**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Port of Spain

Claim No. CV 2017-01239

BETWEEN

**Champa Divi Bharath**

Claimant

And

**Seeram Bharath**

Defendant

**Before the Honourable Mme. Justice Donaldson-Honeywell**

**Date of Delivery**: 4th December 2018

**Appearances:**

Ms. Shontel Hinds for the Claimant

Mr. Kiel Tacklalsingh inst by Ms. Desire Sankar for the Defendant

**ORAL JUDGEMENT**

A. **Introduction**

1. This Judgement follows from the Ruling given on June 11, 2018 in this matter. In the said Ruling a decision was made not to grant Summary Judgement in favour of the Claimant. The decision took into account that although the Defendant's pleaded case seemed weak,

there appeared to be the possibility that he could, by way of evidence then unfiled, succeed in proving that he had an equitable interest in the Claimant's home at LP 51 Sooknanan Street, East Aranguez ["the property" or "the premises"] based on proprietary estoppel. Accordingly, the Ruling delivered in June, 2018 granted the Defendant the opportunity to present such evidence and to have the matter tried.

2. On conclusion of the Trial with Oral Submissions heard today I find, having considered the pleadings, evidence, propositions of law and submissions that the Defendant has failed to take the matter any further. No evidence or legal submission supports his claim to an equitable interest. I now explain more fully my conclusion.

## B. **Background and Issues**

3. The Claimant has owned the property as title holder since 1994. She maintained it as a family home, where as a single mother she raised three sons, including her youngest child, the Defendant by dint of her work as a market vendor. She continued to provide them with accommodation as adults. The Defendant lived with her rent free. Some years ago when the Defendant worked at Kiss the Claimant also used to cook, wash and make his bed for him. He paid her $200 per week during the time she provided these services.

4. The Defendant is now a middle aged, married man. He opposes the Claim filed by his mother by contending that she could not dispossess him i.e. make him leave home. This was so, he said, because she was estopped based on the doctrine of proprietary estoppel. This Defence was based on the Claimant having allegedly assured him that "she would eventually have transferred to him the legal title to the said premises". This assurance he claimed was corroborated by her Wills executed in 1994 and 2005. [See paragraph 1(a) of the Defence].

5. As title holder of the property there is no issue to be determined as to the basis for the Claimant's claim to enjoy possession of it to the exclusion of the Defendant. The issues to be determined therefore related to the Defence.

6. There was agreement between the parties as to the essential elements that the Defendant was required to prove. These are set out in the skeleton submissions of the Claimant at paragraph 5 as follows:

    i. Did the Claimant give assurances to the Defendant that she would give him a share in her property?

    ii. Was there detrimental reliance by the defendant?

    iii. Is it unconscionable for the Claimant to renege on the assurance made in and surrounding her wills?

**C. <u>Findings</u>**

i. **Did the Claimant give assurances to the Defendant that she would give him a share in her property?**

7. The specific assurance alleged by the Defendant at paragraph 1 (a) of the Defence is that the Claimant would "eventually have transferred to the Defendant the legal title to the premises." There is no evidence from the Defendant as to that type of assurance which connotes a transfer of the title during the Claimant's life time. The Defendant makes vague references to promises made throughout his witness statement including at paragraph 12. At paragraph 2 and 26 he comes closest to giving evidence as to what the promise was. Here however, he doesn't speak to a transfer of the title by his mother but

rather that the premises would be transferred to him upon her death. At 1(a) of the Defence the Defendant mentions the Claimant's Wills dated 1994 and 2005 as having "corroborated and evidenced" her assurances.

8. The first point of note is that the promise in the Will could not have corroborated the alleged assurance referred to at 1(a) of the Defence to transfer the title during the Claimant's life. At most the Will supported that there was a different assurance, namely that after her death the Defendant would inherit the property. It would then be transferred to him. It is difficult to see how asking the Defendant to leave the house, so the Claimant can live peacefully for her remaining years, is inconsistent with a promise intended to materialize after her death. In any event, this was the only assurance I found to have been supported by evidence i.e. the alleged discussion about the Wills by the Claimant with her sons.

