

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-02033

BETWEEN

JAI MAHABIR  
CHRISTENDATH MAHABIR  
BISSOONDATH MAHABIR  
(the lawful attorney of RAMDATH MAHABIR by  
Power of Attorney registered as DE201700184841)

Claimants

AND

PATRICK EDWARDS

First Defendant

THE REGISTRAR GENERAL OF TRINIDAD AND TOBAGO

Second Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Friday 20<sup>th</sup> April 2018

Appearances:

Mr. Rajiv Persad, Mr. Ravi Maurice Mungalsingh and Ms. Laurissa Molentiel instructed by  
Ms. Tara Bhariosingh for the Claimants

Ms. Gem K.N Emmanuel instructed by Mr. Ifoma Soyinka for the Defendants

## JUDGMENT

### Introduction

1. The parties' claims<sup>1</sup> call into question the indefeasibility of the title to lands which were vested in, Patrick Edwards the First Defendant, under our system of registered conveyancing, the Real Property Act Chapter 56:02 (RPA) and the nature of his occupation of those lands. If that title can be impeached on the ground of fraud or misdescription, the

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<sup>1</sup> Claimants' Amended fixed date claim form and Amended Statement of Case filed 10<sup>th</sup> February 2017 and Defendant's Amended Defence and Counterclaim filed 1<sup>st</sup> March 2017.

real question is whether in any event Mr. Edwards has been in “adverse possession” of the said lands extinguishing the common law title to those lands which was held by the Claimants, Jai Mahabir (Jai), Christendath Mahabir (Christendath) and Ramdath Mahabir (Ramdath).

2. Certain lands which are known as LP 63 Caratal Road, Gasparillo (LP 63 Caratal Road) was brought under the registered conveyancing system by virtue of an application No. 2 of 1998 (the 1998 Application) made by Mr. Edwards under the Real Property Ordinance Chapter 27 Number 11 (RPO). In the 1998 Application he misdescribed the lands to be brought under the RPO as No. 205 Caratal Road, Gasparillo (No. 205 Caratal Road) instead of LP 63 Caratal Road. It is based on this 1998 Application that he eventually obtained a Certificate of Title Vol 5766 Folio 377 for that property known as LP 63 Caratal Road. Despite the misdescription of the parcel of land by the street address, the actual boundaries of the lands which were described in the Certificate of Title and the 1998 Application do indeed accurately reflect the boundaries of the lands at LP 63 Caratal Road. The difficulty in this case is that those lands, LP 63 Caratal Road, were owned by the Mahabirs by Deed of Conveyance registered as Deed No. 20997 of 1977 and No. 205 Caratal Road was in fact the residential address and home of Mr. Edwards. LP 63 Caratal Road and No 205 Caratal Road are in fact references to two different parcels of land, although the boundaries of the 1998 Application and the Certificate of Title demarcate the lands at LP 63 Caratal Road. This gives rise to the main question in this claim, what is the effect of this “misdescription” in the 1998 Application on the title of the registered owner Mr. Edwards?
3. That question raises for determination at this trial two main issues. The first, whether this discrepancy was an innocent mistake or that Mr. Edwards obtained his Certificate of Title for the lands at LP 63 Caratal Road fraudulently or whether it qualifies as a misdescription for the purposes of the RPA. Critical in assessing that issue is whether the 1998 Application to bring those lands under the Real Property Ordinance was in fact on the strength of his actual occupation of another parcel of land at No. 205 Caratal Road. Second, if the Certificate of Title is to be set aside on the ground of fraud/misdescription, whether Mr. Edwards in any event can demonstrate that he has acquired a possessory title to the lands at LP 63 Caratal Road through adverse possession extinguishing that title held by the Claimants by their Deed. As this judgment reveals, this dispute in reality comes down to

a claim by Mr. Edwards that he has been in continuous and uninterrupted occupation of LP 63 Caratal Road. That may not have been made altogether clear in the 1998 Application and if that obscurity rises to the level of fraud or misdescription (within the meaning of the RPA), his certificate of title must be set aside.

4. A fundamental principle of the system of registered conveyancing in the RPA is the notion that the registered title is absolute and indefeasible, subject to certain statutory exceptions. The conclusiveness of the Register has its benefits for land ownership in creating certainty and clarity with respect to the devolution of title and ownership of lands among other things. The legislative scheme, however, recognises the importance of such indefeasibility of title and has struck a balance between such indefeasibility and the injustice to land owners who may have been deprived of their lands unjustly. The legislation minimizes the risk of injustice to bona fide land owners by among other things, providing for such registered title to be set aside on the grounds of fraud and misrepresentation in the case of a person deprived of land by the registered proprietor.
5. The Registrar General was joined as a party to these proceedings. Although their presence was not essential to the outcome of the claim, it was indeed a prudent step and I am grateful to them in continuing to observe these proceedings. The evidence that has unraveled in this case demonstrates first hand to the representatives of the Registrar General how critical it is that applications to bring lands under the RPA are properly scrutinised and conversely how easily misdescriptions or worse, fraud, can lead to manifest injustice to land owners whose property may be acquired by others under the registration system. In many instances when such applications are made, the Registrar General will commission a site investigator to investigate and report on whether the application can be verified by the investigator's independent investigation. See paragraph 6 of the Judge's Guidelines<sup>2</sup>. Unfortunately due to the passage of time, that report and the Registrar's report to the Judge who considered the application for the 1998 Application could not be located. This case highlights how useful and important that exercise can be and certainly discrepancies such as the one which has given rise to this dispute ought to have been

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<sup>2</sup> A report of the Special Committee appointed to make recommendations for the amendment of the Real Property Ordinance (RPO) Chapter 27:11 and/or The Judge's Guidelines with a view to finding a solution to the pressing problems of Land Titles in Tobago.

discovered in such an investigation and brought to the attention of the Applicant, the Registrar General and the Judge.

6. The indefeasibility of title can be impeached by proving fraud and misdescription. This case brings into sharp focus the meaning of fraud and misdescription under sections 143 (b) and (c) RPA as it relates to applications to bring lands under the RPA. This case will explore the meaning of those terms used in sections 143(b) and (c) of the RPA in the context of a dispute between the person deprived of land and the registered proprietor as distinct from a purchaser without notice. Without such title under the registered system in effect, the Defendant is virtually returned to the starting blocks and he must prove, as he should have done in his 1998 application that he has been in adverse possession of the said parcel of land at LP 63 Caratal Road.
7. At the trial the First Claimant led evidence through himself, his brother, Bissoondath Mahabir, and three expert witnesses, two surveyors, Mr. Aldwyn Aqui and Ms. Sasha Addo and one photogrammetric expert, Dr. Raid Al-Tahir. For the First Defendant, his evidence consisted of himself, his brother Mr. Edwin Edwards and his neighbours, Ms. Gwendolyn Henry-Commissiong and Ms. Gwendoline Jeffrey. Upon considering this evidence, the agreed documents, the 1998 Application and the parties' submissions, I am satisfied that:
  - (a) The Defendant not only misdescribed the lands within the meaning of section 143(c) RPA in the 1998 Application at Lot 63 Caratal Road as No. 205 Caratal Road, Gasparillo but fraudulently and by subterfuge acquired title to the lands including knowingly passing off his own occupation at No. 205 Caratal Road as that of LP 63 Caratal Road.
  - (b) The Defendant's title must be set aside on the ground of both fraud and misdescription.
  - (c) The Defendant has not demonstrated on a balance of probabilities that he was in uninterrupted possession of Lot 63 Caratal Road for sixteen (16) years preceding the claim and the Claimants' title to the said lands has not as a result been extinguished by virtue of sections 3 and 22 of the Real Property Limitation Act Chapter 56:03.
8. In this judgment I will examine, the statutory scheme for bringing lands under the RPA and the exceptions to indefeasibility of title, second, the factual background, and then analyse the evidence under the distinct issues of Fraud, Misdescription and Adverse

Possession. Before I embark on that exercise I must explain a new approach to resolving matters agreed to by the parties.

### **Parties' agreement to post-judgment negotiations**

9. Both parties in this matter have tried to settle this dispute amicably. To further assist them in arriving at a resolution of their dispute, the parties agreed that their claims will be heard by this Court for the purpose of delivering a draft judgment which will be the basis for one final attempt between themselves to amicably resolve this matter.
10. I made it clear that the draft judgment represents the Court's findings and the parties agreed that should the matter remain unresolved, the Court's draft judgment and orders can then be delivered as the Court's final judgment and order. If, however, they are able to arrive at an agreement then the agreement will be entered as their final consent order with the draft judgment being relevant for the purpose of providing the background to the arrival of that agreement. In that circumstance, the Court's final order would be as contained in the consent order. This mechanism has been offered to parties as a recent judicial innovation in seemingly intractable and difficult cases to encourage parties to arrive at a practical and enduring solution to their dispute. See **Carlton Maynard v Cecil Cumberbatch** CV2016-01636 and **Wayne Greaves v Joseph Wilson and Alma Greaves** CV2016-02213.
11. The judgment was therefore issued to the parties in draft form with liberty to the parties to enter a consent order within fourteen (14) days of the date of issuing the draft to them on such terms as agreed by them and approved by the Court. In default, the draft judgment will be delivered as the Court's final judgment or order and entered accordingly.

### **Statutory Background**

12. Part II of the RPA makes provision for the bringing of lands under the system of registered conveyancing. Another method is by way of making a vesting order application under Part III of the RPA which is not relevant to this case. In making an application based upon adverse possession, every applicant is obliged to “deposit with the Registrar General **all instruments or copies of instruments in his possession, or under his control, constituting**

**or in any way affecting his title**, and shall furnish a schedule of such instruments and also, if required, an abstract of title.” The applicant should also in his application:

- (a) State the nature of his estate or interest and of every estate or interest held therein by any other person whether at law or in equity, in possession or in futurity or expectancy;
- (b) State whether the land be occupied or unoccupied, and, if occupied, the name and description of the occupant;
- (c) Describe the nature of his occupancy, and whether such occupancy be adverse or otherwise;
- (d) State the names and addresses of the occupants and proprietors of all lands contiguous to the land in respect of which the application is made so far as known to him;
- (e) Ensure that the schedule so furnished includes all instruments of title to such land in his possession, or under his control, or of which he has knowledge;
- (f) Make and subscribe, a statutory declaration as to the truth of such statement;
- (g) If he thinks fit, in his application require the Registrar General, at the expense of such applicant, to cause personal notice of his application to be served upon any person whose name and address shall for that purpose be therein stated.

