**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Consolidated Claims:**

**CV 2014 – 00728**

**CV 2014 – 03585**

**CV 2014 – 00728**

**Between**

**ZAMINA KHAN**

**ZORAH KHAN**

**KAZIM KHAN**

**Claimants**

**And**

**ISHOON KHAN**

**Defendant**

**AND**

**CV 2014 – 03585**

**Between**

**ZAMINA KHAN**

**(Also Known as Angela Khan)**

**ZORAH KHAN**

**(Also Known as Shirley Khan)**

**KAZIM KHAN**

**(Also Known as Franklyn Khan)**

**Claimants**

**And**

**FARIDA KHAN**

**FAZIDA KHAN**

**FAREED KHAN**

**Defendants**

**Before the Honourable Mr Justice Ronnie Boodoosingh**

**Appearances:**

Mr Haresh Ramnath for the Claimants

Mr Taurean Dassyne and Mr Sylesh Ramjattan for the Defendants

Date: 24 May 2016

**JUDGMENT**

1. This claim arises over a property located at 45 Craignish Road, Princes Town. It consists of an upstairs house with two apartments downstairs and there is a mini-mart to the front. It is on 5007 square feet of land. The claimants are siblings. Ishoon Khan is the mother of the other defendants. Ishoon Khan's husband, Umideen Khan, who is deceased, was the brother of the claimants.

2. The land was bought by Mazar Khan who was the father of the claimants, Umideen and two others. He left a will and devised the property to his then wife Christine and then to his children. Christine was the stepmother of Mazar's children. By deed of assent made in 1978 Christine Khan, the claimants, Umideen, Korisha Khan and Dubida Khan

became registered owners as joint tenants. Before her death, Christine left the property to live with someone else. She died in 1988. Korisha died in 2000. Dubida died in 1988 in the USA. The first and second claimants got married and left to live in Rio Claro and Petit Valley respectively. The third claimant went to live in the United States.

3. Umideen died on 28 June 2011. Before his death, in 2010, he purported to make a deed of gift of the property to his three children Farida, Fazida and Fareed Khan. Ishoon and her children live on the property and run the mini-mart.

4. After Umideen's death the claimants called on Ishoon and her family to leave the property saying they were terminating her licence to occupy it.

5. The claim is for possession of the property and mesne profits. The claimants say they wish to divide their respective interests and to sell the property.

6. Ishoon says she got married in 1977 and came to live on the property and she has not left. She treated the property, along with her husband, as the family home. Her husband Umideen lived on the property from a child and lived there until his death.

7. She says she and her husband and children have invested over $250,000.00 on the property in doing repairs and renovations over the years. They have also paid all of the electricity and water rates. Further, the property was rented sporadically over the years, but has not been rented after 2008. Her claim is based on adverse possession beginning with her husband's occupation of the property.

8. In their reply at paragraph 3 the claimants accepted that the children now hold a one-quarter interest in the property by virtue of the transfer of Umideen's interest to his children by Deed No. DE201100471167D001. The claimants accepted the renovations were done but asserted that they contributed $10,000.00 each to the cost of replacing the roof; $5,000.00 each to build the mini-mart and $5,000.00 each to stock the mini-mart. They also asserted that Ishoon had left the property for a period of time before reconciling with Umideen.

9. In the second claim, the claimants sought partition and / or sale of the property and that the children's share be quantified. They also asserted that the deed in favour of Umideen's children should be set aside for fraud.

10. In their defence the defendants stated that they have been in occupation of the property and the only interest shown in the property by the claimants was after the death of their father, Umideen. At the funeral service of her father, Kazim told Fazida Khan that she should take steps to have the property transferred to herself and her siblings and she should prepare the necessary documents. He also said if he had an interest in the property he was willing to transfer it to her as a gift since he lived abroad and had no intention of returning to Trinidad. These defendants also raised adverse possession.

**Evidence**

11. Zamina Khan after reciting the history of the legal ownership of the property said Ishoon, her husband Umideen and their children occupied the upstairs of the property with the consent and acquiescence of the claimants. She said the upstairs is self contained and there are two apartments downstairs. There is also a mini-mart. Ishoon was separated from Umideen for 5 years when she lived elsewhere. She said Kazim, Zorah, Umideen

and she agreed that when Umideen got married they would allow Umideen to live in the property with his wife and children until the parties were ready to sell it or buy out the other's share. However, Umideen died before this could happen.

