

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2012-01704

ANGELA RAMLAGAN

The Legal Personal Representative of Deonarine Ramlagan (deceased)

First Claimant

ANGELA RAMLAGAN

Second Claimant

AND

NATERAM RAMLAGAN

First Defendant

NATERAM RAMLAGAN

The Legal Personal Representative of
Popo Ramlagan, deceased)

Second Defendant

GOWKARAN RAMLAGAN

Third Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant: Mr. Roger Kawalsingh and Mr. Ravi Mungalsingh
instructed by Ms. Tara Bhiroosingh

Defendant: Mr. Mark Seepersad

Date of Delivery: 21st October 2020

JUDGMENT

[1] The First Claimant, Angela Ramlagan (The Legal Personal Representative of Deonarine Ramlagan, deceased) and the Second Claimant Angela Ramlagan, of Light Pole No. 57, Ganeesingh Street, Balmain Village, Couva claimed against the First and Second Defendant, Nateram Ramlagan of no. 107 Main Road, Balmain Village, Couva and the Third Defendant, Gowkaran Ramlagan Balmain Gardens, Balmain Village, Couva as follows:-

I (i.) An Order setting aside Deed of Conveyance dated the 29th day of June 1991 and registered as No. DE 199200076024 with respect to all and singular that certain piece or parcel of land situate at Balmain Village, in the ward of Couva, in the Island of Trinidad (the said lands) and made between Popo Ramlagan, Deonarine Ramlagan and Gowkaran Ramlagan as transferors of the First part, the said Gowkaran Ramlagan as transferee of the second part and the said Popo Ramlagan and Deonarine Ramlagan as second transferees of the third part;

(ii.) An Order setting aside Deed dated the said 29th day of June 1991 and Registered No. 4529 and made between Gowkaran Ramlagan as vendors of the one part and Popo Ramlagan and Nateram Ramlagan as purchasers of the other part by which the Third Defendant purported to convey a portion the said lands comprising 2397.0m. sq. to the said Popo Ramlagan, the said Nateram Ramlagan and himself Gowkaran Ramlagan as joint tenants save and except the lots sold and a dwelling house standing thereon.

(iii.) An Order setting aside Deed dated 29th day of June 1991 and Registered as No. DE 199204530013 (the said deed) and made between Popo Ramlagan and Deonarine Ramlagan as vendors of the one part and Nateram Ramlagan as purchaser of the other part

by which the said Deonarine Ramlagan together with Popo Ramlagan purported to convey to Nateram Ramlagan the remaining portion of the said lands comprising 3463.8 m. sq. to the vendors (Popo Ramlagan and Deonarine Ramlagan) and the purchaser (Nateram Ramlagan) as joint tenants.

- II. In the alternative the First and Second Claimant's claim against the First, Second and Third Defendants is for:-
 - a. A Declaration that the Defendants' purported title to a portion the said lands comprising two (2) lots more or less on which her dwelling house stands (the claimed lands) has been extinguished and/or the Defendant's right to recovery of the said lands is barred by virtue of the provisions of Section 3 of the Real Property Limitation Act Chapter 56:03.
 - b. In the further alternative, there has been a severance of the joint tenancy of the claimed lands by virtue of the separate dealings by the Claimants and their continuous undisturbed possession of the claimed lands from since in or around 1986.
 - c. Costs.

STATEMENT OF CASE

- [2] The First Claimant is the Legal Personal Representative of Deonarine Ramlagan, deceased who died on the 8th day of November 2010 and to whom Letters of Administration of his estate was granted on the 13th day of May 2011.
- [3] The Claimant challenged the validity of the said deeds on the grounds outlined hereunder.

- [4] The Claimant pleaded that by another Deed dated the said 29th day of June 1991 and registered on the 13th day of March 1992 as No. 4529 of 1992, the said Gowkaran Ramlagan purported to convey the said specific portion of land comprising two thousand three hundred and ninety seven point zero square metres (2397.0 m. sq.) for the alleged valuable consideration therein contained to himself, Popo Ramlagan and the First Defendant as joint tenants.
- [5] By another Deed dated the said 29th day of June 1991 and Registered on the 13th day of March 1992 as No. DE 199204530013 of 1992 Popo Ramlagan and Deonarine Ramlagan purported to convey the said remainder of the larger parcel of land comprising three thousand four hundred and sixty three point eight square metres (3463.8 m. sq.) to themselves and Nateram Ramlagan as joint tenants for the alleged valuable consideration therein contained. The alleged consideration of seventy eight thousand dollars (\$78,000.00) was not paid by the Defendant as confirmed by the attesting witness to the said Deed No. 4530 of 1992, namely Linda Lalsingh, in a statutory declaration sworn to by her on the 1st day of July 2011.
- [6] The said Popo Ramlagan died on the 29th day of May 1999.
- [7] As surviving joint tenant the First Defendant now claims to be owner entitled to possession of the said remainder of the larger parcel of land comprising three thousand four hundred and sixty three point eight square metres (3463.8m.sq.) and has offered to relocate the Second Claimant.
- [8] When the Second Claimant got married to Deonarine Ramlagan on the 30th day of November 1986 she began living with him in a dwelling house he was living in together with his mother Popo Ramlagan before the said marriage.

