

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
(COURT OFFICE, SAN FERNANDO)**

**Claim No. CV 2012-03212**

**BETWEEN**

**SEEPERSAD SOOKHOO**

Claimant

**AND**

**RAMKHALAWAN SOOKHOO**

**DHANMATIE SOOKHOO**

Defendants

**BEFORE THE HONOURABLE MR. JUSTICE ROBIN N MOHAMMED**

**Appearances:**

**Mr. Hendrickson R. M. Seunath S.C. instructed by Mr. K. Neebar for the Claimant**

**Mr. Kemrajh Harrikissoon instructed by Mr. Narad Harrikissoon for the Defendants**

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**JUDGMENT**

## **INTRODUCTION**

1. In this action the Claimant, Seepersad Sookhoo, seeks to set aside a Certificate of Title made in favour of the First Defendant, Ramkhalawan Sookhoo, pursuant to a vesting order granted by Douglin J., on the 29<sup>th</sup> October, 1986 and entered on the 11<sup>th</sup> November, 1986 on the basis that the said order was obtained by fraud. Having obtained the vesting order, the First Defendant then transferred the disputed parcel of land to himself and his Wife as joint tenants by Memorandum of Transfer dated the 26<sup>th</sup> October, 2010. Accordingly, the Claimant also seeks an order to cancel or set aside this Memorandum of Transfer as well. The action was commenced by claim form and statement of case filed on the 3<sup>rd</sup> August, 2012 in which the full reliefs claimed are as follows:
  - a. A declaration that the order made on the 29<sup>th</sup> October 1986 by the High Court of Justice in High Court Proceedings No. S- 1661A of 1986 ordering that the lands described in the Certificate of Title in Volume 1941 Folio 37 now described in Certificate of Title in Volume 5280 Folio 7 be vested in the First Defendant Ramkhalawan Sookoo also called Ramkhalawan Sookhoo was obtained by fraud;
  - b. An order directing that the registration of the First Defendant Ramkhalawan Sookoo also called Ramkhalawan Sookhoo as proprietor of the lands described in the Certificate of Title in Volume 1941 Folio 37 be cancelled;
  - c. An order that the Certificate of Title in Volume 5280 Folio 7 issued pursuant to the High Court of Justice Order in application No. S-1661A of 1986 dated 29<sup>th</sup> October, 1986 registered in Volume 3116 Folio 289 registering the First Defendant Ramkhalawan Sookoo also called Ramkhalawan Sookhoo as the proprietor of the lands described in the said Certificate of Title in Volume 5280 Folio 7 together with the Memorandum of Transfer No. 8 dated the 26<sup>th</sup> October, 2010 endorsed thereon whereby the Defendants are registered as joint tenants be cancelled and/or set aside;
  - d. An order that a photostatic copy of the Will of Ramdoolarie also called Ramdoolaree dated the 2<sup>nd</sup> day of December, 1977 be admitted to probate;
  - e. A declaration that the Claimant is beneficially entitled to a one-half undivided share and interest in the lands described in the Certificate of Title in Volume 1941 Folio 37 now described in Certificate of Title in Volume 5280 Folio 7;

- f. A declaration that neither of the Defendants has any interest whatsoever in the said lands described in the Certificate of Title in Volume 1941 Folio 37 now described in Certificate of Title in Volume 5280 Folio 7;
  - g. An injunction restraining the Defendants jointly and severally by themselves or by their servants or agents from disposing of and/or otherwise dealing with the said lands and/or from constructing and/or from continuing to construct any building or structure on the said lands described in the Certificate of Title in Volume 1941 Folio 37 now described in Certificate of Title in Volume 5280 Folio 7;
  - h. Costs;
  - i. And such further or other relief as the nature of the case may require.
2. The subject matter of the action is a parcel of land situate at Rochard Road (hereinafter referred to as "Parcel A"). The Claimant and the First Defendant are brothers and that parcel of land was formerly held in the name of their parents as joint tenants. Their father died on the 26<sup>th</sup> July, 1976 without severing the joint tenancy and so full ownership of the land passed to their mother, Ramdoolarie (also called Ramdoolaree and hereinafter referred to as "the Deceased").
  3. The Deceased passed away on the 17<sup>th</sup> January, 1978. The First Defendant applied for a vesting order in respect of the said lands on the 26<sup>th</sup> June, 1986. As was stated above, his application was granted on the 29<sup>th</sup> October, 1986 and on the 17<sup>th</sup> December, 1986 pursuant to the said Court order, the First Defendant was registered as the proprietor of the Parcel A as shown on the endorsement of Certificate of Title in Volume 3116 Folio 289. By Memorandum of Transfer dated the 26<sup>th</sup> October, 2010 and registered on the 29<sup>th</sup> October, 2010 as No. 8 in Certificate of Title in Volume 5280 Folio 27, the First Defendant transferred the said land to himself and his wife, Dhanmatie Sookhoo, the Second Defendant, as joint tenants.
  4. The trial of this matter took place on the 29<sup>th</sup> October, 2013. The First and Second Defendants, along with other witnesses, were cross-examined. On the 1<sup>st</sup> November, 2013, ***only two days after the trial was completed, the First Defendant passed away.*** Thereafter, on the 11<sup>th</sup> February, 2014 an application was made by the Second Defendant for her to be appointed to represent the Estate of the First Defendant in this matter. On the 12<sup>th</sup> February, 2014 this Court allowed that application.

5. At paragraph 21 of his Statement of Case, the Claimant sets out the alleged particulars of fraud upon which he relies in arguing that the vesting order and subsequent registration of the Defendants as proprietors of the land in question were obtained fraudulently, namely by the First Defendant -
- a. *falsely swearing an affidavit on the 26<sup>th</sup> June, 1986 in support of an application made by him in High Court Proceedings No. S-1661A of 1986 based on which the Order dated the 29<sup>th</sup> October, 1986 was entered in the said Proceeding No. S-1661A of 1986;*
  - b. *falsely swearing in the said affidavit on the 26<sup>th</sup> June, 1986 that he was informed by Basdeo Heeralal that his mother made a will for him giving the said land (Parcel A) to him but that he was unable to locate the will when at all material times he had the said will or at least a copy thereof and knew that according to the said will, the said piece of land was given to the Claimant and Seuraj Sookhoo;*
  - c. *deliberately and fraudulently concealing the fact that he was in possession of the last will of the deceased Ramdoolarie also called Ramdolaree or at least a copy thereof and that he was a joint executor thereof with the Claimant;*
  - d. *deliberately and fraudulently concealing the fact that he had taken the witnesses to the said will of the deceased, Basdeo Heerealal and Aziz Mohammed, to Commissioners of Affidavits where they separately deposed to affidavits saying that the deceased Ramdoolarie had instructed that the Parcel A be given to himself Ramkhalawan Sookhoo jointly with Ramraj Sookhoo and Doolie Taj Mohammed;*
  - e. *deliberately and fraudulently concealing the fact that he had told the Claimant and the other beneficiaries that he would look after the probate of the said will as corrected by the affidavits by the witnesses thereto;*
  - f. *deliberately and fraudulently concealing the fact that his elder brothers and sister all helped their parents to cultivate and improve the said parcel of land.*
6. For some reason, the Claimant included under the rubric “Particulars of Fraud” types of relief sought such as an “*injunction*”, “*costs*” and “*such further and other relief as the nature of the case may require*”. I note that these particulars, listed as [g] – [i], are again listed later on in the reliefs claimed by the Claimant. Accordingly, I take it that reference

was made to same under “**Particulars of Fraud**” in error as they clearly have no bearing on that rubric.

7. In their Defence filed on the 12<sup>th</sup> September 2012, the Defendants denied the particulars of fraud alleged by the Claimant at paragraph 21 (a) - (f) of the Statement of Case. The Defendants contended that the Claimant is *estopped* from bringing the said action in fraud or otherwise. The Defendants further contended that the Claimant has failed to establish a cause of action in fraud or otherwise wherein the Claimant was alleging that he was wrongly deprived of his interest in the said lands.
8. The Defendants contended that the Claimant has failed to satisfy the high burden of proof and other requisite requirements for establishing fraud and therefore there is no cause of action.
9. The Defendants referred to section **150 of the Real Property Act Chapter 56:02** and said that the First Defendant was named the proprietor of the said lands by virtue of a vesting order dated the 29<sup>th</sup> October, 1986. They stated that this action brought by the Claimant was commenced in 2012 which does not go in line with the provisions of section 150 of the said Act.
10. In their Defence, the Defendants also raised the issue of the validity of the alleged will.

