

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 1674 – 2013

IN THE MATTER OF THE WILLS AND PROBATE ACT CHAP. 9:03

IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT CHAP. 9:01

IN THE MATTER OF INHERENT JURISDICTION OF THE COURT
UNDER THE SUPREME COURT OF JUDICATURE ACT CHAP. 4:01

IN THE MATTER OF THE REAL PROPERTY ACT CHAP. 56:02
AND IN PARTICULAR SECTION 119 THEREOF

IN THE MATTER OF THE SUCCESSION ACT CHAP. 9:02
AND IN PARTICULAR PART VIII SECTIONS 94 – 116 THEREOF

AND

IN THE MATTER OF AN AGREEMENT DATED JANUARY 27, 2012 REGISTERED AS
NO. DE 201200614096, DEED DATED JANUARY 27, 2012 REGISTERED AS NO. DE
201200558003 AND A DEED OF RECTIFICATION DATED JUNE 7, 2012 REGISTERED
AS NO. DE 201202078032 (ALL) OF ARRANGEMENT,
SETTLEMENT AND COMPROMISE
BETWEEN
THE CLAIMANT OF THE FIRST PART
AND
THE FIRST, SECOND, THIRD AND FOURTH NAMED CO-DEFENDANTS OF THE
SECOND PART

AND IN THE ESTATE OF SEERAM SEEJATTAN
(also known as PETER SEEJATTAN), Deceased late of De Gannes Village, Siparia, Trinidad
who died on the 21st day of March, 2008

BETWEEN

LAURALEE RAMCHARAN

Claimant

AND

DR. RAMRAJ DEONARINE

(Putative Executor of the last Will and Testament of the Deceased) Defendant
AND

LAURA SEEJATTAN by her Lawful Attorney, Terance Seejattan
also known as Terrance Seejattan
TERANCE SEEJATTAN also known as TERRANCE SEEJATTAN
GINA MARIE SEEJATTAN
LISA MARIE CASCARANO Co-Defendants

BEFORE THE HONOURABLE MADAM JUSTICE DEAN-ARMORER

APPEARANCES:

Mr. Seenath Jairam, S.C., Instructing Ms. Shantal Jairam and Junior Advocate Ms. Alleyna Cheesman, Attorneys-at-law on behalf of the Claimant
Mr. H.R.M. Seunath, S.C., leads Mr. Haresh Ramnath instructing Khristendath Neebar, Attorneys-at-law on behalf of the Defendant and Co-Defendants

JUDGMENT

Introduction

1. In these proceedings¹, the Claimant, Lauralee Ramcharan, "*Lauralee*" approaches the Court for equitable relief in respect of the estate of the late Peter Seejattan who died, having left a will and having appointed the Defendant as his executor.

¹ By Claim Form and Statement of Case filed on the 19th April, 2013, the Claimant motioned the Court for the following relief:

1. A declaration that the last Will and Testament of the deceased be not admitted to Probate on condition that the Claimant and Co-Defendants have arrived at an arrangement, settlement and compromise with respect to the division and allocation of the estate or assets of the deceased as set out in the compromise documents.
2. A declaration that the compromise documents signed by each of the beneficiaries (namely, the Claimant and the first, second, third and fourth named Co-Defendants) showed on their face an intention to create a compromise having immediate legal effect direction the Court of alternatively, the executor, the Defendant to vary the Court's/his obligations in the administration and distribution of the estate or assets of the deceased so as to make provision for each of the Claimant and the Co-Defendants as beneficiaries under the estate of the deceased and in the absence of some material non-disclosure, the compromise documents took effect to vary the distribution of the deceased's estate as soon as they were communicated to the executor.
3. An order that the said Will be not admitted to Probate.
4. An order that the estate of the deceased be distributed in accordance with the compromise documents.
5. An order that the Claimant, Lauralee Ramcharan be appointed as the Legal Representative of the deceased with power or authority to administer the deceased's estate in accordance with the Laws of Trinidad and

2. Lauralee claims that the Deceased had failed to make adequate provision for her, as his common law wife. She claims that she was entitled to one of his properties pursuant to the operation of *Donatio Mortis Causa* and that a common intention constructive trust has arisen in her favour in respect of all of the Trinidadian properties of the Deceased.
3. Lauralee relies, as well, on documents executed with the Co-Defendants, who are the adult children of the Deceased. It was her contention that the estate of the late Peter Seejattan should be divided according to the agreement reflected in these documents, referred to throughout these proceedings, as “*the compromise documents*”, She contends further that, according to the compromise documents, she should replace the Defendant as the Legal Personal Representative of the Deceased.

