

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2010-02949

BETWEEN

SUKHIYA RAMLAL

Claimant

AND

AZAD MUSTAPHA

(In his capacity as Executor/Administrator of the estate of Abbass Mustapha)

AND

AZAD MUSTAPHA

(in his personal capacity)

Defendant

CV 2011-01309

BETWEEN

SUKHIYA RAMLAL

**(In personal capacity and as Legal Personal Representative of
her late common law husband Bhim Singh)**

Claimant

AND

AZAD MUSTAPHA

AND

INDHAJIT CHARLES

Defendants

Before The Hon. Madam Justice C. Gobin

Appearances:

**Mr. S. Hosein instructed by Mr. R. Singh
for the Claimant**

**Mr. Heffes-Doon instructed by Ms. N. Alfonso
for the Defendant**

REASONS

1. These actions which were consolidated to be heard together, both concerned the claimant's alleged right to ownership of a parcel of land situate at Abass Avenue, El Socorro Extension No.2. The subject lands measure approximately 8200sq. ft. The claimant's immediate adjoining neighbours are, to the west Mr. Indarjit Charles (a defendant), and on the eastern boundary, one Krishna Ramoutar. She alleged that she became the owner of the subject land in the following circumstances.

The claimant's case against Azad Mustapha

2. She was the common law wife of Bhim Singh who died in or about 1985. She and Bhim began to occupy the subject lands in or about 1963. They were tenants of Mr. Abbass Mustapha the father of Azad Mustapha, the other defendant. Between 1963 and 2001 or thereabouts she and her husband (until his death) built on various parts of it at one time or the other, four wooden structures, until eventually a concrete house was erected in which the claimant resides up to the present time.

3. At all times the wooden structures were erected near the roadway, that is, Abass Avenue and a wooden plank allowed access from the road to the yard. At times the houses would be placed closer towards the eastern portion of the land (nearer

Ramoutar) or at others towards the west (nearer Charles). The location of the house depended on what part of the subject lands the family was able to fill to support a replacement structure when it became necessary, after the last one they were occupying would be partially submerged and damaged and the foundation or fill completely washed away. The entire area was prone to flooding, and relocating and rebuilding was what the family had to do at least four times between 1963 and 2001. A newspaper clipping which was produced by the claimant very vividly captured an image of one of the wooden houses after a deluge. It left me in no doubt as to the need to move from one spot to the next.

4. In 1980 Abass Mustapha entered into an agreement with herself and her husband to sell the subject lands. The agreement was evidenced by a receipt dated 6th May 1980. The first deposit of \$2,000.00 had by that date already been paid by Clifford Bheem, the claimant's son, on their behalf, and a receipt had been issued. Several installments were paid until the outstanding balance of \$17,000.00 was paid on 13th April 1982.

5. Mr. Bhim Singh died in 1985. The claimant attempted to get her deed. She visited Mr. Mustapha. There was some query as to the payment of the balance \$17,000.00. This money had been raised by way of a loan to Bhim Singh from Royal Bank. The loan was guaranteed by Azad Mustapha. The proceeds of the loan were paid in a draft to Azad who issued a receipt on behalf of Abbass Mustapha. This receipt is issued from a receipt book of Mr. Azad's private business. On one occasion when she went to ask about her deed in her presence and that of Azad's and

his brother, Mr. Abbass Mustapha claimed he had never received the moneys. The claimant had to return with her receipts reflecting the payment to Azad. The matter was not resolved even then.

6. Mr. Abbass Mustapha became ill and subsequently died without giving her the deed. Over the years she made attempts to communicate with the family of the deceased owner with no success. She was told they were not in Trinidad. Eventually she became aware that Azad was in Trinidad on a visit. In 2007 her attorney sent him a letter to which he did not respond. She and a daughter left messages for him on a telephone.

