

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2008-004699

BETWEEN

**LYSTRA BEROOG
INDRA BEROOG**

Claimants

AND

FRANKLYN BEROOG

Defendant

Before the Honorable Mr. Justice V. Kokaram

Appearances:

**Ms. Mohani Maharaj for the Claimants
Mr. Haresh Ramnath for the Defendant**

JUDGMENT

Introduction:

1. The Claimants are tenants of a parcel of land known as House Lot No. 19.50.002, Palmyra Village (“the said premises”)¹. In this action, they seek to recover from the Defendant vacant possession of the said premises and damages for trespass. The Defendant resists this claim by alleging that the Claimant is not entitled to possession as he was born on the said property, grew up there and save for one year in 1975, was in continuous undisturbed

¹ See description of the parcel of land at paragraph 1 of the fixed date claim form dated and filed 1st December 2008

occupation of the said premises. At the case management stage the Court set down the following issue to be determined:

“Whether the Claimants’ interest in the subject premises has been extinguished by adverse possession of the Defendant based on the facts and matters pleaded in the respective statements of case.”²

2. The onus of establishing the defence of adverse possession is on the Defendant who put it forward³. The question in this case is simply whether the defendant has dispossessed the Claimants by going into ordinary possession of the said premises for a period of 16 years or more without the consent of the owner.⁴ The nub of the Defendant’s case was the bald assertion “I born and grow there”. I, however, find on the evidence adduced in this action that the Defendant did not live continuously on the said premises for 16 years before the commencement of this action. He has not made out his case for adverse possession.
3. I say so principally for the following reasons:
 - (a) The Defendant was not a reliable witness and his evidence is untruthful, his claim of factual continuous possession was not made out.
 - (b) On a balance of probabilities I am satisfied that the Defendant left or abandoned the said premises in 1975 to take up residence in Lower Barrackpore and returned to the said premises intermittently from 1993 and permanently from 2004 to date.
 - (c) Although there was a house on the said premises since at least the 1960’s there is no evidence to demonstrate that the Defendant was in continuous occupation of the said premises from the date of his birth in 1951 to date as alleged in his defence.
 - (d) The Defendant admits that his occupation of the premises through his father was as a result of permission or consent granted to his father by the Claimants’ father, John Beroog.
 - (e) Neither actual possession for the requisite period provided by statute nor the requisite animus possidendi was proven by the Defendant on the facts of this case. The Defendant did not prove on a balance of probabilities that he was in continuous

² This was confirmed at the commencement of the trial with attorneys for the parties.

³ See **Tecbild Limited v Chamberlain** (1969) 20 P&CR 633

⁴ See **JA Pye (Oxford) Limited v Graham** [2003] 1 AC 419

Alphat Ali Mohammed v Guerra (2002) 67 WIR 21

possession of the premises for a period of 16 years or more prior to the commencement of this action.

4. In the circumstances there will be judgment for the Claimants against the Defendant. There has been no evidence led on the issue of damages for trespass since 1993. I hold however, that the Defendant had entered the premises in December 1993 without authority and which constituted a trespass. I will hear counsel on this aspect of the Claimants' case.

The proceedings:

5. By their fixed date claim form dated and filed 1st December 2008, the Claimants sought delivery of possession of the said premises and damages for trespass. It is common ground that the Claimants were at all material times the tenants of the said premises by virtue of a tenancy agreement dated 8th August 1992 made between the Claimants and Caroni (1975) Limited.⁵ The Claimants alleged that the Defendant wrongfully entered the said premises in December 1993 and commenced certain building works and took possession of the said premises.
6. On 22nd December 1993 the Claimants commenced HCA S 4263 of 1993 seeking damages for trespass and an injunction. Those proceedings stood automatically dismissed by virtue of Legal Notice 33 of 1993.
7. The Claimants contended that they have paid all the land rents from 1993 to date as well as the water rates from 1993 to date.
8. The Defence and Counter Claim filed in these proceedings on 7th October 2009 was uncomplicated. The nub of the defence is contained in paragraph 1 of the Defence:

“Paragraph 2 of the Statement of Case is denied for the following reasons:

- (a) The Defendant's parents namely: Bachanoo Beroog and Bloomin Beroog started living and occupying the said lands described in paragraph 2 of the Statement of Case prior to 1951.