Tobago and/or the Laws of the United States of America as modified by and in accordance with the compromise documents.

6. An order that the Claimant, Lauralee Ramcharan be at liberty to administer the entirety of the estate of the deceased as provided for in the compromise documents.
7. An order that the Defendant be relieved of his duties as executor of the said last Will of the deceased and that if necessary he be reimbursed for all actual and verifiable costs and legal expenses incurred by him in attempting to Probate the said last Will of the deceased out of the assets/estate of the deceased.
8. An order that the Claimant, Lauralee Ramcharan as legal personal representative of deceased be at liberty to pay all the attorneys-at-law for the Claimant, the Defendant and/or the Co-Defendants in accordance with Clause 11 of the habendum of the said Deed and/or Clause 11 of the operative part of the Agreement or as the Court may direct in relation to the Co-Defendants.
9. An order that the Claimant, Lauralee Ramcharan as legal personal representative of deceased be at liberty to pay and/or deduct all reasonable charges, costs, disbursements and/or fees incurred, advanced or paid by her as the legal personal representative in administering or taking steps to administer the estate of the deceased.
11. Alternatively, an order that the costs of the Claimant, the Defendant and/or the Co-Defendants (if so directed by the Court) on an indemnity basis or certified fee for Senior and Junior Counsel (and instructing attorney) for the Claimant, certified fee for Counsel for the defendant and/or the Co-Defendants (if so directed by the Court) or such order as to costs in the discretion of the Court be paid out of the estate of the deceased or out of the proceeds of the estate of the deceased before any distribution is made to the Claimant and the Co-Defendants herein or any one or more of them.
12. An order that Contentious Probated Proceedings No. L/1368 of 2009 be dismissed with no order as to costs and/or the same be struck out with no order as to costs.
13. All consequential orders, inquiries and/or directions.
14. Further and/or other relief as to the Court shall deem just.

4. In response, the Co-Defendants filed a Counterclaim, in which they sought orders setting aside the compromise documents. They relied on the grounds that the Co-Defendants had not had the benefit of legal advice and that the compromise documents were fraudulent.
5. In the course of this decision, the Court was required to resolve issues of fact, to consider *inter alia* the doctrine of the common intention constructive trust and the operation of the principle of *donatio mortis causa*. .

Facts

6. Peter Seejattan (the Deceased), had lived in Florida, United States of America (USA) for most of his adult life. He was a businessman and owned and operated two (2) stores: one in Hollywood, Florida and the other in Miami, Florida, USA.
7. The Deceased had four (4) children, Laura, Terrance, Gina Marie and Lisa Marie. The Deceased was a heavy drinker and was frequently in conflict with the law.
8. In 1994, the Claimant, Lauralee Ramjattan travelled to Florida to visit her aunt at Fort Lauderdale, Florida. On this occasion, Lauralee became acquainted with the Deceased and began a relationship with his family that endured until the inception of these proceeding.
9. In particular, Lauralee was close to Gina and Lisa, the two (2) younger daughters of the deceased. She lived at their home in Davie, Florida and took care of the day to day needs of the two (2) younger children. She was involved in their school life, attended their Parent and Teachers Association (PTA) meetings and encouraged them in pursuing their special interests. She loved them and they loved her.
10. Lauralee also became involved in the business of the Deceased. She spent long hours working there, often with the children, whose school work suffered as a consequence.

