

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2010-01850

BETWEEN

BHAGWANDAT RAMPERSAD

CLAIMANT

AND

GLORIA COOBLAL

WILMA COOBLAL

DEFENDANTS

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Mr. C. Blaize

For the Defendants: Mr. O. Ramischand, instructed by Ms. J. George

Date of Delivery: 28th May, 2013

JUDGMENT

BACKGROUND

○ CLAIM

- [1] The Claimant pleaded that in or about 1993 Issac Cooblal (also known as Isaac Cublal) the father of the First-named Defendant and the husband of the Second-named Defendant, was a monthly tenant of Deo Rampersad of a portion of land comprising approximately five thousand (5000) square feet evidenced by Deed No. 1984/1932 (“the said lands”) and more particularly described in “proposed subdivision sketch prepared in 1973 as Lot 6”.
- [2] The Claimant averred that the said tenancy came to an end due to the non-payment of rent by Issac Cooblal in or about 1983 and/or when the leasehold interest held by Deo Rampersad was surrendered to the State in or about 1985.
- [3] The Claimant also pleaded that Issac Cooblal remained in occupation of the said lands and built a house on “Lot 5” of the said lands. The Claimant’s father then instituted proceedings¹ in the High Court to have Issac Cooblal removed from the said lands. However, Issac Cooblal remained in occupation until his death on or about the 5th October, 1995.
- [4] He also pleaded that following the death of Issac Cooblal, the Defendants occupied the said lands without the consent or licence of the Claimant and refused to vacate the said lands.

¹ Ramnarine Rampersad v Isaac Cooblal H.C.A. No. 5515/1983

- [5] In an attempt to regularise the ownership of Lot 5, the Claimant offered the lot to the Defendants for sale. However, the Defendants have failed and/or neglected to purchase the lot from the Claimant.
- [6] In or about February, 2010, the Defendants demolished the house on Lot 5 and began the construction of a structure spanning the front portions of Lots 5 and 6 of the said lands.
- [7] On the 26th April, 2010, the Claimant's Attorney-at-Law wrote to the Defendants calling on them to immediately cease their unlawful occupation and construction on the Claimant's lands. However, to date the Defendants have not responded and have failed and/or neglected to vacate the said lands.
- [8] The Claimant asserts that he is the owner and person entitled to possession of all and singular the two parcels - Lots 5 and 6 - of land situate at Watts Street, St. Augustine and is seeking the following reliefs:
- i. Damages for trespass to a portion of All and Singular those parcels of land situate at Watts Streets, St. Augustine, in the ward of Tacarigua, in the Island of Trinidad known as Lots 5 and Lots 6 (hereinafter called "the said parcel of land") and referred to in Deeds of Leases both dated the 22nd of July 1985 and registered as No. 17114/1985 and No. 17115/1985;

- ii. An Order that the Defendants do forthwith pull down and/or demolish and/or remove any structure that may be erected on/in the said parcels of land together with all or any building materials (including soil), tools and/or machinery rested, placed or stored thereon; and,
- iii. An injunction restraining the Defendants whether by themselves or by their servants and/or agents or otherwise howsoever from doing the following facts, or any of them, that is to say, entering and/or remaining upon the said parcel of land and/or erecting or continuing to erect any structure thereon.

○ DEFENCE AND COUNTERCLAIM

[9] The Defendants admitted that the Claimant is the leasehold owner of the said lands and that Issac Cooblal was a tenant of the said lands.

[10] They also acknowledged receipt of the Claimant's letter dated the 26th April, 2010. However, the Defendants brought to the Court's attention, a previous letter dated the 28th September, 2009 from the Claimant's Attorney-at-Law to their Attorney-at-Law which gave details of a ruling² in 2000 wherein the court gave the Defendants two options:

- i. Dismantle the portion of the Defendants' building that extended onto the Claimant's land; or

² Ramnarine Rampersad v Gloria Cooblal, Wilma Cooblal, Gail Cooblal-Downer, Roger Downer & Murray Manrakhan, H.C.A. No. 1611/2000

- ii. Agree on a valuator/valuation and a subsequent sale to the Defendants of the portion of land encroached upon by the Defendants.

