

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2007 -3625**

**H.C.A. No. 2495 of 2003**

**Claim No. CV2007-03631**

**H.C.A. No. 2496 of 2003**

**BETWEEN**

**SANJAY SAGAR**

**Claimant**

**AND**

**RAJESH SAGAR**

**Rajesh SAGAR (as the Administrator  
of the Estate of the Deceased, Lalan Sagar)**

**Defendants**

**AND**

**BISSOONDAYE MUNGROO**

**Ancillary Claimant**

**AND**

**SANJAY SAGAR**

**RAJESH SAGAR**

**RAJES SAGAR (as the Administrator  
Of the Estate of the Deceased, Lalan Sagar)**

**Ancillary/**

**Defendants**

**Before the Hon. Justice A. des Vignes**

## **Appearances:**

**Mr. Ken Sagar instructed by Mr. Y. Ahmed for Claimant/Ancillary Defendant**

**Ms. Leslie Lucky Samaroo for Defendant**

**Mr. Shiv Sharma for Ancillary Claimant**

## **JUDGMENT**

### **The Proceedings**

1. On the 12<sup>th</sup> September 2003, Sanjay Sagar, (hereinafter referred to as “Sanjay”) filed High Court Action Nos. 2495 of 2003 and 2496 of 2003 against Rajesh Sagar (hereinafter referred to as “Rajesh”) in his personal capacity and in his capacity as the Administrator of the Estate of the deceased.
2. In the first action, (HCA 2495 of 2003), (hereinafter referred to as “the Produce Action” Sanjay sought the following reliefs:
  - (i) A declaration that the Claimant is entitled to such portion as the Court thinks just of all profits on the sales of lumber and/or agricultural and/citrus produce from (a) the three parcels of land comprising the cocoa plantation known as “St. Catherine”; (b) the three parcels of land known as “St. Pelagie”; and (c) the three parcels of land described in Memorandum of Transfer registered in Certificate of Title registered in Vol. 1270 Folio 47 :

- (ii) An account of all sales and profits of sale of lumber and/or agricultural and/or citrus produce effected by the Defendants or each of them on account of the said above-mentioned business since the 14<sup>th</sup> September 1999;
- (iii) An order for the payment by the Defendants to the Plaintiff of the amount found to be due to the Plaintiff upon taking of such account;
- (iv) Costs;
- (v) Interest on the amount found to be due to the Plaintiff at such rate and for such period as the Court shall deem just.

3. In the second action (HCA No. 2496 of 2003), (hereinafter referred to as “the Chicken Farm Action”) Sanjay sought the following reliefs:

- (i) A declaration that the Claimant is entitled to such portion of as the Court shall find just of all profits on sales of chickens accrued from and continuing from the 14<sup>th</sup> September 1999 in respect of the Chicken Farm business situate at St. Pelagie Estate;
- (ii) An account of all sales and profits of chickens effected by the Defendants or each of them on account of the above-mentioned Chicken Farm business since the 14<sup>th</sup> September 1999;
- (iii) An account of all money paid by Malabar Farms Limited to the Defendants since the 14<sup>th</sup> September 1999 and of the manner in which the Defendants applied the said money;

- (iv) An account of all money paid by Supermix Feed Trinidad Limited to the Defendants since the 14<sup>th</sup> September 1999 and of the manner in which the Defendants applied the said money;
- (v) Damages for assault taking place on the 2<sup>nd</sup> January 2002;
- (vi) An order for the payment by the Defendants to the Claimant of the amount found to be due to the Claimant upon taking of such account;
- (vii) Costs;
- (viii) Interest on the amount found due to the Claimant at such rate and for such period as the Court shall deem just.

4. In both the Produce Action and the Chicken Farm Action, Bissoondai Mungroo (hereinafter referred to as “Bissoondai”) brought Ancillary Claims against Sanjay and Rajesh alleging that on the 26<sup>th</sup> September 1992 she and the deceased jointly purchased the subject parcels of land described in Deed Nos. 20037 and 20038 of 1992 and in Memorandum of Transfer registered in Volume 1270 Folio 47, with monies accumulated from their joint business endeavours. The said lands were conveyed and/or transferred to Sanjay and Rajesh, at the request of the deceased and Bissoondai.
5. As a consequence, she alleged that the said lands belonged beneficially to the deceased and herself and it was their understanding and intention that the said lands would be enjoyed by them until their respective deaths.
6. Further, she alleged that after the purchase of the said lands, the deceased and herself continued to deal with same as their own for cattle rearing, cocoa, coffee and market crop cultivation and the proceeds of sales were kept by the deceased and herself and used based on their determination.

7. She also alleged that in 1997, she and the deceased ceased rearing cattle and went into a poultry farming business on the St. Pelagie Estate. The financing and upkeep of that business was undertaken by she and the deceased and the proceeds of sales therefrom were always retained by them for their use.
8. As a consequence, in both actions, Bissoondai sought identical reliefs, namely:
  - (i) A declaration that she is entitled to the continued use and benefit of the subject lands until her death. of:
  - (ii) Costs;
  - (iii) Such further or other relief which the Court may think fit.
9. Sanjay served Defences to the Ancillary Claims but Rajesh did not.

#### **Developments at the trial**

10. At the trial of this action, it was agreed by the parties that since Bissoondai bore the burden of proof to establish her entitlement to the continued use and benefit of the subject lands, the legal title to which was admittedly vested in Sanjay and Rajesh, she should be first to give evidence in support of her claims.
11. Both Sanjay and Rajesh also gave evidence in support of their respective claims and defences and Sanjay gave evidence in defence of the ancillary claims made against him by Bissoondai.
12. Further, in the light of the evidence given by Bissoondai under cross-examination, her Counsel conceded that her evidence did not support the reliefs sought in her Statement of Case in both the Produce Action and the Chicken Farm Action and that she would only be seeking Orders from the Court that:
  - (i) she has an interest in the poultry farm business;

- (ii) she should be permitted to remain on the portion of land on the St. Pelagie Estate on which the chicken farm is operated; and
- (iii) she should be entitled to all of the income from the poultry farm business until she dies.

