

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA No. 2657 of 1997

IN THE MATTER OF THE ESTATE
OF BHADASE SAGAN MARAJ (deceased)

BETWEEN

RAMOLA RAMESAR

(the legal personal representative of Rachel Ramesar
Otherwise Rachel Chinibas, deceased)

PLANTIFF

AND

SATNARAYAN MAHARAJ

And

JAGDISE SAGAN MARAJ

DEFENDANTS

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

Appearances:

For the Plaintiff: Mr. A. Manwah
For the Defendant: Ms. L. Lucky-Samaroo
Led by Mr. A. Fitzpatrick S. C.
Instructed by Mr. S. Capildeo

Date of Delivery: 12th November 2015

JUDGMENT

BACKGROUND

[1] By summons dated 15th August 2008 the Plaintiff sought the following reliefs:

- a) An order that the Defendant do comply with an order of Bereaux J for Administration of the Estate of Bhadase Sagan Maraj (hereinafter called the Deceased) within a time fixed by the Court;
- b) An order that Deed of Assent registered as DE 200403376974 be amended;
- c) An order that the Defendant do assent 1/36 share and interest in the Deceased's Estate situate at Enterprise, Chaguanas and/or assign the right to receive that Plaintiff's share of the compensation for the acquisition of these lands by the State to the Plaintiff;
- d) An order that the Defendant do assent to the Plaintiff 1/9 share and interest of the Deceased's parcel of land described as Streatham Lodge Estate;
- e) An order that the Defendant do pay the sum of \$94,444.44 to the Plaintiff being her share of the proceeds of the sale of the Crest Cinema Property;
- f) An order that the Defendant do forthwith pay to the Plaintiff the sum of \$419,698.11 being her share of the rental income of those premises at Curepe described as "the Bomb" for the period 1979 to August 2005;
- g) An order that the Defendant do forthwith pay to the Plaintiff the sum of \$2,777.77 being 1/9 share of the bequeath to Baboonie;
- h) Interest pursuant to **SECTION 25 OF THE SUPREME COURT OF JUDICATURE ACT.**

i) All necessary and consequential orders, directions and enquiries.

[2] In support of the summons the Plaintiff filed an Affidavit on 15th August 2008. The First Defendant is the sole surviving representative of the Estate of Bhadase Sagan Maraj (Deceased). The First Defendant filed three affidavits in reply to the Plaintiff's on the 8th July 2009, 21st October 2011 and 23rd April 2014.

[3] Both Plaintiff and Defendant were cross examined on their affidavits.

THE PLAINTIFF'S EVIDENCE

[4] The Plaintiff, in her affidavit of August 15th 2008, deposed that Sandra Sagan Maraj, Rachel Ramesar and herself were each entitled to a 1/9 share of the Residue of the Estate of the Deceased. She also deposed that Rachel is entitled to a bequest of \$50,000.00 and a 1/4 share of the Deceased's Estate at Enterprise, Chaguanas and property situate at #3 Sagan Drive, Champ Fleur.

[5] By order of the Honourable Mr. Justice Bereaux made on 24th May 2002 pursuant to High Court Action No 2655, 2656 and 2657 of 1997, the Defendant was ordered to complete the Administration of the Estate of the Deceased by the 3rd June 2003. The Honourable Mr. Justice Carlton Best extended the time for the Administration of the said Estate to the 25th day of February 2004. These orders were not complied with.

- [6] The Plaintiff further stated that she is entitled to 1/9 of the rental income from premises rented to the Bomb Newspaper amounting to \$419,698.11. She also sought an order that the ¼ share of the Deceased's Estate in Enterprise, Chaguanas which forms part of the Residue be transferred to her.
- [7] The Plaintiff also claimed a share of property which formed part of the Residue and which was partially distributed namely \$94,444.44 representing her share in the proceeds of the sale of Crest Cinema and 1/9 share of \$25,000.00 specifically bequeathed to Baboonie who had predeceased the Deceased. She also claimed a share of the proceeds of sale of the Streatham Lodge Estate which she claimed had been sold and the monies therefrom were divided unequally among those entitled.

CROSS EXAMINATION OF THE PLAINTIFF

- [8] In cross examination the Plaintiff testified that she had no further interest in the property in Curepe; that she was paid her full share in relation to it. She also admitted that she was aware that the Streatham Lodge Estate had been sold; she also admitted that she had been paid her share of the proceeds of sale.
- [9] As regards her claim to a share of the proceeds of sale of the Crest Cinema, the Plaintiff testified that she was aware that the cinema had been sold in 1981 and that the proceeds of sale had been distributed among the beneficiaries. She admitted to receiving \$50,000.00 as her share of the proceeds but did not admit to exonerating the First Defendant from all

further claims in relation to this part of the Estate. She admitted that she signed such a certificate when shown her signature thereon however she was not prepared to admit that Rachel also signed that certificate of exoneration despite being shown what appeared to be Rachel's signature with which she was familiar on the said document.