12. She said before 1977 the downstairs had two apartments which were rented out. In 1988 the downstairs was rented out by two tenants who paid $2,000.00 each. Umideen and Ishoon informed them that the rent was used to upkeep the property and to pay bills and taxes. She says the apartments continued to be rented up until Umideen's death. She says a fair rental value is $3,000.00 per month. In 1970 she left the property and went to Rio Claro to live when she got married. She says she would come and spend weekends and they maintained good relations with Umideen and his family. It was only after his death that relations went sour. She said her siblings and her requested Ishoon remain in the upstairs with her children and have use of the mini-mart. And that the siblings should be allowed the downstairs apartments but the defendants refused saying they are entitled to the whole of the property.

13. A letter was sent on 12 March 2012 for Ishoon to vacate the property. She said they were actively involved regarding the renovations and she contributed $10,000.00 towards replacing the roof; and $5,000.00 to Umideen for him to build the mini-mart and stock it. She says the deed should be set aside for fraud since the deed was stamped at $150,000.00 when the property in 2011 was worth over 2.5 million. She said she and her siblings have visited and occupied the property also.

14. Zorah Khan's witness statement is in very similar terms except she said she moved out in 1969 when she got married. She also said around 1992 she gave $3,000.00 to install the plumbing for the apartments downstairs when the tenants destroyed it. She also contributed the exact sums to Umideen for the roof and mini-mart respectively.

15. Kazim Khan's witness statement is also in similar terms. He says, however, he left in 1970 to live at Petit Valley then migrated to the USA in 1986. Whenever he returned to Trinidad he would stay at the property and he maintained good relations with Umideen. After Umideen's death, relations went sour. He contributed the exact sums as the others. He did not offer his interest in the property to any of the defendants and he had no conversation with them regarding the property.

16. From their witness statements none of them say when the arrangement was made with Umideen to allow him and his family to live on the property. None of them say when they gave the money for the roof and mini-mart. None say how they knew the rent obtained was $2,000.00 per apartment. None say how they know the property is valued over $2.5 million.

17. What is clear is that there is no real challenge to their assertion that their father had left the property to his wife and children as joint tenants. There are issues about who knew about it, but the Deed speaks for itself.

18. I come then to the cross-examinations. Zamina said the two other sisters decided not to take part in the agreement regarding the property. She then said Dubida Khan also agreed. She maintained that she assisted after she left the property but does not say when and how. She said she gave her brother $10,000.00 but cannot say when that was, if it was after 1988. To the court she said her brother Kazim had given her back the $10,000.00. So in effect it was Kazim who had paid the $10,000.00. This was different from her witness statement.

19. Zora in cross-examination also cannot remember the year of the agreement. She stated that Umideen did both the floor and the roof. The floor had been wooden before and had

become rotten. She also could not remember when she gave the $5,000.00 towards the mini-mart. She could not recall when she gave the $3,000.00 towards the fixing of the toilet. She said she and her sisters would spend weekends upstairs. She could not remember whether the mini-mart opened in the 1970s or 1980s.

20. Kazim also could not say when the agreement was made but he says it was made with Umideen before he was married. He then said the agreement took place around 1977 when Umideen got married. Christina Khan, Korisha and Dubida were alive but they did not take part in the agreement. He then said Korisha and Dubida were parties also. He could not remember when he gave Umideen money for the mini-mart and to stock it. He said he sent the money in cash with his sister Angela. He said he stayed on the property when he visited Trinidad.

**Defendants' Evidence**

21. Ishoon Khan in her witness statement said she got married to Umideen in 1977. At that time the only occupants of the house were Christina, her husband and children. She always had a good relationship with Christina but the claimants did not. Christina left a couple years after the marriage to live at Penal with her new companion. Christina told them she was leaving the property to them. The first claimant lived in Rio Claro. The second claimant was in Petit Valley. The third claimant migrated to the United States. She had met the first claimant a few times in Princes Town. Their conversations were brief. The second claimant stopped occasionally on her way to visiting the first claimant. They did not spend time on the property. The second claimant would encourage her to maintain the vegetable stall and commended her for the upkeep of the house. The third claimant would call her husband occasionally but did not visit them due to issues with his travel documents.

