Republic of Trinidad and Tobago

IN THE HIGH COURT OF JUSTICE

Claim No. CV2012-00456

Between

VIO RAMPERSAD
(by her lawful Attorney Dipnarine Rampersad through a Power of Attorney dated 2 March 2007 and registered on 7 March 2007)

Claimant

and

GUNNESS RAMJATTAN

Defendant

Before the Honourable Mr. Justice James C. Aboud

Dated: 21 February, 2019

Representation:

- Tishana Abdool instructed by Andre Sinanan for the claimant
- Mohanie Maharaj – Mohan for the defendant

ORAL JUDGMENT

[1] I will deliver an oral judgment, reserving the right to correct my language and syntax should it become necessary to reduce it into writing.

[2]This matter has a long and checkered history. It was filed in 2012. Numerous adjournments were granted for the purposes of holding discussions to have it

resolved. The attempts failed. A key factor in the delay involved the participation of an officer of the former Caroni (1975) Limited ('Caroni'). Eventually the court issued trial directions on 12 May 2016. The defendant told the court on that day that it would be calling a representative from Caroni. No witness from Caroni was ever called to testify.

[3]In a nutshell, the case revolves around this issue: who, as between the claimant and the defendant is entitled to the property identified in the Statement of Case? It is a parcel of land legally owned by Caroni which is the subject of a tenancy agreement created in 1990 between Caroni of the one part and Sarran Rampersad ('Sarran') and Vio Rampersad of the other part. They were siblings. A joint tenancy was created in the tenancy agreement.

[4]Sarran died in 2007. At the time of his death Gunness Ramjattan ('Gunness'), the defendant, was living with him at the house. He had been taking care of Sarran who was very ill. Vio Rampersad being the surviving joint tenant, according to the pleadings and the witness statements, took certain steps to obtain possession and Gunness resisted. He said that the joint tenancy had been severed. The reasons why Gunness says that the tenancy was severed will be examined in a short while.

[5] There were some delays in filing the witness statements and a trial date was set. On the first day of the trial, 21 March 2017, the parties informed the court that in their view the opinion of Caroni or its successor entity should be sought as to the facts within its possession concerning a certain document called a House Lot Transfer Application Form dated 6 June 2005. This is the document upon which the argument of severance is based. It was signed some two years before Sarran died.

[6] This is what the document says:

"I Sarran Rampersad wish to transfer the tenancy which I now hold on Lot # 19/18/049 Cedar Hill to Gunness Ramjattan." The document is purportedly signed by Sarran. His ID card is given. The date of the document is 6 June 2005 and someone has signed as a witness to Sarran's signature. That is what Part A of the Caroni House Lot Transfer Application Form says.

[7]Part B is supposed to be completed by applicant for the Lot. It says this to Caroni: "I wish to apply for the transfer of Lot # 19/18/049 Cedar Hill". Next to the field 'Name of Applicant' Gunness purportedly wrote his name. He gave his current address as Burridge #1, Prince's Town, and he gave his age as 43. He signed it. The person who witnessed Sarran's signature also witnessed Gunness's signature. Part B concludes with these words: ". . . and I am forwarding a tenancy agreement form completed by me (this will be completed by the company only if it agrees to your application)".

[8]There is no evidence before the court of Gunness having completed or signed any tenancy agreement form or of delivering one to Caroni. If he completed and delivered the tenancy agreement form, he hasn't said so in his evidence. Secondly, even if he had done so there is no evidence from Caroni that they have "completed" the Tenancy Agreement Application Form that he was supposed to have submitted. The completion of which Caroni speaks must refer to their execution of the agreement. There is no evidence that Caroni completed the agreement because there is no evidence that they agreed to the application, as required in Part B of the Application. This leads me to Part C and D of the House Lot Transfer Application.

[9] Part C says this: “To be completed by Section Area Cultivation Manger”.

- I approve of the proposed transfer.
- I do not approve of the proposed transfer because . . . “.

There are several dotted lines and then a space provided for a date. Scrolled right across all the dotted lines for the reasons for non-approval and for the date is what looks like an “R”. It is a squiggly line—something that might masquerade for an eccentric signature (if one were generous) or a ballpoint pen malfunction (if one were not). This apparent signature is in the area of Part C that is supposed to contain the reasons for non-approval. As far as I am concerned Part C does not assist the alleged or purported transferee, Gunness, who is attempting to establish that the joint tenancy between Vio Ramparsad and Sarran was severed by Sarran’s actions in making the application.

[10] Part D contains three rows and next to each item there’s a dotted line. The first row is “application approved” and after those words, a dotted line. The second row is “application refused” and then another dotted line. The third row is “date” and another dotted line. Now neither “application approved” nor “application refused” has been ticked off but next to the line “application approved” there is something that resembles someone’s signature. Next to the handwriting the words “20 July 2007” are written. The seal or stamp of Caroni does not appear next to the words “application refused” or “application approved”. The court is uncertain as to whether or not what appears to be a signature signifies that the application has been approved or refused because there’s no tick or circle around either of the two alternatives that could amount to a selection.

