

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. 734 of 2001

Between

JOYCE DHARANGEE LAKHEERAM

Plaintiff

And

SIEUPERSAD BENNY PABLO

Defendant

Before The Honorable Justice David C Harris

Appearances:

Mr. Samuel Saunders **for the** Plaintiff

Mr. Vashist Maharaj **for the** Defendant

JUDGMENT

1. By HCA No. 3846 of 1992, ("the previous proceedings") between the Defendant herein (Ishwardaye Benny) as Plaintiff and one Harridass Chattergoon (the deceased) and the Plaintiff (Joyce Dharangee Lakheeram) herein as Defendants, the Defendant herein (Now Sieupersad Benny Pablo having been substituted in 2008 for the original Defendant, Ishwardaye Benny, decd.) sought inter alia, a declaration that she was beneficially entitled to the fee simple estate of and in a certain parcel of land and an Order that the deceased Harridass Chattergoon, and the Plaintiff herein (Joyce Dharangee Lakheeram) or alternatively the Registrar of the Supreme Court do execute a Deed of Conveyance in favour of the Defendant therein (Ishwardaye Benny (now decd.); or "the Benny's"), conveying the fee simple estate of the claimed lands. These claimed lands were a portion of a larger parcel originally owned by the said Chattergoon.

2. On the 21st day of August 1994 a consent order was entered in the said previous proceedings, by the Honourable Master Morris-Alleyne stating inter alia *"that subject to a survey to be done by Winston Ramcharan, Land Surveyor, and the Parties agreeing to be bound by the Surveyor's report the second named defendant (the Defendant herein) do convey to the Plaintiff all and singular that piece or parcel of land being the southern portion of the lands shown as Lot 4A on a survey plan of Cuthbert Basil dated the 29th of June 1984 and annexed to Deed of Assent registered as 8550 of 1985 on which the Plaintiff's (the defendant herein) house now stands. And in default of the Second Named Defendant executing the said conveyance the Registrar do execute the said conveyance"*.

3. On the 1st March 2000 the Registrar executed a Deed of Conveyance on behalf of Ishwardayee Benny in respect of a parcel of land measuring 382.2 square metres as shown on a survey plan prepared by Mr. Ramcharan. Paragraph 3 of the Recitals to the said Deed of Conveyance states that *"the second defendant has failed to attend the office of Messrs. R. Rampersad & Co. Or Messrs. A.F. Douglas & Co. To execute the Deed as per the Order despite having been notified of same."* The Plaintiff herein – Joyce Dharangee Lakheeram - filed this present action on the 22nd March 2001 alleging that the said survey plan does not comply with Section 22(3) of the Land Surveyors Act Ch. 58:04 nor with S. 8 of the Town and Country Planning Act Ch. 35:01, that the said survey plan does not comply with the consent order because it incorporates more land than the land on which the defendant's house stands and the description of the land in the Deed confers more land than the order provided for, the Deed is defective because it states the incorrect address of the Court in which the previous proceedings were filed and it does not recite the failure or the refusal of the Plaintiff to execute the Deed as is contemplated by the Order.

4. In respect of the alleged "deficiencies" in the Deed, the Defendant (now substituted for by Sieupersad Benny Pablo – 'the Benny's") contends that they are not material or substantial defects and can be easily corrected by a Deed of Rectification. A question arises as to whether, it would be unfair and unconscionable for Joyce Dharangee Lakheeram ("Joyce Lakheeram") to be allowed to rely on such technical defects to defeat the intention of the parties as recorded in the consent order.

5. As regards the alleged breaches of the legislation, I am of the view that they can be disregarded for two reasons. (i) The statutory requirements upon which the Plaintiff Joyce Lakheeram is relying upon are in practice only of absolute strict legal necessity when dealing with registered lands. It is the practice and custom in this jurisdiction to accept Deeds relating to unregistered land even if those requirements are not met, as evidenced by the fact that the deed that is now in contention was indeed registered without any apparent difficulty. The fact that the Deed of Conveyance was

duly registered raises a presumption that any necessary statutory requirements was complied with;

(ii) In any event, If the statutory requirements were indeed of strict legal necessity, there arises on the facts of this case, an estoppel in favour of the Defendant. There is no apparent statutory intention to exclude the operation of an estoppel in the circumstances of this case. In the case of Shah v Shah (2001) EWCA Civ 527, the court approved the dicta of Beldam LJ in the case of Yaxley v Gotts (2000) Ch 162 at pg. 191: "The general principle that a party cannot rely on an estoppel in the face of a statute depends upon the nature of the enactment, the purpose of the provision and the social policy behind it". The Court of Appeal in Shah was of the view that it was entitled to consider the particular statutory provision, its purpose and the social policy behind it when deciding whether an estoppels is allowed. ¹

6. According to Halsbury's Laws of England²

"There is no absolute rule as to whether estoppels may, or may not, be used to circumvent a statutory provision although the principle that a party cannot set up an estoppels in the face of a statute has been described as a principle that appears in our law in many forms. A clear public policy underlying a statute, such as the need to protect vulnerable persons dealing with moneylenders or landlords, may prevent an estoppels from arising but in other instances statutory requirements, for example, as to formalities or time limits may be circumvented by estoppels."