[9] The said dwelling house was constructed upon a parcel of land comprising two (2) lots more or less being a portion of the remainder of the larger parcel of land comprising three thousand four hundred and sixty three point eight square metres (3463.8 m.sq.) which said two (2) lots more or less together with the said dwelling house standing thereon they occupied and treated as their own by doing the following acts:

- (i) changed the roof on the dwelling house in or around the year 1994
- (ii) changed the wooden floor to concrete in or around the year 1994 and tiled the entire floor in or around and during the years 2005 to 2007
- (iii) built two (2) bathrooms, rebuilt the master bedroom, extended the living, room gallery and changed all windows (9) to French windows in or around and during the years 1996-1999
- (iv) changed the roof of the kitchen, installed kitchen cupboards, tiled the walls of the kitchen, changed windows from wooden windows to louvers in or around and during the years 2004-2007
- (v) converted the plumbing to hot and cold water, changed all electrical wiring and painted the entire dwelling house in or around the year 1998
- (vi) blocked off the entire downstairs and converted same into a three (3) bedroom apartment with kitchen, living-room, dining room, hot and cold water plumbing, built-in cupboards; this downstairs apartment has been let to tenants since the year 2005
- (vii) built a warehouse and a mechanical garage with a mechanical pit in or around the year 2007

- (viii) constructed a concrete driveway to the front of the house on the eastern side and in the back of the house in or around and during the years 2005-2207
 - (ix) built a laundry room and another toilet and bath downstairs in or around the year 1997.
 - (x) The Claimants have paid Land and Building taxes for, *inter alia*, the claimed lands and dwelling house standing thereon for the years 1992 to 2009.
 - (xi) The Claimants have paid the Water and Sewerage Authority Rates with respect to the dwelling house standing upon the claimed lands for the years 1987-2010.
 - (xii) The Claimants have paid Building Insurance for the dwelling house standing upon the claimed lands for the years 1987-2010.
- [10] The Second Claimant together with the said Deonarine Ramlagan (up to his death on the 8th day of November 2010) took care of the said Popo Ramlagan who had suffered a stroke in or during the year 1994 (and who was bed-ridden for seven months) until she died on the 29th day of May 1999.
- [11] The Claimants asserted that by virtue of the separate dealings outlined above, and their continuous undisturbed possession of the claimed lands since in or around 1986 the joint tenancy of the First Claimant together with the Second and Third Defendants has been severed.
- [12] The Claimants became aware of the said Deed No. 199204530013 on the night of the date of death of Deonarine Ramlagan (8th day of November 2010), when the Second Claimant's daughter Sarah Ramlagan found a copy of it on a table downstairs of her home.

[13] The First Defendant has since July 2011 unlawfully entered upon the claimed lands and unlawfully stock-piled building materials of several types thereon.

[14] The Claimants averred that the parcel of land comprising two (2) lots more or less is bounded on the East by other lands of Popo Ramlagan, Deonarine Ramlagan and Gowkaran, on the West by lands of Rookmin Rampath on the North by lands of Merritt/Balmain Estate and on the south by Ganeesingh Street.

THE DEFENCE

[15] The Defendants pleaded that:

- (i) The Claim by the First Defendant to set aside the several deeds is wholly unmaintainable owing to the laches, acquiescence and delay of the Claimants.
- (ii) The Defendants pleaded that the Third Defendant had since the year 1986 been in possession of the said parcel of land comprising two thousand three hundred and ninety seven point zero square metres (2397.9m sq.) and in the said year 1986 had constructed his three bedroom concrete dwelling house thereon expending in excess of \$200,000.00 in so doing. The Third Defendant further says that the said property was transferred to him in recognition of his possession and his expenditure on the said property.
- (iii) The Third Defendant denied the allegation that there has been no reciprocal conveyance by him of his one third undivided freehold interest to Popo Ramlagan and Deonarine Ramlagan and further denied that the Deed No. DE199200076024 of 1992 is void for want of consideration. The Third Defendant averred that it was always his intention to convey

his one-third share and interest in the remainder of the larger parcel of land to the said Popo Ramlagan and Deonarine Ramlagan; further he has never exercised or attempted to exercise any rights of ownership or in any way sought possession of the said parcel of land from the said Popo Ramlagan and Deonarine Ramlagan.

