

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2015-00784

BETWEEN

**JAGMOHAN MYKOO
JASSO JAGMOHAN**

Claimants

AND

**INDIRA MUNGAL
ANDREW ANTHONY MARK MUNGAL**

**First and Second Defendants/
Ancillary Defendants**

**SAVITRI KALLICHARAN
HEERALAL KALLICHARAN**

**Third and Fourth Defendants/
Ancillary Claimants**

Before The Honourable Madame Justice Margaret Y Mohammed

Dated the 24th July 2017

APPEARANCES:

Ms. Veena Badrie-Maharaj Attorney-at-Law for the Claimant.

Mr. Alvin Pariagsingh instructed by Ms. Kavita Sarran Attorney-at-Law for the First and Second Defendants/Ancillary Defendants.

Mr. Richard Sirjoo instructed by Ms. Samantha Marajh, Ms. Melissa Boodhai and Ms. Aarti Singh Attorneys-at-law for the Third and Fourth Defendants/Ancillary Claimants.

JUDGMENT

The Claimants case

1. The Claimants are the parents of the First Defendant (“Indira”) and the grandparents of the Second Defendant (“Andrew”). They are also the parents of Maniram Jagmohan (“Maniram”) and the grandparents of Stephanie Jagmohan (“Stephanie”). They have instituted this action seeking the following orders against Indira and Andrew:
 - (a) A declaration that they are entitled to a life interest in All and Singular that certain piece or parcel of land situate at Clarke Road, Charlieville in the Ward of Chaguanas in the County of Caroni in the Island of Trinidad comprising ONE THOUSAND AND FIFTY FIVE POINT ZERO SQUARE METRES (1,055.0m²) be the same more or less being portion of the parcel of land described in the First Schedule in Deed registered as No. DE20110013866 and bounded on the North by lands now or formerly of John Barron on the South partly by Clarke Road (East) and partly by lands of Harry Sahdoo on the East by Plot B being lands of Jagmohan Mykoo and Jasso Jagmohan and on the West partly by lands now or formerly of John Barron and partly by lands now or formerly of John Barron and partly by lands of Harry Sahdoo and which said piece of parcel of land is delineated and shown coloured pink as Plot No. A on the Survey Plan attached and marked “X” to Deed registered as No. DE201100013866 hereinafter referred as (“the partitioned land”);
 - (b) A declaration that Indira and Andrew hold the partitioned land subject to a life interest of the Claimants;
 - (c) A declaration that the Claimants by a liberty to liquidate all outstanding arrears on the mortgage held by Messrs. Intercommercial Bank Limited in respect of the loan granted to Indira and Andrew and secured by the partitioned land;
 - (d) An Order that upon repayment of the outstanding loan to Messrs, Intercommercial Bank Limited, Indira and Andrew do re-convey the partitioned land to the Claimants.
 - (e) Costs.

2. The orders which the Claimants seek against the Third (“Savitri”) and Fourth (“Heeralal”) Defendants is to set aside a deed registered as DE 201502034958 (“the 2015 Deed”) and costs.
3. The Claimants averred that by Deed of Conveyance dated the 24th day of September, 1975 and registered as No. 17341 of 1975 they became seised and possessed in fee simple as joint tenants of two pieces or parcels of land situate in the Ward of Chaguanas. The first parcel comprising 14200 square feet and the second parcel comprising 11685 square feet (collectively referred to as “the parent parcel”). The Claimants, and Maniram and his family occupy the first parcel of land on which their house stand and the second parcel of land where they planted a garden.
4. On the 20th June 2004, by Deed of Gift and registered as No. DE200402121365 (“the 2004 Deed of Gift”) the Claimants conveyed the parent parcel together with the buildings standing thereon and the appurtenances thereto belonging unto themselves for life and after death unto Indira and Stephanie.
5. By Deed of Revocation dated 8th March 2010 and registered as DE201000825624 (“the Deed of Revocation”) the Claimants revoked the 2004 Deed of Gift and re-conveyed the parent parcel to themselves. The Deed of Revocation was prepared by Mr. Shivan Jadoo, Attorney-at-Law of No. 8 Eastern Main Road, Sangre Grande.
6. On or about early March 2010 Indira indicated to the Claimants that she wanted to approach the Bank to obtain a loan to purchase a property situated at No. 134 Caroni Savannah Road, Charlieville (“the property”) for the purpose of a residence for her family and a business venture. Indira also indicated that in order to obtain the loan a survey would have to be done to convey the partitioned land to Indira and Andrew subject to the life interest of the Claimants. Indira informed the Claimants that once the conveyance was executed, she would ensure that they retained a life interest in the partitioned land. Indira represented to the Claimants that her request was solely for this purpose and that the Claimants’ interest in the partitioned land would not be adversely affected. Indira

also assured the Claimants that should it become necessary to sell the partitioned land the family would be given first preference as part of the Claimants' change room, tanks, tank stand, wash area and dog kennel were on the partitioned land.

