

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2008-02970

BETWEEN

PATRICIA DINDYAL HARRACKSINGH

Claimant

AND

HAZEL JAMES

Defendant

Before the Honorable Mr. Justice V. Kokaram

Appearances:

Mr. Stanley Marcus SC and Ms. Suzette Bullen for the Claimant

Ms. Marsha King instructed by I Soyinka and Company for the Defendant

JUDGMENT

1. The respective parties Patricia Dindyal Harracksingh, the Claimant and Hazel James, the Defendant have made rivaling claims in these proceedings to ownership of the identical parcel of land. They both contend that they are the owners of a parcel of land situate at Madrass Settlement in the ward of Cunupia comprising 10 acres more or less which is described and referred to in this litigation as Lot 73 or lands of "Dobee" and appears in form as a rectangular parcel of land on survey plans, admitted into evidence in these proceedings.
2. At a case management conference the Court gave directions for both of the parties' surveyors to file affidavits and responses to questions with a view to having the matter resolved. Unfortunately the matter was not resolved and the preliminary issue that is now to be decided by the Court is to whom Lot 73 belongs by virtue of their respective deeds and evidence of title.

3. This issue is distinct from the parties' respective claims to Lot 73 by virtue of adverse possession are pleaded in their respective statements of case/defence. The Claimant pleads that she and her predecessors in title have been in undisturbed possession since 1939 and the Defendant denying such possession asserts that she and her predecessors in title have been in possession since 1944.
4. However the pleadings of both parties are deficient in setting out any particulars of the alleged occupation of the said premises and I doubt very much whether either party can mount a successful claim of adverse possession on the state of these pleadings.
5. The focus of the pleadings has in essence been on title. The parties have set out exhaustively in their respective pleadings their claim to the superior title to the Lot 73 either by way of a superior chain in title or by a proper identification of the parcel of land conveyed over the years as the said Lot 73.
6. The Claimant's claim is for¹:
 - i. A declaration that Deed dated 1st June 1998 registered as No. 16358 of 1998 and made between Ashford William and Bernadine Williams of the One Part and the Defendant of the Other Part is void and/or of no legal effect.
 - ii. An order that the said Deed registered as No. 16358 of 1998 be set aside and/or cancelled and/or expunged from the records of the Registrar General of Trinidad and Tobago.

¹ The Third Thereof comprising 10 Acres more or less:

- (i) Deed dated 14th March 1908 registered as No. 806 of 1908 from Phaloo to Ishmiel Khawn.
- (ii) Deed dated 20th March 1908 registered as 807 of 1908 from Ishmiel Khan to Yassim Khawn.
- (iii) Deed of Conveyance dated 1st March 1939 registered as No. 3540 of 1939 from Yassim Khawn to Clarence Carmichael Abidh.
- (iv) Deed dated 31st October 1956 registered as No. 14582 of 1956 from The Public Trustee as Legal Personal Representative of Clarence Carmichael Abidh to Stella Piari Abidh.
- (v) Deed of Conveyance dated 5th April 1980 registered as No. 8735 of 1980 from Stella Piari Abidh to Mohammed Yarseen Ali.
- (vi) Deed of Conveyance dated 27th August 1987 registered as No. 14560 of 1987 from Mohammed Yarseen Ali to Patricia Dindyal Harracksingh.

7. The defendant's counterclaim is for² :

² By Re-Grant of Forfeited Lands registered as No. 853 of 1911 and 2048 of 1913 Cecil George Huggins became seised in fee simple in possession of all that parcel or lot of land situate in the Ward of lower Caroni comprising eighty-five (85) acres and bounded on the North by Chin Chin Village on the South by lands of Ramdass and others on the East by lands of Jaffers and on the West by lands of Dookeah.

