

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2008-01443

BETWEEN

**PARASAR PARRAY also known as PARASAR PARAY
PARASAR PARRAY also known as PARASAR PARAY
(Executor of the Estate of AHNAMICA CHABLAL)
PREYA PARRAY
AMEERA PARRAY
RISHMA PARRAY also known as
RISHMA PARRAY-PHAGOO**

CLAIMANTS

AND

**LOUDHU CHABLAL also known as
LOUDHOO CHABLAL**

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE J. JONES

Appearances:

Mr. L. Holder for the Claimants

Ms. L. Ramcharan for the Defendant

JUDGMENT

1. The Claimants are the husband and children of Ahnamica Chablal, deceased (hereinafter called “the Deceased”) who died on the 24th December 2004. The first Claimant also sues in the capacity of executor of the estate of the Deceased. By this action the Claimants seek an order pursuant to the Partition Ordinance Chapter 27 No.14 for the sale of two parcels of land situate in Tacarigua.

2. The sole issue for the Court's determination is whether the Claimants have an existing interest in the parcels of land. The facts are not in dispute. Both parcels of land are subject to the provisions of the Real Property Act Chap.56:02("the Act"). The first parcel of land ("the first parcel") comprises five thousand and seventy three square feet and is occupied by the Defendant, the brother of the Deceased. The second parcel of land ("the second parcel") comprises five thousand three hundred and twenty square feet and is occupied by the Claimants.

3. Both parcels of land were originally owned by the Defendant and three other persons, Pulgaria, Pooran Chablal and Boodram Chablal as joint tenants. Boodram Chablal died on the 16th January 1965 without severing the joint tenancy. By memoranda of transfer dated the 14th December 1978 Pulgaria transferred her interest in the both parcels of land to the Deceased. Pursuant to the Act the transfers were endorsed on the certificates of title for each parcel of land on the 4th March 1980.

4. While initially disputing the effect of the transfer it was conceded by the Defendant during the course of this action that the effect of this transfer was to sever the joint tenancy of the land and create a tenancy in common between the Deceased and the Defendant and Pooran Chablal so that the Deceased held a one third interest in each of the two parcels of land while the Defendant and Pooran Chablal held a two third interest in the said parcels of land as joint tenants.

5. On the 26th October 1980 Pooran Chablal died without severing the joint tenancy in each of the two parcels of land held by the Defendant and himself. As of the 26th October 1980 therefore the said parcels of land were held by the Deceased, as to one third share, and the Defendant, as to two thirds share, as tenants in common.

6. By an endorsement made by the Registrar General on the 3rd August 1993 there were endorsed on the certificates of title the following words:

(i) with respect to the first parcel:

“Ahanamica Chablal and Oudho Chablal are now registered as joint proprietors of the lands herein described by virtue of the deaths of a) Boodram Chablal on the 16th January 1965 and b) Pooran Chablal on the 26th October 1980.”

(ii) with respect to the second parcel:

“Oudhoo Chablal and Ahnamica Chablal are now registered as the joint proprietor of the land herein described by virtue of the death of Pooran Chablal on the 26th October 1980”

7. In truth and in fact the endorsement on the certificates of title were incorrect as the land ought to have been held by the Deceased and the Defendant as tenants in common, they each holding a one third and a two thirds interest respectively in each parcel. The certificates of title, by virtue of the memorials endorsed thereon, however vested the parcels of land in the deceased and the defendant as joint tenants. The effect of these endorsements (“the 1993 endorsements”) was that upon the death of either the

Deceased or the Defendant both parcels of land would have vested in the survivor in fee simple.

8. By endorsements made on both certificates of title dated the 11th September 2006 a red line was drawn across the 1993 endorsements and endorsed on both certificates of title were the words: “Oudhoo Chablal is now registered as the proprietor of two undivided third shares in the land herein by virtue of the death of Pooran Chablal on the 26th October 1980.” It is clear that the endorsements made in 2006 (“the 2006 endorsements”) were an attempt to correct the error made by the 1993 endorsements.

9. The Defendant submits that:

- (i) there is no power vested in the Registrar General to make the said correction;
- (ii) by virtue of section 142 of the Ordinance the certificate of title as existed prior to the endorsements made in 2006 by the Registrar General is conclusive as to title;
- (iii) the Claimant’s real remedy is against the Registrar General and for damages from the compensation fund.

10. Pursuant to the Court’s case management powers the Registrar General was requested to attend before the Court to indicate the circumstances under which the 2006 endorsements were made. According to the representative of the Registrar General’s department the endorsements were made to correct a clerical error pursuant to the powers vested in the Registrar-General by section 6(d) of the Act.

11. It is beyond dispute that the certificate of title and the endorsements duly authenticated under the hand and seal of the Registrar General, insofar as they remain uncanceled in the Register Book, comprise conclusive evidence that the person named thereon as the owner is seised and possessed of the estate or interest specified therein: Sections 37, 38 and 142 of the Act.