7. The parent parcel was surveyed and partitioned with the Claimants' kitchen garden, wash area, dog kennel, change room and tank stand being on the partitioned land.
8. By virtue of Deed of Gift dated 26th October, 2010 and registered as No. DE201100013866 ("the 2010 Deed of Gift") and Claimants conveyed all their share in the partitioned land to Indira and Andrew. The 2010 Deed of Gift was prepared by Indira and Andrew's Attorney-at-Law, Mr. Shivan Jadoo of No. 8 Eastern Main Road, Sangre Grande. The Claimants averred that neither of them was given the 2010 Deed of Gift to read before execution.
9. The Claimants also averred that on the 19th August 2013 by Deed of Mortgage registered as DE201302571031 Indira and Andrew mortgaged the partitioned land to Intercommercial Bank Limited and Indira used the money to purchase the property.
10. In or about November, 2014 Indira approached the Claimants and informed them that she wished to sell the partitioned land. The Claimants reiterated to Indira that the partitioned land was only conveyed to her to assist in securing a loan and if it is to be sold, the family would be given the first option to purchase.
11. Thereafter, Heeralal approached the Claimants and informed them that he wanted to purchase the partitioned land. The Claimants again confronted Indira about the sale of the partitioned land and she assured them that she will try not to sell the partitioned land.
12. In or about December 2014, the Claimants averred that Indira and Andrew agreed to sell to Xtreme Motors Trinidad and Tobago Limited ("the Company") the partitioned land for the price of one million dollars (\$1,000,000.00). The Company was owned and run by Maniram and his family. The Company had a proposed agreement for sale prepared and

caused a cheque to be prepared in the sum of \$100,000.00 and began negotiating with its bankers for a loan. However, Indira and Andrew refused to execute the proposed agreement for sale and to accept the cheque. Instead they requested an additional sum of twenty thousand dollars (\$20,000.00) as legal fees.

13. The Company agreed to pay the additional twenty thousand dollars (\$20,000.00) and caused a cheque in the sum of \$120,000.00 to be prepared as the deposit for the purchase of the partitioned land from Indira and Andrew. However Indira and Andrew refused to accept the cheque and in March 2015 the Company obtained approval for a loan to purchase the partitioned land.
14. On the 5th day of December, 2014 Heeralal informed the Claimants that he was purchasing the partitioned land from Indira and Andrew for the sum of one million two hundred thousand dollars (\$1,200,000.00). The Claimants again confronted Indira about same and she reassured them that the partitioned land was not being sold.
15. By letters dated 8th December 2014 the Claimants attorney at law Miss Shalini Dhanipersad called upon Andrew to cease and desist from selling the partitioned land. There was no response to the said letter. The Claimants then filed a lis pendens on the partitioned land on the 13th March, 2015. The partitioned land was sold to Savitri and Heeralal on the 20th March 2015 and registered on the 8th July 2015.
16. The Claimants also alleged that Indira and Andrew have stopped visiting and assisting them despite their assurances that they would care for and maintain them for the duration of their natural lives.

The First and Second Defendants Defence

17. Indira and Andrew denied that they have stopped caring for and maintaining the Claimants. They contended that they were advised that it may not be proper to engage in dialogue with the Claimants whilst the instant action was ongoing. They averred that the

Claimants became distraught when they heard about the instant action and that they never sued Indira as they were aware that the partitioned land was gifted to Indira and Andrew. They averred that the Claimants told the former that Maniram took them to an Attorney at law to sign a document under the pretext that it concerned his parcel of land.

18. Indira pleaded that she never asked for the partitioned land to be gifted to her to facilitate a loan but it was gifted to her because it was always the intention of the Claimants to subdivide the parent parcel between Maniram and herself and this was expressed in various discussions throughout her life.
19. Indira and Andrew's case was that the purpose of the 2010 Deed of Gift was never to facilitate a loan since the mortgage for the property was obtained three (3) years after the 2010 Deed of Gift. Indira and Andrew averred that Mr. Shivan Jadoo Attorney at law acted for the Claimants in the preparation, execution and registration of the 2010 Deed of Gift.
20. Indira admitted that sometime in December 2014 she told the Claimants that she was going to sell the partitioned land. Indira averred that her decision to sell the partitioned land was because after the 2010 Deed of Gift was executed, Maniram began unlawfully trespassing onto the partitioned land and he began constructing a fence on its eastern boundary. Maniram also erected a tank stand, four water tanks and a dog kennel on the partitioned land.
21. As a result of Maniram's action, Indira and Andrew caused their then Attorney Ms. Humauty Mary Ramcharitar to write to the Maniram a letter dated the 17th August 2012 to cease and desist from his unlawful actions. However, Maniram refused to adhere to the request and in the interest of avoiding a conflict between families Indira and Andrew took a decision to sell the partitioned land.

