

CV2012-03215 - KHEMRAJ RAMKISSOON -v- DEOKIE SIEWRAJH, CV2013-00536 - KHEMRAJ RAMKISSOON -v- SHYAM SAROOP AND CV2015-03762 - KHEMRAJ RAMKISSOON -v- DEONATH SAROOP ARE HEREBY CONSOLIDATED PURSUANT TO THE ORDER OF THE HONOURABLE MADAM JUSTICE DEAN-ARMORER, MADE ON THE 18TH MAY, 2017.

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2012-03215**

**IN THE MATTER OF THE PARTITION ORDINANCE
CHAPTER 27 NO. 14**

In the Matter of All and Singular that piece or parcel of land comprising 1 ACRE 0 ROOD 0 PERCH be the same more or less situate in the Ward of Cunupia, in the Island of Trinidad known as Lots No. 237 & 238 Munroe Road Land Settlement and bounded on the North by Munroe Road Land Settlement on the South by Ragoo Street on the East by Ragbir Street and on the West by Munroe Land Settlement Road together with the building thereon and the appurtenances thereto belonging (hereinafter called "the said parcel of land")

BETWEEN

KHEMRAJ RAMKISSOON

Claimant

AND

DEOKIE SIEWRAJH

Defendant

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2013-00536**

BETWEEN

KHEMRAJ RAMKISSOON

Claimant

AND

SHYAM SAROOP

Defendant

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2015-03762**

**IN THE MATTER OF THE PARTITION
ORDINANCE CHAPTER 27 NO.14**

BETWEEN

KHEMRAJ RAMKISSOON

Claimant

AND

DEONATH SAROOP

Defendant

Before the **Honourable Madame Justice Mira Dean-Armorer**

Appearances:

Gerard Raphael, attorney at law for the Claimants

Vasanti Maharaj, Wendell Louis and Derrick R. Sankar, attorneys at law for the Defendants

REASONS

1. On August 30, 2012, the Claimant, Khemraj Ramkissoon filed a fixed date claim against his sister, Deokie Siewrajh. Mr. Ramkissoon applied for an order for partition of a parcel of land, measuring one acre and situated in the Ward Cunupia and known as 237 and 238, Munroe Road Land Settlement.
2. In his affidavit in support of his claim, the Claimant asserted that by a Deed of Assent registered as 14666 of 1999 he became a joint holder of a leasehold interest in the subject property with his sister, Deokie Siewrajh.

3. It was common ground that the Deed of Assent was executed pursuant to the grant of probate to the Defendant of the will of the late Siewrajh Panjabie (Siewrajh). Siewrajh had been married to Deokie Siewrajh and by his will had bequeathed his property to the Claimant and Deokie jointly.
4. The Claimant alleged that, based on assurances which had been made by the Defendant that the property would belong to him, he expended large sum of money improving it.

SHYAM SAROOP

5. Some 6 months later, on the February 7, 2013, the Claimant instituted proceedings against his brother, Shyam Saroop. The Claimant re-iterated his entitlement to the property by the Deed of Assent. The Claimant contended that during his lifetime, the deceased, Siewrajh had given permission to the Defendant, Shyam Saroop to construct a dwelling house on one lot of the parcel of land, but that the Defendant, Shyam Saroop extended his occupation to three lots of land.
6. The Claimant, applied for these orders against Shyam Saroop:
 - (i) a declaration that he (the Claimant) is joint lessee with the said Deokie Siewrajh and Deonath Saroop of the remaining five lots of land;
 - (ii) an injunction ordering the Defendant to demolish the building erected by him;

- (iii) an injunction restraining the Defendant from entering or remaining on the said three lots of land; and
- (iv) an injunction restraining the Defendant from doing works on the said lot of land.

7. The Defendant, Shyam Saroop contended that in 1974 he began occupying four lots of land known as Lot 238 with the knowledge of the deceased.

8. The Defendant, Shyam Saroop stated that he was given permission by the deceased, Siewrajh in 1976, when he, the defendant, began constructing his house on one plot of land, and that from 1976 to the present he has intended to occupy the land and that he did so following the death of Siewrajh in 1998.

DEODATH SAROOP

9. In November, 2015, the Claimant instituted a third claim. The last claim was instituted against his brother Deodath Saroop. The Claimant applied for these orders:

“An order for partition and/or sale of that concrete chattel house comprising two bedrooms one toilet and bath, a kitchen, living room and dining room situate at Ragoo Street, Munroe Road, Cunupia.”

10. The fixed Date Claim was supported by an affidavit of the Claimant, where, the Claimant re-iterated the means by which he claimed to be entitled to the land, that

is to say by the will of the late Siewrajh, who had been the husband of the sister, Deokie.

