

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-01358

BETWEEN

OMKAR RAMSOOK

Claimant

AND

ADESH RAMSOOK

Defendant

Before The Hon. Madam Justice C. Gobin

Appearances:

Mr. A. Ashraph for the Claimant

Mr. H. Harrikissoon for the Defendant

JUDGMENT

1. The claimant claims an interest in the subject lands on the basis of an estoppel. The law is trite. What I need to do is to resolve issues of fact and to determine whether they do indeed give rise to the estoppel as claimed.

2. The claimant says that when he was aged 18, having just left school and one year after having learnt a trade as a carpenter his parents took him to the disputed lands, pointed out an area which ran from the eastern boundary about 55 feet on the road to the rear end of what was rice lands at the time. They encouraged him to fill it up, promising it would be his. He claims he did

so at his own expense with about 250 truckloads of material and built a basic wooded house on it in the following year.

3. If these allegations are found to be true they would give rise to an equity the extent of which would be left to be determined by the court. Then the most important question which would remain would be how should the equity be satisfied.

4. The defendant joins issue with the claimant on the facts. He denies there was ever a promise or expenditure as alleged. He says his parents were anxious that the claimant should not remain in the family home because of his bad behavior, that in order to maintain peace and some distance between the claimant and the rest of the family the parents filled up the subject plot, and that the father stood the expense of building the wooden structure with the help of several family members including the claimant.

5. It is not in dispute that the original structure was converted into either three or four one bedroom apartments sometime between at earliest 1987 and at latest prior to the death of the father in 1994.

6. The claimant says he is the one who converted the building because the property was his own. He says he did so at his own expense. During his absence out of Trinidad, he allowed his parents to manage the property and to collect rents out of which they kept 2/3 for themselves and 1/3 for him. The defendant on the other hand says that when the claimant migrated in 1988 or thereabouts the wooden structure was still incomplete and it was after the claimant left for the

USA where he has since resided permanently, and since he had expressed his intention not to return, the parents re-entered possession of the wooded house and expended their own monies to complete and convert the building into the one bedroom apartments. They themselves rented out the apartments which which rent they kept and used as their own income. Having considered the evidence I have found the following to be the facts.

7. At age 18, barely out of school and 8 years before he got married it seems odd to me that there would have been any need for his own home. I cannot accept that the parents were simply making an offer to give the claimant his own house spot to build his home in the circumstances described by the claimant. I find it significant that he only began to occupy the unfinished structure after he got married, and this coincides with the time when the electricity and water connections were made. In those circumstances on a balance of probabilities it seems more likely that the parents wanted him out for reasons connected with his own his own behavior.

8. This notwithstanding I do believe the claimant was encouraged or perhaps made to expend moneys in perhaps the same way that his brother Mukesh's earnings were used in another structure, and that the claimant did indeed incur some expense in filling the land and building the original structure. But he was not alone in this venture. I believe his parents assisted financially and other family members including Mukesh as well as the father and the claimant provided labour on the structure. I find that the structure remained incomplete up to the time he migrated as the claimant let slip under his cross-examination.

9. On a balance of probabilities I find that it was only after the death of the parents and because he had expended some monies and labour on the original structure, that the claimant began to lay claim to the apartments and the income. I find that the apartments were converted by the parents. In so finding I reject the evidence of Indarjit Balram when he says he did anything other than work on the roof of the original structure. In his own affidavit in earlier High Court proceedings in 2003, Balram gave evidence limiting the extent of his involvement in the construction to work on the roof. In his evidence in this case he has sought to say he did much more. The attempt by Balram to embellish his evidence at this stage did not impress me. I reject it. Further, the evidence of both the claimant and Balram as to the conversion works appeared to be vague.

10. I accept that the apartment belonged to the parents too, because the financial arrangements alleged by the claimant regarding the collection and use of rent was too vague and inconsistent. I have assessed this claimant to be fairly meticulous about money matters even with family members as his conduct in relation to the matter of the loan between himself and the defendant showed. In those circumstances I would have expected some evidence of a bank account or at least some form of accounting for what he says were his rent moneys collected over several years. In the absence of such I reject his claim that he converted the apartments and received the income from them as he was entitled to. I do not believe the parents collected rent on his behalf. I find that the rent monies were their own.

11. The claimant's attorney raised an important question, if the apartments belonged to the parents and not the claimant, then why did the defendant bulldoze them. If they had remained

standing they would have been his following the grant of the father's estate he would have had this income earning asset. I have concluded that given the state of the relationship, especially the continuing incidents, the violence between these brothers, and recognizing that the claimant had made some contribution to the original structure, the defendant considered it more beneficial to get rid of the apartments rather than to allow the claimant to continue to stake any claim in the property. The financial benefit, if there was any in keeping them and renting them out was outweighed by the need to rid it of any claim by his brother. He clearly felt that destroying the building would put the claimant's claim to rest. His actions in so destroying them are however viewed as extremely high handed. This is more so since the defendant had filed the previous Court proceedings and would have been aware that his brother was making a claim to the property. I shall make an appropriate award of exemplary damages because of this conduct.

12. Another significant point raised by the claimant in support of his claim as to the father's intention to give him the land was that the other children of the family benefitted in a similar way. Again this required serious consideration. In the end I rejected it because no such arrangement was made regarding the younger daughter Sharmilla, so the suggestion that the parents intended to benefit all the children in the same way can be doubted. Sharmilla is now there through an arrangement with her brother, the defendant and only since recently after the breakdown of her marriage. There has been no evidence from the other siblings who have their homes to confirm the parents intention, but if no provision was made for their youngest child, then no pattern can be deduced.

13. From my findings above it should be fairly obvious that the extent of the equity is going to be limited. In deciding how it should be satisfied I prefer to make an order for compensation for the following reasons:

- (1) Even if the father encouraged the claimant to build and to expend moneys he could not have had in mind to give the claimant anything approaching a freehold interest. In turn the claimant who was aware of the terms of State lease under which his father held the lands, could not have expected anything like that.
- (2) At the date of this decision the lease has expired. To give any unqualified right to occupy would interfere with the rights of the State. As a matter of policy, since the State is not a party to this action, the court would be reluctant to do so. The fact that others in the area with similar leases have breached the terms to allow permanent structures and occupation cannot influence the orders of the court.
- (3) If his expectation was that he would have been provided with a home to live, the claimant has demonstrated he has not required this in Trinidad since 1988 or thereabouts. In these proceedings he has repeated almost verbatim what he said about his intention to return to Trinidad when he filed an affidavit in the 2003 proceedings. At that time it was to be when his son completed his education. Almost eight years on the position is the same.
- (4) Such limited financial contribution as I have found on the part of the claimant was made several years ago. Further the claimant has collected rents to which he was not entitled for several years.
- (5) In the circumstances of the allegations of violence, a clean break situation is considered appropriate. The comfort of the defendant and Sharmilla who have their home there has been considered important.

- (6) The court declares that the defendant holds whatsoever interest he has in the property subject to equity in the claimant favour. The defendant will compensate the claimant in the sum of \$75,000.00 in full settlement of his claim. The defendant will pay exemplary damages of \$75,000.00 and costs on the prescribed scale.

Dated this 6th day of May, 2011

CAROL GOBIN

JUDGE