13. The implications of Bissoondai's contradiction of her pleaded case and her witness statement will be examined in further detail in relation to the Chicken Farm Action but, in respect of her Ancillary Claims in the Produce Action, it became evident that, in the light of her Counsel's concession, she has failed to prove that she has any beneficial ownership of any of the parcels of land purchased in the names of Sanjay and Rajesh in 1992 by virtue of a resulting or constructive trust and her Ancillary Claim against Sanjay and Rajesh in that action must be dismissed.

#### **The Issues**

14. In the Produce Action, the Claimant filed a Statement of Issues on the 17<sup>th</sup> April 2008 and the Defendant filed a Statement of Issues on the 18<sup>th</sup> July 2008. Having considered the pleadings and the Statements of Issues and, taking into account the concession by Counsel for Bissoondai, I am of the view that, **as between Sanjay and Rajesh**, the following issues arise for determination:

- A. Was Rajesh involved in the management and cultivation of crops and lumber on the said parcels of land as hereinbefore described after the death of the deceased?
- B. If so, what profits, if any, were made by him from such cultivation from September 1999 to date?

C. Is Rajesh liable to account to Sanjay for all sales and profits from the sale of  
lumber and/or agricultural and/or citrus produce?

D. Is Sanjay entitled to an Order against Rajesh for the payment of any amount  
found to be due, after the taking of an account?

15. In the Chicken Farm Action, taking into account the Agreed Statement of issues filed on  
the 15<sup>th</sup> May 2008 as well as the position adopted by Counsel for Bissoondai at the trial, I  
am of the opinion that the following issues fall for determination:

A. **As between Bissoondai and Sanjay**, whether, after the death of the deceased,  
Bissoondai became solely entitled to the continued use and benefit of the  
portion of the St. Pelagie Estate on which the chicken farm business was  
operated as well as the financial benefits and responsibilities of that business,  
until her death?

B. **As between Sanjay and Rajesh**, whether Sanjay is entitled to:

(i) a declaration that he is entitled to such portion as the Court shall  
find just of all profits on sales of chickens accrued from and  
continuing from the 14<sup>th</sup> September 1999 from the chicken farm  
business?

(ii) An account of:

- All sales and profits of chickens effected by Rajesh on account of the said chicken farm business since the 14<sup>th</sup> September 1999;
- All monies paid by Malabar Farms Limited to Rajesh since the 14<sup>th</sup> September 1999 and of the manner in which Rajesh applied the said monies;
- All monies paid by Supermix Feed (Trinidad) Limited to Rajesh since the 14<sup>th</sup> September 1999 and the manner in which Rajesh applied the said monies

(iii) An Order for the payment by Rajesh of the amount found due to him upon the taking of such account together with interest thereon?

C. Whether Rajesh assaulted and verbally abused Sanjay in or about the 2<sup>nd</sup> January 2002 on the compound of the chicken farm business? If so, what damages, if any, Sanjay is entitled to for the alleged assault?

### **Decisions**

16. For the reasons hereinafter set out, I have come to the following conclusions:

### **In the Produce Action:**

- (i) Sanjay has failed to prove his case against Rajesh either in his personal capacity or as Administrator of the Estate of the deceased. Accordingly, his claim against Rajesh is hereby dismissed;



- (ii) The Ancillary Claimant has failed in her case against Sanjay and Rajesh. Accordingly, her claim against the Ancillary Defendants is hereby dismissed.

**In the Chicken Farm Action**

- (i) Bissoondai has failed to satisfy me that there was any common intention or understanding that the chicken farm business would be hers exclusively until her death and/or that she was entitled to the continued use and benefit of the portion of the St. Pelagie Estate on which the chicken farm is operated. Accordingly, upon the death of the deceased, the St. Pelagie Estate passed to Sanjay and Rajesh as the surviving joint tenants by virtue of the rule of survivorship together with the chicken farm business operated thereon.
- (ii) Sanjay is entitled to succeed on his claim against Rajesh in his personal capacity, but not as Administrator of the deceased's estate, for the declaration that he is entitled to share in the profits of the chicken farm after the death of the deceased and that he is also entitled to the accounts sought and the payment by Rajesh to him of the amounts found to be due on the taking of such account together with interest thereon at the rate of 6 per cent per annum from the 12<sup>th</sup> September 2003 to the date of payment.
- (iii) I am not satisfied that Sanjay has discharged the burden of proof in relation to his claim against Rajesh for damages for assault and his claim is hereby dismissed.

17. However, with respect to the costs payable as a consequence of the Orders made in the Produce Action and the Chicken Farm Action, I will invite the parties to address me on the appropriate orders for costs after I have delivered my judgment.

### **Summary of Undisputed Facts**

18. Lalan Sagar (hereinafter referred to as “the deceased”) and Bissoondai Mungroo (hereinafter referred to as “Bissoondai”) entered into a common law relationship in 1976 and Bissoondai gave birth to 3 children, namely Nito, Sanjay and Rajesh.

19. By Deed No. 20037 of 1992, a cocoa plantation situate in the Ward of Manzanilla formerly known as “Good Hope” but known as “St. Catherine” comprising of three (3) parcels of land comprising of 8 acres, 10 acres and 10 acres 2 roods and 38 perches respectively was purchased from Concord Limited in the names of Sanjay and Rajesh Sagar (hereinafter referred to as “Sanjay” and “Rajesh” respectively).

