

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2014 – 03071

Between

RAVINDRA RAJENDRA MAHARAJ

Claimant

And

SHANTI BENNY

First Defendant

RAJESH BENNY

Second Defendant

PREETAM BENNY

Third Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Ms Shelly Williams and Ms Tricia Samuel for the Claimant

Mr Sterling John for the First and Second Defendants

Mr Prakash Maharaj and Mr Rondell Donowa for the Third Defendant

Date: 8 June 2020

JUDGMENT

1. This claim concerns a parcel of land approximately 10,000 square feet in size, located along the Uriah Butler Highway.
2. The parties are all related in some way. There has been a history of legal challenges related to land among them and other family members. This claim began in 2014 and many efforts were made to try to find an overall solution to issues concerning these lands and the larger lands forming part of the Estate of Dheerajia Benny also called Dheerajie Benny. These efforts were not successful. Thus the court tried the matters arising from these claims alone.
3. Dheerajia Benny was married to Lutchman Benny. They lived together in central Trinidad. Lutchman passed away some time ago. Subsequently Dheerajia Benny left a Will. She too passed on. Her estate was being administered and the executrix was once made a party here and then struck out on her application.

4. What was left was the claim brought by the claimant and the counterclaims. I will consider these in turn.

The Claim

5. The claimant seeks a declaration he is the beneficial owner of 10,000 square feet of land, being part of a larger parcel. A particular description was contained in the statement of case. This was: on the north by lands of RBJ Construction formerly Jagatt; on the south by lands of Rajendra Benny; on the east by other lands of Dheerajia Benny; on the west by the Uriah Butler Highway.
6. He asks for vacant possession of the lands and damages for trespass.
7. His claim is that Dheerajia was his grandmother. She made a Will giving part of the lands to Hemraj Benny, her son. Hemraj Benny, who is the claimant's uncle, bequeathed the land to him by Will dated 10 June 2013 and also appointed him executor of his Estate.
8. Probate of both Wills was applied for. Grants of Probate of both Wills were made in 2016. No assents appear to have been made as yet.

9. The lands had been vested in both Dheerajia (also called Dheerajie) and Preetam Benny as tenants in common. The shares remained undivided.

10. Further, the claim is based on the description set out above. This was a claim based on a specific description. Dheerajia's Will in relation to the lands given to Hemraj Benny refers to "the two lots occupied by him for the past 30 years". This was a vague description, which was left undefined.

11. Further again, Hemraj Benny's Will describes the land as 10,000 square feet measuring 50 feet by 200 feet (See page 27 of TB 1).

12. The Will of Hemraj Benny used in the Probate application refers to the lands as 10,000 square feet measuring 100 square feet by 100 square feet.

13. In cross-examination, he said he was entitled to "his uncle's share". This was a bit of a retreat from a more specific description as contained in the claim and the probate application, even though the descriptions differed. He came to be saying, whatever his uncle Hemraj left to him is what he is entitled to.

14. Tenants in common are entitled to an undivided share in the land and no party can own a distinct parcel until a division is made. In these circumstances neither Dheerajia nor Hemraj Benny could gift a specific part of the lands to anyone.

15. There were two orders made in claims before Ventour J and Rajnauth-Lee J. Neither of these orders, however, gave any specific entitlement to Dheerajia upon which the claimant can rely.

16. There has been no division to date of the lands so the Wills would not have had the effect of passing any entitlement as claimed here. The court cannot interpret the gift as being two lots from Dheerajia's share, whenever it is divided.

17. The claimant essentially accepted the basis of the claim was the Will and that the description he gave was his way of concretising the vague gift. There were also inconsistent descriptions of the lands between the probate application and the claim here. He accepted the lands were not partitioned.

18. The claim, therefore, cannot succeed. With no entitlement, and the claimant not being based on occupation of the lands, no claim for trespass can follow.

The First and Second Defendant's Claim

19. The story takes a different turn with the claim of the first and second defendant. Shanti Benny was Hemraj Benny's wife. The second defendant is her son. Hemraj and she were married in 1975. They built a home. It appears as though Hemraj and Shanti at some point became estranged. However, they did not obtain a divorce. This house was demolished by the claimant about March 2005.

20. Shanti Benny's claim is that her husband and she were gifted two lots of land by Lutchman Benny, who, as noted, was Deerajia's husband. This was land on which they constructed a home. She said they used the land around the home and planted crops there. She said she worked and supported her family as her husband characteristically did not do so.

21. She said her husband and she are entitled to the beneficial interest in the property as a result of promises of Lutchman and their acts in relation to the property.

22. Her claim is based on equity. They were gifted the lots. They built a house. They occupied the land and invested in it. The first defendant says she acted to her detriment. None of these aspects of her case has been challenged seriously by the evidence.

23. The problem, however, is that the claimant is not an appropriate party against whom relief can be obtained since he has no estate in the land through the Will of Hemraj Benny. Thus this claim cannot succeed. It may be that she has a better entitlement to possession as against the claimant at this time but the court cannot grant her the relief she seeks. As among the parties to this claim, however, her entitlement to the two lots appear to be strongest.

Claim of Preetam Benny

24. In addition to defending this claim, Preetam Benny filed an ancillary claim against Zita Benny, the executrix, seeking a declaration that the Will of Dheerajie Benny (referred to as Dheerajia Benny) dated 7 February 2007 as being invalid on the basis that the Will does not have the true mark of the testator.

25. However, Zita Benny was struck out as a party and therefore no declaratory order lies. No order can be made against the claimant here.

26. Preetam retains his undivided share of the land. It does not appear that he challenges Shanti Benny's claim to the land she claims.

27. The claimant also sought to rely on the Will of Dheerajia, but he is not the executor of the Will.

28. The order, therefore, is as follows:

- i. The claim against the defendants is dismissed.
- ii The first and second defendant's counterclaim is dismissed.
- iii. The third defendant's ancillary claim is dismissed.
- iv. Each party will bear their own costs.

29. It is unfortunate that the court's judgment does not settle the dispute among the parties in actuality. Sometimes, however, there are no winners. The claim was started by different attorneys to those who ended it. I would observe that it is necessary for attorneys to consider carefully what is being sought when claims are brought, if the claim is sound in law and who ought to be the appropriate parties to seek relief from.

Ronnie Boodoosingh

Judge