

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2007-01534

BETWEEN

BHARAT BHOWANSINGH

1st Claimant

RAINOOKA BHOWANSINGH

2nd Claimant

AND

(1) MAHENDRA PERSADSINGH

1st Defendant

(2) HUGH NURSE

2nd Defendant

(3) CHARLES NURSE

3rd Defendant

(4) DIANNE NURSE-GITTENS

4th Defendant

(5) FLORENCE NURSE

5th Defendant

**(6) FLORENCE NURSE (as legal representative
of the late Arnold Nurse, deceased)**

6th Defendant

(7) PATRICIA NURSE-TANDOH

7th Defendant

(8) PAMELA NURSE

8th Defendant

(9) JUDITH NURSE TONEY

9th Defendant

(10) MARGARET NURSE-BURKETTE

10th Defendant

(11) ANDREA NURSE

11th Defendant

(12) DAVID NURSE

12th Defendant

(13) MICHELLE NURSE-LUCAS

13th Defendant

(14) MARCIA NURSE-DANIEL	14th Defendant
(15) KENRICK PARSONS	15th Defendant
(16) ANDREW PARSONS	16th Defendant

BEFORE THE HONOURABLE MR JUSTICE RONNIE BOODOOSINGH

APPEARANCES:

Mr Khemraj Harrikissoon for the Claimants

Mr Suresh Dodol for the First Defendant

Mr Garnet Mungalsingh for the Second to Sixteenth defendants

Dated: 27 February 2013

REASONS

1. These are reasons following an oral judgment given on 29 October 2012.
2. This claim concerns a parcel of land in La Brea which is 21 acres, 3 roods and 9 perches (the lands or the 21 acre parcel).

3. The claimants are husband and wife. They own a plot of land adjoining the lands. They say they have been in possession of the lands to the exclusion of all others for over 16 years. The first defendant also says he is in possession of the same lands for over 16 years.

4. The remaining defendants, that is, defendants 2 to 16 say they are the paper title holders to the land. The claimants and the first defendant seek declarations that they are entitled to possess the lands, the title to the lands having extinguished under section 3 of the **Real Property Limitation Act, Chapter 56:03**.

5. I accepted on a balance of probabilities that the second to sixteenth defendants are the paper title holders to the lands in question. This was not challenged on the evidence. The live issues are possession and intention to possess.

6. In accordance with the case of **JA Pye (Oxford) Limited v Graham [2003] 1 AC 419** two matters must be proved by a party seeking to advance a claim of adverse possession. First, there must be factual possession of the lands which is actual physical possession of the lands to the exclusion of all others for 16 years. The second matter is there must be the intention to possess.

7. What is sufficient possession is to be considered in all the circumstances. The possessor must show that he is dealing with the land as if it were his own.

8. The claimants called 4 witnesses. The first defendant gave evidence. Three persons gave evidence for the second to sixteenth defendants.

9. From the outset, the cases of the claimants and the first defendant were inconsistent. They both asserted control of the lands. From the evidence, however, contrary to the claims, what is clear is that the evidence they both assert did not involve the whole 21 acre parcel. Their claims came down to smaller portions.

10. The decision in this claim depended on the court's evaluation of the evidence relating to possession of the lands.

11. It is to be noted that this claim came about at first because the claimants say the first defendant came unto the lands and interrupted their occupation of it. The second to sixteenth defendants came into the matter later on because it was their lands involved. Further, earlier in these proceedings, affidavits were filed by the parties and those were used at the trial to test the witnesses.

12. An agronomist report was also admitted. The parties had consented to this before the judge hearing this claim before.

Observations on the Evidence/ Findings

Bharat Bhowansingh

13. The effect of his evidence was that his father was in occupation of the lands. He continued that occupation up to the present time until the first defendant came onto the lands and dispossessed him of part of it. He gave evidence that he and his father had planted the lands, reaped crops on it and used it to rear animals including cows. He said there was a shed on the lands which he would repair from time to time.

14. In cross examination, he noted he would plant the lands part-time as he had a job as a checker with the local government body.

15. There were important contradictions in his evidence given in cross examination. He said his father would cultivate corn and peas on about 2 acres. They reared goats, sheep and cattle on 15 acres. He said his father had planted one mahogany tree and the others grew from seedlings. He noted that they never sold the produce. It was for their own

purposes. This raised a serious doubt about whether he was truthful about occupying the entire 21 acre parcel of land. He noted they cleared what they planted on.

16. **Rainooka Bhowansigh** also gave evidence. She married the first claimant and moved to his home in 1975. She gave evidence in support of her husband. In answer to Mr Dodol, however, she noted that the lands were not fenced. People had access. People used to hunt (on the lands). In some respects, she contradicted her husband as to the acreage being planted. She gave incredulous evidence that sometimes they would have 10,000 lbs of yam. Given that it was not sold, this seems incredible and an exaggeration.

17. **Krishna Bhowansingh**, the first claimant's brother, gave evidence in support. He noted that his father had cultivated the lands and then it passed to his brother, the first claimant. He said the first claimant took over from his father in about 1973 up until about 2004. He spoke of 8 lots being used immediately to the back of the house to tie animals. He noted there was a shed. They used to sell cows. He spoke of about 10 acres being used to graze cows on. Agriculture would be done on 3 or 4 acres.