By Deed of Mortgage registered as No. 2099 of 1926, Sawjawah, Bhagwandyal and Sookbasseah Adjodha mortgaged to Urmadath Persad certain lands, including land described in the second part of the Schedule to the said Deed as being ALL AND SINGULAR those two several parcels of land and plantation situate in the Ward of Lower Caroni the first thereof containing 80 Acres be the same more or less and abutting on the North upon the village on the South upon land now or lately owned by Ramdeen and others on the East upon lands now or lately of Lyfar and on the West upon lands now or lately of Dookeah and others and the Second thereof containing five acres to be same more or less and abutting on the north, South, East and West upon lands now or lately of the Crown which said two parcels of land are described in a certain Re-Grant from the Crown registered as No. 853 of 1911 as containing eighty five acres and abutting on the North upon Chin Chin Village on the South upon lands now or lately of Ramdass and others on the East upon lands now or lately of Jaffar and the West upon lands now or lately of Dookeah together with the appurtenances thereto belonging.

By Deed of Transfer of Mortgage registered as No. 1728 of 1937 between Urmadath Persad (mortgagee) of the First Part, Frederick Ramgolie (Transferor) of the Second Part and George Frederick Huggins (Transferee) of the Third Part the lands described in the Deed of Mortgage No. 2099 of 1926 were conveyed to the said George Frederick Huggins.

By Deed of Conveyance dated 2nd August 1944 made between Sookbasseah of the One Part and Reynold Williams and Ince Williams of the Other Part the said Reynold Williams and Ince Williams became seised in fee simple in possession as joint Tenants of ALL AND SINGULAR those two several parcels of land and plantations situate in the Ward of Lower Caroni in the Island of Trinidad THE FIRST THEREOF containing EIGHTY ACRES and abutting on the North upon the Village on the South upon lands now or lately of Jaffar and on the West upon lands now or lately of Dookeah and others AND THE SECOND THEREOF containing FIVE ACRES and abutting on the North South East and West upon lands now or lately of the Crown which said two parcels of land are described in a certain Re-grant from the Crown registered as No. 853 of 1911 (204 of 1913) as containing eighty-five acres abutting upon lands now or lately of Ramdass and others on the East upon lands now or lately of Jaffar and on the West upon lands now or lately of Dookeah.

By Deed of Mortgage registered as No. 11753 of 1961, dated 5th day of September Ince Williams mortgaged to Harrilal Ramkissoon and Grace Ramkissoon ALL AND SINGULAR the land described in the schedule thereto with the said schedule being identical to the Schedule to the Deed of Assent and Partition registered as No. 17452 of 1985.

By Deed of Assent and Partition dated the 7th day of October, 1985 made between Russell Williams the Legal Personal Representative of Ince Williams deceased of the First Part the said Russell Isidore Williams and Ashford Williams the Legal Personal Representative of Isidore Williams in his personal capacity of the Third Part and the said Ashford Williams in his personal capacity of the said Fourth Part, the said Russell Isidore Williams and said Ashford Williams became seised in fee simple in possession of ALL AND SINGULAR those two several parcels of land situate formerly in the Ward of Lower Caroni nut now in the ward of Cunupia in Trinidad THE FIRST THEREOF comprising EIGHTY-FIVE ACRES and bounded on the North formerly by Chin Chin Village but now or lately of Ramdass and others (also described as Ramdeen and others) on the East by lands now or lately of Jaffar and on the West by lands now or lately of Dookeah and others AND THE SECOND THEREOF comprising FIVE ACRES and bounded on the North South East and West by lands now or formerly of the State and which said two parcels of land are

- i. A Declaration that the Schedule in Deed No. 14560 of 1987 is erroneous and ought to be corrected to describe delineate the property referred to in Deed No. 807 of 1908.
- ii. An Order that a proper survey be done on the lands described in Deed No. 14560 of 1987 as corrected.

described in a certain “Re-grant of Forfeited lands” (made by the Crown) registered as No. 835 of 1911 (and also in another such re-grant registered as No. 2048 of 1913) as containing EIGHTY FIVE ACRES and abutting on the North upon Chin Chin Village on the South upon lands of Ramdass and others on the east upon lands of Jaffar and on the West by lands of Dookeah together with the building and appurtenances thereto belonging.

