

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2007-04311

**BETWEEN
KHEMRAJ BALDEO**

Claimant

AND

**MOHAN BALDEO
PETER RAMJASS
ANJANIE RAMJASS**

Defendants

Before the Honourable Mr. Justice A. des Vignes

Appearances:

Mr. Donald Seecharan for the Claimant

Mr. Derek Ali for the Defendants

JUDGMENT

The case on the Pleadings

The Claimant's Case

1. This matter arises out of a family dispute concerning the size of a parcel of land allegedly given by a father to his eldest son in 1981. The son, the claimant herein, contends that in 1981 his father, the first defendant, gave him approximately two lots of land forming part of a larger parcel of land occupied by the first defendant which he has occupied and developed since then. However, on 9th July 2005, his

sister and her husband, (the third and second defendants respectively) and his father entered upon a portion of the said two lots of land on its southern and eastern boundary and started to move his fence on the eastern boundary and to put up posts along the width of the land, approximately 30 feet inside his southern boundary for the purpose of fencing same. Despite warnings from the claimant, the Defendants have continued to trespass upon the said parcel of land.

2. As a consequence of this alleged trespass, this action was commenced on the 15th July 2005.
3. The claimant claims that since his father gave him the two lots of land he has been in exclusive possession thereof. He claims that consequent upon this gift he carried out certain works on the land including filling in same with topsoil, erecting a chain link wire fence along the eastern boundary thereof, building a dwelling house thereon as well as two bridges which he has used as his means of ingress and egress from his house and planting various fruit trees and flowering plants. He also obtained water and electricity connections in 1981 and 1986 respectively. According to the claimant, he has expended \$374,624.00 on the said parcel of land.
4. As a consequence, the claimant is seeking a declaration that he has been in exclusive possession of two lots of land since 1981 and that he has an equitable right to ownership thereof and that the First Defendant is estopped from revoking or attempting to revoke the gift of the two lots of land. He also seeks an injunction restraining the Defendants from entering or crossing onto his land as well as damages for trespass and costs.

The Case for the Defendants

5. On the 11th October 2005, the first defendant filed a Defence and Counterclaim but on the 25th February 2008, an Amended Defence and Counterclaim was filed on behalf of all the defendants.

6. The defendants allege that in or around 1959 the first defendant became the leasehold owner of a parcel of land comprising one (1) acre approximately known as Lot 29, Bamboo Grove No. 2, which said parcel of land comprised approximately seven (7) lots and measured approximately 400 feet by 85 feet. From 1959 the first defendant occupied and/or retained exclusive possession of the front parcel of the said lands comprising four (4) lots approximately.
7. In 1981 the first defendant divided the remainder of the said lands comprising three (3) lots of land approximately into four separate parcels of land by placing eight (8) iron pickets on the eastern and western boundaries and distributed the four parcels in the following manner:
 - (a) The first parcel to the immediate south of his house, he gave to the claimant. This parcel measured 50 feet from north to south and 85 feet from east to west;
 - (b) The second parcel of almost equal portion was allotted to the second and third defendants;
 - (c) The third parcel of equivalent portion was allotted to Indra Sankar, his daughter;
 - (d) The fourth parcel of equivalent portion was allotted to Narad Baldeo, his son.
8. The defendants admit that the claimant filled with topsoil the parcel of land allotted to him and constructed a dwelling house thereon, built two drains to the front of his house to allow access to and from Jaffar Street. However, they deny that the claimant filled the second parcel of land which had been allotted to the second and third defendants or enclosed the same with a chain link wire fence.
9. Accordingly, the defendants deny the alleged trespass complained of by the claimant on the basis that the part of the parcel of land claimed by him

(hereinafter referred to as “the disputed lands”) was in fact part of the parcel of land allotted by the first defendant to the second and third defendants.

