

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Cv. No: 2012-00542

BETWEEN

PEARL R. RAMKISSOON
VIJAY RAMKISSOON

First Claimant
Second Claimant

AND

KARAMCHAM POORANSINGH
LILLY MOHAMMED
ROOP POORANSINGH
ARTOO POORANSINGH
DILYA GOOLSAIR

Defendants

BEFORE THE HONOURABLE MADAME JUSTICE DEAN-ARMORER

APPEARANCES

Mr. Robert Boodoosingh, Attorney-at-law for the Claimants

Mr. Chandrica Sharma, Attorney-at-law for the Defendants

JUDGMENT

Introduction

1. By these proceedings¹, the Claimants, Pearl and Vijay Ramkissoon, seek orders declaring their right of way over a strip of land,² which is located on premises which are partly owned and occupied by the First Defendant.
2. The Claimants have contended that they have acquired a right of way by prescription, as well as, pursuant to the doctrine of necessity.

¹ These proceedings were instituted by a Claim Form filed on the 8th February, 2012

² Referred to below as “the pathway”

3. In the course of this Judgment, the Court has considered the authorities which delimit the boundaries of the doctrine of necessity and the elements, which a litigant is required to prove in order to establish a right of way over the land of another.

Evidence

4. In these proceedings the Court heard the evidence of six (6) witnesses. The First Claimant testified on her own behalf and relied, as well, on the evidence of her daughter, Anita Mahabir, her son-in-law, Rukhan Mahabir and her neighbour, Elsie Mahabir Ramcharitar.
5. The Defendant also testified on his own behalf. His case was supported by the evidence of his neighbour, Brian Teelucksingh.

Facts

6. The First Claimant, Pearl Ramkissoon is the mother of the Second Claimant, Vijay Ramkissoon. Pearl Ramkissoon is also the mother of Anita Mahabir, and the mother-in-law of Anita's husband, Rukhan Mahabir. Pearl Ramkissoon had been married to Rohit Ramkissoon, who died in 2004.
7. Pearl Ramkissoon and the First Defendant, Karamchand Pooransingh are siblings. Their father was Pooran Singh. Together with the late Rohit Ramkissoon, Pooran Singh held a joint tenancy of a half acre parcel of land at Cawnpore River Road, Cunupia.
8. In 1982, Pooran Singh and Rohit Ramkissoon executed a Deed of Partition³, dividing the half acre property into two equal portions, each measuring ten thousand, eight hundred and eighty-nine (10,889) square feet. Pooran Singh and his family became owners of the eastern portion, which abuts the Cawnpore River Road⁴. Rohit Ramkissoon and his family became

³ The Deed of Partition is exhibited the Witness Statement of the First Claimant and marked "D"

⁴ Referred to as "the front portion"

occupiers of the western portion⁵ which was separated from Cawnpore River Road by the front portion.

9. Annexed to the Deed of Partition, was a cadastral sheet which was prepared by Surveyor, Cecil Herbert, (*“the Herbert Cadastral Sheet”*). The Herbert Cadastral Sheet depicts both parcels of land, but does not reflect the existence of a right of way.
10. In 1999, Pooran Singh died intestate. His widow, Ramdaye, obtained Letters of Administration and at length, executed a Deed of Assent, conveying the front portion to be held jointly by herself and her offspring⁶. Accordingly, by virtue of this Deed of Assent, both the First Claimant and the First Defendant, as children of the late Pooran Singh, were numbered among the many persons who held joint ownership of the front portion.
11. In 2001, Rohit Ramkissoon sold his interest in the western portion to his wife. His interest was conveyed by a Deed executed on the 3rd November, 2001 for the sum of three thousand dollars, (\$3,000.00).⁷ Annexed to the 2001 Deed of Conveyance, was another cadastral sheet, which was prepared by Surveyor, Elizabeth Hamilton. This latter Cadastral Sheet, includes a right of way to the south of the front portion.
12. Rohit Ramkissoon died on the 27th November, 2004. By a Deed of Assent dated the 3rd August, 2007, the First Claimant, as the Legal Personal Representative of the late Rohit Ramkissoon, conveyed the back portion to herself and the Second Claimant.
13. The Claimants contend that their family had used the pathway as a means of access to their property for more than sixteen (16) years. They also contend that without access through the strip of land, their premises are completely land locked.

⁵ Referred to as “the back portion”

⁶ The Deed of Assent is exhibited to the Witness Statement of Pearl Ramkissoon and marked “B”

⁷ The Deed dated the 3rd November, 2001 is exhibited to the Witness Statement of Pearl Ramkissoon and marked “C”

14. The Defendant has denied both contentions. In answer to the second contention, the Defendant has alluded to an alternative means of access via Headley Trace.