- (iv) The First Defendant, however, claimed to be entitled to a share and interest in the said property since he has never been dispossessed of the said property comprising three thousand four hundred and sixty three point eight square metres (3463.8m sq.)
- (v) The First Defendant made an offer to the Second Claimant to relocate her.
- (vi) Neither the Second Claimant, Deonarine Ramlagan and/or Popo Ramlagan ever treated the said dwelling house and the parcel of land on which it stands as their own.
- (vii) The First Defendant says that whenever his brother Deonarine Ramlagan wanted to effect the repairs as outlined in paragraph 5(ii) of the Statement of Case the said Deonarine Ramlagan and Popo Ramlagan always discussed same with the First Defendant and they devised the means whereby the First Defendant contributed all the materials from his hardware at Balmain Main Road, Balmain to effect the said repairs while the said Deonarine Ramlagan and the First Defendant contributed equally towards the costs of labour. The First Defendant contributed the following:
 - a. To change roof in dwelling house in 1994 - \$25,000.00 paid by the First Defendant.
 - b. To change floor to concrete in 1994 - \$10,000.00 paid by the First Defendant.
 - c. To change tiles – tiles and tinset paid for by the First Defendant.

- d. Built two bathrooms, rebuilt master bedroom, extended living room and gallery, changed all windows to French windows 1996-1999 – All materials for bedrooms and master bedroom including tiles supplied by First Defendant.
- e. Changed the roof of the kitchen, installed all kitchen cupboards, tiled the walls of the kitchen, changed windows from wooden windows to louvers around 2004-2007. The First Defendant supplied, at his expense, all materials including cement, sand, louvers, wall tiles and paid part of the costs of the labour while the Claimants purchased some small items on their own.
- f. Changed the plumbing to hot and cold water, rewired the house and painted the entire dwelling house in 1998. The First Defendant supplied at his expense all plumbing material including the water heater, electrical materials.
- g. Blocked off the entire downstairs area and converted same into a three bedroom apartment with kitchen, living room, dining room, hot and cold water plumbing installed cupboards; the First Defendant supplied at his expense all building materials including blocks, cement, sand, doors, door frames and paid part of the cost of labour. Deonarine Ramlagan wanted another source of income and the first Defendant agreed to construct this apartment so that Deonarine could receive the rental income therefrom.
- h. Built a washroom and a mechanical garage with a mechanical pit on or around the year 2007; the mechanical garage was originally a cow shed which the First Defendant previously used for welding. In 1977, he converted the cow shed into a work shop to house the manufacturing of concrete tubs for laundry as well as concrete flower pots. In 1984, Deonarine Ramlagan who was an auto mechanic, began doing mechanical work for the First Defendant servicing vehicles

belonging to the First Defendant. Sometime in or about 26th June, 2005 both Deonarine Ramlagan and the First Defendant extended the garage and installed a pit. All monies for material and labour were provided by the First Defendant.

- i. Constructed a concrete driveway to the front of the house on the eastern side and in the back of the house in or around and during the years 2005-2007. The First Defendant paid for ready-mix concrete and paid for all material and labour. A small part of the driveway was done by hand, in respect of which the First Defendant supplied, at his expense gravel, cement and steel and paid for the labour. The said driveway was recast by the First Defendant around the year 1989/1990 because of heavy vehicles used by the First Defendant to access his warehouse and the said garage.
 - j. Built a laundry room and another toilet and bath downstairs in or around the year 1997. The First Defendant paid all expenses for construction of a laundry room and toilet and bath downstairs.
- (ix) The First Defendant put the Claimants to strict proof of any expenditure made by them in respect of matters alleged in paragraph 5(ii) of the Statement of Case.
 - (x) The Defendants denied that Popo suffered a stroke in 1994 or that either Deonarine or the Second Claimant ever took care of her. It was denied further, that Popo was bedridden for seven months in 1994. It was averred by the Defendants that the Second Claimant and Popo did not get along – the former was verbally and physically abusive toward Popo.
 - (xi) The First Defendant asserted further, that he gave to Deonarine the monies to pay the Land and Building taxes.
 - (xii) The Second Claimant and Deonarine were never in exclusive possession of the said property.