By Deed of Release dated 9th May, 1986 made between Grace Ramkissoon of the First Part the said Grace Ramkissoon and Jasmine Boodram as Legal Personal Representatives of Harrylal Ramkissoon of the Second Part and Russell Isidore Williams as Legal Personal Representative of Ince Williams of the Third Part the property comprising the estate of Ince Williams was re-conveyed described as ALL AND SINGULAR those two several parcels of land and plantations situate in the Ward of Lower Caroni in the Island of Trinidad, THE FIRST THEREOF containing EIGHTY ACRES (80) and abutting on the North upon the Village, on the South upon lands now or lately of Ramdeen and others on the East upon lands now or lately of Lyfar and on the West upon lands now or lately of Dookeah and others AND THE SECOND THEREOF containing FIVE ACRES (5) and abutting on the North, South, East and West upon lands now or lately of Brown which said two parcels of land described in a certain Re-grant from the Crown registered as No. 853 of 1911 as containing EIGHTY FIVE ACRES and abutting on the North upon Chin Chin Village, on the South upon lands now or lately of Ramdass and others on the East upon lands now or lately of Jaffar and upon lands now or lately of Jaffar and on the West upon lands now or lately of Dookeah.

By a Deed of Gift registered as No. 17313 of 1992 dated 18th day of September 1992, between Ashford Williams of the One Part and Bernadine Williams of the Other Part. The said Ashford Williams and Bernadine Williams became seised in fee simple in possession as joint tenants of ALL AND SINGULAR the lands described in the second part of the second schedule to Deed No. 17452 of 1985.

By a Deed of Conveyance registered as No. 16358 of 1998 made between Ashford Williams and Bernadine Williams and the Defendant, the Defendant became seised in fee simple in possession of the said Lot No. 73 which is described as All and Singular that certain piece or parcel of land situate in the Ward of Chaguanas (formerly Cunupia) in the Island of Trinidad comprising 10 acres (4.0477 Hectares) being portion of a larger parcel of land more particularly described in the second part of the Second Schedule to Deed No. 17452 of 1985 and bounded on the North by a Road Reserve 20.12 metres wide on the South by lands of Williams Russel on the West by lands now or formerly of J. Ling and on the East by lands of Ashford Williams.

THE THIRD THEREOF comprising 10 Acres and shown as marked “73 Dobe” on the said Ward sheet and bounded on the North by a Road Reserve on the South by other lands of the Claimant shown as marked “133 Guyoo” on the said Ward sheet on the West by other lands of the Claimant shown as marked “C.C. Abidh 4.2.36” on the said Ward Sheet and on the East by lands shown as marked “74 Perman” on the said Ward Sheet.

8. In substance however the principal question of determining whether Lot 73 belongs to the claimant or to the defendant is to be determined by the respective deeds evidencing their title. This is an exercise which is being conducted in these proceedings without any evidence of user of Lot 73 over the years.
9. I acknowledge that a court must exercise great care before embarking upon a trial of a preliminary issue as Lord Scarman noted in **Tilling v Whiteman** [1980] 1 AC 25 that preliminary issues were often “treacherous shortcuts which could lead to delay anxiety and expense”. However I proceed on a determination of this issue on the basis that it will more than likely bring an end to this dispute and the parties can re-assess their respective positions on their claim to adverse possession.
10. On the part of the Claimant she claims that Lot 73 was conveyed to her by deed registered as no 14560 of 1987. On the part of the Defendants they contend that Lot 73 was conveyed to them by deed registered as no 16358 of 1988.
11. The Claimant’s deed is dated 27th August 1987 and made between the Claimant and Mohammed Yarseen Ali, the vendor. By the said deed Mr Ali conveyed not only Lot 73 but also other parcels of land and also transferred a parcel of land under the Real Property Ordinance. In her statement of case the Claimant set out her title to the said lands over a period of 50 years with a root of title as far back as by Deed dated 14th March 1908 registered as No. 806 of 1908 made between Phaloo to one Ishmiel Khawn. It is noted that the only difference between the parcel of land described in the Deed no 806 of 1908 and the Claimant’s 1987 deed is its acreage, 5 acres in the former and 10 acres in the latter.
12. The Defendant’s deed dated 5th June 1998 is made between Ashford Williams and Bernadine Williams and the Defendant. In that deed the said Lot 73 was the sole parcel of land that was conveyed. The defendant set out a root of title which began with a Re-Grant of Forfeited Lands registered as No. 853 of 1911 and 2048 of 1913 to Cecil George Huggins.
13. The critical difference between the parties deeds lie in the description of the parcel of land. The task of the court will be to determine from examining these deeds whether Lot 73 was conveyed by the claimant’s or the defendant’s deed.