10. According to the defendants, in or around 1997 the claimant unlawfully and without authorization or permission removed three pickets placed by the first defendant on the lands and proceeded to build a shed to the back of his house on the disputed lands, despite complaints by the first defendant. This shed occupied approximately 3 feet of the disputed lands. The claimant also constructed another drain on the disputed lands and in 2003, without the knowledge or permission of the defendants, built a dog kennel and store room thereon.
11. The second and third defendants allege that in 1997 they were living in Belmont and it was not until July 2005 that they were financially able to commence construction of a house on the disputed lands.
12. The defendants admit, therefore, that in July 2005 the second and third defendants pushed back the wire fence on the eastern boundary of the disputed lands that had been erected by the first defendant, (not the claimant), and inserted 8 posts on the disputed lands to commence construction of a house thereon.
13. As a consequence, the defendants counterclaim against the claimant damages for trespass and an injunction restraining the claimant from entering or trespassing upon the disputed lands and costs of the action.

The claimant’s Reply

14. A Reply was served by the claimant on the 16th November 2005 in which the claimant admitted that the first defendant was the leasehold owner of the one (1) parcel of land and that the first defendant occupied and/or retained exclusive possession of the front parcel of land comprising four (4) lots approximately. However, in large measure the claimant disputed the allegations made by the

defendants against him but admitted that the dog kennel was built in 2003. He contended, however, that the store room was built in 1986.

The Issues

15. The following issues arise for determination in this matter:

- (a) What is the size of the portion of land which the first defendant gave to the claimant in 1981?**
- (b) What is the size of the lands occupied by the claimant and from what date(s) has he been in occupation thereof?**
- (c) Is the claimant entitled to exclusive possession of the disputed lands?**
- (d) Were the second and third Defendants entitled to enter upon the disputed lands in or about July 2005?**
- (e) What reliefs, if any, are the parties entitled to?**

Issue 1

What is the size of the portion of land which the first defendant gave to the claimant in 1981?

The evidence for the claimant

16. According to the claimant, while his grandfather was alive he had built a three room apartment at the side of the house where his grandparents and his parents lived. After getting married in April 1980, he wanted to build a house on a lot of land in Mc Bean, Couva which his grandfather had left to him. However, his father did not want him to go to Mc Bean so he offered him a parcel of land at the back of the house where they were all living to build a house for his family and himself. His father pointed out the area to him and told him to put up a chain link fence to enclose the land which he was giving to him. The area of land was more or less two lots of land.

17. Before starting to build, he put up a chain link fence on his father's advice "*to put up a chain link fence to fence my property to the back of the land.*" The fence was constructed with the help of his father and other family members including his uncle, Lakha Baldeo.
18. Since 1981, therefore, he has been exclusive possession of an area of land measuring more or less 95 feet from north to south and 100 feet from east to west and his shed, storeroom and dog kennel were all built by him well within the area of land given to him by his father. According to him, he planted many fruit trees over the years and his tool/store room was built since he and his wife built their house back in 1981.
19. However, in 2002, by mutual agreement with his father, a 15 foot road reserve along the western boundary of the lands was excluded from the parcel of land occupied by him to get a new entrance and to accommodate a common road to go to the end of the land, thereby reducing the width of the land which he occupied to 85 feet.
20. The claimant's wife, Shanty Baldeo, also gave evidence with regard to the size of the parcel of land given to the claimant by his father in 1981. According to her, the claimant got backpay of \$10,000 in 1981 and his father told him not to waste it and to start to build a house at the back of the father's house. Before starting to build, her father-in-law told them to put up a chain link wire fence to fence the land at the back. This was done with the help of family members, including the claimant's uncle, Lakha Baldeo. The area pointed out by her father-in-law was 100 feet in length and 100 feet in width. Since then, therefore, she and her husband have been in exclusive possession of a parcel of land comprising more or less two lots of land and a bridge known as the back lot of #29 Jaffar Street, Bamboo Settlement No. 2, Curepe. She also gave evidence that by agreement between her husband and her father-in-law in 2002, the width of the land was

reduced to 85 feet to provide for a road reserve 15 feet in width along the western side of the said parcel of land.