[10] This witness also admitted that the lands comprising the Enterprise Estate were fully occupied by squatters. She testified at first that she was unaware that the Estate had owed the Board of Inland Revenue significant sums of money however she later admitted that she was aware of the Estate's debt to the Board of Inland Revenue.

[11] The Plaintiff testified that she was also aware that the Estate had been involved in litigation with beneficiaries and that she had sued the Estate twice. She indicated that she could not dispute that the Estate had spent over 1.4 million dollars in legal fees.

[12] Significantly, this witness testified that Vishnu, one of the beneficiaries of the Deceased's Estate, had married one Polly and had had two children with her, one of whom was still alive. She also stated that Vishnu had predeceased the testator. While she was not prepared to deny that the Estate paid sums for administrative expenses, she denied that they amounted to \$4,000.00 a month.

[13] The Plaintiff admitted that her share of the lands to which she was entitled had been transferred to her in 2004. She also admitted to having received sums of money from the Estate up to 1996.

EVIDENCE OF SATNARAYAN MARAJ

[14] The evidence of Mr. Maraj as contained in his affidavit can be summarised as follows:

- i. That the Defendant incurred administrative costs in administering the Estate to the tune of \$4,000.00 per month;
- ii. That the Estate was a party to a number of matters in Court in which it required representation and thus the Estate incurred legal fees;
- iii. That during the course of Administration of the Estate the Estate paid sums to the Plaintiff in cash;
- iv. That the Defendant assented to those parcels of land which formed a part of the Estate as provided for in the Will of the Deceased and formed a specific bequest.
- v. That the 5% of the value of the Estate to the Sanathan Dharma Maha Sabha had not yet been settled;
- vi. That the sum owned by the Estate to the Board of Inland Revenue had been settled at a total cost of approximately one million dollars.
- vii. That the lands at Enterprise, Chaguanas continue to form a part of the Estate and have not formed a part of the Deed of Assent. That the lands at Enterprise have been retained by the Estate for the purpose of facilitating a sale of the lands to the State;
- viii. That the lands referred to in the Estate as "Pasea" and "Streatham Lodge" are all part of the same lands;
- ix. That Jagdise Sagan Maraj, a legal personal representative of the Estate, had since died and that he and another beneficiary collected rents due to the Estate and owes the Estate approximately

\$1,315,678.50. The Estate also had funds due to the said Jagdise Sagan Maraj in excess of the sums he owes to it.

[15] In cross examination the Defendant testified that he could not sell the entire Streatham Lodge Estate because there was no record of where it was located, its size or boundaries. As a result of this he was only able to sell a few lots from the Estate. He further testified that after the sale of a few lots some tenants came forward. He also indicated that Streatham Lodge and Pasea are one in the same.

[16] As far as the Enterprise lands are concerned the Defendant asserted that it was fully occupied by squatters but that he was in negotiations with the State for the latter to purchase it from him. He stated further that he did not accept the State's offer of three million dollars for 250 acres of land.

[17] As regards the rental income from the property rented to the Bomb Newspaper, the Defendant agreed that the Plaintiff was entitled to a 1/9 share of same up to the time that she had sold her share in the said property. He also accepted that the Plaintiff's 1/9 share would amount to over \$400,000.00

[18] This witness stated that he could not pay out all the sums due to the Plaintiff because of expenses incurred in the Administration of the Estate. These expenses included legal fees, payments to the Board of Inland Revenue as well as administrative fees of \$4,000.00 a month. He further pointed out that five percent of the value of the Estate had been bequeathed by the Deceased to the Maha Sabha but that he had not

retained any of the income from properties sold in order to satisfy this request.

SUBMISSIONS

Plaintiff's Submissions

- [19] The Plaintiff submitted that the Defendant was in breach of the order of Justices Bereaux and Best in that he had failed to administer the Estate of the Deceased. He submitted that the Defendant had failed to pay the sum of \$50,000.00 which was a specific bequest to Rachel and had also failed to assent to a ¼ share of the lands at Enterprise to Rachel. He argued that there was nothing prohibiting the Defendant from assenting these lands to Rachel.
- [20] With respect to the property which comprise the Residue of the Deceased's Estate the Plaintiff contended that the Defendant was estopped from asserting that the Residue could not be paid now because he had begun distribution of the Residue since 1981.
- [21] Lastly, the Plaintiff reiterated that it was no answer to her demand for payment of her share of the rental income from the Bomb Newspaper to say that the Plaintiff had received monies from the Estate over the years.