18. A witness, **Sahadat Sultan**, gave evidence about the claimants using the lands but he could not be specific as to what area they occupied. From the evidence of the claimants and their witnesses as a whole, it appears that over a period of time they used part of

the lands for tying animals and for rearing short term crops. They may have also planted a few fruit trees. What I do not accept is that they occupied the entire 21 acre parcel of land on a continuing and uninterrupted manner.

19. I think the correct position is that they used parts of the lands at different times. I also note that they did not use the lands to the exclusion of others. They noted that persons used to hunt on the lands. In fact, there is no clear demarcation of the lands. They may have used that part of the lands immediately behind their house. The extent of use, however, cannot be properly demarcated. This was a claim for 21 acres. Even if the court accepted that they occupied part of the land, there is no clear evidence of the full extent of what was occupied. There were contradictions by the witnesses of the extent of the occupation. This raises questions of what kind of relief the court could give in such circumstances.

Michael Persadsingh, the First Defendant

20. This defendant is an auditor with the State oil company, Petrotrin, and he lives in La Romain which is about 20 km or more away from the lands. He said the claimant occupied 2 acres. Contrary to his claim, he drew a plan which showed that different members of his family occupied different parts of the land. He noted he had occupied 8

acres from 1987. In cross examination he said he did not clear the lands in 1987. He was pointed to an inconsistency where he said previously that he cleared a couple of acres in 1987. He gave evidence that he started and cleared more lands gradually, and he took until 2003 to clear the lands. He spoke of planting many trees on the lands including forest trees. He said he cleared a pond. He said he built a shed.

21. I did not accept his evidence of his occupation since 1987. I accepted that he came onto parts of the land much more recently, and certainly not as long as 16 years. He noted he has purchased part of the adjoining lands owned by one of the Parsons and he was prepared to vacate part of the 8 acres.

22. This defendant could not identify precisely the part of the parcel of land which he occupies. He drew on a survey plan his impressions of what is occupied and by whom. He called no expert evidence himself. Again it cannot be identified precisely which part he says he occupied.

23. The first defendant's evidence was also contradictory about his assertions of when he planted the immortelle trees and when he planted the cedar trees.

24. I found the evidence given by the claimants and the first defendant to be contradictory to the agronomist's report whose findings were earlier agreed to. The report showed that there was not planted on the lands trees of the nature and extent spoken of by the claimants and the first defendant. The first defendant in particular set out that he had planted large quantities of various types of trees including fruit trees. This was not supported by the report of what existed on the lands. It was far more consistent with the lands being of a forested nature with some fruit trees and shrubs as contended by the second to sixteenth defendants.

The Second to Sixteenth Defendants

25. The more important witnesses from the point of view of dealing with the lands were Mrs Diane Nurse-Gittens and Charles Nurse. Both these witnesses spoke of visiting the lands from time to time. Mrs Gittens in particular spoke of visiting the lands whenever she went to pay land taxes for the land periodically. On these occasions, she would walk part of the land. She could see it from the National Mining Road. The lands had been an old cocoa and coffee estate. These visits included the years 1987, 1990, 1997, 2001, 2007. I think it is very likely that she would have visited the lands, as she said, after journeying from her home in Port of Spain to pay the taxes on the particular occasions. Given the evidence of the claimants and defendants and where they said they occupied,

I also think it quite likely that any use of the lands as they suggested would have been obvious.

26. Further, given as well the continued payment of taxes and that the lands were dealt with and part was acquired by the State for a recreation ground for the local residents, it is clear that the second to sixteenth defendants, or their representative Mrs Gittens, continued to be interested in the lands. The acquisition of part of the lands by the State required the lands to be surveyed which would have included notice to persons nearby. This acquisition was for the purposes of a playground in the area of which all the parties would have known. Her evidence is she saw no signs of the occupation the other parties spoke about. I think it likely that she would have raised objection had she seen need to do so.

27. She gave evidence that she did not see signs of anyone occupying the lands as claimed by the claimants and first defendant.

28. I also accepted that Charles Nurse visited the lands from time to time and his evidence is consistent that there was no occupation of the lands to the extent claimed.

29. I accepted and preferred the evidence of Mrs Gittens and Mr Nurse on their observations of the land.

30. From all the circumstances, it seems that persons in the village would pass by or make use of fruits and produce of the lands and hunt on the lands. I do not accept that either the claimants or the first defendant exercised that degree of sufficient control over the lands to the exclusion of others to establish a claim.

31. In the case of the first defendant, I also do not accept that he was in occupation for 16 years continuously of any 8 acre parcel. The claimants may have used a small portion of the lands near to their home from time to time and made use of the fruits of the land but not exclusively and not with the required intent to possess it. I accepted that the first defendant came onto the lands about 2005.

32. The claim must therefore be dismissed. The first defendant's ancillary claim is also dismissed.

33. The second to sixteenth defendants are entitled to judgment on their claim against the claimants and the first defendant. They are entitled to possession of the lands. An

injunction is also granted to them to prevent the claimants and the first defendant from entering, remaining on or constructing any buildings thereon. An injunction is also granted against the first defendant to pull down and remove any structures built on the lands by him or under his authority.

34. The claimants were legally aided. I will make no order as to costs against them. The first defendant must pay the costs of the second to sixteenth defendants in the sum of \$28,000 representing the costs of his claim and their counterclaim against him. Stay of execution: 28 days.

Ronnie Boodoosingh

Judge