11. Whereas it has not been disputed that Lauralee's relationship with the family was as intense, and long, the parties dispute the capacity in which Lauralee related to the family. On the one hand, Lauralee contends, and has built her claim on the contention that she was the common law wife of the Deceased and had been thus from 1994 until he died. The children of the Deceased, the Co-Defendants in these proceedings, deny Lauralee's contention and insist that Lauralee was no more than a baby-sitter of Gina and Lisa. This issue of fact will be considered and determined later in this judgment.
12. On the 22nd June, 1995, Lauralee was married to Terrance². They were subsequently divorced in the year 2001. It was Lauralee's contention that she and Terrance were coerced into the marriage by the Deceased and that they never cohabited. Terrance, on the other hand has countered that he cohabited with Lauralee at the Davie home of his father and that their marriage broke down because she was very controlling. This is the second issue which will be resolved below.
13. At length, Terrance was remarried. The Claimant produced as photograph of the family at Terrance's second wedding. The photo depicted Lauralee with the Deceased, Terrance and one of his younger sisters.
14. Terrance was cross-examined as to the photo of his wedding. He admitted that the Claimant had been invited, but explained her presence by suggesting that she, as his ex-wife had been invited because she was the baby-sitter of his younger sisters.
15. In the year 2007, the Deceased was deported from the USA to Trinidad on account of his frequent infractions of the law in the USA.

² See paragraph 4 supra, Terrence being the only son of the deceased.

16. In Trinidad, the Deceased lived at Lily Trace Junction, De Gannes Village, Siparia. Lauralee visited him in September, 2007, and resided with him for a period of two weeks. The Deceased died on the 21st March, 2008, at the Eric Williams Medical Sciences Complex, Mt. Hope.
17. Prior to his death, the Deceased visited Dr. Ramraj Deonarine. Among other things, the Deceased asked Dr. Deonarine to be the executor of his will. Two (2) days later, the Deceased telephoned Dr. Deonarine and told him that he had made the will. On the following day, the Deceased visited the home of Dr. Deonarine and supplied him with a black bag. Dr. Deonarine testified that the Deceased, on that occasion, was ill and that he, Dr. Deonarine took him to the Mt. Hope Hospital, where the Deceased died three (3) days later. It is not disputed that the Claimant organised and paid for the funeral. She also purchased tickets for the children of the Deceased to attend the funeral. On the programme, the Deceased was identified as the husband of the Claimant.
18. A few days following Peter's death, Dr. Deonarine searched the black bag, found the will of the Deceased and took it to Attorney-at-law, Mr. Neebar, who prepared an application for a grant of probate.
19. On the 15th May, 2009, Dr. Deonarine filed an application for a grant of probate of the will of the Deceased. By his will, the Deceased directed his executor to sell all his real and personal property and from the proceeds of sale to pay all debts, funeral and testamentary expenses. The Deceased directed that the remainder of the proceeds be divided among his four (4) children in specified portions.
20. Following the application for the grant of probate, the Claimant caused to be filed three (3) separate caveats on the 7th August, 2009, the 3rd February, 2010 and the 1st September, 2010

respectively. The caveats were filed under the *Wills and Probate Ordinance*, Chap. 8:02.

In response, the executor, Dr. Deonarine filed a warning to the caveat on the 21st July, 2011.

Lauralee filed an Appearance on the 25th July, 2011.

21. In February, 2010, Terrance negotiated with Lauralee for the removal of the caveat. In exchange, for her agreeing to remove the caveat, Lauralee would receive one half of Terrance's share of his father's estate.³
22. As a result of the agreement between Lauralee and Terrance, the four (4) children of the Deceased signed a notarised letter and sent it to their Attorney-at-law, Mr. Neebar.
23. In 2011, Lauralee entered another agreement with the children of the Deceased. It is not disputed that the Hollywood business, which had been owned by the Deceased was under the care and management of Terrance. The Hollywood business was not doing well and payment of taxes on the properties of the Deceased was overdue. The children of the Deceased entered into an agreement with Lauralee, whereby she would advance the required sums for payment of the taxes and would allow the probate of the will of the Deceased to be completed.
24. Under the 2011 Agreement, Lauralee would also receive benefits. The extent of those benefits and indeed of the Agreement itself is a matter of dispute. The children of the Deceased contend that Lauralee came to them with a prepared agreement. They contended that they signed it, without the benefit of legal advice but did not keep a copy.
25. Lauralee on the other hand alleges that the agreements had been signed in the presence of a lawyer's clerk, Krishna Harry, and that the Co-Defendants had the benefit of the legal advice of USA Lawyer, David Farbistein. The Agreements were made in the form of a deed which

³ See the Witness Statement of Terrance at paragraph 14

were subsequently registered in Trinidad and Tobago. In these proceedings, the Claimant refers to them as “*the compromise documents*”. In respect of these documents, the Co-Defendants cry fraud. They also contend that they were subjected to duress in executing the documents.