20. By Deed No. 20038 of 1992, three parcels of land known as “St. Pelagie” each comprising of 10 acres were purchased from Concord Limited in the names of the deceased, Sanjay and Rajesh;

21. By Memorandum of Transfer registered in Certificate of Title registered in Vol. 1270 Folio 47, three parcels of land comprising of (i) 5 acres 3 roods and 27 perches; (ii) 5 acres 8 perches and (iii) 9 acres 1 rood and 1 perches, were purchased from Concord Limited in the names of Sanjay and Rajesh.

22. As at the date of purchase of these several parcels of land, both Sanjay and Rajesh were minors (aged 15 and 14 respectively) and were still attending secondary school and neither of them contributed in any way to the payment of the purchase prices for the said parcels of land. After the purchase of the said parcels of land and until his death on the 14<sup>th</sup> September 1999, the deceased cultivated and managed the lands as he saw fit and was the sole recipient of any income generated from the use thereof, with the full knowledge of and without objection from Bissoondai, Sanjay or Rajesh.
23. In or about 1992, at the time of purchase of the said lands, the St. Pelagie estate was cultivated with cocoa, bananas, coffee, various types of citrus fruits, breadfruit, avocados, chataigne, mango trees and various types of lumber. It was the intention of the deceased that he would be the manager and recipient of all monies and financial rewards yielded from the sale of lumber and agricultural produce from all the parcels of land.
24. Sanjay completed school in 1993 and began to assist in the cultivation of the said lands. At that time, Rajesh was still in school and their brother Andrew was out of the country between 1993 and 1995.
25. In the course of 1998, the deceased erected four chicken pens on a portion of the St. Pelagie Estate and began to manage a poultry business. The deceased sold the chickens from his chicken farm to Malabar Farms Limited and was the recipient of all income from this business. As at the date of his death in September 1999, the pens occupied approximately 25,000 square feet on the St. Pelagie Estate.
26. After the death of the deceased in 1999, Andrew Sagar, the brother of Sanjay and Rajesh continued the cultivation of produce on the said lands with assistance from Sanjay.

27. Between September 1999 and March 2001, the chicken farm on St. Pelagie Estate continued in operation and the chickens were sold to Malabar Farms Limited (“Malabar Farms”). Payments for grow-outs were made by Malabar Farms in the name of Rajesh. On or about March 2001, a fifth pen was erected which occupied about 15,000 square feet of the St. Pelagie Estate.
28. In October 2001, Malabar Farms went into receivership and the Claimant entered into an agreement with Supermix Feeds Trinidad Limited (“Supermix”) to purchase chickens from the farm. However, payments for grow-outs by Supermix were made in the name of Rajesh.
29. In late 2001, there was a disagreement between Sanjay, Rajesh and Bissoondai and from on or about January 2002, Sanjay ceased to have any involvement in the cultivation of the St. Pelagie Estate or in the chicken farm business and has not received any monies from Rajesh or Bissoondai from the income generated from the use of these lands.

## **ANALYSIS OF ISSUES**

### **The Produce Action**

#### **A. Was Rajesh, involved in the management and cultivation of crops and lumber on the said parcels of land after the death of the deceased?**

30. On the evidence, it is not in dispute that, during his lifetime, the deceased cultivated the subject parcels of land as he saw fit and was in sole control of the income derived therefrom, with the full knowledge of and without objection from Sanjay.

31. According to Sanjay's witness statement, after his father's death, the St. Pelagie Estate continued to be run in almost the same way as before. His brother Andrew took charge of the estate (with his assistance) while Rajesh spent most of his time in Pioneer Plaza. All monies and/or profits from the estate were collected by Andrew and by him and were passed on either to Bissoondai or Rajesh since at that time there was no dispute between them. According to Sanjay, he did not take any money for himself. Based on this evidence, therefore, Rajesh was not directly involved in the management and cultivation of the St. Pelagie Estate between September 1999 and December 2001.
32. In or about January 2002, Sanjay said he stopped all dealings with the St. Pelagie estate. Yet, he asserted that the estate "*was running as usual with a lot of money being made*" and the cultivation of crops and citrus produce continuing on the same basis as before September 1999 with the exception of the cutting of lumber which was not cut until May 2003 when 35 acres were cut and sold. He also asserted that after that the Defendants continued to be cut and sell lumber but not as whole trees.
33. Under cross-examination, Sanjay confirmed that he and his brother, Andrew collected money from the sale of produce after the death of his father until he left the estate in May 2002. He stated that he handed over that money to Rajesh because Rajesh told him that his father owed St. Clair Medical Centre for an operation as well as phone bills and taxes, although he did not give any evidence as to how much money he paid over to Rajesh over that period. He also indicated that Andrew would collect moneys from the sale of cocoa from the Cocoa and Coffee Board. Further, he would give money to Bissoondai to pass on to Rajesh but she was not aware that he was selling produce from the land. After his

departure from the estate in May 2002, he had not returned although he would pass by the estate. In 2003, he did not visit the estate and he accepted that any evidence that he gave as to what work was being done on the estate during that period was based on what someone else had told him. Most importantly, he admitted that since he left the estate, he could not say if Rajesh was in receipt of any money from the sale of produce and he conceded that it was true that Rajesh was never involved in the sale of produce from the 77 acres since 1999 when his father died.

34. In the light of this evidence, I find that Sanjay has failed to prove that Rajesh was ever involved in the cultivation and sale of crops and produce from the said parcels of land after the death of the deceased. I also do not accept his evidence that he paid over any monies to Rajesh between 1999 and 2002 or that he proved that, at any time after he left the estate in 2002, Rajesh was in receipt of monies from the sale of produce or lumber from the estate.