21. The Claimant also called his uncle, Lakha Baldeo to give evidence on his behalf. On this issue of the size of the land given by the first defendant to the claimant, Lakha Baldeo stated in his witness statement that *“in 1981 he [the first defendant] gave a parcel of land more or less two lots to the plaintiff to build his house at the back.”* He also said that the Claimant had to fill the said land before he could build his house and *“I helped the plaintiff and the first defendant to run the chain link fence along the eastern boundary it had about 5 feet to go. The chain link fence was 100 feet in length.”* In addition, he stated that the Claimant planted fruit trees such as mango, chaitaigne, zaboca, bail tree, coconut trees on his land at the back which were still there.

22. On the basis of this evidence, therefore, it is evident that the Claimant was relying on the following facts to prove the size of the land given to him by his father:

- (i) The erection of a chain link fence *“to fence my property to the back of the land”* before starting to build.
- (ii) The filling in of the land from the front area occupied by his father going down to his portion at the back;
- (iii) The planting of trees at the back of the land.
- (iv) The construction of the house, shed, storeroom and dog kennel within the area given to him.

The evidence for the defendants

23. The first Defendant, on the other hand, gave evidence that around 1981 his daughter, Mahadaye Sinanan informed him that the claimant wanted a piece of land to build a house for himself and his family. At that time he had six children living at home and because of this request he decided to share up the parcel of land to the back of his house between four of his children, namely, the claimant, the third defendant, Indra Sankar and Narad Baldeo.

24. The parcel of land comprised about eight lots and so he decided to keep four lots for himself and the remaining four lots were to be divided between the said four children in shares measuring approximately 50 feet in length by 85 feet in width. According to him, *“to avoid any confusion I marked off the boundaries by placing pickets on the said lands. At all times two (2) pickets placed on the eastern and western ends separated lands given to Khemraj and his family and lands given to Peter and Anjanie Ramjass to the south of Khemraj’s portion.”*
25. At the time of dividing the lands, the first defendant said he informed the claimant that the land to the south of his portion was given to the second and third defendants and he was also aware of the portions given to Indra and Narad and there was no dispute about this.
26. After giving the portion to the claimant, the claimant started to build his house on the land given to him and approximately two years later, the claimant and his family moved into the house when it was completed.
27. He also gave evidence that the claimant never erected a chain link fence on the eastern boundary since he (the first defendant) had built a wire fence running from north to south on the eastern boundary around 1960 *“long before I divided any land between my children.”*
28. The third defendant also gave evidence with respect to the size of the land given to the claimant. She said that at some point around the early 1980’s her father informed her that he was going to share up his lands. Her father told her that he would keep approximately four lots of the front portion of a parcel of land comprising approximately one acre and the remainder would be divided between the children, namely, the claimant, her sister Indra, her brother Narad and herself in equal shares. Later she visited the lands and her father showed her the pickets

- he had placed on the land to mark off four different plots in equal sizes. The claimant then built his house on the first portion of land marked off by her father.
29. With regard to the chain link fence on the eastern boundary, the third defendant stated that the claimant did not erect that fence since it had been there since she could remember as a young child growing up.
30. The second defendant also gave some evidence on this issue. He said that around the time he and his wife were planning to marry the first defendant gave him and his wife a piece of land to build their home on. It was approximately one lot to the south of where the first defendant lived. The first defendant marked the land given to the second and third defendants by placing pickets thereon.
31. Mahadaye Sinanan, the daughter of the first defendant by his second marriage, also gave evidence for the defendants. She said that around 1981 the claimant came to her and asked her to ask the first defendant for a piece of land for him to build a house for himself and his family. Sometime later she informed the first defendant of the claimant's request and later that year the first defendant informed her that he would divide the land and give pieces of land to the claimant and his other children. The first defendant measured out the lands and proceeded to place pickets on the lands to establish boundaries. According to her, *"after my father's approximate four (4) lots of land on which my parents' house stands, the remaining portion was divided into equal plots and marked by pickets. The first plot was given to Khemraj, the second to Anjanie and Peter Ramjass who were planning to marry at the time, the third to our last sister Indra Sankar and the fourth to our brother, Narad Baldeo."*
32. According to her, shortly after the distribution of the lands, Khemraj started to build on the plot given to him. However, since she was a child growing up the chain link wire fence had already been put up by her father but the base of the fence was concreted by *"all of us who helped my father some time in the 1980's"*