- (xiii) The Claimant and Deonarine knew of the existence of the Deed dated 29th June 1991.
 - (xiv) Since 1984/1985 the First Defendant had stockpiled hardware material on the piece of land comprising three thousand four hundred and sixty three point eight square metres (3463.8m sq.); further that in 1989 he constructed a warehouse 44 feet by 107 feet on the parcel of land west of the family home.
 - (xv) There was always a driveway leading to the family home since it was built in 1968. The First Defendant recast said driveway extending it to his warehouse in 1989/1990 and used it daily to access the garage where his brother Deonarine repaired his vehicles and did private jobs as well. In or about 1994/1995, the First Defendant extended said driveway eastwards leading to a temple that he constructed for their mother.
- [16] By way of Counterclaim, the first Defendant sought a declaration that he is entitled to the said property by virtue of his right to survivorship.
- [17] In support of his Counterclaim, the First Defendant relied upon his Defence. Additionally, he averred that:
- a. Deonarine was involved in a motor vehicle accident which resulted in the amputation of his left leg. The First Defendant thereafter hired Deonarine as a mechanic to repair his vehicles and paid him a salary.
 - b. He contributed significantly to the financial support and wellbeing of Deonarine and Popo including the maintenance and upkeep of the family home.
 - c. In January 2011, the Second Claimant locked the gate to the entrance of the driveway denying the First Defendant, his employees, servants, customers and agents access to the garage and warehouse.

- d. On 4th May 2011, the Second Claimant's daughter threatened the First Defendant's employee with a cutlass; the First Claimant visited the First Defendant and verbally abused him in the presence of customers and employees about some of the First Defendant's employees' presence at the back of the warehouse. The First Defendant reported the incident to the Couva Police who visited the Claimant.
- e. The First Defendant offered to relocate the Second Claimant to a property of equal value to the family home.
- f. Deonarine told him one year before his death that he preferred the First Defendant give his children the said property rather than the Second Claimant.

REPLY TO THE DEFENCE AND DEFENCE TO COUNTERCLAIM

- [18] The Claimants denied that they were guilty of laches, acquiescence or delay since difficulties only arose after the death of Deonarine on the 8th November 2010. She asserted that the First Defendant never lived at the family home after his marriage in 1980.
- [19] The Claimant averred that she has received threats from the First Defendant, his servants and agents.
- [20] She denied that the First Defendant supported the family home or effected repairs thereto. She asserted that she and Deonarine paid all household bills and effected repairs to the home - on occasion, they obtained items from the First Defendant's hardware store on credit, which they repaid by installments.
- [21] The Claimant also averred that Deonarine could not read properly and she read and explained all documents to him.

[22] In 2007, permission was granted the First Defendant for the first time to store water tanks only temporarily on the said premises. After Deonarine's death, however, the First Defendant began storing other building materials on the said land. It was also stated that it was Deonarine who cast the driveway.

EVIDENCE FOR THE CLAIMANT

Angela Ramlagan

[23] The Claimant testified that she and Deonarine married on the 30th November 1986 and lived at her mother's (Popo) house at LP 87 Ganeesingh Street, Balmain Village, Couva. Mrs. Ramlagan testified further, that shortly after their marriage Popo told her and Deonarine that 'the house and land is now yours'¹. Popo also told the Claimant that she and Deonarine must take care of all household bills including repairs to the said house because it now belonged to them. Popo also sought their permission to continue living in the house with them and they acquiesced. Deonarine and the Claimant treated the property as their own from that time.

[24] The Claimant also testified that she and Deonarine expended monies on repairing and renovating the property utilizing their own monies.² In 1994 they changed the roof, to removing the wooden floor and replacing it with tiles, between 2005 to 2007.

[25] Deonarine and Angela spent money and renovated the dwelling house and property by changing the roof on dwelling house in or around the year 1994; by changing the wooden floor to concrete in or around the year 1994 and tiling the entire floor in or around the years 2005 to 2007;

¹ Paragraph 4 Witness Statement of the Claimant filed on 18th September 2015.

² Paragraphs 7 and 8 Witness Statement of the Claimant filed on 18th September 2015.

by building two (2) bathrooms, rebuilding the master bedroom, extending the living room and gallery and changing all nine windows to French windows in or around the years 1996 – 1999; by changing the roof of the kitchen, re-doing all kitchen cupboards, tiling the walls of the kitchen, changing the windows from wooden windows to louvers in or around the years 2004-2007; by re-doing the plumbing to hot and cold water, re-doing all the electrical wiring and painting the entire dwelling house in or around the year 1998; by blocking off the entire downstairs and converting same into a three (3) bedroom apartment with kitchen, living room, dining room, hot and cold water plumbing with built-in cupboards; by re-doing the plumbing to cold water, re-doing all electrical wiring and painting the entire dwelling house in or around 1998 and by building a warehouse and mechanical garage with a mechanical pit in or around the year 2007. From in or around 2005 to 2007 Deonarine and Angela converted the driveway which was patched up with oil sand to a concrete driveway to the front of the house as well as the Eastern side and in the back of the house in or around and during the years 2005-2007.

[26] All the works thus described were effected and paid for by the Claimant, Deonarine and later on their children. It was denied that the First Defendant made any contribution toward the construction of the home. Additionally, insurance for the building was paid for by Deonarine and the Claimants. They planted numerous fruit trees gifted them by her brother on the said premises in January 1987.