### **ISSUES FOR DETERMINATION**

11. On the evidence, the main issues which fall to be determined in this matter are as follows:
  - a. Whether the First Defendant obtained the Certificate of Title by fraud, in that he told deliberate lies or deliberately omitted salient facts in his affidavit in support of his application for the vesting order.*
  - b. Whether the Claimant’s action is statute-barred.*
  - c. Whether this Court is in a position to pronounce on the force and validity of the alleged will of the Deceased.*

**ISSUE A: Whether the First Defendant obtained the Certificate of Title by fraud, in that he told deliberate lies or deliberately omitted salient facts in his affidavit in support of his application for the vesting order, namely:**

- i. By deposing that he was informed by Basdeo Heeralal that his mother made a will for him giving the said land (Parcel A) to him but that he was unable to locate the Will.**
  - ii. By concealing the fact that he was in possession of the last Will of the deceased Ramdoolarie also called Ramdolaree or at least a copy thereof and that he was joint executor thereof with the Claimant.**
  - iii. By concealing the fact that he had taken the witnesses to the said will of the deceased Basdeo Heerealal and Aziz Mohammed to Commissioners of Affidavits where they separately deposed to affidavits saying that the deceased Ramdoolarie had instructed that the Parcel A be given to himself Ramkhalawan Sookhoo jointly with Ramraj Sookhoo and Doolie Taj Mohammed.**
  - iv. By concealing the fact that he had told the Claimant and the other beneficiaries that he would look after the probate of the said will as corrected by the affidavits by the witnesses thereto.**
  - v. By concealing the fact that his elder brothers and sister all helped their parents to cultivate and improve the said parcel of land.**
12. When the issue above is compacted, it may be said that put more simply, the question to be resolved is whether at the time of making the application for a vesting order in relation to the lands in question, the First Defendant knew that a will of his deceased mother existed. In their Defence, the Defendants attempted to dispute the validity of the alleged will but that is not what is relevant here nor does it affect the consequences to be drawn if it is concluded that the First Defendant knew about the existence of the alleged will, valid or not. The Claimant's suit alleges that the First Defendant obtained the vesting order by making fraudulent statements in his application concerning the will and his inability to locate it. Whether or not that will was actually valid falls for determination in other proceedings.

**LAW AND LEGAL PRINCIPLES**

13. The meaning of fraud was considered by Wooding CJ., in **Roberts v. Toussaint and Others (1963) 6 WIR 431** who stated as follows-

*“Moreover, in actions in which a registered title is being impeached, **fraud means some dishonest act or omission, some trick or artifice, calculated and designed to cheat some person of an unregistered right or interest: See Waimiha Sawmilling Co. v. Waione Timber Co.(1)([1926] A.C. at pp.106-107)”<sup>1</sup>.***

14. At pages 437-438 of **Roberts v. Toussaint and Others**, Hyatali JA., also addressed his mind to the meaning of fraud. He stated that –

*“The meaning of fraud in the context of this enactment is well settled. In Waimiha Sawmilling Co. v. Waione Timber Co....Lord Buckmaster stated in reference to a parallel statutory provision in New Zealand that “fraud” in actions seeking to affect registered title meant **actual fraud or dishonesty of some sort** and was to be distinguished from constructive or equitable fraud which denoted transactions having consequences in equity similar to those which flow from actual fraud. Accordingly, unless the respondents established this kind of fraud they could not hope to succeed in their claim against the appellant”.*

15. It is important to note that fraud is not limited to express statements but may include the concealment of facts. In **Lenore Walcott (Sole Executrix of the last will of Catherine Alleyne, deceased) v. John Clement Alleyne H.C.A. No. T92 of 1985** Hamel-Smith J., (as he then was) stated that-

*“Fraud does not necessarily arise from one’s express declarations only. Sometimes, and more often than not, it hides its head in what one fails to disclose”<sup>2</sup>.*

16. **Section 154** of the **Real Property Act, Chap. 56:02**<sup>3</sup> deals with the offence of fraud and provides as follows:

*“If any person fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of, any grant, certificate of title or other instrument, or of any entry in the Register Book, or of any erasure or alteration in any entry in the Register Book or in any instrument or form issued by the Registrar General, or fraudulently uses, assists in fraudulently using, or is privy to the fraudulent using of, any form purporting to be issued or sanctioned by the Registrar General, or knowingly misleads or deceives any person hereinbefore authorised to demand explanation or information in respect of any land or the title to any land which is the subject of any application to bring the same*

<sup>1</sup> Page 433 of **Roberts v. Toussaint and Others**

<sup>2</sup> See pg. 10 of **Lenore Walcott (Sole Executrix of the last will of Catherine Alleyne, deceased) v. John Clement Alleyne.**

<sup>3</sup> The wording of section 154 of the Real Property Act Chap. 56:02 is exactly the same as the wording of section 154 of the Real Property Ordinance, Chap. 27 No. 11.

*under the provisions of this Act, or in respect of which any dealing or transmission is proposed to be registered or recorded, such person shall be guilty of a misdemeanour, and shall be liable to a fine of two thousand four hundred dollars, or to imprisonment for three years; and any grant, certificate of title, entry, erasure, or alteration so procured or made by fraud shall be void as regards all persons who may be parties or privy to such fraud”.*

## **THE EVIDENCE**

### **The Claimant’s Pleaded Case**

17. In his Statement of Case, the Claimant deposed that at all material times the First Defendant was aware of the making and publishing of the will of the Deceased and/or of its existence and contents. Shortly after the death of the Deceased, and after becoming aware of the existence of the said will and of its contents, the First Defendant claimed that the will was wrong as the Deceased had promised to give him the family house and the piece of land on which it stood. He threatened that no one was going to put him out of the house or the land.
18. About six years after the death of the Deceased, at a meeting at which all the beneficiaries under the said will were present, the First Defendant presented to the Claimant and another beneficiary, Doolie Taj Mohammed, copies of three documents, one being a copy of the will and copies of two affidavits by the witnesses to the will.
19. At that meeting the First Defendant explained to the other beneficiaries that there was a mistake in the will as the Deceased had instructed the lawyer’s clerk that she wanted to give the parcel of land where she was living to the First Defendant, Ramraj Sookhoo and Doolie Taj Mohammed, and the parcel of land in Seebalack Trace to Seuraj Sookhoo, so he got the witness to swear to the affidavits to make the correction.
20. After reading the will and the affidavits of the witnesses Basdeo Heeralal and Aziz Mohammed, the First Defendant told the other beneficiaries, including the Claimant, that he had already spoken with a lawyer and that he was going to look after probating the will.
21. By the said alleged will, the parcel of land at Rochard Road described in Certificate of Title in Volume 1941 Folio 37 (“**Parcel A**”) was devised to the Claimant and Seuraj Sookhoo, while the parcel of land at Seebalack Trace described in Certificate of Title in



Volume 1883 Folio 175 (hereinafter referred to as “Parcel B”) was devised to Ramraj Sookhoo, the First Defendant and Doolie Taj Mohammed.

22. At the date of the death of the Deceased the First Defendant and Ramraj Sookhoo who were still unmarried, resided with the Deceased in the family house on Parcel A where they and all the children of the Deceased grew up.
23. According to the Claimant, in or about the year 1979 the First Defendant forced the said Ramraj Sookhoo to leave the family home and the latter, who was differently abled, died on the 24<sup>th</sup> October 1993 intestate without ever having been married and without having any children. The said Seuraj Sookhoo died leaving surviving him a wife and four sons.
24. The Claimant contended that in spite of repeated assurances that he was looking after probate of the said will of the Deceased, the First Defendant has not done anything in that regard, but instead, is now claiming that he and the Second Defendant are owners of Parcel “A”.
25. Sometime in late 2011 or early 2012, the Defendants by themselves or by their servants or agents constructed a dwelling house on Parcel A and the Defendants’ daughter Jemma Sookhoo-Ramjattan went into occupation of same.
26. By letter dated the 5<sup>th</sup> February, 2012, the said Doolie Taj Mohammed, as one of the beneficiaries under the said will of the Deceased, called upon the said Jemma Sookhoo-Ramjattan to justify her presence and the construction of the said dwelling house on the Parcel A. By letter dated the 17<sup>th</sup> April, 2012 written on behalf of Doolie Taj Mohammed to the First Defendant, the said Doolie Taj Mohammed enquired about the probate of the said will and also about the dwelling house on the said Parcel A occupied by Jemma Sookhoo-Ramjattan.
27. As a result of enquiries conducted with regard to the said will of the Deceased and the status of her estate, it was discovered that Parcel A which was devised to the said Seuraj Sookhoo and the Claimant became vested in the First Defendant pursuant to an application by the First Defendant for a *vesting order* in **Application S-1661A of 1986** and subsequent thereto, that the First Defendant had transferred the said Parcel A to himself and the Second Defendant as joint tenants.

28. The Claimant contends that the said vesting order and the subsequent registration of the Defendants as proprietors of the lands in question were obtained by fraud.
29. The Claimant, who resides in the United States, did not file a witness statement nor did he give evidence at trial. He did, however, call two witnesses on his behalf, Doolie Mohammed who is his sister and Sonnylal Sookhoo, his brother.