**B. If so, what profits, if any, were made by him from such cultivation from September 1999 to date?**

35. Having regard to Sanjay's evidence and my earlier findings in relation thereto, I also find that Rajesh was not in receipt of any moneys or profits from the cultivation of the produce, citrus or lumber after the death of the deceased in 1999.

**C. Is Rajesh liable to account to Sanjay for all sales and profits from the sales and profits from the sales of lumber and/or agricultural and/or citrus produce**

36. Since Rajesh was not involved in the management or cultivation of the estate or in receipt of any income or profits from the sales of lumber, produce or citrus, he cannot be held accountable to Sanjay for such income. The evidence of Sanjay is clear that it was his brother Andrew who took charge of the cultivation of the estate and that monies were collected by Sanjay and Andrew from the sale of produce, citrus, lumber and cocoa. Since I do not believe Sanjay that he paid over any monies to Rajesh between 1999 and 2002 and since no evidence was led in support of the allegation that Rajesh was in receipt of income from the sale of produce, citrus or lumber after 2002, I have come to the conclusion that I cannot make an Order against Rajesh, either in his personal capacity or as Administrator of the estate of his father, holding him accountable to Sanjay for the profits from such sales.

**D. Is Sanjay entitled to an Order against Rajesh for the payment of any amount found to be due, after the taking of an account?**

37. For all the aforementioned reasons, I find that Sanjay is not entitled to an Order against Rajesh for the payment of any money.

**Conclusion**

38. In all the circumstances, since the Claimant, Sanjay has failed to prove his case against the Defendant, Rajesh either in his personal capacity or as Administrator of the Estate of the deceased, in the Produce Action, I would dismiss his claim.

39. Further, since the Ancillary Claimant has failed in her case against Sanjay and Rajesh, I would also dismiss the Ancillary Claim.

### **The Chicken Farm Action**

- A. **As between Bissoondai and Sanjay, whether, after the death of the deceased, Bissoondai became solely entitled to the continued use and benefit of the portion of the St. Pelagie Estate on which the chicken farm business was operated as well as the financial benefits and responsibilities of that business, until her death?**

### **The Evidence**

40. In her witness statement, Bissoondai gave evidence that the lands purchased in 1992, including St. Pelagie Estate, were purchased in the names of Sanjay and Rajesh with moneys from the joint earnings of the deceased and herself. At that time of purchase, it was her intention and the intention of the deceased that Sanjay and Rajesh would only benefit from their ownership of the properties after the death of both parents and this was understood by both Sanjay and Rajesh. The decision to purchase the lands in their names was made by the deceased and Bissoondai as their alternative to a will.
41. Initially, the eastern part of St. Pelagie Estate was used for cattle rearing, the western side for cocoa and coffee cultivation and southern side for market gardening. However, by 1996 or 1997, cattle rearing was stopped because it was too chaotic and hard to manage.



42. In about 1997/1998 she and deceased agreed to go into poultry rearing and Sanjay was not involved in that decision. She and the deceased approached Malabar Farms to be one of their poultry farmers and they made an initial capital investment of \$15,000 to \$16,000 and they used lumber from the estate to construct the first poultry pen. Prior to the death of the deceased, neither Sanjay nor Rajesh sought to obtain any additional benefit from the poultry business conducted by their parents on the St. Pelagie Estate.
43. After the death of the deceased, Bissoondai instructed that the cheques for the poultry farm business be made payable to Rajesh as she trusted him to encash the cheques on her behalf and to follow her instructions. She continued to have workers on the poultry farm and she instructed Malabar Farms to make payments for the grow-outs to Rajesh.
44. In about the year 2000, Malabar Farms closed down and Supermix took over but the contracts were put in the name of Rajesh on her behalf and payments were made to him. In that same year she constructed another poultry pen, at her sole expense, and she continued to give directions with regard to the business without any complaint or objection from Sanjay or Rajesh. She permitted Sanjay to sell the feedbags and the chicken manure and keep the proceeds.
45. In August 2001 Sanjay got married and his relationship with Bissoondai deteriorated. He began staying away from the farm. He became very aggressive and annoyed whenever she spoke to him. Eventually he left the estate of his own volition.
46. Up to and including 2001, the books and records of the poultry farm business were stored at the St. Pelagie Estate House and, after the departure of Sanjay, she attempted to locate them but she was unsuccessful. Without the benefit of books and records, she gave the

following estimates of the numbers of grow-outs and the gross income derived therefrom from September 1999 to 2007, which she had been unable to verify with Supermix:

<u>Year</u>	<u>No. grow-outs</u>	<u>Payments per grow-outs</u>
After Sep1999	1	\$25-26,000
2000	5	\$35,-40,000
2001	6	\$.....
2002	5	\$32-35,000
2003	6	\$32-35,000
2004	5	\$32-35,000
2005	6	\$32-35,000
2006	5	\$25-28,000
2007	7	\$28-30,000

47. After the death of the deceased, she used to give instructions to Sanjay, Rajesh and Vishnu (Andrew) on what she wanted done on the poultry farm in relation to the care, feeding, maintenance and monitoring of the grow-outs. They would keep records of the grow-outs on her behalf but Rajesh was the person who assisted her the most and did the management of the poultry business on her behalf. Since mid-2007, she put the contracts with Supermix in her name in order to protect her interests.

48. Under cross-examination, Bissoondai accepted that between 1976 and 1995, she was actively involved in taking care of the household and her infant children and these domestic commitments fully occupied her.