[27] The Claimant testified that Deonarine was employed as a mechanic with HE Robinson and Company, until his retrenchment in 1987. They decided that he should work from home and built a garage at the home where he worked repairing vehicles. They built the garage using their savings, salary to purchase used material since this was cheaper.

[28] Mrs. Ramlagan stated that she and her husband reared ducks and goats on the said land which was planted on the said premises.

[29] In 1991 Popo told them that she wanted to formalize her gift of the premises to them. She and Deonarine then visited a lawyer's office. The Claimant asserted that Deonarine could not read properly and could have neither read nor understood the deed by which the said lands were transferred to the First Defendant. It was also asserted that no consideration passed the transfer of either deed.

Rookmin Raghunath

[30] This witness was the daughter of Popo and a sibling of the Defendants. She supported the Claimant's case that:

- a. Deonarine was barely literate, could not read and write much – just enough to sign his name.³
- b. She married in 1972 and lived with her husband's family until 1984 when Popo gave her a lot of land next door to the said land and she built a house thereon and became close neighbours to Angela and her family.
- c. Her mother Popo spent a lot of time with her, Rookmin, and the frequency of her visits increased after Deonarine married the Claimant.
- d. One week after the Claimant's marriage, and during one such visit, Popo informed her that she had 'given up the house and land to Deonarine and Angela, had stopped taking Deonarine's salary and that Deonarine and Angela owned the house now.'⁴Popo also stated

³ Paragraph 4 of the Witness Statement of Rookmin Raghunath.

⁴ Paragraph 10 of the Witness Statement of Rookmin Raghunath

that 'Angela was now responsible for all household bills in that she Popo was just staying there.'⁵

- e. Angela and Deonarine planted fruit trees around the house.
- f. that in or about 1987 Deonarine built a garage and conducted auto mechanic work from home.
- g. that Popo built a temple which was used exclusively by the Claimant, Deonarine and their children.
- h. Deonarine built a duck run and goat pen.
- i. Popo informed her that Deonarine borrowed \$150,000.00 to renovate the said house and effected the following works:
 - i. changed the roof
 - ii. converted the wooden floor to tiles
 - iii. built two bathrooms, master bedrooms, extended the living room and gallery and changed all windows to French windows, installed new kitchen cupboards, installed new plumbing, electrical wiring and built in cupboards, constructed a laundry room and additional toilet and bathroom and a concrete driveway to the front eastern side of the house as well as the back of the house.
 - iv. building a three bedroom apartment with downstairs
 - v. erected a warehouse and a mechanic garage with a mechanical pit.
- j. that the Claimant and Deonarine treated the house and surrounding property as their own to the exclusion of others. No

⁵ Paragraph 10 of the Witness Statement of Rookmin Raghunath

one entered the premises without their permission whether they were at home or not.

Rookmin Raghunath – Cross-examination

[31] Ms. Raghunath testified that it was only when Deonarine died in 2010 that she discovered that there was a dispute about the house. She revealed that Nateram and Deonarine were not close although the latter and Popo were. She stated for the first time that she supported Deonarine financially from time to time; she however denied that Nateram ever did so. She could not say who had built the warehouse situate next door to her home.

[32] This witness also asserted for the first time, that Popo had declared that ‘everything that she had was for Deonarine’ soon after his marriage to the Claimant.

[33] She insisted that it was Deonarine who built the garage because ‘no big professional builder built it’ and he was assisted in its construction by an apprentice. Rookmin also stated further that Popo had suffered a stroke although she was not bedridden.

Sarah Ramlagan

[34] Sarah is the daughter of the Claimant and Deonarine and was born on the 13th September 1987. Her evidence supported Angela’s and the case for the Claimant. Additionally, she testified that:

- i. in or about 1994 renovations began on the house
- ii. in or about 1996-1999 the bathrooms were rebuilt. The master bedroom living room and gallery were extended and all the windows changed.

- iii. in 1997 a laundry, toilet and bathrooms was constructed downstairs and the plumbing was modernized to include hot water; the entire house was also repainted.
- iv. around the years 2004 – 2007 the kitchen roof was changed, all kitchen cupboards were changed as well as its floor, walls and windows.
- v. In 2005 the downstairs area of the house was converted to a three bedroom apartment which was rented to tenants by her parents who alone collected such rents.
- vi. In 2007, her parents built a warehouse and mechanical garage with a mechanical pit. This witness stated that she assisted her father in the garage from time to time.
- vii. In 2007 she started working at Republic Bank Ltd. and contributed one half of her salary toward the payment of household bills. During 2005-2007 her parents constructed a concrete driveway to the front and back of the house.
- viii. Her grandmother suffered a stroke – 1994 and her family cared for her until her death in 1999.