Issues

15. Accordingly, two issues arose for the Court's consideration:

- whether the Claimants have enjoyed unobstructed access over the pathway for a continuous period of sixteen (16) years, thus giving them a right of way over the pathway by prescription, and
- whether there is an alternative means of access through Headley Trace, or whether the Claimant's land is landlocked, so that their right of way over the pathway arises by the doctrine of prescription.

Reasoning and Decision

16. In my Reasoning and Decision, I have considered the law and its application in respect of each of the issues, which have been identified above.

The Prescription Ordinance

17. The Claimants contend that they have been using the pathway since 1977. In support of this contention, they relied on the evidence of the First Claimant's daughter, Anita, who was born in 1976. The Claimants have relied, as well, on the evidence of Elsie Ramcharitar Mahabir, who testified that she lived at River Road all her life and that since 1977 she would see Pearl, using the pathway to get to and from her home. Mrs. Ramcharitar was unshaken under cross-examination.

18. The Defendant, Mr. Pooransingh stated that Pearl Ramkissoon and her husband moved to the back lot in 1982 following the execution of the Deed of Partition. It was also the

testimony of Mr. Pooransingh that this sister, Pearl and her family were always free to use the pathway.

19. Mr. Pooransingh underscored the fact that his nephew, Vijay Ramkissoon, the Second Claimant, migrated to the United States of America (USA) since 1986 and that since that time Pearl and her husband would visit the USA frequently. Mr. Pooransingh testified further that Pearl would rent out the back portion, when she was away for long periods. Even then, according to Mr. Pooransingh, there was no dispute in respect of the use of the pathway by the tenants of Pearl. According to Mr. Pooransingh, the dispute arose in 2012, with the advent of a person whose name was Brent, who according to Pearl, was the new owner of the back portion.
20. In my view, Mr. Pooransingh has not contradicted the contention of the Claimants, that the pathway had been used by the latter for a period in excess of sixteen (16) years. The Defendant has stated that the family members were always free to use the pathway as a right of way and that his difficulty arose with the new owner.
21. In further support of their contention, the Claimants relied on the testimony of Anita Mahabir and her husband Rukhan Mahabir. Both witnesses testified that at their nuptials, their wedding guests were allowed vehicular access to the premises over the pathway and that they also used the pathway to transport building materials for the construction of their home.
22. It is therefore my finding, as a matter of fact, that the Claimants used the pathway as a means of access to and egress from their property from 1977, but that this was done with the consent of the First Defendant.
23. Section 2 of *the Prescription Ordinance*⁸ provides:

⁸ The Prescription Ordinance, Ch. 5 No. 8

“2. When any claim shall be made to any right of common or pasture, or other profit or benefit, except rent and services, or to any way or other easement, or to any water course, or the use of any water, to be taken or enjoyed or derived upon, over, or from any land or water of His Majesty, or of any body corporate or person, and such right of common or other matter as hereinbefore mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of sixteen years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.”

24. In order to succeed under *the Prescription Ordinance*⁹ the Claimants are required to prove that they enjoyed the right of way, “...without interruption for the full period of sixteen years...” The Claimants would also be required to prove that the right of way was not enjoyed with the consent of the Defendant. It is my view that the Claimants have not succeeded in proving that they enjoyed the right of way without the consent of the First Defendant, who has been consistent in asserting that he did not mind his family members using the pathway.
25. Moreover, the Claimants have not provided evidence of uninterrupted use of the pathway for sixteen (16) years. Although it is conceded that they began using it since 1982, the Claimants have not contradicted the assertion that they had been away from the jurisdiction for a large portion of time from 1986. It is therefore my view, that the Claimants have not

⁹ Section 2, The Prescription Ordinance, Ch. 5 No. 8

established the two elements which are required by Section 2 of *the Prescription Ordinance*¹⁰ and their argument in this respect must fail.

The Doctrine of Necessity

26. The second issue of fact is centred on the viability of Headley Trace, as an alternative means of access to the Claimant's premises.
27. The Defendants have contended vigorously, that occupants of the western portion may enjoy access to their plot from Headley Trace. The Claimants while admitting that they could access their property through Headley Trace, contended that they have no vehicular access and that access over Headley Trace would require them to pass over Ramcharitar's lands, which belong to a third party.¹¹
28. There was extensive cross-examination on this issue, following which the Court conducted a site visit and heard the evidence of parties, on site. Having seen the portion of land in question, as well as the access through Headley Trace, it was my view that the way of access from Headley Trace is narrow and not viable. While access through Headley Trace presents treacherous terrain to those who would access the property by foot, vehicular access through Headley Trace is simply impossible.
29. Accordingly, it is my finding, that the alternative route through Headley Trace is in fact no alternative at all.
30. The law in respect of a right of way of necessity is well settled and may be found in these words of Lord Buckley in *Nickerson v. Barraclough* [1981] 1 Ch. 426 at 440.

