

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2016 – 04562

BETWEEN

Artma Maharaj

Shiva Mohan Mahabir Maharaj

Reuben Pariag

(In their capacity as Executive Members of

CHURKOO VILLAGE HINDU MANDIR)

Claimant

AND

Samaroo Ragoonanan

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Anand Ramlogan SC leading Mr Alvin Shiva Pariagsingh instructed by Ms Alana Rambaran for the Claimants

Mr Ramesh Lawrence Maharaj SC leading Ms Vijaya Maharaj instructed by Mr Stephen Boodram for the Defendant

Date: 1 April 2019

JUDGMENT

1. The Churkoo Village Mandir has been located for many years on the Manahambre Road in Princes Town. Next to the mandir (temple) is a plot of land. The first named claimant is the Pundit and spiritual head of the mandir and an executive member. The other named claimants are executive members. It is not disputed that the defendant is the paper title owner of this plot of land. This is a claim for adverse possession of that plot.
2. The claimant says the members of the mandir have exercised exclusive, undisturbed and continuous control of this plot of land for over 16 years such that the defendant's paper title has been extinguished.
3. The trial took place with witnesses being called on both sides. The court was also invited to undertake a site visit which it did. For reasons set out in the submissions of the defendant, the defendant has asked that the court not rely on any perceptions or evidence that may have been obtained from that site visit because certain processes ought to have been complied with following the site visit and these were not. I agree with those submissions. I therefore

do not propose to place any reliance on perceptions or observations from that site visit.

4. The law applicable to adverse possession has been traversed in the submissions of both sides. It can be summarised briefly as follows.

5. Section **3** of the ***Real Property Limitation Act, Chapter 56:03*** provides:

3. No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.

6. Section **11** of the ***Real Property Limitation Act*** provides:

11. No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon; and no continual other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action.

7. Section **22** of the of the **Real Property Limitation Act** states:

22. At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.

8. In the case of **Powell v Mc Farlane (1977) 38 P&CR at 452 at 470**, a decision of Slade J which was affirmed in **JA Pye (Oxford) Limited v Graham 2003 1 AC 419**, it was provided that the basis of adverse possession is, “... *both factual possession and the requisite intention to possess (“animus possidendi”)*).

9. Generally, the act of possession is defined in ***Clerk and Lindsell on Torts 22nd Edition at paragraph 19-13, page 1335:***

“Possession means generally the occupation or physical control of land. The degree of physical control necessary to constitute possession may vary from one case to another, for “by possession is meant possession of that character of which the thing is capable”. The type of conduct which indicates possession must vary with the type of land. In the case of vacant and unenclosed land which is not being cultivated there is little which can be done on the land to indicate possession ... In the case of land without buildings possession is shown by “acts of enjoyment of the land itself” such as building a wall upon it, or taking grass from it.”

10. ***Powell at pages 470-471***, defined factual possession as:

“... an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient

degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed.

11. **Powell** cited the case of **Red House Farms (Thorndon) Ltd. v. Catchpole (Unreported). November 12, 1976. Court of Appeal (Civil Division) Transcript No. 411 of 1976**, further illustrating the meaning of factual possession:

Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.

12. **JA Pye (Oxford) Limited v Graham** also affirmed Slade's J interpretation of the element of intention to possess:

"intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself

the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.”

13. Furthermore, Slade J at **page 472**, stated:

“An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. This, in my judgment, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. The position, however, is quite different from a case where the question is whether a trespasser has acquired possession. In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner.”

14. A helpful summary of the principles was given in the case of *Inez Charles-Sargeant v The Attorney General of Trinidad and Tobago and Anor CV 2017-00876*, where Kokaram J at *paragraph 10* cited the case of *Balevents Ltd and Another v Sartori (2014) EWHC 1164 (Ch)*:

(1) There is a presumption that the owner of land with a paper title is in possession of the land.

(2) If a person who does not have the benefit of this presumption wishes to show that he is in possession of the land, the burden is on him to show that he is in factual possession of the land and that he has the requisite intention to possess the land.

(3) For a person to show that he is in factual possession of the land, he must show that he has an appropriate degree of physical control of the land, that his possession is exclusive and that he has dealt with the land in question as an occupying owner might have been expected to deal with it and no-one else has done so.