Defendant's Submissions

- [22] The Defendant admitted in his submissions that Rachel was entitled to a $\frac{1}{4}$ share of the lands at Enterprise, Chaguanas. He submitted that he has no objection therefore to an order that Rachel's share of the Estate be transferred to the Plaintiff.
- [23] The Defendant submitted, however, that no beneficiary is entitled to make a specific claim to the Residue of an Estate until the Administration of the Estate is completed. He argued that in this case the Estate has not been fully administered and therefore the Plaintiff's claim for the Residue of the Estate cannot be maintained. The Defendant further submitted that until the Administration of the Estate is completed and the Residue ascertained, it is open to the Defendant to utilize funds and/or assets falling into the Residue for the purpose of the Administration of the Estate.
- [24] In relation to the claim for payment of \$94,444.44 the Defendant submitted that from the evidence the Estate has paid to the Plaintiff and/or to Rachel the sum of \$99,278.00 (as at 8th July 2009). As such this claim should fail.

ANALYSIS & CONCLUSION

- [25] I agree with the Defendant's submission that any of the properties which form part of the Residue of the Deceased's Estate do not fall to be distributed until the Administration of the Estate is completed and the

Residue ascertained. The Authors of Williams & Mortimer, Executors Administrators and Assigns¹ opined:

“A Residuary Legatee has no interest in a defined part of the of the Estate until the Residue is ascertained, nor can income be ascribed to unascertained Residue. His right, which is of course transmissible, is to have the Estate properly administered and applied for his benefit when Administration is complete.”

In **Lall v Lall**² Buckley J approved the statement of Plowman J in **Eastbourne Mutual Building Society v Hastings**³ where he opined:

“Therefore, while it may well be said in a general way that Residuary Legatee had an interest in the totality of the assets (though that proposition in itself raises that question which is the local situation of the ‘totality’) it is their Lordships opinion inadmissible to proceed from that to the statement that such a person has an equitable interest in any particular one of the assets, for such a statement is in conflict with the authority of both (Sudeley (Lord) v Attorney General) and Dr. Bernrado’s Homes v Special income tax Commissioners) and is excluded by the very premise on which those decisions were based. ”

¹ (1982) p. 944

² 1965 1 WLR 1249 at 1251

³ 1965 WLR 61

[26] In further support of the principle that where the Estate of a testator has not been fully administered, the Residuary Legatee had no interest in a defined part of the Estate until the Administration is complete, the case of **Dr. Barnardo's Homes etc v Commissioner for Special Purposes etc** is instructive⁴. In that case Viscount Cave opined⁵:

"When the personal Estate of a testator has been fully administered by his Executors and the net Residue ascertained, the Residuary Legatee is entitled to have the Residue as so ascertained, with any accrued income, transferred and paid to him; but until that time he has no property in any specific investment forming part of the Estate or in the income from any such investment forming part of the Estate or in the income from any such investment, and both corpus and income are the property of the Executors and are applicable by them as a mixed fund for the purpose of Administration."

[27] Accordingly, the Plaintiff is not entitled to be paid 1/9 share of the Residue of the Estate of the Deceased before the Administration of the estate is completed. The following properties also form part of the Residue of the Deceased's Estate –

1. Lands at San Juan,
2. Lands at Enterprise,
3. Streatham Lodge

⁴ 1921 2 AC 1 TAB 2

⁵ Page 10

4. Lands at Toco/Salybia
5. The Crest Cinema, Curepe
6. The rental income up to 2005 from property rented to the Bomb Newspaper amounting to \$419,698.00

[28] With respect to Crest Racing Pool in San Juan income was received from the racing pool by the Second Defendant, now Deceased, but these sums were not handed over to the Estate. The First Defendant in cross examination testified that he did not take legal action against the Second Defendant to recover monies belonging to the Estate that he did not hand over because the Estate owed the Second Defendant sums in excess of what had been received.

[29] The Defendant testified as to his efforts to sell the lands at Enterprise. These efforts have not yet borne fruit and as a result no payments can be made to the Plaintiff for her share of the said property. Additionally, these lands form part of the Residue of the Deceased's Estate; as such the Plaintiff is entitled to her share upon the completion of the Administration of the Estate. I note however that the Defendant has offered to assent to the Plaintiff's share.

