

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV. 2012-4773

Between

PREMLAL BEEPATH
(On his own behalf and as the
Legal Personal Representative of the
Estate of Sunbassia Lackraj, Deceased)

Claimant

And

ROOKMIN RAMNARINE

Defendant

BEFORE THE HONOURABLE MME. JUSTICE DEAN-ARMORER

APPEARANCES:

Mr. Gerald Raphael, Attorney-at-law on behalf of the Claimant

Mr. Prem Persad Maharaj, Attorney-at-law on behalf of the Defendant

JUDGMENT

Introduction

1. The subject property¹ stands at 37 Teemul Trace, Clarke Road, Penal. It consists of one acre and twenty point five perches and since 1990, had been jointly owned by the late Autar Kalpoo (“*Autar*”) and the Defendant, Rookmin Ramnarine.

¹ More particularly described in the Claim Form filed on the 22nd November, 2012: “All and singular that certain piece or parcel of land comprising One Acre and Twenty Point Five Perches be the same more or less being the remaining portion of lands described in Certificate of Title registered in Vol. CD 11 Folio 223 shown coloured pink in the plan to instrument registered in Volume 1771 Folio 157 and marked with the letter “C” and also shows in the General Plan registered in Volume 1774 Folio 155 as Lot B and bounded on the North by lands transferred to Imeertee and shown as Lot A on the South by lands now or formerly of Caroni, on the East by lands now or formerly of Maghan and Mabeah and on the West by lands now or formerly of Lockraneah and others and now standing in the name of Autar also called Kalpoo Outar also called Outar Kalpoo.”

2. Between the years 2000 and 2007, the Claimant entered into occupation of the subject premises. In 2012, he instituted these proceedings, seeking a declaration that he is the owner of the subject property².
3. The Claimant has centered his claim on an allegation that he, and his predecessors had been in continuous undisturbed occupation of the land from an unspecified date prior to 1990. In particular, the Claimant contended that the title of the Defendant has been extinguished by the possession of Autar, the former joint owner of the property.
4. The Defendant filed a counter-claim seeking an order that the Claimant deliver to her possession of the subject premises as well as an order setting aside the Grant to the Claimant of Probate of the will of the late Sunbassia Lackraj.
5. In the course of this Judgment, the Court considered the law in respect of possession by joint owners and the circumstances in which one co-owner could extinguish the title of another.
6. The Court heard the evidence of three (3) witnesses on behalf of the Claimant that is to say the Claimant himself, Gumati Jaiserie and Dhanraj Sookdeo. The Defendant relied on her own evidence as well as that of her sister-in-law, Ramkoomarie Roopie Singh.

Facts

7. The subject property had been part of a larger parcel of land, co-owned by Autar and one, Imeertee. In June, 1964, Imeertee and Autar executed a Memorandum of Transfer to effect the partition of the larger parcel of land, so that Autar became the sole owner of his portion, which was the subject property.

² Claim Form filed on the 22nd November, 2012.

8. Autar had been married to Rawti, who had been the mother of the Defendant, Rookmin Ramnarine. In 1990, Autar executed a transfer of the land from himself, to be held by himself and the Defendant, Rookmin Ramnarine as joint tenants.
9. The creation of the joint tenancy had been preceded by many events which were significant for the both the family of Autar and for the Claim which now engages my attention.
10. Prior to 1990, Autar had constructed a two-storey dwelling house. At that time, the property had been in his name only. There is no dispute that he lived there with Rawti and the Defendant. According to the testimony of the Defendant, the latter enjoyed a good relationship with Autar.
11. In 1960, the Defendant got married and bore nine children from her union. She testified that she experienced marital problems and would frequently return to the home of her mother and her step-father.
12. In 1979, Rawti suffered a stroke and was bed-ridden. The Defendant testified that both she and her children returned to the home of Autar to assist Rawti. This was stoutly denied by the Claimant, who though absent from the scene himself, at the time, relied on the evidence of Dhanraj Sookdeo. Mr. Sookdeo had been one of two tenants of the late Autar. It is not disputed that Autar, in fact, rented two portions of the land to Dhanraj Sookdeo and Narci Joogani and that he collected the rents, which he used for his own benefit.
13. Dhanraj Sookdeo testified that, he and his wife looked after Rawti and that the Defendant would visit on weekends and not regularly. Mr. Sookdeo was cross-examined, saying that the Defendant would visit her mother on weekends and that she would spend the day and return to her home.

