REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2010 – 03327

BETWEEN

GLENROY HARPER

Claimant

AND

AGNES HARPER also called RUBINA GRENAWAY

And

MIRIAM THOMAS

Defendants

Appearances:

For the Claimant: **Mr C Selvon**

For the Defendants: **Ms M Solomon**

DECISION

[1] **BACKGROUND**

Mr Donald Wilkinson Harper became seised and possessed of the fee simple estate and interest in a parcel of land situate in Manzanilla in the south eastern part of Trinidad. This land is subject to the provisions of the **REAL PROPERTY ACT** which means that its title is registered and indefeasible. Mr Harper was not the sole owner of this land. In fact he came into this land on the death of his wife Mildred Harper. Mildred, during her life held this land jointly with her sister Agnes, (AH) the First Claimant. They held the

land as tenants in common. The shares in the property remain undivided as the land has not been partitioned.

[2] By his last will and testament, Mr Harper devised his share in the property to his nine children. Glenroy Harper, the Claimant was one of the nine children. There is no evidence that this will was probated or that, that a Memorandum of Assent has been executed.

[3] There was a wooden house on the land which GH says he had occupied for in excess of twenty years. He does not state if he has or how he has acquired any interest in the house save that he claimed that he has lived in that house for the majority of his life.

[4] Sometime around 19th June 2010, GH left the premises and journeyed to the northern town of San Juan to visit with his brother. Whilst there he learnt that the wooden structure was being demolished. He discovered that AH together with two other persons were responsible for the demolition. He confronted Miriam Thomas (MT) the Second Defendant on the issue. I note that he did not state that MT was involved in the demolition of the house, but that it was his aunt, AH and two others.

[5] These are then the relevant facts that prompted GH to approach this court to obtain the following relief:

1. To declare that he is the beneficiary under the will of his late father – a fact readily ascertainable and uncontested and to my mind unsuitable for declaratory relief;
2. To declare that he is the owner of "that Chattel House" being a "wooden dwelling house standing on wooden pillars" situate on the land – although there is no pleading that the house was indeed a chattel house in the body of the pleading. I should indicate that I shall address the implications of this later in the decision;
3. Damages in the sum of Forty Thousand Dollars for the destruction of the dwelling house;

4. Damages for trespass;

5. Injunctive relief.

[6] When the matter came for case management, I posed the following issues:

1. Does the Claimant have the locus standi to bring this action?

2. If so, does the statement of case disclose a cause of action?

[7] **GROUNDS FOR THE CLAIM AND LOCUS STANDI**

This as stated above is a matter for declaratory relief as to the ownership of a chattel house, damages for trespass and injunctive relief. Given the fact situation as pleaded by Mr Selvon, both Ms Solomon and this court proceeded on the notion that GH was suing as a beneficiary in waiting. Ms Solomon produced a very commendable analysis of this issue and concluded that as a beneficiary in waiting, or as a beneficiary of an unprobated will, GH did not have locus standi to bring or maintain this action.

[8] Not so, says Mr Selvon. GH did not base his claim as a "devisee/beneficiary under the last will and testament of his father Donald Wilkinson Harper". *Mea culpa.* In fact, GH "bases his claim on his occupation and/or possession of the subject property". GH's claim "is one in which he claims to have a better right to occupy and/or possess the subject property that the Defendant (he does not say which one) at the time of the demolition where the Defendant herself has not shown any better Title than the Claimant except her own Claim of possession of the subject property". Further Mr Selvon reiterates that GH "makes not claim of adverse possession but by necessity pleads the factual backdrop of his occupation/possession of the subject property in proof of his primary claim of trespass against the Defendant".

[9] There are several comments that I am constrained to make on this submission, not the least that it is to me is an alarming state of affairs. First, Mr Selvon does not identify which Defendant he is referring to in the statement of his issues. I do not believe that he could be referring to AH, since she is acknowledged as a co-owner of the undivided

share of the property for which she and his deceased father shared. She is alive and has not divested her share, title or interest. GH's father is dead and for all intents and purposes, the legal title to the property still vests in the executor of his will. In that respect, Mr Selvon is right to say that GH's claim cannot be based as a "devisee/beneficiary" under this father's will. GH cannot sue his aunt in that capacity.

[10] Mr Selvon stated that the claim is not based in adverse possession either. I agree with that too. Who is GH holding adversely to? That has not been pleaded. If he is a beneficiary in waiting, can he hold adverse to his future interest? The answer obviously is no. Can he maintain an action in trespass? The answer is a resounding no. Thus, if the claim is not in adverse possession, then the plot thickens.

[11] Mr Selvon states that GH's claim is based in "occupation and/or possession of the subject property… for in excess of twenty years". What is the legal principle upon which this is based? That has not been identified to us. Is that Mr Selvon is claiming that GH had rights as an occupier of property? What is the nature of those rights? Isn't it that those rights may be good as against persons similarly circumstanced? Is AH similarly circumstanced? The answer to that is obviously no. AH is a legal co owner of the land. GH is not. The law is clear. Even if GH acknowledges that he is a beneficiary under his father's will, a beneficiary cannot make a claim in law or equity. That however will not interest GH as it has been asserted he is not suing in that capacity.

[12] Further how is this claim in "occupation and/or possession" to get off the ground? What are the facts to give rise to this right? Is it the mere fact of occupation? Was there an intention to displace the true owner? Where is the factual basis of the requirements of *nec vie, nec clam, nec precario*? The claim for ownership/possession cannot exist in a vacuum.

[13] Mr Selvon's case fell apart in this last issue. He sought to draw a distinction between the land and the house. He describes the house as a "wooden" house in the pleadings and in the prayer asks for a declaration that GH is the owner of a "Chattel house being a wooden dwelling house". The term "chattel house" is a term of art. It has a technical

meaning. I would commend the learning in the seminal judgment of Wooding CJ in **MITCHELL v COWIE 7 W.I.R. 118**. Suffice it to say that nowhere is the relationship of landlord and tenant pleaded. This just would not succeed; neither the prayer nor the premise upon which this entire action is built.

[14] As to why MT was joined in this action, remains a mystery to me.

[15] Both Ms Solomon and this court are comforted that Mr Selvon was moved to sate all the facts which he thought were relevant to his client's case, even if the reason for so doing was that it comprised "the factual backdrop of his occupation/possession of the subject property in proof of his primary claim of trespass against the Defendant …". I view this in another way. I see it as fulfilling the requirements of equity, law and procedure especially with regard to GH's claim for injunctive relief.

[16] I do not see that a cause of action exists on the statement of facts filed by GH. In any event, from the facts GH has not proved to me that he has the locus to sustain this case.

[17] But that is not the end. I should advise AH, MT and GH that they should cease and desist from harassing each other, if indeed they have been so doing and hope that I may be able to extract an undertaking from all parties to that effect. From my reading of the situation, since the property is owned in undivided shares, it may be that neither AH nor the heirs of Donald, (GH being one of them) have a distinct share and interest or for that matter a greater claim to the property, which included the wooden house on the land.

[18] I commend that the parties sit and work out this matter. Attorneys should advise their clients on the steps that ought to be taken to regularize this title and ownership.

[19] Since this is a family matter, I am disposed to order that each party bear his own costs.

ORDER:

1. **Pursuant to CPR Part 26.2 (1) (c) the Statement of Case filed on August 10, 2010 be and is hereby stuck out as disclosing no grounds for bringing the claim.**
2. **That each party bears his own costs.**

Dated this 26th day of May 2011.

/S/ CHARMAINE PEMBERTON
HIGH COURT JUDGE