

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2012-04337

BETWEEN

RAMNARINE RAMJEAWAN

Claimant

AND

**DEOLAL PERAI
ROSIE RAMSAROOP**

Defendants

Before The Honourable Madame Justice Margaret Y Mohammed

Dated the 21st November 2016

Appearances:

Mr. H.R.M. Seunath SC Attorney-at-Law for the Claimant.

Mr. Winston Seenath instructed by Mr. Capildeo P.B. Maharaj Attorneys-at-Law for the Defendant.

JUDGMENT

1. The Claimant instituted the instant action seeking the Court to declare that he is the owner of one half undivided interest in a parcel of land situate at Best Trace Penal which comprised 7 ½ acres (“the property”) which was transferred to him by his grandmother Sugia by Memorandum of Transfer (“the Claimant’s deed”); that he is entitled to be registered as the proprietor of one half undivided interest of the property and for the Defendants to deliver up to him or his attorney at law the Duplicate of the Certificate of Title for the purpose of having the Claimant’s deed registered.

2. The Claimant has alleged that in 1981 Sugia transferred her interest in the property to him but the Claimant's deed was not registered since he did not have the Duplicate Certificate of Title. To prevent anyone from registering any interest in the property a caveat was filed on his behalf on the 28th July 2001. The other one half interest was owned by Sugia's son Boodram who resided in the USA. In 2006 Boodram transferred his undivided half share in the property to the Defendants ("the Defendants deed"). In order to facilitate the registration of the Defendants deed, Mr Ramnarine Soorjan Singh, the attorney at law who prepared it, requested the Claimant to remove the caveat. The Claimant agreed to do so on the condition that Mr Soorjan Singh register the Claimant's deed since the latter had received the Duplicate Certificate of Title from the Defendants. Mr Soorjan Singh agreed to register the Claimant's deed. However, he was unable to do so since he encountered a difficulty with the Registrar General's department regarding the lack of a notation of Sugia's identification number by the thumbprint on the Claimant's deed. By the time the issues surrounding the Claimant's deed were resolved the Duplicate Certificate of Title was withdrawn from the Registrar General's department preventing him from registering the Claimant's deed.

3. The Defendants have challenged the validity of the Claimant's deed on the basis that it was not executed by Sugia and if it was, the circumstances surrounding the execution were suspicious. They have also contended that Sugia did not have the capacity to execute the Claimant's deed and that the consideration as stated in the Claimant's deed was not paid and therefore it is void.

4. The issues to be determined in this trial were:
 - (a) Did Sugia execute the Claimant's deed?
 - (b) Was Sugia competent to execute the Claimant's deed?
 - (c) If Sugia was competent, were the circumstances surrounding the execution suspicious to set aside the Claimant's deed?
 - (d) Does the non-payment of the consideration in the Claimant's deed render it void?

5. The Claimant had four witnesses namely himself, his cousin Mr Samuel Siddoo, his brother-in-law Mr Hashim Ali and Mr Ramnarine Soorjan Singh, the attorney at law who prepared and registered the Defendant's deed. The Defendants gave evidence on their own behalf and they relied on the witness statement of Dr Deonarine Mahabir.
6. There were significant disputes of material facts which arose in this matter. To determine which version of events was more probable in light of the evidence the Court was obliged to check the impression of the evidence of the witnesses on it against the: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions. (**Horace Reid v Dowling Charles and Percival Bain**¹ cited by Rajnauth-Lee J (as she then was) in **Mc Claren v Daniel Dickey**²).
7. The challenge in determining which version of the events was more likely was more difficult since there were limited contemporaneous documents to assist and there was no forensic evidence.

Did Sugia execute the Claimant's deed?

8. The Defendants contended that Mr Siddoo, the attesting witness had failed to prove due execution of the Claimant's deed. In particular they argued that the inconsistencies between the affidavit of due execution and the Claimant's deed demonstrated that it was not executed by Sugia. They also challenged Sugia's execution of the Claimant's deed on the basis that the thumbprint on the Claimant's deed was not Sugia's; the "X" mark on it was not made by Sugia but by Mr Samuel Siddoo; and the execution did not take place in the presence of Mr Vernon Jamadar at No 9B Harris Promenade San Fernando.
9. For a deed to be valid it must be signed³. Making one's mark on the document is treated as signing it⁴. The deed must be executed in the presence of one witness who is not a

¹ Privy Council Appeal No. 36 of 1897

² CV 2006-01661

³ Section 6 of the Registration of Deeds Act Chapter 19:06 ("the Act")

⁴ Kokaram J at Paragraph 15 in CV 2006-03676 Ruby Robinson Brito v Janet Augustine

party to it and a qualified functionary⁵; there must be an affidavit of due execution⁶ and in practice it is assumed that it is delivered as a deed unless there is evidence to show otherwise and the deed takes effect from the date of delivery⁷.