13. The application is to be accompanied by a plan of the subject lands. The application is to be considered by a Judge. In this case the application was considered by the Honourable Justice Rajnauth-Lee (as she then was).

14. The guidelines for the applicant to bring lands under the RPA pursuant to section 18 of the RPO helpfully highlights the key content of such applications. The material portions relevant to this case are:

“a) The acreage, situation, boundaries and description of the land affected by the proceedings and the reference to any deeds, relating to the said land.

The local address of the said land with sufficient particulars to enable the same to be easily recognized and located.

b) The Surveyor’s Declaration

This must state that the surveyor caused a survey to be done on the subject parcel of land on a particular date and that no objections were made, or if there are any objections, stating who made the objections and the nature of the objections (with particular regard to the boundary lines by adjoining occupiers). This must also identify all relevant persons present at the time of the survey.

- c) That there are no documents or evidence of title affecting the said land in the knowledge or possession or under the control of the applicant(s) other than those set out in the Schedule to the application.”<sup>3</sup>

15. Section 12 of the RPA provides that “Upon the receipt of such application by the Registrar General, the title of the applicant shall be examined and reported upon by the Registrar General or an Examiner, and the case shall thereupon be referred to a Judge for his consideration, and if it shall appear to the Judge that the applicant is the original grantee from the State of the land in respect to which application is made, and that no sale, mortgage, or other encumbrance or transaction affecting the title of such land has at any time been registered in Trinidad and Tobago, and that such applicant has not required notice of his application to be served personally upon any person, **then and in such case it shall be lawful for the Judge to direct the Registrar General to bring such lands under the provisions of this Act forthwith, by issuing to the applicant, or to such person as he or the person applying in his behalf may by writing under his hand direct, a certificate of title for the same as hereinafter described**”.

16. Sections 17, 18 and 19 sets out the process for providing notice of the application and the formal bringing of the lands under the RPA by the Registrar General after the lapse of notice and the absence of any caveats being lodged against the application:

“17. The Registrar General shall, under such direction as aforesaid, or under any order of the Court, cause notice to be published, in such manner as by such direction or order may be prescribed, that application has been made for bringing the land therein referred to under the provisions of this Act, and shall also cause a copy of such notice to be posted in a conspicuous place in his office and in such other places as he may

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<sup>3</sup> A report of the Special Committee appointed to make recommendations for the amendment of the Real Property Ordinance (RPO) Chapter 27:11 and/or The Judge’s Guidelines with a view to finding a solution to the pressing problems of Land Titles in Tobago.

deem necessary, and shall forward, by registered letter through the Post Office, a copy of such notice addressed to the persons, if any, whom a Judge shall have directed to be served with such notice, and to the persons, if any, stated in the declaration by the applicant to be in occupation of such land or to be occupiers or proprietors of land contiguous thereto, so far as his knowledge of the addresses of such persons may enable him, and in case such applicant shall have required any such notice to be personally served upon any person named in his application, then and in such case the Registrar General shall cause a copy of such notice to be so served upon such person.

18. On any application to bring land under this Act on a title claimed by possession, **the applicant shall post on the land the subject of the application, or at such place as the Registrar General or a Judge shall direct, a notice in Form B of the First Schedule, either accurately describing or necessarily including the land claimed by possession,** and shall keep the same so posted for not less than twenty-one days prior to the day limited for entry of caveats; and the Registrar General may refuse to issue the certificate of title until it has been proved to his satisfaction that the requirements of this section have been complied with.

19. If, within the time limited in such direction or under any order of the Court, no notice forwarded by registered letter aforesaid shall be returned to him by Trinidad and Tobago Post, and if, within the time so limited, he shall not have received a caveat as hereinafter described forbidding him to do so, and in any case in which personal notice may be required as aforesaid, or in which any notice may have been given otherwise than by registered letter, if he shall have received proof to his **satisfaction that such notice has been served or delivered, the Registrar General shall, pursuant to such direction of the Judge, bring the land described in such application under the provisions of this Act by making the proper entry in the Register Book, and, on proper application, issuing to the applicant or to such person as he or the person applying in his behalf may by any writing under his hand direct, the duplicate certificate of title for the same as hereinafter described.**”

17. The Certificate of Title so issued is conclusive evidence of the title of the applicant, in this case Mr. Edwards. Section 37 provides:



“37. Every certificate of title duly authenticated under the hand and seal of the Registrar General shall be received, both at law and in equity, as evidence of the particulars therein set forth, and of their being entered in the Register Book, and shall, except as hereinafter excepted, be conclusive evidence that the person named in such certificate of title, or in any entry thereon, is seised of or possessed of or entitled to such land for the estate or interest therein specified, and that the property comprised in such certificate of title has been duly brought under the provisions of this Act; and no certificate of title shall be impeached or defeasible on the ground of want of notice or of insufficient notice of the application to bring the land therein described under the provisions of this Act, or on account of any error, omission, or informality in such application or in the proceedings pursuant thereto by the Judge or by the Registrar General.”

18. Equally, section 45 provides:

“45. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the provisions of this Act shall, except in case of fraud, hold the same subject to such mortgages, encumbrances, estates, or interests as may be notified on the leaf of the Register Book constituted by the grant or certificate of title of such land; but absolutely free from all other encumbrances, liens, estates, or interests whatsoever, except the estate or interest of a proprietor claiming the same land under a prior grant or certificate of title registered under the provisions of this Act, and any rights subsisting under any adverse possession of such land; and also, when the possession is not adverse, the rights of any tenant of such land holding under a tenancy for any term not exceeding three years, and except as regards the omission or misdescription of any right of way or other easement created in or existing upon such land, and except so far as regards any portion of land that may, by wrong description of parcels or of boundaries, be included in the grant, certificate of title, lease, or other instrument evidencing the title of such proprietor, not being a purchaser or mortgagee thereof for value, or deriving title from or through a purchaser or mortgagee thereof for value.”

19. While the benefits of such a registration system is obvious in creating simplicity and convenience in determining questions of title, inherent in such a system would be cases where genuine land owners may find their property being registered as belonging to another person. The legislative scheme provides some measure of protection by creating a number of facilities which include a caveat procedure in Part XIII, the power of the Registrar General to cancel certificates of title if fraudulently obtained and providing compensation to the person aggrieved by such erroneous registration.

20. Section 138 provides:

“Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the provisions of this Act shall, except in case of fraud, hold the same subject to such mortgages, encumbrances, estates, or interests as may be notified on the leaf of the Register Book constituted by the grant or certificate of title of such land; but absolutely free from all other encumbrances, liens, estates, or interests whatsoever, except the estate or interest of a proprietor claiming the same land under a prior grant or certificate of title registered under the provisions of this Act, and any rights subsisting under any adverse possession of such land; and also, when the possession is not adverse, the rights of any tenant of such land holding under a tenancy for any term not exceeding three years, and except as regards the omission or misdescription of any right of way or other easement created in or existing upon such land, and except so far as regards any portion of land that may, by wrong description of parcels or of boundaries, be included in the grant, certificate of title, lease, or other instrument evidencing the title of such proprietor, not being a purchaser or mortgagee thereof for value, or deriving title from or through a purchaser or mortgagee thereof for value.”

21. Part XV sets out the fraud exceptions to the indefeasibility of title which is dealt with later in this judgment. Importantly, it also provides at sections 148 to 151 a scheme for the compensation of a person deprived of land unlawfully under the Act.

22. Sections 148-151 provides:

“148. Any person sustaining loss or damage through any omission, mistake, or misfeasance of the Registrar General, or any of his officers or clerks, in the execution of their respective duties under the provisions of this Act, or by the registration of any other person as proprietor of such land, or by any error, omission, or misdescription in any certificate of title, or any entry or memorial in the Register Book, and who, by the provisions of this Act, is barred from bringing action for the recovery of such land, estate, or interest, may, in any case in which the remedy by action for recovery of damages as hereinbefore provided is inapplicable, bring an action for recovery of damages against the Registrar General as nominal defendant.

149. If in any such action the plaintiff recover final judgment, then the Court or Judge before whom such action may be tried shall certify the fact of such judgment and the amount of damages and costs recovered, and the amount of such damages and costs shall be paid to the person recovering the same, and shall be charged to the account of the Assurance Fund; and in case the balance to the credit of the Assurance Fund shall be inadequate to defray the amount specified, such sum as may be necessary for that purpose shall be paid out of the Consolidated Fund, and the amount so advanced shall be repaid from the Assurance Fund as the same may thereafter accrue.

150. (1) 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.

(2) The plaintiff in any such action, or in an action for the recovery of land, shall be non-suited in any case in which the deprivation complained of may have been

occasioned through the bringing of land under the provisions of this Act, if it shall be made to appear to the satisfaction of the Court before which such action shall be tried that such plaintiff, or the persons through or under whom he claims title, had notice by personal service or otherwise or was aware that application had been made to bring such land under the provisions of this Act, and had wilfully, collusively, or negligently omitted to lodge a caveat forbidding the same, or allowed such caveat to lapse.

151. Whenever any amount has been paid out of the Assurance Fund on account of any person who may be dead, such amount may be recovered from the estate of such person by action against his personal representatives in the name of the Registrar General, and whenever such amount has been paid on account of a person who shall have been adjudged bankrupt or become insolvent, the amount so paid shall be considered to be a debt due from the estate of such bankrupt or insolvent, and a certificate signed by the Comptroller of Accounts certifying the fact of such payment and delivered to the Official Receiver shall be sufficient proof of such debt; and whenever any amount has been so paid on account of any person who may have absconded, or who cannot be found within the jurisdiction of the Court, and may have left any real or personal estate within Trinidad and Tobago, it shall be lawful for the Court or a Judge, upon the application of the Registrar General, and upon the production of a certificate signed by the Comptroller of Accounts certifying that the amount has been paid in satisfaction of a judgment against the State, to allow the Registrar General to sign judgment against such person forthwith for the amount so paid, together with the costs of the application, and such judgment shall be final and signed in like manner as a final judgment by confession or default in an adverse suit, and execution may issue immediately; and if such person shall not have left real or personal estate within Trinidad and Tobago sufficient to satisfy the amount for which execution may have been issued as aforesaid, it shall be lawful for the Registrar General to recover such amount, or the unrecovered balance thereof, by action against such person at any time thereafter when he may be found within the jurisdiction of the Court.”

