REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV. No. 01273 -2009

BETWEEN

RICKY RAMOO
SITA RAMOO

CLAIMANTS

AND

SITRA JOE RAMOO
(Executor of the Estate of Basdeo Ramoo)

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE JONES

Appearances:

Mr. D. Cowie for the Claimants.

Mr. G. Mungalsingh instructed by Mrs. S. Mungalsingh for the Defendant.

Judgment

1. The claimants and the defendant, brothers and sisters, are the children of Basdeo Ramoo, deceased who died in the year 2008. The defendant is sued in his capacity as the executor of the estate of the deceased and in his personal capacity. The action concerns two parcels of land, the first comprising eight acres ("the first parcel"), and the second comprising two acres one Rood ("the second parcel"), which upon the death of the deceased have been treated by the defendant as forming a part of the deceased's estate.

The claimants allege that the first parcel and an undivided half share in the second parcel belong to them.

2. During his lifetime the deceased purchased these two parcels, together with another parcel of land ("the third parcel") in the name of four of his children: the claimants, and Dinty and Meno. At the time of the purchase all four children were minors. Meno died in the year 1975 while still a minor. By a deed of gift dated 1st March 1978 the interests of the claimants and Dinty in the three parcels of land were conveyed by them to the deceased. At the date of execution of this deed the first claimant and Dinty were still minors. This deed however was not registered until the 10thFebruary 1983. By the time of its registration both the first claimant and Dinty had attained the age of majority. Dinty died on the 2nd March 1983, at aged 21 years.

3. The claimants allege that by virtue of the presumption of advancement both the beneficial and legal interest in the two parcels of land vested in them and their two siblings. With respect the deed of gift they allege that as a result of (a) the infancy of the first claimant and Dinty at the time of the execution of the deed; and (b) the undue influence of the deceased over the second claimant that the transfer is null and void and of no effect and that they are entitled to have the deed of gift set aside.

4. The defendant on the other hand, maintains that the parcels of land form part of the estate of the deceased. He avers that the transfer to the deceased is valid. In addition the defendant alleges that presumption of advancement does not arise to vest the lands in the names of the claimants because during his lifetime the deceased conducted his

business by purchasing land in the name of his children with the intention that the land would be re-conveyed to him at his request or sold at his direction. According to the defendant this practice of the deceased was known to the claimants and their other siblings.

5. In any event, the defendant avers, upon attaining majority the claimants (i) confirmed the transfer of the third parcel of land to the deceased and (ii) during the lifetime of the deceased made no complaint with respect to the said transfer. Further the defendant avers that he has paid all the land taxes with respect to the three parcels of land and claims the protection of section 3 of the **Real Property Limitation Act Chap 50:02**.

6. In the circumstances, the issues that arise for my determination are:

(i) Does the presumption of advancement arise so as to vest both the beneficial and legal interests in the said land in the claimants?

(ii) If so, is the transfer of the said land to the deceased made invalid by reason of (a) the minority of two of the transferors and/or (b) the undue influence of the deceased over the second Claimant?

(iii) If so, does the Real Property Limitation Act apply to defeat any interest the claimants may have to the two parcels of land?

7. With respect to the application of the Real Property Limitation Act, the only evidence in this regard is that after the death of the deceased the defendant paid the taxes on the parcels of land. There is no evidence of the occupation of the said parcels of land. In the circumstances I am of the opinion that on the evidence the Real Property

Limitation Act does not apply. In any event the defendant has made no submissions on this issue. In the circumstances the only conclusion that I can come to is that the defendant no longer relies on the point.

The undisputed facts

8. By and large the relevant facts are not in dispute. Most of the evidence is to be gleaned from the documents put into evidence by consent. The first claimant was born on 12th July 1960 and the second claimant on the 1st May 1958. From the copy of the last will and testament of the deceased put into evidence it is clear that by the time of his death the deceased had at least 13 surviving children. Although no direct evidence is given of his occupation, from the grant of probate it would seem that the deceased was during his lifetime the proprietor of a tyre shop.

