

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(Sub-Registry, San Fernando)

No. CV07-0804

BETWEEN

RAMCHARAN BOODHAI
VINDRA JAGLAL
OMA RAGHOONATH
WINSTON H. BOODHAI

Claimants

AND

SHIRLEY RAMBARAN &
ROLAND RAMBARAN also called
ALVIN RAMBARAN

Defendants

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

Delivered

APPEARANCES:

Mr. Winston Seenath instructed by Ms Vidya Gopeesingh for the plaintiff

Mrs. Mohanie-Maharaj Mohan for the 1st defendant

Mr. Ramesh Deena for the 2nd defendant

Judgement

Introduction

The Claimants' claim is in respect of a parcel of land "the said land". They seek inter alia:

- (i) A declaration that they are the owners thereof.
- (ii) Damages for trespass.
- (iii) Delivery of possession by the defendants.

- (iv) Injunctions and other orders for the removal of a building and chain link fence thereon.

The 1st claimant claims to have acquired the said land (part of a larger parcel) by memorandum of transfer dated November 2003.

The 1st named claimant claims that the defendants entered upon the said land in April 2001 without his permission and erected a small house/structure thereon and proceeded to then fence around an area comprising 50 feet wide to the front and 200 feet in length from the road to the back.

The first defendant claims that she lived on a house on the said land since 1966, initially by permission of her sister Doris and her partner Albert James, and then as owner of the structure acquiring title thereto from Doris by Deed of Gift in December 1998. The second defendant her son, separately claims to believe that as he lived there his whole life the said land belonged to him. He therefore claims to have acquired title to the said land by adverse possession. The 1st defendant and second defendant counterclaim for a declaration that each is entitled to possession.

The issue of who was in possession of the said land and from what period is therefore largely one of fact.

Issue

Whether the first and second defendants were living on the said land from 1966 and 1972 respectively.

Disposition

I find:

1. That the claimant has not established that he entered, possessed, cultivated or performed any acts whatsoever on the said land.

2. That the first defendant has established that she entered into occupation of the said land in or around 1966 and lived there ever since.
3. That the second defendant has established on a balance of probabilities that he was born while his mother lived in the structure on the said land.
4. The second defendant's occupation of the house and the said land is derived from the title of his mother and with her permission
5. The first named defendant has established her claim to have the claimant's paper title extinguished.

Accordingly **it is ordered that:**

- (i) The claimant's claim against both defendants is dismissed
- (ii) The claimant is to pay the costs of each defendant to be assessed by this court in default of agreement on:
 - (a) the 1st defendant's Defence and Counterclaim
 - (b) the second defendant's Defence
- (iii) A declaration is granted that the first defendant is entitled to possession of the lands situate at Bownath Trace measuring 50 feet in width and 200 feet in length bounded on the North by lands of Heeralal Boodhai, by lands of Chaitram Sahadeo and by Bownath Trace on the South by Crown Lands and by lands of Soobaggia now Sonny Nanan on the East by Bownath Trace and by lands of Poonai and on the West by Crown Lands

Analysis and law

The evidence

Ramcharan Boodhai

The Claimant's evidence is as follows:

Title

His title to the entire parcel of land of which the said land was part was derived from memorandum of Transfer dated 29th November 2003

Occupation by Doris

Under cross examination he testified that his parents did indeed give the first defendant's sister – Doris, - permission to erect the house and occupy the said land but he claimed that that permission did not extend to the first defendant and in fact the first defendant never lived on the said land. He claims that up to now she lives at her mother's house – number 4 Bownath Trace.

He therefore in cross-examination corroborated the evidence of the first defendant in a material respect – namely that Doris and Albert James entered upon the land and erected a structure –He testified the Defendant's elder sister [Doris]had permission from his mother to build a hut for herself, then she died. “Permission to put temporary residence – not permanent residence.” It was put to him that the defendant and her sister were there since 1966. He responded that she was there but she had no permission to put anything. He later clarified that the defendant only went as visitor there. However he testified:

- (i) that Doris and Albert lived there
- (ii) that Albert left her 20 years ago,
- (iii) that Doris and Albert lived on this land since 1966
- (iv) that only them alone lived there – Doris and Albert.
- (v) Albert left and went away
- (vi) that Doris lived there

- (vii) that when she died the house was abandoned and
- (viii) that Shirley had her own house at 4 Bownath Trace.