## The 1998 Application

23. In this case the 1998 Application was based upon Mr. Edward's alleged title by possession. The 1998 Application was reconstructed for the purposes of this trial and from a perusal of the application it appears to have commenced with a declaration made in 1991. It was supported by several statutory declarations, a valuation report, a surveyors report and was considered by the then Justice Rajnauth-Lee who raised some queries on the application. It was subsequently ordered by the Judge to be advertised once per week for four (4) consecutive weeks. The Judge also ordered that:

- The Notice of Application to appear in at least two daily newspapers circulating generally within Trinidad and Tobago.
- The Notice must specify the street address of the parcel of land or sufficient details of same so as to allow it to be easily recognized and located.
- Notice to be headed in block letters "TITLE TO LAND BY ADVERSE POSSESSION" and to be predominantly displayed in the newspapers in which it appears.
- If no caveat be lodged within three months of the date of the first of such advertisements the Defendant may bring the parcel of land under the provisions of the Real Property Ordinance.

24. Subsequent to such advertisement, a statutory declaration was made by Mr. Edwards confirming that he gave notice of the application by advertisement and placing notice on the lands in a conspicuous place. The Certificate of Title was issued in 2015.

25. Consistently throughout this application, the lands which were to be brought under the RPO was described with the following boundaries:

- On the North side by lands of James Elias Mahabir and whose address is CO Gasparillo Post office.
- On the South side by lands of James Elias Mahabir and whose address is CO Gasparillo Post office.

- On the East side by the Gasparillo Caratal Road c/ Sub intendent of lands and by lands of James Elias Mahabir and whose address is CO Gasparillo Post office.
- On the West side by lands of James Elias Mahabir and whose address is CO Gasparillo Post office.

26. The survey plan prepared by Mr. Michael Awang demarcated those boundaries with the size ascribed as 1991.6m<sup>2</sup>.

27. However, the 1998 application itself suggests that this parcel of land is known as No. 205 Gasparillo Caratal Road. It does not give the impression that Mr. Edwards was living at No. 205 Caratal Road and was applying for another parcel of land to be vested in him. There is no clear statement to that effect as was made in this trial. Indeed as the statutory provisions above reflects, the application must state the nature of his occupation and if indeed Mr. Edwards maintained two residences that should have been satisfactorily explained to the Registrar General and the Judge. As is evident, both the Registrar General and the Judge were under the impression that the subject lands was at No. 205 Caratal Road.

28. Mr. Rawle Derrick who surveyed the lands and produced the survey plan in fact states that he met Mr. Edwards and conducted his survey of the parcel of land known as No. 205 Caratal Road.

29. It is therefore not surprising that the notice that was authorized by the Judge to be issued advertising the subjects lands as being subject to Mr. Edwards' claim of adverse possession to be No. 205 Caratal Road. The notice states as follows:

*“NOTICE is hereby given that an Application has been made by **PATRICK EDWARDS** to have the parcel of land described in the Schedule hereto brought under the provision of the Real Property Act and the Judge of the High Court of Justice dealing with the said Application has ordered that the Notice of Application be advertised once a week for four (4) consecutive weeks in two local daily newspapers of general circulation in Trinidad and Tobago and if no Caveat be lodged within three (3) months of the date of the first of such advertisement the Registrar General may bring the said lands under the provision of the Real Property Act.*

**THE SCHEDULE ABOVE REFERRED TO**

*ALL THAT parcel of land situate at #205 Gasparillo Caratal Road, Gasparillo in the Ward of Pointe-a-Pierre in the Island of Trinidad comprising **ONE THOUSAND NINE HUNDRED AND NINETY ONE POINT SIX SQUARE METERS** (1991.6m<sup>2</sup>) and bounded on the North by lands of James Elias Mahabir on the South by lands of James Elias Mahabir and by Gasparillo Caratal Road on the East by the Gasparillo Caratal Road and by lands of James Elias Mahabir and on the West by lands of James Elias Mahabir.”*

30. The Certificate of Title was eventually issued on 16<sup>th</sup> June 2015 describing the parcel of land by its boundaries and referring to the survey plan prepared by Mr. Michael Awang.

**LP 63 Caratal Road**

31. The lands which are the subject of this action are located at LP 63 Caratal Road and comprise 1991.6m<sup>2</sup> in Caratal Road, Gasparillo. It forms part of a larger parcel of land of approximately thirty nine (39) acres which was in the Mahabir family for some time. Their father, James Mahabir was the previous owner and his executor of estate conveyed the said thirty nine (39) acres to Jai, Christendath, Bissoondath and Ramdath in various portions by the deed in 1977.

32. The lands at LP 63 Caratal Road consist of land described as Part 2 and a portion of Part 5 of that Deed and owned by the Claimants. The land appears on all of the aerial photographs adduced at the trial to be part of a forested area. To the North of it is a playground and community centre. To the West is the Caratal Road, to the East is forested area and to the South further vegetation before other houses at LP 62 Caratal Road.

**Snapshots of occupation by the parties at LP 63 Caratal Road**

33. Both parties contend that they have been in occupation of these lands, in the case of the Mahabirs from 1977 and in the case of Mr. Edwards from 1960's. Neither of them knew or met each other until this litigation.
34. The Mahabirs contend that in 1981 they applied to Town and Country Planning Division to develop the lands. Around 1987 and 2009 they carried out quarrying works. In 2008

they graded the lands to conduct a topographical survey. They noticed Mr. Edwards constructing a house in 2014.

35. Mr. Edwards alleges that his grandmother, Jeanine Sylvester lived at LP. 63 Caratal Road in a modest wooden home from the year 1934 until her death on 7<sup>th</sup> March 1989. He contends he was living with her from 1968. By application dated 11<sup>th</sup> November 1994, he applied to the Town and Country Planning Division for permission to develop the said lands and was granted permission by Notice of Grant of Permission dated 21<sup>st</sup> April 1995. He contends that over the years he helped his grandmother with her garden at the rear of her home and after her death continued cultivating. He alleges that a fire destroyed the home in 1998 and he began to build a concrete structure in 2007.
36. During that time Mr. Edwards also lived with his family at No. 205 Caratal Road. That property is further South by 1km along the Caratal Road and is in a relatively more densely occupied area than at LP 63 Caratal Road.
37. By the 1998 Application Mr. Edwards applied for an order vesting the lands situate at No. 205 Caratal Road unto himself. Upon considering the RPO Application, Madame Justice Rajnauth-Lee by order on 18<sup>th</sup> May 2011 ordered that:
- “a) The notice of application be advertised once per week for two consecutive weeks;*
  - b) The notice must specify the street address of the parcel of land or sufficient details of same so as to allow it to be easily recognized and located;*
  - c) If no caveat be lodged within three months of the date of the first of such advertisements you may bring the parcel of land under the provisions of the Real Property Ordinance.”*
38. By this order, once the application was **properly advertised** and there were no caveats, a Certificate of Title would be issued to Mr. Edwards by the Registrar General.
39. Mr. Edwards subsequently advertised the lands as “All that parcel of land situate at No. 205 Gasparillo in the Ward of Pointe-a Pierre in the Island of Trinidad comprising One Thousand Nine Hundred and Ninety One Point Six Square Metres (1991.6m<sup>2</sup>)”. This notice of advertisement was published in the Guardian Newspaper on 20<sup>th</sup> February and 27<sup>th</sup> February 2013 and in the Newsday Newspaper on the 6<sup>th</sup> February and 13<sup>th</sup> February



2013. It is clear that inserting such a street address makes the identity of the parcel of land unclear and uncertain. Contrary to Justice Rajnauth-Lee's order such description does not allow the parcel of land to be "easily recognized and located." Is it the lands as described by the boundaries? Or is it the lands at No 205 Caratal Road which are further South of the lands at LP 63 Caratal Road?

### **Pre Action Conduct**

40. As neither party knew each other prior to this dispute, the pre action letters provide some context to the evolution of this litigation. By letter of 16<sup>th</sup> March 2015 the Mahabirs called upon Mr. Edwards to break and remove the dwelling house which was built on their lands by Mr. Edwards "within the recent past". By letter dated 14<sup>th</sup> April 2015 attorney for Mr. Edwards, instead of replying boldly in asserting their title as registered owners of the land, simply replied asking for the Claimants' Deed to which they made reference in their letter. There was absolute silence by Mr. Edwards in his response that he was the registered proprietor of the lands. In fact, at that time, he could not make so bold a declaration as the Certificate of Title was issued only in June 2015. By that time he would have, since 2013, made a statutory declaration certifying that he had issued the notice to bring the lands under the 1998 Application pursuant to the order of Justice Rajnauth-Lee and he was simply awaiting his Certificate of Title if there was no caveat. His attorney who prepared his letter in response is the same attorney who had conduct of his 1998 application. It is passing strange that absolutely no mention of it was made to the Mahabirs. In fact, by letter of 22<sup>nd</sup> April 2015, the Claimants' Deed was sent to Mr. Edwards' attorney at law. As seen above, the duty is on the applicant under section 13 of the RPA to bring all such instruments to the attention of the Registrar General. This deed now demonstrating that the Mahabirs are the paper title owners of LP 63 Caratal Road was suppressed in the 1998 Application and there was stone silence on the part of Mr. Edwards to the Mahabirs' claim as owners of the property.