9. The deeds in evidence relate a tale of their own.

(i) By deed of gift No. 10652 of 1966 made between Bhagirattie Maharaj, also called Myah, as donor and the claimants and Meno and Dinty Ramoo as donees, the donor's one half undivided share in premises known as No 52, Mount Moriah Road was transferred to the donees as joint tenants. This deed specifically precludes a resulting trust in favour of the donor or anyone claiming through or by her.

(ii) By deed of conveyance No. 8808 of 1972 the third parcel of land was conveyed to the claimants and Dinty. The deed reflects that a purchase price was paid by Capildeo Ramoo as trustee. The conveyance vests the third

parcel of land in the name of the claimants and Dinty in fee simple as joint tenants. This conveyance specifically precludes the operation of a resulting trust in favour of the trustee or anyone claiming through or by him.

(iii) By deed of conveyance No. 13913 of 1972 the first parcel of land was conveyed to the claimants, Meno and Dinty. The deed reflects a purchase price paid by Bhagaratie Myah Maharaj who is described in the deed as the trustee. This deed specifically excludes the operation of a resulting trust in favour of the trustee or anyone claiming through or by her.

(iv) By a deed of conveyance No. 13892 of 1973 between the claimants, Meno and Dinty as vendors, the deceased as guardian and Knolly Fraser as purchaser, a parcel of land known and assessed as 143A Maharaj Avenue Marabella was conveyed by the vendors to the purchaser for $15,000.

(v) By deed of conveyance No. 1006 of 1975 the second parcel of land was conveyed to the purchasers, the claimants, Meno and Dinty, as tenants in common. The deed reflects the payment of the purchase price of $21,656.25 by the purchasers. This deed recites an order of the High Court of Justice made on 10th April 1974 in the matter of the Leases and Sales of Settled Estates Ordinance and in the matter of the freehold property of Seeta Ramoo, Meno Ramoo, Ricki Ramoo and Dinty Ramoo known as number 143A. Maharaj Avenue Marabella, by which it was ordered that the sum of $15,000 and accrued interest lying to the purchasers credit be paid out and applied towards the purchase of this parcel of land and that Bhagaratie Maya

Maharaj be authorised to sign the conveyance on behalf of the purchasers. The said deed is signed on their behalf by Bhagarattie Maya Maharaj.

(vi) By deed of gift No 3392 of 1983, dated 1 March 1978 (hereinafter called "the disputed deed") the first, second and third parcels of land were conveyed by the claimants and Dinty to the deceased. This deed does not reflect that any of the donors were minors at the time of execution. This deed, although executed by the claimants in 1978, was not registered until 1983.

(vii) By deed of gift No. DE 200802254346, (hereinafter called "the deed of confirmation") made between the claimants as donors and the deceased as donee and executed by the claimants on the 27th May 2005 and the deceased on the 30th of September 2005 the claimants confirm and convey the third parcel of land to the deceased. This deed recites (i) the conveyances of the first, second and third parcels of land to the deceased by deed of conveyance registered as No. 3392 of 1983; (ii) the fact that at the date of the execution of the said deed both the first claimant and Dinty were minors and did not have the legal capacity to convey their interest in the said land to the deceased; and (iii) that doubts had arisen as to whether the said beneficial interests were conveyed to the deceased. By this deed the first claimant conveys and confirms and the second claimant confirms the conveyance to the deceased of the third parcel of land.

(viii) By a power of attorney registered as DE200603041096 and executed by first claimant on 28th November 2006 and the second claimant on 18th November 2006 the claimants appointed the deceased as their attorney to: (i) sell their interest in the property at No 52 Mount Moriah Road for such price as he may determine in his sole discretion; (ii) receive and retain their share of the profit of the sale for his own use and benefit; and (iii) upon the receipt of the said purchase money to sign and deliver all the necessary conveyances.

10. From the deeds put into evidence therefore at least four parcels of land were conveyed to the claimants and their two siblings while they were still minors. In cross-examination the second claimant accepts that some six parcels of land were purchased by the deceased during their minority and put into their names. While the deeds of transfer show that the purchase price may have been advanced by persons other than the deceased, it is not in dispute that the purchase price for the first, second and third parcels of land was in fact provided by the deceased.