7. In Shah, the court made the observation that " *having regard to the purposes for which Deeds are used and indeed in some cases required, and the long term obligations which deeds will often create, there are policy reasons for not permitting a party to escape his obligations under the deed however minor in the way his signature was attested.*"

8. Whilst the facts of Shah was substantially different to the facts of the present case, in that the Defendants were trying to 'weasel' their way out of a Deed by arguing that their signatures had not complied with the formal requirements laid down by statute for the attestation of same, a similar reasoning could be applied to the facts of this case.

9. I am not persuaded that this Court should allow the Plaintiff to escape the obligations imposed upon him by the consent order. It is unconscionable that the Plaintiff should be allowed to escape the obligations she agreed upon in the consent order. What was agreed to is clear – to convey " *the southern portion of the lands...*". The essence of the consent order was complied with, that is, the surveyor gave notice to Joyce Lakheeram and proceeded to survey it and produce a plan. I

¹ See comments of Pill LJ at Para. 21 of Shah

² Vol. 16(2) (Reissue) Para. 960

am not satisfied on the evidence that the lands surveyed represent anything else but that which was described in the consent order. In the statement of claim at para 3(a), Joyce Lakheeram set out the relief claimed by Ishwardaye Benny in the previous proceedings of 1992 as a declaration for a piece of land measuring 32' by 147' being a portion of the larger parcel. The portion was specifically defined. Yet in the consent order, even though the parties were free to set the parameters or to refer to it in the 'relief', no such definition was included. I do not view this defining of the parameters of the land in the relief claimed in the previous proceedings as necessarily informing the Masters Court and the consent order, as to what was understood or intended between the parties. Instead I view this omission from the consent order as reflecting a deliberate and clear intention to cause the conveyance of the whole of the "... *the southern portion of the lands...*". The disputed portion partitioned by the surveyor on the plans, appears to me to have done just that; partitioned '*the southern portion of the lands*'. The northern boundary of the said 'southern portion' of the lands is just sufficient so as to include the structure. Further, I accept that Harridass Chatergoon (decd) used a 'road' over part of the southern portion of the land to gain access to the back of his house for his tractor/farmall. However, in the consent order there is no reservation of this 'road' to Joyce Lakheeram although it was open to her to insert it if it was intended. It wasn't particularly long before she had second thoughts about the import of the order³. But, in my view, that is what it is; *second thoughts*, from which she cannot now resile. In all the circumstances I am satisfied that the order did intend to convey the whole of the southern portion of the lands including the one time alternate 'back entrance' to what is now Joyce Lakheeram's property.

10. Joyce lakheeram seems to be suggesting in para 7 of her statement of claim that the order and plan thereto was intended to confer only the land upon which the house stood. As I said above, the order is clear enough to me, to confer more than just the footprint of the house and, that is my finding. In any event, at the very least, this would be impractical. For example, the windows and doors open beyond that footprint and ingress and egress would necessitate lands extending beyond the footprint of the house.

11. It cannot have been the purpose of the legislation to allow parties to renege on their word or to disentitle a person(albeit temporarily) from land that by virtue of a court order they were and indeed still are beneficially entitled to. The fact that Joyce Lakheeram refused to sign the Deed is to my mind an indication of unconscionable conduct which the Court will not countenance especially in light of the evidence before me which shows that she had at least two years within which to try to co-operate with the Defendant in bringing this matter to close and ensuring that the purport of the consent order was achieved. Since 1998 the Defendants had been trying to settle

³ See letter from her Attorney.

the matter.⁴ Since 1997 the survey plan was prepared and since 1998, the draft Deed of Conveyance was forwarded to the Plaintiff's attorney for perusal and execution but the only evidence before me on behalf of the Plaintiff was a letter dated 28th February 2000 which in any event, does little to convince me that the Plaintiff was serious about moving the matter forward in an expeditious manner and ensuring that the terms of the consent order were complied with.