(4) Whether a person has taken a sufficient degree of control of the land is a matter of fact, depending on all the circumstances, in particular the nature of the land and the manner in which such land is commonly enjoyed.

(5) The person claiming to be in possession may be in possession through his tenant or licensee, if that tenant or licensee has, on the facts, sufficient control of the land to amount to factual possession.

(6) The person seeking to show that he has had possession of land must show that he had an intention for the time being to possess the land to the exclusion of all other persons, including the owner with the paper title.

(7) The relevant intention is an intention to possess and need not be an intention to own.

(8) The intention to possess must be manifested clearly so that it is apparent that the person now claiming to have been in possession was not merely a persistent trespasser.

(9) If the acts relied on are equivocal then they will not demonstrate the necessary intention.

(10) It is possible in some cases for a person in possession to add to his own period of possession, the period of time during which his predecessor was in possession; this applies in particular where the predecessor relinquishes possession to a person who then takes possession.

15. Furthermore, he stated at **paragraph 17**, *“The evidence to be adduced to prove adverse possession must be logical, cogent and compelling.”*

16. This position is supported in ***Commonwealth Caribbean Property Law 4th Edition*** (Routledge-Cavendish; United Kingdom, 2015) at **page 231**:

“In order to qualify as sufficient adverse possession, the acts the claimant must not be “trivial and equivocal” and in determining whether the claimant has shown sufficient factual possession to found a claim to title by adverse possession, regard must be had to the circumstances of the individual case.”

17. With respect to the acts of possession, the claimant submitted the case of ***Gayadeen and Anor v the Attorney General of Trinidad and Tobago (2014) UKPC 16*** where Lord Hodge at ***paragraph 24*** put forward the legal ingredients of adverse possession and the application of those principles to a claim for adverse possession of land allegedly used as a car park:

“The appellants and Mr and Mrs Rambaran had the necessary intention, the animus possidendi. Their construction, maintenance and cleaning of the car park and the steps they took to exclude persons other than their customers from parking there vouch such an intention. The other requirement is factual possession which connotes a sufficient degree of physical control ... What constitutes an appropriate degree of physical control must depend on the circumstances. In this case the Rambaran’s and the appellants would have wished members of the public to have access to

their car park from Tumpuna Road in order to provide custom to their business. There could have been no question of fencing off the car park if they were to attract such custom. They dealt with the car park as an occupying owner might have been expected to deal with it. No one who parked there temporarily without their consent dealt with the car park in that way. Such ephemeral use of part of the car park by a driver of a vehicle did not amount to factual possession and did not manifest any intention to possess.”

18. The Defendant submitted the case of ***Central Midlands Estates Ltd v Leicester Dyers Ltd [2003] All ER (D) 141 (Jan)***, where the defendant claimed title by adverse possession on an industrial estate where the defendant’s employees parked their cars. The Court held:

“On the evidence there was regular and systematic parking by the defendant’s employees on the strip of wasteland from the mid-1990s but not before. Accordingly, the court was not satisfied that the defendant had established possession by it by the regular parking of cars for 12 years or more. However, the court did not consider that the assumption that regular car parking by the defendant’s employees on the strip of wasteland would

constitute the taking of possession of the wasteland by the defendant itself was correct. The defendant never sought to enclose the strip of wasteland, to put up any car park signs or to do anything at all by way of outward indication that it regarded the strip of wasteland as its own. The court did not accept that merely because some employees used a piece of wasteland for parking, even on a regular basis, that that showed either factual possession or an intention to possess on the part of the employer itself. Nor did the court think that the position became different merely because some persons making deliveries to the employer's business also parked on the wasteland whilst doing so. It followed that the court did not accept the defendant's case based on adverse possession. Not only had it not made out a case of either factual possession or intention to possess but also it had not established that the activities upon which it relied continued regularly over a period of at least 12 years. The claimant was therefore entitled to have the caution vacated."

19. The critical role of the court therefore is to examine the evidence led by the parties to see what evidence there is in relation to these elements. The claimant advances that over the years the land has been used as a car park and for religious and cultural activities. The claimant alleges there used to be toilet facilities on the land. It is further alleged there used to be jhandis

situated on the land and flowers planted which were used in religious ceremonies.