The Defendants acted on the first option and demolished part of their house which was on the northern boundary line.

[11] They denied that Issac Cooblal ceased paying rent and stated that it was the Claimant who refused to accept rent from them in or about 1983.

[12] The Defendants pleaded that by HCA 5515 of 1983 Ramnarine Rampersad, the Claimant's predecessor in title, brought an action against Issac Cooblal, the father and husband respectively of the first and second defendants, for possession of the subject parcel of land now described as Lots 5 and 6 and more particularly described in Deeds of Lease 17115 of 1985 and 17114 of 1985. They also pleaded that after having heard all the evidence in the trial Mr. Justice Davis held, *inter alia* that Isaac Cooblal was a tenant of Ramnarine Rampersad aforesaid and entitled to occupy Lot 5 and a portion of Lot 6 including the entire frontage on Watts Street.

[13] The Defendants also pleaded that by HCA 1611 of 2000 heard and determined before the Honourable Mr. Justice Ventour, the precise area of land which the Defendants were entitled to occupy pursuant of the order of Mr. Justice Davis was clearly outlined and described in his order dated 10th July 2009. In that order Mr. Justice Ventour declared that the area which Isaac Cooblal was entitled to occupy comprised of 464.5 square meters including "all and the entirety of the frontage on Watts Streets" as

shown on the survey plan of Mr. Brian Moses exhibited in those proceedings in “BM2”. The learned judge also clarified in the said order that the Defendants were trespassers in respect of a portion of the subject lands comprising 281 square meters north of the northern boundary of the parcel of land as shown on the said survey plan.

14] In the circumstances, the Defendants further plead that the subject matter of this claim was already determined by HCA 5515 of 1993 and 1611 of 2000; as result this action is *res judicata*, amounts to an abuse of the process of the Court, and should therefore be struck out.

[15] The Defendants, by their counterclaim filed herein, seek an order that the Claimant’s Claim Form and Statement of Case be struck out on the above grounds.

ISSUES

[16] I gave directions that the parties file submissions on the preliminary issues raised:

1. Whether the claim is *res judicata*
2. Whether the claim amounts to an abuse of the process of the Court
3. Whether the Claimant should be prohibited from commencing any other claim in the High Court without the leave of the Court

PROCEDURAL HISTORY

[17] In order to properly determine this issue a brief history of the previous court proceedings is necessary and is set out hereunder.

THE 1983 HIGH COURT ACTION: Ramnarine Rampersad, Legal Personal Representative of the Estate of One "RAMPERSAD" also called ""JOGIN RAMPERSAD", Deceased v Isaac Cooblal HCA 5515 of 1983

[18] In this action the plaintiff sought damages for trespass to a portion of land³ and ancillary relief by way of mandatory and prohibitory injunctions. The defendant counterclaimed for relief by way of declaration and denied the entitlement of the plaintiff to the relief claimed.

[19] The undisputed facts were that the defendant became a tenant of the plaintiff in respect of the disputed parcel of land sometime in December, 1959. The defendant had bought a house standing on the south-western portion of the disputed parcel of land with a frontage on Watts Street from the Plaintiff's brother, one Pooran Rampersad.

[20] The plaintiff's case was that he and the defendant agreed that the former would rent to the latter the parcel of land upon which the house stood until the entire parcel of land was surveyed and sub-divided. The plaintiff alleged that the defendant went on to occupy a larger area of the said

³ Described as "Lot 6" on a 1973 survey plan annexed to the Writ of Summons

lands than previously agreed upon; the latter also erected a shed and built a wire fence around the portion of land that he occupied.

[21] The evidence of the defendant was that the plaintiff never identified the precise boundaries that he was to occupy as a tenant. The defendant identified the area he rented from the person from whom he had purchased the house, which included the parcel of land alongside Watts Street. The defendant occupied this area since he went in to occupation of the house and land.

[22] A number of survey plans were tendered into evidence but the court accepted the 1973 plan and held that the plaintiff and the defendant agreed that the latter was to occupy Lot 6 on the 1973 plan. Therefore, the defendant was in occupation of the land he was lawfully entitled to and was not committing any acts of trespass.

