

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-02804

**IN THE MATTER OF THE PARTITION ORDINANCE
CHAPTER 27 No. 14**

BETWEEN

PRIYA MARAJH also referred to as PRIYA MAHARAJ

Claimant

AND

JEEVAN MARAJH aslo referred to as JEEVAN MAHARAJ

Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Tuesday 27th March 2018

Appearances:

Mr. Owen C. Hinds Jr. for the Claimant

Mr. Kelvin Ramkissoon instructed by Ms. Sonya Gyan for the Defendant

JUDGMENT

1. The Claimant (Priya Marajh/Maharaj) and the Defendant (Jeevan Marajh/Maharaj) are siblings and joint owners of a property known as No. 9 Evans Street, Curepe¹. I will refer to them simply as Priya and Jeevan. Unlike some families they did not grow up together. In fact at an early age they lived in separate households as a result of their parents' divorce. Jeevan was then eleven (11) years old and Priya was three (3) years old. While Priya grew up for the most part in the custody of her mother, Jeevan was abandoned at thirteen (13) years fending for his

¹ All and singular that piece or parcel of land situate at Field 106 St. Augustine in the Ward of Tacarigua, in the Island of Trinidad, comprising Five Thousand One hundred and ninety-five superficial feet known as Lot No. 67 and bounded on the North upon a Road Reserve; on the South upon Lots Nos. 70 and 71; on the East upon the said Road Reserved and by Lot 68 and on the West by Lots Nos. 68 and 64 and intersected by a reserve for a drain four feet wide and which said parcel or lot of land is known and assessed as No. 9 Evans Street Curepe subject to the life interest of Hamchand Maharaj also called Dayanand Hamchan Marajh also called Hamchan Marajh.

own at the Evans Street property. While Priya pursued her education to tertiary level, Jeevan could not afford that luxury. The siblings maintained a relationship over the years but understandably, in the context of their upbringing, it was not as close as they would have themselves preferred. Their relationship is now further strained by this litigation: a claim where Priya as co-owner of the Evans Street property, is now seeking an order for the partition and sale of the Evans Street property under the Partition Ordinance Chap. 27 No.14 and a counterclaim by Jeevan claiming an equitable interest to the entire Evans Street property based upon an agreement he had with her and the family over time and principally in 2006.

2. For Priya, this claim is about monetising her share of the joint asset to assist the financial needs of her household. For Jeevan, his claim is about recognising his place he has called home for over twenty three (23) years without any question from Priya or his parents.
3. This is not a case of siblings competing with each other to claim a superior right to reside in joint property. Priya has no interest in residing in the Evans Street property. This is not a case of an irretrievable breakdown in the relationship of the siblings with any history of bitter acrimony. The parties naturally have had their sibling disagreements. This is a case of competing needs: of Jeevan's desire to keep his Evans Street property and for Priya to help finance her new one. Such needs form the backcloth to the Court's analysis of Jeevan's claims to an equitable interest and the exercise of the Court's discretion under section 4 of the Partition Ordinance. More importantly, these needs are set against the backdrop of a family dynamic "post-divorce" of estranged parents who still maintained a relationship and even tried to foster a better one between the two children.
4. A Court in treating with Priya's claim must be alive to these realities. It must search for therapeutic outcomes and user friendly solutions for these siblings. This is the type of case where Courts should not destroy relationships with its orders but find ways through "solution-focused interventions" to get these parties past their differences and to build a more positive outcome for them. In fact, this dispute is not of their own doing. It was written and indeed found its genesis in a Court's order which separated siblings from each other yet kept them as co-owners of the Evans Street property. This is an opportune time for the Court, by its order in these proceedings, to rectify and restore balance in this family and to accommodate the competing needs where they are unable to do so themselves.

5. Jeevan has been living in the Evans Street property since he was thirteen (13) years old and later with his wife Sharon Marajh (Sharon) when he was nineteen (19) years old. Together with their daughter Nicole, they are the only occupants of the Evans Street property for all these years since 1992. Jeevan contends that he has acquired an equitable interest to the entire Evans Street property based upon an agreement with his sister in 2006 that she will relinquish her share in the Evans Street property in exchange for acquiring their parents' property in No. 4 Citrus Drive, Cunupia and their gratuity and proceeds of insurance. In other words, as between the two children, the Evans Street property will be Jeevan's and "everything else" for Priya. If it is true that such an agreement existed and Jeevan relied on it to his detriment, it would be unconscionable in the circumstances for Priya to resile from such an agreement and Jeevan would have made out his claim for a further equity in the Evans Street property beyond Priya's share. The Court's equitable jurisdiction intersects with the Partition Ordinance and in satisfying that equity, may ultimately prohibit any partition or sale of the Evans Street property. Even without making out his case of promissory/proprietary estoppel, equitable considerations will still arise when the Court exercises its discretion under the Partition Ordinance as discussed later in this judgment in "equitable accounting".
6. After considering the evidence led at this trial and the written submissions of the parties, I am of the view that Jeevan's claim that there was an agreement made between himself and his sister that he will get the entire Evans Street property is unsustainable. The evidence adduced by Jeevan is inconsistent and it is implausible that Priya would have agreed to those terms. It is true that Priya had showed no interest in the Evans Street property for all these years while Jeevan continued to maintain his home there. However, while that may support a view that it is probable that she had agreed to those terms equally, it is consistent with her maintaining an arms distance from her brother, a matter to which she had been accustomed from a tender age. Ultimately, there was not enough adduced in this case to demonstrate on balance of probabilities that Priya had expressly agreed to relinquish her interest. As joint owner, the real question is the relief she would be entitled to under the Partition Ordinance.
7. In exercising the discretion under the Partition Ordinance, the Court cannot be mechanistic in applying the law. As one commentator noted on the exercise of the Court's discretion, generally "isolating pieces of evidence, statutory rules or precedents from the context in which

they arose is arbitrary and an impoverished way of comprehending reality”². In exercising its discretion under the Partition Ordinance, the Court must be alive to the therapeutic and anti-therapeutic impact of a Court’s order against the backdrop of the sensitivities of family life, the need for financial security and the shock to a family unit in displacing it to find alternative accommodation.

8. Accepting from the evidence that there was no agreement at least by Priya for the relinquishment of her share, the options available to the Court under the Partition Ordinance are to partition the property or to sell. A partition was never explored by the parties in this case and there is no evidence that it would be unworkable save for the motivation by Priya for financial security from the Evans Street property which she regards as an income earning asset. On the other hand, taking into account Sharon’s illness, Jeevan’s lack of means, the family’s length of unchallenged occupation and the dislocation that a sale would have on the life of the young Nicole, a sale should be a last option.
9. Rather than impose an order on the parties, my order shall encourage parties to work together and to make their own final decision on the future of this home. I do so by first partitioning the Evans Street property and at the same time giving to both siblings an option to sell the Evans Street property.
10. It is my order, therefore, that the Evans Street property shall first be partitioned. Recognising that notwithstanding Priya’s interest as co-owner, her interest has materially diminished from her lack of interest in the Evans Street property matched to Jeevan’s contributions over the years. The apartment at the Evans Street property shall remain in the exclusive use and occupation of Priya. She may use this as an asset to earn a rental income. Priya shall be responsible for the maintenance and upkeep of the said apartment and the parties shall enjoy the carport and the front yard as a common area.
11. The parties shall each both retain an option to sell the home exercisable by either of them giving notice in writing to the other party.

² Therapeutic Jurisprudence – New Zealand Perspectives by Warren Brookbanks page 285.