14. In the Claimant's deed Lot 73 is described as follows:

ALL AND SINGULAR that certain piece of land situate at Madrass Settlement in the Ward of Lower Caroni in the Island of Trinidad described in title deed as comprising FIVE ACRES but shown on the Cadastral Ward Sheet as comprising TEN ACRES and abutting on the North upon the Public Road on the South by Crown Land on the East upon Lot 74 and on the West upon Lot 72 of the Madrass Settlement, which said piece of land piece of land is more particularly described in deed 807 of 1908.
15. In the Defendant's deed Lot 73 is described as follows:

ALL AND SINGULAR that certain piece or parcel of land situate in the Ward of Chaguanas (formerly Cunupia) in the Island of Trinidad comprising 10 acres (4.0477 Hectares) being portion of a larger parcel of land more particularly described in the 2nd part of the Second Schedule to Deed No. 17452 of 1985 and bounded on the North by a Road Reserve 20.12m wide; on the South by lands of William Russel; on the West by lands now or formerly of J. Ling and on the East by lands of Ashford Williams. The said parcel of land is delineated and coloured pink on the plan hereto annexed and marked "A".
16. Lot 73 as shown on the cadastral maps is a 10 acre plot of land. Its boundaries are in fact as follows: to the North by a road reserve, on the south by crown lands, on the east upon Lot 74 and on the west Lot 72 of the Madrass Settlement.
17. The claimant must satisfy the court that the mis-description of the northern boundary in its deed as "a public road", and the difference in the acreage of five acres in previous deeds, are not material to affect the proper identification of Lot 73 as having been conveyed to the Claimant. It is only by the Claimant's 1987 deed that the parcel of land is described as a 10 acre parcel. This was as a result of a survey conducted by Aqui.
18. For the defendant it must satisfactorily show that Lot 73 was properly identified as forming part of an 85 acre parcel of land. Further both parties, it must stand to

- reason, must demonstrate a good title or a superior title if it is to succeed on its claim.
19. Both parties have relied upon documentary evidence of plans, survey, ward sheets and the testimony of experts, land surveyors namely Alwyn Aqui for the Claimant and Ramon Fortune for the Defendant. They filed affidavits, provided written response to questions and were cross examined.
 20. Extrinsic evidence is admissible to show the boundaries of land as used before the grant to clarify any ambiguity in title deeds. See **Van Diemens Land Company v Table capr Marine board** [1906] AC 92
“it may be laid down generally that all facts relating to the subject matter and object of a deed such as that the property comprised in it did or did not belong to the grantor, the mode of acquiring it, the local situation limits an distribution of the property are admissible to aid in ascertaining what is meant by the words used in the instrument.”
 21. In Halsbury Laws of England 4th edition paragraph 926 the nature of evidence of boundaries was articulated as follows:
“Evidence of boundaries differs in kind and degree. The title deeds of the parties concerned constitute the primary evidence and must be considered first and the boundaries as indicated in the title deeds will prevail if they are clear and unambiguous. The construction of a deed is a matter for the court but in certain limited circumstances extrinsic evidence may be admissible to assist the court. In the absence of clear evidence in the title deeds, the court may be guided by the applicable presumptions, if any evidence may be brought to rebut those presumptions.”
 22. In such disputes, public documents such as maps, surveys, ward sheets, are of assistance to the court so too is expert evidence. In this claim there are no physical markings or objects on the land such as hedges or rivers to demarcate the boundaries, save for a reference to a public road which in itself is in dispute. I must admit however that the surveys and descriptions of land or “parcelisations” to use the words of Mr Fortune, of the Madrass Settlement is not free from controversy. It seems to me that over time various surveyors picked up various

points of reference to attempt to demarcate or describe the same parcels of land. This can lead to confusion and uncertainty. A classic example in this case is the emergence of a road “Boy Cato Road” as the description of the northern boundary of an 85 acre parcel when the northern boundary of that parcel was previously described in early deeds as a village with no reference to the Boy Cato Road although that road was in fact in existence at the time of the making of those deeds.

