

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**HCA No. 1692 of 2005**

**BETWEEN**

**RAMNARASE RAMNANAN  
Also called RAMNARACE RAMNANAN**

**Plaintiff**

**And**

**RAYMOND GHOULIE**

**Defendant**

**Before the Honourable Mr. Justice G. Smith**

**Appearances:**

**Mr. S. Dodol for the Claimant**

**Mr. R. Kawalsingh for the Defendant**

**REASONS**

## INTRODUCTION

This action arose when the Plaintiff obtained an injunction to prevent the Defendant from building a house on a parcel of land. The Plaintiff claims to be the owner of that parcel of land and seeks possession and damages for trespass (inter alia). The Defendant says that he and his predecessors have been in adverse possession of that land since 1948. The Defendant therefore is entitled to the land in dispute.

The sole issue in this case is whether the Defendant and his predecessors in title have been in continuous adverse possession of the parcel of land in dispute for at least 16 years. If the Defendant establishes this adverse possession he would have extinguished the Plaintiff's title to the parcel of land (see sections 3 and 22 of the Real Property Limitation Act Ch. 56:23).

2. After hearing the evidence, I find that on a balance of probabilities, the Defendant and his predecessors have been in continuous adverse possession of the parcel of land since at least 1968 or 1969. They have extinguished the Plaintiff's title to the parcel of land. I therefore dismiss the Plaintiff's claim.

The Defendant did not establish the precise area of his occupation, therefore on his counterclaim, I merely grant a declaration that the Defendant is entitled to build a house on the spot of land where he began construction in or around July 2005.

I also order to the Plaintiff to pay the Defendant's costs of the claim and the counterclaim to be taxed in default of agreement.

## **ANALYSIS:**

3. The Plaintiff claims to be the owner in possession of the land where the Defendant started to build his house (the disputed parcel). The Plaintiff claims that he is the owner of the larger parcel of land which encompasses the disputed parcel. This larger parcel of land (the larger parcel) comprises three acres and twenty-five perches. The larger parcel was conveyed to the Plaintiff and his wife as joint tenants in 1964. The Plaintiff's wife died in 1992 so that the Plaintiff now claims to be the sole owner of the larger parcel. The Plaintiff also alleges that he has been in continuous possession of the larger parcel. He has cultivated it with cane as well as other short food crops. The Plaintiff says that in July 2005 the Defendant wrongfully entered the disputed parcel which is located in the south eastern section of the larger parcel. The Defendant commenced building a house there.

I noted that the Plaintiff's Deed of 1964 only conveyed a 1/3 share of the larger parcel of land. An issue may have arisen as to the Plaintiff's legal title to the disputed parcel but the Defendant took no issue with this. Presumably, it did not affect the Defendant's case since the Defendant contends that he has obtained a title against any legal owner of the land by virtue of his adverse possession. In any event, the Plaintiff also claims that he has been in continuous possession of the entire larger parcel of land since 1964. If this is so, he would also have been in adverse possession as against any of the other co-owners of the larger parcel. This would have entitled him to bring this action for possession against the Defendant.

4. The Defendant claims that his grandfather, one Sam Badree, and his family, have been in undisturbed and continuous possession of the disputed parcel and also of most of the larger parcel since 1948. They have used the land as theirs by cultivating it, demarcating its boundaries, building houses and rearing animals on it. In fact, it was Sam Badree who gave the Defendant permission to build his house on the disputed parcel. Sam Badree alleges that the Plaintiff had previously sued him for possession of the larger parcel some time between 1965 to 1968 but that matter was dismissed. Thereafter the Plaintiff and Sam Badree held a “panchayat” in 1969 and they agreed that Sam Badree would be entitled to lands which included the disputed parcel.

5. I prefer the evidence of the Defendant and his witnesses. The evidence of the Plaintiff was unreliable. The evidence of the Plaintiff’s witnesses was unhelpful in resolving the issue of possession. The evidence of the Defendant was credible and unshaken by cross-examination. The evidence of the Defendant’s witnesses was credible and helpful in resolving the issue of possession. Further, the Defendant’s case was not tested on some major areas of dispute and I accepted the unchallenged evidence of the Defendant and his witnesses on these issues.