10. The onus was on the attesting witness to the Claimant's deed to prove due execution. In **Hill v Unett. Loxley v Hill**⁸ the Court held that a witness to a deed must not only prove his own attestation but also the execution of the deed. The onus was therefore on Mr Samuel Siddoo to prove that Sugia executed the Claimant's deed. I was satisfied from the evidence that Sugia executed the Claimant's deed for the following reasons.
11. Firstly, there was no independent evidence to challenge that the thumbprint on the Claimant's deed was not that of Sugia. According to Mr Siddoo he witnessed Sugia place her right thumbprint on the Claimant's deed after Mr Vernon Jamadar had explained the Claimant's deed to her. There was no evidence to challenge Mr Siddoo's evidence on the execution of the Claimant's deed by Sugia and there was no independent forensic evidence to dispute that the thumbprint on the Claimant's deed was not that of Sugia. In my opinion in the absence of any forensic evidence to prove otherwise I accept that the thumbprint on the Claimant's deed was Sugia.
12. Secondly, I accept that the signature of the functionary, was that of Mr Vernon Jamadar, attorney at law. Mr Siddoo's evidence was that he was a law clerk in Mr Vernon Jamadar's office. Therefore he must have known Mr Vernon Jamadar's signature from a lay person's perspective. The First Defendant accepted in cross-examination that the Claimant's deed was prepared by Mr Vernon Jamadar and he was unable to challenge the signature of Mr Vernon Jamadar as it appeared on the Claimant's deed. Notably the signature of Mr Vernon Jamadar appears both at the preparation certificate and as a witness to the Claimant's deed. In my opinion, the absence of any forensic evidence challenging Mr Vernon Jamadar's signature, the Court must presume that it was Mr Vernon Jamadar's signature. To do otherwise would be to engage in an exercise of

⁵ Section 7 (i) of the Act

⁶ Section 11 of the Act

⁷ *Murphy v Quigg and anor* [1996] 2 LRC 567 at p 571

⁸ 56 ER 541

speculation without any evidential basis where the consequences of making a finding that it is not Mr Vernon Jamadar's signature would in effect be impugning the said functionary's role both in the preparation of the Claimant's deed and in the witnessing of its execution. In keeping with the presumption that the signature was that of Mr Vernon Jamadar it is reasonable to assume that he was present when Sugia executed the Claimant's deed and he acted responsibly by explaining the contents and effect of the Claimant's deed.

13. Thirdly, there was no evidence that the procedure used to make the "X" mark on the Claimant's deed was fatal to the execution. In cross-examination, Mr Siddoo admitted that he personally made the "X" mark on the Claimant's deed since he used the procedure which was shown to him by Mr Vernon Jamadar which was he would make the "X" mark and then he would let the person whose mark it represented touch his pen. He then placed the initials "RTP" on the Claimant's deed. According to Mr Siddoo in Mr Vernon Jamadar's office, if the witness knew the person executing the deed it was not the practice to obtain the identification number of the person and that he did not think that it was necessary to include Sugia's identification number.
14. In my opinion, Mr Siddoo was following instructions from the attorney at law who had trained him in how to deal with the execution of a deed by an illiterate person. There was no evidence placed before the Court to impugn the procedure used. Indeed with respect to the lack of Sugia's identification number on the Claimant deed, Mr Soorjan Singh's evidence was that while the identification number is important, in previous years, deeds executed by a thumbprint was accepted without any notation of an identification number once the affidavit of due execution was done to verify the thumbprint. In my opinion, given Mr Siddoo's frankness with his role in the execution of the Claimant's deed, Mr Soorjan Singh's evidence and the lack of evidence to demonstrate that the practice followed by Mr Siddoo at the time was improper, I am unable to find that the procedure used by Mr Siddoo in the marking of Sugia's "X" on the Claimant's deed was improper.
15. Fourthly, the affidavit of due execution was not entirely accurate when it described the placement of Sugia's right thumbprint on the Claimant's deed but in my opinion this

inaccuracy was not material in challenging the validity of the Claimant's deed. The Defendants alleged that the affidavit of due execution did not describe what appeared on the Claimant's deed with respect to the placement of Sugia's thumbprint. They argued that Sugia's alleged thumbprint is not between the letters "R.T.P of Sugia" as it is at the end of the words and at the extreme right hand side of the document. However, the affidavit of due execution refers to Sugia's right thumbprint being placed between the letters "R.T.P".