49. At the time of the purchase of the several parcels of land in 1992, she did not query why her name was put on these deeds although she agreed that her name was put on other deeds and, in particular, on the deed for Pioneer Plaza.
50. According to her, the purchase prices for the parcels of land were paid from their joint resources and that, at that time, she held a separate bank account into which she deposited moneys which deceased gave her for working the estate. However, she did not produce any document to support her contention that she contributed any monies towards the purchase of the parcels of land because she did not consider it important to ask the Bank for a bank statement.
51. With respect to the chicken farm, Bissoondai stated that the deceased constructed 4 poultry pens during her lifetime and that she contributed half of the money from a separate account in her name. However, she did not produce any bank statement to support this contribution. She also said that the contracts with Malabar Farms were in the name of the deceased only and she did not tell him to put her name on the contracts to show that she had an interest in the business. After the death of her husband, the contract with Malabar Farms was not transferred into her name but into Rajesh's name and the rates and taxes were also paid by him in his name. She did not consider it necessary to have anything in her name because "*we were a very knitted family.*"
52. After the contract was transferred into the name of Rajesh, he conducted all business but Sanjay was also actively involved in the running of the business until his departure in January 2002. With respect to the pen that she said she built in 2000, she could not recall how much she spent but she gave an estimate of \$80-90,000. When pressed about her

outlay to erect the pen in 2000, she then stated that the money came from a joint account held jointly with Rajesh but she did not produce any document to support this.

53. Quite significantly, Bissoondai resiled from her evidence-in-chief and from what I consider to be the essence of her Ancillary Claim when she stated that she and her husband agreed that she would have the benefit of the poultry farm, not the rest of the estate and she admitted that she had no interest in St. Pelagie Estate. She also admitted that her name was not written on any document in the Deed for the poultry farm, that the cheques for the grow-outs were not in her name and that she did not keep any records of the names of the workers she said she hired or how much she paid them. Further, the farm closure reports were signed by Sanjay after the death of her husband.

54. In his witness statement, Sanjay gave evidence that in or about May 1998, his father began a chicken farm business with the construction of one poultry pen on a portion of land comprising approximately 5,000 square feet on the St. Pelagie Estate.

55. According to Sanjay, *“when the chicken farm was started in 1998 it was agreed between myself and my father that he would be the Manager and/or recipient of all monies and financial rewards arising out of the Chicken Farm and only after his death all financial benefits and responsibilities would be transferred to and vested in him and in Rajesh equally. Bissoondaye Mungroo was nowhere involved in this.”*

56. In July 1998, the deceased built another poultry pen on another 5,000 square feet on the St/ Pelagie Estate. During the time of the operation of the chicken farm, Bissoondai was not involved in any way in its operations as she lived at Plum Mitan and would only visit

St. Pelagie Estate periodically for short periods of time to cook, clean or wash clothes for the deceased or to perform other domestic chores.

57. Sanjay set out in detail the work that he did on the farm, with the assistance of his brother Vishnu Andrew, such as cleaning and sanitising the pens, feeding the birds and making them secure and warm, administering medication and vaccines and keeping daily records of the mortality rates of the birds.. He also produced a Contract Farming Payment Schedule from Malabar Farms.

58. In December 1998, he and his father constructed two more poultry pens each occupying 7,500 square feet of Pelagie Estate with a capacity of 7,500 birds per pen. He assisted his father in the construction of these pens by providing physical labour and supervision of workmen. In late 1998/early 1999, due to the increased workload, his father hired two workers and Sanjay assumed responsibility for overseeing operations of the chicken farm. These responsibilities included keeping daily records of attendance of workers, keeping mortality records, feeding records, medication records, checking the number of birds, selling the birds and signing the Farm Closure Reports.

59. After his father's death, he assumed responsibility for the operations of the farm since he was the most experienced of his two brothers, Rajesh and Vishnu Andrew. However, Rajesh requested Malabar Farms to make the payments for each grow-out in his name and thereafter payments were made in the name of "*R. Sagar*". In the meantime, Sanjay would sell empty feedbags and chicken manure from which he earned about \$2,000 per month.

60. In mid-February 2001, Sanjay entered into an equipment loan agreement with Malabar Farms Limited for the loan of 21 fans and a copy of this agreement was produced.
61. In about March 2001, Rajesh and Sanjay built a fifth pen with materials purchased by their father prior to his death. This pen comprised 15,000 square feet on the Pelagie Estate with a capacity of 15,000 chickens. The labour cost for the construction of this pen was \$11,000.
62. After his marriage in August 2001, Sanjay requested monies from the business and he was given \$5,000.
63. In October 2001, Malabar Farms went into receivership whereupon Sanjay entered into an agreement with Supermix to grow birds for them.
64. In November 2001, there was a breakdown in communication between Sanjay and Bissoondai. Thereafter, cheques from Supermix started to come in the name of Rajesh and on or about 2<sup>nd</sup> January 2002, after an altercation with Rajesh, Sanjay stopped working at the chicken farm although he continued to live at the house on Pelagie Estate until about May 2002.
65. Under cross-examination by Counsel for Rajesh, Sanjay explained that when the deceased died, he left behind outstanding debts for medical expenses, phone bills and taxes and, for that reason, he handed over money to Rajesh who continued to receive money from the chicken farm business up to the date when he left the estate in 2002. Rajesh applied for probate of the deceased's estate and all the children viewed Rajesh as the person in charge.

