REPUBLIC OF TRINIDAD AND TOBAGO

CV# 2009-01502

**IN THE MATTER OF THE ESTATE OF TILKEY GOBIN
ALSO CALLED TILKIE GOBIN DECEASED**

BETWEEN

HERAWATI CHARLES

CLAIMANT

And

**(1) MONICA JANKEY MADHOSINGH
(as Executrix of the last Will of Tilkey Gobin
a/c Tilkie Gobin, deceased)**

**(2) BHANMATEE CHATTOO
(as Administrix with will annexed of the Estate of Tilkey Gobin
a/c Tilkie Gobin, deceased, and in her personal capacity)**

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE JOAN CHARLES

Appearances:

Mr. Malcom Johnatty for the Claimant

Mr. Vashist Maharaj for the Defendants

REASONS

By deed registered as No. 10034 of 1950 one Tilkey Gobin (herein after referred to as "the deceased") together with five other persons, became entitled to a parcel of land with houses thereon at Mc Inroy and Jackson Streets, Curepe as joint tenants.

The Defendant alleged the subsequent to the acquisition of the land the deceased bought the three houses thereon in 1976, 1978 and 1979. They produced three Bills of Sale in support of this claim.

The deceased died testate; the first Defendant was the named executrix of the said will. The second Defendant, another daughter of the deceased, by Power of Attorney from the first Defendant, proved the last will of the deceased and was granted Letters of Administration with the will annexed on 28th July 2006.

Under the will specific devises of money from several bank accounts were made to the children of the deceased including the Claimant and the Defendants herein. By virtue of the provisions of the said will the Claimant was entitled to a sum of money in excess of $57,000.00.

The houses on the said lands were rented by the deceased who collected the rental income during her lifetime. Upon her death the Claimant collected rent from a two storey house on the lands in the sum of $2,100.00 a month. The house belongs to another sibling who lives abroad. That sibling gives her $900.00 of this sum each month. The Claimant lives in another house on the said lands.

The first Defendant collects rents from two flats and a house on the subject lands whilst the second named Defendant also collects rents from one office houses on the lands aforesaid.

The Defendants claim that the houses on the said lands are chattels and therefore are not subject to the joint tenancy; as such they fall under the estate of the deceased. They have withheld payment to the Claimant of her share of the estate bequeathed her by the deceased and have demanded that she account to the estate for rents received from one of the houses on the said land. It is to be noted that neither Defendants had accounted to the estate for rents received by them.

The preliminary issues to be determined by the court were:

(i) whether in fact these houses were chattel houses and formed part of the estate of the deceased

(ii) whether the houses formed part of the land and therefore upon the death of the deceased passed with the land under the right of survivorship to the other joint tenants

SUBMISSIONS

The parties were asked to file submissions. Mr. Maharaj did not comply with the timetable but the court did allow him to make oral submissions in support of his case.

The Claimant relied upon the well known case of **Mitchell v Cowie reported** at **(1964) 7 WIR 118** to submit that these houses could not be considered chattel houses since they were affixed to the land and therefore formed part of the land. Mr. Johnatty, in written submissions filed on behalf of the Claimant, also cited **Section 16 (2)** of the **Conveyancing and Law of Property Act Chap. 27 No. 12** in support of his contention that these houses formed part of the land.

He further submitted that there had been no assertion by the deceased during the twenty five year period since the acquisition of these houses that ownership of the said houses were separate and apart from the ownership of the land; that in the absence of any such indication that these houses merged with the title and therefore the counterclaim of the Defendants was defeated on that ground.

In response, Mr. Vashist Maharaj on behalf of the Defendant submitted firstly that **Mitchell v Cowie (1964) 7 WIR 118** was no longer good law given the passage of the **Land Tenants (Security of Tenure) Act 1981**. Specifically, he argued that the deceased, who bought the houses in 1976, 1978 and 1979 and collected rental income from tenants who occupied them, owned the houses independently of the other joint tenants. Since they were tenanted, he argued, she was a protected

tenant under the Act, entitled to a statutory lease from the owner of the land or to purchase same at half the market value. (It is to be noted that the above assertion was not pleaded by the Defendants in either defence or counterclaim.) As such, her interest in the houses passed to her estate and did not pass under the right of survivorship under the joint tenancy.

The Claimant, on the other hand, responded that firstly the Act applies to houses that are used as dwelling houses; that the deceased never lived on the subject land but in fact lived on El Carmen Street, Arima. Secondly, at the time of the coming into force of this Act, (**Land Tenant Security of Tenants Act)**, there were no tenants on the land so that there could have been no beneficiary of the provisions of that Act.

The Defendants, in support of their claim that the houses were chattel houses and that they were held by the deceased separate and apart from the title to the larger estate, also pleaded three Bills of Sale in relation to these houses. The Bills of Sale had not been registered neither did they contain any attestation clauses. The Claimant attacked the validity of the documents on those grounds and further submitted that there was no evidence, even from the will of the deceased, that she regarded these houses as part of her estate and separate and apart from the title that she held to the land as there was no specific reference to the houses therein. On this head he urged the court to take judicial notice of the fact of the location of these houses in St. Augustine; that given their proximity to the University of the West Indies they were very valuable and as such would not have been omitted from the provision of the deceased's will if she was the sole owner and it been her intention as submitted by the Defendants to keep her interest in these houses separate and apart from her interest in the larger estate in the land.