7. Azad eventually visited her home in 2010 and agreed to arrange for the transfer of that part of the subject land on which the concrete house was by then standing. He claimed that the remainder, which was “empty”, was a separate lot, not the subject of the agreement. He offered to sell her the “empty” lot. Azad subsequently sent a surveyor (Mr. Ragoo) onto the lands who effectively divided the subject lands excising a lot measuring 4118 sq. ft. (Lot 6A) which Azad claimed belonged to his father’s estate. Mr. Ragoo’s first survey plan showed the claimant’s house on a plot (Lot 6B) which measured about the same.

8. The claimant objected to this division and stated categorically that she was always in occupation of the entire subject parcel living in her houses on one part on the other including the “empty lot”, depending on what part could sustain the structure that was her home, and at all times planting the remainder with a kitchen garden and rearing livestock, pigs and poultry. She claimed that the agreement for

sale was for a lot, which lot included the entire subject lands which was entirely occupied by herself and her husband at the time of the sale and since 1963. Azad insisted that that was not so. If she did not want to buy he would sell to someone else.

The case against Indarjit Charles

9. Mr. Charles lives on the lot located on the western side of that portion of the subject lands that is now being called the “empty lot”. He was seen in conversation with Azad on some of his visits after he first appeared in 2010.

10. The first action had already been filed in July 2010 when the claimant alleged Mr. Charles began to carry out works on his own adjoining lot, in the course of which he ran pipes through his wall which ended up on the subject lands and which she feared would empty water and sewerage on to it. Further, he began to carry out works on the empty lot, depositing a mound of boulders, digging a large hole, depositing a septic tank, entering with a backhoe excavator. There was an incident in which Mr. Charles threatened and abused her at her home.

11. The claimant’s attorney wrote to Mr. Charles, whose lawyer responded to the effect that Lot 6A on which Mr. Charles had allegedly entered, belonged to the heirs of Abbass Mustapha and not the claimant. Mr. Charles, too, denied that the claimant had occupied the entire subject parcels claiming the “empty lot” was largely abandoned and overgrown until he filled it up in 2008 and allowed the claimant to do some planting near his wall.

The Defences

12. The main defence was Azad's. He accepted that his father had in fact entered into an agreement to sell a lot occupied by Bhim Singh. He claimed that the claimant was not entitled to claim the subject lands at all because she was never a party to the agreement for sale dated 7th May 1980. He had been with his father and witnessed the execution of the document. Her name must have been inserted on the top of that document afterward. He did not see it on the receipt at the time of its preparation or execution. In principle, Azad on behalf of the estate was prepared to effect a conveyance to the persons lawfully entitled to Bhim Singh's estate.

13. But Azad's defence went further. His father had agreed to sell one lot (referred to as No.5 on the receipt) which did not include the lot beyond that on which the claimant's concrete house stands today. The area between her house and Mr. Charles' boundary is a separate lot which was not included in the agreement for sale.

14. For his part, Mr. Charles denied entering the lands and doing any of the acts complained of. He adopted a position at first supported by his witness Alissa Sombrano in her witness statement, that the 'empty lot' had never been occupied by the claimant or Bhim Singh. He claimed that he was the person who in 2008 filled it up, and it was only after that that the claimant began to plant peas etc on it and he had no objection to her doing so.

The Issues

15. The issues which I had to determine were factual –

- (a) What were the dimensions of the parcel of land which the claimant and Bhim Singh had been occupying since 1963.
- (b) Did Abbass Mustapha have an agreement for sale with the claimant Sukiya Ramlal as well as Bhim Singh.
- (c) Were the receipts reflecting the inclusion of the claimant's name made by Abbass Mustapha.
- (d) Has Lot 6(A) as shown on the Ragoo Plan been a separate and distinct parcel from Lot 6(B) or have they together always formed the lands occupied by the claimant and Bhim Singh. Was Lot (5) referred to in the receipt, in fact Lot 6(B) or was it the same as 6(A) and 6(B) on Mr. Ragoo's plan.
- (e) Did Mr. Charles enter the subject lands and execute works thereon and if he did, or if pipes from his lot drained unto the subject lands, was this unlawful.