11. Against the Defendant, Deodath Saroop, the Claimant alleges that he holds an interest in the chattel house, which is at present jointly held by Deodath and Deokie.
12. Deodath Saroop responded by an affidavit in response, filed on May 13, 2016. Deodath contended that his interest in the chattel house would not crystallise until the death of Deokie. Deodath contended further that selling or partitioning the house would lead to an unconscionable result.
13. The three actions had been docketed to three different Judges. Transfers were effected pursuant to the Docket Rules and were all listed before this Court.
14. After an unsuccessful attempt at mediation, the three actions were consolidated on May 18, 2017.

The Evidence

15. At trial the Court heard of four witnesses. The Claimant relied on his own witness statement filed on the September 30 2013 and his supplemental witness statement filed on the February 26, 2015.
16. A witness statement was filed by Deokie Siewrajh. Under cross-examination Deokie Siewrajh was unable to recall signing her witness statement, which could not be tendered into evidence and was accordingly struck out.

17. A witness statement was filed by Shyam Saroop on November 20, 2014. This witness was cross-examined.
18. The Defendant, Deonath Saroop did not file a witness statement but relied on an affidavit in response, which was filed on May 31, 2016. Deodath Saroop was cross-examined.

Facts

19. It was undisputed that the parties are all siblings. Deokie was the widow of the late Siewrajh.
20. By virtue of an agreement dated June 8, 1963 with the Sub-Intended of State lands, Siewrajh became the tenant of the subject parcel of land, which comprised 1 Acre and was known as No. 237 and 238, Munroe Road.
21. Siewrajh published his last will and testament on September 1998. He appointed the Claimant as executor and bequeathed his interest in the parcel of land to the Claimant and to Deokie for their absolute benefit.
22. Siewrajh died on November 8, 1998. The Claimant obtained a Grant of Probate on February, 1999.
23. On the July 7, 1999, the Claimant executed a Deed of Assent assigning and assenting the interest of the late Siewrajh in the subject lands to himself and Deokie, as beneficiaries.

24. There is accordingly no dispute that the Claimant and Deokie are the holders of the leasehold interest in the land as tenants in common.
25. There was also no dispute that by the Absolute Bill of Sale dated the August 5, 2002, Deokie Siewrajh assigned her one undivided half share to herself for life and thereafter to Deonath Saroop absolutely.

Issues of Fact

26. A number of issues of fact arose in the consolidated proceedings. As against Deokie Siewrajh, the Claimant alleged that he received assurances from Deokie and that based on these unparticularised assurances he expended sums thus acting to his detriment.
27. Although the witness statement of Deokie was struck out, the Claimant was cross-examined by learned Counsel Vasanti Maharaj and was unable to provide particulars of the assurances which had been made by Deokie.
28. Another issue of fact arose in respect of the defendant, Shyam Saroop. It was common ground that he occupied a portion of land with permission of the late Siewrajh.
29. The matters in dispute were the extent of the land which he was permitted to occupy and the time at which permission was granted.

30. It was the case for the Claimant that during his lifetime, Siewrajh gave Shyam permission to construct a dwelling house on one lots of land, but that Siewrajh entered possession of three vacant lots. It was the Claimant's case that in 2011, Shyam erected a concrete wall in front of the vacant lots and began backfilling the land.
31. The Claimant contended further that in November 2012, Ricky Saroop, son of Shyam erected metal gates at the entrance of the vacant lots. ¹
32. Shyam Saroop, by his witness statement painted an entirely different picture. According to Shyam, in 1974, he received permission from the late Siewrajh Panjabe to backfill parts of the North West portion and slowly build his home.²
33. He stated further that in 1981, his family began occupying a flat house on at least 1 ½ lot of the said North West portion of the lands and used the remaining portion of the land to raise hogs, goats, chickens and ducks and to plant vegetables. ³
34. By his witness statement, Shyam stated that he continued living with his family on the land from 1981 and his occupation was never challenged by the late Siewrajh.
35. Shyam continued living on the land after the death of Siewrajh in 1998 and has done so until these proceeding were filed in 2013.

¹ See the Supplemental witness statement of the Claimant filed on February 26, 2015

² Witness statement of Shyam Saroop filed on November 20, 2014

³ Ibid at paragraph 6 and 7

Discussion

36. In this consolidated action, the claimant seeks different relief against each defendant. In respect of Deokie, the Claimant seeks an order for partition or sale of the parcel of land. In respect of Deodath, the Claimant seeks an order for partition or sale of a flat concrete chattel house. As against Shyam, the Claimants seeks a declaration that the Claimant is the joint lessee of the property along with injunctive orders for the demolition of the building as erected by Shyam as well as orders restraining Shyam from entering on “the three lots of land or doing construction works thereon”
37. Each defendant will be considered separately.