along the eastern boundary of the said lands.” Therefore, she said that Khemraj never enclosed two lots of land with chain link wire and it was within her knowledge that Khemraj only occupied the first plot comprising approximately 50 feet from North to south and 85 feet from east to west.

33. Accordingly, in order to prove the size of the parcel of land given by the first defendant to the claimant, the defendants relied primarily on the fact that in or around 1981 the first defendant measured out four parcels of land and placed pickets thereon to demarcate the boundaries of each parcel that he intended to give to each of his four children.

Analysis of the evidence

34. Having carefully considered the evidence of all the witnesses, I consider that there are weaknesses and contradictions in the evidence given by both sides on this issue.
35. In respect of the evidence of the claimant’s witnesses, for example, although the Claimant gave evidence of erecting a chain link wire fence along the eastern boundary of the land, neither he nor his wife gave clear evidence of erecting a fence along the southern boundary of the lands which they say the first defendant gave to them. The land to the south needed to be filled in because it was swampy and low-lying and that may be the explanation for not enclosing that southern boundary. Whatever the reason, however, the fact is that the southern boundary of the lands given to the claimant by the first defendant was not clearly demarcated and the erection of a wire fence on the eastern boundary does not conclusively establish the size of the parcel of land given to the claimant. Further, both the claimant and his wife made specific reference to the involvement of Uncle Lakha Baldeo at the time of the erection of the fence. Under cross-examination, however, Lakha Baldeo directly contradicted his evidence in his witness statement when he gave the following responses:

“I don’t know if Mohan promised the children land. I was never there. Khemraj never told me about any promise. I don’t know that Mohan gave Khemraj land. It is grandfather who gave Khemraj land in Mc Bean. I don’t know if Mohan gave Khemraj land in Bamboo. I wasn’t there. ... First thing he did was buy wire. I wasn’t there. Khemraj told me that. I don’t know if Mohan gave any other children land in the back there behind Mohan’s house....”

36. In the light of this evidence, therefore, I am left with the testimony of the claimant and his wife that they erected the wire fence on the eastern boundary and the evidence of the defence witnesses that the fence on the eastern boundary was erected not by the claimant but by the first defendant long before 1981. Given the heavy reliance of the claimant and his wife on the involvement of Lakha Baldeo in the erection of the fence and then his direct contradiction of his evidence in chief under cross examination, I am not satisfied that the claimant has proved that he erected the chain link wire fence along the eastern boundary and I prefer to believe the evidence of the defence witnesses with regard to the existence of this fence long before 1981.
37. In respect of the evidence given by the claimant and his wife as to the filling in of the land from front to back, this evidence does not advance any further the issue of the size of the parcel of land given to the claimant. It is not in dispute that the claimant needed to fill in the lands to the south of the first defendant’s house and that he proceeded to do so. However, I am of the opinion that the action of filling in the land over a number of years after 1981 does not help me resolve this issue.
38. The third fact relied upon by the claimant to prove the size of the land given to him is the planting of the trees. I have carefully reviewed the evidence of the claimant and his wife on this issue and what I have found is that neither of them say when these trees were planted or that they were planted to demarcate the southern boundary of the lands given to them. In his evidence, the claimant only

said at paragraph 10 that if the defendants are permitted to fence off the lands where they placed the posts, they will cut off his doghouse, tool rooms and his many fruit trees that he planted over the years. The evidence of Shanty Baldeo is in similar terms and she could only say that the fruit trees were there for a very long time.

