

REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
Sub-Registry, Tobago**

Claim No. **CV2008-02858**

BETWEEN

DR. SUGANDAYE RAMKISSOON

Claimant

AND

ANGELA RICHARDS

Defendant

BEFORE THE **HONOURABLE MADAM JUSTICE DEAN-ARMORER**

Appearances:

Mr. Haresh Ramnath, attorney-at-law for the Claimant

Mr. Lennox Phillips Junior, attorney-at-law for the Defendant

REASONS

INTRODUCTION

1. When the Claimant instituted these proceedings in 2008, she did so as the holder of the paper title of the subject lands¹. She sought a declaration as to her ownership of the land and an order that the Defendant do deliver up vacant possession.

¹ "ALL and Singular that certain parcel of land comprising 4 lots (20,000 square feet more or less) (hereinafter called "the said lands"), being part of a larger parcel of land described in the Schedule to Deed dated the 29th April, 1952, and registered as No. 3692 of 1952, and bounded on the North by lands of Caroline Trim and on the West by a Road

2. The Defendant alleged that she occupied the land with the permission of Ms. Pearl George, who had enjoyed continuous exclusive possession since 1972.
3. After the Court heard evidence and gave directions for the filing of written submissions, the Defendant produced a deed, by which the Claimant had disposed of the land. On February 25, 2015, I dismissed the Claim. My reasons for so doing are set out below.

PROCEDURAL HISTORY

4. On the 24th July, 2008, the Claimant instituted these proceedings seeking the following relief:

“ i. A Declaration that the Claimant is the legal owner of ALL and Singular that certain parcel of land comprising 4 lots (20,000 square feet more or less) (hereinafter called “the said lands”), being part of a larger parcel of land described in the Schedule to Deed dated the 29th April, 1952, and registered as No. 3692 of 1952, and bounded on the North by lands of Caroline Trim and on the West by a Road Reserve, and which said parcel of land is shown more particularly on the plan coloured pink and marked “A”, annexed to Deed No. 8918 of 1971.

ii. An order that the Defendant do forthwith demolish the building thereon and deliver up possession of same to the Claimant.

iii. An Order that the Defendant do pay to the Claimant mesne profits.

iv. Costs

v. Such further and other reliefs.”

5. On the March 31, 2009, the Defendant filed her defence, by which she alleged that she obtained a licence to occupy the property from Pearl George, who had been in continuous undisturbed possession since 1972.

Reserve, and which said parcel of land is shown more particularly on the plan coloured pink and marked “A”, annexed to Deed No. 8918 of 1971.”

6. Parties filed and exchanged witness statements². The Claimant was successful in her application to read and use of a hearsay notice annexing her evidence, on the ground that she was ill and housebound.
7. The trial was heard on the July 3, 2013 and I directed that the parties file and serve written submissions. The Defendant filed her written submissions on September 09, 2013. The Claimant responded by written submissions on October 22, 2013. The Defendant was entitled to file written submissions in Reply on November 28, 2013. Before availing themselves of the opportunity to file Submissions in Reply, learned attorneys-at-law for the Defendant, filed a Notice of Application on October 23, 2013, seeking the Court's permission to re-open the trial by filing and serving a supplemental witness statement. The Defendant also requested that the supplemental witness statement be admitted into evidence and that written submissions be filed in respect of the application. The purpose of the application was to adduce a Deed of Gift dated the November 8, 2011 in relation to the subject property which purported to transfer ownership away from the Claimant, thus divesting her of ownership of the subject property.
8. After considering the filed written submissions³, on February 6, 2014, I ruled in favour of the Defendant, granting permission to the Defendant to file and serve a supplemental witness statement, for the sole purpose of placing before the Court, a Deed of Gift dated November 5, 2011, from the Claimant to Naresh Deokaran and a deed dated May 29, 2013 transferring ownership of the property from Naresh Deokaran to Sheron Sukhdeo. I also granted permission to the Claimant to file an opposing supplemental witness statement.
9. There was no appeal in respect of this ruling.
10. On the February 10, 2014, the Supplemental Witness Statement of Angela Richards was filed and on the February 24, 2014, a Witness statement on behalf of the Claimant was filed

² Witness Statement of Dr. Sugandaye Ramkissoon was filed on the 25th September, 2009. A witness statement of Devika Gyan was also filed on behalf of the Claimant. Four witness statements were filed, on behalf of the Defendant, namely Lucille George Percy, Pearl George, Julie Jennie Nelson and Angela Richards were filed on the 30th September 2009.

³ Written submissions in support of on the Notice of Application were filed by the claimant on November 19, 2013. The Defendant, filed Written Submissions in opposition on November, 2013.

in relation to the Deed of Gift. A hearsay notice was also filed, which deemed the Claimant unfit to attend court due to bodily complications.