12. Upon Priya giving such notice to exercise the option of sale, Jeevan shall have the right to elect in writing to pay to Priya her share in the Evans Street property pursuant to section 5 of the Partition Ordinance which is to be paid to her within eight (8) months of the date that the option is exercised for the sale of the Evans Street property. The said sum to be paid to Priya shall be the sum of \$555,000.00 representing 30% of the value of the Evans Street Property as determined by Royce Realty Limited. I have ascribed a value for Priya's share of 30% relying on the available valuation when the claim was filed and by deducting a percentage of 20% from Priya's share by means of an equitable accounting of Jeevan's contribution to the improvement of the home and which was the invested value of same on her behalf.
13. In default of Jeevan paying the said sum within the said date (or such time as agreed by the parties) or upon Jeevan waiving his right to so elect in writing to pay for the said share, or upon Jeevan himself giving notice in writing to exercise the option to sell, the Evans Street property shall be sold pursuant to the following terms:
- a) The Evans Street property shall be sold by the parties by private treaty within twelve (12) months of either default of Jeevan's purchase of Priya's share as above or his indication in writing that he waives his right to purchase the said share or upon him giving notice to sell whichever is earlier. Thereafter, if the Evans Street property remains unsold at the end of the said twelve (12) months period, the Evans Street property shall be sold by the Registrar by public auction. The said period of twelve (12) months has been established to provide the parties a sufficient period of time to receive sufficient realistic bids for the sale of the Evans Street property.
 - b) The reserve price in the event of such a sale shall be determined by a valuator to be agreed by the parties within twenty eight (28) days of the date the option to sell is to be effected. The cost of the valuation is to be borne by the party exercising the option and half of those costs shall be recovered from the proceeds of sale. In default of agreement, the Registrar shall appoint the valuator with the cost of the valuation to be borne by both parties.

- c) At the end of the said twelve (12) months, in default of the Evans Street property being sold by private treaty the Registrar shall sell same at the said reserve price established by the said valuator.
 - d) Upon the said sale, subject to the deduction of costs and expenses associated with the sale, the parties shall be entitled to the balance of the purchase price at 70% for Jeevan and 30% for Priya.
14. With respect to legal costs, Jeevan will bear the legal costs of this claim and counterclaim under the following terms. In the case of the partition Jeevan shall pay to Priya prescribed costs in the sum of \$19,000.00 which is approximately 70% of the total prescribed costs payable on the claim and counterclaim. In the case of the sale, these said costs paid by Jeevan shall be recoverable in the sale or shall be deducted from the sums to be paid by Jeevan to Priya for her share. In other words Priya would be entitled to 70% of her costs upon partition and there shall be no order as to costs in the event there is a sale of the Evans Street property with Jeevan recovering any cost paid to Priya in the said sale.
15. As requested by the parties, I issued a draft judgment and in default of any agreement by the parties within fourteen (14) days the orders set out in that draft judgment would be entered as the Court's final order.

Parties' agreement to post-judgment negotiations

16. Both parties in this matter have tried to settle this dispute amicably. The matter was referred to mediation and to a Judicial Settlement Conference. To further assist them in arriving at a resolution of their dispute, the parties agreed that the 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.
17. I make it clear that the draft judgment represents the Court's findings. They have 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 a final consent order with the draft judgment being referred to in their consent order for the limited 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 and not in the draft judgment. This mechanism has been offered to parties as a recent judicial innovation 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.

18. A draft judgment was therefore issued to the parties 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 shall then delivered as the Court's final judgment or order and entered accordingly.

Brief Facts

19. The siblings were born into a traditional Hindu family. Their parents, Dayanand Hamchan Marajh and Daya Marajh were married in 1972. Jeevan was Priya's senior by nine (9) years. He was born in 1973 and Priya in 1982. Their parents' marriage was dissolved in 1985³ on the grounds of two years separation with consent. By this it would appear that the parents' relationship deteriorated for the latest in 1983, one year after Priya was born. At that time, the matrimonial home was the Evans Street property which was first acquired by the parents in March 1979⁴ and by 1981 a completed home with accommodation in the first floor and an open ground floor had been constructed. It was valued by Raymond and Pierre in 1981 at \$227,000.00.
20. By the Court's order dissolving the marriage, custody was split between the two parents with the daughter remaining in the custody of the mother and the son in the custody of the father. Both parents were granted reasonable access to the children. The matrimonial home was to be assigned to the father for life and the remainder to the children as joint tenants. The deed of lease giving effect to this disposition was eventually executed in October 1987 when Priya and Jeevan became joint lessees of the Evans Street property by virtue of Deed of Lease dated 14th October, 1987 and registered as No. DE 198717227094.

³ Decree Nisi- Dissolution No. M. 343 of 1985, 17th July, 1985

⁴ Deed dated 14th March 1979, registered as Number 5044 of 1979

21. The arrangements contemplated by this order for the children, however, were not entirely fulfilled. After the divorce, both siblings remained with their maternal grandparents in Aranguéz and their mother. The father resided at the Evans Street property for a brief period with his partner. The father did not assume custody of Jeevan.
22. At the age of thirteen (13), in 1986, one year after the divorce, Jeevan left his grandparents' home and took up residence at the Evans Street property. Priya would have been four (4) years old at that time. From then the siblings lived separate lives. When Priya was only five (5) years of age, her mother left Aranguéz and migrated to Canada to live and work. She returned sometime in 1992 when Priya was nine (9) years old.
23. Jeevan's father in the meantime was then in occupation of the Evans Street property with his common law wife. Soon after Jeevan arrived, he left Jeevan there to take up residence in Barataria with his new family. Jeevan claimed to have lived in an old wooden house at the back while he effected repairs to the building. The valuation report done in 1981 suggests that the home was completed and newly constructed. In any event, Jeevan remained there to this date.
24. Jeevan and his wife Sharon met and had a daughter in 1992. Sharon moved in with Jeevan at the Evans Street property in 1993 and they eventually got married in 1997. The parents and Priya seldom visited the Evans Street property while Jeevan and his wife maintained and improved the Evans Street property over the years. By 1996 the Evans Street property now comprised a self-enclosed downstairs apartment with a perimeter wall and gate. Approximately, at least, \$409,000.00 was spent by Jeevan and his wife on the Evans Street property.
25. While Jeevan lived at the Evans Street property, Priya lived at first at her grandparents' home then eventually in rented accommodation at St Augustine to do her studies. Then she moved into a property known as No. 4 Citrus Drive, Cunupia after she got married. That property is her mother's acquired by her in 1990 while she was living in Canada. Priya lives there to this time with her husband. She also acquired land in Niblette, Enterprise which was gifted to her by her father and she has purchased a property in Santa Rosa.
26. Much later on, Priya authorised Sharon to change the name of the Water and Sewage Authority Services (WASA) account to Sharon's at the Evans Street property and the father authorised

the change in name on the Trinidad and Tobago Electricity Commission (T&TEC) to Jeevan. These were two acts, among others, which Jeevan relies on to demonstrate that there was an agreement between himself, Priya and his parents that he will get the Evans Street property while Priya will get the other property belonging to the parents.

27. Jeevan contends that in 2006 at a family gathering at their grandparents' home where Priya, Sharon, Jeevan, his parents, grandmother and uncle were present, it was agreed that the Evans Street property would be for the exclusive use and benefit of Jeevan and that Priya would be allowed to keep the property at Citrus Drive, Cunupia, the Enterprise property and the proceeds of life and gratuity of their father and that Priya would relinquish her share in the Evans Street property to Jeevan.
28. Priya now asserts her claim as joint owner of the Evans Street property, notwithstanding that she had showed no interest in the Evans Street property for all these years nor did she make any request to stay there when she left her grandparents' home.
29. It is after their father died in 2013 that the dispute arose. Priya contends that Jeevan began asking her to transfer her share in the Evans Street property to him while Jeevan contends that in breach of her agreement, Priya refused to do so.
30. As siblings, Jeevan and Priya would have lived apart for the past thirty one (31) years since Priya was four (4) years old and Jeevan thirteen (13) years old. For that time, they did not maintain a close relationship. However, by way of background facts, there are two important aspects of Priya's and Jeevan's relationship over the years that has impacted them and defined their current dispute: the divorce of their parents and the attempt to maintain a family unit.