39. On the other hand, when I consider the evidence of the first defendant, he gave evidence under cross examination which was supportive of the claimant's case. Firstly, when asked about the planting of the trees, the first defendant gave the following evidence:

“In 1981 he started to fill in the place where he had to build. I never told him to plant fruit trees. He had children and the children would want fruit. He planted trees and bamboo patch. He planted trees on the bound. The bail tree is on the bound. The mamosepo tree is on the bound..... The trees in Raj's backyard were planted in 1981.....I put the pickets when I brought the surveyor. The surveyor surveyed the land at the back....I brought the surveyor in 2003.”

40. In the light of this evidence, therefore, I do not believe that the first defendant placed any pickets on the land in 1981 to demarcate parcels of land to be distributed to his four children. On his own evidence, the surveyor was brought in 2003 and therefore the placement of pickets, if any, must have occurred at that time, long after the claimant had been occupying the land.

41. I also consider that the first defendant has admitted that the claimant planted fruit trees on the southern boundary of the land that he gave to him in 1981. In the light of this evidence, therefore, and by reference to the plan put into evidence by consent of the parties and marked “A”, I find that the size of the land given to the claimant in 1981 measured 95 feet from north to south and 100 feet from east to west.

Issue 2

What is the size of the lands occupied by the Claimant and the dates from which he has been in occupation thereof?

The Claimant's evidence

42. The claimant's evidence, which was largely mirrored in his wife's evidence, was that after his father gave him the two lots of land, he entered into exclusive occupation thereof. At that time, there was big ravine running into land and half of the first lot was good. The rest of it was on a slope and swamp. He began to fill in the land from front to back and then he began to build a dwelling house in the middle of the land. He built a temporary shed in 1981 for barrows and shovel and so on at the front of the first lot. He also built a driveway and a bridge He spent about \$24,624.00 in backfilling the land and in 1981 he received water connection from WASA. He completed the building of his house in 1985 and he got electricity connection in January 1986. After this, he moved into the house but continued to carry out works on the land such as casting and building the garage, and strengthening the road. In 1986, he built a moveable tool room/store room when he finished building the house. This was made out of galvanize and was built on the second lot. Prior to 2002, he used his father's entrance and passed through his yard to get to his house at the back of land where his house was. In 2002, at the suggestion of his father, he agreed to leave fifteen feet of land on the western side of the lots for a roadway to the lots south of the land he was occupying. As a result, the width of the land from east to west that he occupied was reduced from approximately 100 feet to 85 feet. In 2003, his father gave him permission to burst a piece of wall, remove the fence and put a roadway on the western boundary of the land and he built a roadway down to his house. He also built a new bridge to exit from the lands he occupied onto Jaffar Street.

43. In July 2005, the second and third defendants entered upon the portion of land just south of his house and put up fence posts about three feet from his house. These fence posts were erected along the width of the land approximately 30 feet within the southern boundary.

The Defendants' evidence

44. The first Defendant gave evidence that after he gave the one lot of land to the claimant he started to build his house thereon. According to him the claimant and his family moved into the house approximately two years later. Thereafter, the claimant remained on the one lot of land he gave to him without making any attempt to claim any other portion of land. However, around 1997, the claimant removed the pickets he had placed on the land and started to fill in the lands that he had demarcated for the second and third defendant. He also started to build a shed thereon. The first defendant spoke to the claimant and asked him not to interfere with the other portions of land but he continued to build on the portion which had been allocated to the second and third defendants. When he insisted that the claimant stop building, the claimant and his wife became violent and abusive towards him. In 2003, he observed that the claimant started to put up concrete posts on the portion of land allocated to the second and third defendants and he again warned him and put back pickets to demarcate the boundary between the two lots. After that he went abroad for three months and upon his return he observed that the claimant had built a dog kennel, a drain and a concrete shed and planted trees on the lot allocated to the second and third defendants.