22. Indira and Andrew averred that the Claimants never objected to the partitioned land being sold. Furthermore, when Andrew received the letter dated the 8th day of December, 2014, he discussed it with the Claimants who said that they knew nothing about it.
23. Therefore, Indira and Andrew went ahead and sold the partitioned lands to Savitri and Heeralal on the 20th day of March, 2015.
24. Indira and Andrew also averred that the reliefs sought against them were not maintainable since by an agreement for sale dated 5th November, 2014 (“the Agreement for Sale”) they contracted with Savitri and Heeralal to sell the partitioned land for the sum of one million dollars (\$1,000,000.00). By a supplemental agreement dated 23rd February, 2015 they extended the time for completion of the sale to 20th March, 2015. They completed the sale since there was no bar to completing it. The sale of the partitioned land was a bona fide and genuine arm’s length transaction in good faith with intention to create enforceable legal relations and the proceeds of the sale were used to satisfy an existing mortgage before being applied to their benefit.
25. Indira and Andrew asked the Court to dismiss the Claimants claim against them.

The Third and Fourth Defendants Defence

26. Savitri and Heeralal are the paper title owners of the partitioned land. Their case was that Indira approached Heeralal and enquired whether or not he would be interested in purchasing the partitioned land. Heeralal initially offered to pay \$800,000.00 for the partitioned land, however, after further negotiations, Heeralal agreed to purchase the partitioned land for the sum of \$1,000,000.00. The Agreement for Sale was entered on the 5th November 2014.
27. In or around November 2014, Indira asked Heeralal to inform the Claimants that he was in the process of purchasing the partitioned land. Heeralal did so but he did not disclose how much he was paying for the partitioned land at that time. Savitri and Heeralal

averred that neither at that time nor at any other time did the Claimants disclose that there was any conflict regarding the partitioned land.

28. Savitri and Heeralal averred that they are bona fide purchasers for value without notice. They denied any knowledge of the lis pendens which was filed by the Claimants. They also denied that they had constructive notice of the instant proceedings. They averred that their Attorneys Messrs. Richard H. Sirjoo & Co. conducted a title search of the partitioned land which revealed that there were no judgements or lis pendens registered against the partitioned land. They also averred that they never received any letter dated the 8th of December, 2014 from Attorney-at-Law Miss Shalini Dhanipersad warning them of any possible litigation in relation to the purchase of the partitioned land. On the 20th day of March, 2015 they completed the purchase of the partitioned land which was approximately eight (8) months before they were served with the Claimants Amended Claim Form and Statement of Case in the instant action.
29. Savitri and Heeralal counterclaimed seeking a declaration that they are bona fide purchasers for value without notice and that the 2015 Deed is subsisting and binding. They also seek an order restraining the Claimants, their servants and/or agents from removing them and disrupting their peaceful possession of the partitioned land.

The Ancillary Claim

30. Savitri and Heeralal are the Ancillary Claimants. Their ancillary claim is against Indira and Andrew. Savitri and Heeralal's ancillary case against Indira and Andrew was that by the Agreement for Sale, Indira and Andrew agreed to sell to the former the partitioned the land for the sum of One Million Dollars (\$1,000,000.00). Savitri and Heeralal pleaded that Indira and Andrew represented to them that they had a good and marketable title to the partitioned land and that it was to be sold free from all encumbrances.
31. Savitri and Heeralal inspected the partitioned land and noted that the Claimants had a storage room on it but Indira and Andrew represented to them that they would obtain vacant possession of the portion of the partitioned land occupied by the Claimants twelve

(12) months from the date of the execution of the 2015 Deed. This representation was incorporated at paragraph 10 of the Agreement for Sale. Savitri and Heeralal also pleaded that they relied on the representations by Indira and Andrew and they proceeded to purchase the partitioned land as joint tenants. They averred that Indira and Andrew knew that they intended to use the partitioned lands for their personal use. They also averred that Indira and Andrew did not disclose any private arrangement between the Claimants and them to Savitri and Heeralal.

32. On the 21st day of November, 2015, six (6) days after Indira and Andrew were supposed to deliver possession of the partitioned land to Savitri and Heeralal, they were served with an Amended Claim Form and Statement of Case filed in the instant matter. To date they have not been able to partake in free and comfortable enjoyment of the partitioned land.
33. As a consequence, they are seeking an order that Indira and Andrew indemnify them against any damages, cost and interest that may be ordered against them in relation to the Claimants claims.