16. It was not in dispute that the affidavit of due execution for the Claimant's deed was prepared many years after the Claimant's deed was executed. According to Mr Soorjan Singh, an Attorney at law in practice since 1986, the Claimant's deed was not registered by the Registrar General's department since he could not produce Sugia Identification Card. I accept Mr Soorjan Singh's evidence since I saw him as an independent witness. He had acted for the Defendants in the preparation of the Defendant's deed and he was one of the Claimant's witness. While I agree with the Defendants submission that in the Claimant's deed Sugia's thumbprint is not between the letters "R.T.P of Sugia" as it is at the end of the words and at the extreme right hand side of the document and the affidavit of due execution refers to Sugia's right thumbprint being placed between the letters "R.T.P", in my opinion this error in the affidavit of due execution was immaterial since she had executed it in the presence of Mr Vernon Jamadar and Mr Siddoo and what was material was the identification of the thumbprint, hence the request for Sugia's Identification Card.

Was Sugia competent to execute the Claimant's deed?

17. The Defendants alleged that Sugia was ill and bedridden in 1981 therefore she could not have given instructions to Mr Vernon Jamadar to prepare the Claimant's deed. Even if she did, when she affixed her thumbprint to the Claimant's deed she did not understand the effect of her executing it. In essence the Defendants asserted that Sugia lacked the physical and mental capacity to execute the Claimant's deed. The burden of proving that

Sugia lacked the mental capacity was on the Defendants. In **Gorjat and others v Gorjat**⁹ Sarah Asphil QC sitting as a deputy High Court judge stated at paragraph 139 that:

“Finally, at common law, the burden of proving lack of mental capacity lies on the person alleging it. To put the matter another way, every adult is presumed to have mental capacity to make the full range of lifetime decisions until the reverse is proved.”

18. The evidence from the witnesses on Sugia’s physical and mental capacity at the time of the execution of the Claimant’s deed was diametrically opposite. The Defendants evidence concentrated on their allegation that Sugia was senile, forgetful and bedridden and therefore she was unable to transfer her interest in the property to the Claimant in 1981. However the Claimant and his witness evidence was that Sugia only became ill and bedridden about one week before she passed away in 1990.

19. The Claimant’s evidence was that he lived about ¼ mile away from Sugia and that he visited her almost every day of the week sometimes twice a day. He said that Sugia was only bedridden in the last week before she died. While he said that he took Sugia to Dr Rampaul he did not dispute that Sugia was also a patient of Dr Mahabir. The Claimant also stated that Sugia had shown him a deed for the property many years before she died where she and her son Boodram were the owners of it. During the Christmas season in 1980 Sugia requested him to take her to an attorney at law to transfer her share in the property to him. In February 1981 he took her to Mr Vernon Jamadar’s office where she signed a deed transferring her share in the property to him. At that time his cousin Mr Siddoo was working for Mr Jamadar. After Sugia signed over her share of the property to him he asked the First Defendant for the Certificate of Title, to take it to Mr Jamadar. The First Defendant refused to give it to him. Mr Siddoo and several attorneys at law called upon the Defendant to deliver it up but he refused to do so. As result of the First Defendant’s refusal the Claimant gave instructions to the Mr Vernon Jamadar to file caveat.