[23] Mr. Justice Davis consequently dismissed the plaintiff's claim and declared that the defendant was a tenant of the plaintiff in respect of Lot 6 as demarcated on the 1973 plan which included the entire frontage on Watts Street and a portion of Lot 5 as described in a later survey.

THE 1988 HIGH COURT ACTION: Ramnarine Cooblal, Legal Personal Representative of the Estate of One "RAMPERSAD" also called "JOGIN RAMPERSAD", Deceased v Issac Cooblal

[24] The plaintiff instituted proceedings for the following reliefs:

- i. Damages for trespass to a portion of all and singular the parcel of land situate in the Ward of Tacarigua, in the County of St. George containing 268.03 square meters and bounded on the North by the remaining lands of Ramnarine Rampersad; on the South by lands tenanted by Issac Cooblal; on the East by lands of Mahadaiya and on the West by lands of Jeelal and Sophdaya and better described as Lot 6 on the Cadastral Sheet Numbered B.18M;
- ii. An injunction restraining the defendant whether by himself or his servants and/or agents or otherwise howsoever from doing the following acts, or any of them, that is to say, entering and remaining upon the said parcel of land and/or erecting or continuing to erect any structure thereon;
- iii. An Order that the defendant do forthwith pull down and/or demolish and/or remove any structure that may be erected on or in the said parcel of land together with all or any building materials (including soil), tools and/or machinery rested, placed or stored thereon;

[25] The plaintiff obtained judgment in default of defence against the defendant in terms of the Statement of Claim above.

THE 2000 HIGH COURT ACTION: Ramnarine Cooblal (Legal Personal Representative of the Estate of Rampersad also called Jogin Rampersad, deceased) v Gloria Cooblal, Wilma Cooblal, Gail Cooblal Downer, Roger Downer & Murray Manrakhan

[26] The plaintiff filed an Originating Summons to recover possession of all and singular the parcel of land described in the First Schedule⁴ being a portion of a larger parcel of land described in the Second Schedule⁵ on the ground that he is entitled to possession and that the persons in occupation are without consent or licence.

[27] The Defendants by their defence sought a declaration that Isaac Cooblal as declared a tenant of a parcel of land comprising 10,000 square feet more or less but no less than 747.5 square meters by Mr. Justice Davis in his judgment dated March 12th 1985⁶; as such they were not trespassers of any portion of the lands as claimed by the Plaintiff.

[28] In evidence before Mr. Justice Ventour were two survey plans annexed to the witness statement of a surveyor one Brian Moses as “BM1” and “BM2”. “BM1” was a 1973 survey plan whilst “BM2” was a survey plan dated 2009 and drawn by the said Brian Moses. “BM2” depicted Lots 5 and 6, the structures thereon, the location of Watts Streets in relation to these lots, as well as an area of encroachment measuring 281.2 square meters by the Defendants onto Lot 6. At the conclusion of the trial Mr. Justice Ventour ordered *inter alia* that:

- 1) The area of land that the Honourable Mr. Justice Davis declared that Issac Cooblal was entitled to occupy as a Land

⁴ All and singular that parcel of land situate in the ward of Tacarigua in the county of St. George containing 281.2 square meters and bounded on the north by the remaining portion of Lot No. 5 described in the Second Schedule here on the south by Lot No. 6 on the east by lands formerly of Mahadaiya but now of K. Balram and on the west by lands formerly of Jehlal but now of Lalo Ramkission which said parcel is shown hatched on the plan dated 15th May, 2000.

⁵ All and singular that parcel of land situate in the ward of Tacarigua in the county of St. George containing 5058 square feet and bounded on the north by Lot No. 4 on the south by Lot No. 6 on the east by lands of Mahadaiya and on the west by lands of Jeelal which said parcel is delineated and shown as Lot No. 5.