Marissa Ramlagan

[35] Marissa is the Claimant's and Deonarine's other daughter and she was born on the 4th February 1989. Her evidence generally supported the Claimant's pleaded case, evidence and the evidence of Rookmin and Sarah.

Marissa Ramlagan – Cross-examination

[36] This witness contradicted Rookmin's testimony by stating that Popo was bedridden after she suffered a stroke in 1994.

[37] Her sister Sarah supported her evidence that Popo suffered a stroke but she indicated that Popo was not bedridden.

EVIDENCE FOR THE DEFENDANTS

Nateram Ramlagan

[38] This Defendant testified that he is the owner of the Ramlagan Group of Companies which was located in Balmain Couva. The hardware store is located opposite to Popo's house and she visited him every day. Nateram testified that he and his mother always enjoyed a very close relationship and even from his youth Nateram stated that he was also very close to Deonarine who attended a Commercial School unlike Gowkaran and himself who was sent to 'learn a trade'⁶. Deonarine eventually dropped out and instead was trained as a mechanic. Nateram stated that Deonarine worked for HE Robinson Ltd. and other places until he lost his leg after a vehicular accident. Nateram testified that Deonarine obtained a lumpsum of \$100,000.00 which he saved and later used as security to buy a truck.

[39] Nateram testified that Gowkaran worked full time for him. It was his testimony, that when their father bought the parcel of land in Couva, the intention was that it remain in the family. His mother Popo built the family house with a loan from Caroni Sugar and Welfare in 1968. He stated that her children and grandchildren assisted in the construction of the said house. Their father had determined that this land was a legacy for the family where family gatherings could occur and where the daughters of the family could return if their marriages ended.

[40] Nateram asserted that there were problems between Angela and Deonarine but Popo did not want anyone to interfere. He claimed that

⁶ Paragraph 4 of the Witness Statement of Nateram Ramlagan.

Angela resented Deonarine's family and was not friendly toward them when they visited or gathered at the home; further that Angela was often verbally abusive toward Deonarine – at first he thought that their frequent quarrels were due to Deonarine's drinking but changed this view and now believed that the relationship was troubled from the beginning and that Angela controlled Deonarine. Nateram alleged that the Claimant was also abusive toward Popo, frequently causing her to cry.

[41] Nateram asserted that his mother gave permission to build the warehouse and he did so since it was his mother's place.⁷ The warehouse is situate to the west of Popo's house, further west is Gowkaran's land and his sister's house (Jenny) is west of the warehouse.⁸

[42] The deeds were created after Deonarine stated that he wanted to sell his lands in order to buy a big maxi taxi. His mother objected to such sale and Deonarine did not respect this. Popo had decided to transfer the lands and to execute the deed to effect such transfer. She discussed this with Deonarine, Gowkaran and Nateram and declared that she wanted to transfer the land to Nateram in order to ensure that it remained in the family. All present agreed to this course and they went to the family lawyer who prepared the deeds pursuant to Popo's instructions.

[43] Nateram alleged that Popo's instruction in transferring the lands to him was primarily to ensure that neither Gowkaran's nor Deosaran's wife obtained an interest therein.

[44] The consideration for the transfer was fixed at seventy eight thousand dollars (\$78,000.00) but this sum was not paid to Popo, rather the latter agreed to accept financial assistance from Nateram. This assistance took

⁷ Paragraph 17 of the Witness Statement of Nateram Ramlagan

⁸ Paragraph 18 of the Witness Statement of Nateram Ramlagan

the form of the gift of hardware material to repair and renovate the house where she lived with the Claimant, Deonarine and their children.

- [45] He testified that Angela knew about their deeds and had cursed Popo when she discovered that the latter had transferred the lands including the said premises to Nateram. The First Defendant also testified that he built the garage on the premises for Deonarine to work from and to store the large trucks used in his hardware business.
- [46] He denied that Popo had suffered a stroke or was bedridden in any way up to her death. She looked after the Claimant's children when they were young because Angela came home late from work, he also stated that the Claimant did not contribute to household expenses – he and Popo paid the bills, especially the insurance premiums for their house. He supplied the material for Deonarine to construct the apartment downstairs as well as all renovation works to the home.
- [47] After Deonarine died everything changed – the Claimant and her daughters prevented his drivers parking his trucks in the garage, denied him access to the apartment downstairs and abused his employees continually, even threatening violence.
- [48] Nateram asserted that he attempted to resolve the situation by offering to relocate the Claimant and her daughters to a property of equal value to the said premises.