12. There is evidence from the Plaintiff that she was not present when the survey was done although I am satisfied on the evidence that she was informed of the survey date. There seems to be no real attempt by her to clarify her concerns with the survey plan during this time. At one point the Benny's arranged for Mr. Ramcharan to redo the survey as a result of objections to the survey by the Plaintiff.⁵ However, again, she never showed up. In the end, it was the said second arrangement for the survey that produced the plan that the defendants are relying on in this matter.

13. As regards the Plaintiff's contention that the survey plan and Deed confers more land than contemplated by the Consent Order, I am of the view that the consent order was not restricted only to the footprint of the house but to the southern portion of the land that was occupied and used by the Defendant. It is a reasonable and logical inference that the parties could not have intended by the terms of the consent order to restrict the Defendant's use of the land to the footprint of the house. The fact that the plaintiff, Mrs. Lakheeram, is not happy with the size and location of the Benny's portion is somewhat irrelevant, in that it was the intention of her father and her good self and the court, by virtue of the consent order that the Benny's have the portion shown on the plan.

14. Indeed, in the first action it was not in dispute that the father of the two Parties in this present action – Harridass Chatergoon - was alive and active at the time the Defendant was allowed into occupation of the now disputed lands.

15. I am not convinced that the statutory requirements which were in existence at the time of the consent order, were of strict legal necessity for the validity of the Deed of Conveyance as contemplated by the Consent Order. In addition, in all the circumstances I am convinced that it would be unproductive, unfair and unconscionable to allow the Plaintiff to rely on the statutory requirements to nullify the Deed of Conveyance No. 6483 of 2000. I am satisfied that an estoppel

⁴ See letter dated March 13 1998

⁵ See letter dated 8th February 2000

arises to mitigate the strictures of the law arising under the statute since it would be inequitable for the Plaintiff to rely on the strict legal position. There is no evidence to convince me that Harridass Chatergoon and/or the Plaintiff herein did not act in the manner alleged in para 11 and 12 of the Defence and Counterclaim and that, informed by these and other considerations, freely entered into the subject consent order. In essence, the Plaintiff has made a binding contract, captured in the Consent Order, that she would not insist on the strict legal position – relying instead on what she agreed to in the Consent Order - and a court of equity will hold her to her contract.⁶

16. But it does not stop here. The essential point in this matter is the validity of the consent order. I am satisfied that the order is a valid order. It is now for the parties and indeed the court to give effect to the Order. The order, as I have found, requires that Ishwardaye Benny be given the southern portion of the lands. The southern portion of the lands is in my view accurately represented by the existing survey. It does not include making any allowances for the old tractor access etc. Whether in giving effect to the order several statutory provisions were breached, rendering the conveyance or the survey null and void or not, doesn't alter the validity or import of the Order. It is not the Order that would be null and void, but at most, the conveyance or survey as the case may be. And, if the conveyance and/or the survey are null and void, then, to ensure continued compliance with the unaffected Order, the conveyance and/or survey must be redone so as to give effect to the order; which is that the southern portion of the lands be conveyed to the Bennys. No useful purpose is served, in my view, by voiding the survey and or the conveyance for the reasons submitted by Joyce Lakheeram, if it merely means that the processes have to be repeated to attain the very end - already achieved - contemplated by the parties in the Consent order.

17. Finally, on the question of the construction of the roof by the Benny's that extends over that of the Lakheerams, I think it obvious that this is not permissible. This fact and issue thereto, was first raised in the witness statement and is not pleaded. As a consequence it has not been addressed in the defence and therefore not before me for a determination. However, to avoid this being the subject of further fresh litigation, the parties would be well advised to rectify this now.

⁶ See: Hughes v Metropolitan Railway Co. (1877) 2 AC 439 at 448 & Crabb v Arun District Council (1975) 3 All ER 865

ORDER

18. For the reasons provided above; **IT IS HEREBY ORDERED AS FOLLOWS:** the Claimant's claim is dismissed and the Counterclaim of the defendant is granted, in that:

- i. A Declaration that the Deed of Conveyance dated 1st March 2000 registered as No. 6483 of 2000 is valid and effectual subject to the execution of a Deed of Rectification to rectify the address in which the previous proceedings were filed such Deed of Rectification to be executed by the Plaintiff within 14 days of the presentation of the same for execution by the Defendant her servant and or agent and in default that the Registrar of the Supreme Court of Trinidad and Tobago to execute the Deed of Rectification on behalf of the Plaintiff.
- ii. The Plaintiff do pay the Defendant's costs of the Claim and Counterclaim.
- iii. Liberty to Apply.
- iv. Stay of execution of 28 days.

DAVID C HARRIS
HIGH COURT JUDGE
SEPTEMBER 25, 2012