11. The re-opened trial was fixed for July 15, 2015. Prior to that date, however, the Claimant sought a stay of proceedings pending the hearing a related High Court Action CV 2015-0015 which also concerned the subject premises. In support of the application was the affidavit of Sabita Harry, who held power of attorney on behalf of the Claimant.
12. On the May 28, 2015 the court ordered the Defendant to file an affidavit in opposition on or before the June 12, 2015. Parties were directed to file and exchange Written Submissions in support of and in opposition to the application for the Stay on or before the July 3, 2015⁴. On July 15, 2015, I heard cross-examination of the witnesses, who had signed supplemental witness statements, on the understanding that the issue of the stay would be considered at the end of the cross-examination.

FACTS

13. In the 1960s and early 1970s, the Claimant and her husband, Dr. Arthur Mike, lived in San Fernando. They visited Tobago frequently and befriended Mr. Samuel Chapman, who informed them that the subject lands were being sold by Caroline Trim. On July 21, 1971, the couple purchased the subject lands⁵. Three years later, in 1974, the couple were divorced. However, the Claimant was allowed to purchase Dr. Mike's interest in the subject property and thus by a Deed dated the March 26, 1974, became the sole owner of the subject property⁶.
14. Between 1971 and 1974, the Claimant and her estranged husband visited the land frequently and on each occasion found no building on the land and only one fence on the Eastern boundary.

⁴ The Claimant filed written submissions on the stay of proceedings on the 23rd June, 2015 and the defendant filed on the 3rd July, 2015. Thereafter, submissions were filed on the 28th August, 2015 by the Defendant

⁵ The Deed dated July 21, 1971 was exhibited as "S.R.1" to the Affidavit of Dr. Sugandaye Ramkissoon filed on the 24th July, 2008

⁶ The Deed dated March 26, 1974, from Dr. Arthur Mike to Dr. Sugandaye Ramkissoon was exhibited as "S.R.2' to the aforesaid affidavit.

15. In the years following the divorce, Mr. Chapman acted as an overseer of the land of behalf of the Claimant. The Claimant alleged that Mr. Chapman had given permission to Pearl George to plan on the land. Mr. Chapman became bed ridden and died in 1986.
16. In 2007, Devika Gyan, the Claimant's niece, visited the land at the Claimant's request. Ms. Gyan found a car rental business in operation on the land. When the Claimant herself visited in January, 2008, the car rental business was still in operation.
17. The car rental business was owned by the Defendant who testified that she had obtained permission from Pearl George, who claimed that she had been in continuous and undisturbed possession since 1972. The allegation of Pearl George was supported by her daughter, Lucille George Percy and Julie Jennie Nelson⁷.
18. Witnesses for the Defendant all testified in their Witness Statements that Ms. George occupied the land since 1972 and that she cultivated it with peas, potatoes, tomatoes and corn. They testified that she had exclusive, uninterrupted possession of the land until 2005, when she gave permission to the Defendant to occupy the land.
19. Under cross-examination, however, differences emerged in their testimony. Under cross-examination, Ms. George indicated that she unaware of the boundaries of the land; never did a survey, and never paid land and building taxes.
20. Ms. George also testified under cross-examination that she only planted in the rainy season, and that her grandchildren planted in the dry season. Learned attorney-at-law Mr. Ramnath asked Ms. George how the land was irrigated in the dry season. Ms. George stated that her grandchildren brought water in their cars.
21. The Defendant did not however call any of the grandchildren of Ms. George to testify. It was not clear whether the grandchildren planted as children or as adults or whether they did so at the direction of Ms. George or of their own accord, with her permission or without it.
22. On the evidence of the witnesses for the Defendant, it seemed improbable that Ms. George had occupied the land continuously throughout the year. She planted it in the rainy season and it was left vacant and available to be used by others in the dry season.

⁷ Witness Statement of Lucille George Percy and Julie Jennie Nelson were filed on September 30, 2009.

23. By Deed of Gift dated November 8, 2011, the Claimant transferred the subject lands to one Naresh Deokaran. By Deed of Conveyance dated May 29th, 2013, Naresh Deokaran sold the property to Sheron Sukhdeo for \$1.2 million dollars.
24. By her witness statement dated February 24, 2014, the Claimant, Dr. Ramkissoon, denied all knowledge of the donee, Naresh Deokaran. The Claimant denied that she attended the offices of Mervyn Mitchell for the purpose of executing the deed. The Claimant did not attend Court to be cross-examined, but produced a hearsay notice on the ground of her being housebound by virtue of her ill health.