22. Umideen always represented to her that the house belonged to him. They treated it as their home. They invested in the property. In the 1980s they put in internal toilets and a concrete cesspit; they replaced wooden windows with glass louvers; they did electrical wiring downstairs; they blocked a space downstairs to make two apartments; they repainted the house; they replaced the roof in 2004; they changed almost all of the wooden floor boards; they backfilled the yard and paved it with concrete; and fenced the property with chain link and walls. In 2006 her husband rebuilt the vegetable stall into a mini-mart. Various receipts for hardware purchases were annexed to the witness statement. They paid all the rates for electricity and water and taxes for the property. Several of the bills were annexed.

23. In 2006 to 2007 they rebuilt the mini-mart and took a $28,000.00 loan from NEDCO and stocked the mini-mart. They ran the shop on a shift basis opening during the late hours of the night. In 2010 her daughter, Fazida, took a loan from Republic Bank for $60,000.00 and restocked the mini-mart and renamed it Nip's after her husband's nickname. They did further repairs to the house to the wooden floor, refurbishment of the toilets, electrical wiring and burglar proofing. A copy of loan documents was annexed.

24. In 2010 her husband told her he was making a deed for the property. He subsequently did one giving the property to the children.

25. When her husband died, this was the first time the claimants came to the property for the funeral. The events were distasteful as the first and second claimants were rude to them. Her husband wished to be cremated even though he was muslim. The first and second claimants changed the arrangements with the funeral home to provide for his burial instead. She was distraught but since she had limited time to conduct the funeral she allowed it to go on. She had to hire two police officers to maintain the peace at the funeral.

26. From then a feud arose between the first and second claimants and the children. The third claimant requested that they seek a lawyer since he was not sure when he would return to Trinidad. He was willing to sign off on the property to ensure all the paper work was in order. He said he was willing to transfer his share to her daughter. A document was prepared and it was then he informed them he had changed his mind because the first claimant wanted his share for her children. The first and second claimant became very hostile towards them after as they came to inspect the property and told her that they would do all in their power to have them removed and have the property sold to a stranger rather than have it for her children.

27. A neighbour, Beverley Timothy, also gave evidence. She knew Ishoon and Umideen from living across the road from when she got married. She in fact grew up at times with Mazar Khan. She used to spend the entire day with them at times and eat there and play with Umideen, also known as Nip, when they were children. Their families were close up to the present day. Nip was the only one who stayed with the parents. She knew Nip did extensive renovations over the years doing a lot of the work himself. In 2006 he rebuilt the vegetable mart into a mini-mart. As far as she knew she always knew the house to be occupied only by Nip and his family and they maintained the property and always did improvements.

28. The children, Fazida, Fareed and Farida gave evidence. Fazida gave evidence in her witness statement consistent with her mother. The first claimant never visited them; the second claimant would stop occasionally if her father was around; the third claimant did not visit, except for her father's funeral. She does not know her cousins. Her parents maintained and renovated the property. She was a graphic artist so she assisted with doing the business and paying bills. The third claimant told her after the funeral he would transfer his interest to her but later changed his mind. It was she who initiated a search on the property when the third claimant told her to seek advice on the property. She was the one who informed the third claimant his name was on the deed. In 2010 she

took a loan of $60,000.00 from Republic Bank to renovate the house and refurbish the mini-mart. They always treated the property as their own.

29. Fareed gave evidence consistent with his mother and sister Fazida. He said he contributed to the renovations by working along with his father. He provided labour; he painted; mixed concrete; helped with putting up the fence. He too had no relationship with the claimants growing up and he denies any money was paid by them to his father. His sisters contributed money to the property. The claimants have never interfered with their occupation of the property.

30. Farida's evidence was also in similar terms to her mother and siblings. She worked at Chung's Photo Studio and helped with paying bills for the property. When she got married she lived downstairs with her husband for about a year after her father died. She gave evidence regarding the events of the funeral also.