The Claimant also submitted that if the deceased had purchased the houses and had intended to maintain ownership of them separate and apart from her interest in the land then equity would prevent the lesser interest from merging with the greater

provided that such an intention was shown. He cited **Cheshire and Burn's Modern Law of Real Property [1994] 15th Ed. P.915**. Mr. Johnatty went on to submit that no such intention having been shown in this case then the doctrine of Merger applied. He pointed out that while the Claimant specifically pleaded as part of her case that the deceased did not intend for any interest in the houses to pass to the estate the Defendants did not assert that she did.

He went on to submit further that in equity merger depends on the intention of the party. A party who is alleging that there was no intention to merge must, in fact, be able to show this from the evidence. He submitted that there was no intention demonstrated by the deceased to maintain ownership of the houses apart from ownership of the land. He further argued that no such intention was in fact pleaded. By paragraph 8 of the Statement of Case the Claimant pleaded that the deceased had had no intention for any interest in the houses to pass to her estate and the Defendants by their defence had averred that they put the Claimant to strict proof of this fact but in fact there was no denial as required by the rules to the pleading.

He further went on to argue that the court is bound to determine the matter by the pleadings before it and that in the absence of any such pleading by the Defendants asserting that the deceased had had such an intention, then the Claimant's pleading is not answered and ground ought to fail.

The Claimant argued further that if the deceased possessed an interest in these houses separate from the joint tenancy in the land which she shared with the other joint tenants this interest would have been an equitable one. In the absence of any indication that the deceased asserted a right of ownership of the said houses over the twenty five years from the time of their acquisition to her death the Defendants could not do so now.

He also submitted that this issue had not been pleaded and even to date the matter had not been raised specifically before the court; the court ought not to have

regard to it. Any interest that she would have had would have been extinguished by the principle of laches. Those were the arguments before me and I come to my decision in the matter.

I had regard to the arguments on both sides and the authorities cited before me.

I came to the conclusion applying the principles outlined in the case of **Mitchell v Cowie (1964) 7 WIR 118** that these houses were not chattel houses. From the evidence before me they are one and two storey concrete structures affixed to the land. Additionally, there is no evidence that the deceased considered these houses to be chattel houses nor was there anything to show that the deceased regarded her ownership of these houses as separate from her ownership of the land together with the other joint tenants. I also took into consideration section 16 (2) of the **Conveyancing and Law of Property Act Ch. 27 #12** which provides: "*A conveyance of land having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Ordinance operate to convey, with the land, house, or other buildings...".* In the circumstances therefore these houses did not form part of the estate of the deceased but passed to the surviving joint tenants under the principle of survivorship. It is to be noted that this issue had not been pleaded by the Defendants even though they made submissions on it.

I hold, further, that the provisions of the **Land Tenant Security of Tenure Act** do not apply to these houses by reason of the fact that that Act specifically provides for persons who are in occupation at the time of the coming into force of the Act. The deceased lived elsewhere - El Carmen Street, Arima. At the time of the coming into force of the Act no one was in occupation of the houses.

With respect to the Bills of Sale proffered by the Defendants in support of their case that the houses were chattel houses I came to the conclusion that the documents were invalid by reason of their non registration and the lack of attestation clauses. As well I noted that no mention of these Bills of Sale or indeed

of any chattel houses were made in the deceased's will. That to my mind was powerful evidence that she did not consider that the houses were owned separately from the land.

With respect of the issue of the merger I took into account:

(i) the fact that there had been no intention manifested by the deceased to maintain her ownership in the houses apart from the ownership of the land;

(ii) the Claimant having pleaded in her statement of case that the deceased had had no intention to maintain her interest separately from that of the other joint tenants in the house there was no assertion to the courtesy by the Defendants in their defence or counterclaim.

Therefore from the pleadings I hold that in fact there was no intention manifested by the deceased to maintain separate ownership of the houses. It should also be noted that the burden of proof of showing the contrary would have rested on the person making the assertion that is on the Defendants in this case.

I also hold that the fact that the houses were not disposed of in the will of the deceased is further support for the Claimant's contention that there was no such intention on the part of the deceased. Finally by operation of the principles of laches I also hold that if there had been any such interest then the deceased would have been required to act on such interest. Twenty five years having passed subsequent to the acquisition of the houses the Defendants cannot now assert any such intention on the part of the deceased. In any event this was not pleaded by the Defendants and in all circumstances therefore this limb of the Defendants' argument must also fail.

In the circumstances I therefore hold that:

(i) the Defendants do file an account of all monies owed to the Claimants from the estate of Tilkey Gobin also called Tilkie Gobin on or before 25th January 2011;

(ii) that any such monies due and owning to the Claimant be paid to her on or before the 31st January 2011;

(iii) that interest is payable on such monies at the rate of 6% from the 28th December 2005 to the date of judgement 4th January 2011 and 12% from the date of judgement until payment.

Should the estate be unable to satisfy the interest due and payable to the Claimant then the second Defendant is to personally satisfy this debt. The counterclaim is dismissed.

The Defendants to bear their own costs personally and not out of the estate. I make this order having regard to the facts of this case and specifically the fact that by virtue of the will the Claimant was entitled to a specific sum and she was entitled to have that sum paid to her. The Defendants have unfairly withheld this from the Claimants.

If the Defendants were unclear as to the ownership of the houses, then they ought to have come to court to seek clarification on the issue. The Claimant was entitled to the money bequeathed her by the will of the deceased. The Defendants are to pay to the Claimant the costs of the action personally. These costs are not to be paid from the estate. I make that order, in relation to the history that I have outlined above.

Dated this 23rd day of May 2011.

Joan Charles
Judge