He did not dispute that Shirley never paid rent.

He admitted he did nothing concerning the structure on the land when he acquired his title in 2003. In fact he did nothing until years later in 2007. He claims that this was due to financial embarrassment.

Fence

Claimant – First saw fence some time after 1966, a few years after.

Later – “I can’t say what year it was fenced”.

In his Statement of Case however he claims the Defendants erected the chain link fence after their entry on the said land which was in or around April 2001

Occupation by first named Claimant

He used to cultivate the land and planted various crops. However under cross-examination when asked

Q: “From 1966 thereafter you were never allowed on premises up to today?”

his response was “they never allow me to go on premises when house was there.”

While he testified that “they never allow me to go on the premises when the house was there” he could not explain how he could therefore claim to have planted the said land. In re-examination he explained that he used to pass on the right side of the house to get to the land. He couldn’t say when the house was fenced leaving it unexplained as to:

- (i) when he could possibly have had access to the said land to plant thereon.
- (ii) when if ever he had access to the remainder of his land via the said land.

Entry by Defendants

In April 2001 the defendants entered upon the said land without his permission and erected a small house on a portion of the said lands denying him access and preventing him (since 2001) from cultivating crops and causing him significant loss.

The claimant claimed that in April 2001 he saw the defendants erecting a house. Under cross examination he explains that in fact they were repairing the house Doris lived in. He admitted understanding that “erecting” and “repairing” are two different things.

He testified that he saw the defendant “constructing” the house about a year or 2 after Doris died. The “house was an obstacle to [my] occupation”. When asked what prevented him from breaking it his answer was “I can’t break down house of other persons. It is their house. I did not build it.”

I find that it is clear that:

- (a) a house existed on the said land since at least 1966
- (b) The defendants did not build a house (for the first time) on the said land in 2001
- (c) The presence of that house was an obstacle to the claimant’s occupation
- (d) The condition of that house was not such that the claimant could feel comfortable that it was abandoned and totally dilapidated, or that it had no value or could be safely demolished.
- (e) In fact his inability to occupy the said land and plant thereon [if planting were even possible there] even after Doris died must on a balance of probabilities, have been due to the continued occupation of the house by the defendants. This is consistent with the evidence of the defendants and their witnesses.

In paragraph 4 of his witness statement the claimant expressly denied that Doris and Albert lived on the lands from 1966. He accepted in cross-examination that this was not true. He claimed his attorney prepared his statement and he did not read it ‘over and over’

Findings

I find that the claimant did not plant these lands. I find it suspicious that the claimant does not state in his witness statement the period when he alleges he cultivated the said land. I also find extremely suspicious his omission to take any steps to dispute the defendant’s occupation for years after he acquired paper title to the said land. The claimant bases his case on the alleged entry of the defendants in 2001 without his permission, before he acquired documentary title. . But they would not have needed his permission at that time. He does not particularize any of his own acts of occupation predating the date of alleged entry by the defendants – the date of his alleged cultivation is conveniently vague. In cross examination he adverted to cultivation with the permission of his parents of the said lands but this allegation, which would have been material to his claim to have cultivated the land even before the entry of the defendants, and before his own acquisition of documentary title, is not raised frontally in his witness statement.

I find that the claimants have failed to establish that the 1st named claimant or any of the claimants ever occupied the said land. His actions , or rather inactions and delay , are not consistent with that of a person who was planting lands and then had access blocked by new entrants, nor with that of an owner who was confident that persons occupying his land had no right to be there. They are instead consistent with that of a person who, although he has acquired documentary title to a parcel of land, knows that there are persons in occupation with a claim of some type based on long possession. With the type of losses that the claimant claims to have been suffering from being deprived of his land and access thereto it would be expected he would have objected to the defendant’s occupation at the earliest opportunity as a matter of some priority.