9. It is correct, as submitted by the Defendant in submissions that a promise in a Will may, depending on the circumstances, be viewed as an assurance for purposes of a proprietary estoppel defence. This was made clear in **Gillett v Holt [2000] All E.R. (D) 289**. That case was cited by Mendonça JA in **Nester Patricia Ralph and Esau Ralph v Malyn Bernard Civ Appeal No 131 of 2011**, where he explained that is was not correct to,

*"suggest that the doctrine of proprietary estoppel is only applicable if the assurance on which the claimant relies is limited to the claimant acquiring an interest in the subject property during the life of the person giving the assurance and does not apply when the assurance is that the claimant will inherit his property. That however is not so. There are many cases where the assurance relied on was that the claimant would inherit the property on the death of the person giving the assurance. In Gillett v Holt [2000] 2 All ER 289, for example, the representation was that the claimant would inherit the business."*

10. A Will, though revocable, can be accepted as a sufficient assurance for purposes of proprietary estoppel, but only if looked at in context, in particular as to:

    i. Whether the Claimant made clear that the promise in the Will of 2005 was more than just a statement of present intention. The answer to this is no. The Claimant made the promise in her Will at a time when she was ill and thinking of death. That fact was brought out from Defendant himself in evidence under cross examination;

    ii. Whether the Defendant was encouraged to reply on the assurance to his detriment. Again, the answer is no. The Defendant did not suffer any detriment, he only benefited from relying on the assurances. He suffered no detriment such as to make the promise irrevocable; and

    iii. Whether in all the circumstances it would be unconscionable that the Defendant did not benefit from the reliance. Again, the answer to this is no. The Defendant relied on the promise, exploiting the Claimant in the confidence that he could not be removed from her premises. In other words, he relied on the promise in a way that gave rise to his strong sense of entitlement to reside in the premises and that he need not give anything in return. That establishes an element of the unconscionability suffered not by the Defendant but only the Claimant.

11. The scenario in this case is completely distinguishable from **Gillett** and all the other cases cited by Counsel for the Defendant. In those cases, the person relying on the promised benefit did things to their detriment and there were circumstances of unconscionability affecting them.

12. In **Gillet** a farm worker devoted his life to giving underpaid service to the promisor for decades, based on certain assurances as to residential entitlements. These assurances were witnessed by others who testified. He also gave up schooling at age 16 to go to live with the employer, a 42-year old bachelor. He sold his own house and spent money on

the employer's farm house. He and his wife devoted the best years of their lives to working for the employer and being loyal to his business, social and personal interests. Then they were both summarily dismissed. The unconscionability was clear.

13. In the instant case it is the opposite. The Claimant educated and gave service to the Defendant. She gave rent-free accommodation for himself, his wife and his business. Her reason for providing for his business was that she wanted her children to be in a position to support themselves financially.

14. In **Ganase Mathura et al v Dolly Ragoonaath et al CV 2011-03720** the Defendant and her husband spent resources cultivating land based on assurances the land would be given as a gift while the promisor was alive. No Will was involved. The entitlement to possession was asserted not against the promisor but against another person seeking possession after the promisor's death.

15. In **Nester Patricia Ralph and Esau Ralph v Maylyn Bernard Civ Appeal No 131 of 2011** the Claimant was a common law wife who relied on assurances from her husband, witnessed by her daughter Avonelle, who testified. She showed that she relied on these assurances by transforming the board house on the premises to a substantial construction. This was done in the context of a long conjugal relationship, which also embraced the Claimant's daughter in a family setting. There was no Will involved; just a promise of a permanent living arrangement. The Claimant in that case made joint contributions to the home. Clearly the matrimonial-type family arrangement was taken into account so it was evident that unconscionability would arise if the permanent living arrangement were stopped.

16. By contrast, in this case, no permanent living arrangement promise is pleaded or in evidence. Merely a promise to bequeath property after death.

**ii. Was there detrimental reliance by the defendant?**

17. The alleged acts of detriment suffered by the Defendant and my observations on them are as follows:

*Financial Detriment*

- $50,000 paving and $25,000 shed – These alleged payments were merely for his business. It was admitted under cross-examination that the Claimant contributed to the shed. The Defendant produced no documentary proof or corroborating evidence of this quantum he said he paid.
- Unquantified payment of Utility bills – Any bills paid by the Defendant were to ensure that utilities were running for his business operations and living comfort.
- Unquantified cost of Maintenance of premises – There was no proof from the Defendant that he maintained the premises. The opposite is as alleged by the Claimant is accepted as fact. That account is more probable in light of the piles of equipment left untidily next door to the premises by the Defendant as seen on the Court's site visit. By contrast the Claimant's living area was well maintained. IT was seen to be in spotless condition, including the shed area which is at her door step. The Claimant uses the shed for Hindu prayers but shared it with the Defendant for his car repair business.
- $5,000.00 for raising of the surrounding wall – The part of the Wall raised was seen at the site visit to be in close proximity to the shed where the Defendant conducted his business.
- $8,000 for building up around the cesspit – This was necessary for the benefit of the Defendant as well as other residents.