12. Further by section 45, except in the cases of:

(i) fraud;

(ii) a person claiming under a prior grant or certificate of title registered under the Act;

(iii) rights subsisting under adverse possession or, where such possession is not adverse, a tenant holding for a term of years not exceeding three years;

(iv) an omission or misdescription of an easement or parcels or boundaries,

a person holding a certificate of title to land under the provisions of the Act shall hold the same subject only to such interests as are notified on the certificate of title, notwithstanding “the existence in any other person of any estate or interest, which but for this Act might be held to be paramount or to have priority”.

13. On the facts before the Court it is clear that, subject to the Claimants showing that they have acquired rights to the second parcel by way of adverse possession, the exceptions as set out in section 45 do not apply. Unless therefore the Act vests in the Registrar General the power to make the changes effected by the 2006 endorsements, title in the two parcels of land is deemed by the Act to have devolved to the Defendant upon

the death of the Deceased in 2004 by virtue of the endorsements on the certificate of title and the right of survivorship.

14. Section 6 of the Act describes the powers of the Registrar General with respect to lands under the Act. By section 6(d) the Registrar General “may, upon such evidence as shall appear to him sufficient in that behalf, correct such errors in grants or certificates of title or in any plan thereto annexed, or in the Register Book or any plan therein included, or in entries made therein respectively , and may supply entries omitted to be made under the provisions of this Act: Provided that in the correction of any such error, he shall not erase or render illegible the original words or lines, and shall affix the date on which such correction of any such error, he shall not erase or render illegible the original words or lines, and shall affix the date on which such correction was made or entry supplied, with his initials, and every grant or certificate of title so corrected and every entry so corrected or supplied shall have the like validity and effect as if such error had not been made or such entry omitted, except as regards an entry made in the Register Book prior to the actual time of correcting the error or supplying the omitted entry: Provided also, that he shall not correct any error which is not in his opinion a clerical error without the order of a Judge to be obtained by the party requiring such correction.”

15. The power to correct is therefore limited to errors which in the opinion of the Registrar General are clerical errors. A clerical error is defined in Black’s Law Dictionary as “an error resulting from a minor mistake or inadvertence in writing or copying something on the record and not from judicial reasoning or determination”.

16. It is clear to me that by no stretch of the imagination can the 1993 endorsements be considered to be clerical errors. The fact that the Act makes the determination as to the nature of the error a subjective one cannot in my opinion assist to convert what is clearly not a clerical error to one which is. In my view no Registrar General acting properly could have been of the opinion that the error was a clerical one. In my opinion it is clear that the error far from being clerical was a mistake in the interpretation of the law and is not covered by section 6(d). In seeking to correct the error made in my opinion the Registrar General exceeded the jurisdiction given the office under the Act.

18. It is clear therefore that by a mistake made on the part of the Registrar General's department the Claimants have been deprived of an interest in land which their predecessor in title held under the Act. That said what are the options now open to the Claimants in this regard? No question of fraud or any of the other pre-conditions for the maintenance of a suit for ejectment or the recovery of land as specified by section 143 apply. In similar vein no action for damages lies pursuant to section 145 of the Act.

19. By section 148 of the Act a person who has sustained loss as a result of any omission, mistake or misfeasance of the Registrar General or his employees in the execution of their duties under the Act or by the registration of any other person as proprietor of land and who by virtue of the provisions of the Act is barred from bringing an action for the recovery of such land may in a case where the remedy by action for damages is inapplicable may bring an action for the recovery of damages against the

Registrar General as the nominal defendant. In such a case should the claimant recover judgment the amount of damages and costs shall be charged to the account of the Assurance Fund or if that is inadequate the Consolidated Fund: section 149.

20. While the fact of the Claimants continued occupation of the land may leave open another course of action, on the evidence before me it is clear that the Claimants' remedy is in a claim for damages against the Registrar General as the nominal defendant. The Claimants however face one other problem. By section 150 the time for the bringing of such an action, that is an "action for the 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", is limited to six years from the date of the deprivation unless the person bringing such action is under a disability of infancy or unsoundness of mind. In such a case such a claimant has six years from the date the disability ceased to bring the action but in any event not longer than 27 years from the accrual of the right of action. In the instant case the relevant date is the 3rd August 1993 since the deprivation actually occurred upon the making of the 1993 endorsement.

21. While the wording of section 6(d) suggests that it is open to a person to seek to correct a non clerical error made by the Registrar General by application to a Judge it seems to me that given the concept of the conclusiveness of the certificate of title and the

endorsements thereon such an application must be made promptly. An applicant must not sleep on his or her right to have the error corrected. It would seem to me that any action now seeking to rectify the error would in fact be an action for the recovery of land and covered by section 143 of the Act.

22. It is clear to me that the Claimants have suffered a wrong which because of their failure to remedy in time has resulted in an injustice to them. Whereas it may very well be that the Claimants can in fact establish that they are entitled to have the second parcel vested in them by virtue of their adverse possession, given the application before me I have no evidence upon which I can make an order for the sale of the parcels of land the subject matter of this action pursuant to the Partition Act. The Claimants' case is therefore dismissed. In all the circumstances of the case I make no order as to costs.

Dated this 6th day of March, 2009

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Judith A.D. Jones
Judge