45. The third defendant's evidence, which was corroborated by the second defendant, was that in 1984 she got married to the second defendant and they moved to Belmont to live and that they continued to live there until 2005. Around 1997 to 1998 she was informed by her father that the claimant had started to fill up the lot of land which her father had promised her. However, although her father suggested that she come and block off her portion, she did not do so because she could not afford to. She believed that the claimant would desist from further

interference after her father told her he had replaced pickets on the land and that he would not deter her from building whenever she was ready to do so. In 2005, therefore, she and her husband, having saved up sufficient monies to build their house, went onto the portion of land which her father had promised them and placed eight posts thereon. The claimant objected to this action by cursing and threatening them and subsequently brought this action against them.

Analysis of the evidence

46. On my assessment of this evidence, I am satisfied that the claimant has been in possession of the portion of land given to him by his father in 1981. I have already found that the size of this portion of land was approximately two lots. By the erection of his house, shed, store room, dog house, the filling in of the land south of his house, the construction of a roadway and bridge on the western side of the land and the planting of trees on the southern boundary, the claimant demonstrated that he was exercising control over the entire area of land given to him. It should be noted that these actions were carried in the full glare of his father who continued to live on the front parcel of land. Further, the second and third defendants, having moved out of the area in 1984, took no steps to protect their interest in the land which they allege the first defendant had allocated to them in 1981 and their explanation for such inaction is not credible. Even if they could not afford to build a house at the time of the alleged trespass by the claimant in 1997/1998, it would have been logical and reasonable for the third defendant to have visited the land to see what was the extent of the encroachment and to stake her claim to the land immediately after receipt of that information by calling upon the claimant to cease his trespass upon "her portion of land".. However, she and her husband did absolutely nothing about asserting their interest in the land between 1997 and 2005 and permitted the claimant to continue to occupy that portion land without objection. Such inaction is not consistent with their contention that the first defendant has allocated one parcel of land to them since 1981. In the circumstance, I believe the claimant that he and his family have enjoyed possession of approximately two lots of land between 1981 and 2005.

Issue 3

Is the claimant entitled to exclusive possession of the land based on his entry into possession thereof in 1981 with the permission of the first defendant and his expenditure of monies in constructing and developing the property?

47. The Claimant's Attorney argued that the Claimant is entitled to exclusive possession of the two lots of land based on his entry into possession in 1981 with the permission of the first defendant and his expenditure of monies in developing the property. He relied on the doctrine of proprietary estoppel to support his arguments and cited the following cases:

- (a) *Inwards v. Baker (1965) 2 QB 29;*
- (b) *Dillwyn v. Llewelyn 45 E.R. 1285;*
- (c) *Greasley v. Cooke [1980] 1 W.L.R. 1306;*
- (d) *Moorgate Mercantile Co. Ltd. v. Twitchings 176 Q.B. 225;*
- (e) *Crabb v. Arun District Council [1976] Ch 179, 188*

Proprietary estoppel

48. Without intending any disrespect to Counsel for the Claimant with regard to the authorities cited by him, I have found that the following passage from the recent judgment of Lord Walker of Gestingthorpe in *Thorne v. Major and others [2009] UKHL 18* (at p. 786, para. 29) to be a helpful and concise summary of the elements of the doctrine of proprietary estoppel:

“My Lords, this appeal is concerned with proprietary estoppel. An academic authority (Simon Gardner, An Introduction to Land Law (2007), p. 101) has recently commented: “There is no definition of proprietary estoppel that is both comprehensive and uncontroversial (and many attempts at one have been neither)”. Nevertheless most scholars agree that the doctrine is based on three main elements, although they express them in slightly different terms: a representation or assurance made to the

claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance: see Megarry & Wade, The Law of Real Property, 7th ed (2008), para 16-001; Gray & Gray, Elements of Land Law, 5th ed (2009), para 9.2.8; Snell's Equity, 31st ed (2005), paras 10-16 to 10-19; Gardner, An Introduction to Land Law (2007), para 7.1.1.”