Gowkaran Ramlagan

- [49] He is the First Defendant's brother and his evidence generally supported Nateram's testimony. The other witnesses for the Defendants Narinedai Mahabir, Sewkumar Mungal , Ramnarine Seetal, Sylvester Cadogan and Sandy Assingh also generally supported the Defendants' case but there were inconsistencies which would be dealt with later.

FINDINGS

[50] Upon an assessment of all the evidence and the pleaded case I found the following facts:

- a. that no consideration was paid in respect of the three deeds which form the subject matter of the claim.
- b. the intention of the parties in executing those deeds was to deprive the wives of the brothers – Deonarine, Nateram and Gowkaran, any share in the properties and to allow Nateram to extend his hardware business onto Deonarine’s land.
- c. Gowkaran was not aware of the legal effect of the transfer of his portion of the land by way of joint tenancy – that upon his death the principle of survivorship would operate to deprive his children of his share of the lands. This outcome was not intended by him.
- d. Deonarine did not intend to disinherit his children when he executed the said deeds but intended for them to inherit his share and interest in the said deeds.
- e. the three deeds were sham transactions directed by and in the interest of Nateram.
- f. Deonarine and Angela undertook substantial repair and renovations to the subject house as a result of a promise made to them by Popo upon their marriage.
- g. Nateram did not pay for the repairs and renovations to the said house.
- h. that Deonarine and the Claimant maintained their household, including Popo from their own financial resources; any material for the repair/renovation sourced from the First Defendant’s hardware was paid for by the Claimant and Deonarine.

- i. Deonarine attained a primary school level education and could not read properly; he did not give instructions for the creation of the three deeds nor did he understand the impact of the three deeds by which Nateram became a co-owner as joint tenant which served to disinherit his wife and children to any interest in the property upon his death.

DISCUSSION

[51] The Defendants, by their pleaded case averred that contrary to what was stated in the said deeds, that no consideration had been given by Gowkaran and Nateram for the said conveyance.⁹ In cross-examination, Nateram admitted that no monetary consideration had passed from him to Gowkaran for Gowkaran's one third share in the property to Gowkaran and Nateram as joint tenants – specifically that the \$116,000.00 referred to in that deed as consideration for that conveyance was never paid. Gowkaran also admitted during cross-examination that this sum had not been paid. However, in cross-examination, for the first time Gowkaran asserted that Nateram assisted him in the construction of his house by supplying hardware materials for same, although this fact was not pleaded in the Defence, nor included in his witness statement. I formed the view that this evidence was given as an afterthought in order to give validity to the said deeds which had been conveyed without any consideration having passed from the transferor to the transferee Nateram.

[52] Nateram also admitted that he did not pay the \$78,000.00 described as consideration paid by him to Popo and Deonarine for the transfer to him of an interest in the remaining portions of lands owned by Popo and Deonarine as a joint tenant in deed registered as NO DE199204530013 of 1992. Nateram asserted in cross-examination that the property was

⁹ Paragraph 9 of the Defence

transferred to him because he repaired and maintained the family home prior to the conveyances and promised to continue doing so afterward. I noted that no documents to support the Defendants' averment and testimony of the works allegedly done by Nateram, or financial support allegedly given by him, were produced before this court.

[53] The Defendants relied upon past and future financial support and assistance in construction of and/or repair of Nateram's and Popo's house as evidence of consideration for the deed. I noted however, that no receipts, bills or other documents to support such long term and substantial expenditure were adduced by either Gowkaran or Nateram. In particular, the evidence of the Defendants' witness Ramnarine Seetal in cross-examination was that a delivery note had to be prepared in respect of all material leaving the hardware; further, that a copy of this delivery note had to be retained by the accounts department; thereafter it would be referred for billing and pricing by Nateram himself. No material could leave the hardware store without passing through the billing system. Nateram admitted that all records of the stock leaving the hardware store would be produced to its auditors for the purposes of taxation but no such record had been produced before the Court.

[54] The Claimant having made out a *prima facie* case that she and Deonarine had effected substantial repairs to the house by producing bills, delivery notes which evidenced part payment for material delivered from Nateram's hardware store and evidence that they were both gainfully employed and able to support themselves financially and pay for repair work to the house, the failure by the Defendants to disclose the written records, bills, delivery notes from the hardware store in their possession to displace that *prima facie* case caused me to draw an adverse inference – that the documents, if disclosed would not support their case that such financial support was given. I did not accept Nateram's explanation for this failure – that he did not think that this claim would have been made,

because from his own and his witness' evidence, records were kept of all material which left the hardware store. Further, these records are in his possession - he had ample opportunity to disclose such records and in my view, he deliberately chose not to do so. I did not believe his and Gowkaran's evidence on this issue and therefore hold that there was no consideration provided for the conveyances.

