REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV 2013-3935**

BETWEEN

SHAFFIE HOSEIN **Claimant**

AND

RAMDATH MAHABIR
KAMLA BULLOCK also called KAMLAN DEVI BULLOCK
(The Legal Personal Representative of Durpati Mahabir
also called Durapatie Mahabir also called Drupatie Mahabir Deceased)

Defendants

Claim No. **CV 2015-3306**

BETWEEN

SHAFFIE HOSEIN **Claimant**

AND

JAI MAHABIR
KAMLA BULLOCK also called KAMLAN DEVI BULLOCK
(The Legal Personal Representative of Durpati Mahabir
also called Durapatie Mahabir also called Drupatie Mahabir Deceased)

Defendants

Before the Hon. Madam Justice C. Gobin

Appearances:
Ms. Abdel F. Ashraph on behalf of the Claimant
Mr. Prem Persad Maharaj on behalf of the Defendant

REASONS

1. These actions concerned two parcels of land situate at Powdharie Road, Preysal Village.

2. The first is a triangular shaped parcel measuring approximately one acre, which was the subject of a Royal Crown Grant first vested in one Batoon in or about 1908. Durpati Mahabir, the mother of the Defendants was endorsed as the registered owner of this first parcel on 6th March 1958. Durpati died on 3rd September 1995 and her daughter Kamla Devi Bullock obtained a grant of letters of administration of her estate on 25th October 2002. There had been no dispute regarding to the paper title of this one acre parcel.

3. The second parcel is a five acre parcel located just southwards of the first parcel. Both sides agree that it is a parcel shown and defined on a cadastral sheet which it in a block with the name "Soobana" endorsed on it. The Defendants claimed that this five acre parcel was one of several plots which together part of a larger estate called Sapatè Estate. The Sapatè Estate was conveyed to Durpati and Boodoon Persad by deed registered as No.720 of 1957 as joint tenants. Durpati acquired the entire estate on survivorship upon Boodoon's death.

4. It was only after the evidence was concluded that that deed was properly put before the Court (by the consent of the parties). It described in the schedule one of several parcels of land which was conveyed by that deed as I was prepared to accept that the paper title referred to the five acre parcel of land claimed by the claimant from the description of the adjoining owners Sahout and Sewradge. It did not refer however to "Soobana".

5. The claimant claimed that the five acre parcel had been in the continuous possession and occupation of his family dating back at least to the time that a cadastral sheet which was produced in evidence was drawn. The name "Soobana", shown on that cadastral sheet was the name of his paternal great grandfather. His grandfather who died in 1985 was Subhan Ali, and his own father who died in 1996 was Mohammed Hosein. They planted crops including sugar cane, then other short crops such as dasheen, eddoes, peas, corn, peppers, tomatoes, hot peppers, melongene, saffron etc. part of the land included a teak field. Although the Defendants claim that Soobana's five acre block has been included it seems in the Sapatè Estate transfer, they have not been able to trace how. I have view this as relevant no so much as to title but as to the Defendant's familiarity with the disputed lands.

6. The claimant said that his grandfather, his father and he also "worked" the one acre parcel. Both parcels he claimed had teak posts along the boundary which they changed and replaced as they became old and needed to be over the years.

7. On the five acre parcel the claimant said there was a tapia house with a carat shed. He produced an old photograph. After his grandfather died the carat shed was replaced by a galvanise shed. Sometime later the tapia house was broken down and replaced with a wooden and galvanised house. This too was replaced along the way with a galvanise house in which the claimant now lives.

8. On the one acre parcel the claimant said his grandfather built a garden shed. They used that shed to rest while they worked there and used it as a place to store tools and other

gardening equipment. That shed was destroyed by fire in or about 1990 but he replaced it a few weeks later.