14. The Claimant's case was also supported by her second witness, Gumati Jaiserie who said that she lived two hundred feet from the subject premises and visited the Kalpoo's regularly but that she never saw the Defendant there. Gumati Jaiserie stated that she would see the Defendant visiting her step-brother and step-sister who lived a little higher up.
15. The Defendant by contrast stated that she returned to her parents' home after domestic problems with her marriage. She stated that she owned three cows and two heifers and reared ducks and chickens, but that in 1984 she returned to her husband's house and left her daughter Rita to look after her parents. Accordingly, a direct conflict of evidence was played out before this Court.
16. In my view, the Defendant could, and should, have called her daughter, Rita to support her defence and for this reason her testimony is weakened. The Court observed however, that all these events occurred prior to 1990 and are therefore irrelevant to the central issue in these proceedings, for reasons which will become apparent below.
17. Rawti died on the 23rd February, 1993. Thereafter, Autar embarked on a cohabitational relationship with Rawti's sister, Sunbassia Lackraj, whom he married on the 25th October, 1993. On the 13th August, 1993, that is prior to the marriage of Autar and Sunbassia, the Defendant filed a caveat with the Registrar General's Department, prohibiting any dealings with the land. There was no application by Autar to have the caveat removed.
18. In 1996, Sunbassia, herself lodged a caveat. This was however, removed by an Order of Justice Rahim dated the 30th November, 2012.
19. The Claimant produced, as part of the agreed bundle, a copy of an assessment for land and building taxes dated the 1st January, 1996. The assessed owners at that time were Autar and the Defendant. Autar died on the 6th March, 2000, leaving Sunbassia as his widow. There

was no evidence that Autar had severed the joint tenancy or had made a will leaving anything to Sunbassia or anyone else.

20. The Defendant migrated to the United States of America and according to her testimony under cross-examination, she became an American citizen in the year 2005. She did not attend Autar's funeral.
21. After the death of Autar, Sunbassia continued to occupy the subject premises. She was joined by the Claimant, who became her common law husband. It was the Claimant's evidence that he entered into occupation of the premises some four months after the death of Autar. The Defendant, for her part, contended that the Claimant's occupation began in 2007. I am prepared, on this issue, to accept the evidence of the Claimant, since, it was not disputed that, during the relevant period, the Defendant lived in the United States of America, and had no personal knowledge of what was transpiring at the subject property.
22. Sunbassia, herself died on the 18th October, 2007. She left a simple will bequeathing all her property both real and personal to the Claimant who obtained a grant of probate on the 26th November, 2010. In the inventory submitted to the High Court of Justice, the Claimant identified the subject property as being part of the Estate of the testatrix, Sunbassia Lackraj.

Issues

23. The foregoing factual matrix gives rise to one broad question that is to say whether the right of the Defendant, as joint owner of the subject property, has been extinguished for the purposes of the ***Real Property Limitation Act Chap 56:03***.

Law and Discussion

24. The law in this regard is well rehearsed and it is now well established that the right of holder of the paper title may be extinguished pursuant to Section 22 of the ***Real Property Limitation Act***³, if there has been continuous and undisturbed possession by a person without the consent of the owner of the land, for a period of sixteen years.
25. It is also established that the person who seeks to extinguish the title of the paper-holder must have both factual possession, as well as an intention to possess the land. See ***Grace Latmore Smith v. David Benjamin***⁴, where Mendonça JA held that the principles expounded in ***J.A. Pye [Oxford] Limited v. Graham***⁵ were applicable in the jurisdiction of Trinidad and Tobago. At paragraph 48 of ***Grace Latmore Smith v. David Benjamin***⁶⁷ Mendonça JA had this to say:

“48. As was stated in Pye, and to 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.”