⁵ A copy of the tenancy agreement was tendered into evidence by the first Claimants.

- (b) This Defendant was born in 1951 and his brothers Wayne in 1955, Cedeno in 1957, Richard in 1958, Keith in 1959, Dean in 1963 and their sister Satira in 1966 and they all grew up at the said property.
- (c) The Defendant's father died in 1976 and his (the Defendant's) mother died in 1969.
- (d) The Defendant and his siblings continued living and occupying the said property. Gradually his siblings moved out until the year 1992 when the Defendant, his wife and children began to occupy the said property solely.
- (e) The Defendant and his siblings and parents before him and together with him lived and cultivated short crops, planted a few fruit trees and maintained the boundaries. They exercised joint exclusive and continuous possession without interruption and without consent.

Based on the above the Claimants are not entitled to possession.”

- 9. The Defendant further contended that there was a carat house on the said premises from the 1950's which was renovated between 1951 and 1966 into a wooden house on concrete pillars, then a shed was built 10 to 12 years ago. Notably absent from this pleading is any allegation that the Defendant or his predecessor in title built these structures. He also contended that the meter for the electricity for the property is in his father's name.
- 10. By his counter claim the Defendant sought a declaration that Caroni (1975) Limited had no interest or title in law to pass to the Claimants with respect to the subject premises and a declaration as against the Claimants that their title, rights and interest have been extinguished in favor of the Defendant.
- 11. On 14th January 2010, the Defendant filed an application to join the Attorney General as a Defendant. This application was made on the basis that the counter claim sought a declaration against Caroni (1975) Limited whose assets were vested in the State.

12. At the case management conference on 22nd January 2010 the Court identified the main issue for determination between these parties was whether the Claimants were entitled to possession in light of the matters pleaded in the Defence. If the Defendant could not come up to proof with regard to the plea of adverse possession as pleaded in his defence then there will be judgment for the Claimants. If on the other hand the Defendant does come up to proof, the Claimants would not be entitled to possession and their claim would be dismissed. In those circumstances the Defendant would then consider whether he needed to pursue his counter claim which would necessitate the joinder of the State as a party. Either way the matter would easily be resolved by the Court investigating the facts as alleged by the Defendant. This was a robust but practical management of the case which would have guaranteed the parties a trial and adjudication in a short time frame which in this case resulted in a trial on 10th May 2010.
13. The Court's powers of case management must give effect to the overriding objective. To deal with this case justly required in my opinion the early identification of the main issue and setting that down for trial. Prolonging the proceedings by the joinder of another party to pursue a counterclaim which may not be necessary for that adjudication, was in my view, counter productive to an expedient and just resolution of this dispute. In a claim for adverse possession it is for the Defendant to prove his claim. The very simple allegation being made is that the Defendant has been in continuous possession of the property since his birth. To the credit of both attorneys at law they agreed to this approach as they saw the merit in saving their respective clients the additional costs of the proceedings being prolonged to facilitate the joinder of another party to the action. Attorney for the Defendant indicated that there was no need to reply to the Defence. Directions were accordingly given to try the issue as identified by the Court.
14. Against this backdrop I do not understand the submission of the Defendant as articulated in his written submissions that: "It was however agreed between the parties that the dispute would be resolved if it could be proved that the house was in existence since 1950 so as to extinguish title." This was not the agreement as I recorded it, nor in accord with my direction of the trial on the issue of adverse possession. In any event, the existence of a

house on the said premises cannot on its own be sufficient to establish adverse possession. It is the nature of the actual occupation by this Defendant that is in issue.

The issue:

15. Therefore the main issue to be determined is: whether the Defendant has been in continuous undisturbed possession of the said premises since his birth to date with the requisite intention to possess the said premises as his own so as to defeat the claim of the Claimants for possession. This is in the main a question of fact.

