.

The defendant then turns to the document “E”. He submits that this document is another standard form, and is a tenancy agreement relating to building lands. This tenancy agreement bears a commencement date of the 1st December 1989; the same date as the approval of the transfer of the tenancy from Mynee Gayadeen to herself and Balwant Gayadeen as joint tenants.

The defendant does not dispute that Mynee Gayadeen died on 7th September 1992, and further states that at the date of the execution of the Tenancy Agreement (exhibit “E”) on 25th November 1992, Mynee Gayadeen could not have executed the agreement. The defendant submits however that the execution of the Tenancy Agreement by the tenants was *not* necessary for them to lay claim to the tenancy, as by document/exhibit “D” the parties had completed their intention of transferring the tenancy from Mynee Gayadeen to herself and Balwant Gayadeen as joint tenants.

THE LAW

Section 10 (1) of the *Conveyancing and Law of Property Ordinance Chapter 27 No. 12*. states that “All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed”.

Section 10 (2) of the Act then lists several exceptions to this general rule with section 10 (2) (c) indicating specifically that the section does not apply to “leases or tenancies or other assurances not required by law to be made in writing.”

In the local case of *Jones v Pereira* 10 Trin. L.R. 78 where the Court of Appeal considered whether a deed was necessary for the valid assignment of a monthly tenancy, the court took a close look at the provisions of section 10 (1) and 10 (2) of the *Conveyancing and Law of Property Ordinance*.

The court found here that periodic tenancies of less than three years' duration may be orally assigned and that a deed was not required to effect an assignment of tenancies falling in this category. Collymore C.J. had the following to say in his judgment at page 83.

“... because the submission that every assignment of a tenancy is required by law to be by deed, if correct, is of far-reaching importance in the Colony... I consider it my duty to express my opinion upon it. The submission is based... on section 10 of the *Conveyancing and Law of Property Ordinance*... The short answer to this submission is that the local Ordinance above cited does not substantially reproduce the material section of the English Act, but reproduces only section 52 in almost identical terms. It is section 53 (1) (a) of the English Act when read with section 54 (2) which reproduces section 3 of the *Statute of Frauds* and expressly prohibits oral assignments. Neither of these latter provisions is reproduced in the local Ordinance. If it be the case that, prior to the enactment of Chapter 27. No. 12, the *Statute of Frauds*, being a *Statute of general application*, was in force in Trinidad, it appears to me that it is not so now, except in so far as any of its provisions have been expressly retained. Certain of the provisions of the *Statute of Frauds* have been expressly retained, but section 3 has not... Subsection (1) of that Ordinance, which renders void all conveyances of interests in land unless made by deed does not, by virtue of subsection (2), apply to leases and tenancies and other assurances which the law does not require to be made in writing (my emphasis). Unless therefore some provision of law can be found which requires an

assignment of the kind now under consideration to be made in writing (my emphasis), I am unable to understand how it can be said that the requirements of subsection (1) apply to it... ”.

It was made obvious by Collymore C.J. therefore, that subsection (1) applies to the assignment of leases *themselves* required to be in writing.

In *Jones Worley* C.J at pages 83 and 84. also addressed his mind to this question and responded by stating the following.

“It is common ground that although a monthly tenancy can be created by parol, yet the assignment of such a tenancy must be made by deed in accordance with the provisions of section 10 (1) of the Conveyancing and Law of Property Ordinance... unless it can be brought within the exception of paragraph (c) of subsection (2) of the same section (my emphasis), as being ‘an assurance not required by law to be made in writing’. There can be no doubt that in England the law requires the assignment of any periodic tenancy to be made by deed... In the present appeal, the point was argued on the basis of the assumption that the relevant law of the Colony is the same as the law of England but, in my view, this assumption is mistaken or at least of doubtful validity. The provisions of section 10 (1) and (2) (c) of the Conveyancing and Law of Property Ordinance correspond to and were obviously taken from section 52 (1) and (2) (d) of the Law of Property Act, 1925; but the Ordinance does not contain any sections corresponding with or similar to section 53 (1) (a) or section 54 (2) of the Act of 1925...” .