[30] With respect to Streatham Lodge the Defendant sold the lands prior to March 1983 and each beneficiary including the Plaintiff was paid the sum of \$20,000.00. The Plaintiff signed an exoneration in favour of the legal personal representative and the Estate releasing them from any claim or proceedings in respect of the sale of the lands at Streatham Lodge. As such

the Plaintiff's claim for a further share of the sale of these properties must fail.

[31] The Plaintiff admitted that the lands in Toco/Salybia were bequeathed to Vishnu who died before the death of the Deceased leaving two children. As such therefore pursuant to **SECTION 63 OF THE WILLS AND PROBATE ACT** Vishnu's share of the Estate would have passed to his children. The Plaintiff was not entitled to any part of Vishnu's share of the Estate. I also note that although in the Plaintiff's submissions she claimed a portion of Vishnu's share in the Salybia lands, that claim was not included in her summons. In the circumstances she would not have been entitled to any relief on this head.

[32] It should be noted that the Crest Cinema was sold in 1981 and the proceeds distributed among the beneficiaries included this Plaintiff who received \$50,000.00 representing her share. She also signed an exoneration releasing the legal personal representative and the Estate from all claims and proceedings in relation to the sale of this property.

[33] The Defendant, whilst admitting that the Plaintiff is owed the rental income from the property in respect of which the Bomb Newspaper is a tenant, testified that the monies due her could not be paid because of administrative and legal costs which had to be paid out of the Estate. He cited legal fees in the sum of 1.4 million dollars, payments to the Board of Inland Revenue in excess of one million dollars and administrative fees in the sum of \$4,000.00 per month. Attached to his affidavit filed in October 21st 2011 is a statement of accounts for the years 1979 to 2004. In the body

of that statement it was indicated that several items of expenditure were settled from rental income from the Bomb Newspaper. Some of the other expenses incurred included payments to WASA and other contractors as well as payments to beneficiaries.

Additionally, the Defendant has submitted that payments were made to the beneficiaries including the Plaintiff from other areas of the Estate whilst the rental income from the Bomb Newspaper was used to settle other fees and payments. Whilst from the evidence it would seem that the Plaintiff received in total \$115,644.85 excluding the \$70,000.00 which were paid her upon the sale of Crest Cinema property and lands sold at Streatham Lodge, the rental income owed to her is significant.

[34] I note with concern that the Administration of this Estate has not proceeded in an orderly fashion in that the Executor made payments to the beneficiaries from the Residue before completing the Administration of the Estate. Faced with the Plaintiff's demand that she be paid the balance of her share of the Estate which forms part of the Residue, the First Defendant now seeks to deny her claim by seeking refuge in the very legal principle that a Residuary Legatee should be paid after the Administration of the Estate is completed. I do not agree with the Plaintiff's submission that the First Defendant is estopped from denying the Plaintiff's claim to immediate payment from the Residue of the Estate. This is because the Defendant's action in making those payments was unlawful. I therefore hold that the First Defendant must comply with the law and pay to the Residuary Legatees the balance of their respective shares of the Estate when due - that is, upon completion of the Administration of the Estate.

[35] I therefore urge the First Defendant to complete the sale of the lands at Enterprise to the State at the earliest opportunity so that the Administration of the Estate could be completed. Upon the completion of the Administration the Defendant should pay to the Plaintiff the sums due her for her share of the property at Enterprise, Chaguanas as well as such portion of the rental income due her after expenses of the Estate has been paid. Given the length of time that has elapsed between the commencement of this Administration to the present I order that the First Defendant complete the Administration of this Estate by the 30th November 2016.

[36] I hold further that the Plaintiff is not entitled to the reliefs (e) and (f) herein by reason of the fact that she acknowledged payment of her share of the proceeds of sale of these properties; furthermore, she exonerated the First Defendant from all claims or proceedings in respect of these properties. In any event they form part of the Residue of the Deceased's Estate and as such she was not entitled to immediate payment for her shares therein since the Estate has not been completely administered.

[37] The Plaintiff is also not entitled to relief (g) in her summons because:

- a) the rental income from the Bomb Newspaper is part of the Residue of the Estate of the Deceased which the Plaintiff is not entitled to until the entire Estate has been administered. Additionally, I accept the evidence that some of that income had been used by the First Defendant to pay for administrative costs and expenses of the Estate.

[38] In the circumstances I order:

- a) that the First Defendant complete the Administration of the Estate by 30th November 2016;
- b) that the First Defendant pay to the Plaintiff the balance of the rental income from the Bomb Newspapers due to her less Administration expenses immediately after the completion of the Administration aforesaid;
- c) no orders as to costs.

Joan Charles

Judge