9. The claimant claimed he first met the Defendant Ramdath Mahabir in or about May 2012 when he came to the five acre parcel and told him he was the owner of the land and he was going to bulldoze it. The claimant sought assistance of the Legal Aid and Advisory Authority. A letter was sent on his behalf to Ramdath Mahabir. The letter set out the claimant's instructions and Mr. Mahabir admitted receiving it. But he determined that Shaffie Hosein had only gone into possession between the years 2005/2006. He subsequently returned, entered the five acre parcel and graded it.

10. In respect of the one acre parcel the claimant similarly relied on activity of cultivation of crops since the time of his great grandfather and then his own with his grandfather then with his father. The Defendant similarly denied that the claimant and his forefathers ever occupied any portion of the 1 acre parcel. He said that the claimant only commenced activity about the year 2005 when he began planting a few fruit trees and crops. His actions were seen as temporary. It was denied that there was any a wooden shed on the one acre parcel until the claimant attempted to erect a structure in August 2015. The Defendants quickly resisted they entered with workmen and tractors and reclaimed ownership of it by ejecting the claimant.

11. The issue I had to determine was mainly factual. Was the claimant's entry and activity on the lands only as recent as 2005 as the Defendants alleged or was it as he claimed, something which had gone on for decades as he described through generations of his family.

12. On 29th March 2018, I declared that the claimant and his predecessors in title had been in continuous and undisturbed possession of the two parcels of land, the subject of the actions and that the paper title of the Defendant's i.e. that held by the estate of their deceased mother had extinguished.

13. The resolution of the factual issue turned on my assessment of the credibility of the parties and their witnesses. A word on the expert reports of photogrammetric surveyors, Mr. Paul Williams (now deceased) and Dr. Dexter Davis.

14. In the course of the management of the case the parties agreed to the appointment of Mr. Paul Williams to produce a report on the history of the use and occupation of the five acre parcel. Mr. Williams produced his report. Upon receiving it, the Defendant's proceeded to engage the services of another expert Dr. Davis who produced his own report. The purpose was essential to undermine the conclusions contained in the jointly commissioned report of Mr. Williams.

15. By the date of the trial, Mr. Paul Williams had passed away. Dr. Davis produced both reports. Mr. Ashraph's cross-examination established that while these two experts were well regarded and had impressive professional reputations, the fact they had both came to different conclusions demonstrated that even when they were using the same materials, their opinions could be very different because of their subjective interpretation of the records photosurveys and maps etc. I thought the point was well made.

16. What I considered significant is that in relation to the five acre parcel, Mr. Williams stated that he used Cadastral Sheet nos. 34B/3b published by the Lands and Surveys Division to identify the area in dispute. That cadastral sheet relied on by both parties has the number 44A written in on it in manuscript. There has been no evidence to establish the nexus between the cadastral sheet bearing the number 34B/3b and the cadastral sheet upon which both parties relied on this case.

17. But assuming it is the same parcel of land, Mr. Williams went on to conclude that no buildings existed on the disputed parcel before the 2005 google imagery. But Mr. Williams found that the 1980, aerial photograph showed the entire parcel was occupied by planted agriculture. This continued through 1994 into 2003-2005 and into his visit in 2015. Although the photograph showed a fence in 2003, he was unable to find in the later 2005 google photograph. This suggests to me that in some details the photographs, or the interpretation are not necessarily conclusive.

18. Dr. Davis's findings were contained at page 9 of his report. He found the triangular piece is generally clear (it is noted there is a stand of trees to the immediate west of the lot possibly indicating that at sometime this lot was cleared). The southern parcel (was generally covered in vegetation (with no discernible rows of beds or other signs of discernible cultivation.

19. He found that even in 1994, there was an area that was cleared and on which planned agriculture was taking place and the rest of the parcel and it did not appear to be the entire (five acre lot). Dr. Davis confirmed that the 1998 and 2003 imaginary showed more clearing and planned agriculture though not the entire lot.