Documentary Evidence

26. Much of the evidence which was placed before this Court was documentary. The documentary evidence may conveniently be placed under three (3) headings: the photographs, the will and related documents, the agreements. The Court is exhorted by the highest authority to be guided by contemporaneous documentary evidence in its assessment of issues of fact.⁴

Photographs

27. The Claimant has relied on photographs which were so numerous that they occupied two (2) folders. The photographs were tendered into evidence *de bene esse* in bundles, which were marked “X” and “Y”, respectively.

28. The photographs consistently depict Lauralee and the Deceased in armoured postures. From this, the Claimant asks the Court to infer that she was engaged in a cohabitational relationship with the Deceased. In the course of assessing the issues of fact, the Court will consider the effect of the photographs.

The Will and Related Documents

29. The second category documents which were tendered into evidence relate to the Will of the Deceased. Although the Claimant repeatedly referred to the Will as “*the purported will*”, there was no challenge to its validity. There was no suggestion that it fell short of the formal

⁴ See *Horace Reid v. Dowling Charles*, Privy Council Appeal 36 of 1987

requirements of a will or that the signature was not that of the Deceased. In substance, the Will is very simple, directing that all the property of the Deceased be sold and after payment of funeral and testamentary expenses, all proceeds to be divided between the children of the Deceased.

30. The Will accompanies the application of Dr. Deonarine for a grant of probate. The application annexes the inventory of the estate of the Deceased. The inventory shows the Deceased as holding two First Citizens Bank (FCB) accounts and ten parcels of land of various sizes and at various locations.
31. Following the Will and three (3) caveats filed by the Claimant, the warning of the Defendant and an Appearance filed on behalf of the Claimant.

The Agreements

32. The first document indicating any agreement between the parties is the notarised letter, which was signed by the children of the Deceased and forwarded to Mr. Neebar, Attorney-at-law for the Co-Defendants. This document bore no fruit and was overtaken by the compromise documents.
33. The first of the compromise documents was an undated agreement which was signed by the Claimant, three of the children of the Deceased and Terrance, who held a power of attorney for Laura.
34. The second of the compromise documents was a nineteen (19) page Agreement of Arrangement, Settlement and Compromise dated the 27th January, 2012 signed by the Claimant and Terrance in his own behalf and as the lawful attorney of Laura Seejattan. This document recites the entire history of the relationship between the parties and provides for

the distribution of the property of the Deceased both in Trinidad and Tobago and in the USA. This Agreement provided that the Claimant to be appointed as the personal representative of the Deceased in the USA. It was agreed in the Agreement that it would act as an unequivocal and unconditional authorisation by Terrance to the Personal Representative of the Estate of the late Peter Seejattan to disburse sums agreed to be due to the Claimant.

35. The Agreement of Arrangement, Settlement and compromise was signed simultaneously with a Deed of Arrangement, Settlement and Compromise. The Deed, a seventeen (17) page document was also signed by the Claimant, Gina, Lisa, Terrance on his own behalf and Terrance, as the lawful attorney of Laura. The Deed of Arrangement was followed by a Deed of Rectification on the 7th June, 2012, whose purpose was to rectify the original deed, by including paragraphs in the recitals.

Issues

36. The instant claim has canvassed issues of fact, issues of law and issues of mixed fact and law.
37. The first issue of fact which arises is whether the Claimant was in a cohabitational relationship with the Deceased for the purpose of the *Succession Act*⁵.
38. The Court was also required to decide whether the marriage between Lauralee and Terrance was a sham and whether this couple ever cohabited.
39. The Court was also required to decide, as an issue of fact, whether the documents which were produced in the course of litigation and referred to as the compromise documents were in fact the documents signed by the parties.

⁵ The Succession Act, Cap. 9:02

40. The following issues of law arise:

- Whether the Claimant is entitled to the Siparia property pursuant to the doctrine of Donatio Mortis Causa
- Whether a common intention constructive trust arose in favour of the Claimant in respect of the Trinidadian properties of the Deceased.
- Whether by virtue of the Compromise Documents, the Claimant should replace the executor Dr. Deonarine as the Legal Personal Representative of the estate of the Deceased and whether the Will should be set aside in favour of the Compromise Documents.