The Ancillary Defendants Defence

34. The Ancillary Defendants are Indira and Andrew. They averred that that they provided a good and marketable title and that Savitri and Heeralal's Attorney-at-Law accepted it. They averred that Savitri and Heeralal had notice that the Claimants were in occupation of a small portion of the partitioned land and that the Claimants agreed to move in with Indira and Andrew within a year. They averred that the reason vacant possession has not been delivered to Savitri and Heeralal after the sale of the partitioned lands was because the Claimants have reneged on their agreement to move in with Indira and Andrew.
35. Indira and Andrew denied that the sale was influenced by any representations or reliance and they averred that it was an arm's length transaction. They also denied that Savitri and Heeralal suffered any loss and damage and if they did it was restricted to the portion of the partitioned land being occupied by the Claimants.

The issues

36. The issue between the Claimants and Indira and Andrew is, whether the Claimants transferred their interest in the partitioned land to Indira and Andrew based on the representations by Indira that the Claimants would retain a life interest in the partitioned land and the family would have a first option to purchase it?
37. The issue between the Claimants and Savitri and Heeralal is whether Savitri and Heeralal were bona fide purchasers for value without notice?
38. Between the Savitri and Heeralal and the Indira and Andrew the issues are:
- (a) Did the Indira and/or Andrew make any negligent and/or fraudulent misrepresentations to Savitri and Heeralal as an inducement to execute the Agreement for Sale?
 - (b) If yes, did the Savitri and Heeralal directly rely on Indira and/or Andrew's fraudulent misrepresentations and proceeded to purchase the partitioned land?

Whether the Claimants transferred their interest in the partitioned land to Indira and Andrew based on the representations by Indira that the Claimants would retain a life interest in the partitioned land and the family would have a first option to purchase it?

39. At paragraphs 4 and 5 of the Amended Statement of Case the Claimants pleaded the following particulars of representation:

Indira represented to the Claimants as follows:

- i. Indira and Andrew wanted to obtain a loan from Intercommercial Bank Limited.
- ii. The Claimants would have to revoke the 2004 Deed of Gift;
- iii. The parent parcel would have to be partitioned and a one half share conveyed to Indira.

- iv. A new Deed would have to be executed conveying the partitioned land to Indira and Andrew subject to the life interest of the Claimants.
- v. The Claimants interest would be protected and not adversely affected.
- vi. Indira and Andrew would not sell or dispose of the partitioned land and would only encumber it for the purpose of obtaining the proposed loan for the purchase of the property.
- vii. Indira and Andrew would care for and maintain the Claimants for as long as they are alive.
- viii. Should it become necessary to sell the partitioned land the family would have first preference to purchase it as part of the Claimants house was on it.

40. **Section 2 of the Misrepresentation Act¹** states –

“Where a person has entered into a contract after a misrepresentation has been made to him, and—

(a) the misrepresentation has become a term of the contract; or

(b) the contract has been performed,

or both, then, if otherwise he would be entitled to rescind the contract without alleging fraud, he shall be so entitled, subject to this Act, notwithstanding the matters mentioned in paragraphs (a) and (b).”

41. **Chitty on Contracts²** states that representation ceases to be true when –

“A statement may be made which is true at that time but which subsequently ceases to be true to the knowledge of the representor before the contract is entered into. In such circumstances a failure to inform the representee of the change in circumstances will itself amount to a misrepresentation, unless in the context it is quite clear to the reasonable recipient of the information that the party who gives it accepts no responsibility for its accuracy or for reviewing it.”

¹ Chapter 82:35

² 30th Edition Vol.1 page 514 paragraph 6-018

42. The learned authors of **Chitty on Contracts** continued that:

“Representations are treated for many purposes as continuing in their effect until the contract between the parties is actually concluded. This is one reason why a statement which is true when made, but which ceases to be true to the knowledge of the representor before the contract is concluded, is treated as a misrepresentation unless the representor informs the representee of the change in circumstances.”³ (Emphasis added)

43. **Snell’s Equity**⁴, defines a fraudulent misrepresentation as –

“It consists of a false statement of fact which is made by D to C knowingly, or without belief in its truth, or recklessly, without caring whether it is true or false, with the intent it should be acted upon and which is in fact acted upon by C. D will be liable in such a case even though the misrepresentation was made with no corrupt motive and with no expectation of profit, and even though the person defrauded had a full opportunity of discovering the fraud or had an agent who knew the truth.”

44. **Halsbury’s Laws of England**⁵ provides that –

“Where a representation is a continuing one and between the time when it was made and the time when the representee altered his position on the faith of it either (1) the representor discovers that his original statement which, when he made it, he honestly believed to be true, was false; or (2) supervening events render, to the knowledge of the representor his statement no longer true, a duty to disclose the changed situation to the representee may arise.”

45. **Halsbury’s Laws of England** also state that the representee can establish fraud where “*he can show that the representor dishonestly failed to discharge the duty of disclosing the change in the situation*”.

³514-515 paragraph 6-019

⁴ 30th Edition page 608 paragraph 38-02

⁵ 4th Edition 2003 Reissue Vol. 31 at page 483 paragraph 760

46. It is stated further in **Halsbury's Laws of England** ⁶

“In order to sustain any claim or proceeding for misrepresentation it is necessary for the representee to establish that he was induced by it, not merely to alter his mind, but to alter his position, that is to say, to effect a change in his material or temporal interests or situation.”