I have no hesitation in finding that:

- (i) The claimant is not a truthful witness.
- (ii) That he tried to mislead the High Court on many material aspects of his case; and
- (iii) That he was prepared to bend the truth when it suited him and did so. I find that he initiated this claim in an attempt to obtain de facto possession in respect of the land to which he had acquired documentary title, and only documentary title.
- (iv) On his own evidence he has supported material aspects of the 1st defendant's case - namely occupation by Doris since 1966 without interference, and fencing during her occupation.
- (v) Although documentary title to the said lands vested in him in 2001, he enjoyed no rights of access to the said lands and was excluded therefrom by the presence of Albert Pedro, Doris, and later the defendants who occupied the said lands and did not pay rent to anyone.
- (vi) Their occupation from 1966 to the present in those circumstances sufficed to extinguish the title of the claimants and their predecessors in title 16 years thereafter since at least 1982.

The evidence of the first named defendant

This defendant claimed that her sister Doris and her partner Albert bought the house from someone named Pedro, for \$3500. In any event only \$800 was paid as Pedro having received that sum was never seen again. The first defendant came to live with Doris in 1966. Doris transferred the house by deed of gift to the first defendant in December 1998 just before her death. Albert also testified to the purchase of the house from Pedro. No one asked for rent for the land and no rent was ever paid. The first

defendant wrote a letter to the claimant asking that she be allowed to purchase the said land in 2006. She claims that she simply signed this letter which was prepared by one Mr. Seelal whom she thought was a lawyer. The same Mr. Seelal conducted a valuation of the house at a cost of \$1000 and gave her a receipt wherein he was described as a valuator, realtor and Auditor. Another document dated November 3rd 2006 was also issued on her behalf signed by her and by a lawyer. She claims never to have met the lawyer. In that document she purports to give notice under the Land Tenant's security of Tenure Act 1981 of intention as tenant to purchase tenanted lands at half the market value.

Furthermore the deed of gift to her from Doris describes the said land as tenanted land.

She claims not to have understood the documents prepared or signed on her behalf and the effect thereof. In this case it is common ground that no land rents were ever paid either by Doris, Albert, or herself.

I find that notwithstanding the first defendant's letters and correspondence framing her interest as that of a land tenant the facts were that since 1966 Doris Albert and Shirley all had occupied without paying rent to anyone. Between the claimants' version of Doris getting permission from the claimant's parents to live there and the defendant's version of Albert's agreeing to pay "Pedro" \$3500 for the 2 roomed structure with no running water or electricity or toilet facilities in 1966, I would prefer the first defendant's version, corroborated as it was by Albert himself.

Other documentary evidence

The first defendant produced the following items in support of her claim to have lived at 43 Bownath trace since 1966-

1. a cash bill from Y de Limas for a watch she claimed to have purchased in 1986. For some reason yet unexplained the bill bore a stamp with the year 1988. The first defendant denies, convincingly, that she placed this stamp on the bill after she received it, and insists that the bill came with the stamp. The bill is at best corroborative of

an address – at Bownath Trace, and at worst self serving. The original was produced. It does not corroborate that she lived at 43 Bownath Trace the address of the said property. There would be little point in placing such a stamp on a concocted bill. In any event I place no weight on this cash bill.

2 neither do I place any weight on the delivery receipt for a crib – to Bownath Trace.

In cross-examination she denied that she in fact lived at her mother's address 4 Bownath Trace, explaining that in letters issued by her she used that postal address on occasion for convenience, and that she also moved there temporarily while repairs were made to 43 Bownath Trace – the subject property. She explained that documents signed by her offering to purchase under the Land Tenants Security of Tenure Act were prepared by others and that in fact she did not read them.

I am inclined to believe that even if she read them she certainly did not understand them sufficiently and was content to rely on those preparing the documents.

Despite all the matters which required explanation, I was satisfied that there were adequate explanations [save for the postage stamp issue]. These matters did not detract from the fact that I considered her to be a witness of truth and accepted her evidence that

- (a) she resided in the house on the subject property, since 1966
- (b) she continued to occupy it after Doris died
- (c) Doris had conveyed the house to her before her death.
- (d) it was fenced initially by her sister Doris,

Other witnesses

Her evidence of long standing occupation was supported by Albert James– the initial occupant, and builder of the house, by Mr. Dassow, an Aeronautical Engineer and Businessman and Glenn Simmons, her nephew. I accept their evidence.