23. A principle of law that I have applied in this case is the maxim *falsa demonstratio non nocet* “if there be a description of the property sufficient to render certain what is intended the addition of a wrong name or of an erroneous statement as to quantity occupancy locality or an erroneous enumeration of particulars will have no effect”. The court will reject false descriptions as surplusage. See Halsbury Laws of England paragraph 928:

“Generally all words and parts of a deed will be relevant to the ascertainment of the boundaries but where a deed conveying property contains a sufficient and ascertained description of the property and also a false description, the false description is rejected as surplusage under the maxim falsa demonstratio non nocet cum di corpose constat. On the other hands whether the principal words of the description lack the certainty necessary for the rejection of the subordinate description can be read as limiting the principal description, the deed will be construed accordingly. Thus if premises are described in general terms and a particular description is added, the latter controls the former.”

24. Jessel MR in **Francis v Hayward** (1882) 22 ChD 1777 in applying this principle noted:

“Then it is described as bounded on the east be the defendants property. But this general description of the boundaries does not cut down the effect of the prior description. When after a description of a property it is stated that on one side it is bounded by a certain other property and it appears that it is not so bounded for every inch there is an inaccuracy in the

statement of the boundary but this is not enough to exclude what is not so bounded if it appears from the evidence to have been part of the property dealt with and the previous description of that property is sufficient to include it.”

25. **Herrick v Sixby** (1867) IV Moore NS 349, cited by the Defendant is a useful case demonstrating the disputes between parties over boundaries of land and whether the deed accurately describes the parcel of land that is the subject of the conveyance. In that case there was a dispute over the description of the eastern boundary. That boundary was worked out by a process of rationalization by the court from the available evidence of surveys, and points fixed to the ground to determine the dominant idea and intention of the parties in the conveyance. As a reserve position the court had resort to the principle that where the language of the description in the deed equally admits of two different constructions, the one which would make the quantity of land conveyed agree with the quantity mentioned in the deed and the other which would make a the quantity altogether different, the former construction must prevail. This principle is applicable however in those cases where the intention of the parties can be demonstrated to refer to the parcel of land by the acreage and not by its boundaries.
26. However **Herrick** is also authority for the proposition that in a case from a conveyance of a certain ascertained piece of land accurately described by its boundaries on all sides with a statement that is contained “so many acres or thereabouts” if the quantity was inaccurately stated did not affect the transaction.

“But suppose that, notwithstanding these reasons, the question what the parties to the deed intended to be the eastern boundary is still to be considered so doubtful that neither of the two constructions contended for by the parties has any better claim to be adopted than the other, so far as any arguments can be drawn from that part of the language of the deed which we have hitherto dealt with still, even upon that supposition, there is one consideration which seems decisive in favour of the Appellant’s contention. It is a clear principle that if one part of a deed is so ambiguously worded that it is equally capable of two different

constructions one of which is in accordance with, and the other conflicts with, another part of the deed, about the meaning of which there is on doubt, the former construction must be adopted as the right one. And (as an instance of the application of that general principle) if, in a deed conveying land, the description of the land intended to be conveyed is couched in such ambiguous terms that it is very doubtful what were intended to be the boundaries of the land, and the language of the description equally admits of two different constructions, the one of which would make the quantity of the land conveyed agree with the quantity mentioned in the deed and the other would make the quantity altogether different, the former construction must prevail. Applying that principle to the present case, the deed states the intention to be to convey “about fifty acres” – The language of the deed with respect to boundaries is 9for the present purpose) to be considered as equally susceptible of each of the two constructions contended for: - The effect of the one construction is to make the portion conveyed fifty-one acres, that is, : about fifty acres”. According to the principle before referred to, the former construction must prevail.