⁶ HCA 5515 of 1983

Tenant in his judgment in HCA 5515 of 1983 dated the 12th day of March 1985, is the same area as shown on the survey plan of Mr. Brian Moses dated 18th day of March 2009 and exhibited to the witness statement of Mr. Brian Moses filed on 19th day of March 2009 as “BM2” comprising of 464.5 meters including all and the entirety of the frontage on Watts Street and which piece or parcel of land the Defendants are beneficially entitled to occupy.

- 2) The Defendants are trespassers in respect of the remaining portion of lands shown north of the northern boundary of the parcel of land described in paragraph 1 hereof and shown on the said survey plan of Mr. Brian Moses referred to in paragraph 1 hereof and comprising 281.2 square meters and the Plaintiff is entitled to possession of this remaining portion of lands.

[29] It should be noted that whilst the parties in this action provided the Court with the pleadings and exhibits in HCA 1611 of 2000, neither a written judgment nor reasons were provided. The Court, therefore, had regard to the pleadings, witness statements, the Court Order and all the exhibits in determining this matter.

ANALYSIS

[30] The doctrine of *res judicata* was enunciated in **Henderson v Henderson**⁷ where Wigram V.C. opined:

“... where a given matter becomes the subject of litigation in, and of adjudication by a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

[31] Action estoppel and issue estoppel are branches of *res judicata*. The distinction between the two are explained in **Arnold & Others v National**

Westminster Bank PLC⁸, where Lord Keith of Kinkel opined:

“Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having

⁷ [1984-1860] All ER Rep. 378, 381

⁸ [1991] 2 AC 93, 104

been between the same parties or their privies and having involved the same subject matter. In such a case, the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment.

Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue ... issue estoppel ... has been extended to cover not only the case where a particular point has been raised and specifically determined in the earlier proceedings, but also that where in the subsequent proceedings it is sought to raise a point which might have been but was not raised in the earlier proceedings."

In **Thomas v The Attorney General (No.2)**⁹, Sharma JA opined:

"Res judicata, whether cause of action estoppel or issue estoppel is based on the fundamental principle that is unjust for a man to be vexed twice with litigation on the same matter, coupled with the public interest in seeing an end finally to litigation."

[32] The Defendants contended that these proceedings are barred by issue estoppel. This doctrine states that a party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even

⁹ (1988) 39 WIR 372, 379

if the objects of the first and second actions are different, the finding on a matter which came directly in issue in the first action, provided it is embodied in a judicial decision that is final is conclusive in a second action between the same parties and their privies.¹⁰

[33] The conditions necessary for a successful plea of issue estoppel are:

- i. The same question was decided in both proceedings;
- ii. The judicial decision said to create the estoppel was final; and,
- iii. The parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.¹¹

[34] This is the fourth action instituted regarding the said lands and the third action relation to the issue of trespass to same. The previous actions, as highlighted above, indicate that the claimant/plaintiff was the same in the three (3) actions above, *i.e.* the son of Issac Cooblal's landlord; while the defendant was Issac Cooblal in two actions and his children in the third. The action now before the Court is once again between the heirs of these two (2) parties.

[35] Further, the issues ventilated before the High Court are once again being raised in these proceedings, *i.e.* the Defendants are in illegal occupation of a portion of land – Lot 5 – belonging to the Claimant, thereby making them

¹⁰ Halsbury's Laws of England, 4th Edition, Vol. 16, p. 1030, para. 1530

¹¹ Carl Zeiss Stiftung v Rayner and Keeler Ltd. (No. 3) [1970] Ch. 506

trespassers and injunctive relief is being sought to remove them from the said lands.

[36] The Claimant submitted that these proceedings are not *re judicata* since new circumstances have arisen, namely:

- i. The surrender of the leases by the Claimant's father and the issuance of the new leases to him by the State in 1985;
- ii. The Defendants' erection of a structure in 2010 across the southern portion of Lots 5 and 6 as defined in the 1985 Deeds; and,
- iii. The acts of trespass by the Defendants in 2010.

In support of this contention, Counsel for the Claimant cited the case of **Barrow v Bankside Members Agency Ltd.**¹², where the court held that unless there are special circumstances parties to litigation cannot return to court to advance arguments which they failed to put forward on the first occasion.