20. The witnesses for the claimant were Pundit Artma Maharaj, Mr Kelvin Jaggernauth, Mr Shiva Mohan Mahabir. For the defendant the witnesses called were Dr Dexter Davis, Mr Samaroo Ragoonanan, Mr Torrence Neebar, Mr Mark Lewis and Mr Rawlin Samaroo, Mr Indar Sankar. The defendant did not pursue with Mr Sankar's evidence.

21. The evidence on behalf of the claimants given by the three witnesses were in similar terms. Pundit Artma Maharaj has been the spiritual head of the mandir for over 30 years. He said the members of the mandir have been in possession of the land next to it before his appointment and the defendant is suddenly claiming it. The defendant has interrupted the mandir's religious functions harassing and threatening members, visitors and guests. The area is the same width as the land the mandir is on and they have always treated the area as one. His father, some 80 years ago, became one of the lead pundits of the temple. At that time the temple was a modest wooden structure. This was demolished about 50 years ago and a concrete structure about 30 feet X 30 feet was built up. The land they were on originally belonged to the now closed sugar company, Caroni (1975) Limited, and he was told Caroni owned the disputed land also. The land was placed on the disputed land and flowers, trees, and plants used for religious ceremonies were grown on the land.

22. Pundit Artma gave evidence that as he was growing up the annual Ramayan would be hosted there. The members would keep the land cleaned and

maintained. As he became the pundit he instructed the members to continue to do so which included cutting the grass and spraying the land. The membership of the temple grew and the land has been used over time for construction of a kitchen to service temple needs; storage of construction materials to facilitate renovation of the mandir as required; parking for vehicles when they have different functions; housing of the jhandis; housing the toilet facilities; being used to host pujas, Divali and Phagwa celebrations, playing sports and holding bazaars; cultivation of flowers and trees used in religious worship.

23. He stated the temple's maintenance committee has always played a role in maintaining the disputed land. Pundit Artma noted that the land slopes sharply at the back and they could not park vehicles down the slope until in 2016 when the land was prepared and backfilled. Monies from members funded this and the contributions of the members made the land valuable. In 1995 and 2016 they expended money to backfill the land.

24. Pundit Artma continued that a major renovation of the mandir took place between 2003 – 2008. During this time construction material was stored on the premises. Trucks and workmen frequently parked on the disputed land. The members made the practical decision to move the toilets and jhandi area from the disputed land and incorporate it into the mandir building and courtyard area respectively. It was decided to use the land more for a car park.

25. He said the mandir is now a modern building with modern facilities and surroundings. He can say the members have occupied the land continuously

for over 30 years without interruption. The members never acknowledged anyone as the owner because as far as they were aware the mandir was the owner of the land. No one ever interrupted their use until 2016 when the defendant did, using abusive language on more than one occasion. The defendant also placed rocks on the land to prevent parking. Between November and December 2016 there were several acts by the defendant using verbal abuse of members and visitors over the use of the land including the disruption of functions. In December the defendant placed a no trespassing sign. The defendant never before 2016 ever asserted any ownership rights over the land. They have spent substantial sums developing the land.

26. He noted that letters passed between the defendant's attorney and theirs in 2016; the first from the defendant coming in March 2016 when the defendant's attorney wrote him about the backfilling of the land in February 2016. Pundit Artma gave further evidence relating to the aggressive behaviour of the defendant. Theirs has always been the peaceful use of the land for the temple's activities.

27. The other witnesses gave similar evidence in relation to the use of the temple. Mr Jaggernauth said he has been involved with the temple for 60 years and Mr Shiva Mohan said he has been a member for 20 years. I don't propose to review their evidence in detail but I note the evidence in the witness statements was supportive of the evidence of Pundit Artma.

28. The defendant gave evidence that he bought the land in 1991. He had gone to see the land with the owner, Mr Gobin Singh. He saw it was sloping towards

the back and the mandir was on one side and a house on the other. He said from when he bought the land he would keep it clean and clear. He regularly went onto the land and his son and a friend would help to cut the grass. He planted a few fig (banana) trees and cedar trees. He paid land and building taxes for the land from when he bought it to when the government stopped collecting taxes. He attached the receipts. He said about 1993 or 1994 he got a friend, who was a truck driver, to drop some dirt on the land near the roadway so he could level the land to park his car. He regularly visited the land.