In the case of **Rajkumar v John HCA 1784 of 2005** the court had to consider whether there could be an oral assignment of a statutory lease which came into being by virtue of the *Land Tenants (Security of Tenure) Act 1981*. In deciding this, the court pointed out that the provisions of section 10 of the *Conveyancing and Law of Property Act Chap. 56:01* had to be considered. These provisions are the same as those contained in section 10 of the abovementioned Ordinance. At pages 6 and 7 of the judgment it was stated:

“It was submitted on behalf of the defendant that the decision in Jones v Pereira... permits oral assignments of tenancies. I agree, but this is in relation only to a tenancy - or lease - not itself required to be in writing (my emphasis). This creates two difficulties for the Defendant. First, while the Land Tenants Act does not specifically require a statutory tenancy to be in writing, or to be reduced into writing, it does set out a form of Memorandum of statutory lease which either a landlord or tenant may require the other to sign (see Regulation 3 of the Land Tenants (Security of Tenure) (Forms and Notices) Regulations). This memorandum is set out in Form 1 to the Act. The Act also expressly provides for the registration of such a Memorandum as a deed pursuant to the provisions of the Registration of Deeds Act Chap 19:06 (see Section 17A(2) of the Land Tenants Act). Indeed, this Act provides for nearly all conceivable matters relating to a statutory tenancy being in writing, including the renewal of a lease and the request for and consent to an assignment of a lease. This is all indicative of an intention, at the very least, that statutory leases under the Act, as well as all dealings in or with them are to be in writing, and although the Act does not say so specifically then, this reflects the intention and effect of section 3 of the Landlord and Tenant Ordinance... There is certainly nothing - statutory or otherwise - that takes a lease under the Land Tenants Act outside the scope and effect of this Ordinance. Section 3 of this Act is the second difficulty faced by the Defendant. It provides that: ‘No lease for a term exceeding three years... shall be valid as a lease..., unless the same shall be made by deed duly registered...’. This provision is what led the Court of Appeal in Jones v Pereira to hold, obiter, that a periodic tenancy of less than 3 years’ duration can be assigned orally, and that no deed is required to effect that assignment. In that case, the tenancy was monthly. In the case before me the tenancy, the statutory lease... was for 30 years beginning on 1st June 1981. It is therefore a lease for more than 3 years and in my view by Section 3 of the Landlord and Tenant Ordinance is required to be in writing. Consequently, it does not (my emphasis) attract the exception provided by Section 10 (2)(c) of the Conveyancing and Law of Property Act”.

The court in **Rajkumar** therefore concluded that there cannot be a valid assignment of a statutory tenancy created under the Land Tenants (Security of Tenure) Act, except by deed.

In this case exhibit “D”, the House Lot Transfer Application Form, along with exhibit “E”, the tenancy agreement bearing commencement date 1st December 1989, show, at most, an intention which may have existed on the part of Mynee Gayadeen at some point in time, to transfer the said tenancy to herself and Balwant Gayadeen as joint tenants. This indication of such intention was never followed by the requisite preparation, execution and registration of a deed of assignment. Based on the authorities cited above, this was clearly required by law for the assignment and thus, the creation of a joint tenancy to have been effective and more importantly, enforceable against a third party. The application form and the tenancy agreement, quite apart from their completeness or lack thereof, do not constitute the requisite deed in writing and hence were ineffective in assigning the statutory lease from Mynee Gayadeen to herself and Balwant Gayadeen as joint tenants.

As a matter of law and on the pleadings there was no assignment of the tenancy of Mynee Gayadeen to herself and the first defendant, and as a result, the first defendant could not claim to be a joint tenant of the said premises.

Taking the law into account, along with the fact that it was never disputed in this case that Mynee Gayadeen was the legal tenant of the said premises during her lifetime, it stands to reason that at the time of her death, Mynee Gayadeen was the sole tenant of the premises assessed as 12 Jaipaul Street, Ste. Madeleine.

3. Did the deceased's tenancy of the said lands become vested in her estate upon her death?

It is asserted in the Claim that the premises assessed as 12 Jaipaul Street, Ste. Madeleine form part of the estate of Mynee Gayadeen deceased. It is further stated at paragraph 2 of the Statement of Case that prior to her death the said deceased made and published her last will and testament dated 26th May 1988. The Statement of Case continued that the unexpired residue of the statutory lease forms part of her estate to be administered in accordance with the provisions of her will. Probate of the last will and testament of the deceased was granted to the Claimants in this matter, on the 21st April 2006, the first Defendant having renounced.