**Evidence of Doolie Mohammed**

30. In her witness statement filed on the 16<sup>th</sup> September 2013, Doolie Mohammed (“Doolie”) stated that 2 years after her mother died, she received a telephone call from her brother Seecharan and as a result of that call she came to Trinidad to speak with her brothers about the First Defendant’s occupation of the family home. She stated that when she came to Trinidad she and her brothers Seecharan, the Claimant and Seeraj all met at the family home with the First Defendant. At that meeting, the First Defendant told them that the will that their mother left was incorrect and because of the mistake the Claimant and Seeraj wanted him to leave the house.
31. She said that the First Defendant then showed her a copy of the will together with copies of two affidavits sworn by witness (sic) to the will and said that those affidavits show that the will was made wrongly. She then told her brothers who were at the meeting that as far as she knew, both of their parents wanted the First Defendant, Ramraj and her to have the property where the family house is, that is the parcel of land at Rochard Road.
32. After they discussed the matter, they all agreed that there had to be an error in the will as their mother had told all of them how the property was going to be shared, especially since before he died, her father had given lands to Sonnylal, Seecharan, Seeraj and the Claimant. She said that Ramraj had always been handicapped and their mother had told the First Defendant and her that they must make sure that Ramraj continued to live in the family home and that they should look after him. She said that at that meeting, she also reminded the First Defendant about what their mother told them about Ramraj who was not living in the family house at the time but in a house provided by Seepersad at Seebalack Trace on their mother’s land, and she told the First Defendant that was not right.
33. She further stated that at that meeting, they all agreed that the First Defendant should go ahead and probate the will as he had already spoken to a lawyer about probating the will

with the correction so that she and he would take the property at Rochard Road and that the Claimant and Seuraj would take the property at Seebalack Trace.

34. After spending a couple of weeks she said that she went back to England and put the copy of the will and the two copies of the affidavits sworn by the witness (sic) in the same envelope in which the First Defendant had given them to her in her wardrobe at home.
35. Around November 2011, as a result of a telephone conversation which she had with Sonnylal, she came to Trinidad and spoke to the First Defendant about a house in which his daughter Jemma Ramjattan was then living on a portion of the parcel of land at Rochard Road. She told him that while they agreed that there was a mistake in the will, they did not agree for his daughter or anyone else to build any house on the land. The First Defendant then asked her what will she was talking about.
36. She did not bring the will with her but the following year, she returned to Trinidad and gave copies of the will and the affidavit to her lawyer and gave instructions to have letters sent to the First Defendant and Jemma.
37. After the First Defendant pretended not to know about the will, she gave her lawyer certain instructions and she subsequently saw a copy of a deed showing that the property at Rochard Road was first put in the First Defendant's name alone and then in his and his wife's name.
38. She stated that she tried several times to have this matter settled but although the First Defendant had promised to comply with their mother's wishes, he later decided that he was going to fight to keep the entire property at Rochard Road for himself and his family.
39. At trial, Doolie stated at the outset that her witness statement was inaccurate insofar as she had stated that about two years after her mother died she got the call from Seecharan. She said that the timeframe was in fact six years and not two. She maintained that the meeting regarding the will had in fact taken place but said that her brothers Seepersad and Seuraj were not at the discussion, as was first stated in her witness statement. This conflicts with the Claimant's Statement of Case insofar as he claimed to have been present at the meeting. She maintained, however, that Seecharan and the First Defendant were indeed present. She testified that that meeting took place sometime around 1984, 1985. She said that it was more of a discussion at Seecharan's home. She was upstairs but overheard Seecharan talking to someone who she thinks was called "Ramkissoon". Ramkissoon said

to her brother that (what was in the will) was not what his mother said because he was present when she was doing the will. This oral testimony is not in keeping with what was stated in her witness statement. She stated therein that the Claimant and Seuraj were present and there was no mention therein of “Ramkissoon” or someone possibly called such being present at the time of the meeting or discussion. It is curious that such a salient fact would have been omitted from her witness statement, only to be mentioned for the first time at the trial.

40. Doolie was also asked when she first had sight of the will. She responded that she “physically” saw it at her home in England around 2010, 2011. She stated that she never had sight of the will in Trinidad and Tobago but maintained that there was a discussion that took place about the will being incorrect. She admitted that contrary to what was stated in her witness statement, the First Defendant did not show her a copy of the will and conceded that that part of her witness statement was incorrect. She said when she was going back to England she was handed an envelope and was told it was a copy of the will. She took it back to England and rediscovered it when she started decorating her room.
41. Doolie was also asked on cross-examination what would be her answer if she was told that there was never any will. She responded that “*the answer would be well he is probably right I didn’t see it so I can’t say there was a will*”. On re-examination she was asked what was in the envelope when she saw it in 2010. She stated “*a will, a copy of a will and two affidavits*” and she confirmed that those were the documents which she attached to her statement.
42. It is acknowledged that Doolie Mohammed’s evidence contained some glaring inconsistencies. That being said, she did not waiver insofar as she maintained that the First Defendant was present at a meeting or discussion where the existence of and contents of the alleged will of their mother was discussed. Though she admits that she was not actually shown a copy of the will by him, she said that she was handed an envelope and told that it contained same. She stated that this meeting occurred somewhere around 1984 and 1985, which would have been before the application for a vesting order was made by the First Defendant. Thus, on these material points, her evidence was consistent. If Doolie’s evidence in this regard is to be believed, the First Defendant would have had knowledge of the existence of this will and its contents and in fact would have even had a copy of the will in his possession.
43. Counsel for the Defence contends that Doolie was not a credible witness. The case of **A-G of Hong Kong v Wong Muk-ping [1987] AC 501** proves helpful on the issue

concerning the assessment of the credibility of a witness. Therein, Lord Bridge of Harwich explained:

*'It is a commonplace of judicial experience that a witness who makes a poor impression in the witness box may be found at the end of the day, when his evidence is considered in the light of all the other evidence bearing on the issue, to have been both truthful and accurate. Conversely, the evidence of a witness who at first seemed impressive and reliable may at the end of the day have to be rejected. Such experience suggests that it is dangerous to assess the credibility of the evidence given by any witness in isolation from other evidence in the case which is capable of throwing light on its reliability ...'*

Considering the dicta of Lord Bridge of Harwich, it was stated in **Smith New Court Securities Ltd. vs. Scrimgeour Vickers (Asset Management) Ltd. (1996) 4 AER 769** that-

*“In other words, an initial and provisional conclusion that a witness is not credible on a particular point may be falsified when considered against the possibilities, probabilities and certainties emerging from the whole body of evidence before the court.”*

44. Accordingly, having considered the whole of the evidence, which shall be traversed as this judgment goes on, I find Doolie Mohammed’s evidence to be credible on the issue of a discussion having taken place where the will was discussed and the First Defendant having had knowledge of the existence of the will and even having had a copy of the will in his possession before the application for a vesting order was made.

#### **Evidence of Sonnylal Sookhoo**

45. In his witness statement filed on the 16<sup>th</sup> September 2013, Sonnylal Sookhoo (“Sonnylal”) stated that he is the third child of eight children. Seerattan also called Soogrim and Seecharan were older than him. Seerattan died when he was 32 years old and Seecharan died a few years after their mother passed away.
46. He stated that his parents and other members of his family first lived at Seebalack Trace, Penal. Around 1963, his parents and the other members of the family, except Seurattan, Seecharan and himself, moved to Rochard Road where his brother, the First Defendant, now lives. His elder brothers Seurattan and Seecharan then lived at Seebalack Trace next to the old family house. His father gave him the old family house and the acre of land and he gave Seecharan the acre next to him.