41. This adds further credence to the view that the entire process to bring the lands under the RPA was an act of subterfuge. As instead of engaging with the Mahabirs about the outstanding 1998 application or bring the Mahabirs' Deed to the attention of the Registrar General or the site investigator, Mr. Edwards and his attorney waited to obtain the Certificate of Title knowing full well the competing claim of the Mahabirs. Indeed, by letter

of October 2015, the attorney for Mr. Edwards made a full explanation to, of all persons, Trinidad and Tobago Electricity Commission (T&TEC) of Mr. Edwards' title to the said lands by adverse possession of the application to bring the lands under the RPO. In that letter he explained that "the process to obtain same has been virtually completed and he is now awaiting the issuance of the Certificate of Title". The letter further went on to explain that: "Notwithstanding the claim by Jai Mahaibr and Christendath Mahabir to be the "bonafide owners" their title to the said lands would have been extinguished by our client's adverse possession of same for the duration of time as stated above and in accordance with the Real Property Limitation Act."

42. It is baffling, if not unimaginable, for the attorneys on record to respond so vigorously to T&TEC and yet fail to respond at all to the Mahabirs' pre-action letter. Such conduct violates the principles of the pre-action protocol which encourages the early exchange of information and an obligation on the Defendant at the earliest opportunity to provide a response which would set out the Defendant's case. It raises a credible conclusion that no response was given to the Mahabirs to prevent their lodging of the caveat. In a claim which alleges against the Defendant, fraud and dishonesty, its pre-action conduct certainly sets the stage for the Claimants' assertion in this case that Mr. Edwards' title as registered proprietor was obtained deliberately to cheat the Mahabirs of their property.

### **The Claims**

43. The Claimants' original claim was for possession being the paper title owners of the property. They contend that they had no knowledge of the application for a vesting order until 29<sup>th</sup> July 2016 when Mr. Edwards filed his defence and counterclaim in these proceedings. Indeed, only when it was disclosed in the defence, they amended its pleadings to make the allegations of fraud and misdescription which has now become the central issue in this case.

44. The Claimants' pleaded case set out the following particulars of fraud/misdescription committed by Mr. Edwards<sup>4</sup>:

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<sup>4</sup> Amended Statement of Case filed 10<sup>th</sup> February 2018.

- a) By depositing an affidavit on 11<sup>th</sup> September, 2013 in support of vesting application No. 2 of 1998 stating that he desired to have the parcel of lands situated at No. 205 Gasparillo Caratal Road;
- b) By fraudulently representing and/or misrepresenting to Mr. Rawle Derrick Land Surveyor that the parcel of land to be brought under the provisions of the RPO and which were the subject of his application was situated at No. 205 Gasparillo Caratal Road, Gasparillo. By Statutory Declaration deposited on 11<sup>th</sup> November, 2002, the said Mr. Rawle Derrick stated that “he visited the piece of land No. 205 Gasparillo Caratal Road, Gasparillo in the Company of Patrick Edwards who identified the said parcel of land as the one which he is seeking to have brought under the Real Property Ordinance”. On the basis of this fraudulent misrepresentation and/or misdescription and/or error, the said Rawle Derrick declared that he spoke to the owners of the adjoining parcels of land on the North, South and West and they all gave supportive testimony to the applicant’s application;
- c) By annexing a survey plan of the Claimants’ lands situated at LP 63 Caratal Road, Gasparillo in support of his application to vest lands situated at LP 63 Caratal Road Gasparillo in himself;
- d) By advertising the lands which were to be vested in the First Defendant as lands situated at No. 205 Gasparillo Caratal Road, Gasparillo;
- e) By submitting a survey of the Claimants’ lands situated at LP 63 Caratal Road Gasparillo in support of Application No. 2 of 1998 to the Registrar General whilst fraudulently misrepresenting that the survey plan referred to lands situated at No. 205 Gasparillo Caratal Road, Gasparillo.”

45. In essence, they contend principally, that Mr. Edwards fraudulently used the history of the land situated at No. 205 Caratal Road to acquire title to their land at LP.63 Caratal Road. As such they claim the following reliefs:

- (i) A declaration that the order made by the Honourable Madam Justice Rajnauth-Lee in Application No. 2 of 1998 ordering that the lands now described in Certificate of Title in Volume 5766 Folio 317 be vested in the First Defendant Patrick Edwards was obtained by fraud;

- (ii) An order directing that the Certificate of Title in Volume 5766 Folio 317 whereby the First Defendant Patrick Edwards was registered as the proprietor of the lands described in the Certificate of Title in Volume 5766 Folio 317 be cancelled;
- (iii) In the alternative an order against the Second Defendant pursuant to section 148 of the Real Property Act Chapter 56:02 compensating the Claimants for loss and damage suffered by the Claimants occasioned by the registration of the First Defendant as the Proprietor of the Claimants' lands.
- (iv) Vacant possession of All and Singular that certain piece or parcel of land situate at Caratal Road, Gasparillo comprising approximately One Thousand Nine Hundred and Ninety One Point Six square metres and which said lands are a portion of the lands described in Part Two of the schedule to the Deed of Conveyance registered as No. 20997 of 1977 as all and singular that piece or parcel of land situate in the Ward of Pointe-a-Pierre comprising ten acres two roods and seven perches more or less delineated and coloured pink on the plan annexed and bounded on the North by another portion of the said lands conveyed to the said Ramdath Mahabir and Deodath Mahabir on the South by lands of Ammolio Baldeo and on the East by Gasparillo Road and on the West by lands of V.O West and a portion of the lands described in Part 5 of the said Deed of Conveyance registered as No. 20997 of 1977 as all and singular that piece or parcel of land situate in the Ward of Pointe-a-Pierre comprising Eleven acres Fifteen perches more or less delineated and coloured pink on the plan annexed and bounded on the North by lands of Frederick Brown, by lands of Alexander Paul and by lands of Heemah and others on the South by another portion of the said lands conveyed to Christendath Mahabir and Jai Mahabir on the East by Gasparillo Road and other West by lands of V.O West and by lands of Frederick Brown;
- (v) An injunction restraining the First Defendant whether by himself, his servants and/or agents from entering and/or remaining on the said property;
- (vi) An injunction restraining the First Defendant whether by himself, his servants and/or agents howsoever otherwise, from preventing the Claimants, their servants and/or agents from gaining access to and/or using the said lands;

- (vii) Damages for trespass to the said lands;
- (viii) Mesne profits.

46. Mr. Edwards contends that he is seised and possessed of the land at LP 63 Caratal Road by virtue of the Certificate of Title registered in Volume 5766 folio 317 dated 16<sup>th</sup> June 2015 and further that he only became aware of the misdescription of the said lands during the course of these proceedings. He contends that the misdescription was due to an inadvertent error but the said lands were correctly described as “comprising one thousand nine hundred and ninety one point six square metres (1991.6m<sup>2</sup>) and bounded on the North by lands of James Elias Mahabir on the South by lands of James Elias Mahabir and by Gasparillo Caratal Road on the East by the Gasparillo Caratal Road and by lands of James Elias Mahabir and on the West by lands of James Elias Mahabir.” He therefore counterclaims for the following reliefs:

- (i) A declaration the Defendant is seised in fee simple and entitled to possession of the lands described in the Certificate of Title registered in Volume 5766 folio 317 dated 16<sup>th</sup> June 2015;
- (ii) Alternatively, a declaration the First Defendant is entitled to possession of all that piece or parcel of land situated at LP #63 Caratal Road, Gasparillo, in the Ward of Pointe-a-Pierre comprising one thousand nine hundred and ninety one point six square metres (1991.6m<sup>2</sup>) and bounded on the North by lands of James Elias Mahabir on the South by lands of James Elias Mahabir and by Gasparillo Caratal Road on the East by the Gasparillo Caratal Road and by lands of James Elias Mahabir and on the West by lands of James Elias Mahabir by virtue of sections 3 and 22 of the Real Property Limitation Act, Chap 56:03.

47. Notably, a finding in this case that Mr. Edwards’ occupation was not “adverse” would further put to lie his 1998 Application and demonstrate his intention to illegitimately acquire LP 63 Caratal Road.

### **The issues**

48. The parties agreed that the issues to be determined are as follows:

- a) Whether the First Defendant's title to the lands as described in certificate of title in Volume 5766 Folio 317 and which was obtained by virtue of Application No. 2 of 1998 was acquired by fraud and/or error and/or misdescription;
- b) Whether the First Defendant complied with the order made by the Honourable Madame Justice Rajnauth-Lee dated 18<sup>th</sup> May 2011 in Application No. 2 of 1998 wherein the Honourable Court ordered inter alia that:
  - (i) The notice of application be advertised once per week for two consecutive weeks;
  - (ii) The Notice must specify the street address of the parcel of land or sufficient details of same so as to allow it to be easily recognized and located.
- c) Whether the order made by the Honourable Madam Justice Rajnauth-Lee in Application No. 2 of 1998 ordering that the lands now described in certificate of title in Volume 5766 Folio 317 be vested in the First Defendant Patrick Edwards was obtained by fraud and/or error and/or misdescription.
- d) Whether the First Defendant has been in continuous, undisturbed possession of the lands situate at LP. No. 63 Caratal Road, Gasparillo for a period in excess of 16 years.
- e) Whether the First Defendant has been in wrongful and/or illegal occupation of the lands situate at LP No. 63 Caratal Road, Gasparillo.

### **The narratives**

#### ***The Claimants***

49. In his examination in chief<sup>5</sup>, Jai stated that his family always had intentions of developing the lands under the 1977 deed, inclusive of the lands at LP 63 Caratal Road. In 1981 an application (T7F 1981/07) was made by them for permission to develop the lands. While the application was pending, Jai and his brothers carried out quarrying works on the said lands for a year in 1987. He contended the Claimants did not clear the lands after 1991 and as such the lands became overgrown in some places and barren in others. As such, he

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<sup>5</sup> Witness statement of Jai Mahabir filed 18<sup>th</sup> September, 2017

contends that during 1987-2014 the lands were not used by Mr. Edwards for cultivation purposes.