11. The first claimant attained at the age of majority on 12th July 1978. The second claimant attained the age of majority on 1st May 1976. The disputed deed was executed by first claimant when he was approximately 4 months short of his 18th birthday. The second claimant was in fact 19 years at the time. The disputed deed apart, two deeds were executed by the claimants after they attained the age of majority, the deed of confirmation and the power of attorney.

12. No action was taken by the Claimants with respect to the disputed deed until the year 2005 when, at the request of the deceased, they both executed the deed of confirmation in respect of transfer to the deceased of the third parcel of land. By the time of the execution of this deed both claimants were living abroad. Also in 2005, again at the instance of the deceased, they both executed a power of attorney authorising the deceased to sell another parcel of land in their name at any price fixed by him and allowing him to keep the profits from the sale.

13. Thereafter no further action was taken by either of the claimants until after the death of the deceased when according to both claimants they became aware of the provisions of the deceased's two testamentary documents dated 17 June 2004 and 30 May 2008 respectively and consulted legal advisors on the status of the other two parcels of land insofar as they had not signed any confirmation or conveyance with respect to those parcels of land.

14. Thereafter, in 2009, the claimants filed this action seeking declarations that they were entitled to the first, second and third parcels of land. The defence filed to the original claim filed by the claimants referred to the deed of confirmation and the power of attorney, as evidence that the claimants had confirmed the disputed deed. In response to that plea the claimants amended their statement of case to delete any claim to the third parcel of land.

Does the presumption of advancement apply?

15. The purchase of property in another's name gives rise to certain presumptions. In some circumstances a resulting trust will be presumed in favour of the person providing the purchase money. In others, where the property is put in the name of someone with whom the purchaser stands in a special relationship, for example a child or a person to whom the purchaser stands in loco parentis, the presumption of advancement may arise. Both these presumptions are rebuttable by evidence of the actual intention of the purchaser.

16. While accepting that, with respect to a conveyance by a parent to an infant, the presumption of advancement arises to defeat the presumption of a resulting trust in favour of a person who provides the purchase money the defendant submits that on the facts before the court this presumption is rebutted by the evidence of a contrary intention by the deceased. The onus of proof in this regard is on the defendants as the person seeking to rebut the presumption: **Hepworth v Hepworth (1870-71) L.R. 11 Eq.10.**

17. The question here is what evidence is admissible for the purpose of rebutting the presumption. It must be noted here that no objection was taken by either side at the trial to the admissibility of any evidence in this regard. According to Lord Landdale, Master of the Rolls, in **Sidmouth v Sidmouth 48 E.R 1254 at page 1257.**

> "Where property is purchased by a parent in the name of his child, the purchase is prima facie to be deemed an advancement; the resulting or implied trusts which arises in favour of the person who pays the purchase-

money, and takes a conveyance or transfer in the name of a stranger, does not arise in the case of the purchase by a parent of the name of the child; but still the relation of parent and child is only evidence of the intention of the parent to advance the child, and that evidence may be rebutted by other evidence, manifesting an intention that the child shall take as a trustee; and in this case, as in most others of the like kind, the only question is ,whether there is such other evidence.

18. "That contemporaneous acts and even contemporaneous declarations of the parent may amount to such evidence, has often been decided. Subsequent acts and declarations of the parent are not evidence to support the trust, although subsequent acts and declarations of the child may be so; but generally speaking we are to look at what was said and done at the time."

19. According to Viscount Simonds in **Shepherd v Cartwright [1955] AC 431 at page 446:**

"…… although the applicable law is not in doubt, the application of it is not always easy. There must often be room for argument whether a subsequent act is part of the same transaction as the original purchase or transfer, and equally whether subsequent acts which it is sought to adduce in evidence ought to be regarded as admissions by the party so acting, and whether, if they are so admitted, further facts should be admitted by way of qualification of those admissions"

20. In support of his submission that a resulting trust was intended the defendant alleges a course of conduct of the deceased as evidenced by the transactions between the parties up to and until 2005. In the Shepherd's case a similar submission was rejected on the ground that it could not be supported by "either reason or authority". Insofar as reason was concerned the court accepted that it was always possible that the deceased could have changed his mind subsequent to the impugned transaction, in so far as the authorities were concerned it was that it was the intention at the time of the transaction that was admissible and relevant.

