

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2013-03552

BETWEEN

DAVID RAMKHELAWAN

Claimant

AND

CYNTHIA RAMOUTAR

Defendant

Before The Hon. Madam Justice C. Gobin

Date of Delivery: March 13, 2019

Appearances:

Mr. C. Seelochan instructing by Ms. N. Ramyad for the Claimant

Mr. G. Raphael instructing by Ms. Chunilal for the Defendant

REASONS

1. The parties David Ramkhelawan and Cynthia Ramoutar to this action are siblings. They both occupy and have their homes on lands situate at Yaraba Extension Road, Carlsen Field which were originally State Lands then Caroni Lands or at least a part of it. The parties are the maternal grandchildren of Sumaria and Madhoo Benny.
2. The Documentary evidence established that both grandparents individually were granted tenancies of what I accept were two separate parcels of land at Carlsen Field. The Claimant produced an old original tenancy agreement dated 24/07/54 which showed that by it Sumaria was granted a tenancy of a one acre parcel of land for vegetable cultivation. The agreement does not indicate the boundaries of this one acre parcel.

3. The Claimant's case is that this is the parcel on which his house is located and on which he has lived since 1971 when upon his marriage he was given permission by Sumaria to build a house to occupy her tenanted lands. He claims the boundaries of the one acre parcel are from his knowledge on the ground: -

“On the North by a road
On the south by a ravine separating the lands of the Plaintiff
On the East by other lands
On the West by the Yarba Extension Road.”

4. David's case is that lands North of the Ravine are originally his grandmother's and now his and that he has been in exclusive possession of it first with her permission, during which time he erected his home and then continuously after her death in 1994 until the present time. He said he had fenced off the one acre parcel since about 1975 and in 1987 he blocked off another portion internally to protect his crops from his animals.
5. The Defendant accepts that David's house is north of the ravine closer to the road on the northern boundary but says that he has only been there since 1996. That notwithstanding, until she filed her Counterclaim in this case, she had brought no action against him to recover lands claimed to be hers. She says that in any case he has only been occupying just about a lot of land on which his house stands and she accepts that he can remain there so long as he confines his occupation to the lot.
6. The Defendant's case is that she is her grandfather's successor in title. Madhoo was the tenant of Plot 649 which was a parcel of land measuring 1.649 Hectares. This plot was defined in surveys commissioned by Mr. Ganeshdath a Licensed Surveyor who produced plans in 2005 and 2006. Lately, Mr. Indar Ragoos another licensed Surveyor returned to the site and produced yet another plan. All her survey plans include the one acre parcel occupied by David as part of Plot 649.

7. The Defendant produced no formal tenancy agreement and I did have some concerns as to whether she had established that she had actually been assigned a tenancy at all. After closer consideration of the pleadings, the evidence including land receipts made out in Madhoo Benny's name by Caroni Limited for Plots 615 and 649, and references in them which appear to identify him as tenant No. 51602, I am prepared to accept that he was in fact a tenant of a Lot 649 which was tenanted for cane farming as opposed to vegetables and other crops and that this was a plot, separate and apart from Sumaria's.
8. These proceedings began when the Claimant claimed that Cynthia and her sons wrongfully entered his lands, broke down part of his chainlink fence and erected a new fence confining him to a parcel measuring 50" x 90". The Defendant claimed that her entry on the plot was made pursuant to judgment of the **Honourable Mr. Justice Rajkumar** dated 4th July 2012 in consolidated High Court Proceedings No.5408 of 2004 / CV No.2007-02194 against Rajesh Ramkhelawan and Adrian Ramkhelawan. These are sons of David who had erected structures on David's parcel. She claimed that she entered the lands on the strength of her judgment, demolished part of the Claimant's chainlink wire fence and restricted his occupation to a portion measuring 50" x 90". David filed these proceedings claiming he is the owner of what used to be Sumaria's lands and Cynthia has maintained that she inherited Madhoo's parcel which included all the lands shown on her plans.
9. The central issue which I had to determine was what were the boundaries Madhoo's Plot 649. Whether Sumaria's was a separate plot which ought not to have been included in the Defendant's plans as part of Plot 649 and whether David had been in exclusive occupation of the lands north of the ravine intersecting the lands since 1971 or thereabouts.
10. The absence of proper records from Caroni and the office of the Director of Surveys or the Commission of State Lands, has not helped. I have been left to decide this matter on the basis of the credibility of the parties. The only document in which boundaries of Plot 649 appear is what the Defendant has produced as her Tenancy Agreement from Caroni Limited. It is on the

basis of the schedule to this “agreement” that both surveyors have purported to locate the boundaries of the parcel claimed by Cynthia as Plot 649.