Glenn Simmons nephew of 1st defendant testified as to his knowledge of the said land since he was a boy and the fact that the claimant did not cultivate that land as he claimed. I accept his testimony.

Allan Dassow's evidence was to the same effect. He is an Aeronautical Engineer, by training and independent of the parties though he refers to Albert Pedro as "Uncle Albert."

Albert James testified

In his witness statement at paragraph 1, 3, 4, 5, 6, 8 - he stated:

3. *On or about the year 1964 I was living at San Francique, Penal when I started a relationship with Doris Sooklal, sister of the First Defendant and aunt of Alvin (the Second Defendant). We decided to get a place to live together and I went and check a man whom I know as Pedro who was at the time living on the disputed lands at Bownath Trace, Penal in a small wooden house.*
4. *I entered into a relationship with Pedro to purchase the house for thirty-five hundred dollars (\$3,500.00) and paid him a down-payment of eight Hundred Dollars (\$800.00) and after that me never see Pedro again. I do not have a receipt of this transaction because so much years past I believe that lost. [sic]*
5. *Not long after I get the boards from a Shell petroleum bungalow that they were building over and I break down the little house and constructed a 20 ft by 20 ft house. I also get used oil steel pipes of varying length and width and I use the thicker ones as pillow trees for the house and with the others I built a tank stand and use the rests as fence post. I bought three rolls of chain link wire which I used to fence round the property except the back where it had a deckhi (lagoon) and in the front I built a gate. I used to*

plant a small kitchen garden and mine [sic] a few fowls also. Doris and I start living in that house in a common law relationship.

6. *On or about the year 1966, Doris sister Shirley Rambaran, the first Defendant had some problems and she come to live in the house. In 1972 Alvin (Second named Defendant) was born in that same house and he grow up right there. He uses to call me uncle and I treat him as my son.*

8. *I know the claimant and the older members of his family because they lived close by. During my stay at the disputed lands neither he nor any members of his relatives made any claim about that property. No body ask for rent and me never paid a cent because I believe that since Pedro ups and gone I was now the owner. I use to tell the First Defendant that when I gone this go be he (Alvin's) one.*

In cross-examination he testified that up to the time he left the said land “they use to plant rice in the back of the said land in the swamp. This is not inconsistent with the defendants’ case – they do not claim the swamp to the back of their lands. This evidence does not support the claimant’s case

- (a) Mr. Albert James did not say Claimant had access to the back of the said lands - or the swamp, from Bownath Trace by passing at the side of his house.
- (a) Mr. Albert James did not say Claimant planted the lands to the back of his house before the swamp with pumpkin, melongene etc.
In fact he said – he had no plants and “they could grow nothing behind me”
- (c) He denied that in or around the mid 60’s rice was being planted at the back of the disputed property.
I accept his evidence.

Second defendant

2nd Defendant testified as to his occupation of the said land since birth, and his belief, largely self created, – that the house belongs to him.

I find that the second defendant's occupation of the house and land, on his own evidence, is based on the permission of his mother, the first defendant. The first defendant's occupation together with Doris was adverse to that of the documentary title holders.

His occupation was based on his mother's occupation and was not adverse to her. His claim to occupy the house stands or falls on her entitlement. Whatever his expectations might be, the house was conveyed to his mother, not him.

Findings of fact

It is a question of fact whether the 1st defendant was living on the said land in a house with her sister Doris and Albert Pedro, together at first, and then only with her sister. The 1st claimant admitted eventually that Doris was living on that land since 1966. I find that the claimant's prevarications under cross examination were due to inability to supply any credible explanation as to why the defendants would require his permission in 2001 to be on the land, when he only acquired title 2 years later. I find significant:

- (a) his delay in even approaching a lawyer to record a protest at the alleged entry of the defendants on the said land in 2001, (which I disbelieve), or even in 2003 when he acquired title.)
- (b) the omission from his witness statement of:
 - (i) the previous occupation of the defendant's sister, and
 - (ii) the alleged oral permission by the claimant's mother to Doris to occupy the said land.

