

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2011-03720

BETWEEN

GANASE MATHURA
HARESH MATHURA

Claimants

AND

DOLLY RAGOONATH
DAVE RAGOONATH
STEVE RAGOONATH

Defendants

BEFORE THE HONOURABLE MADAM JUSTICE M. DEAN-ARMORER

APPEARANCES

Ms. Lauren Ramtahal and Ms Sasha Paula Singh, Attorneys-at-Law for Claimants

Mr Seenath Jairam S.C. instructed by Ms Alleyna Cheeseman, Attorneys-at Law for Defendants

REASONS

Introduction

1. The Claimants instituted these proceedings seeking possession of 18 square feet of land which formed part of a larger parcel of land comprising one acre, two roods and twenty three perches, at Macaulay Road, Claxton Bay.
2. The Defendants contended that they were entitled to the land by operation of the ***Real Property Act***¹ and in the alternative by reason of the doctrine of proprietary estoppel.

¹ The Real Property Act, Ch. 56:03

3. On the 18th August 2017 I gave judgement for the first defendant. My reasons for so doing, are set out below.

Procedural History

4. By their Claim Form and Statement of Case filed on the 28th September, 2011, the claimant sought the following items of relief:

- “(1) A declaration that the Claimants are entitled to possession of that piece or parcel of land known as 2¼ mile post Macaulay Road, Claxton Bay now occupied by the Defendants and measuring about 80 feet more or less in width and about 120 feet more or less in depth save and except for a portion thereof measuring 50 feet in width by 75 feet in depth upon which portion to the Defendant has constructed a house.*
- (2) A declaration that the Defendants shall pay to the Claimant all rates and taxes paid by the Claimants in respect of the portion of land aforesaid measuring 50 feet in width by 74 feet in depth upon which said portion the Defendants has [sic] constructed a house.*
- (3) A declaration that the Defendants shall pay to the Claimants all future rates and taxes on the 31st December each year to commence as for the year of judgment in these proceedings.*
- (4) An injunction restraining the Defendants from undertaking any work on that portion of land immediately to the North of the One Lot Portion upon which the Defendants home is constructed.”*

5. On the 1st December, 2011, the third Defendant filed a Counterclaim seeking *inter alia* a declaration that he was the absolute owner of the land.
6. The first and second Defendants also filed a counterclaim seeking a declaration that the first Defendant was entitled to an equitable interest in the subject property and that the Defendants have been in lawful occupation and control of the said lands.
7. All Defendants applied for a declaration that the third Defendant was entitled to a statutory lease pursuant to the *Land Tenants Security of Tenure Act 1981*. This item of relief was however, not pursued in the pleadings. It was also omitted from the written submissions. It was therefore, my view that it was abandoned, and I made no finding on it.

Evidence

8. Each claimant signed and filed witness statements in support of the Claim. Additionally, the Claimant relied on the testimony of Suresh Mathura, Burt Sinanan and Victor Achat.²
9. The Defendants also filed and relied on their own witness statements. They also relied on the statements of:
 - Kenny Ragoonath
 - Rudolph Brown
 - Bheesham Sawh
 - Kubir Ragoonath³
10. By the date of the trial in September, 2016, the witness, Kenny Ragoonath had died. The first Defendant, who lived in Canada, was also gravely ill and could not travel. The

² Witness statements for the Claimants were filed on November 29th, 2013

³ Witness Statements for the Defendants were filed on December 13th, 2013

Defendants therefore, filed Hearsay Notices in respect to the testimony of these two witnesses who were unable to give evidence.

Submissions

11. Attorneys-at-law for the Defendant filed written submissions on 7th December, 2016. The Claimants filed their written submissions on the 2nd February, 2017. The Defendants thereafter, filed Submissions in response to the Claimant's written submissions on the 3rd March, 2017.⁴

Facts

12. Doon Mathura had been the father of the first Claimant, Ganase Mathura and of the first Defendant, Dolly Ragoonath. In 1977, by virtue of Deed #10891 of 1977, Doon Mathura and Ganase Mathura became seized of the larger parcel of land as joint tenants.
13. In 1965, Doon gave to Dolly, a portion of land measuring 50 feet by 75 feet. Although this gift was neither by deed nor in writing, it has not been disputed by the Claimants, that Doon gave the land to Dolly for the purpose of constructing a house for herself and her husband, Harold Ragoonath. The house which measured 20 feet by 20 feet, was later constructed in the year 1966.
14. It was on the 12th April, 1966, that a Landlord's Certificate was signed by Doon, certifying that Harold occupied the land as a yearly tenant and that he had paid all rents and other

⁴ The authorities which were referred to by learned attorneys-at-law are set out in Appendix A

charges due, in respect of the portion of land. Over the years, Dolly and her husband had children, who also resided in the dwelling house on the subject of land.