47. There are various ways in which a representee may act on the faith of a representation so as to alter his position. He may enter into a contract either with the representor himself.

48. In **With v. O' Flanagan**⁷ it was held –

“the representation was made with a view to induce the purchasers to enter into the contract and must be treated as continuing until the contract was signed, and that it was the duty of the vendor to communicate the change of circumstances to the purchasers.”

49. The Court in **With v O'Flanagan** further affirmed the underlying principle in **Brownlie v. Campbell**⁸ where Lord Blackburn said –

“when a statement or representation has been made in the bona fide belief that it is true, and the party who has made it afterwards comes to find out that it is untrue, and discovers what he should have said, he can no longer honestly keep up that silence on the subject after that has come to his knowledge, thereby allowing the other party to go on, and still more, inducing him to go on, upon a statement which was honestly made at the time when it was made, but which he has not now retracted when he has become aware that it can no longer honestly persevered in.”

50. It is a question of fact whether Indira represented to the Claimants that if they transferred the partitioned land to her and Andrew, the latter would retain a life interest in it and if

⁶ 4th Edition 2003 Reissue Vol. 31 page 492 paragraph 778

⁷ 1936 Ch.575

⁸ (1880) 5 AC 925, (1880) 7 R (HL) 66

they proposed to sell the partitioned land, Indira's family, namely the Claimants and Maniram had the first option to purchase it.

51. In **Winston McClaren v Daniel Dickey and ors** ⁹ Rajnauth–Lee J (as she then was) repeated the approach the Court should adopt where there are different versions of the events as:

*“12. Where there is an acute conflict of evidence, the Judicial Committee of the Privy Council has laid down the following principles in the case of **Horace Reid v Dowling Charles and Percival Bain** Privy Council App. No. 36 of 1987. At page 6, Lord Ackner delivering the judgment of the Board examined the approach of the trial judge”:*

“Mr James Guthrie, in his able submissions on behalf of Mr Reid, emphasized to their Lordships that where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.”

13. Accordingly, the trial judge must check the impression that the evidence of the witnesses makes upon him against

- (i) contemporary documents, where they exist;*
- (ii) the pleaded case; and*

⁹ CV 2006-01661, unreported

(iii) *the inherent probability of improbability of the rival contentions.*

14. *The Judicial Committee of the Privy Council adopted a similar approach in the case of the Attorney General and another v Kalicklal Bhooplal Samlal (1987) 36 WIR 382. Lord Ackner who delivered the judgment of the Board made the following statement at page 387:*

*“The trial judge may well have reached his decision entirely as a result of the impression made upon him by the manner in which the witnesses gave their evidence. Indeed, it is difficult to draw any other conclusion. But a judge must check his impression on the subject of demeanour by a critical examination of the whole of the evidence (see *Yuill v Yuill* [1945] P 15 at page 20). In this case the Court of Appeal were fully entitled to conclude that he did not balance demeanour against the rest of the evidence and had thus not taken proper advantage of having seen and heard the witnesses. It is essential when weighing the credibility of a witness to put correctly into the scales the important contemporaneous documents (the brochure and the letter of 12th October 1981) and the inherent improbability, as the Court of Appeal percipiently pointed out, that the licence would have been granted without samples of those tiles which were not depicted in the brochure, being produced. Thus the balancing operation, which is of the very essence of the judicial function, was not properly carried out.” (Emphasis added).*

52. The Second Claimant’s (“Jasso”) evidence was that the Claimants transferred the partitioned land in the 2010 Deed of Gift to Indira and Andrew based on four (4) representations/ conditions made by Indira to them namely that: she wanted to obtain a loan to purchase the property; she would have ensured that the Claimants retained a life interest in it; if the partitioned land was to be sold, the family would be given first option to purchase and that she would take care of them.
53. According to Jasoo’s witness statement, in 2004 an attorney at law explained to the Claimants the meaning of a “life interest” in land. Jasoo said she understood that it meant that as long as she was alive she can live on the parent parcel. Jasso also stated that in

early March 2010, Indira spoke with the Claimants and indicated that she wanted to approach a bank to obtain a loan to purchase the property. Indira indicated that in order to obtain the loan a survey would have to be done to convey an identified portion of the parent parcel to Indira and Andrew subject to a life interest to the Claimants and that the life interest would not be affected. Indira also assured the Claimants that if it became necessary to sell the partitioned land, the family would be given the first preference to purchase it since part of the Claimants house namely the change room, tanks, water stand, wash area, and dog kennel were on the part of the partitioned land. Indira also said that she would care and maintain the Claimants. A survey was done for the parent parcel. Jasso stated that based on the aforesaid representations made by Indira, the Claimants executed the 2010 Deed of Gift.