- $15,000 electrical work – This work was done only in the shed where it was for his benefit in conducting his business.

Total alleged cash contribution was $103,000.00. However, no receipts or proof of source of payments was submitted by the Defendant.

*Non-Financial Detriment*

- The Defendant claims that based on the assurance given by the Claimant, he gave up opportunities –

  - To live elsewhere- There was however, no evidence of this lost opportunity. The Defendant has moved from the property since the filing of his Defence herein. There is also evidence before the Court that he is the co-owner of other lands.

  - To establish business elsewhere – The Defendant led no evidence of this lost opportunity. There was neither proof of the alleged thriving status of the car repair business nor that it could not be operated elsewhere.

**iii. Is it unconscionable for the Claimant to renege on the assurance made in and surrounding her wills?**

18. In my view unconscionability has not been proven by the Defendant because only the Claimant suffered detriment from the alleged promises. She had to share her kitchen, bathroom and clothes washing area with the Defendant and his common law wife in close quarters as observed at the Court site visit. She had to endure that areas occupied by the Defendant and his wife were kept untidy. She says she was subjected by the Defendant to abuse and temper tantrums. Pictures attached to the Claimant's pleadings

support the alleged untidy use of the shed by the Defendant, right by her bedroom and front door.

19. The Defendant may however, prima facie, have equity in the shed. The Claimant however, stood by and let him supervise the labour to construct that shed knowing it was mainly for his own benefit.

20. On the other hand, while recognizing that this is not a forensic accounting exercise and must be looked at in the round, account must also be taken of the fact that the Defendant used the shed rent free for a business and did not share the profits from his business with the Claimant. In the circumstances of this case there should be a set off of any equity in the shed against all he gained from the Claimant's assurances.

The calculation

21. The House value the Defendant seeks was valued on October 4, 2017 at $1,215,000 by Boland Sookoo and Associates Ltd, the expert retained jointly by the parties to assist the Court in this matter. The Defendant's alleged financial contribution of $103,000 is in my view not enough to establish the equity claimed. As aforementioned, even the payment of that amount has not been proved by the Defendant. In any event the agreed valuation sets the value of improvement works at $25,000.00, excluding paving and wall. So if in fact the Defendant built the shed, repaired the cesspit and paid fully for the wall and paving, the alleged amount of $55,000 for paving and wall added to the $25,000 valued improvements amounts to a contribution worth approximately $80,000. There must be subtracted from this the estimated Rent valued by the expert at $1,200 per month. Rent for 2005 to 2017, the 12-year period of residence since the promise was expressed in the 2005 Will amounts to $172,800.

22. Thus, if I were to look at financial contributions alone, the equity to be accounted for amounts to $0 since unpaid rent exceeds the $80,000 equity by $92,000. That $92,000 is a financial benefit gained by the Defendant as opposed to a detriment or equity. I agree with the Defendant's Attorney's that I must also consider non-financial detriment as stated in the Judgement of Mendonca JA in **Nestor Patricia Ralph v Bernard** at paragraph 50**.**

23. However, in this case only one letter to the Town and Country Department, written by the Defendant in order to protect the property from a neighbouring nuisance, was referred to as documentary proof of a non-financial detriment. That is not enough to tip the scale in his favour. He also said that setting up his life around the premises was to his detriment. In my view he benefited. As aforementioned I also find no merit in his claim that he gave up other accommodation and business location opportunities based on the Claimant's assurances. There was no evidence to prove such lost opportunities.

**D. <u>Evidence</u>**

**The Site visit**

24. The evidence considered included observations at a site visit conducted on September 27, 2018. On entering the Claimant's property along a narrow driveway passing another home I observed a large pile of mechanical equipment, somewhat overgrown with weeds on the premises of the other house just before reaching the Claimant's home. There was no dispute that the items belonged to the Defendant. He said he had placed them there with the neighbour's permission when he moved out a few months ago. One large piece of equipment remained under the shed near the Claimant's front door.

25. The Defendant pointed out his alleged building works, namely, the shed, the 3 to 8 layers of bricks used to heighten an outer wall, the paving, the cesspit wall (approximately 2-3 brick layers around a 6ft. by 6 ft. square) and the electrical wiring in the shed. All alleged improvements were to the outside of the house, mainly to the shed area where the Defendant once had his car repair business.