47. Their only sister Doolie went to England somewhere around 1968 or 1969 and Seeraj got married and went to live next to Seepersad, the Claimant, on lands which his father gave to both of them, leaving Ramraj and the First Defendant also called Moonan, to live with his parents at Rochard Road.
48. Sonnylal stated that his father died in 1976, about two years after they moved to Rochard Road. He said further that the properties at Seebalack Trace and Rochard Road are just a quarter mile apart and one has to pass the Rochard Road property to get to the Seebalack Trace property as the Rochard Road property is at the junction of the Rochard Road and Seebalack property.
49. After their father died, they all kept close to their mother and helped to look after her and Ramraj as the First Defendant was then unmarried. Ramraj used to suffer from fits. They also had an aunt who used to live across the road from their parents' house at Rochard Road who assisted in looking after their mother and Ramraj.
50. Sonnylal said that his father used to plant a kitchen garden on the land at Rochard Road and the rest of that parcel of land contained grass for the animals which they reared on the lands at Seebalack Trace.
51. The First Defendant's present wife, the Second Defendant, came to live with him in their mother's house. Shortly after her arrival, problems arose between her and Ramraj and the First Defendant used to beat Ramraj. Ramraj would walk on the road and beg for food. Sonnylal stated that he saw the First Defendant beating Ramraj on several occasions but when he spoke to him about it he (the First Defendant) would get annoyed. Sonnylal said that he would take Ramraj to his home at Seebalack Trace and give him food until the Claimant built a small house on the lands next to Seecharan and put Ramraj to live there. The Claimant also got people to take care of Ramraj and to cook for him.
52. When their father died, the First Defendant was unemployed and so Doolie gave him some money to buy a truck. The First Defendant would use same to transport material. However, even after he began to work the truck he did not make any contribution to the running of the house. Further, the First Defendant did not even assist in paying the taxes on the house and land which he (Sonnylal) regularly took his mother to pay after his father died.
53. In his witness statement, Sonnylal said that a few years after his mother died, the First Defendant came to his house at Seebalack Trace and showed him a copy of his mother's will and told him that Seeraj had given it to him. When he came he was crying and told him that "Seeraj and they" wanted to put him out of the house because the will stated that the Rochard Road property was to go to the Claimant and Seuraj. As the eldest

member of the family then living, Sonnylal said that he tried talking to the other brothers, but they all accused him of interfering as he had no interest in any of the property left by his mother. Before he died, his father had given lands to him (Sonnylal), the Claimant, Seecharan and Seeraj.

54. He said that after the other brothers accused him and refused to listen to him he decided not to have anything to do with them and the property left by their mother. Sonnylal stated that before his mother died, she told him that she was going to leave the Rochard Road property to his sister Doolie, the First Defendant and Ramraj and she also said that he (Sonnylal) should always look out for Ramraj.
55. Sonnylal said that after the First Defendant showed him the will, he spoke to Doolie about the problems with the will and she came down and had a meeting with the other brothers. After that meeting, Doolie came back with a copy of the will and they had a discussion about same.
56. In late 2011, the First Defendant began to build a house on the Rochard Road lands on the same spot where his aunt, Moon Ramsumair, had her house. Sonnylal said that he called Doolie and told her about it. She came down and he took her to the Claimant's lawyers who were then doing some legal work for him. Sonnylal said that he was present when Doolie gave instructions to the lawyer to write to the First Defendant about the will and the house being built on the land at Rochard Road. After the First Defendant built the house at Rochard Road where his aunt used to live, he then started to build another house next to his mother's house on the same piece of land at Rochard Road.
57. Sonnylal was cross-examined on his statement at trial. He admitted that Seecharan died around 1997. Accordingly, it was incorrect to have stated in his affidavit that "*as the eldest member of the family then living, I tried talking to the other brothers*" as Seecharan who was older than him, was still alive. Sonnylal stated during cross-examination that the First Defendant showed him a copy of the will around "the '80, '82" or sometime around there, presumably meaning 1980 or 1982. Sonnylal said that he first became aware that his mother made a will when the First Defendant showed it to him. Attorney for the Defendants then put to him that the First Defendant never showed him any will because there was none, to which Sonnylal replied "***Well Ramkhalawan showed me a will and that is what I know. He showed me a will. It was given to him by Seeraj Sookhoo when he came crying at my door "they want to put me out"***". Thus, Sonnylal's testimony is consistent with his witness statement insofar as he claimed that the First Defendant showed him a copy of the will. He said that this was done around 1980, 1982. Both Sonnylal and Doolie thus claim that the First Defendant knew of the will and its contents and had a copy of same before his application for a vesting order in 1986.

### The Defendants' Pleaded Case

58. The Defendants averred that the First Defendant had no knowledge of the said will at the time it was made. The Deceased promised the First Defendant that he along with Ramraj Sookhoo, the First Defendant's brother, will become joint tenants of the lands and dwelling house constructed upon same which is described in Certificate of Title in Volume 1941 Folio 37 now described in Certificate of Title in Volume 5280 Folio 27.
59. The Defendants further averred that these promises were made pursuant to the fact that the First Named Defendant and Ramraj Sookhoo were the only children still residing in the said dwelling house up until and for several years before the death of the Deceased. Ramraj Sookhoo was differently abled and it was the wish of the Deceased that the First Defendant continue residing within the said dwelling house and be the main caretaker of Ramraj Sookhoo. The Defendants contended that the Deceased passed away before the said promises were illustrated by way of a will.
60. In the Defence, the First Defendant admitted that he first became aware of the possibility of a will when a supposed will was published in the newspaper on the *6<sup>th</sup> April, 1989* but said that the said publishing did not "*illustrate*" him as executor and he denied that he was aware of a will and/or of its existence and contents. The Defence stated that the supposed will (the original and/or copy) illustrating its contents was never discussed and or disclosed to the First Named Defendant before the Claim Form and Statement of Case were served upon the Defendants.
61. According to the Defence, after viewing the said publication, the First Defendant then made several attempts to obtain information of the supposed will and its contents but was denied same by the Claimant who refused at all times to disclose any further information with respect to the publishing of the supposed will. Pursuant to this, the First Defendant honestly believed that no will existed and that he was within his rights to make an application to the Court to have the said lands vested in his name. The First Defendant and Ramraj were the only children of the deceased residing in the said dwelling house constructed on the said lands and continued to do so subsequent to the death of the Deceased without any objection from their siblings. The First Defendant continued to maintain the said dwelling house built on the said lands and ensured that the property tax payments were up to date.



62. The First Defendant also contended that had he known of the possibility of the supposed will before the application for the vesting order was made, he would not have applied for the said vesting order.
63. The Defendants contended that the said application was successful in the year 1986 and the First Defendant was totally within his rights to make a Memorandum of Transfer wherein the Second Defendant is named as a joint tenant of the said lands.
64. By the Defence the First Defendant contended that he never claimed that the supposed will was wrong and further, that there was never any meeting to discuss the supposed will. The said will and affidavits were never presented to his siblings by the First Defendant. It is further denied that the First Defendant ever instructed two witnesses to swear to the said affidavits. The Defence also stated that the First Defendant never gave instructions that he would look after probating the supposed will since the said will was not discussed and/or disclosed to him.
65. The Defence also sought to put the Claimant to strict proof of the validity of the supposed will.
66. The Defendants further contended that the supposed will was probated by the Claimant and not the First Defendant even though he was named as one of the joint executors of the supposed will. They contend that the aforementioned is contrary to allegations made by the Claimant wherein it is alleged that the First Defendant promised to probate the supposed Will and that same was not probated due to the First Defendant deliberately refusing to do so. They further averred that the probating of the said supposed will was done without the permission of the First Defendant as he did not know of same.
67. The Defendants contended that Ramraj Sookhoo was residing with the First Defendant in the house on Plot A. Around 1986 the Claimant then constructed a one room house situated in Seebalack Trace, Rochard Road, Penal and gave instructions that Ramraj Sookhoo should reside in the said one bedroom house with the Claimant being his main caretaker. However, when Ramraj began residing there the Claimant never assumed the responsibility of being Ramraj's main caretaker.
68. The Defendants have counterclaimed<sup>4</sup> seeking:

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<sup>4</sup> See Defence and Counterclaim filed on the 12<sup>th</sup> September 2012.

- i) *A declaration that the First and Second Defendants are the joint tenants of an estate in fee simple in Parcel A;*
- ii) *A declaration that the Certificate of Title registered in Volume 5280 Folio 25 and described in Certificate of Title Volume 1941 Folio 37 issued in the name of the First Defendant was not obtained by fraud;*
- iii) *An order that the photostatic copy of the supposed Will of Ramdoolarie also called Ramdoolaree dated the 2<sup>nd</sup> December, 1977 be declared null and void;*
- iv) *A Declaration that the Claimant is not entitled to possession, entry and/or enjoyment of the First and Second Named Defendants' said lands;*
- v) *An injunction restraining the Claimant, whether by himself, his servants and/or agents or howsoever otherwise from interfering with the First and Second Named Defendants' use and/or peaceful and quiet enjoyment of their said lands;*
- vi) *Costs; and*
- vii) *Such further and other reliefs as the Honourable Court may deem just.*

**Evidence of the First Defendant**

69. A witness statement was filed by the First Defendant, Ramkhalawan Sookhoo, on the 20<sup>th</sup> September, 2013. Much of what was stated therein was the same as what was stated in his Defence.
70. In his witness statement, the First Defendant said that he, Ramraj and his parents resided in a two-storey 20 x 21 wooden house that his father built on the disputed property around 1965. He said that he continues to live there to-date although it has been significantly improved and renovated over the past years. He said that he has three children, one of whom still resides with him and his wife in the matrimonial home.
71. The First Defendant said that the responsibility was always his to be the main caretaker of his parents when they fell ill, and also to care for Ramraj when his parents were unable to do so. He said that around 1986, he came home and Ramraj was not there. Around 6 or 7 o'clock it began to get dark and so he went to look for him. He eventually found Ramraj in a small one room house situated in a plot of land at Seebalack Trace, Penal that was built by the Claimant. The First Defendant said that he was made aware that Ramraj would now remain in the said one room house and that the Claimant would be his main caretaker. However, even then it was still his duty to look after Ramraj who would often come over to his family home as his wife would cook for him and Ramraj would have his clothes washed as well. On the 25<sup>th</sup> October, 1993, Ramraj fell gravely ill and the First Defendant took him to the hospital where he eventually died.
72. The First Defendant claimed that he never concerned himself with having the said property given to him through paper documents. He said that his parents' health was

deteriorating and his father had already stopped working as he had suffered a stroke. There simply was not any time or money for him to undertake the task of doing a proper transfer of the said property in his (the First Defendant's) name. He said that that was the only reason why a proper transfer of title was not given to him. His brothers, namely, Seecharan, Seuraj, Sonnylal and the Claimant had already been given a plot of land by his parents and they always told him that the family home would be left to him and Ramraj Sookhoo just as they had done for the aforementioned siblings.