29. About 1995 he saw the mandir extended its washroom roof partly over his land. He got his surveyor to survey the land. He said Pundit Artma was there and the survey confirmed that the washroom roof was hanging over his land. Pundit Artma moved it some 6 months after. There was no indication then that the mandir was claiming his land. His son was present. He has tried to locate the surveyor but has not been successful. He attached the survey plan. About 2010 he saw a steel bin was installed at the top of the land. He asked Pundit Artma to move it and it was moved. In 2010 he said boulders were dropped on the land. He asked Pundit Artma about it who said he did not know why it was dropped there and he moved the boulders.

30. In 2015 the mandir extended a concrete wall separating the land and the waste water pipe was running to his land. He told Pundit Artma to move it, but it was not moved. Between 2000 to 2015, Pundit Artma asked him many times to purchase the land but he did not accept the offers. He said when the mandir was doing renovations in 2015 Pundit Artma asked him to exchange the land for another piece in Churkoo Village. He was willing to exchange this

land and pay him money as well. He went to view the land but he did not accept the offer. He attached a photograph of this land.

31. In February 2016 his son noticed the mandir started to dump lots of dirt on the land with trucks. He went to Pundit Artma about this and they had discussions. Pundit Artma told him the dirt was being given free as well as crushed material and would be an opportunity to fill the lands. After getting advice he told the pundit to move it and he removed some. A neighbour complained about the backfill washing onto his lands. He got his lawyer to write the pundit dated 26 March 2016. This was attached also.

32. He subsequently wrote other letters, complained to the regional corporation about the waste water running into his land and building and health inspectors visited the land. There were other interactions between the parties and letters that were sent. In November 2016 he received a letter claiming the temple was claiming adverse possession. He had always been asked by Pundit Artma to sell the lands to him.

33. He said he has cleaned the land with the assistance of his son and he would pass to check the lands from time to time. He denied he harassed members of the mandir on the different occasions mentioned. He also specifically denied each allegation of the different uses of the land that the witnesses for the claimants testified about.

34. Rawlins Samaroo, the defendant's son gave evidence that his father would take him to see the land shortly after it was purchased. He and his father along with a friend of his, Mark Lewis, would cut the grass from time to time. He gave evidence about the slope of the land. He spoke of being present when the land was surveyed in 1995 and Pundit Artma was present. He spoke of his father complaining to the pundit about the pipes coming onto his father's land. He spoke of steel rods being placed on the land as posts to block persons parking on the land; they put up a no trespassing sign; and they would ask people to remove their vehicles when they parked on the land. Mark Lewis, is a technician with the telephone company. He would pass on the Manahambre Road. He is good friends with Rawlins. In the 1990's he was taken to see the land and Rawlins told him it was his father's land. From time to time he would assist him to help him to clean the land. He never saw any jhandis placed on the land. He noted that you could not come out from the mandir and go onto the land. He said someone would have to go to the road and then come onto the land. His evidence was supportive of the defendant and Rawlins. Mr Torrance Neebar gave evidence that he used to go to the mandir and he and his family were involved with it. There was a disagreement at some time and he stopped going. He knew the defendant purchased the land in the 1990's. He said up to 1990 when he was involved in the mandir the mandir did not occupy lot 63 and he had never seen the mandir host any functions there. The bazaar would be hosted opposite and events were held in the temple compound with use of tents. He never saw any jhandi area on the disputed land. While Mr Neebar had a disagreement with the temple's executives some time ago which made him leave the temple, he is a witness who, like the claimant's witnesses, attended the temple for a long time and he swears the opposite of the claimant's witnesses about the use of the land.

35. It is interesting to note that the defendant did plead in his Defence the various specific discussions and interactions he had with Pundit Artma about the land and which are summarised above from his evidence. It was noted that Pundit Artma made offers to purchase the land and to persuade him to sell it. He specifically pleaded being offered a lot of land in exchange. These averments were not specifically denied in the witness statement given by Pundit Artma. This, in my view, was significant, because it went directly to the issue of the acknowledgement by Pundit Artma of the defendant's ownership of the land and of the defendant's continuing interest in the land.

