

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2011- 02496

BETWEEN

**ELIAS L. RAMSAMOOJ**  
Claimant

AND

**HARRILAL DHARAM**  
Defendant

**BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES**

**Appearances:**

**Mr. W. Seenath instructed by Mr. H. Bhola and Ms. V. Goopeesingh for the Claimant.**

**Mr. A. Ashraph instructed by Mr. W. Gopaul for the Defendant.**

**REASONS (Oral)**

The Claimant claims to be the legal owner of a parcel of land more particularly described in Certificate of Title, Volume 1586 Folio 477. He alleges that the Defendant is in occupation of that land which he says comprises one acre and two roods (“the land”) and that, except for one lot upon which the Defendant's house stands, this occupation is wrongful. He seeks possession the Claimant however does not plead his occupation of the land. His case therefore is based on the presumption of possession which arises from the fact that he owns the paper title for the land.

The Defendant on the other hand contends that the Claimant is not the sole owner of the land. According to the Defendant the Claimant only has a 3/7<sup>th</sup> undivided interest in a larger parcel of land comprising approximately 4 acres (“the 4 acre parcel”) of which the land forms a part. The

Defendant pleads that he has been in the sole and exclusive occupation of the land since 1976 and counterclaims that he is entitled to possession of the land.

According to the Defendant's pleaded case in the year 1976 he and his mother entered into an agreement with Kenneth Ramsamooj, the legal personal representative of the registered proprietor of the land, to purchase the land for the sum of \$3000. Pursuant to that agreement they paid the sum of \$3000 and received a receipt for such payment. Thereafter the Defendant and his family entered into the exclusive possession of the said land which possession has continued to date.

While not disputing that the Defendant and his mother entered onto the land in 1976 the Claimant says that they only occupied one lot of the land pursuant to permission given to them by the said Kenneth Ramsamooj. By his reply and defence to counterclaim the Claimant pleads laches. With respect to this plea it is clear from the submissions of the Claimant that such a plea is only maintainable in circumstances such as these if the claim was for specific performance of the agreement between Kenneth and the Defendant. This however is not a claim for specific performance and accordingly laches does not apply.

In the circumstances on the pleadings I am required to determine whether:

1. the Claimant has the locus standi to bring an action in trespass with respect to this parcel of land?
2. the Defendant is entitled to the possession of the land by virtue of his purchase or occupation of the land since 1976?

On the evidence it cannot be disputed that the Claimant is the owner of only a 3/7<sup>th</sup> undivided share in the 4 acre parcel. Indeed, in his evidence the Claimant admits this but seems to suggest that he is in the process of acquiring the other interests in the land. The question is whether this is sufficient to maintain an action in trespass in circumstances where the Claimant has not pleaded that he is in possession of the land.

To my mind, however, of more importance with respect to the determination of this action is the counterclaim of the Defendant that he is entitled to possession of the land since should the Defendant succeed then the fact that the Claimant may not have the locus standi to bring the action is to my mind irrelevant. The burden of proof in this regard is on the Defendant.

With respect to his claim to be the owner of the parcel of land by virtue of his purchase of the land from Kenneth Ramsamooj the Defendant has placed before the court by way of an agreed document a receipt dated 23<sup>rd</sup> February 1976 purportedly signed by Kenneth evidencing the payment of \$3000 for the land. Also tendered into evidence by consent is a report of a forensic document examiner which indicates that in the opinion of the expert it is highly probable that the signature Kenneth Ramsamooj was in fact executed by him. No evidence has been led by the Claimant challenging the Defendant's evidence in this regard except to say that there was never any discussion between the siblings with respect to the sale of the land to the Defendant.

Given that the land is subject to the provisions for the Real Property Ordinance and given that this is not an action for specific performance of the agreement the principle of indefeasibility of title prevents the Defendant from challenging the legal title of the Claimant and the other co-

owners of the land, except by virtue of his occupation of the land for a continuous period in excess of 16 years. In this regard the Claimant submits that the Defendant cannot rely on the agreement for sale and possession. I do not accept this submission in my opinion the answer to this submission is found in the case of **Alphat Ali Mohammed v Anthony Guerra and the Registrar General CA No 47 of 94** relied on by the Defendant herein.

In my opinion therefore, given the manner in which this case is pleaded, except with respect to credibility and to disprove the Claimant's allegation that the Defendant occupied only a house spot and as a licensee of Kenneth, nothing much turns on the receipt and the transaction between Kenneth and the Defendant. With respect to credibility, however, it does support the Defendant's evidence that what was occupied by him and his family from the year 1976, was in fact one acre and two roods and not one lot of land.

The Defendant himself did not give any oral evidence rather, by way of a hearsay notice, there was tendered into evidence an affidavit of the Defendant dated 19<sup>th</sup> September 2011 filed in these proceedings for use in opposition to an injunction sought by the Claimant. The hearsay notice was accompanied by a medical report dated 12<sup>th</sup> May 2012 which indicated that the Claimant was not competent to give evidence at the stage. The affidavit itself exhibited a medical report which although undated stated that at the time of making the report the Claimant was physically disabled but not mentally incapable of making decisions. The hearsay notice was not challenged in anyway.