73. The First Defendant said that he stopped working on the cane fields at around 17-18 years of age and thereafter assumed self-employment, driving his father's tractor and then his own. He claimed that the said property was damp and below the level of the road and he purchased material and used his own truck over the course of 30 years to improve its condition. He even paid his brothers to use their trucks and backhoes to do so. At other times his children and wife helped him with the manual labour involved. He said that the home is now an L-shaped house 21 x 30 with three bedrooms, two kitchens and a bath. He said he cast the inside ground flooring in concrete and rebuilt the garage. He continues to operate his transportation business on the said property and plants fruits and vegetables at the back of the family home.
74. He maintained that he has no knowledge of his parents ever making a will and to date he has not seen a will left by his parents even though he looked throughout the family house for any such document. This was why he went about seeking a vesting order to have the said property put into his name in 1986. It was no secret that he was having that done and when the vesting order was granted Sonnylal took him and his wife to the High Court.
75. In 1989 he saw a newspaper article concerning his mother and after reviewing it he went to ask the Claimant what it was about. The article mentioned the probate of a will supposedly belonging to his mother made in the year 1977 being done by the Claimant. The Claimant told him not to worry about it as it did not concern him. He said that he had no reason to disbelieve him since they had lived peacefully for years.
76. Soon after posting the advertisement for probate in the newspapers, the Claimant began to distance himself from him and he subsequently left Trinidad around 1990. He sold his plot of land to Seecharan. The First Defendant said he had no contact with the Claimant for over 20 years and only came to know details of his whereabouts around 2012 when the claim was initiated. He said that his daughter Jemma Sookhoo-Ramjattan started building a house on the disputed property adjacent to the family home around 2007/2008 which she moved into around December 2008. She still resides there. The First Defendant further stated that he was building a new home on the disputed property but to date the house remains uncompleted due to this Court matter.

77. He maintained that the alleged meeting around 1984 with the siblings regarding the supposed 1977 will never happened.
78. The First Defendant was cross-examined at trial. He was cross-questioned on the fact that his witness statement stated that “to-date” (the statement having been filed on the 20<sup>th</sup> September 2013) he had never seen a will left by his parents. He claimed that that statement was correct. He however admitted that the Claim Form and Statement of Case would have already been filed and served on him by August 2012 and I note that in the Defence it was stated that “*The first Defendant was never privy to its content before the Claim Form and Statement of Case was (sic) served upon Defendants*”. The copy of the will and affidavits were annexed to the Claim Form as “S.S.1”, “S.S.2” and “S.S.3” and when asked whether he saw the will in 2012 the First Defendant responded “*Yes well I saw it on the Claim Form*”. Accordingly, his witness statement was incorrect insofar as it stated that he had not seen the said will “to-date”.
79. The First Defendant was also cross-questioned on his affidavit filed on the 26<sup>th</sup> June, 1986 in support of his application for a vesting order. Therein he deposed that “*I have been informed by one Basdeo Heeralal that my mother had made a will for me giving me the said lands but I am unable to locate it.*” Counsel questioned the First Defendant on the efforts made by him to locate the will. He admitted that Basdeo Heeralal was still alive at the time that he swore to that affidavit. When asked whether he had asked him where they made the will, the First Defendant responded “*No, I did not have no discussion with him*”. He then stated that he did not ask him “then” but there is nothing in the evidence to suggest that he ever asked him at all. He also conceded that he could have questioned Basdeo further regarding the alleged will.
80. He was then asked about his statement in the said affidavit that he was “*unable to locate*” the will. He claimed to have looked for it. I note that in his witness statement he claimed to have searched throughout the family home for it. However, when one deposes to being unable to locate an alleged will, it is expected that reasonable searches conducted with due diligence would have been carried out before arriving at that conclusion, given the nature of the application being made. In seeking to defend the instant matter, the First Defendant went to lawyers. He however admitted that he did not seek out the assistance of any lawyers in attempting to locate the alleged will.
81. In his Defence, he claimed that he first became aware of the possibility of a will when a supposed will was published in the newspaper on the 6<sup>th</sup> April, 1989. He said that he contacted his brother to ask about it but was told not to be concerned and was told that everything was in the hands of lawyers. He claimed that the Claimant refused to disclose further information regarding the alleged will and so he believed it did not exist. At paragraph [4.4], the Defence speaks of “*the First’s Defendant’s persistence in acquiring same* (information regarding the alleged will), presumably from the Claimant.

However, no details were given as to what sort of “persistence” had taken place. All that was referred to in that paragraph was his contacting of the Claimant to find out about the will. At trial he claims to have met him in the road and asked about the will. These two occasions can hardly be accurately described as “persistent” efforts having been made to acquire information about the will.

82. The First Defendant at this time was residing on this land with his family and had been so residing for years. Land on which he claimed to have expended time, finances and effort, leveling same, planting and renovating the home. Given all that he had invested in same, it is safe to say that a reasonable person in his position, on learning of the possibility of a will relating to the very land, would not have been content to let the matter lie upon the Claimant’s refusal to disclose further details and would have pursued alternative avenues for discovering information, and at the very least would have attempted to obtain information about its existence from other siblings. However, there is nothing in the Defendant’s evidence to suggest that this was done.
83. On the Defendant’s own evidence, very little was actively done on his part to ascertain the existence of this supposed will. Reasonably, it cannot be said that he made sufficient efforts to ascertain the nature of or locate the said will. He failed to ask Basdeo pertinent details regarding the will on learning of its alleged existence from him. He claimed to have searched the family home and found nothing. He admitted that he did not ask a lawyer to conduct checks for same and also admits that he could have questioned Basdeo further concerning the will. He claimed that on seeing the publication in the newspaper, he asked the Claimant about same and on his alleged failure to disclose any information, on his own evidence, it appears that he took it no further.
84. The overall lackluster approach of the First Defendant towards locating the will is not what one would reasonably expect of someone having a vested interest in the disputed property and leads me to suspect that the First Defendant simply made no real effort to locate same. The conclusion to be arrived at for such a lack of effort on his part is that he perhaps already knew the will existed, or had it in his possession, which would explain the lack of any concerted effort to locate same. I bear in mind that Sonnylal and Doolie claimed that he knew about the will and in fact had a copy of same prior to swearing to his application in support of the vesting order.
85. This brings me to another point. In his affidavit in support of his application for a vesting order, the First Defendant swore that “*my mother always indicated to me that she would give the said property to me...<sup>5</sup>*”. In his Claim Form filed on the 3<sup>rd</sup> August 2012, the Claimant stated that at the said meeting, the First Defendant explained to the other beneficiaries that there was a mistake in the will as the Deceased had instructed

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<sup>5</sup> Paragraph [6], Affidavit of Ramkahlawan Sookhoo filed on the 26<sup>th</sup> June, 1986.

the lawyer's clerk that she wanted to give the parcel of land where she was living to the First Defendant, Ramraj Sookhoo and Doolie Taj Mohammed, and the parcel of land in Seebalack Trace to Seuraj Sookhoo, so he got the witness to swear the affidavits to make the correction. The Claimant did not file a witness statement.