21. It was conceded however, by Viscount Simonds, that in certain cases "there might be such a course of conduct by a child after a presumed advancement so as to constitute an admission by him of his parent's original intention": **at page 449**. He was of the view however that such evidence should be regarded jealously.

22. In the instant case it would seem to me that there is no doubt that there was a course of conduct by the deceased in purchasing land in the name of the minors. This fact, however, does not assist in determining the intention of the deceased at the time of the purchase. It is as equally referable to a resulting trust as to a gift to the minors.

23. With respect to the first and third parcels of land the only contemporaneous evidence which may be of assistance with respect to the deceased's intention at the time of purchase, are the statements in those deeds precluding the presumption of a resulting trust in favour of "the trustee" or anyone claiming through or by "the trustee". The difficulty here is that it is clear that the device of trustee was used in the deeds because

the claimants and their two siblings were minors. In one case, the trustee is Bhagaratee Maharaj and in the other, Capildeo Ramoo. No evidence has been led as to the identity of these two persons. In particular there is nothing connecting them to the deceased whom it is agreed provided the purchase money. In the circumstances, it may very well be, and in my view highly likely, that the declaration with respect to a resulting trust contained in both those deeds was merely made to ensure that no resulting trust be presumed in favour of either Bhagaratee Maharaj or Capildeo Ramoo. The statements made in the deeds therefore are hardly conclusive or indicative of the intention of the deceased at the time of purchase.

24. The only other evidence of any assistance is the course of conduct by the claimants themselves after the transfers. To this end the actions of the claimants after the transfers need to be examined to see whether their actions may constitute an admission by them of the deceased's original intention. In examining the conduct of the claimants in relation to the disputed deed it must be borne in mind that insofar as the first claimant is concerned he was a minor at the time of its execution and insofar as the second claimant is concerned, she alleges that it is the undue influence of the deceased that led her to execute the deed. In those circumstances, in my view, more reliance needs to be placed on the conduct of the claimants upon their attaining majority and while they were abroad and presumably free from the influence of the deceased.

25. According to the first claimant, in his witness statement, after the execution of the disputed deed he and the deceased did not discuss the matter until the deed of confirmation came up. He says in 2005 the deceased sent this deed for his signature. He

read the deed and recalled the transaction in 1978. He noted the contents of the confirmation deed and in particular, that it recited that he was under the age of 18 and did not have the legal capacity to convey his interest and that doubts had now arisen as to whether their rights of ownership were validly given to the deceased who had been attempting to sell the one acre parcel referred to in the deed. According to him, the deceased telephoned him and told him that he had already received payment for the land and would give the second claimant and himself some of that money. He says that it was in those circumstances that he signed the deed.

26. According to the second claimant in her witness statement she did not raise any issue over the disputed deed. She says that in the month of January 1993 she migrated to the United States where she got married and started a family. According to her evidence in chief in 2005 the deceased sent the deed of confirmation for her signature. She says that from reading the deed she recalled signing the transfer to the deceased. She says she noted that according to the deed doubts had arisen as to whether their rights of ownership were validly given to the deceased who "had been attempting to sell the 1 acre parcel referred to a prospective buyer which required that it be signed to cure that defect". In the circumstances, she says she signed the deed to confirm what she had done with respect to the one acre parcel. According to her the deceased promised her some of the money he collected from its sale, but she never got any.

27. By way of a hearsay notice evidence was given of statements made by deceased to the claimants in or about May 2005, shortly before they executed the deed as follows:

To the first claimant: "Don't worry, when I get the rest of the money from selling the one acre of land. I will give you and Sita a portion just sign the deed and send for me." To the second claimant: "I will get the money for the acre of land just now and I will give you something from it. I will carry the deed for the lawyer. Sign it and send it back."

28. It is evident, therefore, that with respect to both claimants the deed of confirmation as well as the proposed sale of land were both initiated by the deceased. There is no evidence by them of any protest by them or enquiry made of the deceased in this regard. While there seems to be some expectation that they would receive a portion of the money from the deceased as he had promised there certainly seems to be no expectation by either of them that they would be entitled to the whole of the purchase price.