31. These witnesses were cross-examined. Ishoon said Christina gave them the property as a gift. She never knew about a deed for the property. She said she was not separated from her husband for 5 years. He did not leave and return. She knew Shirley used to come about once a year. She then said she came about twice. Her husband cast the yard. She said she does not have receipts for work done in the 1980s. Certain receipts attached to her witness statement, such as for the freezer and television, were not for the renovation of the house. The downstairs was rented for a period but not continuously. She accepted 26 receipts for $400.00 for the property. Some discrepancies were pointed out to her regarding a few of the receipts. She accepted about $282,000.00 was spent on the property. She noted they pay both a residential and commercial rate for electricity to the property. She said the claimants had no relationship with them. The first and second claimants came and said we had to bury him, not burn him and wait for his brother to come from the United States. She said the claimants only found out they had an interest

in the property when her daughter did the search. She said they did not live there with the consent of the claimants. She said the claimants did not contribute to the roof or mini-mart.

32. Fazida said she grew up in any environment where it was projected the property was theirs. She runs the mini-mart at present. It was after the funeral she learnt of the claimants' interest when a search was done about two weeks after her father's funeral. She informed her uncle of his interest in the property.

33. Fareed also said he was not familiar with the claimants before the funeral. He saw them once before. He said he did not know he had an uncle until the funeral. He contributed to the work on the property. He found about the deed after the funeral.

34. Farida said she got married in 2004. She lived downstairs in an apartment. She does not know how much was spent on the property. She too worked and contributed to the building.

35. Diane Beverley Timothy knew Umideen from a child. She knew him hustling maxi taxis. She only knew the defendants. She did not know the claimants. Umideen, also called Nip, was always fixing something on the property.

**Law**

36. The critical issue in this claim is adverse possession that is whether the defendants were in continuous, uninterrupted, exclusive possession of the property for over 16 years adverse to the interests of the claimants such as to extinguish their ¾ undivided share.

37. The defendants must show that they and their father Umideen were in possession of the property for over 16 years. This must have been continuous and uninterrupted. They must also show they had the intention to possess exclusively, to deal with the property as their own. There is both a subjective and objective element.

38. The party seeking to establish adverse possession must show:
    1. A sufficient degree of physical custody and control (factual possession)
       and
    2. The intention to exercise such custody and control on one's own behalf and for one's own benefit (the intention to possess): **Pye v Graham [2002] W.L.R. 221**.

       See also **Roach v Jack and Others, Civ. Appeal No. 132 of 2009**, unreported, per Bereaux JA, delivered 29 July 2013.

39. The possession of the defendants is tied intimately with that of their father Umideen. It is one and the same.

40. In **Wills v. Wills (Jamaica) [2003] UKPC 84** (01 December 2003) Lord Walker on behalf of the Board of the Privy Council gave judgment. That was a claim of co-owners of a property who were husband and wife. One of the parties, Elma, had left to go to the United States and had left her husband in the property. He eventually began living with someone

else (Myra) on the property and the issue was a claim for adverse possession against a co-owner. Lord Walker noted:

> "29. ....Elma no doubt wished to maintain her claim to co-ownership, not least because she expected to outlive George and hoped to take by survivorship. But such an intention, however amply documented, cannot prevail over the plain fact of her total exclusion from the properties. After 1976 at the latest George occupied and used the former matrimonial home and enjoyed the rents from the rented properties as if he were the sole owner, except so far as he chose to share his occupation and enjoyment with Myra.
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> ...
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> 31. ... Elma began to live apart from her husband in 1964 and (apart from some disputed evidence about occasional co-habitation in the United States) she lived completely apart from him from 1976 at the latest. She consulted lawyers in 1984 but she never seems to have taken action either to have the properties sold, or to rearrange their ownership by an exchange of beneficial interests, or even to obtain a proper written acknowledgement of her title (which could no doubt have been obtained if the alternative had been the threat of more drastic action)."

41. Thus what happened showed that the intention of her husband was to possess the property and to deal with it as his own as against the co-owner.

42. Another legal issue raised by the claimants was whether the defendants had put their case properly to the witnesses that there was no agreement between Umideen for his family to live on the property until the parties were ready to sell it.