66. In relation to the chicken farm business, Sanjay said that, in the presence of Rajesh, the deceased said that after he died the chicken farm business would belong to him and Rajesh. However, this evidence was not contained in his witness statement.
67. He also admitted that although the farm closure reports annexed to his witness statement were signed by him in relation to the period May 2000 to July 2001, Supermix made all cheques payable to Rajesh and he collected those cheques and handed them over to Rajesh, without objection. According to him, he did so in pursuance of a discussion he had with Rajesh, and not Bissoondai. Once again, there was no mention of any such discussion in his witness statement. He insisted, however, that Bissoondai was not at any time in control of the chicken farm business.
68. Under cross-examination by Counsel for Bissoondai, Sanjay gave evidence that after the death of the deceased, he and Rajesh discussed putting everything in Rajesh's name although this was not mentioned in his witness statement. He confirmed that he had no objection to the payments being made in Rajesh's name by Malabar Farms since there were debts to pay and Rajesh was the one who was outside all the time while his business was running the chicken farm and the estate and he was there all the time. He also stated that when Rajesh was collecting all the payments for the chicken farm, he did not raise with him or with Bissoondai the agreement which the deceased had communicated to him. He also confirmed that after he got married in September 2001, he began to question both Bissoondai and Rajesh about getting a salary and/or monies for working on the estate and on the chicken farm. Further, he accepted that his Attorney's letter dated 27<sup>th</sup>

January 2003 to Rajesh's Attorney did not refer to an agreement with his father, although he considered such agreement to be very important.

69. In his witness statement, Rajesh gave evidence that his father always ran the chicken farm business with his mother, without any financial contribution from either Sanjay or Rajesh. However, the contracts with Malabar Farms were in his father's name only. From time to time, his father and mother gave all the children small lump-sums. Both he and Sanjay helped out in the business when his father was alive and his parents always had workers. During his father's lifetime, there was never a dispute about the ownership of the chicken farm business although the lands on which it was conducted was in the joint names of the deceased, Sanjay and Rajesh. According to him, there was no understanding or agreement that the chicken farm business would go to Rajesh and Sanjay on the death of their father.

70. He also gave evidence that after his father died, his mother continued to carry on the chicken farm with the help of Sanjay, Andrew and Rajesh and they all acted on her instructions and under her supervision. About a year after the death of his father, Bissoondai constructed another pen with materials purchased with funds from the business and the cost of labour was about \$15,000, which did not include the cost of the stands. Due to her trust in him, Bissoondai gave instructions to Malabar Farms to make the cheques payable to Rajesh so that he could collect and negotiate them on her behalf. The disbursement of the funds from these cheques was carried out in accordance with his Bissoondai's instructions.



71. In about 2001-2002, Sanjay complained to Rajesh that Bissoondai was not sharing enough of the profits of the business with him and with the other children and in or about November 2001 he left the lands of his own free will and went to live with his wife's family.

72. Under cross-examination by Counsel for Sanjay, Rajesh gave evidence that his father hired workers to work on the estate and his mother had no need to work there. He could not say if his mother put money into the poultry farm but, to his knowledge, she was not actually involved in running the farm. However, he insisted that she financed and built the fifth chicken pen. He agreed that Sanjay was involved in the day to day running of the poultry farm but the cheques were made payable in his name. He indicated that the farm would produce 5 grow-outs per year for which he would be paid \$35,000 per grow-out and he estimated that the wages for two workers would be on average \$2,400 per month. In addition, there would be expenses for electricity, water and maintenance of the farm. When he collected cheque payments, he would deposit them into a savings account at Scotiabank, Sangre Grande in the joint names of Bissoondai and Rajesh.

### **Analysis of the evidence**

73. The resolution of this issue requires this Court to determine whether the contentions of Bissoondai or the contentions of Sanjay are more plausible and credible. In the absence of any documentary evidence which clearly set out what was to become of the poultry farm business after the death of the deceased, the Court must look at the surrounding circumstances before and after the death of the deceased to determine to what extent it is

possible to ascertain whether Sanjay and Rajesh, as the surviving owners of the St. Pelagie Estate, on which all the chicken pens were constructed, were entitled to the benefits and responsibilities of the chicken farm or whether Bissoondai was entitled to the use and benefit of the portion of the St. Pelagie Estate on which the Chicken Farm was operated as well as the financial rewards of this business until her death.

74. The evidence of Bissoondai, Rajesh and Sanjay make it clear that during his lifetime, the deceased was completely in control of all aspects of the chicken farm, although the business was operated on St. Pelagie Estate which was registered in the names of the deceased, Sanjay and Rajesh as joint tenants. The contracts were in his name, he hired the workers, he dealt with Malabar Farms, he collected all monies and he gave his wife and children whatever money he felt they needed whenever he pleased. His absolute control was never challenged by his wife or any of his children at any time.

75. It is not in dispute that, prior to the death of the deceased, Sanjay assisted his father on the estate after he left secondary school on or about 1993. When the deceased started the chicken farm, Sanjay was the child most actively involved in its operations and neither Bissoondai nor Rajesh challenged Sanjay on his evidence of his day to day involvement in the chicken farm until the death of the deceased.

76. In her Ancillary Claim, Bissoondai sought a declaration that she was entitled to the continued use and benefit of all the lands purchased in 1992, including the St. Pelagie Estate, based on the following:

- (a) She and the deceased jointly purchased the lands with monies accumulated from their joint business endeavours;

- (b) At the time of purchase, she and the deceased instructed their Attorney at Law to put the lands in the names of Sanjay and Rajesh;
- (c) The lands belonged to her and the deceased beneficially since the purchase of the same and it was their understanding and intention that they would be enjoyed by them both until their deaths, at which time they would belong to Sanjay and Rajesh;
- (d) The financing and upkeep of the poultry farm was undertaken by the deceased and by her and the proceeds of sales of the business had always been retained by the deceased and by her for their use.

77. Counsel for Bissoondai argued that a resulting trust arose in her favour on the grounds that she contributed to the payment of the purchase price and there was a common intention or understanding, expressly or implicitly, between the deceased and Bissoondai that she would take some benefit in the property.