29. It is clear from the evidence of both claimants that they both read the deed of confirmation carefully and understood its terms and import. According to the both of them upon reading the deed they recalled the transaction that had occurred in 1978. They were both at this time adults and away from the influence of the deceased. The first claimant had migrated to the United States around 1982. According to him in 1985 he together with his wife became permanent residents in the United States. He says he divorced his wife in 1994, met his future wife in 2001 and in 2005, went to live in Spain with her. In fact when he received the deed of confirmation he was living in Spain. The second claimant migrated to the United States permanently in January 1990, where she says she got married and started a family.

30. Despite the fact that the deed of confirmation only seeks to confirm the transfer of the third parcel of land to the deceased by the claimant, the reality is that it confirms the transfer of a parcel of land transferred to the deceased at the same time and in the same manner as the two parcels of land, the subject matter of this action.

31. Under cross-examination the first claimant claims that the reason he signed the deed of confirmation was to help out his father. I find that hard to believe. It is certainly contrary to the impression given by his evidence in chief that he signed the deed because of the promise by the deceased to give them some money. To my mind if the reason for confirming the transaction was really to help out the deceased surely this would have been stated in his evidence in chief. Perhaps because she was not asked in cross-examination, while the second claimant confirms that her father promised some money from the sale, she proffers no reason for signing the deed of confirmation.

32. Further the evidence is that on 18th November 2006 and the 28th November 2006 the second and first claimant respectively executed a power of attorney in favour of the deceased. Again, as with the deed of confirmation, this deed was initiated by the deceased. Indeed, it is clear from the terms of the document that the claimants were to have no input with respect to the negotiations for the sale of the Mount Moriah Road property. Nor, in the light of the undisputed evidence that the purchase price of the parcels of land in their names was provided by the deceased, does it seem that they were to receive any of the proceeds of the sale, whether capital or profit. Again the evidence is that this power of attorney was signed by the claimants and returned to the deceased without protest by either claimant. In truth, and in fact, according to the second claimant,

this property was not sold by the deceased but rather transferred to the deceased's widow before his death.

33. It seems to me that in all the circumstances the subsequent acts and declarations of the claimants are admissible to assist in determining the intention of the deceased with respect the purchase of the two parcels of land. In accordance with the established authorities I am satisfied that the subsequent acts of the claimants constitute an admission by them of the deceased's original intention with respect to the purchase of the two parcels of land. In the light of these subsequent acts I reject the claimant's evidence that they knew nothing of the intention of the deceased as described by the defendant. On the evidence before me it seems clear that this intention was known to the claimants, and in fact explains their acts subsequent to the execution of the disputed deed.

34. To my mind, by confirming the transfer of the third parcel of land in circumstances where it cannot be said that they were under the influence of the deceased or under any legal incapacity confirms to me that at all material times the claimants knew and understood that the lands purchased by the deceased in their names were not gifts but that the deceased's intention was always to retain the benefit of the ownership of the land. The fact that the legal effect of the deed of confirmation is merely to convey and confirm the third parcel of land is in my opinion irrelevant to the issue at hand. By signing the deed, and indeed by signing it without protest, the claimants, in my view confirmed the transaction and intention of the deceased that was evidenced by the preparation of and their execution of the disputed deed. This in my view is further confirmed by their execution, again without protest, of the power of attorney. In this

regard it matters not that the power of attorney refers to another parcel of land. It seeks to confirm the fact that the claimants were aware of the method of business adopted by the deceased with respect to the purchase of lands in their names.

35. The fact that, despite the nature of their allegations in these proceedings, the claimants stood by and did nothing to challenge the disputed deed until after the death of the deceased, while in the meanwhile allowing the deceased to treat the properties which they now allege belong to them, as though he was the owner does not reflect well on the credibility of the claimants. Neither does the fact that in their initial statement of case, not only do they seek orders with respect to the third parcel of land but there is no reference at all to the deed of confirmation.