43. The need to put one's case is accepted as being part of the fair trial of a claim; in particular, in giving the other side an opportunity to respond to your case. This follows from the rule in **Browne v Dunn (1894) 6 R 67**. This was cited in the case of **Markem v Zipher [2005] EWCA Civ 267** where the requirement of putting one's case was dealt with at length. I consider it is useful to reproduce the following passage:

> "58. *Browne v Dunne* is only reported in a very obscure set of reports. Probably for that reason it is not as well-known to practitioners here as it should be although it is cited in *Halsbury* for the following proposition:
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> "Where the court is to be asked to disbelieve a witness, the witness should be cross-examined; and failure to cross-examine a witness on some material part of his evidence or at all, may be treated as an acceptance of the truth of that part or the whole of his evidence."
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> 59. Because the decision is so difficult to lay hands on we take the opportunity here of citing all the material passages. We do so via the decision of Hunt J in *Allied Pastoral* because his judgment also contains his own valuable comments. He said (p.623):
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> "It has in my experience always been a rule of professional practice that, unless notice has already clearly been given of the cross-examiner's intention to rely upon such matter, it is necessary to put to an opponent's witness in cross-examination the nature of the case upon which it is proposed to rely in contradiction of his evidence, particularly where that case relies upon inferences to be drawn from other evidence in the proceedings. Such a rule of practice is necessary both to give the witness the opportunity to deal with that other evidence, or the inferences to be drawn from it, and to allow the other party the opportunity to call evidence either to corroborate that explanation or to contradict the inference sought to be drawn. That rule of practice follows from what I have always believed to be rules of conduct which are essential to fair play at the trial and which are generally regarded as being established by the decision of the House of Lords in *Browne v Dunn* (1894) 6 R 67.
>
> No doubt because that decision is to be found only in an obscure series of law reports (called simply "*The Reports*" and published briefly between 1893 and 1895), reliance upon the rules said to be enshrined in that decision seems often to be attended more with ignorance than with understanding. The appeal was from a defamation action brought against a solicitor and based upon a document which the defendant had drawn whereby he was to be retained by a number of local

residents to have the plaintiff bound over to keep the peace because of a serious annoyance which it was alleged he had caused to those residents. Six of the nine signatories to the document gave evidence on behalf of the defendant that they had genuinely retained him as their solicitor and that the document was really intended to be what it appeared on its face to be. No suggestion was made to any of these witnesses in cross-examination that this was not the case and, so far as the conduct of the defendant's case was concerned, the genuineness of the document appeared to have been accepted. However, the defence of qualified privilege relied upon by the defendant depended in part upon whether the retainer was in truth genuine or whether it was a sham, drawn up without any honest or legitimate object but rather for the purpose of annoyance and injury to the plaintiff. This issue was left to the jury. The plaintiff submitted to the jury that the retailer was not genuine and was successful in obtaining a verdict in his favour. In support of that submission, the plaintiff asked the jury to disbelieve the evidence of the six signatories who had said that the retainer was a genuine one.

Lord Herschell LC said (at 70-71): "Now my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a case, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intended to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses."

His Lordship conceded that there was no obligation to raise such a matter in cross-examination in circumstances where it is "perfectly clear that (the witness) has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling". His speech continued (at 72): "All I am saying is that it will not do to impeach the credibility of a witness upon a matter on which he has not had any opportunity of giving an explanation by reason of there having been no suggestion whatever in the course of the case that his story is not accepted."

Lord Halsbury said (at 76-77): "My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind nothing would be more absolutely unjust than not to cross-examine

witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to."

Lord Morris (at 77-79) said that he entirely concurred with the two speeches which preceded his, although he wished (at 79) to guard himself with respect to laying down any hard-and-fast rules as regards cross-examining a witness as a necessary preliminary to impeaching his credit. The fourth member of the House of Lords, Lord Bowen, is reported (at 79-80) to have said that, on the evidence of the six signatories, it was impossible to deny that there had been a real and genuine employment of the defendant. But his Lordship made no statement of general principle.

These statements by the House of Lords led to the formulation of a number of so-called "rules". They have been stated in various ways in the cases and by text-book writers, and it is fair to say that there is some room for debate as to their correct formulation. For example, in *Cross on Evidence* (2nd Australian ed, 1979) the authors state (at para 10.50): "Any matter upon which it is proposed to contradict the evidence in chief given by the witness must normally be put to him so that he may have an opportunity of explaining the contradiction, and failure to do this may be held to imply acceptance of the evidence in chief."