54. According to Jasso the 2010 Deed of Gift was prepared by Indira and Andrew's attorney at law, Mr Shivan Jadoo of No 8 Eastern Main Road Sangre Grande and that they were never given the 2010 Deed of Gift to read before execution.
55. Jasso also stated that in November 2014, Indira approached the Claimants and indicated that she wanted to sell the partitioned lands. The Claimants reminded her that the partitioned lands were only conveyed to her and Andrew to secure a loan and if it was to be sold the family had to be given the first opportunity to purchase. Thereafter, Heeralal approached the Claimants and informed them that he wanted to purchase the partitioned land. Upon hearing this the Claimants confronted Indira and directed her not to sell the partitioned land to any stranger and that it was only conveyed to her in order to enable Indira to obtain a loan. Indira assured the Claimants that she will try not to sell the partitioned lands. In or about the 5th December 2014 Heeralal informed the Claimants that he was purchasing the partitioned land from the Indira and Andrew for the sum of one million two hundred thousand dollars (\$1,200,000,00). Upon hearing this, the Claimants again confronted Indira about the sale of the partitioned land and she again reassured them that it was not being sold.

56. Jasso's evidence was tested in cross examination. She stated that Indira told her that she was retaining a life interest in the partitioned land and that Indira wanted the partitioned land to obtain a loan. She stated that she told Mr Jadoo that she wanted a life interest in the partitioned land and that the family was to have a first option to purchase it. She said that she went to Mr Jadoo's office once and her son in law took her. She said that Mr Jadoo told her that she had to sign the Deed of Revocation before she could give Indira the partitioned land and she signed it in Mr Jadoo's office. She stated that she had no difficulty with the Deed of Revocation since she was told that she had to sign it to remove Stephanie's name and only when she got the parent parcel on her name she could give the partitioned land to Indira.
57. Jasso's evidence in cross examination on the 2010 Deed of Gift was that she signed it at Indira's home and there was no attorney at law present when she signed it. The only persons who were present were the Claimants and Indira and that nobody read or explained the 2010 Deed of Gift to her. She only realised something was wrong with the 2010 Deed of Gift when Indira wanted to sell the partitioned land.
58. Jasso was also asked why she didn't keep a life interest in Stephanie's portion and her answer was *"In my mind I have life interest in the house"*. She also said that Stephanie lived with her for 26 years and she would not put her out. Jasso also stated in cross examination that Indira stopped talking to Maniram when the survey was done in 2010. She admitted that she took a proposed agreement for sale and a cheque from Maniram to Indira to purchase the partitioned land but Indira refused to accept them. She said that Indira told her about the Agreement for Sale with Savitri and Heeralal after she gave Indira the cheque and the proposed agreement for sale.
59. In my opinion, Jasso was a credible witness since her evidence in cross examination was consistent with her pleaded case and her witness statement that the Claimants only conveyed the partitioned land to Indira and Andrew for Indira to obtain a loan; that she thought that the Claimants had retained a life interest in the partitioned land; and if the partitioned land was to be sold the family had a first option to purchase.

60. Maniram's evidence in chief on the first option by the family to purchase the partitioned land from Indira and Andrew was that in or about December 2014 Indira and Andrew agreed through him to sell the partitioned land to the Company, which was a family owned business. Based on that agreement he had a proposed agreement for sale prepared and in anticipation of the sale, with the authority of the Company, he had a cheque prepared in the sum of \$100,000.00 and he began negotiating with the Company's banker for a loan. The cheque and the proposed agreement for sale were presented to Indira and Andrew but they refused to accept it and to sign the agreement. They asked for an additional \$20,000.00. The Company agreed to pay the additional sum and issued a cheque dated the 24th February 2015 in the sum of \$120,000.00 as the deposit for the purchase of the partitioned land. He presented the cheque to Indira and Andrew but it was refused.
61. In cross examination, Maniram stated that he only became aware that Indira wanted a loan when a land surveyor came to survey the partitioned land. He stated that he was aware of the agreement to give the family the first preference to purchase if Indira was to sell the partitioned land. He was unaware of the 2010 Deed of Gift. He denied that he tried to construct any fence on the eastern boundary of the partitioned land. He stated that the dog kennel was on the partitioned land since 1999 and the tank stand since 1995. He stated the Indira agreed to sell the partitioned land to the Company and he denied that it could not purchase it since it did not have money.
62. In my opinion Maniram's evidence corroborated Jasso's evidence and supported the Claimants case that the Claimants transferred the partitioned land to Indira and Andrew on the condition that if it was to be sold the family had to get a first option to purchase it.
63. Indira's evidence in her witness statement was that in or around 2011 the Claimants informed her that they were ready to transfer the partitioned land to her. At that time she was married but since she knew that her marriage was failing she asked them to include Andrew in the 2010 Deed of Gift. The Claimants honoured her request and by the 2010 Deed of Gift she and Andrew became the owners of the partitioned land. At the time of

the 2010 Deed of Gift, Indira stated that she was renting the property. In the interest of saving money, Indira decided that she should build a house on the partitioned land since she would be close to the Claimants and save money.