50. In 2008, the lands were graded and cleared to facilitate the preparation of a Perimeter, Topographical and Layout plan. He contends at the time, there was no house or cultivation on the said lands. A survey was subsequently conducted by Mr. Aldwyn Aquí.
51. Jai further contended that Mr. Edwards had not been in occupation of the lands in excess of sixteen (16) years since Mr. Edwards lived at No. 205 Caratal Road. This, Jai deposes, is made evident when Mr. Edwards made the 1998 application. As such, he states that the Certificate of Title which Mr. Edwards obtained as a result of his application “was premised on his occupation of No. 205 Caratal Road” and not LP 63 Caratal Road. In addition, the investigations conducted by the Registrar General pursuant to the application would have been conducted in relation to the lands situate at No. 205 Caratal Road and not LP 63 Caratal Road.
52. Jai also contends that any advertisement with regard to the application would have been with respect to land situate at No. 205 Caratal Road and as such, he and his brothers would not have lodged a caveat since they would not have had an objection with that parcel of land being vested in Mr. Edwards.
53. In his cross examination, Jai admitted that after 1977, he only visited the lands two or three times per year. He stated that they did quarry the land at some point in time because there was sandstone on the right side of the land and they used that to repair their yard. He contended that it was not permanent quarrying but when they needed the sandstone they quarried the land a few times a year to repair their private property. He was firm in his belief that the survey was conducted on the lands in 2009. He also reiterated that he had no interest in the advertisement for lands situated at No. 205 Caratal Road since it is not their land and as such, they would not lodge a caveat with regard to those lands. He was also unshaken in his evidence that he only realized Mr. Edwards was building a concrete structure on LP 63 Caratal Road around 2013-2014.
54. Bissoondath in his examination in chief<sup>6</sup> also stated that the lands at LP 63 Caratal Road remained unoccupied during 1987 to 2014 when Mr. Edwards commenced construction

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<sup>6</sup> Witness statement of Bissoondath Mahabir filed 18<sup>th</sup> September 2017.

of a house on the said lands. His also contends that all evidence with regard to Mr. Edwards' application to vest the said lands unto himself was premised on the lands situated at No. 205 Caratal Road. In 2016, he contacted Messrs. L&S Surveying Services Limited and requested that they verify that the lands at LP 63 Caratal Road is not the same parcel of land at No. 205 Caratal Road. By report dated 26<sup>th</sup> September 2016, Messrs. L&S Surveying Services Limited confirmed that the lands at LP 63 Caratal Road was not the same as the lands situate at No. 205 Caratal Road.

55. In cross examination, Bissoondath stated that in 1977 when the lands were purchased there was one structure on the land belonging to a Mr. Williams who had permission to occupy the land from Bissoondath's uncle. No further details were provided of that occupation. He stated that the lands were quarried for a short period of time since there was an outcrop of sandstone which they wanted to utilize.

56. From the cross examination of the Claimants, their evidence of the visits to the land is clear and unshaken. Naturally, they would have visited the lands periodically, however, unless they were actively engaged in using the land, they may not have inspected the entire parcel in question. They did not notice Mr. Edwards building there until 2014. This simply means they saw it at that time and not that Mr. Edwards only began occupation by building a home in 2014. I am also satisfied that being familiar with the property in that area there is a marked difference between residential address No. 205 Caratal Road and LP 63 Caratal Road. The advertisement of lands that brought it under the RPA at No. 205 Caratal Road would therefore be of no moment to them.

### *The Defendant*

57. Mr. Edwards in his evidence in chief<sup>7</sup> stated that his grandmother, Jeanine M. Sylvester lived at LP 63 Caratal Road in a wooden house. He lived between her house and his family's home at No. 205 Caratal Road. His grandmother reared livestock and planted crops such as peas, corn and cassava. She also had fruit trees on the land. Mr. Edwards assisted her in sowing and reaping the crops, selling the crops and tending to the livestock.

58. From 1968, he stated that he lived primarily with his grandmother. Upon his grandmother's death on 7<sup>th</sup> March 1989, he remained in "undisturbed possession of the

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<sup>7</sup> Witness statement of Patrick Edwards filed 18<sup>th</sup> September 2017.



said lands.” In 1998, there was a bush fire which destroyed the wooden house and Mr. Edwards, thereafter, lived with his brother, Edwin at No. 205 Caratal Road. He stated that he continued to cultivate the garden at LP 63 Caratal Road and also replanted fruit trees destroyed in the fire. In 2007, he began to construct a two-storey house with the first floor being completed in 2009.

59. He contends that in his application to bring the lands at LP 63 Caratal Road under the Real Property Ordinance, the lands were misdescribed as lands situated at No. 205 Caratal Road, Gasparillo due to an “inadvertent error”. He further contends that at the time of the application and “until recently” No. 205 Caratal Road was his mailing address and he only became aware of the misdescription in the application during the course of these proceedings.

60. Mr. Edwards proved to be an unimpressive witness under cross examination. He was hesitant in his answers, inconsistent and at times looked confused. I am satisfied by the many inconsistencies in his evidence that his testimony on the key issues in the case is unreliable. He stated that he lived both at LP 63 Caratal Road and No. 205 Caratal Road all his life and he only became aware of the number of the light pole on LP 63 Caratal Road after 2000. This contradicts the fact that he was aware of LP 63 Caratal Road when he made an application to develop the lands in 1994. He stated that he lived at his grandmother’s house until it burnt down and he went to live with his brother Edwin since he “always lived at 205” Caratal Road. He indicated that although he cultivated crops on the land there were periods when there were no crops since they were seasonal crops. As such, there would have been overgrowth on the land. He also stated he continued rearing livestock on the land a few years after his grandmother died since it was difficult to continue rearing the livestock.

61. He admitted that at the time of making his application to vest the lands at LP 63 Caratal Road unto himself, he did not know the street number for the land and his address was stated as No. 205 Gasparillo Caratal Road in the declaration in support of his application because that was where he was living at the time. This is a startling admission when one properly reads his application which clearly gives the impression that the lands at No. 205 Caratal Road is a description of the subject land. He further admitted that No. 205 Caratal Road is his residential address as it is presently and has been so all along. He then

confesses only after a lengthy and searching cross examination that he always knew that No. 205 Caratal Road is different from LP 63 Caratal Road in that they are different parcels of land.

62. Emerging battered and bruised from the cross examination, his counsel tried to come to his aid in re-examination asking him in light of his evidence that “you have repeatedly stated that you live at both 205 and LP 63” to tell the Court directly where he spent most of his time “63 or 205?”. When he hesitated, she asked “give me an address and that is it.” His meek response was “205.”
63. Mr. Edwin Edwards in his examination in chief<sup>8</sup> stated that after the death of his grandmother, Mr. Edwards continued to live on the lands at LP 63 Caratal Road where he continued to cultivate the garden and rear common fowls and ducks. He indicated that subsequent to the Order of Madam Justice Rajnauth Lee, he recalled seeing a large sign with a legal notice on the lands situate at LP 63 Caratal Road. Alarming, he also only became aware that his address at No. 205 Caratal Road was used in the advertisement during the course of these proceedings.
64. In cross examination, he stated that he used to assist Mr. Edwards in maintaining the crops between 1989 and 2014 but confesses that it was not a “continuous everyday activity.” He also contended that during the said period Mr. Edwards did not spend a significant time living with him at No. 205 Caratal Road. This certainly could not be true as after the fire, it is admitted that Mr. Edwards stayed at No. 205 Caratal Road until he returned to LP 63 Caratal Road in 2013.
65. Ms. Gwendolyn Henry- Commissiong and Ms. Gwendoline Jeffrey<sup>9</sup> deposed to knowing that Mr. Edwards’ grandmother occupied the lands at LP 63 Caratal Road from 1934 until her death in 1989. Ms. Henry-Commissiong stated that Mr. Edwards lived with his grandmother since childhood and after the fire destroyed the house, he “maintained a presence on the land by keeping it maintained, by replanting trees and cultivating the garden.” Ms. Jeffrey also stated that Mr. Edwards continued to maintain and cultivate the

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<sup>8</sup> Witness statement of Edwin Edwards filed 18<sup>th</sup> September 2017.

<sup>9</sup> Witness statements of Gwendolyn Henry-Commissiong and Gwendoline Jeffrey filed 18<sup>th</sup> September 2017.

lands after the fire and he moved back to the lands in 2009 when a concrete structure was constructed.

66. The cross examination revealed that they were uncertain with the dates of certain events. Even giving credit to the fact that these were senior citizens, there was no direct evidence of the details and particulars of cultivation allegedly maintained by Mr. Edwards on the entirety of LP 63 Caratal Road nor clear recollection of the time period.
67. From the evidence of the Defendant's witnesses it is unclear whether Mr. Edwards did continue to occupy and maintain a presence on the disputed lands after the fire destroyed his grandmother's home. Even if there was the planting of short crops there was no sufficient evidence that it was done to the extent sufficient to utilize the entire parcel of land which was the subject of the RPO application. What is pellucid is that No. 205 Caratal Road and LP 63 Caratal Road are two entirely different parcels and it is more plausible that No. 205 Caratal Road was for the larger part of his life Mr. Edwards' residence. Even if his grandmother lived at LP 63 Caratal Road, his occupation was temporary and after the fire in the early 1990's non-existent, until he began constructing his home around 2014/2015.

### *The experts*

68. In unravelling key aspects of the occupation by either party as well as confirming the difference between LP 63 Caratal Road and No. 205 Caratal Road, the evidence of the Part 33<sup>10</sup> experts in this trial were extremely helpful. All three experts who were the subject of Part 33 orders provided their evidence with clarity, professionalism and independently of the competing views by the parties in this litigation.
69. Mr. Sasha Addo in his examination in chief<sup>11</sup> deposed that he is a Licensed Land Surveyor with L&S Surveying Services Limited. L&S Surveying Services Limited was contracted on 22<sup>nd</sup> September 2016 by Bissoondath to prepare a report to verify that the parcel of land at LP 63 Caratal Road is not the same as the parcel of land at No. 205 Caratal Road. A site visit was conducted at both parcels of land. By report dated 28<sup>th</sup> September 2016, he confirmed that the parcel of land at LP 63 Caratal Road was not the same as the parcel of land at No. 205 Caratal Road. Mr. Addo confirmed that on the survey plan conducted in

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<sup>10</sup> Civil Proceeding Rules 1998 as amended (CPR).