According to the affidavit evidence of the Defendant on 26<sup>th</sup> February 1976 he and his mother purchased the land from Kenneth. He says the boundaries were pointed out to them and the land measured approximately 100 feet along the road from the lands that Kenneth's mother Rose had sold to Ragbir in the South to lands belonging to Singh in the North. He says the subject land was approximately 500 feet in depth reaching land that belonged to Tyrell which was marked by iron pickets. He says after the purchase of the land the government dug a ravine on its southern boundary line with Ragbir.

According to the Defendant they immediately entered into possession of the land, built a small wooden house and planted the land with rice in the rainy season and watermelon, cucumber and squash in the dry season. The front of the land they planted with short crops and dug a pond to the back. He says his mother lived on the land with him until 1978 and thereafter he remained in occupation of the land. In 2009 he and his sons began to backfill the land because of recurrent flooding and continue to do so. Except with respect of this action he says no one has taken any action against him for possession of the land.

While the Defendant was not available for cross examination his evidence was supported by the evidence of his witnesses: Suresh Dharam, his son, and Benny Singh and Rampersad Siewjattan, his neighbours. By and large the evidence of these witnesses was consistent with that of the Defendant and credible. None of these witnesses' evidence was shaken in cross-examination. Particularly impressive was the evidence of Siewjattan.

Evidence for the Claimant was given by the Claimant himself and Dharamdeo Boochoosingh. With respect to the Defendant's occupation of the land according to the Claimant in his witness statement, except for the lot of land upon which the Defendant's house originally stood, the Defendant and his family never cultivated or occupied the land until October 2010.

Under cross-examination however it is clear that the Claimant migrated to the United States of America since 1968. According to him under cross-examination he returned in 1970, 1971 and then several times later. Sometime later, again under cross-examination, he admits to coming to Trinidad in 1970, 1971, 1978 and 1980 and maybe another year. According to him during the visit in 1978 he visited the land, but did not see any rice being planted there. He gives no evidence as to the time of year of his visit. He says that he did not even see rice planted on Boochoosingh's land next-door. Under further cross-examination, however, he admits that the land was graded in the 1970s by the Defendant and the Defendant graded to the back of the land but did not grade the front of the land until recently. He also admits that the Defendant dug a pond on the land not on the house spot but to the back of the land.

The evidence of the Claimant's witness Boochoosingh does not assist the Claimant. According to him he knows what was happening on the land because he used to plant adjoining lands owned by his brother. He says that during the rainy season he planted the land with rice and watermelon. It is clear that Boochoosingh is not an impartial witness. According to him there is a dispute between his brother and the Defendant with respect to the boundaries of the land. According to his evidence in chief after the Defendant and his mother came onto the land in 1976 they planted two lots of land with rice and the remainder of the land was occupied by the

Claimant's father. Under cross-examination he accepts that the Claimant's father died long before 1976. He also contradicts himself with respect to the location of the land owned by his brother vis a vis the land. He accepts that the Defendant graded the back portion of the land. Indeed in his evidence in chief he says that the back portion of the land was graded so badly that more than a half acre of the land was spoilt and damaged. Further under cross-examination he accepts that apart from their planting the two lots of land with rice the Defendant and his mother also dug a pond on the remainder of the land. Even more damaging is his evidence in cross-examination that he stopped planting his brother's land in the 1980s. This fact to my mind makes all the evidence given by him with respect to the Defendant's occupation of non-occupation of the land after 1980 suspect. I do not accept the evidence of this witness to my mind his evidence is just not credible.

At the end of the day I accept the evidence led on behalf of the Defendant and prefer it to that led by the Claimant. To my mind, the Defendant's witnesses were credible and believable. Despite the fact that the Defendant was not cross-examined I accept his evidence and find that in all material aspects it was corroborated by his witnesses.

In the circumstances I find that the Defendant and his family went into the occupation of the land in or around February 1976. Thereafter they erected a small wooden house on the land and cultivated the rest. I find that the Defendant and his family continued in the occupation of the land using it for their residence as well as for rearing animals and the cultivation of food crops. This cultivation continued until the Defendant got a stroke in or around 2005-2006. The

occupation of the Defendant and his family of the land has continued since February 1976 and has not been interrupted or disturbed.

In the circumstances the Defendant is entitled to a declaration that he is and has been in the adverse possession of all that piece and parcel of land situate at SS Erin Road in the ward of Siparia comprising one acre and two roods (being a portion of the land described in Certificate of Title registered in Volume 1586 Folio 477) and bounded on the North by lands of Boochoonsingh the South by a ravine on the East by lands of Tyrell and on the West by the SS Erin Road by virtue of his occupation for a period in excess of 16 years.

Dated this 5<sup>th</sup> day of December, 2012.

**Judith Jones**  
**Judge**