⁹ [2010] EWHC 1537

20. Hashim Ali is the Claimant's brother-in-law. According to him the First Defendant looked after Sugia who was bedridden for a couple of weeks before she died. However in 1981 when the First Defendant got married Sugia was still active moving around when he assisted in the wedding preparations. Although Counsel for the Defendants challenged Mr Ali's knowledge of Sugia's physical condition in 1981 his evidence remained unchanged.
21. According to both Defendants, Sugia resided with them until she died at age 90 years. Both of them cared for her with the Second Defendant being the main caregiver. Sugia did not go out without being accompanied by either Defendant. They also took her to visit her regular doctor Dr Mahabir. Sugia started to get ill in the middle of the 1970s when she was 75 years. She began forgetting things then she could not move about or stand up by herself. In the late 1970s Sugia was about 80 years old when she became bedridden. In 1981 Sugia was unable to move without assistance, she was forgetful and she was unable to recognize anyone without close observation. The Claimant stopped visiting Sugia in the 1970s after Sugia refused to be converted from a Hindu to a Christian. In 1990 when Sugia died the First Defendant gave Sugia's identification card to the District Registrar for Births and Deaths.
22. To resolve the conflict between the evidence of the Claimant and the Defendants, the latter sought to rely on the witness statement and medical report of Dr. Deonarine Mahabir both dated in 2013 which were tendered into evidence through a hearsay notice on the basis that at the time of the trial he was ill. It was left up to the Court to determine the weight to place on his evidence. According to Dr Mahabir's witness statement he was a medical practitioner for 36 years before November 2013. Sugia was his patient for the period 1979 to 1990. During that time Sugia suffered from congestive cardiac failure, senile dementia and gall bladder disease. On many occasions he went to her home to treat her and she was also brought to his office. He no longer had her medical records however he remembered her as his patient and the nature of her illnesses. His medical report which is dated the 8th July 2013 reflected the information in his witness statement but it added that Sugia was seen at home from time to time since she was bedridden.

23. The only independent evidence on the physical and mental condition of Sugia around the time of the execution of the Claimant's deed was from Dr Mahabir. I accepted that Sugia was Dr Mahabir's patient from 1979 to 1990 and I had no reason to doubt that he treated her at his office and at her home. However I had difficulty in attaching any considerable weight to certain aspects of his evidence for several reasons. Dr Mahabir's evidence was based on his recollection in 2013 of events that took place between 23 to 34 years ago. In the absence of any reliance on medical records which would have been contemporaneous with his treatment of Sugia, I was uncertain if his recollection was accurate. Further, his evidence of the various ailments which Sugia suffered with was vague. I did not get a sense if Sugia suffered with all the ailments during the period 1979 to 2009 or if she suffered with different ailments at various points during that period. There was also no evidence of when Sugia suffered with senile dementia or when she was bedridden. There was no explanation in Dr Mahabir's witness statements how these ailments affected Sugia. While Dr Mahabir stated that Sugia was bedridden he did not say when and for how long. It is reasonable to assume that Sugia was not bedridden for the entire period of 1979 to 1990 since Dr Mahabir said that he treated Sugia as his patient at his office.
24. In my opinion the medical evidence did not support the Defendants assertion that Sugia was not able to understand the effect of her execution of the Claimant's deed. There was material information which was lacking in Dr Mahabir's evidence which in my view was critical in assisting the Defendants in proving their assertion of Sugia's lack of physical and mental capacity. Therefore, I was unable to find that the evidence of Dr Mahabir supported the Defendant's assertion that in 1981 Sugia was physically and mentally incapable to give instructions to prepare and to execute the Claimant's deed.

Were the circumstances surrounding the execution of the Claimant's deed suspicious?

25. The Defendants alleged that there was an incident in 1980 or 1981 where the Claimant and Samuel Siddoo went to Sugia's home where they were left alone with Sugia for twenty minutes where they used the opportunity to obtain the thumbprint of Sugia without Sugia being aware of what was taking place.

26. In this jurisdiction Rajnauth–Lee J (as she then was) in **Sonalal v Ramroop**¹⁰ cited the case of **In re Dellow’s Will Trusts**¹¹ on the standard of proof required for fraud. In that case, Ungood-Thomas J observed that in civil cases it is not so much that a different standard of proof is required in different circumstances according to the gravity of the issue; the gravity of the issue becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged. The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus prove it. While the Defendants did not plead particulars of fraud in my opinion the learning in **Sonalal** is useful guidance on the standard the Court should adopt in examining the gravity of the allegation of suspicion which the Defendants pleaded.
27. With respect to the incident in 1980 or 1981 both the Claimant and Mr Siddoo denied that any such incident took place. There was no evidence that on the alleged visit in 1980 or 1981 that either the Claimant or Mr Siddoo had anything with them when they visited Sugia. If this was when the Claimant allegedly obtained Sugia’s thumbprint, the Second Defendant who stated that she attended to all Sugia’s needs and who returned 20 minutes thereafter did not say that she noticed that any of Sugia’s fingers had any ink markings. If she had attended to all of Sugia’s needs which I have no reason to reject then surely she would have made such an important observation after only being away from Sugia for 20 minutes. Further based on the Defendants evidence Sugia and the Claimant were estranged since the mid 1970s. If the Defendants evidence is to be accepted then the Second Defendant ought to have noticed anything out of the ordinary. In my opinion, the lack of details and the inherent improbability of the Defendants allegation caused me not to believe this allegation.