20. At page 10 of his report he stated,

> **"In Mr. William's report he identifies the entire site being under agricultural occupation from as early as the 1980 imagery. In my observation, there is clear development over the period from 1980 to 2003, where there is no clear evidence in 1980, some clearing in 1994 and distinct planned agriculture taking place evidenced from 1998."**

21. Whatever the differences in their opinions, the finding of both these experts is more consistent with the claimant's case that there was cultivation, throughout the period as opposed to the evidence of the Defendant that the claimant only entered in 2005-2006 and began to plant small crops.

22. I never understood the claimant to be saying that either parcel was under complete, and ordered cultivation at any particular point in time. The Court is very well aware of how rural families use their lands in these situations. They rotate crops, they grow on different areas. I would hardly expect to see rows of beds of crops throughout a five acre family plot owned by rural villagers, such as I have assessed the claimant's family to be. On the evidence and I accept on some part of the land there was a teak field. There was originally sugar cane. There were tall fruit trees in recent years. On the other hand there was no evidence that the Defendants were growing crops or that they had themselves planted trees so on a balance of probabilities, I accepted the claimants' account of how they came to be there. For all their inconsistencies I find that the expert reports when taken together put the lie to the Defendants' claims about the state of the lands.

23. Insofar as Mr. Ramdath Mahabir has referred to his cousin Boodoon Persad having land tenants on "the lands" (paragraph 8) I do not believe this vague statement referred to the five acre parcel in dispute. The Sapatè Estate contained other five acre parcels of land. There was no mentioned in the Defence of any acts of possession or occupation by the Defendants, their predecessors or anyone on their behalf in respect of the disputed parcel. If this was an attempt to introduce this plea belatedly, I rejected it.

24. I preferred the evidence of the claimant and particularly that of his witness Mr. Waleed Juman I considered him to be truthful. I believe he was familiar with both parcels and the activities of the claimant's family on them. I rejected the evidence of Mr. Macuum. His evidence proved to be unreliable when I asked him certain questions. I believe he was familiar with claimant and his family and was aware of their reputations and connections in relation to the parcels of land generally. But it became clear to me that he was not familiar with the sites.

25. I have found as a fact that as the claimant said the boundaries of the five acre parcel was fenced and this was significant. On 7th October 2013 when the Statement of Case was filed in the five acre parcel, the claimant specifically pleaded at paragraph 3: -

> **"Since the Claimant began living on the Claimant's lands the boundaries of the Claimant's lands were clearly marked. Along Powdharie Road on the South there stood and still stands a teak fence comprising of teak posts with teak lathes between them. The other boundaries are marked with teak posts standing approximately 12 feet apart."**

26. In response the Defendant pleaded at paragraph (4) as follows: -

> **"The defendant admits that the boundaries were marked and that teak posts did exist. The Defendants … … … … … … … … … … … … … marked as document 3."**

27. In the Defence, the Defendants did not seek to explain or to answer that that fence had only recently been erected. They accepted on the pleading it was there, as were boundary marks. The claimant's claim on the pleading that the fence had been there since he went to live there at age 10, was therefore accepted. In the course of his evidence Mr. Jai Mahabir confirmed that there was a fence enclosing the 5 acre parcel and he did not know who had erected it. The existence of fence for many years was confirmed in the evidence of Jamaludeen and I accepted it. I believe it was erected by the claimant's paternal forebears and it was compelling evidence together with their use and occupation that established that they had the necessary animus to possess the five acre parcel.

28. I believe too that there was some partial fencing on Part of the one acre parcel which similarly had been erected by the claimant's family. The Defendants attempted to explain the appearance of what the claimant said was a teak fence (1 acre), by suggesting that teak from the neighbouring Agostini Estate had spread along the same parts of the boundary of the one acre parcel. I rejected this.

29. From the evidence of the Defendants I formed the view that they very rarely visited the estate at all even since the early days after their mother acquired an interest in it. If they did take the occasional drive once per year – they did not pass along what was left

of a road which runs between the two parcels of land. That road had for many years been overgrown and impassable. I reject the evidence that they would stop on a road to the north of both parcels and that they would be able to clearly observe what was taking place on the disputed parcels.