11. Since very early on I made certain observations about what appeared on the face of the document. Having heard all of the evidence I remain doubtful about the genuineness of it and in particular the boundaries as described. My findings on the document have largely influenced my general adverse conclusions as to the credibility of the Defendant. I shall return to indicate these in some detail.

Res Judicata

12. It is convenient here to deal with the issue of res judicata which has been pleaded by the Defendant. The Claimant himself introduced the order of Rajkumar J in the earlier proceedings in which Cynthia sought and obtained orders against two of David’s sons Rajesh and Adrian. It accepted that David did at some time in the course of those consolidated proceedings file a witness statement. David was not a party to the proceedings although he had been on the lands at the relevant time. A determination of a matter against his son in the manner in which this order issued could hardly deprive him of whatever title he may have acquired.

13. The order of **Rajkumar J** is set out in full: -

Before the Honourable Mr. Justice Peter Rajkumar

Dated 4 July 2012

UPON this matter coming up for trial.

AND UPON HEARING Attorney at Law for the claimant the first defendant not appearing and being unrepresented. The second defendant appearing in person and being unrepresented.

IT IS ORDERED AND DECLARED THAT:

1. A declaration is granted that the first defendant is not entitled to enter upon the claimant’s tenanted land described in the tenancy agreement between herself and

Caroni (1975) Limited and in particular upon the said portion of land described in paragraph 3 of the statement of claim filed on 15 April 2004;

2. An injunction is granted restraining the first defendant, his servants or agents from entering upon or remaining on the claimant's tenanted land described in the tenancy agreement between herself and Caroni (1975) Limited and in particular upon the said portion of land described in paragraph 3 of the statement of case filed on 15 April 2004, stayed until 31st August 2012; and
3. An injunction is granted restraining the first defendant, his servants or agents from building or extending any structure on the claimant's tenanted land described in the tenancy agreement between herself and Caroni (1975) Limited and in particular upon the said portion of land described in paragraph 3 of the statement of case filed 15 April 2004;

IT IS ORDERED THAT:

1. The first named defendant, his servants and/or agents do quit and deliver up possession of the said portion of land on or before 31st August 2012; and
2. The first defendant is to pay the claimant's costs in the sum of fourteen thousand dollars (\$14,000.00).

/s/ Marissa Ramdass
Assistant Registrar
Supreme Court of T&T

14. On the face of the order it is clear that there were two Defendants Rajesh and Adrian. Rajesh did not appear on the date of the order which was it seems the date of the order. Adrian clearly did. No order was made against Adrian. The declaration was made against Rajesh only. There is no evidence as to what has become of the issues raised on the pleadings or on the witness statements including that filed by David. There is no evidence that the res was determined as between Cynthia Ramoutar and Adrian.

15. The Defendant in this case, in relying on a plea res judicata clearly appreciated that in order for it to be raised there had to be a trial on the merits. The Defence stated that there had been and this was repeated in Cynthia's Witness Statement. The Defendant has failed to establish that there was such a trial on the merits. No transcript or record of the actual proceedings was produced. The order on the face of it does not indicate that evidence was led.
16. The statement of **Lord Brandon** in the **Sennar (No.2) [1985] 2 All ER 104 at page 111** is instructive.

“A decision on the merits is one which establishes certain facts proved or not in dispute, states what are the relevant principles of law applicable to such facts and expresses a conclusion with regard to the effect of applying those principles to the factual situation concerned.”