The divorce

31. The divorce was a pivotal moment in the siblings' lives. By that time Jeevan would have been twelve (12) years old and Priya, three (3) years old. The Court's order does not appear to be a consent order⁵. The custodial arrangements and the property settlement are two important

⁵ On 17th July 1985, the marriage of Dayanad Hamchan Marajh and Daya Marajh was dissolved and the High Court ordered:

- i. That the child Jeevan do remain in the custody of the Petitioner (the father) with effect from 1st August 1985 and that the Respondent (the mother) be and is hereby granted reasonable access.
- ii. That the child Priya do remain in the custody of the Respondent with effect from 1st August 1985 and the Petitioner be and is hereby granted reasonable access;
- iii. That the Petitioner do pay the sum of \$200.00 per month with effect from 1st August 1985 as maintenance for the child Priya until she attains 16 years or until further order;

aspects of the siblings' lives. Rather than keep the siblings together, in a bitter taste of "Solomonic justice" they were, by order, taken apart. It is a rare order to be made and the Court is not seised of the facts nor circumstances in which such an unusual order would have been made. By placing Priya in the custody of the mother would mean she would be raised in Aranguez while Jeevan would reside in Curepe with his father. Physically, the children were, by that order, kept apart in their own silos with neither feeding off the other strengths nor assisting in their weaknesses in their upbringing. Priya was obviously groomed academically and has excelled in obtaining further education and financial security. Jeevan with limited educational opportunity, has been self-employed at an early age.

32. Another significant feature of this divorce is the disposition of the matrimonial property. The Evans Street property was conveyed to the father for his life and then to the children, notwithstanding their separate destinies, as joint tenants. The wisdom of this order is clear. It was intended that the Evans Street property would be the source of the children's future and financial security while the father would retain a residence during his lifetime. Importantly, however, the mother received no interest in the Evans Street property and the father only had a limited life interest. This is significant in the analysis of the law of estoppel and Jeevan's case that there was an agreement which included the mother and father to "give" him the Evans Street property. In law, they had, in the case of the mother nothing to give, and in the case of the father, only a life interest. In essence, Jeevan is left with the inescapable fact that the fate of the Evans Street property is bound with his sister, Priya, and unless she agrees to relinquish her interest, his future in Evans Street property remains joined with hers. However, despite the parents' limited legal interests in the Evans Street property, the fact that Jeevan highlights the importance to him of the wishes of his mother and father of the Evans Street property after the divorce underscored the significant moral influence of the parents in a family unit.

The family unit

33. In this case the family unit was divided at the divorce. With Jeevan and his father on one side and Priya and her mother on the other. As life evolved, Jeevan and his father became estranged and he alleges that there was a mending later in their lives. However, the maternal grandparents

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- iv. That the matrimonial home at No.9 Evans Street Curepe be conveyed by the parties to the Petitioner for life and the remainder to the two children of the family as joint tenants;
 - v. That the Petitioner do pay the cost of the conveyance.

played an important role in the siblings' lives and was part of the extended family unit. There were frequent pujas at their grandparents' home. No doubt the grandfather played a significant moral influence in their lives as the nucleus in traditional hindu families and the centre around which the family revolved. This accounts for the frequent meetings and pujas at that home. It also accounts for the fact that the father, notwithstanding his having custody of Jeevan, was content to leave him at Aranguez.

34. As Priya indicated, after her grandfather died, these pujas became less frequent as usually happens when the matriarch or patriarch passes on. Yet still, for Jeevan, such a family gathering in 2006 was significant when the alleged agreement was made. Counsel for the Defendant has highlighted this aspect of the traditional family life and asked the Court to take judicial notice of the “panchayat” while Counsel for the Claimant advised caution in taking such notice. See **R v Find** [2001] 1 SCR 863 per McLachlin C.J.
35. But the panchayat is a living memory that transcends generations and is a visceral feature of the East Indian community in various forms over the years. The panchayat was in fact a communal expression of dispute resolution where the panchyee would give advice and decisions on the resolution of disputes and the allocation of resources in a family and community. Such decisions carried significant moral influence and in many cases respected as law. This reverence for the elders in traditional families has led to many disputes in our Courts where on the one part, the moral authority of such utterings are enough to provide direction and guidance for some members of the family, but when held up to the formal legal system, falls short of the required legal requirements or documentary proof necessary to create binding legal rights.
36. There are two reported authorities where our Courts have in fact recognised the importance of the moral influence of the “panchayat” giving rise to legal rights, specifically **Moonie Ramoutar v Harry Ramoutar** H.C.293/1986 per Deyalsingh J and **Rampiarie v Munraj Dan** H.C.S.1122/1986 per Lucky J. In these cases, the informal arrangements or family agreements once proven can be elevated to having a legal force of a contract. In **Rampiarie** Lucky J commented on the panchayat:

“I would like at this stage to devote a few words to the meaning and significance of a “panchait” because it is my view that it is important in this case. As I understand it, based

on the evidence led, a panchait is a meeting of respected and influential elders in a community who are summoned by the parties in a dispute for the sole purpose of resolving the dispute. The ruling, if accepted by the parties, is acted upon as though it is a binding agreement or legal contract or the decision of a quasi-judicial tribunal. Panchait is one of the customs which has evolved in the country among the poorer classes of rural East Indians as a substitute for the accepted forms of litigation not easily accessible and affordable by these classes.”

37. Notably in that case, unlike this case, there was evidence of the convening of a panchayat and credible evidence to demonstrate that all who participated to that agreement acted upon the moral influence of the panchayat.
38. Although, the 2006 gathering was not a panchayat in the traditional sense, it was a manifestation of an ingredient of the panchayat, of the role of the elders in a family unit and for the East Indian community cast against those historical underpinnings of the panchyee. It is therefore not farfetched for the siblings parents, Daya and Dayanand, in that setting to still be talking about the Evans Street property as their property to “give” or “take away”. As far as the elders were concerned, their properties, despite the Court’s order, were the product of parents’ hard work for the benefit of their children and in their wisdom they retain that moral influence and authority to dictate the destiny of those assets. While this may account for parents speaking in this way when their children are under the age of majority (where children go their room when “big people talking” See Lucky J in **Rampiarie**), when they become adults like Priya in 2006 of twenty eight (28) years of age, conflicts will naturally arise when the elders’ wishes clashes with the personal needs and motives of the mature child. Hoffman LJ will quite rightly observe in **Walton v Walton** (14th April 1994 unreported) and in **Thorner v Major** [2009] UKHC 18 that there are several reasons why the law is reluctant to assume there was a binding contract in a family context. One feature is the unspoken and ill-defined qualifications to which promises may be subjected. In this case, the real issue really is whether Priya herself consented or ever agreed to relinquish her share, notwithstanding the wishes of her elders.
39. I will examine the competing claims as set out in the parties’ pleadings, the issues for determination, briefly examine the respective testimonies of the parties and analyse the competing claims for an equity and a sale of the Evans Street property.

The respective claims

40. Priya contends that she has never lived on the Evans Street property and has never had benefit of it while Jeevan, his wife and daughter have had benefit of same for many years. Jeevan, according to her and without her consent, rented out the ground floor of the Evans Street property to a woman who operated a beauty salon there for a number of years and he was the beneficiary of the rent receipts.
41. After the death of her father, Jeevan approached her on a few occasions requesting that she transfer all her shares and interest in the Evans Street property to him. She refused to transfer her shares and contends that as a result, Jeevan threatened her with physical violence. As such, she contends that it is impossible for them to have communication with regards to the Evans Street property.
42. She claims an order for the partition and sale of the Evans Street property. Alternatively, she seeks an order that Jeevan be at liberty to purchase her share and/or interest in the said premises as determined by the Court. She also claims occupation rent and rent received for the Evans Street property and an account for such sums as may be found to be due to her.
43. By his defence and counterclaim⁶, Jeevan relies on the defence of promissory and proprietary estoppel and relies on the alleged agreement or promise set out in his pleadings in the following terms:
- a) In or about 2006, at a family gathering at their grandparents home at which Priya, Jeevan, his wife Sharon, their parents and grandmother together with their uncle Amarnath Sankar and others were present, it was agreed that and Priya held out and represented to Jeevan that the Evans Street property would be for his exclusive use and benefit and that Priya would be allowed to keep the Citrus Drive property, the Enterprise property and the proceeds of life insurances and gratuity of the said Dayanand Marajh and that she would relinquish her share in the Evans Street property in favour of Jeevan.