In *Phipson* (12th ed, 1976) the authors state the rule somewhat more discursively (at para 1593): "As a rule a party should put to each of his opponent's witnesses in turn so much of his own case as concerns that particular witness, or in which he had a share ... If he asks no questions he will in England, though not perhaps in Ireland, generally be taken to accept the witness's account and he will not be allowed to attack it in his closing speech, nor will he be allowed in that speech to put forward explanations where he has failed to cross-examine relevant witnesses on the point ... Where it is intended to suggest that the witness is not speaking the truth upon a particular point his attention must first be directed to the fact by cross-examination, so that he may have an opportunity of explanation; and this probably applies to all cases in which it is proposed to impeach the witness's credit ... Failure to cross-examine, however, will not always amount to an acceptance of the witness's testimony, e.g. if the witness has had notice to the contrary beforehand, or the story is itself of an incredible or romancing character."

60. Hunt J concluded (p.634):

> "I remain of the opinion that, unless notice has already clearly been given of the cross-examiner's intention to rely upon such matters, it is necessary to put to an opponent's witness in cross-examination the nature of the case upon which it is proposed to rely in contradiction of his evidence, particularly where that case relies upon inferences to be drawn from other evidence in the proceedings."
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> 61. We think all that applies here. It is not necessary to explore the limits of the rule in *Browne v Dunn* for this case falls squarely within it. Indeed the position is stronger here, for the Judge was not even asked to disbelieve the witnesses. Mr Watson was right not to support the Judge's findings - the only puzzle is why he did not take that position earlier."

44. The case for the defendants from the pleadings and their witness statements was that there was no agreement or at least they did know of any such agreement. It is accepted in the claimants' written submissions that this was put to the first claimant.

45. The case for the claimants is one and the same. They rely on this agreement. All of the claimants were cross-examined to different degrees about the alleged agreement. But it was specifically put to the first claimant that there was no such agreement.

46. The agreement was pleaded by the claimant and specifically disavowed in the defence. The evidence of each of the witnesses on behalf of the claimants was essentially in the same terms that there had been this agreement. It was unnecessary in these circumstances to specifically put this allegation to each witness. The issue has been at the forefront of this case on both sides. The existence of this agreement was specifically challenged in the evidence of the defendants and also in the cross-examination of the first claimant. Putting this same fact to the other witnesses for the claimants would likely have elicited the same denial anyway. Nothing therefore turns on the failure to put this fact to each witness given the clear thrust of the defendants' case. The instant case,

therefore, does not fall within the ambit of the rule as set out in the authority above. The defendants' case was adequately put in the circumstances.

47. Another issue raised by the claimants in submissions is that Umideen had purported to transfer the property to his children by deed of gift and the deed shows the property was stamped to cover $150,000.00 when renovations had been done costing over $200,000.00 and there was an existing building. Thus the property could not be valued $150,000.00. Counsel relies on the case of **Alli-Shaw v Wailoo [1968] 11 WIR 357** per Vieira J. In that case the value of the property pursuant to a sale agreement was $18,000.00. However, the parties had made an agreement stating the value was $15,000.00. The $3,000.00 balance was to be paid separately. On suing for this $3,000.00 it was held that the agreement to pay $3,000.00 was contrary to public policy as being a fraud on the revenue and unenforceable.

48. However, the present case is different. We do not have evidence before this court of how the sum of $150,000.00 was arrived at. There is also no evidence that these defendants knew anything about the process of transferring the property or were implicated in any fraudulent transaction. There is also no evidence before me of the process used by the relevant revenue department in approving or determining the stamp duty payable, if any, based on the value of the property. The claimant's submission calls for speculation on the court's part. To deduce fraud solely from the supposition, even if accepted, that the property must clearly have been worth over $150,000.00 and the figure for stamp duty ought to have been higher is a leap which the court is unable to make. In any event, it is unnecessary for the defendants to rely on the transfer of the property by Umideen to them as far as this case is concerned. The issue is whether the title of the claimants was extinguished by the acts and intention of Umideen and his family members.

**Findings**

49. Christina Khan died in 1988. Ishoon's evidence was that she gave them the property as a gift. They did not know there was a deed leaving the property by Mazar Khan to his wife and children as joint tenants. Thus, even if they lived there with Christina's oral permission or pursuant to a gift from Christina, Christina's interest in the property extinguished on her death. From the defendants' case therefore, at latest, therefore, time against these claimants began to run from 1988. But from the defendants' case Umideen, Ishoon and the children were not living there with the consent of the claimants from before this.

50. I accepted the evidence from the defendants that they spent a considerable amount of money in terms of the upkeep and improvement of the property over time. They gave detailed evidence over time. I find they all contributed in different ways as a family.