Deokie Siewrajh

38. The order claimed against Deokie is for sale or partition of the land. It is therefore unclear why, in the absence of any amendment to his Fixed Date Claim form, the Claimant has adduced evidence of an assurance, given to him by Deokie, on the basis of which assurance, he acted to his detriment.
39. In respect of the Claimant’s allegation of an assurance, the Claimant failed to provide any particulars, whatsoever of the assurance. Under cross-examination, he stated that the assurance had been made in December, 1999. However no particulars have been provided of the nature of the assurance, whether it was written or verbal,

whether it was made on one occasion or many, or whether it was made in the presence of any other person.

40. More critically however, there are no details as to what was promised by Deokie in the alleged assurance.

41. Central to the doctrine of proprietary estoppel is a promise or assurance. Any relief, that could be extended by equity, must be based on the assurance and what was promised, as an inducement for detrimental reliance.

42. In these proceedings, there has been a bare allegation of an assurance. The Court is left with no information as to what Deokie was alleged to have promised. The first critical element of proprietary estoppel was therefore missing. If this was an aspect of the claim against Deokie, it is my view that it must fail for the reason that the Claimant has not established that any promise was made by Deokie.

43. In respect the claim for partition, the Claimant has not specified the section of the Partition Ordinance upon which he relies. It was unclear whether the Claimant was seeking an order for the partition of the land or a sale thereof.

44. It was my view that on the basis of the evidence before this court, it was impossible to make an order for partition. The Claimant produced neither a survey of the land nor any expert report as to the way in which the parcel of land was divided in reality. Instead of a survey, the Claimant relied on his own hand-drawn sketch, which was

part of his bundle of documents. The hand-drawn sketch is clearly unreliable and cannot form the basis of a court order.

45. I considered whether an order for sale might be appropriate in these proceedings.

The power to order a sale is conferred on the Court by sections 3 and 4 of the ***Partition Ordinance***.

46. The court was grateful to counsel Vasanti Maharaj for her citation of authorities on the subject. In CV2010-831 ***Gobinsingh v Gobinsingh***, Robin Mohammed J identified the difference between sections 3 and 4. Under section 4, any one holding a half share in property may request a sale. Under section 3, it is within the Court's absolute discretion to order a sale.

47. It is a matter of conjecture whether the Claimant relies on section 3 or 4. Under section 3, the Court would order a sale if it is more beneficial to the parties interested.

48. Under section 4, where a person interested in the property to the extent of a moiety or upward seeks a sale, the Court shall direct the sale "unless it sees good reason to the contrary..." The onus to prove good reason falls on the party resisting the sale.

49. In these proceedings, it was my view that the Defendants have provided good reason against an order for sale. The Defendants and their families have lived in the property for several years and for the most part peacefully. They are clearly not persons of

sophistication, education or wealth and displacing them in their advanced years could not be beneficial to them. Third reason is that it is doubtful whether the leasehold interest in the land could be sold without the permission of the Commissioner of State Lands.

50. Accordingly, it was my view that the claim against Deokie should be dismissed.

Deodath

51. The claim against Deodath is similar to that against Deokie. The Claimant seeks an order for partition of a chattel house. It is doubtful whether this is possible. Moreover, the interest of Deodath in the property will crystalize after the death of Deokie. For the reasons which I have stated in respect of the Claim against Deokie, the Claim against Deodath is dismissed.

Shyam

52. The Claimant's action against Shyam relates to "three vacant lots". In asserting the boundaries of the three vacant lots, the Claimant relies on a hand-drawn sketch, which is clearly both unacceptable and unreliable. For this reason alone it is my view that the claim against Shyam should be dismissed.

53. The case against Shyam is further weakened by the defence advanced by Shyam, that is to say that he had intended to possess and in fact possessed the disputed portion since he moved into his house in 1981. There he planted the land and reared animals.

This was with the acquiescence of Siewrajh. Shyam continued to occupy the land after Siewrajh died in 1998. The Claimant did not institute these proceedings against Shyam until 2015, way beyond the 16 year limitation period.

54. It is therefore my view that the title of the Claimant, if any, was extinguished by the occupation of Shyam, who would have been entitled to a declaration had he sought one.

55. Accordingly, it is my view that the proceedings against Shyam ought also to be dismissed.

Date of Delivery: October 25, 2019

Justice Dean-Armorer