Discussion

41. In the section which follows, the Court will treat with each issue setting out the law and applying it to the facts, which have been established on a balance of probabilities.
42. The first and most critical issue to be addressed is whether the Claimant was a cohabitant for the purpose of the *Succession Act*.⁶ In determining this issue, the Court bore in mind that the cohabitational relationship is a creature of statute and is circumscribed by a statutory definition. A definition of the cohabitational relationship may be found at Section 94 of the *Succession Act*.⁷

“94. (1) In this Part—

“cohabitant” or “cohabiting partner” means—

⁶ The Succession Act, Chap. 9:02

⁷ Ibid

(a) in relation to a man, a woman who has been living with or who has lived together with a man in a bona fide domestic relationship for a period of not less than five years immediately preceding the date of his death;”⁸

A similar definition may be found at Section 2 of the ***Administration of Estates Act***⁹.

“2. In this Act— “cohabitant” means a person of the opposite sex who, while not married to the intestate, continuously cohabited in a bona fide domestic relationship with the intestate for a period of not less than five years immediately preceding the death of the intestate; ...”¹⁰

43. In these proceedings, the Claimant alleges that she was the common law wife of the Deceased. In support of her contention she has relied on the testimony of Horace Ramjattan, who deposed that she was introduced by the deceased as his common law wife.
44. The Claimant relied as well on the printed programme which was distributed at the funeral of the Deceased. In the programme the Deceased was described as the husband of Lauralee. Learned Senior Counsel, Mr. Jairam in the course of cross-examining Terrance, the Second Co-Defendant, confronted the witness with the funeral programme. Although Terrance expressed surprise, he did not contradict the description of the Deceased as the husband of Lauralee.
45. The greater part of the Claimant’s evidence, in support of her contention that she was a cohabitant of the Deceased, could be found in the two volumes of photographs which were produced to the Court, as exhibits “X” and “Y”.

⁸The Succession Act, Chap. 9:02, Section 94 (1) (a)

⁹ The Administration of Estates Act, Chap. 9:01

¹⁰ The Administration of Estates Act, Chap. 9:01, Section 2

46. The photographs which were presented to the Court depicted Lauralee and the Deceased in intimate attitudes to each other. The photographs clearly do not provide direct evidence of an intimate relationship. The Court is therefore asked to infer from the content of the photographs, and from the overwhelming volume of photographs which were placed before this Court, that Lauralee and the Deceased were intimate, that they lived together and that she occupied the role of wife to him.
47. There is no contradictory evidence, and even if the Court finds, as it does that the marriage between Terrance and Lauralee was not a sham, the evidence is overwhelming, that Lauralee occupied the position of a wife, living at the same premises with the Deceased, until his deportation in April, 2007.
48. Following the deportation of the Deceased in 2007, the parties no longer lived together. Lauralee visited in September, 2007, and stayed with him. There was no indication that they were intimate at this time and the cascade of intimate photographs, on which Lauralee relied for the pre-deportation period, were absent. In any event, following her two (2) week visit, the parties lived separate and apart from September, until the death of the Deceased in March, 2008. Accordingly, any cohabitation between Lauralee and the Deceased was broken in September, 2007. For a period of some six (6) months, there was no cohabitation.
49. In this way, it was my view that the relationship fell short of the statutory definition of a cohabitation, that is to say that parties lived together in a *bona fide* domestic relationship of at least five (5) years prior to the death of the cohabitant. The Court in my view is required to ask itself two questions. The first is whether there had been cohabitation immediately preceding that date and if so whether such cohabitation was for a period of five (5) years.

Clearly the answer to the first question is in the negative. Immediately prior to the death of the Deceased and for some six (6) months before there was no cohabitation.

50. Learned Senior Counsel, Mr. Jairam in the course of his written submissions compared the relationship between Lauralee and the Deceased to a marriage, where one party had gone to prison. In my view, it would be wrong, in law to compare the marriage relationship to the cohabitational relationship. Both are, in fact, creatures of statute and as a matter of policy, Parliament has not accorded the partners to a cohabitational relationship the same rights as those who are married. See the words of Mendonça, J. (as he then was) in HCA# 3007 of 2001, *Anthony Delzine v. Judy Stowe* at page 16 of 35, where Mendonça, J. had this to say:

“I think it must be recognised that it was not the intention of Parliament to accord to cohabitants the same status as a married couple.”