15. In 1981, Doon died. As joint tenant, Ganase became solely entitled to the larger parcel and in 1986, instituted High Court Proceedings against the first Defendant. The statement of claim, which had been filed in those proceedings was tendered in evidence and marked "A". By those proceedings, signed by Attorney-at-law, Indira Persad, the first Claimant applied for declaratory relief in respect of the subject parcel of land.
16. It was common ground that there had been an attempt at settlement of these proceedings. On the 19th December, 1986, Attorney-at-law Sonja Beharry wrote on behalf of Dolly to Indira Persad, Attorney-at-law for Ganase Mathura. A dispute of fact arose as to whether the 1986 High Court Proceedings were settled. Under cross-examination, however, the Claimant, Ganase Mathura indicated that many years later he learnt that the matter had been thrown out. This was a clear indication that the 1986 proceedings had not been settled.
17. Following the 1986 High Court Proceedings, the Claimant intervened to grade and level the land. It was the clear evidence of the third Defendant, that on this occasion the animals, which were being kept by his parents, were sold.
18. It was also admitted by the third Defendant, that he was not cleaning the land for himself but for his mother.
19. Years passed and it was not until the 15th September, 2009, that Ganase sold an undivided half share interest in the said lands to his son Hareesh Ramnath. This transfer was effected by Deed registered as No. DE200902171244 D001. At that time, the only portion of those lands which was occupied was the area measuring is 50 x 75 feet, on which stood the house of

Dolly and her late husband Harold. By 2009 the house was occupied not by Dolly or Harold, but by the third defendant, Sterven, who continued to occupy it, up to the date of the trial.

20. The Defendants contended over the years that they occupied four (4) lots of land, on which they reared animals including goats, cows, ducks, chickens and pigs, and planted crops. All witnesses for the Defendants testified that the Ragoonaths reared animals and planted crops.
21. Their contention was strongly opposed by Ganase, who in cross-examination, admitted that the issue was never with the occupation of the lands measuring 50 x 75 feet, but rather, with the Defendants' claim of their alleged occupation four (4) lots of land. Ganase was very adamant that Doon had never given permission to Dolly to occupy four lots of land. In fact, he strongly expressed his view that his land was for his children. He further denied that the Defendants ever planted crops or reared animals.

Issues

22. There was no dispute in these proceedings that the Claimants were the paper title holders of the subject lands. Accordingly, the issues in these proceedings arose out of the defences which have been advanced by the Defendants.
23. These issues were twofold:
 - Whether the Defendants have occupied the subject land for more than 16 years, so as to extinguish the title of the Claimants.
 - Whether Doon gave the subject land to the first Defendant and whether she acted upon the gift to her detriment, so as to give rise to an equitable estoppel in respect of the subject land. If so, what was the appropriate remedy?

Discussion

24. In the paragraphs which follow, the Court referred to the law in respect of each issue and proceeded to apply to the law to the facts which have been established on a balance of probabilities.

Adverse Possession

25. In these proceedings the Claimant sought possession of a parcel of land measuring eighty (80) feet in width by one hundred and twenty (120) feet in depth and currently occupied by the Defendants.

26. The Claim excluded a lot portion measuring fifty (5) feet by seventy-five (75) feet, on which stands a house constructed by the Defendants.

27. There was no dispute that the Claimant, Ganase Mathura became the paper title owner of the land, under the principle of survivorship, when, his father, Doon, died in 1981. The first Claimant, Ganase subsequently sold a portion of the land to the second Claimant, in 2009.

28. The Claimants conceded that the late Doon had given Dolly, the first Defendant one lot of land for the purpose of constructing a home. The gift from Doon to his daughter was not by Deed, but by way of verbal permission and it was common ground that the first Defendant and her husband initially constructed a tapia house, which was replaced in 1966, by an upper level concrete house.