⁶ Defence filed 14th November, 2016

- b) Jeevan agreed not to make any demand for any benefit or entitlement to his mother's estate to the intent that all her assets would go to the benefit of Priya.
- c) It was further agreed that in consideration of Priya relinquishing all her right, estate and interest in the Evans Street property that the said Dayanand Marajh:
- (i) Made her the exclusive beneficiary of and granted to her all the monies that he became entitled to by way of gratuity from his employment as the Financial Manager of J.N Harriman and Sons Limited;
 - (ii) Granted to her all the proceeds of his life insurances;
 - (iii) Conveyed to her by way of deed of gift a parcel of land situate at Niblette Street, Enterprise
- which Priya voluntarily accepted without objection.
- d) Jeevan acted upon this and the representations to his detriment which caused him to believe that the Evans Street property would be exclusively his since adequate provisions were made for Priya.
- e) Jeevan contends that the verbal agreement was confirmed and repeated on several occasions at family gatherings, funerals and weddings by his parents and Priya and also conveyed to relatives including Sahadaye Ragoobarsingh-Marajh and Saraswatee Marajh. He also contends:
- That he gave up his entitlement to any benefit and interest in his father's gratuity and life insurances because of the verbal agreement and as such, his father removed him as a joint beneficiary to his gratuity and proceeds of life insurance and named Priya as the sole beneficiary thereof.
 - That his mother bought the Citrus Drive property subsequent to her divorce and his father eventually liquidated the mortgage on that property with the intention that Priya will receive the exclusive benefit of that property. The Citrus Drive property was rented out until 2006 when the tenants vacated the premises and Priya commenced exclusive occupation of same.

- That Priya was at all material times aware of the verbal agreement and her representation that she would relinquish her share, right and entitlement in the Evans Street Property constituted a clear and unequivocal promise by her which Jeevan relied upon.
- That as evidence of such representations and agreement, his father with the consent and knowledge of Priya, agreed to transfer and did transfer the T&TEC services at the Evans Street property in the name of his wife, Sharon. In addition to this, by letter dated 6th January, 2014, Priya wrote to WASA conveying her authorization to Sharon to be an agent and changed the name on the WASA bills at the Evans Street property to Sharon's name.

44. Jeevan sets out the following as particulars of reliance:

- (i) At all material times he treated the Evans Street property as his own and relied upon the representations contained in the agreement and held the belief or expectation that the Evans Street property would exclusively go to him.
- (ii) Priya at all material times visited Jeevan at the Evans Street property and never made demand for the property or request him to pay her for any interest therein.
- (iii) Jeevan and his wife over the past 20 years and in particular the last four years conducted major repairs and maintenance to the Evans Street property totalling to approximately \$409,000.00 using his own monies and that of his wife obtained from an inheritance left by her father and partly from a loan.
- (iv) From time to time, Jeevan conducted repairs of motor vehicles at the Evans Street property and practised his trade as a mechanic with the full knowledge and consent of Priya.
- (v) Priya herself brought her own motor vehicle for repairs by Jeevan at the Evans Street property and made no demands for the Evans Street property.

45. In these circumstances, Jeevan contends that it is inequitable and unconscionable for Priya to resile from her representation and that she is estopped from making any claim to any interest in the Evans Street property and is not entitled to the relief claimed.
46. In the alternative, he states that for him to vacate the Evans Street property will cause undue hardship on him and his family and he does not have the financial capacity to purchase a property of his own and/or purchase Priya's share in the Evans Street property.
47. By his counterclaim, he seeks an order to remain and reside on the Evans Street property; a declaration that the verbal agreement made amongst his father and Priya and him on or about 2006 and confirmed on diverse occasions thereafter is binding; a declaration that he is entitled to the entirety of the premises situated at No. 9 Evans Street, Curepe and an order that Priya does convey her one half interest in the Evans Street property to him.
48. In her reply⁷ Priya denied that Jeevan moved into the Evans Street property when it was in a state of abandonment and repair. She contended that Jeevan's relationship with her father was not cordial but rather was one of discord. She further denied that there was an agreement for her to relinquish her share and interest in the Evans Street property and contends that her father approached Jeevan to settle the Evans Street property so that she can receive her share but this resulted in an argument between Jeevan and her father. She stated that she received the Enterprise property because of the relationship she shared with her father and not because of any agreement. Her father transferred the T&TEC bill to Sharon's name because they were living on the Evans Street property and Jeevan and Sharon asked her father on several occasions to transfer the electrical bill in their name. She contends this was not done pursuant to any agreement.

The issues

49. The parties agreed that the following issues are to be determined at this trial:
- (i) Whether there was an agreement between the Claimant and the Defendant to transfer all her share and interest in the property situate at No. 9 Evans Street Curepe to the Defendant;

⁷ Filed December 14th, 2016

- (ii) If the answer to (i) is yes, what are the terms of that agreement;
- (iii) Whether the Defendant's course of conduct over the last twenty (20) years is as a result of the alleged agreement;
- (iv) Whether the Claimant is obligated to transfer her share and interest in the said property to the Defendant in pursuance of the alleged agreement or how much of her share of interest should be transferred having regard to the alleged course of conduct;
- (v) The nature and cost of the repairs conducted by the Defendant since residing at the said property; and
- (vi) Whether the Claimant is entitled to occupation rent and a share of the rent receipts from the Defendant.

50. Although not an agreed issue, obviously if the answer to (i) is no and there is no agreement between the parties, how is the Court to exercise its discretion under section 4 of the Partition Ordinance and is there any good reason not to sell the Evans Street property?

51. As discussed later in this judgment, even though Jeevan may not be able to successfully avail himself of promissory or proprietary estoppel, equitable principles will equally apply in the exercise of the Court's discretion under the Partition Ordinance.

Proprietary and Promissory Estoppel

52. The Defendant in his written submissions rely on both the doctrines of proprietary and promissory estoppel although the nub of his case is that there was an express promise or agreement by Priya to relinquish her share to him.

53. In **Snells Equity 31st Edition, 2005**, the learned author states at para 10-08:

“Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise,

the party making the promise or assurance will not be permitted to act inconsistently with it.”

54. Jeevan must establish that Priya had represented that he will obtain her interest in the Evans Street property “either by making an express promise ...as...where...a mother assures her daughter that she will have the family home for life ...or by encouraging the claimant to believe that she will obtain such interest by words or conduct ... or by encouraging the claimant's belief passively by remaining silent. It is not necessary for the claimant to prove that the defendants agreed that the promise or assurance would be irrevocable since it is the claimant’s detriment which makes the assurance binding and irrevocable provided that it was clearly intended to be acted upon” See **Snell’s Principles of Equity 31st Edition** and **Malyn Bernard v Nester Patricia Ralph** CV No. 2010-00120.
55. The principles of proprietary estoppel are well rehearsed in several UK and local judgments. See **Taylor Fashions Ltd. v. Liverpool Victoria Trustee Co. Ltd** [1981] 1 All ER 914, **Thorner v Major** [2009] UKHL 18, **Fulchan v Fulchan** CV2010-03575, **Savitri Lalla v Sinanan Lutchman and Christopher Lutchman** CV2015-02125, **Pena v Pena** HCA No. 258/99 Boreaux J. Importantly, to acquire an equity in this case, the party with an interest in land, Priya, must create an expectation or encourage Jeevan to have an expectation that her interest will be acquired. Jeevan must rely on the faith of that expectation and with the knowledge of Priya and without objection from her, act to his detriment in connection with such land. If so, a Court of equity will compel Priya to give effect to such expectation.
56. The elements of promise or encouragement, acting upon such promise or encouragement with the expectation and belief of the promise and acting to the detriment of the promise must be clearly established by Jeevan. It would then be a matter for the Court to determine how the equity is to be satisfied.
57. Equally, these elements of proprietary estoppel must be examined holistically in the round and are not “watertight compartments”. The Court will examine the alleged inducement, encouragement and detriment to determine if they are both real and substantial. Ultimately, the Court “must act to avoid objectively unconscionable outcomes”. See Jamadar JA in **Mills v Robert** CA T243 of 2012 where he stated at paragraph 19 and 22:

“19. In respect of the law of proprietary estoppel we are more troubled about the correctness of the application of the law. Whereas in promissory estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect in the law of proprietary estoppel there is no absolute requirement for any findings of a promise or of any intentionality.....