51. Accordingly, a marriage endures until the High Court orders its dissolution on one of the grounds identified in the *Matrimonial Proceedings and Property Act*.¹¹ A cohabitational relationship ceases to exist when the parties cease their cohabitation.
52. The Deceased died on the 21st March, 2008. The cohabitation had ceased months before. The Court is prepared to accept that cohabitation ended in September, 2007. In this way, the relationship did not exist for five (5) years immediately preceding the death of the Deceased.
53. My finding, in this regard, has obvious consequences for the contention on behalf of the Claimant that the Deceased failed to make adequate provisions for her, as a common law wife. In so far as it is my view, that the Claimant has failed to establish that she was a cohabitant for the purpose of the *Succession Act*¹², it is my view and I hold that it cannot be declared that the Deceased failed adequately to provide for her in his Will.

¹¹ The Matrimonial Proceedings and Property Act, Chap. 45:51

¹² The Succession Act, Chap. 9:02

Donatio Mortis Causa

54. The issue of ***Donatio Mortis Causa (DMC)*** received the authoritative consideration of the Court of Appeal in ***Citalee Dookaran v. Ramraj Ramsahai***¹³. In that appeal, the Court of Appeal upheld the decision of this Court. Relying on the House of Lord decision, in ***Sen v. Headley***¹⁴ the Court of Appeal identified the three (3) elements of ***DMC*** as being:

“(1) *The gift must be made in contemplation of death*

(2) *The gift must be made on the condition that it is absolute and perfected only on the donor’s death.*

(3) *There must be delivery of the subject matter of the gift...*”

55. At paragraph 84 of her witness statement, the Claimant alleged that in April, 20, 2008, on returning to her home in the USA, she received a large brown envelope containing the original deed for the De Gannes, Siparia Property. The Claimant stated:

“*Peter had always told me that the property was mine...*”

56. This was the totality of the evidence, which was adduced in support of the claim that the Deceased had made a gift in contemplation of death. This evidence, however falls short of demonstrating that the deeds were intended to be a gift from Peter. The facts in these proceedings are to be contrasted with those of ***Sen v. Headley***¹⁵, where the Deceased, while ill with terminal cancer, told the Plaintiff that the house and all its contents were hers. The Deceased then substantiated his words by indicating how the deeds could be found. By contrast, in these proceedings, no details were provided as to whether, and in what circumstances, Peter (the Deceased) told the Claimant, that the De Gannes Village, Siparia

¹³ Civil Appeal No. 123 of 2007

¹⁴ *Sen v. Headly* [1991] 1 WLR 606

¹⁵ *Sen v. Headly* [1991] 1 WLR 606

property was hers. There was no specific allegation that the Deceased ever made such a statement, whether close to and in contemplation of his death, or at all.

57. It is also my view that the Claimant by her evidence, has failed altogether to prove that the *DMC* was made after the execution of the will. *DMC* is one of the two exceptions where equity will operate to perfect an imperfect gift. The other of course, is the rule in *Strong v. Bird*¹⁶. It seems however, that the subsequent execution of a will would negate the intention of a deceased person to give a gift in contemplation of death. Accordingly, even if the Claimant had adduced evidence that the deceased had declared an intention to give her the Siparia property, the fact that the Deceased died with a valid will in existence, renders any verbal intention null and void and of no effect.
58. It is therefore my view and I hold that the Claimant has failed to establish that the elements of *DMC* support her claim to the De Gannes Village, Siparia property.

The Common Intention Trust

59. The Claimant has alleged that the Deceased held the Trinidadian properties on trust for her. She has provided evidence that she worked tirelessly in the acquisition of these properties.
60. The Law in relation to the *Common Intention Constructive Trust* has undergone a metamorphosis throughout the years, beginning with the early authorities of *Petit v. Petit*¹⁷ and *Gissing v. Gissing*¹⁸ and *Lloyd Bank v. Rosset*¹⁹, where the Courts required contributions to the acquisition of the home pursuant to an express or implied agreement at the time of acquisition.