[11] I return now to the events of the trial on 21 March 2017. Basically, the parties submitted to the court and, in fact, the court also was in agreement, that evidence from Caroni or its successor was needed to explain this document. There were also certain receipts for rent issued by Caroni that needed clarification. A further

trial direction was given that the opinion of Caroni or its successor be sought in relation to the House Lot Transfer Application Form and several rent receipts issued out of the receipt book of Caroni. These referred to the parcel of land that had been tenanted to the joint tenants, but the rent is shown in these several rent receipts as having been paid by Gunness, the defendant.

[12] The court and the parties were trying to determine on the basis of the Application Form and the rent receipts who did Caroni recognize as its tenant. It is either one or two persons. Pursuant to the court's interest in the resolution of those questions, directions were given for filing on or before 26 June, 2017 an agreed statement of facts and an agreed statement of legal issues. A direction was also given in these terms:

"The parties shall write to the chairman or other responsible officer of the successor entity of Caroni 1975 Limited to enquire whether any of the facts surrounding

a. The House Lot Transfer Application dated 6 June 2005
b. The rents receipts produced by the defendant (or such other matters as the attorney shall jointly identify) are known to the successor entity. The response of the successor entity may be included in the agreed statement of facts."

[13] I then fixed a pre-trial review for 6 July 2017. On that date it was discovered that there had been no response from Caroni or the successor entity. The Commissioner of State Lands was identified as the successor of Caroni. I think that it would have been in Gunness's best interests to get that information. If Caroni had records certifying that it had approved the transfer application or had treated Sarran as the *de jure* tenant, it would have been helpful in determining if the joint tenancy was severed. At that time, bearing in mind the issues in the matter and

the inability to obtain any response from Caroni, I extended the time for the filing of the agreed statement of facts and law and I substituted the Commissioner of State Lands for Caroni 1975 Limited as a person whose opinion should be included in the agreed statement of facts. I also recorded the parties' agreement to be bound by the opinion of the Commissioner of State Lands and the pre-trial review was given a long adjournment date of 19 April 2018 to accommodate the expected administrative delays in obtaining the information. At that hearing it was discovered yet again that the Commissioner of State Lands had not responded and was not forthcoming. The court then identified a preliminary issue, bearing in mind the state of the evidence as it had been contained in the witness statements and as it had been contained on the pleaded cases.

[14] The question was whether the joint tenancy of Saran Rampersad and Vio Rampersad was severed by virtue of the House Lot Transfer Application Form dated 6 June 2005 thereby transferring Sarran's interest to the defendant and effecting a severance. Put more precisely, the preliminary question before the court was whether on the basis that this document (and I will include the receipts that have been issued as having been paid by the defendant), it can be said that the joint tenancy was severed. I have come to the conclusion that on the basis of the House Lot Transfer Application Form and of the several receipts issued by Caroni to the person who paid rent, namely the defendant Gunness Ramjattan, that it does not effect a severance of the title and that in fact by the right of survivorship the interest of Sarran passed on his death to Vio Rampersad now represented by her brother Dipnarine Rampersad.

[15] The clearest explanation for how the severance of a joint tenancy can be effected is contained in the judgment of Vice-Chancellor Sir W. Page Wood in the case of *Williams v Hensman* (1861) 70 ER 862 at p 867:

> A joint tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the *jus accrescendi*. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund- losing, of course, at the same time, the right of survivorship. Secondly, a joint tenancy may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interest of all were mutually treated as constituting a tenancy in common.

[16] This can be put into more modern language. Therefore, by a disposition of the interest of one joint tenant, the joint tenancy can be severed. Additionally, both parties may get together and agree to separate their joint tenancy. For example, there was a case called *Re Drapers Conveyance* that I recall from my student days in which the both parties jointly hired a surveyor and partitioned the land. I can get the citation if needed. There are many other examples of mutual agreement. The mutual agreement argument does not apply to this case. Thirdly, a severance can occur by a course of dealings. This is where the defendant pitched his case in the counterclaim through Ms Maharaj-Mohan's advocacy. According to Ms Maharaj-Mohan the court needed to examine the factual matrix. She submitted that an examination of the facts would reveal the requisite course of dealings. By these means, she said, the interests of the two co-owners were mutually treated as constituting a tenancy in common and not a joint tenancy. Ms. Maharaj-Mohan did not base her case on the first method of severance, that is, severance by disposition. I will deal with the third method first, that is where I severance occurs by a course of dealings.

[17] It is clear to me that if a court is looking for evidence of a course of dealings it must be evidence of dealings between the co-owners *inter se* and not between one co-owner and a third party. This was recognized by Mr Justice Roger Hamel-Smith JA sitting in the Court of Appeal in *Rosie Gangoo v Jassodia Gangoo and Ors.,* ((unreported) Civil Appeal 131 of 1999, delivered on 23 September 2002). The Honourable judge expressed the view of Sir John Pennycuick in the case of *Burgess v Rawnsley* [1975] 3 All ER 142. He put it this way:

> "A course of dealing may include abortive negotiations between the joint tenants for a re-arrangement of their interests, if that course of dealing, even though it does not lead to a concluded agreement, indicates a common intention on the part of the joint tenants that the joint tenancy should be regarded as severed".