16. The claimant gave evidence and called witnesses including a daughter who supported her case. After I had heard the evidence I gave judgment for the claimant. I preferred the evidence of the claimant and her witnesses who were all consistent and whose demeanour and candid responses impressed me. Their evidence was supported by several more contemporaneous documents. I rejected outright material aspects of the Azad Mustapha's evidence and I now indicate my reasons for so doing.

Reasons for rejecting Azad's evidence

17. The thrust of his defence in the earlier action was that his father had no agreement with Sukiya Ramlal, only with Bhim Singh. He went so far as to claim that her name did not appear on the receipt evidencing the agreement for sale and that it was only inserted afterwards, suggesting a fraudulent tampering for the purposes of her claim.

18. The entire receipt was not shown on the annexure to the statement of case. The document was probably photocopied when it was folded. It was however later disclosed, in full, in the claimant's bundle. Because of the allegation that the claimant had only inserted her name at a later stage, I called for the original receipt dated 6th May 1980 and it was produced in Court. On inspection, not only did the claimant's name appear at the top, but it also appeared in a notation at the bottom along with Bhim Singh's in what appeared to be a record of some payments. This second appearance of her name had not previously been addressed by Mr. Mustapha. He claimed to know nothing of that note, which on the face of it, further supported the claimant's case.

19. Azad's attempts to persuade me that he recalled the circumstances under which it was issued and the details of the contents of the receipt from his memory did not impress. It served only to convince me that he was not present at all when it was made out. I have concluded from his handwriting that the elder Mr. Mustapha was not a very proficient writer and that his level of formal education was not high. On a balance of probabilities I did not accept that if his son, a retired banker had been

present when this agreement was made that his father would produce the receipt in the language and form in which it was given.

20. On the face of it, I found that the handwriting throughout the receipt dated 6th May 1980 to be consistent. The note at the bottom recorded other payments and significantly included what I perceived to be (the tear in the document notwithstanding) a clear reference to the previous \$2,000.00 payment by Clifford on behalf of his parents which had not been referred to by Azad at all. What was more conclusive is that a bundle of other receipts produced by the claimant reflected the claimant's name as well as Bhim Singh's. One dated 5th February 1980 made by Abbass Mustapha records the payment "on account". Several others which were prepared by Zubida Mustapha (Azad's wife) also reflect that payment for one lot of land was received from the claimant and Mr. Bhim Singh. One receipt only, related to a payment of rent, all others I accept were issued on account of the purchase price. When he was confronted with these receipts, Azad sought to say that the claimant may have actually brought the monies to their home to pay on behalf of Bhim, and Zubida may have issued the receipts in her name. This was not consistent with his earlier statement that only Bhim came to his father's house to make payments.

21. The contemporaneous documents clearly established that Sukhiya was jointly a tenant of the land and that she had together with Bhim, contracted for the sale of the parcel of land and that she was entitled to have the property vested in herself after the death of Mr. Bhim Singh in 1985. This put to rest the main plank of Azad's defence.

22. Azad's denial of her entitlement during the course of this litigation is inconsistent with the position taken in his attorney's letter dated August 10, 2010. In response to the claimant's attorney's letter, Ms. Indrani Ramoutar, acting on behalf of several persons including Azad Mustapha and it appears Mr. Indarjit Charles wrote -

“(2) your client occupies the said Lot 6 (B) which your client purchased from the estate of the deceased pursuant to an agreement to purchase” (emphasis added)

This was wholly at odds with his position in these proceedings that it was Bhim Singh who purchased the lot, not the claimant.