36. I find that presumption of advancement does not apply with respect to the deceased's purchase of the first and second parcels of land. Accordingly, on the evidence, a resulting trust exists with respect to those two parcels of land in favour of the deceased. In view of this finding strictly speaking issue (ii) does not fall to be answered.

37. For completeness and in the event that I may be wrong with respect to this issue I will however go on to consider the two questions posed in issue (ii). It must be borne in mind, however, that the answer to the questions posed are on the basis that the presumption of advancement applies with respect to the transactions.

Is the transfer of the land invalid by reason of:

(a) the minority of two of the transferors and/or

(b) the undue influence of the deceased over the second claimant?

(a) The effect of the minority of two of the transferors.

38. With respect to the minority of the first claimant and Dinty at the time of the execution of the disputed deed, the claimants make two submissions. The first is that as minors the first claimant and Dinty had no capacity to make the deed of gift to the deceased. The second submission is that insofar as the deed of gift does not strictly comply with the Leases and Sales of Settled Estates Ordinance or the Infants Act that deed was null and void and of no effect.

39. With respect to capacity of minors, hold or dispose of real property, the position in this jurisdiction is as was applicable in England prior to the passage of the Law of Property Act 1925. According to Emmet: "before 1926 an infant could purchase, acquire, hold and dispose of a legal or equitable estate in land, but a purchase or sale by him could be avoided at his election on his attaining twenty-one, or within a reasonable time thereafter; if he died before that age, this right passed to his personal representatives": **Emmet on Title, eighteenth edition at page 351**. See also **Barnaby v Equitable Reversionary Interest Society (1885) 28 ChD 416; and Wittingham v Murdy (1889) 60 LT 956**.

40. That this is the position in Trinidad and Tobago is confirmed by Wylie in **The Land Laws of Trinidad and Tobago.** In dealing with the yet unproclaimed Land Law and Conveyancing Act of 1981 he says:

> "at common law a minor could hold a legal estate in the land, but because of the obvious difficulties in such a person, especially if still very young, managing such property and problems created by the rule that a disposition by an infant is voidable on attaining his majority, special provisions had to be made by statute. Thus the Leases and Sales of Settled Estates Ordinance deemed land held by an infant, even for an estate in fee simple, to be settled estate, so that sales and leases could be made on the infants behalf under the Act."

According to him, the Land Law and Conveyancing Act 1981, sought to bring the matter to its logical conclusion, by providing that a minor could no longer hold a legal estate and, following the earlier ordinances, land held by a minor is made subject to statutory trusts, like settled land, under which trustees have full power to manage it and deal with it. Unfortunately this Act has never been proclaimed.

41. The position in Trinidad and Tobago therefore remains the position under the common law. There is no prohibition to a minor holding an interest in land in Trinidad and Tobago or disposing of such an interest. But such an interest could be avoided by a minor upon attaining the age of majority, or within a reasonable time thereafter. In the year 1973 by virtue of the **Age of Majority Act Chap. 46:06** the age of majority changed from 21 to 18 years.

42. Dinty attained the age of majority in the year 1980. The first claimant attained majority in 1978. No application was made by either Dinty or the first claimant to avoid

the disputed deed either upon attaining majority or within a reasonable time thereafter. In truth and in fact therefore there was no need for the first claimant to have executed the deed of confirmation.

43. By section 35 of the **Leases and Sales of Settled Estates Ordinance** "where a person in his own right seised of or entitled to land for an estate in fee simple…… is an infant the land is deemed a settled estate within the meaning of the Ordinance." While the Ordinance allows the court, upon an application to it, to authorise any dealings with a settled estate, in this case lands held by a minor, the Ordinance does not make such an application under the Ordinance mandatory in order to dispose of an estate held by a minor.

44. In similar vein the **Infants Act Chap. 46:02** allows the court on a petition of any infant, by his guardian or next friend, if it thinks proper and for the benefit of the infant, to authorise the sale of any lands of the infant: **section 24 of the Act**. Provision is made by the Act for a notice of any petition to be made by way of an advertisement in the newspapers and for monies received on the sale to be applied as may be directed by the court. Again the application of the Act for the purpose of a sale of land by an minor is not made mandatory.