[55] My view that the ultimate motive for the deeds of conveyance was for Nateram's benefit and specifically for the expansion of his hardware store is based on the following facts and/or evidence:

- a. Gowkaran testified in cross-examination that the intention behind the execution of the three deeds was not only to prevent the Claimant from acquiring an interest in Deonarine's share, but to prevent the Claimant's children Marissa and Sarah from inheriting their father's share of the property because they would give it to their mother, the Claimant.
- b. Nateram denied that this was the intention of the parties in executing the deeds and suggested that Gowkaran was confused. He denied that the intention was to ensure that only Deonarine, Gowkaran and himself obtained an interest in said property.
- c. Nateram stated quite clearly in cross-examination that the intent was that he acquire an interest in this parcel for the expansion of his hardware store.
- d. Nateram stated quite clearly that 'everything' all the parcels were meant to be passed to himself.
- e. The First Defendant testified that 'the wives were a problem' (Deonarine's, Gowkaran's and his wife) and they intended that the lands remained vested with the siblings including his sisters.

- f. Gowkaran testified in his witness statement that the deeds were executed to prevent Deonarine from selling his portion of the land. Nateram however he claimed that the intention was always for Deonarine's portion of the land was to be left for his children.
- g. Nateram gave instructions for the preparation of the deeds, not Popo Gowkaran or Deonarine, the former owners.

[56] The above evidence clearly demonstrated the true intention the First Defendant in having three deeds executed. It was for his sole benefit to the exclusion of both Gowkaran and Deonarine's children. I formed the view that it was a cynical grab for the lands by Nateram, who, by reason of his wealth and influence over Popo, Gowkaran and Deonarine, deceived them into possibly disinheriting their children to his benefit. Both Gowkaran and Deonarine were beholden to him – the former by his employment at the hardware and the latter from the jobs he obtained repairing the hardware's trucks. Nateram's and Gowkaran's shifting evidence on the reason for the transfers served to undermine their credibility and caused me to form the view that they were neither credible nor reliable witnesses. I took into account the fact that neither Deonarine, Gowkaran or Popo could read properly or understand the transaction that they entered into while Nateram had the resources to give effect to his desire to obtain an interest in the lands to the possible exclusion of the Claimant, her children as well as Gowkaran's children.

[57] Even though the Defendant's case was that the deeds were executed because Popo wanted to divide the lands among the Ramlagan family, I took into account that, contrary to this averred intention of Popo's, it was Nateram who gave instructions to the attorneys to prepare the deeds- both Gowkaran and Nateram admitted to this fact during cross-examination. This evidence, in my view contradicts the Defendant's pleaded case and evidence in chief and reveals underhanded attempts to

mask the true purpose for the execution of the deeds to benefit Nateram while depriving younger Ramlagans of an interest – Sarah, Marissa and Gowkaran’s children. This fact and the evidence analyzed above caused me to come to the conclusion that those deeds amounted to a sham transaction with the intention, unbeknownst to even Deonarine and Gowkaran, to deprive their children of an interest in the lands and to benefit Nateram solely. As noted above, both Gowkaran and Deonarine did not intend this result.

[58] Where a conveyance is expressed to be for valuable consideration but no consideration was paid, the grantee must adduce the clearest evidence of the donor’s intention that a gift of the property was intended; should he fail to do so, a resulting trust for the grantor may result.¹⁰ Whilst a resulting trust for the grantor is no longer implied where there is a voluntary conveyance of property, a court must examine all the circumstances in order to determine whether the grantor intended to transfer the property to the grantee or for the grantee to hold the property in trust for him.

[59] I therefore hold that there was no consideration provided for those deeds. I did not accept the Defendants’ evidence which lacked creditworthiness, that the consideration for the three deeds was either past consideration or future consideration – that Nateram had expended sums on the construction/renovation of Gowkaran’s and Deonarine’s homes, or that he had provided financial support to Deonarine both before and after the execution of the deeds. I hold further that there were no promises made by Nateram to Deonarine and Gowkaran to assist financially, given that they were both stable financially and able to take care of themselves and their family. In the circumstances there being no consideration for the deeds and no intention on the part of the grantors Deonarine and Gowkaran to deprive their children of any interest in the lands I also hold

¹⁰ Halsbury’s Laws of England Vol. 52 2014 para 242

that Nateram holds Deonarine's share of the said lands as a Resulting Trustee for the estate of Deonarine and as such they must be set aside.

[60] I therefore make the following Order that:

- i. Deed Registered as No. DE 1992200076024 and Deed registered as 4529 of 1992 and Deed No. DE 199204530013 are void and are set aside.
- ii. It is declared that Nateram Ramlagan holds Deonarine's share of the said lands on a resulting trust for the estate of Deonarine Ramlagan.
- iii. The Defendants to pay to the Claimants costs to be assessed in default of agreement by the Registrar.

Joan Charles
Judge