

**THE REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

CV 2013-03536

BETWEEN

LAKERAN RAMNARINE

LAKHIRAM RAMNARINE

Claimants

AND

BERTSON NICHOLLS

Defendant

Before the Honourable Mr. Justice Boodoosingh

Appearances:

Mr Balroop Roopnarine for the Claimants

The Defendant In Person

Dated: 20 July 2015

REASONS

1. The Claimants are brothers. The Defendant is the son of Felix Lovell.
2. The claim concerns a parcel of land located at John Gorman Trace in St. Patrick's Parish. The Claimants gave evidence that they signed an agreement for sale of land at the law offices of Messrs Gift & Co. on 3 July 1990. They paid a deposit of \$2,700.00. They agreed to buy a plot of just over 5000 sq. ft. for \$27,000.00. On 27 August 1990, they paid the balance and got a receipt. A conveyance was prepared from Mr. Felix Lovell to them.
3. In June 1993, they negotiated with Mr. Lovell to buy the other portion of land adjoining the first plot. This comprised the other half in the amount of 5439 sq. ft. This was for the sum of \$50,000.00.
4. The parties executed an agreement on 28 June 1993, at the law offices of Mrs. Jocelyn Gift. On 1 November 1993, Mr. Lovell executed a Conveyance for the lands at Gift & Co.
5. The Claimants then instructed Gift & Co. to bring the lands – the two parcels – under the Real Property Ordinance. In 1996, they received a Certificate of Title in respect of the lands.
6. They then say they placed a chain link fence. In June 2009 the first Claimant, while he was abroad, learnt some persons including the Defendant had broken down their chain link fence and removed containers they had parked on the lands. The Defendant says the land belonged to his father. The Claimants accept this.

7. He said when his father died, he got Letters of Administration of his father's estate. He then had a Deed of Assent made transferring the lands to him. This was done in 2009. From the time he was a boy he knew his father had occupied the lands and cultivated it. He said in 1999 he planted peas for the garden. After he got his Deed he saw vehicles parked on the land in 2009. He got Mr. Phillip, a bailiff, to remove them. He disputed that those were his father's signatures on the Deeds.

8. The question in this claim is who should the Court recognize as the owner of the lands given that there were two Deeds and a Certificate of Title, which is obtained after a detailed process and investigation by the State authorities is undertaken.

9. At an early stage, I had advised the Claimant he would need evidence to prove his claim of fraud in relation to the two Deeds of 1990 and 1993 which preceded the issue of the Certificate of Title.

10. To this end, his then attorney, Mr Ancil Moses, arranged for an expert document and handwriting examiner to conduct an examination of the signatures on the Deed as against known specimens of the handwriting of Mr Felix Lovell. Mr. Moses, Attorney at Law, quite correctly, and in accordance with his duty to the Court, faithfully had this Report submitted to the Court.

11. This Report, with reasons, showed that there was a high likelihood that Mr Felix Lovell signed the Conveyances.

12. In light of all the evidence he gave his client certain advice. The Defendant did not accept this advice. Mr. Moses then sought to withdraw from representing the Defendant and the Court had given permission.
13. This Report concluded that there was a strong probability that the Deeds were signed by Mr. Felix Lovell and set out the basis as being that the signatures showed general similarities, few variations and no differences.
14. The Defendant, however, steadfastly continued to deny the signatures were that of his father.
15. I have considered the Defendant's evidence and weighed it against the Claimant's evidence. I have also taken account of the Expert Report, which stands unchallenged except for the Defendant's say so.
16. What was also put before the Court were two statutory declarations sworn in 1994 of Mr. Felix Lovell and Ms. Elvira Douglas, which were likely made for the application process for the Certificate of Title. These declarations give the history of the land including the adverse possession of Felix Lovell of them.
17. The Defendant countered that his father had stood bail for someone in 1991 and the Oath Justifying Bail referred to 1010.5 square metres of land (likely the two plots together). That was the description placed on it. However, we have no evidence of how that description came to be placed. It is to be recalled that Mr. Lovell at that time still owned one of the plots – over 5,400 sq. ft. of land. It may

well be that he had used that part of the land but it was misdescribed for whatever reason as 1010.5 sq. metres.

18. Lining up the Defendant's evidence, however, it is not sufficient to displace the clear and categorical evidence of the Claimants. The Defendant in my view has not established on a balance of probabilities that fraud attended the 1990 and 1993 Conveyances.

19. There was also an application to call one Bernella Stewart, who the Defendant says told him she did not witness the signing of the Deed as the Deed says. However, she was an unwilling witness.

20. I did not consider I should further adjourn this trial to accommodate her being summoned to give evidence. The Defendant never said when he got this information from her in his application. He had more than ample time before to make arrangements regarding witnesses he wished to call.

21. It is clear that the Defendant feels hard done by the sale by his father of the land which he had obtained rights to by adverse possession. However, that cannot displace the overwhelming evidence, supported by the document examiner's report which the defendant himself commissioned and by a statutory declaration of Mr. Felix Lovell himself.

22. While being cross examined he sought to make allegations against Mr Moses. The defendant was essentially saying that Mr Moses ought not to have advanced

the Expert Report given that it was not helpful to his case. I rejected this entirely. Mr Moses acted in the highest traditions of his duty to the court.

23. It follows that the lands did not form part of the estate of Mr. Lovell when he died in 1999. The Defendant could not therefore convey it to himself by the Deed of Assent of 2009.

24. There remains a matter of trespass. The Defendant by his admission and the evidence of the Claimants went and took possession of the lands. This was on the false assumption that the lands formed part of the estate. This was a clear trespass and was unjustified.

25. I award nominal damages to the Claimants for trespass in the sum of \$10,000.00.

26. The counterclaim is dismissed.

27. The Claimants are entitled to:

- (1) A declaration that they are the fee simple owners of the lands described in Certificate of Title Vol.3857, Folio 225.
- (2) The Deed of Assent dated 9 March 2009, registered as No. DE20090049191400001 is null and void and of no effect.

- (3) The said Deed of Assent is set aside and to be expunged from the records of the Registrar General's Department.
- (4) An injunction is granted restraining the Defendant, his servants or agents from entering the lands or interfering with the Claimant's quiet enjoyment of the said lands.
- (5) The Defendant is to pay the Claimants the costs of the claim and counterclaim in the sums of \$14,000.00 and \$7,000.00 respectively.
- (6) Stay of execution of 28 days.

Ronnie Boodoosingh
Judge