36. The cross-examination generally revealed witnesses keeping to their versions. However, there were some matters which emerged which are dealt with in my observations and findings on the evidence following.

37. The first observation on the evidence of the claimant is that many of these allegations were vague. There was no precision as to dates, times and specific occasions. There was likely to be a wealth of evidence available from persons who attended the mandir. There was likely to be available to the mandir several persons of varying ages who could have given different parts of the history of the use of the land and first-hand accounts of their involvement. This was not forthcoming. On an important aspect of the possession relating to the backfilling of the land there was no clear evidence of the extent of the backfilling done over the period of time.

38. The second observation relate to nature of the evidence. There was some significant similarity on paper among the witness statements of the claimants.

In some cases this related to the same words being used. Counsel for the defendant suggests there has been collusion among the witnesses. I did not conclude that. They may have discussed their evidence and then witness statements were settled on their behalf which they then adopted. This is not the best practice to follow. Each witness ought to give his or her independent account of the facts as they know it. Witness statements are very different from pleadings in this respect. But having had the benefit of seeing and observing these witnesses, I am reluctant to conclude there was collusion on their part. These witnesses may have adopted statements drafted for them based on their instructions. They may have accepted what was set out was true because that is what they wanted ultimately to say. As I said, it would have been better if each witness gave his independent version in, as far as possible, his own words. However, the similarity in their statements does not suggest to me that they colluded to deceive the court.

39. Having said that, in cross-examination, significant inconsistencies arose with respect to important facts. On the same issue of backfilling of the land there was inconsistent evidence among the witnesses on when this was undertaken and the extent of it.

40. There was inconsistency in the versions of the witnesses on the extent of the land that was backfilled. Pundit Maharaj indicated from 2003, 16 cars could park which suggested a larger area of backfilling; Mr Jaggernath said by 2003, $\frac{3}{4}$ of the land had been backfilled while Mr Mahabir said $\frac{1}{3}$ of the land had been backfilled from 2003. This was a significant inconsistency on one of the major planks of the case for the claimants. There was the clear assertion of the land being used for parking. There was also contradictory evidence about

when the backfilling took place and for what purpose. Shiva Mahabir spoke about the backfilling for the car park taking place in 2016 and other backfilling took place in 2003 for the storage of temple equipment.

41. The third observation relates to a matter over which there is some agreement on both sides. The land, as accepted by the witnesses, slopes sharply to the back. This brings into doubt the extent to which the land could have been used for the holding of sports events and yagnas with tents being constructed on the land. The defendant's evidence is that the lay of the land did not permit such events to be held and that only a small area to the front could be used where the land joined the pavement or roadway. Both sides accepted the sharp sloping at back. A sharp slope does not make impossible the use of the land for events like sports events or even yagnas, but it certainly makes it difficult and even potentially dangerous. In the villages, people may well make do with what space they have available and use that space which may not be entirely ideal. However, the use towards the back would probably have been limited and really only the front portion may have been more practically speaking fully usable and only a relatively small part of it.

42. The fourth matter relates to the exclusivity of the use of the land. The learned pundit did suggest that from time to time he had excluded persons from using the land. However, there is evidence from both the pundit and another witness, Mr Kelvin Jaggernath who both gave evidence that other persons not connected with the mandir could park on the land including patrons of the rum shop across the road. The land was not fenced and there was not a "no trespassing" sign on the land. It seems highly plausible in such a context that users of the rum shop would use the land to park when it was vacant. There

is also no evidence to suggest that persons were on the spot to seek to exclude other users. It may have been used on a first come basis; who got there first got to use it. At different times of the day and on different occasions different people may have made use of the area on which parking could realistically take place. This to me is where the real weakness of the claimants' case is. I really do not doubt their witnesses that the land was used over the years to some extent. But this was an open piece of land which was not fenced or protected. Its use would have been on an "on needed" basis.

43. A yagna held annually may be over a week or a 9 days. Part of the land may have been used for certain purposes. Given the descriptions accepted by both sides, it seems reasonable to accept, however, that the slope would not have been conducive to putting chairs or tents or for the land to be used for the usual activities associated with a yagna.