The evidence:

16. After hearing the witnesses in this matter,⁶ observing their demeanour and cross-checking the plausibility of their respective versions of the facts with the documentation and pleadings, I was satisfied that the Defendant failed miserably in making out his claim of continuous and undisturbed possession of the said premises. Whereas there are some inconsistencies in the evidence of the Claimants, the Defendant lacked any credibility whatsoever. At one stage in his cross-examination he said he could not read and refused to read a document shown to him in cross-examination. Such testimony placed his entire witness statement in jeopardy as it does not indicate on its face that he was under such a disability. He later, however, almost miraculously gained the ability to read a letter shown to him in cross-examination. He had almost no documentation to support his claim. He distanced himself from the previous litigation in 1993 as though it never occurred even though he filed a defence in those proceedings. He was flippant and evasive in many of his answers and it was amazing to hear him continuously parrot the words “I born and grew there” as a stock answer to any question that he had difficulty in answering, even when such an answer was wholly out of context and not warranted as a response to a question. He became in the end the cross-examiner’s dream of a witness who is shown to be a stranger to the truth. The evidence of the Defendant in my view therefore, fell woefully short of the type of evidence required to prove adverse possession.

⁶ Lystra and Leena Beeroog gave evidence for the Claimants and Franklyn Beeroog and Paul Williams for the Defendant. An officer from T&TEC was subpoenaed by the Claimants but his evidence was not helpful.

17. The Claimants' witnesses were consistent and their evidence on the following material facts remained unshaken:

- The house on the property was built initially by the Claimants' father, John Beeroog.
- The Defendant lived on the premises with his mother and father from 1960 until he left in 1973 or 1974.
- The Defendant left the premises to live with his wife in Lower Barrackpore. The residence was his mother-in-law's. His five children were all born there.
- He returned to the said premises in 1993 to place building materials on it and intermittently came onto the premises while maintaining his residence in Lower Barrackpore.
- The house at Lower Barrackpore in which the Defendant and his family was living burnt down in 2004 and he returned to live on the said premises.

18. Lystra Beerog was an old witness yet her version of the facts remained consistent under cross-examination. Her explanation as to the origin of the house on the said premises appeared to me to be plausible. It was a very modest house that she and her husband used when they "worked" the land twice or three times a week. Admittedly, she was ambivalent about the contributions of the Defendant's father to the premises but she admitted that he also did some work to the house. Her daughter, Leena Beeroog was not shaken in cross-examination.

19. The Defendant's expert witness, Mr. Paul Williams gave an explanation to the Court of the occupation patterns over the years on the said premises based on aerial photography. His evidence was limited to the physical structures that were present on the said premises. Although his testimony could not help the Court determine who was in actual occupation of the said premise his evidence did establish the following:

- That a building measuring 22 x 24 feet has been in existence on the same premises since 1965. His evidence did not confirm nor deny that the house was in existence prior to that date.
- That a temporary shed was built on the said premises after 1998.

20. The Defendant proved to be an extremely unreliable and untruthful witness:

- He began his testimony by denying that paragraph 8 of his witness statement was untrue. Paragraph 8 admitted that the Claimants were entitled to possession of the said premises. This could be discounted as poor drafting of the witness statement. However, it also reveals this witness' lack of attention to his own statement when he signed it. This assumed greater importance later in his cross-examination when he revealed that he could not read. This cast further doubt on whether he ever read or understood the contents of his own witness statement at all.
- At the beginning of his cross examination he was insistent that no one gave him permission to be on the premises:

“Q: You say at paragraph 10 that no one gave you permission to be on those premises? A: Since I know myself I born in Palmyra Village with parents there.

Q: You say no one give you permission? A: Since I know myself I was there.

Q: No one gave your parents permission to be on premises? A: Since I know myself I living with my parents and them.

Q: So you cannot say that permission was given to your parents or not? A. Not to my knowing.”

However in spite of this denial, later in his cross examination he admits that the Claimants' father gave his father permission to stay on the property.

- His assertion that he did not live in Lower Barrackpore is not consistent with the birth certificates of his children showing their mother's residence as being Lower Barrackpore. When the certificates bearing the address of Lower Barrackpore was shown to him he conveniently claimed he could not read. He then qualified that

statement by claiming that all he could do is see his signature. Later when a letter was shown to him he read it and admitted that it refers to his address in Lower Barrackpore.