¹⁰ The Prescription Ordinance, Ch. 5 No. 8

¹¹ See paragraph 7 of the Amended Statement of Case filed herein on the 31st January, 2013 and Paragraph 14 of the Witness Statement of Pearl Ramkissoon filed herein on the 13th November, 2013.

“...in my judgment the law relating to the ways of necessity rests not on the basis of public policy but upon an implication to be drawn from the facts that unless somehow is implied, a parcel of land will be inaccessible. From that fact, the implication arises that parties must have intended that parties must have intended that some way of giving access to the land should have been granted...”

31. In the Privy Council decision in ***Manjang v Drammeh***¹², Lord Oliver of Aylmerton cited the decision of Lord Buckley with approval. Lord Oliver found it hardly necessary to state the essentials of the implication of an easement of necessity and continued in this way:

“There has to be found first a common owner of a legal estate in two plots of land. It has secondly to be established that access between one of those plots and the public highway can be obtained only over the other plot. Thirdly there has to be found a disposition of one of the plots without any specific grant or reservation...”

32. I have found all three (3) elements to be present in these proceedings. There is no dispute that both parcels of land had originally been commonly owned. Both parcels, having been held jointly by Rohit Ramkissoon and Pooransingh, became separate and distinct, following the execution of the 1982 Deed of Partition.
33. The third element is likewise beyond dispute. The back portion of land was disposed by the 1982 Deed of Partition. There was no reservation in this Deed of a right of way. The right of way appeared years later in the Deed of Conveyance of 2001. This was an internal arrangement between Rohit and his wife and it is unclear what was the genesis of the reservation.

¹² PCA #10 of 1989

34. In respect of the second element however, there was much dispute. The main issue of fact in this claim was whether the only access from the back portion to the public highway was over the alleged right of way.
35. After hearing the cross-examination in this matter, and having conducted a site visit, it was my finding that occupants of the back portion have no viable access from their land except through the alleged right of way¹³.
36. The land is at present occupied by Anita Mahabir who is the daughter of the first claimant. It matters not, since the right to an easement, such as a right of way passes to successors of the owner of the dominant tenant.
37. Accordingly, it is my view and I hold that the claimants have succeeded in establishing the three (3) elements, which were identified by their Lordships *Manjang v Drammeh*¹⁴. They are therefore entitled to judgment and to the relief claim in the Claim Form filed herein on the 8th February, 2012 at paragraphs (A),(B),(C),(D) and (E).

Orders:

- “A. The Claimants are entitled to unobstructed and unfettered access by way of a Right of Way more particularly shown on the Cadastral Sheet which is attached to the Deed of Conveyance between Rohit Ramkissoon and Pearl Ramkissoon and annexed to the Amended Statement of Case herein and marked “C”.*
- B. It is declared that the Claimants are entitled to unobstructed Right of Way over a parcel of land indicated on the Cadastral Sheet annexed to Deed to and from the public road full and free right and liberty for the Purchaser, his heirs and assigns, his tenants, servants, visitors, licensees in common with all others having the like right at all times*

¹³ See paragraphs 28 and 29, *Supra*

¹⁴ PCA #10 of 1989

hereafter by day or night with or without vehicles or animals of any description for all good purposed connected with the use and enjoyment of the said lands for whatsoever purpose the said lands may from time to time be lawfully used and enjoyed and in particular for the purposes of going to and from the said lands to pass and repass over and along a certain track 2.44 metres wide which said Track is delineated and coloured pink and marked "Right of Way" on the Diagram to Deed registered as No. DE 200102659398annexed and marked "X".

- C. It is hereby declared that the Defendant whether by himself and/or his servants, agents employees or however otherwise, is not entitled to block, obstruct or construct any structure on or over or across the said right of Way or otherwise interfere with the Claimants' use and enjoyment of same by the Claimants, his heirs and assigns, his tenants, servants, visitors, licensees in common with all others having the like right.*
- D. It is hereby ordered that the Defendants are restrained whether by himself, servants, agents, employees or however otherwise from blocking, obstructing or permitting or maintaining the blocking, obstruction or permitting or maintaining the blocking, obstructing of the said Right of Way or from interfering with or doing any act which interferes with the Claimants' access and egress along the said Right of Way to and from their said lands.*
- E. It is hereby ordered that the Defendant do remove all structures or blockage or otherwise placed on, over or across the said Right of Way."*

Dated this 10th day of February, 2017.

M. Dean-Armorer
Judge