44. But the use was unlikely to be on an on-going basis, continuously and not only by them. The use may be for a period of days. The land was conveniently there and could have been used if no one else was occupying it. For the limited period it may have been cleared. But it is noteworthy that no permanent structures were ever placed on the land. It seems odd that if the temple members considered the land to be one continuous plot with the land the temple stood on that they would have not expanded there and would only use it for non-permanent uses. If no one had ever claimed it then it may have been in more targeted use as the temple expanded and renovated.

45. This limited use in the sense of there not being any permanent structures is an indication of the acceptance by the members of the mandir, it seem to me, that the land was not theirs. They may use it when needed, but it seems doubtful that the members intended to possess it exclusively.
46. Once it was open persons would be free to use it. Specifically, patrons of the bar would have found this place to be a convenient spot on which to park vehicles if only at the narrow area near to the road and pavement.
47. The fifth matter is the lack of supporting documentary evidence to back up the assertions of the witnesses on behalf of the mandir. The mandir, from the evidence, is a well-established and functioning organisation. Pundit Artma and Mr Jaggernauth have given evidence of the growth over the years and the extent of the activities in the community. There are many occasions in the Hindu calendar which are observed. Accordingly one would have expected there would be records as to donations, projects undertaken, receipts issued for work done, invoices, bills, photographs of events, minutes of what was being done and when, and similar documents. The witnesses spoke of the land being maintained and sprayed. Surely there ought to be records of the maintenance committee or of the executive which may have supported some aspects of the use of the disputed land. There was a noticeable lack of support to the assertions of the witnesses. It was not enough for the executive members to present themselves as witnesses. This would have been the kind of case where several persons ought to have been able to give relevant evidence of the use and occupation of the lands. The temple may have been able to source photographs from members of events which took place there.

48. The court is entitled, and especially in a case like this where a functioning organisation is concerned, to look for such supporting evidence. The claimants have to prove their occupation and control of the land to displace the presumption in favour of the land owner.

49. The sixth matter concerns efforts to purchase the land by the temple. There is evidence of approaches made to the defendant to have the land sold to the mandir. This suggests both acknowledgment of his title and indirectly throws doubt on their claim to exclusive possession for 80 years. In this case it appears to be inconsistent with their assertion to exclusive possession and control.

50. The seventh matter concerned the expert evidence of Dr Davis. He undertook an aerial photographic analysis of the area and provided a report to the court. He examined photographs from 1980 onwards at intervals. The vegetation on the land and the lay of the land tended to show that only a narrow strip of land close to the roadway was likely to be suitable for use as a car park. This was contrary to the assertions of the claimants' witnesses. Further, the lay of the land according to Dr Davis would make it difficult to use the land for other purposes such as sports or recreation. Difficult does not mean impossible, but this also tended to accord with the defendant's case that the land was generally not used and was mostly covered in bush for many years.

51. I found no reason not to accept the evidence of Dr Davis. He explained how he came to the conclusions he did; he was an independent witness; he

illustrated his findings and his evidence remained consistent and intact after cross-examination.

52. The defendant's evidence is that over the years there were encroachments on the land by Pundit Artma and the members of the temple and on each occasion the defendant brought it to the attention of the pundit and steps were taken to comply with the requests. The evidence is that at the time of the backfilling in 2016 the defendant visited Pundit Artma's home and discussed the matter there. All of these interactions tended to suggest that the claimants both accepted and acknowledged the defendant's ownership of the land and his entitlement to oversee what went on. The defendant's clear evidence, which I accepted, was that he would pass by the land often enough and he was interested in the land and he had plans for it to leave it to his son.

53. Further, the defendant's witnesses gave evidence of their cleaning the lands at the request of the defendant. They gave evidence of the sloping nature of the land which was consistent with Dr Davis' evidence.

54. The eighth point is that there was an interesting bit of evidence from Pundit Artma in his witness statement at paragraph 6. He noted that the temple stands on Lot 64. This land, he said, is owned by Caroni (or its successor) and the land was tenanted. He noted that they continue to be tenants of that lot at present. At paragraph 8 he stated that his father, the former pundit of the temple, had told him the lot next door had previously belonged to Caroni also. He did not say he knew it was sold, but he did say that they treated it as if it formed part of the mandir property. It would seem a bit odd that they would

continue to consider themselves to be tenants of Caroni for Lot 64, but the land next to it would be considered part of the mandir property but their intention to possess it would be different from their intention to remain as tenants in relation to Lot 64.

