

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2008-02874

BETWEEN

KRISONDAYE RAGOONANAN

CLAIMANT

AND

RADESH SAMAROO

DEFENDANT

Before the Honourable Mr Justice R. Boodoosingh

Appearances:

Ms C. Mohan holding for Mr H. Ramnath for the Claimant

Mr. A. Ashraph for Defendant

Dated: 14 June 2012

REASONS

1. This is a boundary dispute between the Claimant and Defendant. By her claim of 25 July 2008 the Claimant alleged she and her predecessor in title, her mother, had since about 1951 occupied a parcel of land comprising 5 acres and 26 perches of land at Barackpore, known as plot 3. The Defendant had, for 45 years, been in possession and occupation of the neighbouring plot, 5 acres and 22 perches, known as plot 2.

2. She alleged the defendant's father had erected a galvanize fence about 40 years ago along the western boundary of plot 2. She alleges that the Defendant and her kept this boundary until 22 May, 2008 when the Defendant brought a tractor and formally entered Plot 3 (also called the larger parcel of land). She said the Defendant knocked down the fence and 2 sheds she had there, knocked down a religious plant and various fruit trees she had. The Defendant also employed workmen and placed a new chain link fence.

3. She filed a claim for trespass, damages and for possession of "the said lands". These said lands must obviously be Plot 3. There was also a claim for a declaration that the Claimant is the legal owner of the said land - again this must be Plot 3.

4. The Defendant filed a Defence on 6 November, 2008. He said there was never any galvanize fence between Plot 2 and 3.

5. The defendant says that the claimant owned Plot 3 and he owned Plot 2. The parties never crossed the boundaries. The disputed area was also a pasture that both parties and villagers used to pasture their animals. This area always formed part of his land, he said, that is to say, plot 2. He denied any trespass or damage resulting to the claimant's land.

6. A reply was filed on 19 December, 2008.

7. The Claimant reiterated the defendant's father had erected a galvanize fence.

8. Stollmeyer J. gave directions on 31 October, 2008. Witness statements were to be filed and exchanged on or before 30 April, 2009. The directions were complied with.

9. The matter came up for a further hearing on 29 May, 2009 as a pre-trial review. Having seen the respective witness statements, the parties entered into a Consent Order as follows:

"1. Mr. Harvey Ramrekha is to re-define the mutual boundaries between lots two (2) and three (3) shown on the Survey Plan approved by the Deputy Director of Survey dated 16 August, 1954.

2. Parties are to be bound by the boundaries as re-defined by him.
 3. Parties are to bear the costs of the survey equally.
 4. The Pre-Trial Review is adjourned to the 30th day of September 2009....”
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10. The matter came up next not on 30 September, 2009 but on 16 October, 2009. After various adjournments it came up on 16 April, 2010. By this time, the survey report was in. It fixed the boundaries between Plot 2 and Plot 3 along the line of the chain link wire fence established by the Defendant.
 11. Meanwhile, the Claimant having seen the Survey Report, had filed an application to set aside the Consent Order before Stollmeyer J. This application was dismissed on 16 April, 2010. A trial was fixed for 13 October, 2011. On that day Mr. Ashraph for the Defendant gave notice that as a preliminary point the claim should be dismissed having regard to the terms of the Consent Order – that this had effectively dealt with the matter before the court and the claim should be dismissed.
 12. Both parties filed written submissions which I considered. The Claimant says the claim is alive because it was one of trespass and any title the Defendant had was extinguished.

The Defendant says this is an attempt to shift focus from the pleaded case after the Survey Report was not in the Claimant's favour.

13. The Claimant also in submissions sought to discount the Survey Report since it did not comply with the requirements of Part 33 of CPR.
14. It is noteworthy that the survey was agreed to after the witness statements had been filed. The terms of the Consent Order must be seen against that background. The terms were also wide. It said, the parties were to be bound by the boundaries as re-defined by him. I agree with the Defendant's attorney that the Claimant had sought to shift ground as the Survey Report was not in her favour.
15. If her claim was based on the extinguishment of the title by the Defendant, what would have been the purpose of agreeing to a Survey Report to define the boundaries? There would have been no need for this to be done then. The Claimant would have relied on the evidence of occupation set out in the witness statements.
16. Clearly, this was an attempt to compromise the claim as a whole. There was also no appeal from the dismissal of the application to set aside the Consent Order.

17. Having, in her view, been hard done by the Survey Report, the Claimant now seeks to go behind the Consent Order by suggesting the matter remains alive. I disagree. The Consent Order before Stollmeyer J. and the Survey Report presented effectively disposes of the claim. The Claimant, had, by that Consent Order, effectively decided to abandon her claim for trespass since her case as pleaded was one of her entitlement to Plot 3. Trespass then flowed from that claim. Having had Plot 3 defined, the claim for trespass falls by the wayside.

18. This claim was never presented on any extinguishment of title by prescription.

19. The claim is dismissed. The Claimant must pay the Defendant's costs in the sum of \$14,000. Stay of Execution 28 days.

Ronnie Boodoosingh

Judge