26. Yet another firmly entrenched principle is the doctrine of survivorship, whereby the right of a joint tenant is extinguished on death. The surviving joint tenant becomes seized or possessed of the whole.⁸

³ “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. ”

⁴ C.A. Civ. 67/2007 or Civil Appeal No. 67 of 2007

⁵ *J.A. Pye [Oxford] Limited v. Graham* (2003) 1AC 419

⁶ C.A. Civ. 67/2007 or Civil Appeal No. 67 of 2007

⁷ C.A. Civ. 67/2007 or Civil Appeal No. 67 of 2007

⁸ 87, Halsburys Laws of England {14th Edition) paragraph 203.

27. When these well-established tests are applied to the facts of these proceedings, it is clear beyond dispute that the Defendant as joint owner of the property, would have become the sole owner by operation of the principle of survivorship from the death of Autar in the year 2000.
28. The Claimant, himself could not have extinguished the Defendant's title since the former only occupied the premises undisturbed from the death of Sunbassia in 2007. This was five years prior to the filing of this action and therefore fell short of the sixteen years required by the *Real Property Limitation Act*⁹.
29. In my view, Sunbassia, herself could not establish a possessory title since her occupation was by the permission of Autar until his death in the year 2000. Thereafter, she occupied the premises for only seven years until her death. Accordingly, Sunbassia, herself could not acquire a title by possession.
30. Learned attorney-at-law for the Claimant, has however relied on a far more clever argument, that is to say that Autar, for his part, occupied the premises for his own benefit from the year 1990 and accordingly, extinguished the right of the Defendant as the other joint owner.
31. In this regard, learned attorney-at-law, Mr. Raphael, relied on the provisions of Section 14 of the *Real Property Limitation Act*¹⁰

“When anyone or more of several persons entitled to any land ... as joint tenants ... shall have been in possession ... of the entirety ... for his own benefit, ... such possession ... shall not be deemed to have been the possession ... of such last mentioned person...”

⁹ Real Property Limitation Act, Chap. 56:03

¹⁰ Real Property Limitation Act, Chap. 56:03

32. The Bahamian equivalent of this Section, received the authoritative consideration of their Lordships at the Privy Council in the case of *Paradise Beach and Transportation Co Ltd v Price-Robinson [1968] All ER 530* where their Lordships observed that the purpose of the Section was to remove the common-law presumption that one co-owner held possession for the other co-owners. Their Lordships held that where the right of entry by a co-owner has occurred before a period of twenty years¹¹, their title is extinguished. The right of entry accrues from the date of the beginning of the co-ownership. There is however, a qualification referred to by Lord Upjohn, that is to say that the co-owner who extinguishes the rights of the other must have occupied the premises for his own benefit.
33. Accordingly Lord Upjohn noted:
- ‘The “separate possessions” ... obviously only start when the occupation is “for his or their own benefit”’.*¹²
34. It is also my view that the onus of proving separate ownership falls on the party who would assert it. I therefore proceed to consider whether, from the year 1990 or anytime thereafter, the Claimant’s evidence supports a finding that Autar was occupying the land for his own benefit. It is my view that the actions of Autar negate such a finding.
35. According to the evidence in these proceedings, the Defendant was the daughter of Rawti, who was the wife of Autar. The Defendant lived with Autar and Rawti, as part of their household. The Defendant got married in 1960 and some thirty years later, Autar voluntarily chose to make her a joint tenant to the land. This factor alone, suggests an intention, on the part of Autar, that he held title to the land with a view to passing it on to the Defendant upon his demise.