29. The Defendant had resisted this Claim on two grounds. Firstly, they contended that the title of the Claimants had been extinguished by their continuous and undisturbed possession for more than sixteen (16) years, pursuant to the *Real Property Limitation Act*⁵.
30. By way of defence, the Defendants contended that they had always planted the land with short crops and had reared cattle. They relied on the testimony of Rudolph Brown and Beesham Sawh, persons who resided in the village and who had testified that the first Defendant and her late husband cultivated the surrounding four acres of land. The Defendants relied as well on the evidence of the sons of the first Defendant: Sterven, Dave (Kubir) and Kenny (Deceased), whose evidence was adduced pursuant to a hearsay notice. These witnesses all testified that, as young children, they assisted their parents in agriculture.
31. By contrast, the Claimants and their witnesses have vehemently denied that there was any cultivation. Like the Claimant, they have relied on persons who claim to be associated with the land : Burt Sinanan and Victor Achat, who swore that they never saw cultivation.
32. The law in respect of adverse possession is well settled in this jurisdiction. By virtue of the *Real Property Limitations Act*⁶, the title of a paper title holder is extinguished, following the adverse possession of the land for a period of sixteen (16) years⁷. Following the effluxion of sixteen (16) years, the paper title holder is statute barred from initiating proceedings against the occupiers of the land⁸.

⁵ Real Property Limitation Act, Cap. 56:03

⁶ Real property Limitations Act Ch at section 3, which provides: "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".

⁷ Ibid at section 22

⁸ Ibid at section 3

33. The question as to the elements of adverse possession were authoritatively considered by the House of Lords in *JA Pye (Oxford) Ltd. v. Graham* [2002] 3 All ER 865, where their Lordships held that possession by an adverse possessor requires

- (i) A sufficient degree of physical custody and control, that is, factual possession
- (ii) An intention to exercise such custody and control on one's own behalf and for one's own benefit, that is, intention to possess or *animus possidendi*.

34. The principle in *Pye* was held to be relevant to the jurisdiction of Trinidad and Tobago by the Court of Appeal in judgment *Grace Latmore Smith v David Benjamin*⁹.

35. I considered whether the defendants discharged their burden of proving possession for sixteen (16) years. In my view, it is probable that prior to the death of Doon in 1981, the Defendants occupied and cultivated the lands surrounding their home. This cultivation took place between 1955, when the first Defendant was married to her late husband and 1986 when the first Claimant instituted the 1986 proceedings. This spanned some thirty-one (31) years.

36. I considered whether this occupation operated to extinguish the title of Doon and of the first Claimant. In my view, the evidence is clear that the Defendants' occupation at this time was pursuant to the permission of the patriarch and cannot be regarded as adverse for the purpose of the *Real Property Limitation Act*¹⁰.

⁹ *Grace Latmore Smith v David Benjamin* Civil Appeals Nos. 67 and 68 of 2007 (not cited by either side in these proceedings)

¹⁰ *Grace Latmore Smith v David Benjamin* Civil Appeals Nos. 67 and 68 of 2007 at paragraph 48 where Mendonca JA said: "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"

37. Following the death of Doon, the first Claimant began to assert his right to the land. He did so by filing the 1986 action and entering onto the land and carrying out grading and levelling works.
38. By the evidence of the third Defendant, it appeared that following the grading of the land by the first Claimant, the Defendants' animals were sold, agriculture came to an end and Dolly migrated to Canada. There was no evidence, that following this event, the Defendants ever resumed occupation of the land by agriculture or otherwise.
39. The entry of the Claimants to grade and level the land constituted an interruption in the possession by the Defendants. In order to establish that they enjoyed continuous undisturbed possession for the purpose of the *Real Property Limitation Act*, the Defendants would have been required to prove that, following the grading and levelling exercise, they enjoyed continuous undisturbed possession for 16 years prior to the filing of this action in 2011. They would therefore be required to prove that the grading exercise took place prior to 1995. They had however been unable to establish this, and I was therefore constrained to reject the defence of adverse possession.