30. The estates their mother became entitled to under the 1956 deeds were large. I do not believe that the boundaries on the ground were known to them. Even when it was eventually agreed that the five acre parcel of land may have been one described in the schedule of the Deed, (and this was after the close of evidence only when a full copy of it was produced for the first time), it had already become apparent to me that the two Mahabir brothers did not know where the boundaries would run even on the cadastral sheet.

31. During the course of each Defendant's evidence I passed a copy of the cadastral sheet to each asking him to indicate where the lands were situate. One brother included the five acre parcel claimed by the claimant – Soobana's plot. The other did not. This together with the evidence that it was in the year 2012 that they began an exercise to survey and establish the boundaries of the lands they had inherited, undermined their case that they had been in control of the lands and they had been monitoring any illegal entry on it. They have not established that they knew what was theirs.

32. The Defendants alluded to an original caretaker and after the death to his son who took over looking after the lands. I drew negative inferences from their failure to produce the surviving witness who would have been available. I do not believe he would have supported their accounts of the claimant's recent entries had he been called.

33. I rejected the evidence of the Defendant's that they were first aware of the presence of the claimant since 2005/2006 on the five acre parcel. If as they pleaded they **"became very concerned about his occupation as the way he was talking, he was laying claim to the entire five acre parcel of land",** I do not believe that they would have left him there for a period of about seven years until they moved on to the land with heavy back up in 2012.

34. On the totality of the evidence I preferred the claimant's evidence in respect of his occupation of both parcels of land. I believe the tapia house a photograph of which was produced was indeed a family home at some time. I believe that the claimant's grandfather and other family members lived on the five acre parcel and that even when some members of the family moved to occupy a house closer to the main road that their gardening activities continued.

35. I found the appearance of the name "Soobana" on the cadastral sheet, five acre parcel of land significant. This was according to the claimant's, Statement of Case, the name of his great grandfather and this fact was not disputed on the defence. There has been no other explanation as to how Soobana's name appears on that parcel on an old cadastral sheet and how that five acre parcel bearing his name became included in the Sapatè Estate.

36. It is true that title was not an issue, but it does tend to support the Claimant's case that his great grandfather Soobana's name appeared, then occupation by his grandfather(Subhan) continued and then through to his. These were more likely to be

family lands which simply remained in the family. The similarities in the family name Soobana and Subhan suggested a connection between the person whose name appeared on the cadastral sheet and the claimant's grandfather.

37. I believe the family "worked" the one acre parcel at all times as their own. I have taken into account the character of these lands and the size of the parcels in concluding that the claimant and his predecessors did not limit their occupation and possession to any small part of the lands. The parcels of land are defined.

38. The five acre parcel was fenced. But in respect of both, the Court is well aware of how rural families who own land or garden land utilise it. One would hardly expect to see ordered cultivation through the entire parcels for the entirety of the period. There would be fruit trees, which would require no attention. There would be as in this case patches of cane, there would be small areas close to the house if they live there of a kitchen garden, there would be rotation crops.

39. From time to time it would be expected that parts would become overgrown. That would hardly be evidence of abandonment of possession. Persons who consider themselves to be owners of land (and in this case the claimant has established that they did so for generations) can and do choose to leave parts of their land untended from time to time, for years if they wish. It does not affect their claim to possession unless they have been ousted, and this is not the case here. When one understands this, the absence of evidence of planned commercial cultivation would not assist the paper title holder.

40. In this case the claimant established on a balance of probabilities that for at least forty (40) years he and his family had been in occupation of the subject parcels of land with the necessary *animus possedendi*.

41. The paper title to the subject lands to which Kamla Bullock is entitled by virtue of her grant of letters of administration of the estate of her mother Durpati Mahabir, would have extinguished well over four (4) decades ago.

Dated this 24th day of April 2018

CAROL GOBIN
Judge