DISCUSSION

25. The Claimant, Dr. Sugandaye Ramkissoon instituted proceedings in 2008 seeking a declaration of her ownership of the subject lands. In response, the Defendant mounted a defence of adverse possession, claiming that she had obtained a licence from Pearl George, who had been in continuous undisturbed possession for since 1972.
26. The single issue which arose, when the Claim progressed to trial, was whether Pearl George had been continuous, exclusive possession from 1972 to 2008, so as to extinguish the Claimant's title for the purpose of section 22 **Real Property Limitation Act Ch 56:03**.
27. Section 3 of the **Real Property Limitation Act**⁸ provides:

“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 to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then 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 to the person making or bringing the same.”
28. At the end of 16 years, the right of the title holder is extinguished. Section 22 provides:

⁸ Ch 56:03

“22. At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.”⁹

29. Throughout the years the Courts have given authoritative consideration to this area of law and the principles of adverse possession are well settled. In ***J.A. Pye (Oxford) Ltd. v Graham***¹⁰, their Lordships established that there are two limbs which must be satisfied, factual possession and an intention to possess¹¹.
30. The Defendant who relies on the Defence of adverse possession is required to prove both factual possession and an intention to exclude the world at large for a continuous period of 16 years. See ***Pye***¹².
31. I heard cross-examination of the Defendant’s witnesses, who asserted that Ms. George planted on the land in the rainy season and that her grandchildren planted in the dry season. Ms. George did not suggest that her grandchildren were planting on her behalf. By her own evidence she did not assert continuous possession for any one year.
32. It was my view that the Defendant could not and did not prove that Pearl George occupied the land for a continuous period of 16 years. The Defendants evidence established no more than a user by Ms. George of the land for the rainy season of each year.
33. Before the Court had an opportunity to deliver its judgment, the Defendant produced deeds which on their face were valid deeds. By the first deed, the Claimant gave a gift of the land to a person named Naresh Deokaran. The Claimant denied that she attended attorney-at-law, Mr. Mervyn Mitchell, for the purpose of executing the deed to Naresh Deokaran.

⁹ Real Property Limitation Act Ch 56:03a

¹⁰ *J.A. Pye (Oxford) Ltd. v Graham* [2002] UKHL 30

¹¹ *Pye* was reconciled within this jurisdiction by Justice of Appeal Mendonca, in the case *Grace Latimore Smith v. David Benjamin* Civil Appeals Nos. 67 and 68 of 2007 at paragraph 48 where his Lordship stated: “As was stated in *Pye*, and which I have already made mention, for there to be possession under the Limitation Act there must be the absence of consent of the paper title owner or where relevant his predecessor in title, factual, possession and an intention to possess”

¹² *J.A. Pye (Oxford) Ltd. v Graham* [2002] UKHL 30

34. In the light of the forgoing evidence, I considered the effect of the deeds and whether the Claimant had succeeded in proving that they were fraudulent.
35. Parties agreed on the maxim *omnia praesemuntur rite esse acta*¹³. Learned attorneys-at-law for the Defendant cited and relied on this statement from **Halsbury Laws of England**:
*“In accordance with the common law maxim that everything has been done according to due form, formal requisites to judicial, official or public acts, or to titles to property which are good in substance, will be presumed”*¹⁴
36. The Claimant countered with an allegation of fraud, but produced no evidence in support, aside from a bald denial. It is well accepted that allegations of fraud in civil matters cannot be proved merely on a balance of probabilities. Local cases which expound this principle include the decision of Stollmeyer, J (as he then was) in **Marilyn Lucky v. Maureen Elizabeth Thomas Vaillou**¹⁵. .
37. The principle was expounded by Rajnauth-Lee J (as she then was) in **Sonalal Ramroop v. Seeta Ganeais**¹⁶ and by this Court in **Devanand Beharry v. Ackban Hosein**¹⁷.
38. The Claimant failed to support her allegation with any other evidence. By her bald denial, she was unable to displace the presumption of regularity and unable to discharge the burden required to prove fraud.

The Stay

39. By Notice of Application filed on May 11, 2015, the Claimant applied for a stay of this Claim by of the Court’s inherent jurisdiction. The ground advanced by the Claimant was that she had filed proceedings against Naresh Deokaran and Sheron Sukhdeo¹⁸. The outcome of the new proceedings would affect the outcome of the instant claim. Should the Claimant be successful, in the new proceedings, she would be restored as the proper title holder and would have reclaimed her locus standi to prosecute the instant Claim.

¹³ Presumption of regularity

¹⁴ Halsburys Laws of England 2009 5th Edition Vol 11Page 839 Paragraph 1103

¹⁵ H.C.A. No. CV 1396 of 1996

¹⁶ CV2006-00075

¹⁷ CV.2008-3059

¹⁸ CV2015-0015

40. I found myself in agreement with learned attorney-at-law for the Claimant, that a successful claim in fraud against the named donee, Naresh Deokaran, would restore the Claimant as the proper title-holder. It was my view however, that a stay of proceedings was not necessary. In so far as the trial had been re-opened and new documentation had been produced, it was open to the Claimant to issue the necessary witness summonses for the attendance of the donee as well as and the attorney-at-law, who prepared the deed. It was also open to the Claimant to call a handwriting expert. These steps were not taken.
41. Accordingly, when Submissions were filed and judgment reserved, there was before the Court a valid deed, by which the Claimant had transferred her title to a third party. She no longer had an interest in the subject property and was not entitled to the relief which she sought. I therefore dismissed the Claim.

Date of delivery: November 16, 2018

Mira Dean-Armorer
Judge