55. A ninth matter is that the defendant noted he was a taxi driver and security guard. He gave evidence that he purchased the land in 1991. He is not a man of tremendous means. Thus, I found it unlikely that he would make this investment in the land and then have nothing to do with it after he purchased it. It seems both plausible and reasonable to accept that he would, over the years, as he said, have maintained some contact with the land, that he would have checked on it and he would have had his son check on the land as he says. In cross examination he noted he bought the land and he intended to give it to his son. This makes his case more likely than the claimant's case regarding whether he would come onto the land and act as any owner would. It seems likely that the defendant sprung more forcefully into action in 2016 when the claimants ramped up activities on the land by placing dirt and crushed material on it with the intention of using it as a car park. It is clear from then that there was a flurry of letters and interactions from that point on. His payment of the land taxes is also consistent with his continuing interest in the land.

56. The defendant was able to provide also the history of the land in terms of its sale and how it got to him. This history showed the land changed hands a few times. At one time it was Caroni; then owned by one Garibdass; then by one Gobin. By 1995, on the survey plan it was not stated to be lands of Caroni as was the lot on which the temple stood. With different owners, it seems more

likely than not that each owner may have had some involvement with the land. A purchaser would at the very least visit the land before purchase.

57. Regarding the witnesses on both sides, clearly they were both connected to the respective parties. However, the defendant's witnesses do seem to have given more specific and less generalised evidence than that of the claimant's witnesses. Dr Davis was an independent witness who in cross-examination was readily willing to accept some of the limitations of his photogrammetric analysis. Significantly he accepted that parking was likely close to the roadway having examined the vegetation and slope. Mr Neebar may have had reason to go against the present management of the temple, but he did have significant knowledge. I found he held up well in cross-examination. He certainly asserted that the use was not of the nature suggested by the claimant's witnesses.

58. In all, I do not doubt that from time to time members of the mandir may have made use of the land in the past. It was open and next to the temple. The defendant, may have been aware of limited use, but since there was nothing permanently being done with the land, he may have tended to overlook the occasional use.

59. I also do not doubt that because of its close proximity, persons attending the mandir for occasions may have parked near the roadway in the part that was suitable for parking. These may have been a few spots. It would be a convenient place. But as the **Central Midlands** case cited above noted, the parking of vehicles by individual members would not necessarily lead to the

formation of an intention by the mandir as a body, being a collection of its members, to possess the said land with the intent to displace the owner. The circumstances revealed here do not meet the high standard set out in the **Guyadeen case** above where a car park was concerned. Even picking flowers from an empty lot, as asserted above, while it was an important part of religious observances, would not necessarily translate to an intention to possess the land. These do not show an intention akin to seeking to own the land.

60. I do not accept, however, that the use by the claimants was continuous or of such a nature to establish possession and control of it. Certainly there was no evidence of their exclusive control of it in the sense of acting as its owner. As already noted, Pundit Artma quite frankly accepted that they never prevented others from parking on the land, to the extent that was possible, and they never put anyone out of the land. There was no signage placed suggesting an assertion of exclusive control of the land. It was never fenced. When substantial renovations and development of the temple took place to the modern structure he gave evidence that it now is, the land next door was largely left untouched. The evidence was also that patrons of the bar opposite made use of it. I also accepted the defendant's evidence of his continued interest in the land since obtaining it and his acts of visiting and cleaning the land from time to time. These matters are sufficient to dispose of the claim which fails on a balance of probabilities.

61. The claim is therefore dismissed. There was a counterclaim. I find it unnecessary to make a declaration that the defendant is the owner of the land. He has a deed for it and the claim of the claimant is dismissed. An

injunction in favour of the claimant was granted. The injunction would be discharged. I do not consider it necessary to make any further order on the counterclaim.

62. I will hear the parties on costs.

63. I place on record my appreciation to Counsel on both sides for the usual erudition and high quality of their submissions and for their cross-examination and assistance during the matter. I am indeed grateful.

Ronnie Boodoosingh

Judge