In the Claimants' submissions it was submitted that in her last will and testament, Mynee Gayadeen, inter alia, specifically devised her dwelling house situate at 12 Jaipaul Street, Ste. Madeleine together with the benefit of the tenancy rights of the land comprising one lot more or less on which a building stands, and rented from Caroni on an annual tenancy to Balwant (Capil) Gayadeen, Boochan Gayadeen and Ramanan Gayadeen absolutely as joint tenants. The three beneficiaries are also named as the three executors. The Claimants again submit in their submissions that the tenancy of Mynee Gayadeen became vested in the estate of the deceased upon her death and now falls to be distributed in accordance with the wishes contained in her last will and testament.

The first defendant's position on this point, on the other hand, is that the tenancy of the said premises now vests solely in him. It is the defendant's submission that a joint tenancy was in fact created during the lifetime of the deceased, and upon her death the tenancy accrued to him via the process of jus accrescendi, as sole surviving joint tenant.

Considering that there was no assignment of the deceased's tenancy of the said premises, the relevant law on this point is to be found at section 10 of the *Administration of Estates Act Chapter 9:01*.

Section 10 (1) provides *that where any real estate is vested for any term in any person, it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or executors or the administrator or administrators of his estate as if it were a chattel real vesting in them or him.*

Section 10 (2) continues that this section shall apply *to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.*

Section 10 (3) provides that *probate and letters of administration shall be granted in respect of, and shall take effect to vest in the executor or administrator, all real estate and personal estate whatever, including chattels real.* It is to noted that in ***Crago v Julian [1992] 1 All ER 744 at para h of page 748*** it was held that a leasehold interest in property is in law a chattel real.

Section 10 (4) provides that *on the death of any person all his estate real and personal whatever within Trinidad and Tobago shall vest in law in the Administrator General until the same is divested by the grant of Probate or Letters of Administration to some other person or persons.*

At paragraph 360, Volume 17 (2), Halsbury's Laws of England, Fourth Edition (Reissue) it is stated that the vesting of a term of years in a deceased's personal representative is by operation

of law. Authority cited for this proposition is the case of **Ackland v Pring (1841) 2 Man & G 937**. In that case a declaration alleged that upon the death of the lessee in that matter, all the estate and interest of the said lessee became vested in the defendant as executrix of the deceased lessee. Accordingly the executrix became possessed of the residue of the said term of twenty-one years. The defendant as executrix became, and was, possessed thereof until the expiration of the said term of years. Upon a demurrer to this declaration one objection raised, as to the allegation that the estate vested in the defendant as executrix, was whether such allegation was sufficiently precise to enable the defendant to take an issue thereon. But the Court stated clearly that it saw no real ground of objection to this averment “*which is, in effect, a conclusion of law, the term vesting, by law, in the personal representative*”. at page 952 of the judgment)

On the basis of the abovementioned, I hold that there having been no assignment of the deceased’s tenancy during her lifetime or otherwise, the tenancy of the said premises forms part of the estate of the deceased and falls to be distributed in accordance with the provisions of her will.

Conclusion

Exhibit “D” is at most an expression of an intention to transfer by way of gift a tenancy from the deceased to joint ownership of herself and Balwant Gayadeen. There is no consideration expressed and the relationship between Mynee and Balwant is expressed as that of mother and son. There is therefore a presumption that the proposed arrangement for transfer of the tenancy was not contractual in nature.

Part B of exhibit “D” clearly puts the completion approval and agreement by the landlord to the proposed joint tenancy, along with the completion of the new tenancy agreement, to some date in the future.

Exhibit “E”, the written tenancy agreement alluded to in exhibit “D”, although dated 1st December 1989, was only executed by the first defendant on the 25th November 1992, subsequent to Mynee’s death. This agreement was never signed by the then existing tenant but only by the beneficiary of the gift. A donor has no enforceable obligation in equity, while a donee has no enforceable right in equity.

Mynee Gayadeen died on 7th September 1992. At the time of her death, no tenancy assignment had been completed and her statutory tenancy on the date of death had already vested in her estate by operation of law.

Caroni (1975) Limited accordingly, only had an interest in the reversion and therefore could not effectively grant a new lease of the said premises as was purported by the new tenancy agreement dated 19th August 1993, the legal title in the leasehold being vested in the estate of Mynee Gayadeen.

Accordingly, the tenancy of Mynee Gayadeen was not joint at the date of her death and is therefore, by operation of law, vested in her estate.

Gregory Delzin

Judge

17th June 2009