[18] The key take-away from that passage is the requirement of a common intention. It was said there that the course of dealings argument—the third category in *Hensman*—requires mutual agreement or common intention. Now, at p 7 of her written submissions, Ms Maharaj-Mohan makes her submission in favour of the common intention element in a course of dealings argument. She says that severance occurred in this way: "The evidence gleaned as stated herein by the deceased Sarran Rampersad gives rise to an intention of severance that was recognized by Vio Rampersad the other joint tenant. The deceased Sarran Rampersad lived alone on the said premises and all times dealt with the interest as being separate and apart. Sarran Rampersad paid all rents and other outgoings pertaining to the subject premises."

[19] From that last sentence I gather Ms Maharaj-Mohan to be saying that by the bare fact of Sarran living alone or exclusively on the premises he should be treated as

having "separated" or severed the interests or, in any event, with Vio's approval or acquiescence of treating those interests as having been severed. Secondly, she is suggesting that by him paying the rents and other outgoings the court should regard him as treating the other co-owner's interest has having been extinguished by his actions. An argument like this is more akin to a claim for adverse possession. By this submission I think she's obliquely suggesting that the title of the other co-owner was extinguished. Of course, the extinguishment of a title is an event that is very fact-sensitive and the legal and pleading requirements are rigorous.

[20] Thirdly, she says that the application form and the several receipts issued by Caroni suggest a course of dealings sufficient to establish a severance. I disagree with this proposition. I have already criticized the evidential weight and significance of the application form and the receipts. I can add the following criticism. This submission disregards the requirement of a common intention. To amount to a course of dealings Vio Rampersad must be involved in it. There must either be evidence of her participation in an enterprise that had the mutually agreed outcome of a severance, or of her awareness of the dislodgment of her legal rights by that state of affairs and her acquiescence in the face of it. Sarran's payment of the bills does not, by itself, mean that Vio's interest has been extinguished or severed. The fact that he's enjoying the property does not mean that Vio's legal interest magically evaporates. Joint tenants may own property in which one owner, by tacit agreement, resides on the property and the other does not. A title cannot be severed by those facts alone. The factual intricacies of the consensus or lack of consensus between them would need to be spelt out in detail. This is not to say that one joint tenant cannot dispossess another. I recently dealt with that subject in the case of *Briggs v Briggs* Claim No. CV2014-00545. The judgment is on appeal but not in relation to the statement of the law. There are evidential requirements for such a dispossession to take place. This case is not such a case. In any event, it is not pleaded as a case of adverse possession.

[21] In my respectful view the third mechanism of severance identified in the *Hensman* case is not applicable to this case. There is no evidence of a consensus *ad idem* between the two owners to suggest a course of dealings.

[22] I now turn my attention to the first mechanism of a severance. According to Vice-Chancellor Sir W. Page Wood an act of any one of the persons interested, operating upon his own share, may create a severance as to that share. The right of each joint tenant is a right by survivorship to the title of the other only if the interest was not severed. Each one is at liberty to dispose of their interest in such manner as to dismantle the right of survivorship. The first mechanism of severance is where one joint tenant by effective means transfers a title from his or herself to someone else and disposes of the interest. It seems to me that the transfer might even be effective if a co-owner, as a joint tenant, transferred to himself, as tenant in common, but I make that statement only in passing. In the case before me the application form certainly does not amount to a disposition of an interest. By its title alone it is an application and its efficacy depends upon consequential events taking place and approvals being granted.

[23] Firstly, the person to whom the co-owned interest is being transferred needs to forward a tenancy agreement that he has completed and signed, and Caroni will only sign that agreement if it agrees with the application. That is what is specified on the application form. There is no evidence that Gunness Ramjattan supplied such an agreement to Caroni. Secondly, there is no evidence whatsoever of Caroni having agreed with the application or signed an agreement. The first method of severance would have been satisfied if Caroni had signed a tenancy agreement naming Gunness as the co-owner.

[24] Part C and Part D of the application form does not convert the document into an approval. What is required, to use the language of Vice-Chancellor Sir W. Page

Wood is an actual disposition of an interest. I do not accept that the squiggly line in Part C amounted to an approval. In Part B there is the signature of some unknown person by the name of "Lee" or "Hugh" that appears to be roughly in the same area as the words "application approved". On the face of the document, there is a probability that this bare signature, appearing without Caroni's seal, signifies an approval. But the court is more interested in certainties than it is in probabilities. There is no gainsaying the fact that the document is an application. It is, in my opinion, an application for a disposition and not an actual disposition.

[25] On the basis of the evidence that has been assembled, and bearing in mind that the preliminary question was agreed as determinative of the matter, and having regard to the court's case management powers, I answer questions posed in this way: the joint tenancy between Sarran Rampersad and Vio Rampersad was not severed.

[26] I will now hear the attorneys on the question of costs.

James Christopher Aboud
Judge