22. In proprietary estoppel therefore, the focus shifts somewhat from the search for a clear and unequivocal promise and for intentionality, to whether the party claiming the benefit of the estoppel had a reasonable expectation induced, created or encouraged by another, and in those circumstances acted detrimentally to the knowledge of the other. For proprietary estoppel to operate the inducement, encouragement and detriment must be both real and substantial and ultimately the court must act to avoid objectively unconscionable outcomes.”

58. It is indisputable in this case that Jeevan spent the majority of his life at the Evans Street property without demur from anyone and that he expended considerable sums on the Evans Street property. However, contributions alone does not give rise to an equitable interest. His contributions must fit into the analysis of detrimental reliance discussed above before equity can come to his aid. In **Harry Fulchan v Naresh Fulchan** CV2010-03575, Rajkumar J as he then was noted that not each and every contribution made to a property would give rise to an equitable interest. At paragraph 17 he stated:

“17. Routine maintenance activities on property that is occupied by such a claimant, such as cleaning or painting, would not usually fall into the category of detrimental actions that require compensation by the award and recognition of an equitable interest in property. This is activity to be expected of anyone who occupies and has the benefit of occupying property.”

Partition

59. Although not specifically stated in the proceedings, the Claimant is relying on Section 4 of the Partition Ordinance Chap. 27 No. 14 in that she seeks as half owner of the property, a sale of the joint property. Section 4 provides :

“In a suit for partition, where, if this Ordinance had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively to the extent of one moiety or upwards in the property to which the suit relates, request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.”

60. In **Pena v Pena** HCA No. 258/99 Beraux J (as he then was) noted at page 9:

“Under section 4, the court shall order a sale at the request of the party or parties holding one half share or more unless there is good reason not to do so. The onus is on the person seeking to prevent the sale of the property to show good reason.”

61. In **Porter v Lopes** [1977] 7 Ch. D. 358 Jessel M.R in considering section 4 of the Partition Act 1868 observed that under this jurisdiction:

“The Court must see some good reason why there should not be a sale. I do not say there may not be some other reason from the peculiar nature of the property, but it must be a good reason against the sale.”

62. What is a “good reason” is a question to be determined in the context of each case. No finding by another Court on what is “a good reason” can bind this Court. In **Alexander v Alexander** CV2004-00250, in finding that the Defendant showed no good reason why the sale should not be ordered, Rahim J considered the following factors at paragraph 48:

“a) The Defendant and his family have resided at the property for several years while the Claimant has not.

b) That the Defendant has expended money on the property.

c) That a sale will cause some hardship to the Defendant but that this hardship can be curtailed by an order that he be permitted to bid at the sale.

d) That is it impractical to partition the property consistent with each party’s half share entitlement. The area of land is 662.7 square metres or 7133.24 square feet, roughly 2100 square feet more than one lot. One of the existing houses appears to be on a larger portion of the plot so that an even division is impractical.

e) That in any event, having regard to the high level of acrimony between the Claimant and the Defendant, a partition is likely to be of even more deleterious effect to the relationship of the parties.”

63. Section 3 of the **Partition Ordinance**⁸ reads:

“In a suit for partition, where, if this Ordinance had not been passed, a decree for partition might have been made, then if it appears to the Court that by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.”

64. It is when the Court, when in considering an application for partition or sale of property under section 3 of the Partition Ordinance it ought to have regard to considerations such as the nature of the property, the number of the parties interested or presumptively interested, the absence or disability of the some of the parties, whether a sale of the property would be more beneficial to the parties than a division of the property between them.

65. Conversely under section 4 of the Partition Ordinance, where a party requests the Court to direct a sale of property and a distribution of the proceeds instead of a division of the property, the Court is entitled to direct a sale of the property, unless it sees any good reason for not allowing the sale.⁹ The onus therefore falls on the party seeking to prevent such sale of the property to provide good reason.¹⁰

66. In **Drinkwater v Ratcliffe**¹¹, Jessel MR in commenting on the effect of the equivalent English Act observed that:

⁸ See Partition Ordinance Chap. 27 No. 14

⁹ See section 4 of the Partition Ordinance Chap. 27 No.14

¹⁰ See **Felix Pena v Alisa Pena** HCA No.258 of 1999 per Justice Beraux (as he then was) at pg. 9

¹¹ [1875] LR 20 Eq. 528, 530

“The 3rd section gives power to the Court to sell for certain reasons. These reasons are specified in every case but one. The reasons specified are, the nature of the property, the number of the parties interested, the absence or disability of some of the parties. The reasons are unspecified in one case, viz., where, by reason "of any other circumstance," a sale of the property and distribution of the proceeds would be more beneficial to the parties interested than a division of the property between or among them. Whenever that happens, and any party interested applies for a sale, the Court may direct a sale. It is an absolute power of sale on the request of anybody, provided the Court is satisfied that it would be more beneficial for the parties interested than a division.”

67. Further, in commenting on the effect of section 4 Jessel MR also observed:

“Then the 4th section provides that if the parties interested, to the extent of a moiety or upwards, request a sale, the Court shall sell, unless it sees good reason to the contrary - that is, irrespective of the nature of the property, irrespective of the number of persons, irrespective of absence or disability, irrespective of any special circumstances which make the Court think it beneficial. The parties interested to the extent of one moiety are entitled to a sale as of right, unless there is some good reason to the contrary shewn; they have not to shew any reason for the sale, but a reason to the contrary must be shewn.¹²

68. This therefore begs the question, whether this Court, at the Claimant’s request should order a sale or partition of the Evans Street property. The Claimant is not entitled to provide any reason for requesting the sale. The onus is on the Defendant in this case to show good reason why the Evans Street property should not be ordered for sale.

69. In my view, a “good reason” is open-ended and a Court exercising its equitable jurisdiction is entitled to take into account such matters that may make a sale unfair or unjust. It may well include such matters considered in section 3 of the Partition Ordinance and any other reasons which a Court may consider good enough in the circumstances to avoid a sale. Section 5 of the Partition Ordinance provides another option available of paying for the co-owners share of the joint property. Section 5 of the Partition Ordinance provides:

¹² Ibid at pages 530-531

“In a suit for partition, where, if this Ordinance had not been passed, a decree for partition might have been made, then if any party interested in the property to which the suit relates requests the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court may, if it thinks fit, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions; and in case of such undertaking being given, the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit, and may give all necessary or proper consequential directions.”

70. Importantly in a partition, two issues may arise for the co-owners a) equitable accounting and b) occupational rent.

Equitable Accounting

71. In **Re Pavlou** [1993] 1 WLR 1046, a husband and wife were joint tenants of a house for ten years after which the husband left. The wife continued to live in the home and paid the mortgage and effected major repairs on the property. Three years later, the wife petitioned for divorce and obtained a decree nisi. One year later a bankruptcy order was made against the former husband and the joint tenancy was severed. It was agreed that there must be an equitable account to determine the wife’s fair share. Millet J opined:

“On a partition suit or an order for sale adjustments could be made between the co-owners, the guiding principle being that neither party could take the benefit of an increase in the value of the property without making an allowance for what had been expended by the other in order to obtain it: see *Leigh v. Dickeson* (1884) 15 Q.B.D. 60. That was a case of tenants in common, but in my judgment the same principle must apply as between joint tenants; the question only arose on a partition or on the division of the proceeds of sale, the very point of time at which severance occurred if there was a joint tenancy. The guiding principle of the Court of Equity is that the proportions in which the entirety should be divided between former co-owners must have regard to any increase in its value which has been brought about by means of expenditure by one of them.