<sup>11</sup> Witness statement of Sasha Addo filed 18<sup>th</sup> September 2017.

1994 was a notation “house ruins”. When he conducted his survey he did not see these “ruins.”

70. Mr. Aldwyn Aquí in his examination in chief<sup>12</sup> testified that he is a Land Surveyor who was contracted by Mr. Ian Abraham in November 2008. Mr. Abraham was acting on behalf of the Claimants who presented him with a plan of subdivision of twelve (12) 0.2 ha parcels which were to be excised from a larger parcel containing 39A 1 R 08P and shown on the Ward Street D22 and 53C as James Elias Mahabir. He visited the lands at LP 63 Caratal Road between 2008 and 2009 to conduct the survey and he contends that other than the Williams Building on the South and the encroachments by the school and church on the North, there were no other buildings on the site. The ruins that Mr. Aquí saw in 2008 was a remnant of a wall. But the entire area was covered in bush.
71. Dr. Raid Al-Tahir prepared a photogrammetric report dated 17<sup>th</sup> November 2017 in which he examined aerial photographs of the land at LP 63 Caratal Road. He produced four (4) snapshots from 1994, 1998, 2003 and 2014. From his examination of the photos, he concluded that there was a structure (house) erected on LP 63 Caratal Road between 2003 and 2014 but there was no indication that there was a structure on the land between 1994 and 2003. With regards to vegetation on the said land, he stated:
- (i) On all photographs from 1994 to 2003, the land was covered by a thick forest and high trees with different densities. There was no indication of any purposeful planting or gardening or preparation for crop planting on the land.
  - (ii) The 1994 photograph showed at that northern part of it that there was re-growth after it had been cleared some years prior to 1994. Since then and up to 2003, the trees in that part had grown to match the thickness and density of the rest of the land.
  - (iii) The trees in that specific parcel were cleared only after 2003 for the construction of the house.
  - (iv) The 2014 aerial photograph does not show any evidence of any planting or gardening around this structure and more definitely no crop planting.

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<sup>12</sup> Witness statement of Aldwyn Aquí filed 18<sup>th</sup> September, 2017

(v) North of the specific parcel, there is a flat area covered with shrub in all photographs.

(vi) The land to the South of the parcel had been cleared from its high trees sometime after 2003. There was no indication of it being used or prepared for planting.

### Analysis of the Evidence

72. Ultimately, this determination of the issues at this trial turns on findings of fact based on the credibility of the witnesses. Was Mr. Edwards acting innocently in making his application or was he acting with an “evil hand”? Has Mr. Edwards and his witnesses painted a credible story of undisturbed occupation for over sixteen (16) years preceding the making of this claim of LP 63 Caratal Road? To unravel these questions, it is important for the Court to examine all the available evidence. Mohammed J in **Seepersad Sookhoo v Ramkhalawan Sookhoo and Dhanmatie Sookhoo** CV2012-03212 usefully commented at paragraph 43:

“Counsel for the Defence contends that Doolie was not a credible witness. The case of AG 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.”

73. The Court should evaluate the internal and external inconsistencies of the respective cases to examine any conflicts internally in the witness statements and cross examination; externally against contemporaneous documents, the pleaded cases and to examine the inherent probability or improbability of the rivalling contentions. Also important are opportunities and motivations for fabrication. See **Horace Reid v Dowling Charles** Privy Council Appeal No. 36 of 1987, **Shanique Myrie v The State of Barbados** CCJ Application No. OA 002 of 2012 and **Deryck Warner v The Attorney General of Trinidad and Tobago** CV2014-00542. The more inconsistencies there are in one party’s story, the more likely he is not speaking the truth.

### **Fraud/Misdescription**

74. Sections 37, 45 and 49 of the RPA provides:

“37. Every certificate of title duly authenticated under the hand and seal of the Registrar General shall be received, both at law and in equity, as evidence of the particulars therein set forth, and of their being entered in the Register Book, and shall, except as hereinafter excepted, be conclusive evidence that the person named in such certificate of title, or in any entry thereon, is seised of or possessed of or entitled to such land for the estate or interest therein specified, and that the property comprised in such certificate of title has been duly brought under the provisions of this Act; and no certificate of title shall be impeached or defeasible on the ground of want of notice or of insufficient notice of the application to bring the land therein described under the provisions of this Act, or on account of any error, omission, or informality in such application or in the proceedings pursuant thereto by the Judge or by the Registrar General.

45. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the provisions of this Act shall, except in case of fraud, hold the same subject to such mortgages, encumbrances, estates, or interests as may be notified on

the leaf of the Register Book constituted by the grant or certificate of title of such land; but absolutely free from all other encumbrances, liens, estates, or interests whatsoever, except the estate or interest of a proprietor claiming the same land under a prior grant or certificate of title registered under the provisions of this Act, and any rights subsisting under any adverse possession of such land; and also, when the possession is not adverse, the rights of any tenant of such land holding under a tenancy for any term not exceeding three years, and except as regards the omission or misdescription of any right of way or other easement created in or existing upon such land, and except so far as regards any portion of land that may, by wrong description of parcels or of boundaries, be included in the grant, certificate of title, lease, or other instrument evidencing the title of such proprietor, not being a purchaser or mortgagee thereof for value, or deriving title from or through a purchaser or mortgagee thereof for value.

49. A person who claims that he has acquired title by possession of land under the provisions of this Act may apply by summons for an order vesting the land in him for an estate in fee simple or other estate claimed. The summons shall be served on every person appearing in the Register Book to have any estate or interest in the land or in any encumbrance notified on the grant or certificate of title thereto or such of them as can be found.”

75. The nub of this claim involves a consideration of three important sections on indefeasibility of title and the exception to such indefeasibility:

“141. Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any estate or interest shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for which, such proprietor or any previous proprietor of the estate or interest in question is or was registered, or to see to the application of the purchase money or of any part thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

142. Any grant or certificate of title registered under the provisions of this Act, so long and so far as it remains uncanceled in the Register Book, and so far as no discrepancy

is shown to exist between it and the duplicate thereof, shall be conclusive evidence of the matters thereon stated, or thereon endorsed by the Registrar General, except as in this Act provided.

143. No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases:

- (a) the case of a mortgagee or an annuitant or a lessor as against a mortgagor or a grantor or a lessee in default;
- (b) the case of a person deprived of any land by fraud, as against the person registered as proprietor of such land through fraud; or as against a person deriving, otherwise than as a transferee bona fide for value, from or through a person so registered through fraud;
- (c) the case of a person deprived of or claiming any land included in any grant or certificate of title of other land by misdescription of such other land or of its boundaries, as against the proprietor of such other land not being a transferee thereof bona fide for value;
- (d) the case of a proprietor claiming under the instrument of title prior in date of registration under the provisions of this Act, where two or more grants or two or more certificates of title, or a grant and a certificate of title, may be registered under the provisions of this Act in respect of the same land.

And in any case other than as aforesaid, the production of the original grant, certificate of title, or other instrument shall be held, both at law and in equity, to be an absolute bar and estoppel to any such action against the person named in such instrument as the proprietor of the land therein described, any rule of law or equity to the contrary notwithstanding: Provided that nothing herein contained shall prevent a plaintiff from obtaining in an action judgment for specific performance of a contract for the sale or lease of land under this Act, nor prevent a beneficiary entitled to call for a transfer from a trustee from obtaining a decree for such transfer or such vesting order as hereinbefore mentioned.”



76. The Certificate of Title is conclusive evidence of the Defendant's title to land under the RPA. Lord Phillips<sup>13</sup> commenting on the indefeasibility of title observed that the legislation balances the need to have conclusive evidence of title with the risk of injustice if title is registered by fraud or mistake. In **Santiago Castillo Ltd v Quinto and another** [2009] 74 WIR 217 the Court commented at paragraph 4:

“Under the Torrens system registration confers title on the registered proprietor. A merit of the system is that a purchaser from the registered proprietor does not normally need to look further than the register for reassurance that the vendor has good title. Under some systems once a title is registered it is indefeasible. Under other systems the title of a bona fide purchaser from the registered proprietor will, once it is registered, be indefeasible. The indefeasibility of title is, however, capable of giving rise to injustice if the registration of the title is brought about by fraud, or by a mistake. For this reason, many Torrens systems make provision for rectification of the register, but the nature of such provision varies from system to system. The effect of each depends on its own terms.”

77. A Certificate of Title, though properly registered, therefore, is only conclusive until it is shown to fall within the recognized exceptions. There are two sections above which deal with the question of fraud in which the title of the registered proprietor can be impeached. First, where the fraud is that of the person bringing the land under the RPA (section 143) and second where a purchaser has notice of fraud (section 141). In the latter case, a number of authorities have established the meaning of notice and the difficulty with which a purchaser's title can be impeached. This case concerns the fraud of the persons being the landowner under the RPA under section 143. From the established case law there appears to be no distinction made in the meaning of the term fraud in the context of these two sections. In **Stuart v Kingston** (1923) 32 CLR 309 the Court noted:

“It is no longer in doubt that the fraud which can invalidate a registered title under these Acts is actual fraud on the part of the person whose title is impeached. And actual fraud is "fraud in the ordinary popular acceptance of the term," i.e., "dishonesty of some sort," "fraud carrying with it grave moral blame”.

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<sup>13</sup> **Santiago Castillo Ltd v Quinto and another** [2009] 74 WIR 217

78. It is clear, however, that it is difficult and unwise to compartmentalise or to give abstract illustrations of what may constitute fraud in a hypothetical situation. The conjoint effect of **Roberts v Toussaint** [1963] 6 WIR 43, **Waimiha Sawmilling v Waione Timber** [1926] AC 101, **Lenny Mastay v Egbert Ross** CV2008-02016, **Edward Lynch and Dennis Lynch v Dianne Ennevor and Eli Jackson** 19 JLR 161 and **Seepersad Sookhoo v Ramkhalawan Sookhoo** CV2012-03212 on the meaning of fraud for the purposes of these sections established the following principles:

- (a) fraud means some dishonest act of omission trick or artifice calculated and designed to cheat;
- (b) actual fraud and dishonesty carrying moral blame, moral turpitude;
- (c) fraud is not limited to express statements but include concealment of facts and failure to disclose.