49. It is also clear from the authorities that the doctrine cannot be applied in a rigid way “by subdividing it into three or four watertight compartments”. *In Gillett v. Holt [2001] Ch 210*, Robert Walker LJ (as he then was) discussed the general principles and said (at p.225 C-E):

“... Although the judgment is, for convenience, divided into several sections with headings which give a rough indication of the subject matter, it is important to note at the outset that the doctrine of proprietary estoppels cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a ‘mutual understanding’ may depend on how the other elements are formulated and understood. Moreover the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end, the court must look at the matter in the round.”

50. Applying these principles to the facts of this case, I have already found the first defendant made a representation to the claimant that he was giving him the two lots of land and that in reliance thereon the Claimant entered into possession of the two lots and expended money in building his house thereon and filling in the land. In my opinion, therefore, it would be unjust and/or inequitable and/or unconscionable to allow the first defendant to renege on his representation to the

claimant and the claimant is entitled to rely upon the doctrine of proprietary estoppel to support his claim to exclusive possession of the land based on his entry into possession thereof in 1981 with the permission of the first defendant and his expenditure of monies in constructing and developing the property.

Issue 4

Were the Second and Third Defendants entitled to enter upon the disputed lands in or about July 2005?

51. Having regard to my earlier findings, I am satisfied that the claimant has proved his entitlement to exclusive possession of the lands given to him by his father and that he was entitled to maintain an action in trespass against anyone who entered upon those lands without his permission since “*trespass to land consists in any unjustifiable intrusion by one person upon the land in the possession of another*” **Clerk and Lindsell on Torts 19th edition, at paragraph 19-01**

52. I am also satisfied, based on the admissions contained in their witness statements that the second and third defendants entered upon the portion of land occupied by the claimant on the 9th July 2005 without his permission or authority and thereby committed an act of trespass. I am not satisfied, however, that the first defendant was in any way involved in this entry onto the land occupied by the claimant and therefore I do not find him liable in trespass.

Issue 5

What reliefs, if any, are the parties entitled to?

53. The claimant’s Attorney relied on the doctrine of proprietary estoppel to support his claim for a declaration that the claimant since 1981 has been in exclusive possession and is entitled to exclusive possession of the two lots of land.

54. He also submitted that the first defendant's title was extinguished by the provisions of the Real Property Limitation Ordinance and that the claimant was entitled a declaration that he had an equitable right to ownership of the said parcel of land and that he is entitled to a conveyance of the said parcel of land to him.
55. As against the second and third defendants, he also submitted that the claimant was entitled to recover damages against them even though he had not in fact suffered any loss.
56. Although the claimant has established his entitlement to rely on the doctrine of proprietary estoppel, there still remains, however, the issue as to how this equity should be satisfied. In *Henry & Mitchell v. Henry [2010] UKPC 3*, Sir Jonathan Parker in delivering the judgment of the Privy Council explained the proper approach to be taken by the court when considering how the equity should be satisfied:

“52. In Campbell v. Griffin (2001) 82 P. & C.R. DG 23, Lord Walker (Robert Walker LJ, as he then was), when considering the issue as to how the equity which had been found to have arise in that case should be satisfied, described the court's approach to that issue as a cautious one. The court had to look at all the circumstances in order to achieve the minimum equity to do justice to the claimant. However, he went on to observe (as he also observed in his judgment in Gillett v. Holt (above) that the court enjoys a wide discretion in satisfying an equity arising under the doctrine of proprietary estoppel. Lord Walker then went on to weigh the disadvantages which the claimant had suffered by reason of his reliance on the defendant's assurances against the countervailing advantages which he had enjoyed by reason of that reliance (including, in that case, rent-free occupation of the property in issue) Lord Walker concluded that the claimants' rent-free occupation of the property had not extinguished his equity., but that in all the circumstances the grant of a life-interest in the property would be disproportionate to his legal and moral claims over

the property. In the result, exercising the wide discretion to which he had earlier referred, he concluded that the appropriate form of relief was an award of a fixed monetary sum charged on the property.