I must make it clear of course that, in deciding as I do that the wife is entitled as against the trustee in bankruptcy to credit for one half of any repairs or improvements, there has to

be an inquiry as to the amount expended and the increase, if any, in the value of the property thereby realised. Much expenditure on property is not reflected in any increase in value, and most expenditure on property results in a much smaller increase in value than the amount expended. The wife will be entitled, as against the trustee in bankruptcy, to credit only for one half of the lesser of the actual expenditure and any increase in the value realised thereby.”¹³

Occupational rent

72. In **Re Pavlou**, Millet J opined at page 1050:

“First, a court of equity will order an inquiry and payment of occupation rent, not only in the case where the co-owner in occupation has ousted the other, but in any other case in which it is necessary in order to do equity between the parties that an occupation rent should be paid. The fact that there has not been an ouster or forceful exclusion therefore is far from conclusive.”

73. Against the backdrop of these principles I will examine the evidence and then analyse them under the issues of estoppel and partition.

The evidence

The Claimant’s witnesses

74. In her examination in chief¹⁴, Priya testified that she and Jeevan were never close and never had any sort of relationship. Rather, her parents tried to force a relationship between them. She confirmed she was only three (3) or four (4) years old when Jeevan left their grandparents home where they lived after their parents divorced.

75. She did visit Jeevan at the Evans Street property on a few occasions which were attempts by her parents to foster a relationship with her and Jeevan but this did not improve their relationship.

76. She contends that when her father was alive there was no agreement between him, her mother, Jeevan and herself that the Evans Street property would be left to Jeevan’s exclusive benefit

¹³ **Re Pavlou** [1993] 1 WLR 1046 at 1048-1049

¹⁴ Witness statement of Priya Marajh filed 11th August, 2017

nor did she agree to relinquish her interest in the Evans Street property in favour of Jeevan. She is also unaware that her father named her and Jeevan as joint beneficiaries to his gratuity and/or proceeds of any life insurance policies.

77. Upon the death of her father, she received the sum of \$5000.00 per month for approximately three (3) years from a policy her father held with Colonial Life Insurance Company Limited (CLICO) but this was not in pursuance of any agreement with Jeevan. Her father also transferred the property situate at Niblette Street, Enterprise, Chaguanas via a Deed of Gift but this was also not made pursuant to any agreement with Jeevan.
78. She contends that shortly after her father's death, Jeevan requested that the account at WASA relative to the Evans Street Property should be transferred to his wife's name to which Priya refused to do. Jeevan and his wife, Sharon, kept calling her and Jeevan also sent a letter with his daughter, Nicole, for Priya to sign. It was only after Priya obtained legal advice she decided to authorize WASA to transfer the account to Sharon's name. Thereafter, Sharon told her that they should "talk" about transferring Priya's share in the Evans Street property to Jeevan to which Priya immediately refused to do. That was the first time the issue of her transferring her shares in the Evans Street property came up.
79. Priya contends that Jeevan and his wife continued to harass her to transfer her interest in the Evans Street property to Jeevan which she refused to do despite repeated calls from Jeevan. When she refused to speak to Jeevan, she was informed by her grandmother, Molly Sankar that Sharon told her that Jeevan would get a gun for Priya. As a result, Priya made a report at the Cunupia Police Station.
80. She contends that to her knowledge, her father built an apartment at the Evans Street property for a family friend Radica to occupy as a tenant who did pay rent while in occupation. However, when Radica vacated the premises, she contends that a police woman, who worked at the same police station as her husband, operated a beauty salon at the premises part time.
81. She further contends that she was aware that Jeevan painted the roof but he did not replace any of the galvanize. She was also informed by Jeevan that he "burglar proofed" the upstairs of the Evans Street property.

82. She was told by her father that it was his intention that the Evans Street property should be shared equally between Jeevan and herself.
83. In cross examination, she was unshaken as to her testimony that there was no agreement made between the parties either at 2006 or an earlier period. Although she received a monthly sum of \$5000.00 from the proceeds of insurance, she consistently indicated that it was a result of her good relationship with her father. Importantly, however, she is unable to say how much was invested by Jeevan in the upkeep of the Evans Street property. She does give him credit for making an investment in the Evans Street property but is unaware of the extent of that investment. She is therefore not in a position to deny that Jeevan did in fact invest in the Evans Street property in making substantial improvements.
84. After her father died she would have received his monies in a joint bank account, \$5000.00 a month from his insurance and the property in Niblette Street, Enterprise. Interestingly, the evidence demonstrates that she did indeed have a good relationship with both her father and mother.
85. When questioned by the Court at the end of her cross examination, Priya stated she would prefer if her share was realized in monetary terms rather than her physically moving into the Evans Street property since she has a mortgage on a property in Santa Rosa which she would like to clear. She does acknowledge Jeevan made improvements to the Evans Street property but she was firm in her contention that there was no agreement on her part to relinquish her share in the Evans Street property.
86. In her examination in chief¹⁵, Daya Marajh contends that at the time when Jeevan was living at the Evans Street property on his own, it was not in a state of disrepair. When she left the property it was in “perfect condition”, fully furnished with three bedrooms, a kitchen, dining room, porch, living room and one toilet and bath. She was also informed by Dayanand that Jeevan brought persons onto the Evans Street property to drink, lime and smoke.
87. In or around 1992 when she visited the Evans Street property it was “dirty, the beds were unkempt and dirty dishes were always in the sink.” Jeevan also changed the locks on the property to keep her out.

¹⁵ Witness statement of Daya Marajh filed 11th August 2017

88. She was informed by Dayanand that there was always an argument between him and Jeevan every time he visited the Evans Street property. She contends that Jeevan did not have a good relationship with his father and that they were not on speaking terms up to the time his father passed away.
89. She further contends that when Dayanand was alive there was no agreement between him, her, Priya and Jeevan that the Evans Street property would be left to the exclusive benefit of Jeevan.
90. She stated that Dayanand never assisted her in paying off the mortgage at the Citrus Drive property. That property is still in her name and was never transferred to Priya nor did she promise to transfer same pursuant to any agreement.
91. She also contends that the life insurance policies held by Dayanand were surrendered during his lifetime and his gratuity was used to pay off his medical expenses. She was not aware whether Jeevan and Priya were joint beneficiaries on the policies or gratuities.
92. After her divorce, Dayanand built an apartment for Radica, a family friend who had nowhere to go, and after Radica vacated the premises, Jeevan informed her that he wanted to rent the apartment. The apartment was thereafter rented to a woman who operated a hair salon.
93. She contends that there was no filling of the land to the road nor electrical works. Jeevan added a gate downstairs but there was no garage built. She knew he “burglar proofed” the upstairs of the Evans Street property.
94. She further contends that there have been no significant structural improvements to the Evans Street property since it is in almost the same condition as it was when she resided there.
95. In her cross examination she revealed that her relationship with Jeevan was a cordial one. She cannot deny the expenditure of Jeevan on the home and she admits to improvements being conducted on the Evans Street property. Her only dispute was to the quality and extent of those improvements. However, her visits to the Evans Street property were inconsistent and transitory for her to make any proper assessment and in any event, the Court has been provided with two reliable snapshots of the state of the Evans Street property in 1981 and 2016. She too did nothing to dissuade Jeevan from making improvements to the Evans Street property.
96. For some reason, the father made no special arrangements for Jeevan in his will, nor joint bank account, nor as an assignee of any benefits, nor in the preparation of any further deeds. The

Defendant's case is that this demonstrates the credibility of the existence of the alleged agreement, however, it equally points to a father making provision for his daughter and being content with leaving Jeevan, whom he abandoned at the age of 13, with half share of the Evans Street property.