23. From the inception, the claimant gave her explanation as to why she never had a deed on completion of payment of the purchase price. The defendant had several opportunities to answer her allegations in this regard. He mainly suggested that because she was not a party to the agreement, upon her husband's death he advised her to get legal advice as to her interest. In his amended defence he said his father told the claimant after her husband's death that the agreement was with Bhim Singh and that only his legal heirs and their children were entitled to the land. When he was asked by me why between 1982 – 1985 after the final payment had been made and while Bhim was alive, the purchasers got no deed, for the first time he said that Bhim had a young daughter who was under aged and he wanted to wait, or couldn't make up his mind about whom to give the land. He appeared to be shifting and embellishing his evidence only to overstate that Bhim did not want the claimant to have it. I did not accept his evidence in this regard.

24. While these inconsistencies were sufficient to find conclusively in the claimant's favour on this issue, I found Mr. Mustapha's overall credibility to be further damaged by his extraordinary conduct in relation to guaranteeing Bhim Singh's loan of \$17,000.00 for the completion of the agreement for sale. It was the only such transaction in which he assisted a tenant of his father's. He sought to explain he and his father wanted to help Bhim. But significantly, the draft with the proceeds of the loan were made payable to Azad, not to his father. When he was asked why not to Abbass directly, he claimed his father never held a bank account in his life. I am well aware that in days gone by, there were in fact people who were suspicious of putting their moneys in banks and of dealing with bankers in general, but this was not so long ago. In this case I find it difficult to accept that Mr. Mustapha, a landowner who had been collecting rents for decades and purchase monies for years, dealing with lawyers, preparing agreements for sale and deeds since the 60's and 70's would be such a person with no bank account. This is more so because his eldest son Azad was himself well placed in a bank at the time up to his retirement in 1979. Azad did not explain why in any case his father could not have endorsed a draft made out to himself at the bank, even if he held no account.

25. On the other hand, the claimant raised an issue of Azad's credibility arising out of this transaction. She claimed that part of the delay in obtaining her deed arose because Mr. Mustapha (elder) claimed he had never received the \$17,000.00. She gave evidence of attending a meeting with the father, Abbass, Azad and another brother, when there was a family dispute and accusations were made about Azad

over the non-payment. Azad actually agreed that a meeting did take place, though not in his brother's presence, but he claimed that no such accusation was made.

26. While it was not strictly speaking necessary for me to resolve the issue of whether there was a dispute or not, it is a matter which is relevant to Azad's credibility. I was not inclined to believe in guaranteeing the loan to Bhim Singh and collecting the draft, Azad acted out of pure generosity towards a stranger with whom he had no particular bond, even of friendship. I do not believe he acted at his father's request. Even if he collected the payment on his father's behalf, it is curious that his father himself did not issue the receipt for this substantial sum. I am inclined to accept the evidence of the claimant, that in her presence the father queried the payment because he stated he did not receive it. Against this, my finding as to his conduct and motive in relation to the subject lands is only consistent.

27. As to what the claimant and her husband agreed to buy, one receipt I believe reflects it was one Lot (No.5). The adjoining lots which Mr. Abbass had previously sold measured approximately 4,000 sq. ft. or about half of the claimant's plot. The more contemporaneous deeds of the adjoining occupiers show Philina Charles, Mr. Indarjit Charles mother to have bought what was identified as Lot No. (7) and Ramoutar to have bought lands known as No. (4). This would suggest that on the ground what might have been roughly called Lots (5) and perhaps (6) (in the absence of a formal marking out) which fell between, were occupied by the claimant and her husband. While a No. (5) was reflected on the receipt, and notwithstanding the numbers of the neighbouring plots on their deeds, I noted that when Azad's surveyor,

Mr. Rago first produced a plan, the subject lands carried one number (6) which he indicated after he divided it as 6(A) and 6(B). On that plan Ramoutar's lot was shown as No. (5). This suggests to me that the numbering was not necessarily as clear as Azad would like to make out. I expect the surveyor would have had information as to the lot numbers from the adjoining occupiers as well when he produced the first plan. A second plan was produced which simply appeared to correct these numbers, but the defendant neglected to call Mr. Rago to explain why this was necessary at all.