¹¹ See Section 1 of the Real Property Limitations Act 1874 (Bahamas)

¹² *Paradise Beach and Transportation Co Ltd v Price-Robinson [1968] All ER 530 at 535 E-F*

36. Although there is no evidence before me, Autar's actions are consistent with the practice, in this jurisdiction, of land-owners creating joint tenancies, as an alternative to making testamentary gifts.
37. No subsequent event negated this original intention. There was evidence that the Defendant disapproved of the relationship between Autar and Sunbassia, however, even when the Defendant took the step of filing a caveat¹³, there was no counter-action by Autar to have the caveat removed. He also took no step to dispose of his interest or to sever the joint tenancy, in any other way, although it would have been clearly within his rights so to do.
38. It is therefore my view, that there is no evidence to suggest that Autar, at any time prior to his death, occupied the property for his own benefit. The facts in this case are, in my view, distinguishable from those of *Paradise Beach and Transportation Co Ltd v Price-Robinson*¹⁴, where two sisters were among numerous co-heirs, including of the children and the grandchildren of the testator. The sisters managed a farm for many years and they were held to have done so for their own benefit. The Privy Council held that the two sisters had extinguished the title of other tenants in common. By contrast, in these proceedings, Autar was not a co-heir with the defendant. He was in fact a father figure to the Defendant. Since the Defendant was at all material times an adult, it will be wrong for the Court to imply that Autar held the property for the Defendant. See *Paradise Beach and Transportation Co Ltd v Price-Robinson* at page 535¹⁵. I will therefore examine the available evidence in order to ascertain whether Autar held the subject property for his own benefit. This, he held since 1964 and, decided some twenty-six years later to make the Defendant a joint owner. The

¹³ Caveat filed on the 13th August, 1993

¹⁴ *Paradise Beach and Transportation Co Ltd v Price-Robinson* [1968] All ER 530 at 535

¹⁵ *Paradise Beach and Transportation Co Ltd v Price-Robinson* [1968] All ER 530

Defendant's joint tenancy was Autar's gift to her. It is my view, that this original decisive step on Autar's part speaks eloquently of an unexpressed intention to hold the land with a view to passing it on to the Defendant, after his death. No evidence has been led to suggest that Autar had any other intention, and no evidence has been led to suggest that he formed any counter intention before his death.

39. It follows, and it is my view, that Section 14 of the *Real Property Limitation Act*¹⁶ is not applicable to these proceedings since there is no evidence that Autar, at any time, occupied the subject property for his own benefit. Accordingly, it is my view, and I hold that the title of the Defendant, has not been extinguished. The Claim is therefore, hereby dismissed.
40. Learned Attorneys-at-law made submissions on the applicability of the doctrine of proprietary estoppel. This was at the request of the Court. Although I am grateful for the erudite submissions of learned Counsel, I have examined the claim more closely and I am of the view that there was no pleaded claim, in respect of proprietary estoppel. I will therefore make no finding in respect of proprietary estoppel.
41. I turn now to consider the relief sought by the Defendant in her counter-claim. The Defendant will be entitled to vacant possession. I considered the application of the Defendant to have the grant of probate struck out. It appeared to me, to be unfair to strike out the entire grant of probate, where there may have been other items of property, which passed from Sunbassia to the Claimant, under a valid will. The inventory, which was submitted to the High Court of Justice, incorrectly stated and that the late Sunbassia was the owner of the subject property. It is my view that this factor alone should not result in the cancellation of the grant. This could be the basis of a separate action, if necessary.

¹⁶ Real Property Limitation Act, Chap. 56:03

Orders

42. The Claim is hereby dismissed. The Counter-Claim is upheld, in so far as it is ordered that the Claimant must deliver up vacant possession to the Defendant.
43. Parties have agreed to a stay of execution of one hundred and twenty (120) days, from the date of this order. The Claimant is ordered to pay to the Defendant the costs of the Claim, agreed in the sum of fourteen thousand dollars (\$14,000.00) and the costs of the Counter-Claim in the sum of seven thousand, five hundred dollars (\$7,500.00).

Dated this 9th day of May, 2017.

M. Dean-Armorer
Judge