64. According to Indira, in or around the year 2012, she noticed that Maniram had built a fence within the eastern boundary of the partitioned land and he had encroached on it since he had placed a water tank and a dog kennel on it. As a result she instructed an Attorney Ms. Humauty Mary Ramcharitar to write to Maniram by letter dated 12th August 2012 to cease and desist from his unlawful actions to which she received no response.
65. In 2013, the property was put up for sale and after discussing it with the Claimants, she and her husband decided to purchase it. However, Indira realized that she could not afford to purchase the property with her own finances. She discussed this issue with the Claimants and they decided that she should mortgage the partitioned land so that she could have enough money to purchase the property. Therefore she mortgaged the partitioned land and used the proceeds towards purchasing the property. The partitioned land was mortgaged for six hundred thousand dollars (\$600,000.00).
66. According to Indira, shortly thereafter she and her husband separated and she bore the sole financial responsibilities for her family. She realized that she needed additional money and or she would lose the property. The only other asset she had was the partitioned land. She informed the Claimants that she intended to sell the partitioned land and the Claimants asked her to give Maniram the first option to purchase to which she had no objection. She informed Maniram that she needed to pay the sum of one million dollars (\$1,000,000.00) for the partitioned land and that she was short of money and needed the cash to put towards payments for the property.
67. By letter dated the 8th December 2014 Indira stated that she was informed that Savitri had approached the Claimants and asked to purchase the partitioned land. The Claimants advised her against selling the partitioned land to Savitri and Heeralal.

68. Indira's witness statement was silent on any of the conditions for the transfer of the partitioned land as asserted by Jasso.
69. However a different picture emerged in cross examination from Indira. Indira denied that she asked the Claimants to give her the partitioned land in order to obtain a loan. She stated that before the 2010 Deed of Gift she commissioned the survey of the partitioned land since she said it was promised to her as a child. She agreed that in 2010 after the partitioned land was surveyed Maniram stopped speaking to her and he only spoke to her for a couple months afterwards namely when he was interested in purchasing the partitioned land and recently when Jasso was hospitalized.
70. Indira agreed that Jasso told her, before the Claimants conveyed the partitioned land to her that if it was to be sold that the family must be given the first option to purchase it. She stated that Maniram was given the first option to purchase the partitioned lands. She admitted that that Maniram came to her and made an offer to purchase the partitioned land from her a couple months *before* she entered into the Agreement for Sale with Savitri and Heeralal. She stated that Maniram first approached her to pay off the mortgage and in return that she transferred the partitioned land to him. She told Maniram that the Bank would not have agreed to that arrangement. She admitted that this information was material and that she omitted to include this in her Defence and in her witness statement.
71. Indira also admitted in cross examination that Jasso spoke to her one month *before* she executed the Agreement for Sale about selling the partitioned land to Maniram. She stated that she and Jasso agreed that Maniram would purchase the partitioned land for one million dollars (\$1,000,000.00). She also stated that the Jasso brought an envelope to her subsequent to the execution of the Agreement for Sale but that she did not open it to see if it contained a cheque. She also admitted that although she did not have a written agreement with Maniram she had a verbal agreement with him. She denied that when Jasso brought a cheque for \$100,000.00 to her she said that she wanted \$120,000.00.

72. In my opinion the aforesaid material omissions in Indira's and Andrew's Defence and witness statement, and Indira's admissions in cross examination undermined the credibility of their case and fortified the Claimants case that one of the conditions for the transfer of the partitioned land to Indira was that the family had to get a first option to purchase it if it was to be sold.
73. Indira was referred to paragraph 10 of her Defence and it was put to her that the 2010 Deed of Gift was never read over to the Claimants' and that since her position was that she was not present, she was in no position to state otherwise. She agreed with her Defence but she later she stated that "*maybe she read it over*". Indira also admitted that she paid the attorney at law who prepared the 2010 Deed of Gift and that her husband took the Claimants to Mr Jadoo since he knew Mr. Jadoo and that Jasso could not possibly have known Mr Jadoo.
74. In my opinion Indira's evidence in cross examination on the circumstances surrounding the execution of the 2010 Deed of Gift by the Claimants, corroborated Jasso's evidence and the Claimants case that Indira made the arrangements for the preparation of the 2010 Deed of Gift and not the Claimants and that Indira did not ensure that her representation that the Claimants would have retained a life interest in the partitioned land was in the 2010 Deed of Gift.
75. In cross examination, Indira was shown a plan dated the 19th February 2010 which was attached to the 2010 Deed of Gift which stated that it was commissioned by the First Claimant on the 27th January 2010. She was also shown another plan dated the 6th May 2011 which stated that it was commissioned by Indira and Andrew on the same date 27th January 2010. Indira admitted that she commissioned both plans and that the First Claimant did not commission the 19th February 2010 plan. She accepted that the part identified as A1 on the 6th May 2011 plan contained the dog kennel, water tanks and stand and the washing area of the Claimants.
76. In my opinion, the documentary evidence supports the conclusion that the survey for the preparation of both survey plans were done on the same day. Indeed Indira more or less