On a balance of probabilities I find that the Defendant and his predecessors have been in continuous adverse possession of the disputed parcel since at least 1969.

I will now set out in greater detail the reasons for my findings on the evidence.

*The Plaintiff’s evidence was unreliable:*

6. Cross-examination of the Plaintiff revealed several inconsistencies in his testimony. I now detail the main ones.

- (i) In paragraph 12 of his witness statement the Plaintiff stated that the Defendant had approached him to buy a lot of land out of the larger parcel of land. In cross-examination when it was suggested that the Defendant never approached the Plaintiff to buy a lot of land he stated that the Defendant never did so.
- (ii) In paragraph 7 of his witness statement the Plaintiff stated that the Defendant and Sam Badree would graze their bison on the larger parcel of land. In cross-examination he denied that this ever happened.
- (iii) In paragraph 3 of his witness statement the Plaintiff stated that Sam Badree owned a parcel of land comprising one acre and twenty-nine perches. In cross-examination he denied this and alleged that Sam Badree only owned one lot or a house spot of land and not as much as one acre of land.
- (iv) In paragraph 10 of his witness statement the Plaintiff stated that he had given one Jattan Badree permission to occupy one lot of the larger parcel of land and that Jattan Badree built a house there. In cross-examination he was shown this statement and he stated that he could not recall having said that.
- (v) In cross-examination the Plaintiff looked at a survey plan by one Harvey Ramrekha, a surveyor he had hired. On that plan was an area of 0.4774

hectares. The Plaintiff said that there were no houses in that area yet soon after, he admitted that there were in fact houses there.

- (vi) The 1964 Deed through which the Plaintiff claims title to the larger parcel of land states that the parcel of land comprises three acres and twenty-five perches. In cross-examination the Plaintiff stated that he never owned three acres and twenty-five perches of land.

Apart from these inconsistencies the Plaintiff put forward a case that he had given Jattan Badree a portion of land because Jattan Badree was his boss and threatened to fire him if he did not do so. This story did not seem plausible especially since the Plaintiff was a man who possessed several acres of land, harvested canes and hired workers. It seems odd that he could be bullied into parting with his land.

These several inconsistencies and the strange story that the Plaintiff propounded lead me to conclude that the Plaintiff was an unreliable witness.

*The Plaintiff's witnesses were unhelpful:*

7. The Plaintiff's first witness, one Sultan Khan, supported the Plaintiff's case. But he was an employee of the Plaintiff. Cross-examination of Mr. Sultan Khan revealed that his knowledge of the larger parcel of land was limited. It seems that he knew this land by going to pick mangoes there. While he purported to confirm that the Plaintiff occupied the land, he eventually admitted at the end of cross-examination that he did not know who occupied the land "where the mango trees were." As the later evidence would show, these mango trees were almost to the centre of the larger parcel of land. He also admitted

that several persons other than the Plaintiff occupied the land in question. I find that he was not an independent witness and in any event his knowledge of the larger parcel was limited

8. The second witness for the Plaintiff was Harvey Ramrekha, a licenced Surveyor. He had prepared a survey plan for the larger parcel which comprised three acres and twenty-five perches. In cross-examination he admitted that the plan he prepared did not show the areas in dispute between the parties. The plan was prepared to show what a 1/3 share of the larger parcel of land “would look like”. This 1/3 share was the Plaintiff’s entitlement as per his 1964 Deed. The plan was prepared as a “preliminary plan for discussion because in any case, Mr. Terry Badree’s house was within the Plaintiff’s 1/3 share.”