[37] The surrender and issuance of new leases to the Claimant's father in 1985 did not preclude Mr. Justice Davis in the 1983 High Court action from holding that Issac Cooblal was a lawful occupant on the said lands. This is therefore not a new circumstance before the Court.

[38] It is to be noted, that in arriving at his judgment, Mr. Justice Davis determined the following issues of fact and law:

¹² [1996] 1 All ER 981

- 1) That Isaac Cooblal went into occupation and became a tenant of Ramnarine Rampersad in respect of a portion of land which included “the whole frontage of the said parcel of land on Watts Street¹³.” Mr. Justice Davis specifically stated that he did not accept the Plaintiff’s evidence that Isaac Cooblal was made a tenant in respect of the lot of land in which the house stood.

- 2) That during the course of the survey on 1973 the Plaintiff and defendant ratified and confirmed the boundaries of the lot of land which the defendant occupied as tenant; as a result the survey plans of 1973 and 1975 show the defendant as occupying a portion of land which included the whole frontage of Watts Street.¹⁴

- 3) Mr. Justice Davis also held that he found as a fact that up to 1978, before any dispute arose between the parties, the defendant “clearly occupied the south eastern portion of the land abutting Watts Street”¹⁵

- 4) The Court also found as a fact that the Plaintiff lied and fabricated his evidence with respect to the area of land occupied by the Defendant as tenant in order to get two lots of lands with frontage on Watts Street because the land had become very valuable. Mr. Justice Davis, in finding for the

¹³ See page 14 of judgment of Mr. Justice Davis dated 12th March 1985

¹⁴ See page 14 of judgment of Mr. Justice Davis dated 12th March 1985

¹⁵ See page 14 of judgment of Mr. Justice Davis dated 12th March 1985

defendant, Isaac Cooblal expressly opined that the Plaintiff could not seek to unilaterally change the agreed boundaries of the tenanted lands by a subsequent survey.

[39] The Claimant in this action has sought to re-litigate the issues of the Defendants' trespass on Lot 6 and their right to occupy Lot 5, matters which were clearly determined by HCA 5515 of 1983 and 1611 of 2000. Further, in determining the issue of the area of land subject to the tenancy, Mr. Justice Davis made specific findings of fact as outlined above which this Court cannot now adjudicate upon. He saw and heard the witnesses and was entitled to draw such inferences and to arrive at the conclusions that he did.

Mr. Justice Ventour, having clarified the issue of the Defendants' trespass by reference to a survey plan which was in evidence before him, in my view, the issue of the Defendants' trespass was conclusively determined. If the latter were in breach of the order of Justice Ventour, then the proper course that the Claimant should have adopted was that of taking the necessary action to have the said orders enforced against the Defendants.

[40] In the circumstances, I conclude that these proceedings are *res judicata*. I am also of the view, given the tumultuous history of these proceedings, that it is now an abuse of process of the Court. In **Johnson v Gore Wood and Co.**¹⁶, the court addressed the similarities between issue estoppel and abuse of process. Lord Bingham opined:

¹⁶ (2002) 2 AC 1

“The underlying public interest is the same; that there should be finality in litigation and that a party should not be twice vexed in the same manner. This public interest is reinforced by the current emphasis on efficiency and economy in the context of litigation, in the interests of the parties and the public as a whole.”

I also had regard to the following cases in arriving at my decision: **Wendell Steele v Lennox Petroleum Services Limited**¹⁷, **Dr. John Prince v Telecommunications Authority of Trinidad and Tobago Limited**¹⁸ and **Teddy Mohammed v Gold and Gold Limited**¹⁹.

CONCLUSION

[41] In the circumstances, I make the following orders:

- i. Judgment for the Defendants against the Claimant;
- ii. The Claimant Form and Statement of Case are struck out;
- iii. The Claimant to pay the Defendants’ costs in this matter, to be assessed in default of agreement by the Registrar.

JOAN CHARLES

JUDGE

¹⁷ CV2009-04689

¹⁸ CV2009-03367

¹⁹ HCA No. 447/2002