

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2010-01509

BETWEEN

LENNOX JOBE

(By VERA ROSSEAU as duly constituted Attorney)

Claimant

AND

WILLIE WILLIAMS

First Named Defendant

KLINT RYAN

Second Named Defendant

Before the Honourable Mr. Justice Vasheist Kokaram

Appearances:

Mr. Ken Wright for the Claimant

Ms. Linda Greene for the Defendant

JUDGMENT

1. This is a trial of the second Defendant's counterclaim dated and filed 2nd July 2010. The second Defendant, Klint Ryan is seeking a declaration in his counter claim that he is the sole and absolute owner of the property described in the Deed of Gift DE 200801814286 and Deed of rectification DE 200802250423. The parcel

of land which is the subject of these proceedings comprise 4,786 square feet and is situated at Williams Drive Junction Road, Sangre Grande (“the said premises”). The second Defendant is currently in occupation of the said premises.

2. The second Defendant relies on his title as pleaded in paragraph 14 of the Statement of Case:

“The second Defendant denies paragraph 18 in its entirety and states instead that the Claimant is not entitled to any of the remedies (injunctive or otherwise) claimed. The second Defendant by Deed of Gift DE 200801814286 and Deed of Rectification DE 2008022504233 is the legal and equitable owner of the said land which is 4786 square feet of land and known as Williams Drive Junction Road Sangre Grande...”

3. Although some reference has been made to acts of possession of the said premises by the second Defendant’s grandmother before 1984 to the time of her passing in 1995, it is not clear from the pleadings when the occupation of the second Defendant commenced. In the Claimant’s defence to the Counterclaim, the Claimant contended that he was in “undisturbed possession of the said premises since 1973”. He also traced the history of the title of the said premises since 1970. The second Defendant denies that the Claimant was in uninterrupted possession of the said premises since 1973 but does not aver any commencement date of his own occupation.
4. In the second Defendant’s written submission it is clear that he simply relies upon the Deed of Gift simpliciter to assert his ownership to the said property. Although reference is made in the written submission to the second Defendant’s “possessory title”, on the pleadings the only acts of possession alleged were that of his grandmother with his case being focused on the fact that he acquired legal ownership by title that is the Deed of Gift.
5. The second Defendant adduced evidence from himself and four witnesses. There was no evidence from the Claimant. The Claimant’s duly appointed attorney Vera Rosseau who filed a witness statement on behalf of the Claimant did not attend the

trial, the Claimant himself did not file a witness statement and failed to attend the trial. In any event the Rosseau witness statement was so replete with hearsay it would have been of no use to the Court.

6. The second Defendant's witness in the main focused on answering the claim of the Claimant that he was in possession of the premises since 1973. In his evidence under cross examination the second Defendant admits that the said premises was vacant at the time he acquired the property by the Deed of Gift and that he came into possession only in 2008. He stated that he planted a kitchen garden after the death of his grandmother on the said premises. The other witnesses simply gave evidence of acts of possession which were inconsistent with the Claimant's contention that he was in possession in 1973. The witnesses all say in one voice that the Claimant was "nowhere near the land".
7. On a balance of probabilities I hold that the Claimant was not in possession of the said premises since 1973 as he alleges. However the second Defendant must prove his own title as he himself sought to do in claiming the relief that he is the legal owner of the said premises. His acts of possession only commenced after the execution of the Deed of Gift. The simple issue therefore in this counterclaim is (a) whether the second Defendant has adduced a good and proper title and (b) whether a Deed of Gift is proper evidence of title. I answer both issues in the negative. It follows therefore that the second Defendant's counterclaim must fail.
8. I accept the Claimant's submission that to maintain his action the second Defendant in his counter claim must prove his title to the said premises. This ought to have been pleaded in order to establish a good root of title. In HCA T101 of 1996 **Randolph Murray v Henrickson Biggarts**, Justice Smith (as he then was) stated:

"Unless a Defendant is in possession of the land with the consent of the Plaintiff (e.g. tenant) a Plaintiff who seeks possession of land from a Defendant must prove his own title to the land strictly. He must set out all the links in his title showing a good root of the title and establishing that he

is the owner of the land. In a claim for possession a Plaintiff succeeds on the strength of his own title and not on the weakness of the Defendant's title. See **Charles v Singh** CS 50 of 1960, **Ramdhan v Solomon** HCA 522 of 1976 and **Man Hong v Singh** HCA 1278 of 1980, **Bullen and Leake Precedents of Pleading** 11th ed 45.”

9. The relevant root of time to be deduced is for a period of 30 years. A root of title is a document purporting to deal with the entire legal estate in the property and not depending up any previous instrument for its validity and containing nothing to throw any suspicion on the title of the disposing parties. Justice Smith pointed out in **Murray** that a deed of assent assumed a previous instrument of title and by itself is not a good root of title. So too in my view is the case of a deed of gift. The best examples of a root of title are a conveyance on sale or a freehold mortgage.
10. In this case the second Defendant simply relied on the Deed of Gift as rectified by a later deed. This is not good enough. The circumstance as explained by the second Defendant surrounding the execution of the Deed of Gift is equally unhelpful to his case. He explained he was summoned by his grandfather and after a discussion with him he retained the services of a lawyer to “legally transfer the property by deed of gift”. This of course begs the question was it a good title?
11. In the Deed of Gift dated 15th July 2008 it recites that the vendor Alphonso Williams became seized of the said premises by deed of conveyance dated 7th June 1990 and registered as number 17480 of 1990. The said premises was described as a parcel of land measuring 4,786 square feet being a portion of a larger parcel of land comprising 9,953.6 square metres described in the schedule to the said conveyance dated 7th June 1990. The deed of rectification dated 29th August 2008 corrected the spelling of the vendors name, deleted reference to the 1990 deed of conveyance and substituted it with the deed of conveyance dated 25th October 1976 and registered as number 270 of 1977. The description of the land was also varied to reflect that it was part of a larger parcel of land comprising 2 acres.

12. Neither of these documents which were produced by the second Defendant are by themselves a good root of title.
13. The second Defendant has failed to prove his title. He therefore has failed to prove that he is entitled to ownership of the said premises by virtue of these deeds. In so far as the Claimant contends that he is an equitable owner there is nothing in the pleadings, evidence or submissions which makes out that claim.
14. The counterclaim is dismissed. I will hear counsel on costs.

Dated 1st March 2012

Vasheist Kokaram
Judge