26. In **Fulchan v Fulchan CV2011-03575** Rajkumar J, as he then was expressed concern that

> "*It appears that the misconception has developed that any purported contribution – no matter how tenuous, trivial or remote, can give rise to an equitable interest. In recent times this court has had to consider, for example, a. payment of land and building taxes, b. painting, c. purchase of chattels – for example furniture and air-conditioning units, d. cleaning of the yard and surroundings, and the assertions that these either singly or in combination with other matters, gave rise to an equitable interest which had to be recognized by the holder of legal title. Such payments may be ancillary to other contributions but would rarely suffice on their own to create an equitable interest in real property."*

27. In the instant case I did not find the works referred to in the Defence and pointed out by the Defendant at the site visit to be the type of improvements that could give rise to an equitable entitlement to the Claimant's property.

28. The Claimant invited us to view inside her home. Both outside and inside were kept in immaculate condition; neat, tidy, clean and well decorated with many religious artefacts. The Claimant said she had regular Hindu prayers and needed to have the shed area kept clean.

29. There were two buildings on the premises. The back building is a two-storey structure where two of the Claimant's elder sons reside. The front building is a three-bedroom bungalow. You enter that building directly through the living room. The Claimant's bedroom is to the right. Next to it is a bedroom kept for a granddaughter who visits. Then there is the room that was shared by the Defendant and his wife. That room is adjoining the only bathroom that the parties must share. On stepping out of the Defendant's bedroom there is a kitchen. Again the Claimant shared this with the Defendant and his wife. The wash area is just outside the kitchen door.

**The witnesses**

30. On the morning of the Site Visit, the Trial had commenced. The Claimant, the Defendant and two workmen alleged to have assisted the Defendant in his building works were sworn in as witnesses and cross-examined.

31. The Claimant presented as very frail. She was quite articulate and respectful. She admitted to not being able to read well. She maintained as stated in her witness statement that she built the shed i.e. she paid for it. I found her to be a witness of truth in this regard since the Defendant's evidence under cross examination supported her to an extent. He agreed that she contributed financially to building the shed.

32. The Claimant testified that the Defendant only contributed labour to building the shed. As it relates to the cesspit, her evidence was that the work done on it comprised two rows of blocks 6ft x 6 ft. She said all her sons and she herself paid together for that work and the Defendant did the labour.

33. The Claimant's evidence was that the Defendant threatened her and was disrespectful to her and that her elder son had to intervene.

34. There was un-contradicted evidence from the Claimant that the Defendant owns property in Piarco.

35. The only inconsistency in the Claimant's evidence under cross examination was as to whether she discussed her second Will which was executed in 2005 with sons. She had admitted to having done so at paragraph 20 of her witness statement but did not initially confirm this when cross examined. In my view she was not discredited. It appeared that she could have been confused based on her age and the stress of the situation. Eventually under further cross examination, she admitted that she did discuss the 2005 Will with her sons.

36. Although heavy weather was made of it by Counsel for the Defendant in skeleton submissions, my finding is that the Claimant's difficulty in reading is of no relevance in discrediting her as a witness. It was suggested that her initial difficulty in admitting that, as stated in her Witness Statement, she had spoken with her sons about the Will was because she could not read. The Claimant explained however, that she relied on her Attorney to explain what was in all the documents to her.

37. It is unfortunate that the Claimant's son presented submissions demeaning her regarding literacy. This belies any empathy and gratitude on his part for sacrifices she made to ensure he was well educated and had a place to live. I find as a fact that, even though the Claimant may have been unable to read the witness statement prepared for her, she had full understanding of her claim. This was so as her testimony in Court was largely consistent with her Witness Statement, though she may not have recalled a point therein or why certain points were admitted.

38. The **UK Civil Procedure Rules Practice Direction 22 – Statement of Truth** provisions cited from The White Book, 2018, Volume 1, page 728 by counsel for the Defendant as to steps to be taken where a Witness is unable to read are inapplicable. It was submitted by Counsel for the Defendant that the Claimant's entire Witness Statement should be struck out because the procedure mandated in the UK CPR was not followed. That submission is without merit as there is no similar provision in the **Trinidad and Tobago Civil Proceedings Rules, 1998 (as amended)**.

39. The Defendant seemed apprehensive in answering questions. His equity in the property was not fully proved by his evidence. Under cross examination he admitted that his mother contributed financially to his building works on her property. He also shed more light under cross examination on his benefits than on any detriment he suffered as a result of the promise in his mother's Will.