45. Indeed, as suggested by Wylie, applications to the court under the Ordinance, were devised for the protection of the purchaser so as to rule out the possibility of the infant avoiding the sale upon attaining majority. In the instant case it is clear that, for whatever reason, the deceased was not initially of the view that this device was

necessary. Indeed by the deed of confirmation it is clear that the issue only arose in circumstances where the deceased sought to sell one of the parcels of land. It is reasonable to assume therefore that this was done at the instance of the purchaser. In my opinion the failure of the deceased to apply for the court's sanction under the Ordinance was not fatal to the transaction.

46. Although not a major plank in the argument of either side some issue is made of the fact that the disputed deed was not registered until some five years after its execution. In this regard therefore it should be noted that whereas in general a failure to register a deed while not affecting its validity as between the parties to the deed will, in accordance with the **Registration of the Deeds Act Chap 19:06** result in a loss of priority: **section 16 of the Act.** The position however, is different with respect to deeds of gifts. By **section 18(1) of the Act** every deed of gift executed after 29th March 1933 must be registered with a period of 12 months from the date of execution. Registration thereafter attracts an increased registration fee, together with a penalty.

47. Further **section 18 (2) of the Act** provides that:

> "no deed of gift or settlement, until registered in manner hereinbefore prescribed, shall be effectual to pass any estate of interest on any land sought to be affected thereby, or to render such land liable as security for the payment of money."

48. Insofar as the disputed deed is concerned therefore, in accordance with section 18 of the Registration of Deeds Act the transfer to the deceased of the three parcels of land

did not take effect until 1st March 1983 when the deed was registered. By that time both the first claimant and Dinty had already attained the age of majority.

49. It must be noted here that, although not admissible to show the deceased's intention at the time of purchase, the actions of deceased in this regard are, in my opinion, consistent with an intention that the presumption of advancement not apply.

50. In my opinion therefore circumstances of this case the fact that the first claimant and Dinty were minors at the time of the execution of the disputed deed is not fatal to its validity. In this regard therefore, even on the assumption that the presumption of advancement did apply, I am of the opinion that the fact of the minority of two of the transferors does not affect the transfer of the fee simple estate in the three parcels of land to the deceased by way of the disputed deed.

(b) undue influence

51. The second claimant seeks to have the disputed deed set aside on the ground that she was unduly influenced by the deceased to execute the disputed deed. Once again we are dealing with a presumption. In order for the presumption of undue influence to arise there must be (a) the making of a substantial gift or the granting of a substantial benefit and (b) the existence of a relationship in which the donor or grantor has such confidence and trust in the donor or grantee or some third person as to place that other person in a position to exercise undue influence over the donor or the grantor in making the gift or

granting the benefit: **Halsbury's Laws of England, fourth edition, 2003 Reissue, volume 31, page 533, paragraph 843.**

52. It is not disputed that the presumption arises with respect to the relationship of parent and child. While there is no rule in equity that a parent may not accept the benefit from a child, even where the child is still under his parental influence, the onus, however is on the parent to disprove that the presumption of undue influence arises. In this particular case therefore the onus is on the defendant, as the legal personal representative of the estate of the deceased, to rebut the presumption raised by virtue of the relationship between the deceased and the second claimant.

53. "In order to discharge that onus it must be shown not merely that the person liable to be influenced knew what he was doing but also that he entered into the transaction only as a result of an independent and informed judgment or alternatively only after full, free and informed thought about it.": **Halsbury's Laws of England, fourth edition, 2003 reissue, volume 31, page 541 paragraph 852**.

54. According to the second claimant at the time of the transaction she was 19 years and 10 months old and living in the deceased's home. She was dependent upon him. According to her she and her siblings were all unquestioningly obedient to the deceased. The deceased, she says, was an extremely dominant person who tolerated no dissent. She says that she received no independent legal advice. Indeed, according to her, she signed the document when the deceased told her to do so. The person presenting the document,

whom she assumed was a lawyer, said nothing to her siblings and herself and spoke only to the deceased. She merely did as she was told by the deceased. Her evidence in this regard, is corroborated by the first claimant.