¹⁶ *Strong v. Bird* (1874) LR 18 Eq 315

¹⁷ [1962] 3 All ER 37

¹⁸ [19970] 2 All ER 780

¹⁹ [1990] 1 All ER 1111

61. The law has recently been settled in the UKSC case *Jones v. Kernott*²⁰, where Lord Walker in his joint opinion with Lady Hale identified five (5) principles pertaining to the common intention constructive trust. Addressing a fact situation where co-habitants were joint tenants of the property in question, Lord Walker has this to say:

- “(1) The starting point is that equity follows the law and they are joint tenants both in law and in equity.*
- (2) That presumption can be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home, or (b) that they later formed the common intention that their respective shares would change.*
- (3) Their common intention is to be deduced objectively from their conduct: “the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party’s words and conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party” (Lord Diplock in Gissing v Gissing [1971] AC 886, 906). Examples of the sort of evidence which might be relevant to drawing such inferences are given in Stack v Dowden, at para 69.*
- (4) In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, “the answer is that each is entitled to that share which the court considers fair having regard*

²⁰ [2011] UKSC 53

to the whole course of dealing between them in relation to the property”:
Chadwick LJ in Oxley v Hiscock [2005] Fam 211, para 69. In our judgment,
“the whole course of dealing ... in relation to the property” should be given a
broad meaning, enabling a similar range of factors to be taken into account as
may be relevant to ascertaining the parties’ actual intentions.

(5) Each case will turn on its own facts. Financial contributions are relevant but
there are many other factors which may enable the court to decide what shares
were either intended (as in case (3)) or fair (as in case (4)). ”

62. In particular, Lord Walker stated that were it is not possible to ascertain an intention to share the property by direct evidence or by inference, each party is entitled to that share which the Court considers fair having regard to the whole course of dealing between them, in relation to the property.
63. At paragraph 42 of her witness statement, the Claimant alludes to the work carried out on a twenty-six (26) parcel of land known as Laura Valley. The Claimant proceeded to say that she and the Deceased worked together on all properties in Trinidad.
64. In my view, the Claimant has provided uncontroverted evidence of her having contributed to the development of Laura Valley. Having regard to the principles listed by Lord Walker, it is my view that it would be fair to accord to the Claimant fifty percent (50%) interest in Laura Valley.
65. In respect of the other properties however, the Claimant by her evidence has fallen short of providing any details. She has not identified the properties and has not, even in some sketchy way, outlined her contribution. In my view, there is no evidence upon which the Court can infer a common intention in respect of any property other than Laura Valley.

The effect of the Compromise Documents

66. The Claimant, by learned Senior Counsel, has contended that by virtue of the Compromise Documents the will ought to be set aside and that she, the Claimant ought to take the place of Dr. Deonarine as the Legal Personal Representative of the estate of the late Peter Seejattan.
67. In so contending, the Claimant has relied heavily on the judgment of Sumption, Q.C. (as he then was) in *Crowden v. Aldridge*²¹. In that case one finds the impeccable reasoning of Sumption, Q.C. likening the acts of legatees to beneficiaries under a trust. This was clearly an allusion to the principle in *Saunders v. Vautier*²² where the totality of beneficiaries may agree to call in trust property and direct that trustees convey it to them, thus terminating the trust.
68. Sumption, Q.C. did not however hold in his decision that beneficiaries under the *Saunders v. Vautier*²³ principles had the power to change the trustee. Similarly Sumption, Q.C. did not go so far as to hold that the legatees had the power to replace the executor of the will of Maurice Farrington.
69. Nonetheless, learned Senior Counsel Mr. Jairam contends that by unanimous direction the legatees can change the Legal Personal Representative.
70. In my view, to take this step would be equivalent to taking a leap of faith unsupported by statute or any other authority. Statute has provided measures by which the Legal Personal Representative can be replaced and the unanimous direction of legatees is not one of them.

²¹ [1993] 1WLR

²² [1841] 41 All ER 482

²³ Ibid

71. Senior Counsel, Mr. Jairam has agreed that a will is sacrosanct, reflecting the wishes of the Deceased. The will has not been impugned for fraud, for a failure of requisite formalities or for the lack of capacity of the testator. It seems therefore in those circumstances that the Legal Personal Representative should be allowed to apply for a grant of probate, pay, as directed all funeral and testamentary expenses.
72. Learned Senior Counsel, Mr. Jairam urged the Court to hold that there were special circumstances in this case, pursuant to Section 25 of *the Wills and Probate Act*, Chap. 9:03.
73. Section 25 of the *Wills and Probate Act*²⁴ provides as follows:

“25. Where any person shall die intestate or without having appointed any executor, or shall have appointed an executor but such appointment shall fail, or the executor named by the Will shall be under the age of twenty-one years, or shall be absent from Trinidad and Tobago and shall not have proved the Will, or where any person shall die out of Trinidad and Tobago but leaving any estate within Trinidad and Tobago; administration in respect of such estate shall be granted to the person entitled thereto: Provided that if, by reason of the insolvency of the estate of the deceased or of any other special circumstances, it appears to the Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law have been entitled to the grant of administration, the Court may in its discretion, notwithstanding anything in this Act, appoint as administrator such person as it thinks expedient, and any administration granted under this provision may be limited in any way the Court thinks fit.”