Indeed it is impossible to read this deed, bearing in mind the nature and character, and condition of Lot 3 at that time, without feeling satisfied that the dominant idea and intention of the parties was, that out of this rectangular block of wild uncultivated woodland, which was known to contain about 140 acres, Captain John Ruiter should sell and convey to the two Kranses about fifty acres at the western end thereof, in consideration of 225 dollars. The question of boundaries was, to their minds, altogether subordinate to that of the quantity. It is not like the case of a conveyance of a certain ascertained piece of land, described precisely and accurately by its boundaries on all sides, adding a statement that it contains so many acres or thereabouts – in which case, if it turns out that the quantity is incorrectly stated, it shall not affect the transaction. It is the case of a conveyance of a certain number of acres, or thereabouts, - to be taken out of a larger block of land, and never yet measured off or

ascertained, followed by directions, expressed in ambiguous language, as to the mode in which it is to be measured off. And, therefore, none of the authorities, or of the reasons which apply to the cases of clearly described boundaries, accompanied by an erroneous statement of the quantity, apply to the present case.

27. In arriving at my conclusion I derived considerable assistance from the surveyor Mr. Aldwyn Aqui who conducted two surveys in the Madrass Settlement area.
28. As the cross examination of both surveyors for the respective parties evolved it became apparent that there are in reality two disputed parcels of land Lot 72 and Lot 73. Lot 72 is a 10 acre parcel of land through which the Madrass Settlement Road passes almost in its middle and making the southern portion almost a 5 acre portion. Having said that however, I note there is no formal subdivision of Lot 72. Lot 72 remains a 10 acre parcel. Lot 73 is a parcel of exactly 10 acres of land which is consistent with most of the parcelisations in the ward sheets.
29. The Defendant submitted that the public road must be a reference to the Madras Settlement Road. Following this logic then the Claimant's parcel of land is really Lot 72 with the Madrass Settlement Road being the northern boundary. The Claimant contends that their parcel of Lot 73 with the northern boundary as a "public road" is really a reference to the road reserve is really that the Defendant's parcel cannot be traced by sufficient good title or properly identified in the former deeds. According to the claimant's interpretation the parcel is in reality a 10 acre parcel.
30. If I find in favour of the defendant's interpretation the claimant's parcel may well be a reference to a 5 acre parcel of land, more or less and should in reality be described as a portion of a larger lot, Lot 72.
31. Upon considering the evidence of the experts and the written submissions of the parties I have formed the view that the Claimant's deed validly conveyed Lot 73 to the Claimant. The Defendant's claim to Lot 73 is in my view unsupported by a proper description of her parcelisation, evidence of title and in my view her expert's evidence was deficient.

- (a) The Defendant's parcel is alleged to be part of a larger 85 acre parcel, however there is no sufficient evidence of the description of that parcel in previous deeds, nor was there any sufficient explanation by Mr Fortune as to where that 85 acre parcel of land can be located. Mr Aqui's evidence really at the end of the day stands unshaken that is that the 85 acre parcel of land out of which the parcel of land referred to as "Dobee now Williams" in the survey conducted by W Sylvester, from which the Defendant's parcel of land was purportedly obtained, cannot be identified from the Plan and Book Records of the Lands and Survey Department. The boundaries, that is the neighbours on the South, East and West cannot be found. The "Sylvester Plan" therefore referred to as "B" in the deed no 17452 of 1985 is unreliable;
- (b) The Defendant has not accounted to this Court for significant gaps in her title commencing with the re-grant in 1913.
- (c) The only issues raised to challenge the Claimant's description of Lot 73 by the Defendant, were the northern boundary and the previous description of it as a 5 acre parcel of land. I am satisfied based on the certainty of the Eastern, Westerns and Southern boundaries that the only lot to which the Claimant's deed describes is Lot 73. The reference to a northern boundary of a public road must be in reference to the road reserve. The alteration of the description of Lot 73 from a 5 acre plot to a 10 acre plot is sufficiently explained by the Claimant's expert. It is the only reasonable inference that can be made. To accept the Defendant's submission that the northern boundary of the Claimant's land is the Madrass Settlement Road will mean that the Claimant's parcel is Lot 72. If that is so, it would also mean that the Western and Eastern boundaries of the Claimant's deed should have read the public road on the West and Lot 73 on the East. I am however satisfied based on the evidence of Mr. Aqui that the Eastern, Southern and Western boundaries of Lot 73 were clear, certain and sufficiently identified in the Claimant's deed to render a proper reference to Lot 73. The acreage in my view was secondary and was not demonstrated to me by any evidence to be the dominant feature to determine the identity of the parcel. In the cross examination of Mr. Aqui, he