86. However, witness statements were filed by Sonnylal and Doolie which support this claim made by the Claimant. Sonnylal stated in his witness statement that before his mother died, she had told him that she was going to leave the Rochard Road property to Doolie, Ramraj and the First Defendant. Doolie stated in hers that at the meeting she told her brothers that as far as she knows both of their parents always wanted the First Defendant, Ramraj and her to have the property where the family house is, that is, the parcel of land and house at Rochard Road. Thus the evidence of both Sonnylal and Doolie speak to the mother having wanted parcel A (the Rochard Road property) to be shared by the three named siblings, not go solely to the First Defendant.
87. In the Defence, the Defendants stated that *“The deceased, Ramdoolarie a/c Ramdoolaree, promised the First Named Defendant that **he along with Ramraj Sookhoo, the First Named Defendant’s brother, will become joint tenants of the lands and dwelling house constructed upon same which is described in Certificate of Title in Volume 1941 Folio 37 now described in Certificate of Title in Volume 5280 Folio 27...**”*<sup>6</sup> [Emphasis mine].
88. Accordingly, the First Defendant himself is saying that his mother promised him that the lands will go to him *and* his sibling Ramraj. Similarly, in his witness statement filed on the 20<sup>th</sup> September, 2013, the First Defendant stated that *“My brothers ...had already been given a plot of land by my parents and **they always told me that the family home would be left to me and Ramraj Sookhoo just as they had done for my aforementioned siblings**”*<sup>7</sup> [Emphasis mine]. At trial Counsel for the Defence asked him *“So in this defence you’re saying that your mother had told you that she will give this property to you and Ramraj...give the two of you right?”* to which the First Defendant replied “yes”.
89. He was thus aware of this promise made by his parents and more particularly, his mother, to leave the property not only to him, but also to Ramraj who was still alive at the time that he swore to the affidavit in support of the vesting order in 1986. However, in his affidavit in support of the vesting order, he deposed that his mother had indicated to him that she would give the said property to him. No mention was made of Ramraj.
90. The copy of the alleged affidavit of Basdeo Heeralal dated the 11<sup>th</sup> September 1984 annexed to the witness statement of Doolie Mohammed states as follows:

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<sup>6</sup> Paragraph [4.1] of the Defence filed on the 12 September 2012.

<sup>7</sup> Paragraph [11] of the witness statement of Ramkahalawan Sookhoo.

*“That before the said Ramdoolarie placed her mark in the said will, she told the Clerk in the said Jamadars Office that she has two parcels of land one on the Rochard Road where she lives with her youngest son Ramkhalawan Sookhoo, and the other piece is in the Seebalack Trace, However **she directed that the said youngest son to get the piece of land on the Rochard Road with the house jointly with Ramraj Sookhoo and their sister Doolie Taj Mohammed***<sup>8</sup>...

*That it has now been discovered that the said Ramraj Sookhoo, Ramkhalawan Sookhoo and theirs sister Doolie Taj Mohammed got the wrong piece of land, in other words, they got the piece in Seebalack Trace instead of the piece in Rochard Road with the house, which I believe is a typing error.*<sup>9</sup>”

91. Sonnylal and Doolie’s evidence is to the effect that their parents wanted to leave the parcel of land at Rochard Road to Ramraj, the First Defendant and Doolie. The alleged affidavit of Basdeo Heeralal annexed to the witness statement of Doolie refers to the mother intending to leave the property to Ramraj, the First Defendant and Doolie. The First Defendant himself mentions not once but twice (in the Defence and witness statement) that his parents intended to leave the property to both he and Ramraj. In the affidavit filed in support of the vesting order however, he claimed that his mother indicated to him that she would leave the said property to him. He also said that he had been informed by one Basdeo Heeralal that his mother had made a will for him giving him the said lands.
92. Curiously, I note that while in his Defence and witness statement, the First Defendant mentioned the alleged promise made by the parents to transfer the land to himself and Ramraj, no mention was made of a promise for the lands to be also shared with Doolie. The Defence was filed on the 12<sup>th</sup> September 2012 and his witness statement on the 20<sup>th</sup> September, 2013. According to the evidence of Sonnylal and Doolie, the lands in question were to be shared by Doolie, Ramraj and the First Defendant. Ramraj had already passed away at the time of filing of the First Defendant’s aforementioned documents but Doolie was very much still alive, the only person posing a threat to his rightful interest if the will is eventually construed in light of Basdeo Heeralal’s affidavit of correction. I thus suspect that the First Defendant conveniently left out any reference to Doolie and only mentioned the now deceased Ramraj when speaking of the alleged promises as a means of serving himself.
93. On the totality of the evidence, I accept the evidence of Sonnylal and Doolie to the extent that they state that their parents had always intended to transfer the land in dispute to Ramraj, Doolie and the First Defendant. I also find that the First Defendant

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<sup>8</sup> Paragraph [4] of the alleged affidavit of Basdeo Heeralal.

<sup>9</sup> *ibid.* Paragraph [6].

had always been aware that their mother's promise or indication was that this land would be transferred to the three of them and not only to him as he claimed in the 1986 affidavit. In the event that I am wrong in my conclusion that he was aware of her intention or promise to transfer the said lands to himself Ramraj and Doolie at the very least, based on what he stated in his own evidence, at the time that he swore to the affidavit in support of the vesting order, he was aware that she had promised that those lands were not to go to him solely, but to himself and Ramraj. However, he deliberately concealed this salient fact from the Court and simply deposed that she made the promise to him.

94. Further, I consider that in his own evidence he said that his parents had always told him that the family home would be left to him and Ramraj. I note this against Sonnylal's and Doolie's evidence which was to the effect that the parents always said or intended that that property was to go to Doolie, Ramraj and the First Defendant. It is thus curious that given the fact that the First Defendant knew that his parents had always intended to transfer the property to the siblings jointly (even if as the First Defendant contends, to Ramraj and himself rather than both of them and Doolie) Basdeo Heeralal would have told him that the Deceased had made a will leaving the disputed property solely to him. On a balance of probabilities, I find that the First Defendant was not telling the truth when he informed the Court that Basdeo Heeralal told him that the Deceased left a will leaving the property to him and find it more than likely that Basdeo would have informed him that it was also left to, at the very least, Ramraj as well, and I find that the First Defendant deliberately omitted that part from his affidavit.
95. The First Defendant claimed that one day in or around 1986 he came home to find that Ramraj was nowhere to be found and around six or seven o'clock, when it started to get dark he searched for him, eventually finding him in a house that the Claimant had built. He said that he was made aware that Ramraj would now remain in the one room house and that the Claimant would be his main caretaker. He however said that it was still his duty to care of Ramraj who would often frequent his home. Sonnylal stated that when Ramkhalwan's wife moved into the home, difficulties arose between Ramraj and the First Defendant. He said that he often saw the First Defendant beating Ramraj who used to be walking in the road and begging for food. He said that he used to take Ramraj to his house and give him food until the Claimant built a house and put Ramraj in there to live. He said the Claimant also got people to care for Ramraj.
96. It is not disputed that Ramraj and the Claimant lived in the same household with the parties' parents and continued to live together after the death of their parents. I do not doubt that residing there the First Defendant would have assisted in caring for his disabled brother. It is thus more than passing strange that having resided for many years together under the same roof, Ramraj, a disabled person would suddenly move, or be



moved from under the care and presumably watchful eye of the sibling who always assisted in caring for him to alternative premises to be cared for by others. I also note that according to the First Defendant's evidence, he discovered Ramraj missing sometime around 1986. If his evidence in that regard is to be believed, this was the very year in which he made the application for the vesting order and swore to the affidavit in which I have found he deliberately concealed to mention Ramraj when speaking of his mother's promise with respect to the disputed lands.

97. Taking all of the evidence into account, I accept the evidence of Sonnylal in so far as he claimed that the First Defendant used to beat Ramraj and that Ramraj would walk the road begging for food. I suspect that the First Defendant, having intentions of obtaining the property for himself, treated Ramraj, the one sibling still residing on the disputed property and who he admits was also promised an interest in it, in such a way as to drive him from the family home and further find that the Claimant sought to come to his disabled brother's aid by providing him with alternative accommodation.
98. The First Defendant stated in his Defence that if he had known of the possibility of the supposed will before the application for the vesting order was made, he would not have applied for the said order.<sup>10</sup> He claimed in his Defence that he only became aware of the possibility of a will on the 6<sup>th</sup> April, 1989 when a supposed will was published in the newspaper<sup>11</sup>. No mention was made in his defence of Basdeo Heeralal, referred to in his affidavit in support of his application for the vesting order, who he said informed him that his mother made a will for him giving him the lands. During cross-examination in this matter, he confirmed that Basdeo told him that, since he answered in response to the question of whether Basdeo was alive *"Oh yes. When he told me that."*
99. Accordingly, if as the First Defendant says in his affidavit of the 26<sup>th</sup> June 1986, Basdeo told him of the will,<sup>12</sup> he was then not telling the truth when he stated in his Defence that he only learnt of the possibility of the will in 1989, as he would have known about it since before the 26<sup>th</sup> June, 1986. It follows that he was also not telling the truth when he claimed at paragraph [19.2] of his Defence that if he had known of the possibility of the supposed will before the application for the vesting order was made, he would not have applied for the said vesting order. By his own admission encapsulated in the affidavit in support of the application for the vesting order, Basdeo had informed him that a will made by his mother existed. Yet, armed with that knowledge he still made the application for the vesting order on the 26<sup>th</sup> June, 1986.

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<sup>10</sup> Paragraph [19.2] of the Defence.