79. The burden of proving fraud, of course, lies on the Claimant. Narine J, as he then was, usefully set out the burden and standard of proof in cases such as these in paragraph 2 page 24 **Harnam Singh v Dassie Singh** HCA 538 of 1991:

“The burden of proving fraud lies on the person who alleges it. It must be distinctly alleged and distinctly proved. The standard of proof is on a balance of probabilities. However, the standard is flexible, and requires a degree of probability commensurate with the seriousness of the occasion. The more serious the allegation the more cogent is the evidence required to overcome the likelihood of what is alleged. The very gravity of an allegation of fraud is a circumstance which has to be weighed in the scale in deciding as to the balance of probabilities. See: *Smith New Court Securities Ltd. v. Scrimgeour Vickers (Asset Management) Ltd.* [1996] 4 All E.R. 769; *Re Dellow's Will Trusts*, *Lloyds Bank Ltd. v. Institute of Cancer Research* [1964] 1 All E.R. 771 *Hornal v. Neuberger Products Ltd.* [1956] 3 All E.R. 970.”

80. The Defendant has consistently stated in his defence and in his cross examination that his misdescription of the parcel of land at LP 63 Caratal Road was an inadvertent error and there was no attempt by himself to cheat or to act fraudulently. However, from my assessment of the evidence, I am satisfied that Mr. Edwards acted fraudulently and made

an application which was designed to cheat, to steal a march and to grab land under the nose of the Claimants. I say so for the following reasons.

81. First, it is clear that Mr. Edwards did reside at No. 205 Caratal Road and it was a well-known residential address. The 1998 Application consistently refers to his application as referring to the lands at No. 205 Caratal Road even though the boundaries set out are for LP 63 Caratal Road. It raises a serious ambiguity in the declarations of all the deponents in support of the application as to whether they were speaking about Mr. Edwards' occupation at No. 205 Caratal Road. Under cross examination his case, as is now revealed, was that he was originally living at No. 205 Caratal Road and went to live at his grandmother's home allegedly at LP 63 Caratal Road then returned to No. 205 Caratal Road when her house was burnt to the ground in the 1990's. He returned later to LP 63 Caratal Road when he constructed the two storey dwelling house in 2014/2015. Importantly, no person who made any declarations in support of the 1998 application mentioned anything about the fire that destroyed the grandmother's home. They all sang from the "same sheet" that Mr. Edwards in the year 1989 "took control of the subject parcel of land and has since been in undisturbed occupation and possession of same".
82. Second, it is clear under cross examination that when he made the application in 1998 he was quite aware that the lands he intended to apply for was LP 63 Caratal Road and not No. 205 Caratal Road. Any sensible person reading the notice to bring the lands under the RPA would know that the lands being applied for were at No. 205 Caratal Road and he must have known that this referred to his residential home. Mr. Edwards himself accepted the "error". I do not accept for one moment that this was as innocent as Mr. Edwards would make it out to believe. He consistently maintained that the lands were at No. 205 Caratal Road and went to the extent of advertising the lands as No. 205 Caratal Road knowing full well that it was not those lands but lands at LP 63 Caratal Road which were to be the subject of the RPO Application.
83. Third, he plainly lied in his statutory declaration in declaring that he gave notice to the adjoining land owners who would have been the Mahabirs when he confessed in cross examination that he never met them before. Even more egregious is that Mr. Rawle Derrick, his surveyor, deposed that he spoke to the landowners of the adjoining parcels of land which was patently untrue. Moreover, Mr. Edwards did not call Mr. Derrick as a

witness to explain how he conducted the survey and to verify that the survey that was conducted was indeed the lands at LP 63 Caratal Road and not No. 205 Caratal Road which is what is stated in the application. He even admitted that he never met Mr. Derrick. In his statutory declaration he also stated that it was his father who was in occupation of LP 63 Caratal Road until his death when in fact his father lived at No. 205 Caratal Road.

84. Finally, as a witness Mr. Edwards was not credible. His responses were inconsistent, hesitant, confused, and he made open admissions that he plainly knew he had misled several persons in making this RPO Application. Indeed he admitted under cross examination that his representation to the Wardens Office that he was in occupation of the lands for forty (40) years was simply not true.

85. Further, Mr. Edwards failed to comply with the order of Justice Rajnauth-Lee in failing to properly describe or identify the parcel of land and Mr. Edwards admitted he misdescribed the property in the advertisement. It is not a trifling matter as No. 205 Caratal Road for the Claimants would effectively signify to them an entirely different parcel of land further south of their lands. Indeed, it leads to the conclusion that the notice that must be posted on the lands, if it was done, would have been posted on No. 205 Caratal Road and not LP 63 Caratal Road. This underscores the deliberate act of the Defendant to grab the Claimants' lands without their notice. It is further supported by his silence when the Mahabirs challenged his occupancy in March 2015. The order made by Justice Rajnauth-Lee was accordingly obtained by fraud.

86. The 1998 Application is littered with falsehoods and deliberate concealments and unanswered questions sufficient to taint the entire application with fraud. I am satisfied on the evidence that it would be unjust for Mr. Edwards to rely on the indefeasibility of title and that the fraud exception as set out in section 141 has been proven by the Claimants on a balance of probabilities.

### Misdescription

87. In **Lincoln Dillon v Mary Almondz and Anor** HCA No. 75 of 2000 Beraux J (as he then was) in commenting on misdescription noted at paragraphs 44 and 45:

“[44] A misdescription is an error of fact relating to the description of a parcel of land. It may relate to the physical description of the parcel (usually of the boundaries), the

extent of the acreage, the nature of the interest sold or the quality of the land. In my judgment the wrongful inclusion of the disputed portion into the acreage of the Pantin lands brings it within the definition.

[45] Thus, once a proprietor who acquires title to land through a misdescription disposes of the land to a third party, for value, the title of that third party, having been acquired for value and absent fraud, cannot be challenged by the proprietor whose land has been wrongly absorbed as a result of the misdescription. Recovery is available only if the land remains in the ownership of the acquiring proprietor. This position is complemented by the provisions of section 143(c) and 145 of the Act. Section 143(c) expressly excepts from indefeasibility;

“the case of a person deprived of or claiming any land included in any grant or certificate of title of other land by misdescription of such other land or of its boundaries, as against the proprietor of such other land not being a transferee thereof bona fide for value; (emphasis mine).”

88. Notably Bereaux J, as he then was, did not eliminate a misdescription by reference to the address of the property as a misdescription within the meaning of the RPA. Whether an error can amount to a misdescription is a question of fact. In this case, the residential addresses carry significant meaning. To allow such an application to pass muster under the RPA system would give license to applicants living for example in Rio Claro to apply for lands located in Diego Martin, with the boundaries set out but described as lands with an address in Rio Claro. The Certificate of Title ought not to be conclusive evidence of title as against the true owners of land in Diego Martin.

89. The Certificate of Title Volume 5766 Folio 317 issued to Mr. Patrick Edwards was obtained by fraud and misdescription. The Registrar General is directed to cancel the Certificate of Title in Volume 5766 of Folio 317 whereby Patrick Edwards was registered as the proprietor of the lands described in the said Certificate of Title in Volume 5766 Folio 317.

### **Adverse Possession**

90. Ultimately, this claim stands or falls on the evidence to demonstrate whether the Defendant has demonstrated uninterrupted occupation of the subject lands for a period of sixteen (16) years with the intention to occupy the lands as his own.

91. In **Ian Roach and Marjorie Roach v Hugh Jack and Ors.** Civ Appeal No. 132 of 2009 Beraux JA noted that the case of **JA Pye (Oxford) Ltd v Graham** [2002] W.L.R 221 is the leading authority on adverse possession. He stated at paragraphs 15, 16 and 17:

“[15] The effect of sections 3 and 22 is that the squatter or trespasser in possession extinguishes the right and title of the paper title owner to the land at the end of the sixteen year statutory period. In that sense therefore the squatter’s possession during that period is adverse to the true owners’ title. Adverse possession thus means possession inconsistent with the title of the true owner. (See Megarry and Wade, sixth edition page 1308, paragraph 21.016.) Slade J examined the term “adverse possession” in *Powell v. Mc Farlane* 179 38 P. and C.R. 452 at 469. In a passage subsequently approved by the House of Lords in *JA Pye (Oxford) Ltd. v. Graham*, [2002] W.L.R. 221, he said: ...

“Possession of land, however, is a concept which has long been familiar and of importance to English lawyers, because (inter alia) it entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession. In the absence of authority, therefore, I would for my own part have regarded the word “possession” ... as bearing the traditional sense of that degree of occupation or physical control, coupled with the requisite intention commonly referred to as *animus possidendi*, that would entitle a person to maintain an action of trespass in relation to the relevant land; likewise I would have regarded the word “dispossession” in the Act as denoting simply the taking of possession in such sense from another without the other's licence or consent; ...”

[16] To establish adverse possession, the squatter must demonstrate that he has taken exclusive control of the property in question. He must also have “an intention for the time being to possess the land to the exclusion of all other persons including the owner with the paper title” (per Slade L.J. in *Buckinghamshire County Council v. Moran* [1990] Ch 623 at 643). Megarry and Wade (*supra*) from which that latter authority and passage were drawn, adds at page 1310 paragraph 21-019 that:

“An intention to own or acquire the ownership of the land is not required, nor is it necessary that the squatter should intend to exclude the true owner in all circumstances. The animus can be sufficiently established even if both the true owner and the squatter mistakenly believe that the land belongs to the latter ...

The intention to possess must be manifested clearly so that it is apparent that the squatter was not merely a persistent trespasser but was seeking to dispossess the true owner.”