17. The order makes no reference to the pleadings nor indeed to the witness statements. It is therefore impossible to identify what issues were actually decided. The declaration was limited in its terms to the rights of one Defendant vis a vis the Claimants lands described in the tenancy agreement. This is not a Judgment in rem. It is a Judgment which binds Rajesh and no one else. It is a judgment in personam. There was no general declaration as to Cynthia's right or alleged title against all the world.
18. Neither the agreement nor the Survey Plan was actually attached to the order of Justice Rajkumar. And while it is not necessary to go behind it I have looked at the agreement which was attached to Cynthia's statements in those proceedings, and it is obvious on the face of it that the deletions on the words "North" and "South" did not appear on the document that was placed before him exactly as they did on even the original which was eventually produced in the instant proceedings. I therefore conclude that the agreement she filed upon in the earlier proceedings was a different one. While the issue of authentication of Cynthia's tenancy has not been an issue in the case, my observations are relevant to her credibility. I shall return to this issue where I indicate my reasons for preferring the Claimants credibility on the remaining factual issues.

19. I have said before, the main factual issue I had to determine is whether Plot 649 includes lands north of the ravine or whether that was a separate parcel of lands formerly of Sumaria. The resolution of this issue rested on my determination of the credibility of the Claimant and the Defendant. David has not sought to suggest that Madhoo had no lands, whereas Cynthia even in the face of a tenancy agreement bearing her grandmother's name has denied the latter ever had a tenancy. Under cross-examination she went so far as to say the document was a false document. This has not impressed me.
20. David said he fenced his entire acre block north of the ravine since about 1975. The Defendant came to trial denying this was so. Under cross-examination she was shown the Survey Plan with the portion claimed by David delineated in yellow/green highlighter. She accepted that the area had been fenced around but said it had been done by her father. This departure from her previous position that the only time that there had been a fence was when David recently erected one, caused me to reject her credibility. Her belated admission that a fence existed is more consistent with David's case. The obvious question which would arise too, on Cynthia's admission, would be why fence off the northern half of the land, if it is all part of one plot.
21. I shall now indicate my observations about the tenancy agreement since these are relevant to my findings on credibility. The Defendant claimed that their mother Rookmin transferred the tenancy of Plot 649 to her. She produced a receipt dated 4th April 1999 which she said was evidence of the transfer. The receipt bore no details of a plot number or indeed of a tenant number. But as a result of this transaction the Defendant was given what she said was a tenancy agreement dated 4th October 1999. Somehow as a result of the transfer – the tenancy was converted to a small holding under Agricultural Small Holdings Tenure Act.
22. When she was cross-examined about the difference in the form of tenancy she said this was when Caroni had stopping cane production and were giving a new kind of tenancy. This is not credible as the Defendant's agreement specifies that the tenancy is for "cane". Further the Court is allowed to take judicial notice of the fact that Caroni's cane operations were shut down

in or about 2003. It is significant too that documents produced by the Defendant from Caroni Ltd in the year 2004, which were to authorise water and electricity connections, refer to her as “an occupant” of a house on their lands whose status was yet to be regularised. This was some 5 years after the date of her agreement. Had the Defendant had the tenancy agreement, one would expect her to produce it when she went to Caroni for approval for her utility connections.

23. The document produced by the Defendant as her agreement, the basis on which she claimed title to Plot 649 is a curious one. It is dated 4th October 1999 and made between Caroni 1975 and herself. The tenant number at the top of the document is the same as her grandfather’s 51602.

24. At paragraph 1 (d) it indicated the commencement date of July 1970 for a period of 5 years. This would logically suggest that that five year term had ended well before the tenancy was granted. There is no official company stamp on the document. The most significant amendments are those to the schedule which affect the location of the parcel. The deletions and alterations have not been initialled by anyone and significantly not by any official of Caroni Ltd.

25. At the end of the day it is the effect of the alterations and inverting of the North and South boundaries on this document which have been at the heart of the litigation. David’s position has been throughout, and it makes sense, if the boundary had not been amended, the northern boundary of her plot would not include Sumaria’s one acre parcel.

26. The Defendant produced several plans which were referred to in the course of these and the earlier proceedings. The first plan was that of Mr. Ganeshdath dated 8th February 2005. Mr. Ganeshdath was not produced as a witness in the case and no explanation was offered for this omission. His plans as well as that of Mr. Rago (more recently drawn) are all in evidence.