78. In Underhill & Hayton's Law of Trusts and Trustees (18<sup>th</sup> Edition)<sup>1</sup> the law is summarised as follows:

*“25.1 (1) When real or personal property is conveyed to a purchaser jointly with others, or to one or more persons other than the purchaser, it will be presumed that he does not intend the other to take beneficially, provided that he is proved (by parol or other evidence) to have paid the purchase-money in the character of*

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<sup>1</sup> At p. 463-464

*purchaser (as opposed to that of the donor or lender); and failure to rebut this presumption will lead to the imposition of a resulting trust.*

(2) *This presumption may be rebutted by parol or other evidence that the purchaser intended to benefit the others.*

(3) *If the relevant transaction pre-dates the commencement of the Equality Act 2010, s. 199, then this presumption may also be rebutted by the fact that the person in whom the property was vested was the lawful wife or fiancée or child of the purchaser or was some person towards whom he stood in loco parentis....*

*In any of these cases a prima facie (but rebuttable) presumption will arise that the purchaser intended the ostensible grantee or grantees to take beneficially....*

25.32 *Where the presumption of advancement applies it is particularly strong for property bought in the name of a child who is a minor<sup>2</sup> and it seems it should make no difference whether the child is legitimate, legitimated or adopted.....”*

79. The evidence of Bissoondai fell woefully short of proving her allegations. Firstly, she failed to adduce any evidence that she was involved in any joint business endeavour with the deceased between 1976 and 1992 because, according to her evidence under cross-examination, her responsibilities of child-rearing and homemaking kept her fully occupied over that period. She also failed to bring before the Court any evidence to show

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<sup>2</sup> Shephard v. Cartwright [1955] AC 431 at 452

that she contributed financially towards the purchase price of the lands although she alleged that she had contributed money from her bank account. In addition, the presumption in her favour would be rebutted by the fact that the lands were vested in the names of Sanjay and Rajesh, the sons of the deceased and, prima facie, they would be entitled to a presumption in their favour that the deceased intended them to take a beneficial interest in the said lands.

80. Accordingly, in my opinion, she cannot rely on a presumption of a resulting trust in her favour based on her contribution of monies towards the purchase price. Secondly, she failed to adduce any evidence from Mr. Bissoondatt, the Attorney at Law who prepared the conveyances, with respect to the instructions he received at that time. Thirdly, the deed for St. Pelagie Estate conveyed the lands to the deceased and his sons, Sanjay and Rajesh, as joint tenants. Therefore, in the absence of proof of a financial contribution by her towards the purchase price, in order to establish a constructive trust in her favour, she was obliged to adduce cogent evidence that there was, expressly or impliedly, a common intention or understanding that she would take some benefit in the property. At this hurdle, in particular, Bissoondai faltered and eventually admitted that there was no such common intention or understanding with the deceased with respect to any of the lands. She then sought to change the course and focus of her claim to a claim for the benefit of the poultry farm and the use and benefit of that portion of the St. Pelagie Estate on which the farm stood until her death. However, even in respect of this claim, she failed to persuade the Court that she was in any way involved, financially or otherwise, in this business either at its commencement or at any time up to the death of the deceased. Her name was not on any of the contracts, she did not work at the chicken farm, she did not

have any dealings with Malabar Farms or Supermix and she could not recall the names of the workers or the amount she paid them. Further, she produced no evidence in support of the alleged expenditure of \$80-90,000 to build the fifth chicken pen.

81. On the other hand, Sanjay gave evidence that shortly after the start-up of the chicken farm, his father discussed with him that he and Rajesh would take over the business after his death. In his witness statement, he stated that *“when the chicken farm was started in 1998, it was agreed between myself and my father that he would be the Manager and/or recipient of all monies and financial rewards arising out of the Chicken Farm and only after his death all financial benefits and responsibilities would be transferred and become vested to myself the Plaintiff and the First Defendant equally.”* Although under cross-examination, he sought to introduce Rajesh into that conversation and Rajesh denied any such conversation, the evidence demonstrated that after the death of the deceased, Sanjay continued to run the chicken farm operationally and Rajesh assumed responsibility for the administrative and financial aspects of the business. Rajesh’s name was put on the contracts and he collected the payments from Malabar Farms and Supermix. Sanjay said he had no objection to this arrangement because he had been told by Rajesh that the deceased had outstanding debts to pay which Rajesh, as legal personal representative of the deceased’s estate was liquidating. He even collected the cheques in name of Rajesh and handed them over to him. In my opinion, this arrangement is consistent with Sanjay’s evidence as to the expressed intentions of the deceased as well as the terms of the deed to the St. Pelagie Estate.

82. This division of responsibilities worked well between September 1999 and November 2001 when there was a disagreement between Sanjay and Bissoondai. The significance of that date is that Sanjay had gotten married in August 2001 and he requested a higher income from the chicken farm business. This issue was not resolved to Sanjay's satisfaction and, as a consequence, he stopped working at the chicken farm on or about January 2002. Thereafter, Rajesh continued to collect the cheques from Supermix and to deposit the proceeds into a joint account with Bissoondai.

83. In my opinion, the mere fact that after the death of the deceased, Rajesh took instructions from Bissoondai or shared the income of the business with her does not prove that she became entitled to the business or the use and benefit of the portion of land on which the chicken farm was operated. In fact, such action on his part gives a ring of truth to Sanjay's evidence that he was forced out of the business by Rajesh and Bissoondai and deprived of any income therefrom since on or about January 2002.

### **Conclusion**

84. In my view, therefore, Bissoondai has failed to satisfy me that there was any common intention or understanding that the chicken farm business would be hers exclusively until her death and/or that she was entitled to the continued use and benefit of the portion of the St. Pelagie Estate on which the chicken farm is operated. Accordingly, I find that after the death of the deceased, the St. Pelagie Estate passed to Sanjay and Rajesh as the surviving joint tenants by virtue of the rule of survivorship together with the chicken farm business operated thereon.