<sup>11</sup> Paragraph [ 4.3] of the Defence.

<sup>12</sup> Paragraph [11].

**Evidence of Dhanmatie Sookhoo**

100. Dhanmatie Sookhoo, the wife of the First Defendant, is the Second Defendant in this matter. Her witness statement was filed on the 20<sup>th</sup> September, 2013. Therein, she stated that she came to live at #131-133 Rochard Road Penal, the land currently in dispute, after she married her husband on the 28<sup>th</sup> February 1979. They have three children who were also born and raised on the disputed property. The family house on the said property has been renovated and she said that her Husband continues to plant a small garden on and operate his trucking business from the said property.
101. She said that though she did not have a personal relationship with her husband's parents as both passed away before she came to live on the disputed property, she knew Ramraj personally as he was her husband's brother who lived under the care of herself and her husband at the said property in the family home as he was differently abled.
102. She said that around 1986 Ramraj left the family home to live in a one room house at Seebalack Trace built by the Claimant. Her husband was made aware that the Claimant was now Ramraj's main caretaker but she said her husband continued to look after Ramraj.
103. The Second Defendant said that the disputed property was initially damp and below the level of the road and her husband, along with some help from herself and the children, took steps to improve the property. Around 1986 her husband sought a vesting order to have the disputed property put in his name. She said that as she came to understand it, his parents never made a will in relation to the disputed property. When the vesting order was granted, she and her husband were taken to the High Court by his brother Sonnylal.
104. She said that around 1989 her husband saw a newspaper article concerning a probate of a 1977 will belonging to his mother being done by the Claimant. Her Husband enquired from the Claimant what the meaning of the article was but the Claimant told him not to worry about it as it did not concern him. She said soon after this the Claimant started to distance himself from them. She said he left the country around 1990 and she only became aware of the details of his whereabouts around 2012 when the claim was initiated. Her daughter Jemma started building a house on a portion of the disputed property around 2007 to 2008 and thereafter moved into that house around December 2008. She said that her Husband was building a new home on the disputed property when the claim was initiated but to date the house remains incomplete due to this court matter.

105. Dhanmatie Sookhoo was cross-examined at trial. She admitted that she was not at home when Ramraj, who she conceded was retarded, left the home to live in a one room house. She stated further that her husband was away from the home at work. She stated that she had gone out and said “ *because I have three kids to look after.* ” She maintained that she assumed responsibility for Ramraj along with her husband, but when asked why she did not make proper enquiries when he left the home, she again responded “ *I had three children to look after* ”. The response of the Second Defendant did not appear to be one of a person who was concerned about the well-being of a disabled person. It reeked of indifference and lacked the concern that would be expected of one who genuinely cared about the welfare of a disabled relative who was in one’s care, who suddenly disappeared. Sonnylal said that after Dhanmatie moved into the family home, problems arose between Ramraj and the First Defendant, and given the attitude of the Second Defendant regarding Ramraj when asked about him at trial, I suspect that given that there was no mention on the evidence of problems existing between Ramraj and Ramkhalawan before her arrival, her presence likely had something to do with the tension which arose between them.

### **Decision**

106. On the evidence, it is clear to me that the First Defendant knew of the possibility of the existence of a will of the Deceased before 1989 as he claimed in his Defence. He was also not telling the truth when he stated in his Defence that had he known about the possibility of the existence of a will at the time, he would not have made the application for a vesting order.

107. Further, on the evidence, I find that the First Defendant knew that he alone had not been promised the disputed lands by the Deceased, and at the very least, at the time of swearing to the affidavit in support of his application for a vesting order, he knew that she had promised that the property was to be given to him and his brother Ramraj who was still alive then. I believe that the First Defendant purposely misrepresented the truth when he said that Basdeo informed him that his mother made a will leaving the disputed property to him and find on a balance of probabilities that he deliberately neglected to mention Ramraj’s name in that regard.

108. I also find that the Claimant was misrepresenting the truth when he claimed in his affidavit in support of his application for a vesting order that he was unable to locate the will. Having considered all of the evidence, I find that no real effort was made on his part to do so and draw the inescapable conclusion that this was because he, as Sonnylal and Doolie contend, had a copy of the said will or knew of the will and its contents.

109. The aforementioned were critical non-disclosures or misrepresentations which went to the heart of his application for the vesting order. In **Venice Arthur Charles v. Harold Seeratan & Ors CV 2008- 02579**, in finding that the Claimant had procured her Certificate of Title by fraud, Rajkumar J., had this to say about her “fundamental non-disclosures”-

*“It is clear that they must have been deliberate. They were designed and intended to result in the vesting of 6.18 acres of land in the claimant when she knew of the claims of other persons, and possible entitlements, to portions of the said lands. I find that these omissions, even individually, and even more so collectively, were deliberate and fraudulent.”*

110. This dictum aptly describes the instant case. I find that the aforementioned non-disclosures and concealment of material facts were dishonest and deliberate. They were designed and intended to ensure the vesting of the disputed property in the First Defendant’s name solely, despite his awareness of the possible entitlement of others to a share in the said property. I find that, taken both individually and as a whole, such omissions were fraudulent.

111. Accordingly, I find that the First Defendant obtained the vesting order by committing the fraud as alleged at [a], [b] and [c] of the **Particulars of Fraud** set out in the Claimant’s Statement of Case. That being said, on the evidence, I do not think that sufficient evidence was adduced to establish the particulars of fraud set out at (d), (e) and (f) of the Particulars of Fraud in the Statement of Case<sup>13</sup>.

112. Having found that the First Defendant obtained the vesting order by fraud, the Certificate of Title issued to him on the basis of those fraudulent non-disclosures and misrepresentations must be set aside. It follows that the Memorandum of Transfer by which the First Defendant transferred the disputed property to himself and the Second Defendant must also be set aside.

**113. Having concluded that the First Defendant obtained the vesting order by fraud, I hold that the Defendants are not entitled to the reliefs sought in their Counterclaim, set out more particularly at paragraph [68] of this judgment at [i]-[vii]. Accordingly, the Counterclaim will be dismissed.**

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<sup>13</sup> See paragraph [5] of this Judgment.

**ISSUE B: Whether the Claimant’s action is statute-barred**

114. In written submissions filed on behalf of the Defendants on the 28<sup>th</sup> November, 2013, Counsel for the Defendants raised as an issue the question of whether the Claimant’s action is statute-barred. In written submissions filed on behalf of the Claimant on the 20<sup>th</sup> January, 2014, Counsel for the Claimant asserted that this issue had already been fully argued and ruled upon by Jones J., in a preliminary issue raised by the Defendants.
115. Indeed, the Defendants raised this issue at paragraph 20 of their Defence and Jones J., to whom the matter was then assigned, requested submissions and authorities from attorneys for the parties to assist in determining this issue. Further, attorneys for the parties also orally addressed Jones J., on the issue on the 15<sup>th</sup> January, 2013 and on the 20<sup>th</sup> March 2013, having considered the section upon which reliance was placed by Defence Counsel in support of their claim that the Claimant was estopped from bringing the action, Jones J., ruled that she was not satisfied that the Claimant was out of Court and gave directions for the trial of the matter.
116. The Defendants, however, raised the issue again in their closing written submissions of the 28<sup>th</sup> November, 2013 subsequent to the trial. Therein, reliance was placed by the Defendants on **Section 150 of the Real Property Act, Chap. 56:02.** That section provides as follows:

*“No action for recovery of damages sustained through deprivation of land, or of any estate or interest in land as hereinbefore described, shall lie or be sustained against the Registrar General, or against the person upon whose application such land was brought under the provisions of this Act, or against the person who applied to be registered as proprietor in respect to such land, or against the person certifying any instrument as aforesaid, unless such action shall be commenced within the period of six years from the date of such deprivation: Provided that any person being under the disability of infancy, or unsoundness of mind may bring such action within six years from the date on which such disability shall have ceased: Provided further, that in no case shall any such action be brought after twenty-seven years shall have elapsed from the accrual of such right of action.”[Emphasis mine].*

117. Section 3 of the **Real Property Limitation Act, Chap. 56:03** provides as follows:

*“No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through*

*whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same”.*

118. Section 21 of the Real Property Limitation Act provides that:

*“In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered: Provided that nothing in this section contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents on account of fraud, against any bona fide purchaser for valuable consideration who has not assisted in the commission of such fraud, and who at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed”.*

119. In light of the aforementioned provisions, I am of the view that the question of whether the Claimant’s action was statute-barred could only be determined after having arrived at a determination of the substantive issue of whether or not fraud existed in the instant matter and if so, at what point was the Claimant in a position to discover the fraud with due diligence.

120. I have already determined that the First Defendant obtained the vesting order by fraud. The Defendants argued that the Claimant is alleging that he was deprived of the land in 1986 and has filed this action in 2012 which is outside the six year limitation period. Further, the Defendants argued that in 1987 when the Claimant made an application to probate a photocopy of the purported will signed by his mother, searches and due diligence would have disclosed that there was an endorsement concerning the vesting order in the Certificate of Title.