28. The claimant says she and Bhim purchased the entirety of what they occupied, which was what fell between the lots of Charles and Ramoutar. She said the difference in price, and I accept this, is explained by the fact that while others were paying or had paid much less for their lands, the price of the subject lands was much higher because they were buying a lot that measured two of those previous purchasers' lot sizes.

29. It is perhaps convenient here to indicate that I accept the claimant's evidence that at all material times, through her several wooden buildings and eventually the concrete house, as well as through her cultivation and livestock rearing on the remainder she and her family indeed occupy the entire area of the subject lands as tenants since 1963 and as owners since 1982.

30. The defendants sought to say that the previous wooden structures stood on exactly the same spot as the present concrete structure only further away from the road. This was obviously to support the case that the claimant never occupied the

remaining portion outside of her house spot. Once again a contemporaneous document/photograph proved otherwise. The photograph which was produced by the claimant's daughter Pamela Bhim Singh-Mason shows both the old house and the new house standing side by side. This photograph taken in or about 2001 clearly supports the claimant's case in respect of at least the two houses shown at that time. The position of the old wooden house was at that time closer to the Charles' boundary and must have been resting, even if only partially, on what is now being called "the empty lot".

31. I accept that the claimant planted the area around every house in which she and her family lived over the entire plot of the subject lands and that it is only in recent years that she has stopped cultivating to the extent she did formerly, because of old age and failing health. This explained the appearance of bush and shrubs on the photograph produced by Mr. Charles. I found it significant that the defendant's witness Allison Sombrano under cross-examination or in answer to the Court said she always thought the claimant to be the owner of the land (the empty lot) because she was always had peas and other vegetables planted on it. Indeed she thought Mr. Charles had gotten permission from the claimant to enter the vacant portion to deposit materials. She clarified too that when she said that part of the subject lands was "vacant" she meant there was no house on it. This evidence of a defence witness clearly supported the claimant's case.

32. At the close of the evidence I found that Abbass Mustapha agreed to sell the parcel of land between the Charles and Ramoutar boundaries to the claimant and

Bhim. I found that the claimant, since she began to live there in 1963 or thereabouts was occupying that entire parcel of the subject lands. The number ascribed to the lot takes the first defendant's case no further. Because if I am wrong on this, and even if Mr. Abbass agreed to sell her only a portion of it, I have found her to have been in actual possession of the lands entirely since 1963 to the present time. If she did not agree to buy the "empty lot" in 1982, it is clear that Abbass Mustapha's and his estate following his death, have been out of possession since that time, while the claimant has been there with the intention to possess it. Indeed she believe it to be lawfully hers. If I am wrong and there was a separate parcel which is now being called Lot 6(B) by the defendant, by virtue of the foregoing, any paper title to that lot remaining in Abass Mustapha would have been long extinguished.

33. What further supported my finding that the entire parcel was sold to the claimant and Bhim is that Azad said in the early 80's his father was trying to sell off the lands and settle his affairs at that time. If that was Abbass Mustapha's intention, there is no explanation as to why this "empty lot" remained. On a balance of probabilities I find that consistent with this express intention, he had in fact sold off all his lands retaining no interest in any portion of the subject lands. He remained alive for five years after the agreement for sale. He took no steps in relation to it. No step was taken by his estate in relation to these lands after his death and indeed, even now no counterclaim has been filed by Azad or the estate claiming an entitlement to possession. Such a conclusion is also supported by the failure of Azad's siblings, even after correspondence was issued by the claimant and even when Azad was appointed to represent the estate, to take formal steps to obtaining a

grant of Letters of Administration. I can reasonably infer that all the others know their father left no lands at Abass Avenue, he had sold off everything prior to his death.

