REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV NO. 2010 -00258

BETWEEN

ALBERT BERKELEY
Also Known as
GARNET BERKELEY

CLAIMANT

AND

IRIS BERKELEY

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE JONES

Appearances.

Mr. D. Waithe for the Claimant.

Mr. M. Morgan and Mr. K. Bengochea instructed by Ms. K. Persad for the Defendant.

[ORAL]REASONS

The claimant seeks an order that: (i) by virtue of his occupation in accordance with the real property limitation ordinance he is the owner of and entitled to the possession of 10 acres of land forming a part of a larger parcel of land comprising 23 acres one rood and 30 perches. This larger parcel of land is hereinafter referred to as parcel A. (ii) pursuant to the Land Tenants Security of Tenure Act he is the statutory tenant of another parcel of land comprising 10 acres forming part of a larger parcel of land comprising 19 acres two roods and 32 perches. This larger parcel of land is hereinafter referred to as parcel B.(iii) alternatively, that he is the owner of the 10 acre

portion of parcel B by virtue of his occupation in accordance with the real property limitation ordinance.

The defendant is the widow and executrix of the estate of Harding Berkeley deceased, who was at the time of his death in the year 2002 the paper owner of parcels A and B and the uncle of the claimant.

With respect to parcel B by his statement of case the claimant avers that in May 1980, he and the deceased orally agreed that he would occupy 10 acres of this parcel at an annual rent of $400 for the purpose of residing, cultivating and keeping squatters off the property. He pleads that in reliance on this tenancy agreement he constructed a dwelling house on the 10 acres; moved into the house in the month of July 1980 and in the same year began the cultivation of crops on the said 10 acres. He avers that for the period 1981 to 1991 he paid the sum of $400 a year as rent. Thereafter he stopped paying the rent, but has remained in the continuous, exclusive and uninterrupted possession, occupation and control of the 10 acre piece.

With respect to parcel A he claims to be entitled to 10 acres of this parcel by virtue of his occupation thereof. In this regard he pleads that in month of July 1980, without the knowledge of the deceased, he began to cultivate the said 10 acres. In the month of November 2009 however one Vijay Maharaj, advised him that he was arranging to purchase the 10 acres and that the claimant was to stop planting and clear the existing crops on the land. In January 2010, he pleads, Maharaj caused a survey to be done on the said 10 acres and thereafter blocked a portion of the

access road to the said 10 acres with construction material. Thereafter the claimant has been denied access to a number of fruit crops.

The defence raised by the defendant merely puts the claimant to the proof of the facts alleged in the statement of case and on the basis of those facts the defendant avers:

(a) with respect to the 10 acres on Parcel B:

(i) that the claimant is not a tenant within the meaning of section 2 of the Land Tenants Security of Tenure Act nor is the $400 allegedly paid by the claimant in law in the nature of rent; that in law therefore the claimant was an employee and or licencee of the deceased;

(ii) even if the relationship of landlord and tenant existed, the claimant's failure to pay the alleged rent does not in law constitute a determination of the tenancy;

(iii) even if the relationship of landlord and tenant existed the subject matter of the tenancy was at all material times agricultural land and incapable of conversion to a statutory lease neither is the dwelling house a chattel house within the meaning of the act;

(iv) even if the relationship of landlord and tenant existed and could be converted to a statutory lease such lease will only be in respect of an area occupied by the building on the land and the reasonable area appurtenant to the said building, such reasonable area being not more than 5000 ft.^{2};

(b) with respect to the 10 acres on parcel A even if the claimant entered onto the said parcel A as alleged:

(i) the claimant is presumed in law to have done so in his capacity as licensee and/or employee and or tenant, and therefore the entry was not adverse to the deceased's title;

(ii) the actions as pleaded do not constitute sufficient and/or unequivocal acts of occupation so as to establish a possession that was adverse to the deceased's title;

(c) with respect to both properties if the relationship of landlord and tenant existed, by reason of the arrangements pleaded and/ or the tenancy the claimant is estopped from denying the deceased's title to both properties.

By way of counterclaim the defendant pleads the paper title to both parcels of land; that in January 2010 she sold parcel A to Vignanand Maharaj and seeks possession of parcel B and a declaration that she was entitled to convey parcel A to Maharaj. She also seeks the removal of two lis pendens placed on the parcels of land by the Claimant.