The Defendant's witnesses

97. In his examination in chief¹⁶, Jeevan for the most part repeated his case as set out in the Defence and Counterclaim. Importantly, he contended that in the last twenty seven (27) years of his father's life (this would be from 1986-2013), they resumed cordial relations and went to outings and family gatherings. He further contended even prior to 2006, in 1993, at the funeral of his grandfather, Chunilal Sankar, he heard Priya stating that she would give up the Evans Street property to him and that she would take the Citrus Drive property and any gratuities and proceeds of insurance from their parents. Between 1990-2013, the agreement was repeated on several occasions during family gatherings, funerals, weddings, at Christmas time, Divali time and prayers.
98. He stated that he relied on Priya's promises, representations and conduct over the years and treated the Evans Street property as his own and that he was solely entitled to the property.
99. In cross examination, Jeevan's evidence appeared inconsistent and prone to exaggeration. It is implausible that Priya would have made the alleged agreement in 1993 when she was just ten (10) years old even though under cross examination Jeevan was insistent that she did. He further embellished this by saying that Priya would have made this agreement when she was seven (7) years old in 1990.
100. In any event, in 1990 there would be no agreement by the parties with regard to Citrus Drive and the Niblette property in Enterprise as that property in Citrus Drive was not even purchased in 1990 and the Niblette property was purchased in 2005 by his father.
101. When confronted with the fact that his father purchased the Niblette property in 2005, Jeevan claims that his father was renting that land in the 1970's. However, he made no mention of this in his witness statement nor is there any deed produced to demonstrate that this was the case. Nor has he provided this Court with any documents to demonstrate that gratuities were

¹⁶ Witness statement of Jeevan Marajh filed 11th August 2017

assigned to Priya. The Court was not even told by Jeevan nor provided with any details surrounding such gratuities if he was entitled to it at all.

102. He further embellishes his story by demonstrating that he made investments in the property based on this agreement in 2006 but a substantial amount of the investment is made prior to 2006. When asked to explain why he has no documents to support his case, he conveniently accused his sister of removing everything from his father's office after he died.
103. His evidence on the alleged agreement in 2006 was vague, imprecise and unreliable.
104. In Sharon's examination in chief¹⁷, she contended that Priya and Jeevan shared a good relationship up until this instant matter. Priya visited Jeevan on many occasions at the Evans Street property to fix and maintain her vehicle since Jeevan is a mechanic. She, Jeevan and their daughter, Nicole, also visited Priya at the Citrus Drive property on many occasions and they interacted at family gatherings.
105. She contends that she never heard Priya indicate that she wanted the Evans Street property. Rather there were representations and an agreement with Priya that the Evans Street property would be solely for Jeevan and she, Priya, would receive the Citrus Drive property.
106. In 1993, at the funeral of Chunilal Sankar she also heard Priya state that she was "okay" with giving up the Evans Street property to Jeevan. She contends that she had a good relationship with her father-in-law until his death in 2013.
107. Over the last 20 years, she, along with Jeevan and Nicole, treated the Evans Street property as their own. The majority of renovation works on the property was done by Mr. Paul Heeralal. She contends that Priya never objected to the renovation works.
108. She contends that during conversations between Daya Marajh and herself, Daya assured her that the Evans Street property was for Jeevan.
109. In cross examination the defects in Jeevan's evidence was also reflected in her testimony. It is clear that she had an interest to serve in supporting Jeevan and her own case to preserve their interest at the home.

¹⁷ Witness statement of Sharon Marajh filed 11th August, 2017

110. In Tardath Bissoondial's evidence in chief¹⁸, he contends that on numerous occasions (including around 2006 at family gatherings in Sooknanan Street, Aranguez) Daya Maharaj told her and others in her presence that the Evans Street property was for Jeevan and the Citrus Drive property was for Priya.

111. In or around 2011, he informed Dayanand that he wanted to purchase his land in Enterprise but he responded that his land in Enterprise was for Priya and the Evans Street property was for Jeevan. It is important to note in his testimony there is no direct reference to Priya specifically agreeing to relinquish her share.

112. In Paul Heeralal's examination in chief¹⁹, he stated that he conducted renovation works for Jeevan at the Evans Street property. These included:

- (i) Burglar proofing the household in 1991;
- (ii) Changing and painting of roof in 1998;
- (iii) Cutting off drains to secure the yard of the household;
- (iv) Backfilling of yard;
- (v) Paving the vicinity around the household;
- (vi) Paving the driveway and yard;
- (vii) Erection of a wall around the household;
- (viii) Installation of water tanks;
- (ix) Building of garage;
- (x) Tiling of apartment;
- (xi) Installation of windows;
- (xii) Building of walls in the driveway;
- (xiii) Painting of the home in 2012.

¹⁸ Witness statement of Tardath Bissoondial filed 11th August 2017

¹⁹ Witness statement of Paul Heeralal filed 11th August, 2017

113. These renovations were conducted during 1991 to 2012. He recalled that in 2011, Dayanand told him that Priya “had her place to live in Cunupia and his son (Jeevan) had a place to live in Curepe so that they did not have to rent and search for a home.”

114. In cross examination, he admitted that the receipts were only prepared for the purposes of this case. While the receipts were not contemporaneous documents, the Court is satisfied by his cross examination of his recollection of the main items of work executed on the property for Jeevan and his family.

115. In drawing my conclusions on the facts in this case, I am mindful of the Court’s duty to analyse the credibility of witnesses based upon their internal and external consistencies and inconsistencies. It is important, therefore, for the Court to examine internal and external inconsistencies in 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 rivaling 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.

Estoppel: Promise/Representation

116. Based on the testimony of the witnesses, I am of the view that no promise or representation was made by Priya to Jeevan that she will relinquish or transfer her share of the Evans Street property to him. I say so for the following reasons.

117. First, Jeevan’s claim of an alleged verbal agreement is contradictory in his own pleadings and testimony. In his defence he claims that the agreement was made in 2006 by his parents, himself and Priya. In his relief, he claims the agreement was made in 2006 by his father, Priya and himself, no mention is made of his mother. The said agreement he contends was repeated several times. In his witness statement he contends that the said agreement was made in the presence of Sharon and other family members, yet Sharon in her own evidence omits to mention anything or give any details with respect to an agreement arrived at in 2006. Under cross examination he then admits, quite candidly, that his case was that in 1993 there was an

agreement that he would get the Evans Street property and that Priya would get the Citrus Drive property, the father's proceeds of gratuity, policy of insurance and the property at Niblette Street, Enterprise. This is not only inconsistent with his pleaded case but cannot plausibly make sense as in 1993 the Niblette Street Property was not acquired at that time.

118. Second, when challenged on whether there was any such agreement Jeevan replies in cross examination that "it was a constant ongoing agreement". This is a rather vague and imprecise answer but really represents the uncertainty of Jeevan's own case and the inability to precisely identify when Priya would have agreed to relinquish her rights if at all.

119. Third, in insisting that the alleged 2006 agreement was repeated "prior" to that date takes Jeevan's case into the realms of implausibility and fantasy. So much so that he is forced to admit that the alleged 1993 agreement would have been made by Priya when she was ten (10) years old. He further embellishes his story by contending that the agreement dates as far back as 1990 when Priya would have been seven (7) years old. As indicated earlier, while the parents may have discussed the Evans Street property as if it was still theirs, critical for the pleaded case of Jeevan and indeed the case in equity would be to demonstrate that it was Priya herself who consciously and with mature deliberation represented to Jeevan that the Evans Street property is his. For a twenty three (23) year old Jeevan to rely on the promise of his seven (7) year old sister makes his claim unrealistic and opportunistic. It is implausible that Priya at nine (9) years of age would be aware or cognisant of any interest in the Evans Street property to be given to Jeevan quite apart from the fact that Jeevan was living there.

120. Fourth, by 1986 when Priya was four (4) years old, her father, Dayanand would only have a life interest in the Evans Street property and there is nothing for him to give to Jeevan. The remainder is only that of Priya's to give.

121. Fifth, insofar as it can be construed as a family arrangement, there is no sufficient oral evidence or evidence of conduct to support it. Daya and Priya remain unshaken that no such agreement took place. This must be understood in contrast to any family understanding that Jeevan was in fact living at the Evans Street property. But it was a property that was the "children's nest egg". There are no documents produced to give effect to the oral agreement. There are no steps taken by the father to give life to this alleged agreement when in fact he was able to transfer the Niblette property to Priya.