34. I have come to the conclusion based on his conduct in relation to the claimant and indeed my findings in relation to the payment of \$17,000.00 balance, that Azad's claim and his attempt to subdivide the claimant's lands to create an extra lot has arisen only out of what is perceived to be an opportunity to make some money out of a sale and at the claimant's expense.

35. Mr. Indarjit Charles found himself here because he has, it appears to me, been drawn into supporting Azad's scheme. In doing so he has not been found to be particularly credible. He was forced under cross-examination to admit that having regard to what was shown in the daughter's photograph of the claimant's concrete house and the wooden house, that the wooden house standing at that time did in fact occupy a part of what was the "empty lot". When he was asked by the Court (after looking at the photograph) to insert on the plan where the claimant's wooden house was located, he had to place a portion of it on the empty lot, closer to his boundary. I am inclined to believe that it was situated more substantially on the empty lot as had been the house shown in the newspaper clipping which was produced.

36. Further, insofar as the allegation as to Mr. Charles' recent entry on that lot is concerned I found that he did indeed wrongfully enter as alleged, deposit boulders

and that certain pipes were run from his own premises onto the empty lot. The claimant's photographs provided sufficient proof of this.

37. After I had indicated my findings on the evidence at the close of the trial, his counsel asked for an opportunity to deal with the evidence relating to a strip of land which he alleges is Mr. Charles' that falls outside of his wall and which forms no part of the subject lands and that the pipes which lead onto this strip do not therefore touch or empty on to any lot, but his own. My findings on these particular submissions were as follows.

38. Defence Counsel suggested that in her own evidence the claimant said Mr. Charles' second wall was placed five feet "inside". He took this to mean inside Mr. Charles' own boundary. I understood it to mean quite the opposite, that when Mr. Charles removed his original wall and shifted it, he encroached into the subject lands or there would have been reason for her to complain. She made it clear that she meant five feet into her land.

39. I rejected the evidence that Mr. Charles' boundary wall and house wall were not one and the same. On a balance of probabilities I rejected his evidence that he would give up effectively a five-foot strip of land outside his wall because he said he had to enclose the area between that wall and his house for his business purposes. It is precisely because he runs a business under his home and the nature of that operation (a pack house for fruits and vegetables) that I find it difficult to accept that he would just give up 5 feet which would provide valuable additional space. This is against his

having said that he had shifted the position of his original wall by erecting the replacement closer towards his house.

40. On his own evidence, when he observed the claimant planting fig trees on what would according to his evidence have been his strip of land, he did not object to her planting, but only to the type of tree. He objected because fig trees would attract rats and scorpions. I do not accept that he was generously allowing the claimant to plant on his strip, especially since his case was that that empty lot was mainly abandoned and overgrown and that he had indeed filled it. It would mean that he was allowing the claimant to leave the boundary of her house lot, leave a lot of land covered in bush to plant along a strip of land outside his wall. This I rejected.

41. Mr. Charles further sought to support his claim regarding the boundary line by relying on what he said was a picket placed by Mr. Rago the surveyor, which indicated the point on his eastern boundary clear of the strip. I was not prepared to accept the evidence in the absence of Mr. Rago who could so easily have been made available to give his expert evidence and indeed to explain his three survey plans which were produced in evidence and the numbering on the first one in particular which gave the number “6” to the subject lands.

42. Finally, after the injunction was granted Mr. Charles, through his attorneys, sought the claimant’s permission to enter the subject lands pending the hearing of these matters. I find it significant that no distinction was made in this request between Mr. Charles’ alleged strip and the remainder of the lands.

43. For the foregoing reasons I gave judgment for the claimant. I further ordered the defendants to pay the claimant's costs of the injunction in the sum of \$12,500.00 and prescribed costs of the consolidated action in the sum of \$22,000.00.

Dated this 7th day of May 2012

CAROL GOBIN

JUDGE