It is not in dispute that the defendant holds or held the paper title to both parcels of land. In the circumstances the burden of proof is on the claimant to establish the interests claimed by him in both 10 acre parcels.

The evidence led by and on behalf of the claimant's.

Three witnesses gave evidence on behalf of the claimant. Of those three witnesses I consider only one, Philip Peniston, to be a substantial witness in support of the claimant's case. In my opinion since it is not really in dispute that the claimant had a presence on both parcels of land for some substantial time the other two witnesses are not particularly relevant save insofar as they may assist in my assessment of the credibility of the two main protagonists that is the claimant and the witness Peniston.

The claimant's evidence in chief was given by way of witness statement and by and large, consistent with his statement of case. In terms of the weight to be placed on the claimant's evidence in chief however, it must be noted that under cross-examination he accepts that he cannot read very well and that this fact was not told to his Attorney. Also causing some unease is the manner in which he identifies himself as also being known as Garnet Berkeley. This becomes of more concern given his evidence in cross-examination as to his father's name and the role his father played in the agreement with the deceased. Also of concern is the fact that at no time in his evidence does the claimant attempt to describe the land occupied by him. This is particularly glaring given the fact that the claimant alleges the occupation not of the whole but of a portion of both parcels of land.

With respect to the 10 acres on parcel B according to the claimant in chief, in May 1980, he and the deceased orally agreed that he would occupy this land at an annual rent of $400. This sum, he says, was to be paid to the brother of the deceased, Maxwell Berkeley. He says that in 1980, he

began paying this rent and continued until 1991. In support of this statement he presents rent receipts for the period 1981 to 1991. While these documents indicate receipt of the sum of $400 from a Mr. A. Berkeley for land rent they are signed by a "Mr. R. Berkeley".

The picture that emerges under cross-examination, however, is completely different. Under cross-examination it transpires that no arrangement was made between the claimant and the deceased but rather the arrangement was made between the claimant's uncle Maxwell and the deceased and told to the claimant, by his father Armstrong Berkeley. According to the claimant in cross the arrangement was that he was to go and take care of Parcel B. If a squatter came onto the land he was supposed to put them out but he had to inform the deceased if he did so. According to him, the deceased and his uncle Max told him he could build a house on the land and plant a few crops. The arrangement, he says, was that the deceased was to get about $400 a year for the land.

Under cross–examination he maintains that he began paying land and building taxes for both Parcels of land in 1991. When it is put to him that he only put into evidence tax receipts from 1999 he then accepts that it was really from 1999 that he started to pay the taxes. According to him however he told his uncle Max and got his permission to start paying the land taxes for Parcel B. It is however interesting to note that if he really began paying the land and building taxes from 1991 as initially said under cross-examination this would coincide with the time he says he stopped paying the rent.

With respect to the 10 acres of Parcel A claimed by him in chief he says that since July 1980 he began to cultivate this property. With respect to the description of land now claimed by him at

best from his evidence in chief we can deduce that one of its boundaries coincided with a boundary of the said parcel of land.

According to the claimant in cross-examination he began to occupy the land when he saw people squatting on this parcel of land, advised them that the land belonged to his uncle and put them off the land.

In essence, this is the evidence given by the claimant in support of his case.

According to the claimant's witness Philip Peniston he is a debt collector and farmer. He says in chief that he met the claimant in 1986. He says that he and the claimant are friends and associates. According to him in 1989 the claimant hired him to assist in the cultivation of crops on the 10 acres of parcel B. He describes the area, upon which the crops were planted by reference to what he refers to as “the reserved road”. This road he says separates the Berkeley land from the Ramsingh’s land.

With respect to the 10 acres of parcel A he says that this land has been cultivated from 1991 to 2010. He describes the area cultivated. According to him in addition the claimant also reared livestock on this 10 acres portion. As well he describes the 10 acres of land cultivated by the claimant in parcel B. According to him he assisted the claimant with the land development and preparation and the payment of land taxes as well as his applications for loans for the agricultural business. He says that he was authorised by the claimant to apply the proceeds from the sales of crops to repay the loans the claimant obtained. He says that 2004 he helped the claimant construct

a new concrete house on parcel B. This, he claims, was because the board house had to be abandoned after it began falling apart due to its age.