40. The Defendant admitted that he never paid rent to operate the business in the shed. He admitted the shed was built "thinking it would benefit me" – i.e. that was his reason. He didn't see the cause to pay rent for the accommodation of his wife from 2005 and for himself at any time. He used electricity in the shed and in the house for himself and his wife. He said that he used to pay utility bills from 2005 to 2015 but stopped when in 2016 the mother hid the bills. The Defendant never tried to pay for the utilities without a bill. He did not disclose any receipts for bills he paid.

Assurances

41. At paragraph 24 of the Defendant's Witness Statement he speaks of being assured as long as he can remember that the premises will be his upon the Claimant's death. He says she told this to other persons as well.

42. No particulars as to the words used when the Claimant allegedly made assurances, the dates or which persons were told was in evidence before the Court, save for the reference at paragraph 26 of the Defendant's Witness Statement to two Wills dated 1994 and 2005. Under cross examination he said the two workmen called as his witnesses were people who heard the Claimant give such assurances. When asked he had difficulty remembering their names which gave the impression that he was not truthful. Had there been such crucial corroborating evidence from witnesses surely the Defendant would remember their names. In any event the two witnesses made no mention of hearing the assurances in their witness statements. Under cross examination one of them denied hearing such conversations. The other wasn't asked so there was no confirmation from the two workmen that they heard the Claimant give the alleged assurances.

43. The Defendant himself, in his witness statement and under cross examination only gave evidence as to the Claimant's Wills and discussions with her sons about the Wills as specific instances of her expression of the assurance. However, the Defendant revealed under cross-examination that the discussions surrounding the last of the two Wills took place in 2005 when the Claimant was to have heart surgery. Clearly that Will and the discussions in relation to it were just an urgent statement of present intention regarding who would own her property. This was done because the Claimant thought she may not have survived the surgery. The Defendant put forward no evidence of any assurance given to him by the Claimant after 2005. In fact, he confirmed under cross examination that he relied on the Claimant's Will. He said "If she did not have her will I wouldn't do all that."

Detriment

44. Under cross-examination with regard to the alleged detriment suffered, the Defendant claimed he earned approximately $1,000 monthly in his car repair business. As such, he admitted that to pay $50,000 for paving he took a few months. He admitted that the Claimant paid for some materials for the paving. He said he made "a lot of contribution". He admitted that the contention in his Witness Statement that he paid "Solely" was wrong. The Defendant admitted that he purchased some cement that was soft and his Mother had to have it removed. He could not say how much cement he bought but said the contractors would know. Regarding the shed he admitted the Claimant paid for the steel beams. He said he paid the workmen and for screws and so on. No particulars were provided to show how this contribution added up to $25,000.00.

Conscionability

45. The Defendant admitted that proceedings regarding domestic violence brought against him by the Claimant went on for 3 years. He was discredited as to the evidence in his Witness Statement that the proceedings were withdrawn for lack of evidence. The Magistrate's Court record was put before him under cross-examination and he had to admit that there was no such basis for the discontinuance of those proceedings.

**E. Conclusion**

46. The Defendant benefited from living off the largesse of his mother, the Claimant for many years. After 2005 when he believed he had an assurance with regard to an interest in the property he did not act to his detriment. Instead, lulled into a false sense of entitlement/security that he could not be put out, he started to ill-treat the Claimant, while still benefitting from her rent free provision of accommodation and a business place.

47. In all the circumstances, the Defences of propriety estoppel and equitable interest in the Claimant's property are not made out.

48. The Claimant as the title holder is entitled to the possession orders sought.

**F. <u>Order</u>**

**IT IS ORDERED** that: -

i. There shall be judgment for the Claimant against the Defendant for possession of property located at LP 51 Sooknanan Street, East Aranguez in the island Trinidad.

ii. The Registrar of the Supreme Court is directed to pay to the Claimant the sum of Eight Thousand Dollars ($8,000.00) in costs that was deposited into court by the Defendant.

iii. The Defendant do pay to the Claimant the remaining costs in the sum of Six Thousand Dollars ($6,000.00).

iv. The Defendant is to remove his remaining possessions from the said property located at LP 51 Sooknanan Street, East Aranguez in the island of Trinidad by 18th December, 2018.

v. There be a stay of Execution of fourteen (14) days.

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Eleanor Joye Donaldson-Honeywell

Judge

Assisted by Christie Borely JRC 1