

REPUBLIC OF TRINIDAD AND TOBAGO

CV2013-04064

IN THE HIGH COURT OF JUSTICE

**IN THE MATTER OF THE WILLS AND PROBATE
ORDINANCE CH.8 NO.2**

AND

**IN THE MATTER OF THE ESTATE OF
NELLIE RAMNEHAL otherwise NELLY RAMNEHAL
otherwise DHANPAT otherwise NELLI Deceased**

BETWEEN

**KHIMRAG RAMNEHAL
INDRA RAMNEHAL**

Claimants

AND

**SHAREEFA RAMLAL
VINA BOODHAN**

Defendants

Before The Hon. Madam Justice C. Gobin

Appearances:

Mr. R. Boodoosingh for the Claimant

Mr. B. Dolsingh instructed by Mr. S. Mahase for the 1st Defendant

Ms. B. Maharaj for the 2nd Defendant

REASONS

Background

1. At the first case management conference the parties agreed that this case involved a matter of law which could be determined as a preliminary issue with appropriate consequences.

2. The facts relevant to that issue are these. The claimants/appellants are the legal personal representatives of Nellie Ramnehal, who was the owner of a large one acre parcel of land, of which the 'tenanted lands' occupied by the defendants and their predecessors forms part.

3. The defendant's are the daughters of Hazra Mootoo and Mootoo Phakera. Hazra died on the 16th March 1987 and Mootoo, subsequently, on the 25th October 1999. It is not in dispute that the tenanted lands were the subject of a statutory lease in respect of which the claimants' predecessor was the landlord. The claimants say that Mootoo, the father of the defendants was the statutory tenant, but the defendants say that Hazra, their mother was the tenant. This matter came to Court because the defendants sought by notice dated 25th October 2010 to renew the statutory lease in accordance with the Land Tenants Security of Tenure Act.

Claimant's position

4. The claimants took the position that they were not entitled to do so because, since Mootoo was (from the inception, according to their case) the statutory tenant, the defendants needed to formalize their status, by first obtaining a grant in relation to the estate of their father. Until such time they could not have been entitled to the renewal of the lease. Further the time for notice of an intention to renew had expired on the 31st May 2011 and the lease was terminated in the absence of proper notice by the person lawfully entitled to Mootoo's estate.

Defendant's position

5. The defendants on the other hand claimed that they were applying for a grant not as representatives of the estate of their father, but as surviving beneficiaries of the estate of their mother Hazra. They claimed she had died testate leaving the unexpired term of the lease to them and their father under the specific terms of her will. Upon his (their father's) death, the lease fell to them as surviving joint tenants. The defendants relied on a Deed of Assent dated the 20th June 1991 and registered as No.12438 of 1991. It conveyed the leasehold premises for the residue of term of years subject, to the lessees covenants and conditions, to Mootoo and to them both as joint tenants.

Legal Issue

6. The legal issue raised was whether the statutory tenancy was assignable on the death of the tenant and the authorities produced by the defendants supported what I thought was the settled position that the interest of the statutory tenant is transmissible on his or her death. (**Mendonca JA Carl Hector v Oliver Keith CA Civ. 6/2010; Angela Sealy v Mohan Jogie CV 2012-00415 – Rahim J**)

7. If, as the defendants claimed therefore, Hazra, their mother was the statutory tenant, then the deed of assent had the effect of transferring the remainder of the term to them together with their father as joint tenants. Upon his death, as survivors, they were in their own right entitled to seek the renewal. I thought that the determination of that legal issue effectively determined the matter, as the submissions of the claimants seemed to miss the point as to the effect of the deed of assent.

Factual Issue/Who was Tenant

8. There was as well the factual issue which was raised on the pleading as to whether Hazra or her husband was the original tenant. This matter was raised in pre-action correspondence between the parties. When the defences were filed, receipts were annexed which showed that consistent with the claim of the defendants, that receipts were issued in Hazra's name up to about the time of her death and thereafter in the father's solely. Those later receipts could not affect the interest of the defendants. Their interest as tenants vested under the deed of assent.

Claimant struck out

9. The claimants failed to attach any receipts to support their claim that Mootoo was the original tenant, neither in pre-action correspondence nor on the pleadings in accordance with Part 8.6.2. On the other hand the receipts produced by the defendants which were not disputed on the pleadings. In those circumstances it seemed to me that the statement of case insofar, as that aspect of the claim was concerned, disclosed no ground for bringing it and it was struck out. That striking out effectively determined the claimants' case.

10. The claimant's attorney was told of the existence of the Deed of Assent dated 26th June 1991 almost two years before this action was filed. This was done by letter dated 24th January 2011 from the defendants' attorneys. The order for costs in those circumstances seemed appropriate and fair.

Dated this 22nd day of September 2014

CAROL GOBIN

JUDGE