122. Far from the Niblette property transfer being viewed as corroborating Jeevan's view that there was an arrangement with respect to the parents' property, it works against him as the father, Dayanand took no step to rectify the Evans Street property conveyance when clearly in 2011 he had the legal advice and representation to have the Niblette conveyance effected. Clearly, it must demonstrate that the parents recognised that there was nothing short of getting Priya herself to convey her interest to Jeevan.
123. Sixth, the Citrus Drive property is still in the name of the mother, Daya, and Priya's benefit of same is consistent with her own close relationship with Priya stemming from the matrimonial order rather than corroborating evidence of Jeevan's alleged agreement.
124. Seven, the fact is that Jeevan's father abandoned him and it will be unusual for a sudden change in heart to convey the entirety of Evans Street property to him when there is no sufficient evidence of a strong relationship with Jeevan and his father or stronger than that with Priya. Indeed, the alleged agreement which conferred the majority of the parents' property to Priya is also consistent with Priya's relationship with her mother and closer relationship with their father. While Jeevan does attempt to paint a close relationship with his father, there is absolutely no accounting by Jeevan for the father's desertion of him when he was a youth to live on his own means without support and in violation of the matrimonial order.
125. Finally, the evidence of Tardath is significant in what it omits to say explicitly. Tardath's dealings in relation to learning of this alleged agreement was from Daya and not from Priya. This is significant as Daya had nothing to give to Jeevan in relation to the Evans Street property and insofar as Tardath paints the picture of a "boastful" Daya, this is equally consistent with the "boastful" elder speaking about their children's affairs in general terms. Indeed, there is merit and truth in her statement that Jeevan is provided for in the Evans Street property and Priya in the Citrus Drive property as they both lived in their separate households. But this is a far cry from saying that Priya had agreed to give up her share in the Evans Street property to Jeevan. She always maintained her interest, she simply never articulated any rights of occupation or ownership over the years.
126. There is no evidence that the proceeds of the insurance did in fact go to Priya. The evidence of the alleged agreement is too vague, nebulous, scattered and incoherent to prove that it is more plausible that Priya had relinquished her share in the Evans Street property.

127. Insofar as Counsel for the Defendant relies on Priya's silence as a consequence, this was not Jeevan's pleaded case. In any event, the fact that Jeevan himself saw the need to approach Priya only after his father died demonstrates, in my view, an obvious awareness notwithstanding Priya's years of silence about his occupation, he knew that the property was not his until Priya agreed to relinquish her share to him.

Detrimental reliance

128. By the time of the alleged agreement made in 2006, a significant amount of the expenses had already been incurred. It is difficult for Jeevan to demonstrate detrimental reliance on any alleged promise for the following reasons.

129. Although Jeevan did not himself expend any significant money on the home, it was his wife, Sharon who made the financial investment on behalf of the family. In any event, a substantial amount of expenditure occurred prior to 2006 and it is difficult to imagine that the pre 2006 expenditure was based on promise made by a ten (10) year old girl.

130. In any event, the contributions and the investment made is equally consistent with Jeevan supporting himself and making the Evans Street property his home entirely without reference to any member of his family. This is more plausible and consistent with a child of a divorce, abandoned at his grandparents, deserting that home to make a life of his own at the Evans Street property. His expenditure, significant as it was over the years, fits consistently with a picture of a young man determined to succeed against all odds, making use of the only property which was provided to him for his own financial security and where no promises were held out to him for any other property in the family. He was the proverbial "black sheep", rather than the "proverbial heir" to the Evans Street property.

131. From this analysis, I accept Priya's evidence that she made no such agreement with Jeevan and neither did Sharon. It is simply a case of Jeevan believing the house to be his after his unilateral occupation of same and absence of any dissent from his sister. But this is not enough to create an equity in the manner in which the case has been framed.

Partition

132. However, this is not the end for Jeevan. There are many reasons why a sale would not be desirable in the circumstances of this case. The fact is it appears that Jeevan is of little means.

His wife is suffering from ill health. His daughter has just emerged unto the employment market and no doubt would still look forward to a stable base to call home until she establishes herself professionally. Jeevan and his family treated the Evans Street property as home for close to thirty one (31) years without any dissent by Priya. There is no acrimony between the two siblings save for the unpleasantries that may arise which attends litigation. Jeevan's contribution to the Evans Street property over the years has been significant and the value of the Evans Street property has increased tremendously by 80% since 1981.

133. Jeevan did not oust Priya from living at the Evans Street property. From an early age she elected not to live there. The evidence of the rental of the Evans Street property was negligible in any event. The notion of occupational rent, therefore, simply does not arise. However, there must be equitable accounting between the two co-owners:

“Therefore, no remedy exists for money expended in repairs by one tenant in common, so long as the property is enjoyed in common; but in a suit for a partition it is usual to have an inquiry as to those expenses of which nothing could be recovered so long as the parties enjoyed their property in common; when it is desired to put an end to that state of things, it is then necessary to consider what has been expended in improvements or repairs: the property held in common has been increased in value by the improvements and repairs; and whether the property is divided or sold by the decree of the Court, one party cannot take the increase in value, without making an allowance for what has been expended in order to obtain that increased value; in fact, the execution of the repairs and improvements is adopted and sanctioned by accepting the increased value. There is, therefore, a mode by which money expended by one tenant in common for repairs can be recovered, but the procedure is confined to suits for partition.”²⁰

134. In my view, Priya must accept the additional value of the home to be the result of her brother's effort on both their behalf. This has diminished her share on an equitable basis to 30%. Neither party has explored a partition of the Evans Street property and neither has requested it. However, the fact is that Jeevan was content to live on the upper floor and on occasion rent the self-contained apartment on the ground floor to a stranger. There could hardly be any protest if the Evans Street property is partitioned with the self-contained apartment

²⁰ Leigh v. Dickeson, (1884) 15 Q. B. D. 60 at 67

being used by Priya for her absolute use and occupation. She can monetise this self-contained apartment by renting it and by this means, in an area such as St. Augustine near to the Eastern Main Road, easily command a rent which will assist in her mortgage payments. The car port and the front yard can be common areas for both of their use.

135. In my view, having regard to Jeevan's monetary investment, giving account for Priya's share of such investment and her inaction over these years in the Evans Street property, it is equitable to quantify Priya's interest on a sale in the Evans Street property at 30%. Partitioning the property by giving Priya the self-contained apartment in a rough way represents that 30% interest in the Evans Street property.

136. In the event that neither or either party finds such a solution workable, they may then trigger the option for sale in writing. I have set out the conditions of such a sale earlier in my judgment.

Resolution

137. I have considered the evidence advanced and have determined the issues discussed above against Jeevan as follows:

- (a) There was no clear nor unequivocal statement by Priya that she relinquished her rights and interest in the Evans Street property.
- (b) Priya maintained her interest in the Evans Street property.
- (c) There is no evidence of relying on any representation made to him by Priya.
- (d) It is not in any event unconscionable for Priya to maintain an interest in the Evans Street property.

138. However, equity will intervene in the crafting of the appropriate orders under the Partition Ordinance. Having regard to the therapeutic and anti-therapeutic impact of an order for sale on Jeevan's family, the Court has crafted the orders set out earlier in this judgment. The Evans Street property cannot be viewed as a sterile asset. It has a monetary value as it has as a sentimental and moral one. It is equally Priya's financial "nest egg" as it is Jeevan's centre of stability. The Partition Ordinance would appear at first to be Solomonistic in its approach to difficult questions of co-ownership. But too often properties are sold as though to penalise parties for their inability to arrive at an agreement for the distribution of a joint asset. While an

agreement to partition is eminently sensible, it is understandable why emotions step in the way of a reasoned solution. The Court must not shirk in its responsibility of being solution oriented to point the parties in the direction of amicably resolving differences and creating a better future out of their relationships. This Court recognising the pitfalls of the Solomonistic justice meted out to these siblings when they were children would not repeat the mistake when they are now adults.

139. I had propose therefore on 22nd April 2018 at a further hearing to deliver this judgment whereby, unless the parties have arrived at an agreement, I will make the orders as set out in paragraphs 10-14 above.

Final Orders

140. The parties returned to the Court on 26th April 2018 and announced that unfortunately that there was no agreement between them. The Court therefore made the order set out in paragraphs 10-14 as its final order for the reasons set out in the judgment.

Vasheist Kokaram
Judge