[17] JA Pye (Oxford) Ltd. v. Graham (supra) is the leading authority on adverse possession. In summary, it was held:

(a) that (approving Slade J’s dicta set out at paragraph 15 above) the words “possession” and “dispossession” bore their ordinary meaning, so that “possession” as in the law of the trespass or conversion, connoted a sufficient degree of occupation or physical control coupled with an intention to possess and “dispossession” occurred where the squatter assumed “possession” as so understood;

(b) that the phrase “adverse possession” was directed not to the nature of the possession but to the capacity of the squatter. In order to establish factual possession the squatter had to show absence of the paper owner’s consent, a single and exclusive possession and such acts as demonstrated that he had dealt with the land as an occupying owner might normally be expected to do and that no other person had done so;

(c) that the requisite intention was not to own or acquire ownership but to possess and on one’s own behalf, in one’s own name, to exclude the world at large including the paper title owner, as far as reasonably possible; and that it was not therefore inconsistent for a squatter to be willing, if asked to pay the paper title owner while being in possession in the meantime.”

92. In my assessment of Mr. Edwards’ counter claim, I am not satisfied that he has made out his claim for adverse possession for the following reasons.

93. First, the Defendant’s pleadings are woefully insufficient in properly articulating his claim for adverse possession. See **Zanim Ralphy Meah John v Courtney Allsop et al** CV2010-

04559. The only pleadings to support his claim of adverse possession is contained in the following paragraphs of his amended defence and counterclaim:

“2. The First Defendant lived on the said lands with his grandmother Jeanine Sylvester who was in occupation of the said lands from the year 1934 up until the time of her death on 7<sup>th</sup> March 1989. A true copy of the Death Certificate of Jeanine Sylvester hereto attached and marked “**B**”.

3. After the death of his grandmother the First Defendant remained in undisturbed possession of the said lands and still occupies the said lands to date.”

94. None of these pleadings provide sufficient particulars of the acts of possession which eventually found its way in the witness statements for the Defendant. With reference to paragraph 2 of the Amended Defence Mr. Edwards was certainly incapable of being in occupation of the lands from 1934 with his grandmother as he was born in 28<sup>th</sup> June 1960. In his evidence he eventually deposed that he helped his grandmother with her cultivation and then moved in the house in the 1960s. He provides no particulars of the acts of possession in paragraph 3 and gives the impression that he was living on those lands which is patently untrue as the grandmother’s house, according to his own evidence, was destroyed by a fire in the 1990’s and he moved back to No. 205 Caratal Road. Further, on the death certificate of his father and his grandmother in the 1980’s he was living at No.205 Caratal Road. Not only are these pleadings woefully insufficient, they are themselves found wanting and unsupported by the evidence led by Mr. Edwards.

95. Second, the independent and uncontroverted evidence of the surveyor’s surveys demonstrate that at the earliest in 1994 there was mapped on the disputed land “house ruins”. By that time there was no house on the said lands. In the 1977 survey attached to the Mahabirs’ Deed no structure was mapped on the lands. There was no house in which Mr. Edwards’ grandmother allegedly occupied. It is more than likely that they occupied No. 205 Caratal Road and they would have used LP 63 Caratal Road intermittently, if at all. However, there is no evidence by use of the surveys, of continuous use by the grandmother between 1977 to the date of her death nor of Mr. Edwards himself from 1989 after the death of his grandmother. In 2008 the survey conducted by Mr. Aqui did not reveal any house or structure on the land save for the ruins of a wall. Plainly, there is no evidence of Mr. Edwards maintaining a residence on that site between 1994 to 2008. This is also



consistent with the photogrammetric surveys. Faced with this evidence, Mr. Edwards can only rely on the use of the lands by some other means or purpose other than as an actual residence, a matter which he did not plead but sought to adduce evidence of cultivation of short crops. Even here he faces the difficulty of the photogrammetric surveys not picking up any significant user of the lands for agriculture and certainly not to the extent of five (5) lots of land (1991 square meters).

96. Third, the surveys also demonstrate that a structure was erected on LP 63 Caratal Road between 2003 to 2014 and there was no such structure between 1994 to 1998. There could therefore not have been any continuous uninterrupted occupation of the said lands by Mr. Edwards.
97. Fourth, in any event all the contemporaneous documents including Mr. Edwards' grandmother's death certificate, the RPO Application itself all put Mr. Edwards' occupation as at No. 205 Caratal Road and not LP 63 Caratal Road. Importantly, the death certificate of the grandmother reveals that Mr. Edwards recognised his residence as No. 205 Caratal Road when his grandmother's residence was simply "Caratal Road".
98. Fifth, even if Mr. Edwards did cultivate the lands at LP 63 Caratal Road and did not live on it, under cross examination he admits that he did not cultivate the entire parcel of land which was the subject of the 1998 Application. Indeed, Mr. Edwin Edwards confessed that the cultivation was on 50% of the land. It is therefore unclear from the Defendant's evidence why an application for the entire disputed lands was made.
99. Sixth, the alleged rearing of common fowl and ducks did not carry with it any ring of truth under cross examination.
100. Finally, the Defendant's witnesses Ms. Gwendolyn Henry-Commissiong and Ms. Gwendoline Jeffrey's evidence were too vague and imprecise to carry any sufficient weight as to the proving any occupation of the lands at LP 63 Caratal Road as contended for by the Defendant.
101. The Defendant's evidence falls woefully short of demonstrating that he was in adverse possession of LP 63 Caratal Road for sixteen (16) years immediately preceding his claim.

### **Damages**

102. There is no evidence of the current value of the land or the value of the Claimants' loss by the Defendant's occupation. Mr. Edwards by constructing a dwelling house and occupying the property would have committed an act of trespass. The Claimants cannot be awarded mesne profits in the absence of evidence and would only be awarded nominal damages in the sum of \$15,000.00.

### **Resolution**

103. As discussed with the parties, unless the parties agree otherwise, the orders that this Court proposed that it will make are as follows:

- a) The Certificate of Title in Volume 5766 Folio 317 whereby Patrick Edwards was registered as the proprietor of the lands described in Certificate of Title in Volume 5766 Folio 317 be cancelled and set aside on the ground that the said Certificate of Title was obtained by fraud and misdescription;
- b) The Defendant is to deliver vacant possession of the lands described as All and Singular that certain piece or parcel of land situate at Caratal Road Gasparillo comprising approximately One Thousand Nine Hundred and Ninety One Point Six square metres and which said lands are a portion of the lands described as Part Two of the schedule of the Deed of Conveyance registered as No. 20997 of 1977 as all and singular that piece or parcel of land situate in the Ward of Pointe-a-Pierre comprising ten acres, two roods and seven perches more or less delineated and coloured pink on the plan annexed and bounded on the North by another portion of the said lands conveyed to the said Ramdath Mahabir and Deodath Mahabir on the South by lands of Ammolio Baldeo and on the East by Gasparillo Road and on the West by lands at V.O West and a portion of the lands described in Part 5 of the said Deed of Conveyance registered as No. 20997 of 1977 as all and singular that piece or parcel of land situate in the Ward of Point-a-Pierre comprising Eleven acres Fifteen perches more or less delineated and coloured pink on the plan annexed and bounded on the North by lands of Frederick Brown, by lands of Alexander Paul and by lands of Heemah and others on the South by another portion of the said lands conveyed to Christendath Mahabir and Jai Mahabir on the East by Gasparillo Road and on the West by lands of V.O West and by lands of Frederick Brown to the Claimants;

- c) The Defendant is restrained whether by himself, his servants and/or agents from entering and/or remaining on the said property;
  - d) The Defendant is restrained whether by himself, his servants and/or agents howsoever otherwise from preventing the Claimants, their servants and/or agents from gaining access to and/or using the said lands;
  - e) The Defendant is to pay the Claimants nominal damages in trespass in the sum of \$15,000.00;
  - f) The Defendant's counterclaim is dismissed;
  - g) The Defendant is to pay the Claimants prescribed costs of the claim and the counterclaim in the sum of \$28,000.00.
104. The Court proposed that on 20<sup>th</sup> April 2018 at a further hearing to deliver this judgment unless the parties have arrived at an agreement.
105. The parties engaged in further "without prejudice" negotiations and announced on 20<sup>th</sup> April 2018 no further agreement between them.
106. Accordingly the Court now makes the following orders:
- a) The Certificate of Title in Volume 5766 Folio 317 whereby Patrick Edwards was registered as the proprietor of the lands described in Certificate of Title in Volume 5766 Folio 317 be cancelled and set aside on the ground that the said Certificate of Title was obtained by fraud and misdescription;
  - b) The Defendant is to deliver vacant possession of the lands described as All and Singular that certain piece or parcel of land situate at Caratal Road Gasparillo comprising approximately One Thousand Nine Hundred and Ninety One Point Six square metres and which said lands are a portion of the lands described as Part Two of the schedule of the Deed of Conveyance registered as No. 20997 of 1977 as all and singular that piece or parcel of land situate in the Ward of Pointe-a-Pierre comprising ten acres, two roods and seven perches more or less delineated and coloured pink on the plan annexed and bounded on the North by another portion of the said lands conveyed to the said Ramdath Mahabir and Deodath Mahabir on the South by lands of Ammolio Baldeo and on the East by Gasparillo Road and on

the West by lands at V.O West and a portion of the lands described in Part 5 of the said Deed of Conveyance registered as No. 20997 of 1977 as all and singular that piece or parcel of land situate in the Ward of Point-a-Pierre comprising Eleven acres Fifteen perches more or less delineated and coloured pink on the plan annexed and bounded on the North by lands of Frederick Brown, by lands of Alexander Paul and by lands of Heemah and others on the South by another portion of the said lands conveyed to Christendath Mahabir and Jai Mahabir on the East by Gasparillo Road and on the West by lands of V.O West and by lands of Frederick Brown to the Claimants;

- c) The Defendant is restrained whether by himself, his servants and/or agents from entering and/or remaining on the said property;
- d) The Defendant is restrained whether by himself, his servants and/or agents howsoever otherwise from preventing the Claimants, their servants and/or agents from gaining access to and/or using the said lands;
- e) The Defendant is to pay the Claimants nominal damages in trespass in the sum of \$15,000.00;
- f) The Defendant's counterclaim is dismissed;
- g) The Defendant is to pay the Claimants prescribed costs of the claim and the counterclaim in the sum of \$28,000.00;
- h) There be a stay of execution of 28 days from the date hereof;
- i) There be leave to the Claimants to issue a writ of possession within 28 days of the expiration of the stay hereof.

**Vasheist Kokaram**  
**Judge**