was unable to say where the “Defendant’s” 85 acre of land was. He identified Lot 73 through the co-ordinates obtained for the western and southern boundaries. The parcels of land were all demarcated as 10 acres plots. The only public road in the vicinity was the Madras Road and a road reserve. That road reserve was not in use and he is unable to say whether it was in use when surveyed in 1908. Further he confirms in this cross examination that the key to his analysis is the description of the neighbour plots used in prior deeds. So that in the 1939 deed a description of 5 acres of land with the boundaries of north upon a public road, south on crown lands east on Lot 74 and west on Lot 72 corresponds to Lot 73 because it is the lot between Lot 74 and Lot 72. If it describes Lot 72 then the eastern boundary ought to have been a road and the west Lot 73. The following exchange is useful:

“This is all part of the decision making process....

All part it was not based on that one thing the road reserve that that is not the salient factor in deciding where the parcel of land was it was a combination of things, a road reserve to the north, the neighbours to the east the neighbours to the west and the neighbours to the south.”

- (d) The Defendant’s reference to the legal description of a “public road” really is not relevant in light of my analysis of ascertaining the parcel of land Lot 73 as defined by the Claimant’s deed. Furthermore and more importantly there is no evidence of user in this case.
- (e) I accept that the only alleged flaw in the evidence of the Claimant is that the 10 acres of land was previously described as 5 acres, however having identified the boundaries of the land together with the parcelisation of the ward sheets of the land in that area as 10 acre parcels, the conclusion that Lot 73 was conveyed as a 10 acre plot as explained by Mr Aquí is irresistible. Lot73 must also be a 10 acre parcel of land. Further as I indicated earlier unlike the case of **Herrick v Sixby** there is no evidence of the intention of the parties or dominant idea being the conveyance of the acreage rather than the

description of the parcels. In the latter, the description of the parcel of land prevails.

- (f) There are significant defects in the title of the Defendant. First, there is no sufficient explanation of the identification of the Lot 73 as the smaller parcel of the 85 acre parcel described in the re-grant of 853 of 1911. By Deed 5779 of 1944 although Sookbasseah purported to convey the 85A parcel in the re-grants to R Williams and Ince Williams there is no link to show how Sookbaseah obtained the title to the 85A larger parcel. Mr Fortune did not, unlike Mr. Aqui conduct any surveys of these lands, he accepted the survey plan of Mr. Sylvester except for one parcel. He is familiar with the practice of using neighbours to identify a parcel of land but the primary source is the deed “if you don’t have a survey plan. If the deed does not describe the land “as you like it” then we call in the neighbours”. He also accepts that if smaller parcel is being excised from a larger parcel “you will identify from the larger parcel where the small parcel comes”
- (g) He admitted that the ward sheets show 10 acre plots and not 85 acre plots. Ward sheets show the “parcelisations of lands”. The defendant asserted that her parcel comes from an 85 acres parcel but he was unable to show how the 10 acres came from the 85 acres in the 1944 deed and had to make reference to the Sylvester plan of the 1985 deed. He was unable to properly trace the title and there were unexplained gaps in ownership.

32. I hold therefore that the Claimant succeeds on the preliminary point. The Claimant’s deed is the more reliable description of Lot 73 and the Claimant demonstrated a superior chain of title. In comparing the respective deeds and the chain of title the Claimant is the owner of Lot 73.

Dated 20th July 2011

Vasheist Kokaram
Judge