Proprietary Estoppel

40. I turned to consider whether the Defendants acquired an equitable interest pursuant to the doctrine of proprietary estoppel. The elements of a plea of proprietary estoppel have been the subject matter of many decisions of high authority throughout the years.¹¹ For the purpose of

¹¹ See for example: *Thorner v Major and Others* [2009] 3 All ER. 945 (cited by the Defendant)
Uglow v Uglow [2004] EWCA 987
Gillett v Holt [2001] 1 Ch.210
Henry v Henry [2010] 75 WIR 254

these proceedings, I referred to the authority relied upon by the defendants, that is to say 47 *Halsbury Laws of England* (2014) paragraph 392 where the learned authors wrote:

“392. Elements in the estoppel.

Proprietary estoppel usually arises when the representation consists of a representation about, or a promise of, an interest in land¹ although its principles have been used in the context of commercial relationships where the representation or promise was not about land².

The traditional formulation was based on the principle that, where the owner of land (A) knowingly allowed his rights to be infringed by another (B) who expended money on the land in the mistaken belief that it belonged to B, A could not afterwards be allowed to assert his own title to the land³. From this formulation a five-fold test, referred to as 'the five probanda', developed, under which the following circumstances had to be present⁴ in order that an estoppel might be raised against A⁵:

- (1) B must be mistaken as to his own legal rights; if he is aware that he is infringing the rights of another, he takes the risk of those rights being asserted⁶;*
- (2) B must expend money, or do some act, on the faith of his mistaken belief⁷; otherwise, he does not suffer by A's subsequent assertion of his rights;*
- (3) acquiescence⁸ is founded on conduct with knowledge of one's legal rights, and hence A must know of his own rights⁹;*
- (4) A must know of B's mistaken belief; with that knowledge it is inequitable for him to keep silence and allow B to proceed on his mistake¹⁰;*
- (5) A must encourage B in his expenditure of money or other act, either directly*

or by abstaining from asserting his legal right¹¹.

This five-fold test has, however, now largely been abandoned in favour of a three-fold inquiry based not on B's mistake but on an agreement between A and B or on A's encouragement of B's expectation¹². The court will inquire:

- (a) whether an equity in favour of B arises out of the conduct and relationship of the parties;*
- (b) what is the extent of the equity, if one is established; and*
- (c) what is the relief appropriate to satisfy the equity¹³.*

The fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine of proprietary estoppel; in the end the court must look at the matter in the round¹⁴. Modern analysis distinguishes three 'strands' on which the estoppel can be based: acquiescence, representation, and promise¹⁵."

41. The elements of proprietary estoppel were considered by the House of Lords in ***Thorner v Major***¹², in which two cousins had worked side by side caring for a farm. Although no verbal assurances had been made by the older cousin, the owner of the farm, the younger cousin assisted the older cousin over the years, notwithstanding opportunities to move on. The elder cousin died and the younger instituted proceedings against the personal representatives of the elder cousin.

42. In the course of his judgement, Lord Walker confirmed that proprietary estoppel cases were to be analysed in terms of assurance, reliance and detriment.¹³

¹² Ibid [2009] 3 All ER 945

¹³ See case *Thorner v Major and Others* [2009] 3 All ER. 964 para. [55]

43. I therefore proceeded to consider whether the defendants had established the presence of the three elements: assurance, reliance and detriment. The first Defendant, Dolly testified in her witness statement, that after her marriage, her father told her that she could occupy four (4) lots of land. It was not disputed that her father had also given her the house spot. It was her evidence that on the surrounding land, she carried out agriculture, cultivated the land and reared cattle. The first Claimant, who lived next door acquiesced in her cultivation of the lands.
44. Dolly was not present at the trial. Her witness statement was adduced as an attachment to a Hearsay Notice. The weight to be accorded to her evidence was a matter for the Court's discretion.
45. Witnesses for the Defendants, Sterven and Dave, had also testified that their maternal grandfather (Nana) gave the land to their mother. Although this was strictly hearsay, it was never struck since the Claimants raised no objection to its admissibility. Accordingly, the weight which ought to be attached to this evidence was a matter for the Court's discretion. In my view, this evidence was acceptable for the fact that it had been told to the sons of the first Defendant, as a matter of family tradition and in this way, provides support for the testimony of the first Defendant.
46. The Claimants have denied that Doon gave four acres of land to the first Defendant. They insisted that she was only given the house spot. The first Claimant insisted that he walked the perimeter of the land with the first Claimant and his late father. He was subjected to rigorous cross-examination in this regard. Learned Senior Counsel, Mr. Jairam suggested to him that it was unlikely that they would walk one lot, and that it was more probable that the first Claimant walked four lots.