27. I find it significant that Mr. Ganeshdath on his first survey plan indicated a survey of “two” parcels of land as opposed to one. Significantly on the face of that plan what is shown and the notes to the plan confirm this, is that irons were found just about half way along the plan along

a line intersecting it. There is no explanation as to why Mr. Ganeshdath who was instructed by Cynthia would draw that line. He failed to indicate the location of the Ravine, which intersects its and which feature was confirmed by Mr. Ragoo in his evidence.

28. The appearance and discovery of these irons on Mr. Ganeshdath's plan is more consistent with and supports the Claimant's case that the area to the north was a separate parcel of land. I am prepared to draw adverse inferences from the failure on the part of the Defendant to call Mr. Ganeshdath as a witness. Mr. Ganeshdath's second Plan shows it as one block of land. Again no explanation has been offered for this change.

29. At the trial the Defendant adduced evidence of Land Surveyor, Mr. Indar Ragoo. Mr. Ragoo accepted that his plan was produced on the basis of instruction and the boundaries indicated on the tenancy agreement. Given my observations and doubts about the amendments to the schedule of Cynthia's tenancy agreement, Mr. Ragoo's plan is of very limited assistance in resolving the central issue. In other words, boundaries which have been established with the definitions on Cynthia's amended tenancy agreement are not considered to be even helpful, far less conclusive. I repeat my observation that two copies of the agreement in particular the amendments to the schedule are clearly differently altered. This has not assisted the Defendant's credibility. It raises a suspicion as to who altered it and when.

30. I accept David's evidence that he planted crops since well before 1987 and that he fenced the entire acre block since the 1970's. I reject the evidence of the Defendant that she planted anything north of the Ravine. In her Witness Statement she mentioned only having planted about twenty heads of Dasheen near a drain. Her attempt in cross-examination to embellish to include the planting of other crops did not impress me.

31. The Defendant offered no satisfactory explanation for the appearance of houses occupied by her siblings. She accepted that many of these were now concrete structures which replaced their original board houses. This demonstrates the even South of the Ravine and her tenancy agreement notwithstanding, she has not been in sole occupation or control even of those lands.

32. It also exposes as hollow, the basis of the petty civil court claim for ejectment she brought against her brother Ramsaroop Ramkhelawan. The proceedings before the Court were in evidence. She claimed that his erecting of a structure was causing a breach of her tenancy agreement with Caroni Ltd. From the evidence it appears that this is while there were other houses of other siblings on the land. Mr. Rago's plan dated 28th June 2017 does not include Ramsaroop's plot in the Defendant's parcel.

33. On the claim for damages for trespass – there is no evidence of special damage claimed. I have noted that the Defendant claimed to be entitled to enter and remove the Claimant's fence and restrict his occupation on the basis of the order of Rajkumar J. On no interpretation of that order was this action authorised or legal. I propose to make an order for nominal damages.

34. Having considered the evidence and assessed the credibility of the parties I accept on a balance of probabilities the evidence of the Claimant and reject that of the Defendant. In the circumstances, I declare Judgment for the Claimant on his claim and dismiss the Defendant's Counterclaim I make the following orders: -

- a. The Court declares that the Claimant has been in continuous and undisturbed possession of all that parcel of land measuring approximately one acre and shown on the northern section of the lands shown on the Plan of Indar Rago dated 28th June 2017 with all boundaries consistent save that the southern boundary marked by a Ravine.
- b. The Court declares that the Defendant has no right title or interest in the lands north of the said Ravine under the Agricultural Small Holdings Tenure agreement dated 4th October 1999 between Caroni (1975) Ltd and herself, or otherwise.
- c. The Claimant is at liberty to remove the fence erected by the Defendant on 23rd January 2013.
- d. Nominal damages for trespass are awarded in the sum of \$20,000.00.

- e. The Defendant is to pay the Claimant's prescribed costs of the claim in the sum of \$14,000.00 and \$7,000.00 of counterclaim.

Carol Gobin
Judge