These all lead to the conclusion that the claimant is not to be believed on the issue of when the defendants went into occupation.

Instead I accept the evidence of the 1st and 2nd defendants that they lived on the said land from 1966 and 1972 respectively as it was corroborated by:

- (a) The deed of gift – consistent with the 1st defendant living on the land (though equally consistent with her simply having looked after her sister in her last days of illness)
- (b) The evidence of
 - (i) Albert James
 - (ii) Allan Dassow
 - (iii) Glenn Simmons

I note the reference in the Deed of Gift and the documents/letter written by or on behalf of the 1st defendant to a tenancy of the land. However I accept this was probably due to an imperfect appreciation of the legal position by those who were assisting the defendant. It is undisputed that no rents were paid to anyone.

I find the land was fenced long before 2001 and on a balance of probabilities in or around 1966.

Law

It is common ground that the defendants never paid rent to anyone, and the claimants never received rent. On the evidence of the defendants and their witnesses which I accept, their occupation was adverse to that of the documentary title holders from its inception.

See Ramnarace v Lutchman Privy Council Appeal No.8 of 2000 paragraph 10.

See Real Property Limitation Act Chapter 5. No.7

Section 3

“No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the

time at which the right to make such entry or distress, or to bring such action, shall have first accrued.....”

Law

In **Ocean Estates v Pinder** [1969] 2 A.C. 19 the Privy Council described a situation akin to the instant one and recognized that a squatter may enter into occupation prepared to pay rent or to move out if challenged, and after sufficient time has elapsed, may notwithstanding their initial intent to recognize a superior title, occupy adversely to the rights of the documentary title holder, sufficient to acquire title by adverse possession.

“This was based upon an admission of the defendant at the trial when he said:

“I would have paid rent on the land in dispute if anyone had come along. Nobody showed up. I didn’t try very hard to find the owner. If somebody had come along I would either have taken a lease or got off the land. After I had been on the land for seven years I started claiming the land.”

Their Lordships do not consider that an admission of this kind, which any candid squatter hoping in due course to acquire a possessory title would be almost bound to make, indicates an absence of the animus possidendi necessary to constitute adverse possession.

In fact this accords with the entry and circumstances of occupation that I find existed, the first defendant living in the house on the said lands since 1966 and the second defendant since 1972.

I find that the right to evict Albert James first accrued when he and Doris went into possession of the land in or around 1964-1966 and by in or around 1982 at latest the legal owners’ rights were extinguished.

Conclusion and disposition

I find that the 1st defendant's occupation and possession of the said lands was open, peaceful, and adverse to the rights of the legal owner. I find that it was not with the licence or consent of the legal owner or his agent. I also find it continued from 1966 so by 2007 when this claim was instituted by the claimant the 1st defendant had been in occupation and possession more than 41 years, and the second defendant for 35 years.

Disposition

I find:

1. That the claimant has not established that he entered, possessed, cultivated or performed any acts whatsoever on the said land.
2. That the first defendant has established that she entered into occupation of the said lands in or around 1966 and lived there ever since.
3. That the second defendant has established on a balance of probabilities that he was born while his mother lived in the structure on the said lands.
4. The second defendant's occupation of the house and the said land derived from the title of his mother and is with her permission.
6. The first named defendant has established her claim to have the claimant's paper title extinguished,

Accordingly **it is ordered that:**

- (ii) The claimants' claim against both defendants is dismissed
- (ii) The claimants are to pay the costs of each defendant to be assessed by this court in default of agreement on:

- (a) the 1st defendant's Defence and Counterclaim
 - (b) the second defendant's Defence
- (iii) A declaration is granted that the first defendant is entitled to possession of the lands situate at Bownath Trace measuring 50 feet in width and 200 feet in length bounded on the North by lands of Heeralal Boodhai, by lands of Chaitram Sahadeo and by Bownath Trace on the South by Crown Lands and by lands of Soobaggia now Sonny Nanan on the East by Bownath Trace and by lands of Poonai and on the West by Crown Lands

Dated this 15th day of May 2009.

Peter A. Rajkumar
Judge.