121. I am of the view that on the evidence, there is nothing to suggest that the Claimant knew about the application for the Vesting Order prior to 2012. In her witness statement of the 16<sup>th</sup> September, 2013, Doolie Mohammed states that -

*“In or about November 2011, as a result of a telephone conversation which I had with Sonnylal, I came to Trinidad and I spoke to Ramkhalawan about a house in which his*

*daughter Jemma Ramjattan was then living on a portion of the parcel of land at Rochard Road. When I told Ramkhalawan that while we had agreed that there was a mistake in the Will, we did not agree for his daughter or anyone else to build any house on the land, **Ramkhalawan then asked me what will I was talking about.** I did not bring the will with me **but the following year I came back to Trinidad and gave copies of the Will and the affidavit to my lawyer and I gave instructions to have letters sent to Ramkahlawan and Jemma.** After Ramkhalawan pretended not to know about the Will, I gave my lawyers certain instructions, and I subsequently saw a copy of a deed showing that the property at Rochard Road was first put in Ramkhalawan name alone and then in his name and in his wife's name". [ Emphasis mine].*

122. In his Statement of Case, the Claimant stated that letters dated the 5<sup>th</sup> February 2012 and 17<sup>th</sup> April, 2012 were sent on behalf of Doolie Mohammed to Jemma Sookhoo-Ramjattan requiring her to justify her presence and the construction of a dwelling house on Parcel A and to the First Defendant enquiring about the probate of the said will of the deceased and about the dwelling house on Parcel A occupied by Jemma Sookhoo-Ramjattan. The Claimant went on to state in his Statement of Case that “ *As a result of enquiries conducted with regard to the said Will of the deceased and the status of her estate, it was discovered that the Parcel A which was devised to the said Seuraj Sookhoo and the Claimant became vested in the First Defendant pursuant to an application by the First Defendant for a vesting order....* ”

123. The evidence of the Claimant and Doolie Mohammed suggest that the fact that the First Defendant had obtained a vesting order only became known to them around 2012. Doolie spoke of coming to Trinidad in 2011 and speaking with Ramkhalawan who pretended not to know about the will. She said she returned the following year (2012) and gave instructions to her lawyers to send letters to Ramkhalawan and Jemma. She said that after Ramkhalawan pretended not to know (which was in November 2011) she gave her lawyer certain instructions and subsequently saw a copy of the deed showing that the property was first put in the First Defendant's name then transferred. Accordingly, the timeline as set out in her evidence and referred to by the Claimant in his Statement of Case, puts the discovery of the vesting order around 2012. There is no evidence to the contrary to suggest that they knew about it before then.

124. The Defendants sought to claim that Sonnylal knew about the Application for the Vesting Order. In fact, they claimed that he drove them to Court on the day that the decision was made. Notably, this was never put to Sonnylal during cross-examination.

125. It has been argued on behalf of the Defendants that had the Claimant, in applying for Probate in 1987, acted with due diligence and carried out the relevant searches and so forth, he would have discovered that title had been vested in the First Defendant. However, the Defendants' argument seeks to hold the Claimant to a standard of

diligence to be expected of say, a purchaser of land, as opposed to an executor. Accordingly, I find that the Claimant had no such duty to conduct searches as claimed by the Defendant in applying for probate and so that argument fails.

126. In the circumstances, I am of the view that the First Defendant's fraudulent obtaining of the vesting order was only discovered by the Claimant in or around 2012. The Claimant then filed his Claim Form on the 3<sup>rd</sup> August, 2012. Accordingly, his action is not statute-barred.

**ISSUE C: Whether this Court is in a position to pronounce upon the force and validity of the alleged will in question**

127. Amongst the reliefs sought by the Claimant is an order that a photostatic copy of the Will of Ramdoolarie also called Ramdoolaree dated the 2<sup>nd</sup> December, 1977 be admitted to probate (in solemn form).

128. The Defendants, however, argued that this action cannot be described as a probate action. Further it was not so described and did not satisfy the requirements of such an action under the Civil Proceedings Rules. The Defendants further submitted that the Claimant has failed to disclose that he applied to probate a photocopy of an alleged will of his deceased mother. None of the purported witnesses of the alleged will signed any witness statement and no evidence was supplied by the Claimant to support this relief. According to the Defendants, therefore, this claim should also fail for lack of evidence for this Court to pronounce on the force and validity of the alleged will.

129. It was argued on behalf of the Claimant that all documents relating to the application for Probate have been put into evidence by the Defendants. It was argued that whether the Claimant has or has not specifically made a claim for an order for probate in solemn form, if there is sufficient evidence before the Court upon which such an order could be made, the Court could properly make such an order. It was submitted that there is sufficient evidence before the Court on which an order for probate in solemn form could be made as the will on the face of it is in proper form and contains an attestation clause. Therefore, in accordance with the principle "*omni praesemuntur rite esse acta*" there is a presumption in favour of the validity of the will and that presumption has not been displaced.

130. However, I am of the view that the Claimant's argument in that respect is misconceived as the maxim does not apply in relation to proving a will. The burden of proof is on the person seeking to say that the will is valid to establish such. When that has been done, the burden then shifts to the other side claiming its invalidity to prove same on one or more of the various factors such as undue influence, testamentary



capacity, lack of formalities and so forth. Contrary to the Claimant's assertion, as the Defendants quite rightly suggest, there is insufficient evidence before the Court on this issue of the validity of the will for the Court to address its mind to this question and so it cannot adjudicate on same. Moreover, there are certain formalities and procedures which the law requires for proving or challenging the validity of a will and such steps were not taken or addressed in this action.

131. As part of his relief, the Claimant sought a declaration that he is beneficially entitled to a one-half undivided share and interest in the lands described in the Certificate of Title in Volume 1941 Folio 37 now described in Certificate of Title in Volume 5280 Folio 7 and further, a declaration that neither of the Defendants has any interest whatsoever in the said lands described in the Certificate of Title in Volume 1941 Folio 37 now described in Certificate of Title in Volume 5280 Folio 7.

132. It is this Court's view that these conclusions depend upon the determination of the validity of the alleged will of the Deceased and as was said earlier, this Court is not in a position to address that issue in this suit. Accordingly, the Court cannot arrive at any such conclusions pending such determination and therefore cannot grant the aforementioned declarations. The Claimant has what may be termed as a "contingent interest" as a beneficiary under the alleged will. The Claimant is also named as joint executor of the said will, the First Defendant being the other named joint executor. An application has been made by the Claimant for a grant of probate in common form with power reserved to the First Defendant. No cogent evidence has been led or afforded to this Court as to the present status of the application for probate. However, it is this Court's view that based on the Claimant's contingent interest as a beneficiary under the alleged will and his duty as an executor named in the will, the Claimant would have possessed the required locus standi to found this case at bar.

133. In light of the foregoing analyses and findings, the order of the Court is as follows:

### **ORDER**

- 1. A declaration is granted that the Order made on the 29<sup>th</sup> October, 1986 by the High Court of Justice in High Court proceedings No. S-1661A of 1986 ordering that the lands described in the Certificate of Title in Volume 1941 Folio 37 now described in the Certificate of Title in Volume 5280 Folio 7 be vested in the First Defendant was obtained by fraud.**

2. That the Certificate of Title in Volume 5280 Folio 7 registered in Volume 3116 Folio 289 registering the First Defendant as the proprietor of the lands described in the said Certificate of Title in Volume 5280 Folio 7 be and is hereby set aside on the ground that the said Certificate was obtained by the First Defendant by fraud.
3. That the Memorandum of Transfer No. 8 dated the 26<sup>th</sup> October, 2010 whereby the Defendants are registered as joint tenants of the said lands be set aside.
4. That the Second Defendant, in her capacity as the representative of the Estate of the First Defendant in this matter, shall forthwith deliver up to the Registrar General the said Certificate of Title in Volume 5280 Folio 7 registered in Volume 3116 Folio 289 for cancellation.
5. An injunction is granted restraining the Defendants jointly and severally by themselves or by their servants and/or agents from disposing of and/or otherwise dealing with the said lands and/or from constructing and/or from continuing to construct any building or structure on the said lands described in the Certificate of Title in Volume 1941 Folio 37 now described in Certificate of Title in Volume 5280 Folio 7.
6. The Defendants' Counterclaim filed on the 12<sup>th</sup> September, 2012 is hereby dismissed.
7. That the Defendants shall pay the Claimant's costs in this matter to be assessed by the Registrar pursuant to rule 67.12 (2) CPR 1998.
8. That there be a stay of execution for 42 days.

Dated this 17<sup>th</sup> day of April, 2014

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**Robin N. Mohammed**  
Judge