¹⁰ CV 2006-00075

¹¹ [1964] 1 W.L.R. 451

Whether the non-payment of the consideration in the Claimant's deed render it void?

28. The Claimant admitted during cross-examination that he did not pay Sugia the sum of \$5,000.00 as consideration for her one half share in the property. Counsel for the Defendants relied on the authorities of **Alfred Kowlessar v Kenrick Ramraji**¹² and **Jadoo v Sonia Maharaj**¹³ to ground his submission that the Claimant's deed is void on the basis that the transaction failed since there was no consideration in law. In my opinion the authority of **Alfred Kowlessar** can be distinguished from the instant matter since in **Alfred Kowlessar** the Defendant admitted in the Defence and the evidence that no consideration was paid and the reason a sum of \$150,000.00 was inserted as the consideration was for stamp duty purposes. The Court found that there was an infringement of the doctrine of public policy since the intention was to circumvent the Stamp Duty Act and based on this finding and the other surrounding circumstances it set aside the disputed deed. In the instant matter there was no pleading or evidence that the reason for the insertion of the sum of \$5,000.00 as the consideration was to circumvent the Stamp Duty Act.
29. Further in **Jadoo** the Court held that no consideration was paid and that it did not permit the defendant to pay the consideration subsequently since the basis that she was seeking to obtain the title was as a volunteer. In the instant case the issue of the Claimant asking for the opportunity to pay the consideration afterwards does not arise.
30. According to **Gibson's Conveyancing**¹⁴ a deed is not void for want of a consideration¹⁵. In **Edna Poorah (Deceased by representative of her estate Tim Poorah also called Tim Purah) and Shirley Purah appointed to represent the estate of Edna Poorah v Muriel Lawrence**¹⁶ the Court of Appeal in this jurisdiction considered this issue. This was an appeal against an order in which the plaintiff/appellant's claim to set aside a deed was dismissed by the trial judge. The deed was made between the plaintiff, as vendor and

¹² HCA 1162 of 1990

¹³ HCA 6127 of 1985

¹⁴ 11th Edition

¹⁵ Page 131

¹⁶ Civ. App. No. 131 of 2001

her daughter, the defendant, as purchaser. The plaintiff by way of sale, conveyed a parcel of land to the defendant for the purchase price of \$125,000.00. There was a plea that there was no evidence that the plaintiff therein received or benefited from an alleged consideration of \$125,000.00 or that any consideration was paid at all. Counsel for the respondent confirmed that the conveyance was, in fact, by way of gift. The Court of Appeal concluded that no money passed from the defendant to the plaintiff and noted that the general import of the plea that the deceased received no consideration for the conveyance did raise an issue of the improvidence of the transaction. The Court of Appeal held that in those circumstances where the deceased did not have the benefit of independent legal advice, and the transaction was clearly improvident, it was open to the Court to set aside the transaction.

31. In my view the facts in the instant case are distinguishable from **Ednah Poorah**. In the instant case I have already found that Mr Vernon Jamadar was present when Sugia executed the Claimant's deed and therefore Sugia had the benefit of independent legal advice. Therefore while the transaction was improvident since Sugia had the benefit of independent legal advice at the time of the execution of the Claimant's deed she would have understood the consequences of including the consideration without having received it. In those circumstances, the Court is not willing to void the Claimant's deed and set aside the transaction solely on the basis that there was no consideration.

Order

32. It is declared that the Claimant is the beneficial owner of a one half undivided share and interest in All and Singular that parcel or lot of land situate in the Ward of Siparia in the island of Trinidad comprising 4 Acres 3 Roods and 38 Perches described in the Crown Grant registered in Volume CLVI Folio 365 now described in Certificate of Title Volume 4943 Folio 5 and bounded on the North by lands petitioned for by Prasad on the South by lands petitioned for by Seecharan on the East by lands petitioned for by Chs H Pouchet and on the West by a Trace reserved forty-seven links wide.

33. It is declared that the Claimant is entitled to be registered as proprietor of All the share and interest of Sugia in the said property by virtue of an unregistered Memorandum of Transfer by Sugia to the Claimant dated the 10th day of February 1981.
34. The Defendants are directed to deliver up to the Claimant or his Attorney at law the Duplicate Original of the Certificate of Title Volume 4943 Folio 3 for the purpose of having the said Memorandum of Transfer from Sugia to the Claimant endorsed thereon.
35. The Defendants to pay the Claimant's costs to be assessed by this Court in default of agreement.

Margaret Y Mohammed
High Court Judge