51. Of critical concern was whether the defendants lived there with the consent of the claimants. More specifically, did Umideen live there with the consent of the claimants.

52. There were certain matters in the claimants' case that were suspicious to me. First, none of them state in their witness statements when the agreement was made with Umideen. Only the third claimant says it took place about the time that Umideen was married. This agreement was central to their case and should have been set out upfront. In cross-examination they struggled to say when it was made. Second, none of them seem to recall when they contributed the sums of money they said they contributed. Third, they all said they contributed the same amount. Zamina in answer to the court, however, said that Kazim was the one who contributed since she was paid back. So she did not herself actually make a contribution. On these important issues their evidence was vague and

lacked specificity. I find that the claimants did not make the financial contributions that they claim to the improvement of the property.

53. It also seemed odd to me that it was only after Umideen's death that they made any claim on the property. If they knew they had an interest in it and saw Umideen and his family spending money and renovating the property, this must have given rise to some concern on their part.

54. It is clear from the evidence that a considerable amount of money over a number of years was being spent on the property by Umideen and his family. True, they were the ones in occupation of it, and thus it would be reasonable for them to spend on the property, but it seems odd that the claimants, knowing they had an interest in the property they would allow Umideen basically free rein on the property for all of these years. The claimants also stood to the side and did nothing with the property and did not stop their brother and the defendants when they developed the property. There was no intervention.

55. Further, all of the claimants were loose about their evidence on the rental of the property, what was obtained from it and the value of the property. I find it strange that knowing they each had a 1/4 interest in the property they allowed Umideen and his family to collect $4,000.00 per month as rent for so many years and not seek to share in it. As was pointed out over the many years, if their evidence is to be believed, Umideen and his family would have benefitted to over a million dollars. It is odd in that context that the defendants would have to borrow relatively small amounts in the amount of $28,000.00 and $60,000.00 fairly recently to make improvements to the mini-mart and the property. Further that the work on improvements would have been done in such a piecemeal fashion as it is clear it was done in.

56. I also find it implausible that the claimants, knowing they each had a ¼ share if they were as involved with the property as they say they were that they would content themselves to accept the two downstairs apartments alone to be shared among the three claimants. The claimants have also not provided any proper evidence about the value of the property.

57. Regarding the evidence of the defendants it is implausible that the defendants would spend so much money, close to $300,000.00, to develop the house if they knew that all they had was essentially a licence to occupy the premises. In this regard I do not accept that there was an agreement permitting Umideen occupation with the consent of the claimants.

58. The spending of the large amount of money and the several improvements made to the property suggest that the defendants and their deceased father, Umideen, used and dealt with the property as their own.

59. Based on this analysis I find that there was no agreement between Umideen and the claimants for him to occupy the property until they decided to sell it or partition it. I considered this to be an invention of the claimants to counteract clear acts of control and possession of the premises by the defendants.

60. The critical issue in this claim is adverse possession, whether the defendants were in continuous, uninterrupted, exclusive possession of the property for over 16 years adverse to the interests of the claimants with the requisite intention such as to extinguish the ¾ undivided share of the claimants.

61. I accept the defendants' evidence that they were left to deal with the property as they choose. And that the deceased did in fact deal with it in that way. I find that the defendants were left to use the property as they chose since the 1970s. The two claimant sisters had little to do with it. Even if there was an occasional visit, this was not in the context of seeking to assert any interest or right to the property. The third claimant lived in the US and at best came to Trinidad occasionally.

62. I find therefore that Umideen and his family had a sufficient degree of occupation and control over the property. I also find they did this without the consent of the claimants and dealt with the property as an occupying owner might normally be expected to do. I also find Umideen and his family had the requisite intention to possess the property and to do so to exclude the world at large including the claimants. This conclusion is fortified by the deed he made transferring the property to his children. As in the **Wills v Wills** case, his was a case of adverse possession against co-owners.

63. The claims of the claimants therefore are dismissed. There is judgment for the defendants on their counterclaim. It is declared that the interest of the claimants in the subject property has been extinguished. It is also declared that the defendants together are entitled to possession of the subject property in its entirety. Both these claims ought to have been brought together. This will be reflected in the costs order. The claimants must pay the costs of the defendants of the both claims and the counterclaims together in the sum of $28,000.00.

Ronnie Boodoosingh

Judge