I do not accept the evidence of this witness. From his evidence is clear that this witness was not an independent witness but rather a business associate of the claimant with respect to the claimant's activities on the land. Not only did he clearly have an interest to serve but his manner and demeanour in the box did not inspire confidence. His evidence under cross-examination with respect to the road reserve, the cultivation on the land and the method of measuring the acreage of the land in particular also gave cause for concerns as to his credibility.

In addition, and perhaps of more relevance is the fact that he gives evidence as to what was done by the claimant on the land which is not given by the claimant at all. For example, loans taken by the claimant for, what the witness refers to, as "the agricultural business". Indeed, it must be noted that the claimant refers to this witness on all of two occasions in his evidence in chief. The first is with reference to the assistance given by him to the construction of the new concrete house on parcel A. The second reference is with respect to Mr. Vijay Maharaj meeting the claimant and "one of my workmen, Mr. Philip Peniston" on 30 November 2009.

I do not accept the evidence of Phillip Penniston. I find that he is not a witness of the truth and has an interest to serve in these proceedings. Indeed the evidence of this witness suggests that there is more in the mortar than the pessle.

Save that the other two witnesses confirm the presence of the claimant on both parcels of land their evidence does not really take the claimant's case any further.

At the end of the day I'm not satisfied with the evidence presented by the claimant I find that the claimant has not discharged the burden upon him. In the first place from the evidence adduced it is clear that the land were at all material times agricultural lands within the meaning placed on such lands by the Land Tenants Security of Tenure Act and the Agricultural small holdings Act. By section 2 of the Land Tenants Security of Tenure Act lands used for the purpose of agriculture are specifically excluded from the provisions of the Act. The fact that the claimant was permitted to erect a house used for his residence on the land does not in my opinion change the nature of the land from agricultural to residential.

In any event without saying too much about the claimant's credibility, with respect to parcel B it seems to me that rather than disclose that there was a relationship of landlord and tenant between the deceased and the Claimant the evidence discloses that the claimant went onto that parcel of land pursuant to a family arrangement between the deceased, his father and his uncle which allowed him to live and plant crops on the property and that in exchange he would keep the property clear of squatters and pay the sum for $400.00.

On the evidence it seems to me that sometime thereafter the claimant stopped paying the $400.00 and with the permission of his uncle began paying the land taxes on the parcel B. In the circumstances I do not accept that the relationship of landlord and tenant arose between the deceased and the claimant with respect to parcel B. In my view on the totality of the evidence the

claimant's occupation of parcel B was as a licensee pursuant to the aforesaid family arrangement. This licence ended on the death of the deceased in 2002. In the circumstances, even if I accept that the claimant was in the continuous occupation of an identified portion of that parcel, which I do not, his occupation of the land from the 2002, when his permission to occupy ended, would not have the effect of vesting the ownership of the land in him.

With respect to the Claimant‘s claim to have continuously occupied a portion of land comprising 10 acres of Parcel A. I am not satisfied that the evidence presented by the Claimant and on his behalf establishes the continuous occupation of a defined portion of Parcel A. The only evidence approaching an identification of the area of land actually occupied is that of the witness Peniston whose evidence I do not accept. Further it would seem to me to be a bit incredulous that in the circumstances the deceased would allow the Claimant to occupy one of the parcels for the purpose of keeping squatters off the property and not make the same arrangement for the other parcel. In fact the evidence of the claimant in cross-examination suggests to me that this was the position.

It would seem to me therefore that in the circumstances and on a balance of probabilities the claimant’s occupation of both parcels of the land was as a licensee thereof pursuant to a family arrangement. I find that the lands in question were agricultural lands and as a result not subject to the Land Tenants Security of Tenure Act. In any event I find that the Claimant has not presented any satisfactory evidence upon which I can find that he was in the exclusive and continuous occupation of a defined portion of either parcel of land sufficient to vest the ownership of that land in him pursuant to the Real Property Limitation Act Ch. 56.03.

In the circumstances the Claimant has not proved his case and his case is hereby dismissed. The defendant is entitled to a declaration in terms of paragraphs (i) and (ii) of the counterclaim and the removal of the lis pendens. The Claimant is to pay the Defendant's cost on the claim in the sum of $14,000 and on the counter claim in the sum of $14,000.

Dated this 20th day of April 2011.

Judith Jones
Judge