47. It was my view, on a balance of probabilities, it was likely that they would have walked four (4) lots, and that Doon giving the four (4) lots to his daughter, walked it with her and the first Claimant.
48. Following this gift, the first Defendant and her husband relied on the promise of the late Doon and expended their resources in cultivating the land. It was Dolly's evidence that they toiled on the land, not only using it for their livestock, but also planting and taking care of it and in this way relied on the promise to their detriment.
49. It was also my view, the Claimant was undoubtedly aware of the promise of his father and for this reason did not seek to assert his right until his father had died.
50. I therefore held the view that it was wholly unconscionable of the first Claimant to await the death of his father, then enter onto the land and act contrary to the promise of which he was undoubtedly aware.
51. Therefore, I held the view that the first Defendant had acquired an equitable interest in the land by virtue of the doctrine of proprietary estoppel and the land ought to be conveyed to her.
52. The same clearly cannot be said of the second and third Defendants. Sterven admitted quite candidly that it was the first Defendant, his mother and not him who held an interest in the land. The Counterclaim of the third Defendant was accordingly, dismissed.
53. Accordingly, it followed that the Claim was dismissed. There was judgment for the first Defendant on the Counter Claim.

Orders

54. It is hereby ordered that the first Defendant is entitled to an equitable interest in ALL AND SINGULAR that piece or parcel of land measuring one hundred (100) feet more or less In

width and one hundred and eighty (180) feet in depth or to such extent as in such manner as the Court directs that equitable interest to be realised.

55. An Order that the Claimants do convey the said lands situated at 26A Macaulay Road, Claxton Bay to the first Defendant. The Defendant to bear the costs of surveying the said land and the cost of conveyancing and registration and the stamp duty in respect of the said land. The conveyance to be completed within ninety (90) days of the Court's order.
56. Should the Claimants fail to convey the said land to the first Defendant, the Registrar of the Supreme Court shall execute the conveyance to the third Defendant within thirty (30) days of being notified of the default of the Claimants by the third Defendant.
57. An injunction restraining the Claimants and their Agents or servants from entering upon the said lands or from threatening or otherwise interfering with the third Defendant.
58. The Claimant to pay to the first Defendant the Costs in the sum of fourteen thousand dollars (\$14,000.00).

Dated this 10th day of January, 2018.

M. Dean-Armorer
Judge

APPENDIX

Case law relied on by the Claimants and Defendants

CLAIMANTS	DEFENDANTS
1. <i>Ocean Estates LTD v. Pinder</i> [1969] 2 AC 19	1. <i>Re Benzon Bower V. Chetwynd</i> [1914] 2 Ch 68
	2. <i>JA Pye (Oxford) Ltd. v. Graham</i> [2002] 3 All ER 866
	3. <i>Recreational Holdings I (Jamaica) Limited v. Carl Lazarus and the Registrar of Titles</i> No. 2011 HCV 05503
	4. <i>Powell v McFarlane</i> (1979) 38 P & CR 452
	5. <i>Des Barres v. Shey</i> (1874) 29 LT 592
	6. <i>Wilson v. Martin's Executors</i> [1993] EGLR 17
	7. <i>Thomas Murphy, v Laurence Murphy, Defendant</i> [1980] IR 183
	8. <i>Ramnarace v. Lutchman</i> (2001) 59 WIR 511
	9. <i>West Bank Estates Ltd. v. Author</i> [1967] 1 AC 665
	10. <i>Bedford Thomas v. Ann Mc. Phy and Another High Court</i> Civil Claim No. 588 of 2001
	11. <i>Seddon v. Smith</i> (1877) 36 LT 168
	12. <i>Wallis' Cayton Bay Holiday Camp Ltd. v. Shell Mex and BP Ltd</i> [1975] QB 94
	13. <i>Buckinghamshire CC v. Moran</i> [1989] 2 All ER 225
	14. <i>Thorner v. Majors and Others</i> [2009] 3 All ER 945