²⁴ The Wills and Probate Act, Chap. 9:03

74. In the course of his submissions, learned Senior Counsel identified those factors which in his submission amounted to special circumstances. Learned Senior Counsel identified eight (8) special circumstances:
- (1) The children's unanimous agreement under the compromise documents
 - (2) The children's confidence as set out in the compromise documents
 - (3) The avoidance of further litigation
 - (4) The willingness of the Claimant to take the burden of administration
 - (5) Dr. Deonarine willingness to give up the role of Legal Personal Representative
75. I considered these in categories beginning with the willingness of the Claimant to undertake the role of Legal Personal Representative and Dr. Deonarine to relinquish this role. Should this be the case, ***Wills and Probate Act***²⁵ provides for Dr. Deonarine to renounce his role.
76. It seems that any special circumstances must be read in the context of the whole provision at section 25 of the ***Wills and Probate Act*** and must be in the nature of insolvency of the estate that is to say a complete collapse of the estate. In my view, nothing less would motivate the Court to exercise its discretion to vary the stated wishes of one, who being deceased, is incapable of appealing my order.
77. In my view, there is no reason why the Claimant cannot seek to enforce the compromise documents following the application and grant of probate, as per ***Crowden v. Aldridge***²⁶.
78. As to the familiarity of the Claimant with the US and Trinidad, it is clear that this Court has no jurisdiction over any foreign properties.
79. I turn now to consider the Counterclaim. The Co-Defendants have applied for orders setting aside the compromise documents. They have contended, in the first place, that they never

²⁵ The Wills and Probate Act, Chap. 9:03

²⁶ [1993] 1WLR

signed the compromise documents which were placed in evidence in these proceedings and that the documents are fraudulent. They also seek to set aside the documents on the ground that they did not have the benefit of legal advice and on the ground of non est factum .

80. The statutory declaration of law clerk , Krishna Harry, provides evidence that the Co-Defendants indeed signed the Agreement of 2012. The Statutory Declaration was a contemporaneous document and in my view completely destroys any possibility of fraud. Moreover, the uncontroverted evidence was that the Co-Defendants had the benefit of the advice of Attorney-at-Law David Fabistein. Accordingly, it seemed that there might have been little merit in the grounds of the lack of independent legal advice and of fraud.
81. However, having regard to my ruling on the merit of the claim, it would be open to the Co-Defendants to launch a full attack on the compromise documents should the Claimant seek to enforce them following the grant of probate. Accordingly, it is my view that the issues canvassed by the Counterclaim should not be decided in these proceedings, but following the grant of probate. Accordingly, it is my view that the Counterclaim should be dismissed.
82. It follows that it is my view and I hold that the Claim must fail, so too should the Counter Claim. The caveats preventing the grant of probate should be removed and the Claimant could seek to enforce the Deed of Arrangement after the will has been proved.

Orders

83. It is ordered that Paragraphs 1 to 13 of the items of relief claimed in the Claim Form filed on the 19th April, 2013, are refused.
84. Pursuant to paragraph 14 of the Claim Form by which the Claimant seeks such further and/or other relief which the Court shall deem fit:

- (i) It is declared that the Estate of the late Peter Seejattan holds fifty percent (50%) of the interest in the property known as Laura Valley, on trust for the Claimant.
85. The Counterclaim of the Co-Defendants is dismissed.
86. The Co-Defendants to pay to the Claimant costs of the Counterclaim to be taxed by the Registrar of the Supreme Court.
87. The Defendant and the Co-Defendants do pay to the Claimant one fourteenth (1/14) of the costs of the Claim.
88. Liberty to apply.

Dated this 3rd November, 2017.

M. Dean-Armorer
Judge