55. Save that the defendant makes some issue as to whether the second claimant in fact lived at the deceased's home at the time there is no real challenge to this evidence. On the evidence before me, therefore I find that the defendant has not discharged the onus upon him to satisfy me that the transaction was as a result of an independent and informed judgment by the second claimant.

56. On the facts of this case however, it does not end here. Given the passage of time the real question to be answered now is the effect of such undue influence on the transaction. According to the **Halsbury's**:

> "transactions entered into under undue influence and unconscionable bargains are voidable at the instance of the person influenced or his representatives, but not void ab initio. The person influenced may lose his right to have them set aside either by a subsequent ratification, or by his passive acquiescence, to be inferred from his holding his hand for considerable period of time, or in such circumstances that he must be taken to have determined not to impeach transaction.": **page 549, paragraph 864**.

57. In this regard the case of **Allard v Skinner (1887) 36 Ch. D 145**, is of some assistance. The question for the court's determination here was whether the transfer of property, in this case stock and money, made while the plaintiff was a member of a

religious sisterhood, was in circumstances where the plaintiff was no longer a member voidable at her option. The unanimous decision of the Court of Appeal was that the circumstances were such that the plaintiff would have been entitled on leaving the sisterhood to claim the restitution of that part of the property that was still in the hands of the sisterhood. The difficulty was that the plaintiff did not seek restitution until some six years after she had left the institution. In those circumstances, by way of a majority decision, the court held that the claim was barred by her laches and acquiescence.

58 In the opinion of Lindley L.J. while the lapse was a very material consideration, there was far more than inactivity and delay on the part of the plaintiff. According to him there was conduct amounting to confirmation of the gift. In that case, the plaintiff had made a will in favour of the sisterhood. Upon leaving the sisterhood the plaintiff changed her will, but never asked for the return of the money until the end of "five years or so" after she left the sisterhood. Upon these facts Lindley LJ came to the conclusion that:

> "she deliberately chose not to attempt to avoid the gifts but, acquiesce in them, or, if the expression be preferred to ratify or confirm them……. Moreover, by demanding her will and not her money, she made her resolution known to the Defendant .": **page 188**.

59. At the end of the day the question of whether the delay is evidence of acquiescence or ratification on the part of the claimants is an issue of fact for my determination. No steps were taken by the second claimant to avoid the transaction until some 30 years after the execution of the deed by her and some 18 years after she had left Trinidad and Tobago and the deceased's home permanently. This in my view is a very

material consideration. It suggests passive acquiescence on the part of the second claimant. As in Allard v Skinner, however there is far more than inactivity and delay on the part of the second claimant. There was conduct which in my view amounts to a confirmation of the transaction.

60. In the year 2005 both claimants executed the deed of confirmation. While this deed sought to ratify the transfer of the third parcel of land only as we have seen the transfer of the third parcel of land was at the same time and in the same manner as the transfers of the first and second parcels of land. This deed of confirmation was executed in the year 2005. It cannot, in my view, be disputed that by this time neither of the claimants were under the influence of the deceased. They had both been long married and living abroad.

61. Neither, in my view, can it be disputed that the second claimant knew what she was doing. According to her evidence, indeed, according to the evidence of both claimants, at that time, 2005, their attention was drawn to the 1978 transaction. They both remembered it. They both read the deed of confirmation and, by their evidence in chief, it is clear that they understood it. Despite this not only did the second claimant take no steps to avoid the transaction but she signed the deed of confirmation without protest and returned it to the deceased.

62. It would seem to me that in the circumstances, the second claimant deliberately chose not to avoid the transaction evidenced by the disputed deed. In my opinion, by virtue of her acquiescence, the second claimant has lost the right to have the disputed

deed set aside. In this regard, although no relief is sought on this ground by the first claimant, there has been mumblings of an unconscionable bargain on his behalf. The position, in my view, is the same with respect to the passage of time between the execution of the disputed deed, the first claimant's attainment of majority and his recent attempts to set aside the transaction, and his confirmation of the transaction in the year 2005.

63. In all the circumstances of the case therefore I am of the view that the claimants have not succeeded in either of the two challenges made by them to the disputed deed. Accordingly the claimants' case is dismissed.

Dated this 26th day of January, 2011.

Judith Jones
Judge