*The Defendant and his witnesses were more credible:*

9. The Defendant’s evidence remained unshaken by cross-examination. Further he was not questioned on several important areas of dispute such as:

- (i) The demarcation of the Western boundary of the lands occupied by Sam Badree by an earthen drain. This earthen drain is within the Plaintiff’s larger parcel of land. The Defendant alleged that it was used as the boundary with the Plaintiff’s land. The drain puts the disputed parcel well within the boundaries occupied by the Defendant and Sam Badree.
- (ii) The maintenance of a dirt road by the Defendant and Sam Badree. This dirt road was used to mark the southern boundary of the land occupied by

the Defendant and Sam Badree. This dirt road is also partly within the Plaintiff's larger parcel of land.

- (iii) The allegation that the Defendant and his family reaped mangoes from trees in the centre of the larger parcel of land.
- (iv) The Defendant's cousin maintained a duck pen on the northern area of the larger parcel for over 35 years.

These acts of possession and ownership of this land remained unchallenged.

10. The Defendant's first witness was his grandfather Sam Badree. Sam Badree gave incorrect dates about a prior court action between the Plaintiff and himself. According to Sam Badree, this court action was in 1967 when he was receiving a pension. But in 1967 Sam Badree was only 37 or 38 years old. Apart from this, Sam Badree's evidence remained unshaken by cross-examination. Also, Sam Badree was not cross-examined on major areas of dispute such as the earthen drain mentioned above. Sam Badree alleged that he constructed this drain as the boundary between the Plaintiff's land and his land after a "panchayat" and with the agreement of the Plaintiff. Even though the Plaintiff questioned the holding of the "Panchayat", the evidence as to the construction of the earthen drain as the boundary between Sam Badree and the Plaintiff remained unchallenged.

11. The second witness for the Defendant was Anand Roopchand, a licenced surveyor. He had prepared a survey plan of the larger parcel of land. His plan showed the occupation of the larger parcel. It showed the position of items on the land such as

houses, fences, mango trees, a duck pen, roads and the earthen drain. It was very helpful in resolving the dispute between the parties. So, for instance, it identified features such as the earthen drain and the dirt road which the parties referred to in their evidence as being boundary areas. It also identified the mango trees which again was a feature referred to by the parties.

*Findings of fact:*

12. On a balance of probabilities, I prefer the evidence of the Defendant and his witnesses to the evidence of the Plaintiff and his witnesses. I find as a fact that the Defendant and Sam Badree have been in continuous adverse possession of the disputed parcel of land since at least some time in 1969 when Sam Badree dug the earthen drain. Sam Badree and the Defendant used a significant portion of the larger parcel of land for planting and reaping cane and other short crops, rearing animals and building houses. The Defendant and Sam Badree had the requisite intention to possess and the factual possession of a significant portion of the larger parcel. The disputed parcel is within the parameters of the larger parcel that the Defendant and Sam Badree occupied. The Defendant and Sam Badree necessarily also had the factual possession of and the intention to possess the disputed parcel where the Defendant is now building his house (see Generally Pye v Graham [2002] 3WLR 221 P.C. at pages 234 E – 235A). The Defendant and Sam Badree extinguished the legal or the possessory title of the Plaintiff

to the disputed parcel of land at least 16 years after 1969 viz from since 1985 (see sections 3 and 22 of the Real Property Limitation Act Ch 56:03).

Therefore the Defendant is entitled to continue building his house on the plot of land he is now using. However, since this plot is not well defined in terms of area, I would only grant this Defendant a declaration of his entitlement to the area of land where his house is being constructed. Sam Badree is not a party to this action, so I do not grant him relief with respect to the larger parcel of land. However, this judgment should serve as the basis for the resolution of any future dispute between the Plaintiff (or his successors in title) and Sam Badree (or his successors in title).

**THE ORDER:**

12. I dismiss the Plaintiff's claim. On the Counterclaim, I grant a declaration that the Defendant is entitled to build his house on the spot of land on which he began construction in July 2005.

I order the Plaintiff to pay the Defendant's costs of the Claim and the Counterclaim to be taxed in default of agreement.

Dated this 20<sup>th</sup> day of May 2009

**Mr. Justice G. Smith**  
**JUDGE**