*53. In the instant case the judge should have undertaken a similar weighing process to that undertaken by Lord Walker in **Campbell v. Griffin**; that is to say, he should have weighed any disadvantages which Calixtus Henry had suffered by reason of his reliance on Geraldine Pierre's promises against any countervailing advantages which he had enjoyed by reason of that reliance.”*

57. Adopting this approach to the facts in this case, therefore, it is evident that the claimant suffered the following disadvantages by reason of his reliance upon his father's verbal grant to him of the two parcels of land:

- (a) He did not go with his wife to build his house on the piece of land in Mc Bean, Couva that his grandfather left for him;
- (b) He expended substantial sums of money in building his house, filling in the land, building bridges to gain access to his house and generally maintaining and upkeeping the two lots of land;
- (c) He planted trees and occupied the entire two lots of land.

58. In respect of the advantages enjoyed by the claimant, it is also evident that the claimant did not pay his father any money for the two lots of land, whether by way of rent or purchase price since 1981.

59. I am of the opinion, however, that these advantages do not outweigh the disadvantages suffered by the claimant and are not sufficient to extinguish the equity that has arisen in his favour.

60. In the exercise of my discretion, therefore, I am prepared to grant to the claimant the following reliefs as sought in his Statement of Claim:

- (a) A declaration that the claimant has been and is entitled to be in exclusive possession of ALL AND SINGULAR that parcel of land comprising more or less 95 feet from north to south and 85 feet from east to west known as the back lot of # 29 Jaffar Street, Bamboo Settlement No. 2, Curepe which said parcel of land is bounded on the north by the parcel of land occupied by the first defendant, on the south by lands of the first defendant, on the east by a chain link fence 95 feet in length and on the west by a road reserve 15 feet wide.
- (b) An injunction restraining the Defendants whether by themselves, their servants or agents or otherwise from entering upon the said parcel of land.

61. In respect of the claimant's submission that the first defendant's title was extinguished by the provisions of the Real Property Limitation Ordinance and that he is entitled to a declaration that he has an equitable right to ownership of the said parcel of land and a conveyance of the said parcel of land to himself, I am not prepared to grant this relief. Apart from the fact that in his pleadings the claimant did not plead that the title of his father had been extinguished, the thrust of his claim was based on his occupation of the two parcels of land since 1981 with the express permission of his father and his expenditure of monies thereon over a number of years. It was not the claimant's case that he dispossessed his father or that he was a squatter upon the said parcels of land. In addition, it is not in dispute between the parties that the first defendant holds a leasehold interest in the one (1) acre parcel of land under an agricultural lease from the State for a period of twenty-five (25) years from the 28th March 1985. Accordingly, the claimant cannot be entitled to a conveyance of the two lots of land or to a declaration that he has an equitable right to ownership thereof.

62. In respect of the claimant's claim for damages for trespass, I find that the claimant has not proved that he has suffered any damage as a consequence of this act of trespass by the second and third defendants. I have already found that the claimant did not satisfy me that he erected the fence in 1981 and therefore the cost of

repairing the damage to the fence is not a recoverable expense. Further, although the claimant may have to incur some cost in removing the posts erected by the second and third defendants, he has not led any evidence as to the cost of doing so. Therefore, although in law the claimant is entitled to recover damages for trespass without proof of any actual loss, I am only prepared to award the claimant nominal damages of \$1,000.00 against the second and third defendants.

63. The Claimant has succeeded in his claims against the Defendants and therefore I order the Defendants to pay the claimant's costs to be assessed.

64. I would also dismiss the Defendants' Counterclaim with costs to be paid by the Defendants to be assessed.

Dated this 14th day of February 2011.

**André des Vignes
Judge**