**B. As between Sanjay and Rajesh, is Sanjay is entitled to:**

(i) **a declaration that he is entitled to such portion as the Court shall find just of all profits on sales of chickens accrued from and continuing from the 14<sup>th</sup> September 1999 from the chicken farm business?**

(ii) **An account of:**

- **All sales and profits of chickens effected by Rajesh on account of the said chicken farm business since the 14<sup>th</sup> September 1999;**
- **All monies paid by Malabar Farms Limited to Rajesh since the 14<sup>th</sup> September 1999 and of the manner in which Rajesh applied the said monies;**
- **All monies paid by Supermix Feed (Trinidad) Limited to Rajesh since the 14<sup>th</sup> September 1999 and the manner in which Rajesh applied the said monies**

(iii) **An Order for the payment by Rajesh of the amount found due to him upon the taking of such account?**

85. Based on the evidence of the witnesses and my earlier findings on the previous issue, I am of the opinion that Sanjay is entitled to succeed on his claim against Rajesh in his personal capacity, and not as Administrator of the deceased's estate, for the declaration that he is entitled to share in the profits of the chicken farm after the death of the deceased and that he is also entitled to the accounts sought or for the payment by Rajesh to him of the amounts found to be due on the taking of such account.

**C. Whether Rajesh assaulted and verbally abused Sanjay in or about the 2<sup>nd</sup> January 2002 on the compound of the chicken farm business? If so, what damages, if any, Sanjay is entitled to for the alleged assault?**



86. In his witness statement, Sanjay gave evidence that in or about the 2<sup>nd</sup> January 2002 he went to the farm and was talking with the workers. Rajesh got angry with what he was telling the workers and he brandished a cutlass in his presence and used threatening and abusive language which caused him to be afraid and humiliated.
87. Under cross-examination by Counsel for Rajesh, Sanjay insisted that although he and Rajesh are of similar build and he was not afraid of Rajesh, when Rajesh pulled a cutlass for him on the chicken farm, he had reason to be afraid of him. However, he did not seek a protection order against Rajesh in the Magistrate's Court and he remained living in the house on the Estate until May 2002 and he was not afraid of life and limb.
88. In his witness statement, Rajesh denied assaulting Sanjay in January 2002 or at all. Under cross-examination by Counsel for Sanjay, he insisted that he did not threaten Sanjay with a cutlass or use violent and abusive language towards him.
89. The resolution of this dispute requires the Court to choose between the evidence of two brothers who both insist that they are speaking the truth. In such circumstances, bearing in mind that Sanjay bears the burden of proof of the allegation of assault, I have taken note of the fact that Sanjay's account of the incident did not specify the names of the workers with whom he was speaking with when Rajesh brandished the cutlass and verbally abused him. Further, he did not provide any detail as to what he was telling the workers that caused Rajesh to get angry and he did not call any witnesses at the trial to corroborate his story. There is no mention in his witness statement of any report being made by him to the Police and in the letters written by his Attorney on his behalf on the 27<sup>th</sup> January 2003 and 9<sup>th</sup> September 2003, there was no complaint made about an assault,

threats or abusive language. In fact, in the letter dated 9<sup>th</sup> September 2003 from the Sanjay's Attorney to Rajesh, there is a rather bald statement that "*due to unhappy differences in the family my client was forced out of the farm in January 2002*".

90. Accordingly, I am not satisfied that Sanjay has discharged the burden of proof and I find against him on his claim for damages for assault.

### **Conclusion**

91. In the light of my earlier findings. I will make the following orders in the Chicken Farm Action:

- (i) It is hereby adjudged and declared that the Claimant is entitled to half of profits on the sales of chickens accrued from the 14<sup>th</sup> September 1999 to date from the chicken farm business operated on the St. Pelagie Estate;
- (ii) It is hereby ordered that the following accounts and inquiries be taken by a Master in Chambers, namely:
  - (a) An account of all sales effected, expenses incurred and profits realised by the Defendant in the conduct of the chicken farm business on the St. Pelagie Estate from the 14<sup>th</sup> September 1999 to the date of this Order;
  - (b) An account of all monies received by the Defendant from Malabar Farms Limited between the 14<sup>th</sup> September 1999 and

October 2001 and of the manner in which the Defendant has applied or disbursed such monies;

(c) An account of all monies received by the Defendant from Supermix Feeds Limited between November 2001 and the date of this Order and of the manner in which the Defendant has applied or disbursed such monies;

(d) An account of all income deposited by the Defendant from the chicken farm business into accounts at banks or other financial institutions either in his own name or jointly with Bissoondai Mungroo or any other person from 14<sup>th</sup> September 1999 to the date of this Order;

(iii) And it is further ordered that the Defendant do within ninety (90) days of the date hereof file and serve upon the Claimant the accounts hereinabove ordered with all necessary vouchers, invoices, bank statements or other supporting documentation and verify the said account by affidavit, with liberty to the Claimant to file an affidavit in answer to the said account as so verified within thirty (30) days after service of the account;

(iv) And it is further ordered that the Defendant do pay to the Claimant the amount which the Master may certify to be due to the Claimant on the taking of such account together with interest thereon at the rate of 6 per cent per annum from the 12<sup>th</sup> September 2003 to the date of payment.

- (v) And it is further ordered that the Claimant's claim against the Defendant for damages for assault be dismissed;
- (vi) And it is further ordered that the claim of the Ancillary Claimant against the Ancillary Defendants be dismissed.

**Costs**

92. As earlier indicated, I now invite the parties to address me on the appropriate order for costs in the context of the Orders hereinbefore made.

**Dated the 3rd day of July 2013**

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**Judge**