- He did not know why his own brothers and sister left the property. If he was living on the said premises he should have been intimate with the details of his siblings' movements.
- The witness strangely and senselessly was parroting the phrase "since I know myself I born and grow in Palmyra." This occurred when he was faced with any difficulty in cross examination. A classic example can be seen in the following exchange:

"Yes I knew my uncle give my father permission to live in land.

I don't know what construction. Yes I know it have a tenancy in the land.

Q: So why in paragraph 10 of your witness statement you say you never knew who the owner is of the land, that is true or lie? A: Yes that is what he told me that he pay my uncle to pay for land in Caroni. Yes

Q: So long before he died you know about this? A: Yes.

Q Now in your witness statement you say you can't read but in here you say I never knew who the owner of the land was but in 1976 you tell the court you give your uncle money to pay rent so what you say is lie or true?

A: Since I know myself we live there in Palmyra village"

- His answers were inconsistent. At one stage he admitted that Mr. Panday was his lawyer in previous proceedings and then he said he did not go to see Mr. Panday. Puzzled by that question I intervened and asked whether he went by Mr. Panday and he admitted that he did. He further puzzled me when he distanced himself from having any knowledge about the contents of his own defence in the previous High Court Action and when he was asked rhetorically by attorney for the Claimants "So Mr Panday write up this defence himself?" He replied "I don't know."

- He further asserted that he did not build anything on the land and later said he built a shed.
- It is clear that the letter written in 1993 which he said he received was addressed to him in Lower Barrackpore. That could not be consistent with the Defendant's version of his occupancy that he was always in Palmyra and left in 1975 to return to live there continuously since 1976 to date.
- The Defendant does not deny that the Claimants paid the water rates and land and building taxes. The only documents that were used to demonstrate that the Defendant was in occupation of the premises was a letter to his attorney-at-law from T&TEC and the photography submitted by Mr. Williams. They were both unhelpful in supporting the Defendant's claim. It did not detract from the Claimants' consistent story that the Defendant left the premises in 1975 and returned permanently in 2004.
- In these circumstances I could not rely on this witness' testimony and I considered him to be untruthful.

Adverse possession

21. Claims of "adverse possession" pit the rights of persons in occupation against the title owners of the property. It is a short hand expression for the type of possession which can, with the passage of years, mature into a valid right. It is therefore a very serious and significant claim where that type of occupation will trump a legal right. The claim must therefore be carefully scrutinized to determine the character of the land, the nature of the acts done upon it and the intention of the occupier. The onus is on the Defendant to prove (a) factual possession of the land for 16 years or more and (b) the animus possessendi, the intention to possess the land as his own.⁷
22. The essential concept of factual possession is that of exclusive physical control. I cannot hold on the basis of the evidence adduced by the Defendant that he was in exclusive physical

⁷ See **Powell v Mc Farlane** (1977) 38 P&CR 452, **JA Pye**

control of the premises after 1975. I do not accept his explanation that he “born and grow there”. He left the property when he got married and lived thereafter at Lower Barrackpore with his wife and her family. He returned in 1993 when he placed building materials on the property and permanently moved to the said premises in 2004.

23. Quite apart from the absence of single exclusive occupation, he does not possess the requisite intention. He clearly admits in his cross examination that his father obtained permission from the Claimants’ father, the owner, to stay on the land. There is no intention to possess the land as his own.
24. The Defendant has failed on a balance of probabilities to make good his claim of adverse possession. There is therefore no need for any further enquiry in this matter in relation to the Defendant’s counterclaim against Caroni (1975) Limited, and there will be judgment for the Claimants against the Defendant. The Counterclaim will be dismissed.
25. Counsel addressed me on the issue of damages and indicated that her clients do not wish to pursue that matter as they recognize that this is a family matter.
26. I therefore order as follows:
 - (a) The Defendant do give vacant possession of the said premises described in paragraph 1 of the amended statement of case to the Claimants on or before 1st January 2011.
 - (b) The Defendant do pay to the Claimants’ costs agreed in the sum of \$5,500.00 on or before 1st January 2011.

Dated this 20th day of October, 2010

Vasheist Kokaram
Judge