admitted to this when she stated that she commissioned both plans. It also confirms that Indira knew that at least from January 2010 the Claimants occupied a portion of the partitioned land. The 6th May 2011 plan also demonstrated that Indira was fully aware that the area marked as A1 was where the Claimants had their change room, wash room, tank stand, and dog kennel. In my opinion this plan supported the Claimants case that Indira knew that she had to protect their interest by ensuring that they retained a life interest in the partitioned land since this was one of the conditions for them conveying it to Indira and Andrew. Further, it was plausible that since the Claimants were aware that since their dog kennel, water tanks and stand and the washing area were on the partitioned land their interest would have been secured by reserving a life interest to them.

77. Indira also confirmed that she decided to sell the partitioned lands to Savitri and Heeralal in November 2010 and she had told Jasso that she had entered into the Agreement for Sale. She accepted that Savitri and Heeralal had 90 days from the 5th November 2014 to complete the sale but they could not complete. She also accepted that she could have terminated the Agreement for Sale and kept the deposit but instead she did another agreement from the 23rd February 2014. She admitted that she did not tell Jasso that the time for completion under the Agreement for Sale had expired although Jasso had asked her to sell the partitioned land to Maniram to please Jasso and this would have made Jasso happy.
78. In my opinion, Indira's admission that she did not tell Jasso that the Agreement for Sale had expired although Jasso had asked her to sell the partitioned land to Maniram demonstrated that it was never Indira's intention to honour the condition of giving the family the first option to purchase.
79. Andrew's evidence in his witness statement was in a large part similar to Indira evidence in her witness statement in that:
 - (a) The reason for the partitioned land was transferred to he and Indira was due to Indira's marital problems.

- (b) In 2012, Maniram and Indira got into an argument over his construction of a fence on the eastern side of the partitioned land and Indira told Maniram on numerous occasions to cease from building and placing anything on the partitioned land however he refused.
- (c) In 2013, the property Indira was renting was up for sale and Indira discussed with the Claimants that she wanted to purchase it but she was unable to do so because of financial difficulties.
- (d) Indira suggested that she mortgage the partitioned land, since she had no other means to purchase the property and the Claimants agreed.
- (e) Indira and her husband separated in March 2014, and she encountered financial difficulties thereafter. Indira and Andrew decided that in the interest of keeping the property to sell the partitioned land.
- (f) In November 2014 Indira and Andrew agreed to sell the partitioned land for one million dollars (\$1,000,000.00) to Savitri and Heeralal who paid a 10 % deposit.
- (g) Subsequent to entering into the Agreement for Sale, Maniram sent over a cheque with Jasso but Indira refused to open it and returned it since she and Andrew knew that they already entered into the Agreement for Sale.
- (h) The sale was not completed within the 90 days under the Agreement for Sale and by a supplemental agreement dated 23rd February, 2015 the time for completion of the sale was extended to 20th March, 2015.
- (i) The partitioned land was sold for \$1 million dollars (\$1,000,000.00) to Savitri and Heeralal.
- (j) Subsequent to this, Andrew and Indira frequently visited the Claimants.

80. However, Andrew contradicted Indira's evidence in chief in one material aspect since he confirmed that Indira did not give the family, in particular Maniram the first option to purchase the partitioned land. Andrew stated that there were already plenty offers made but as Savitri and Heeralal were living next door to the partitioned land Indira felt the need to offer them the first opportunity to purchase it.

81. In cross examination Andrew, agreed that Indira mortgaged the partitioned land in order to purchase the property. He admitted that in 2013 Indira and his father were still together and they only separated after they purchased the property. He and Indira only wanted to sell the partitioned land after his father moved out. He stated that he knew Maniram was interested in purchasing the partitioned land but that Indira only approached Maniram about the sale of the partitioned land *after* they entered into the Agreement for Sale. He recalled that Jasso brought a cheque for them after they had signed the Agreement for Sale. He said that after the Agreement for Sale was executed he told Jasso about it.
82. Heeralal's evidence in his witness statement was that in 2014 he approached Indira and inquired whether she was interested in selling the partitioned land. At first, Indira indicated that she was giving Maniram first preference, however, after a few weeks, she indicated that she was willing to sell the partitioned land to him. Indira told him to have the partitioned land valued so that a sale price could be determined. He had the valuation done by Raymond and Pierre Limited which set a value of eight hundred thousand dollars (\$800,000.00). He advised Indira of the value and he made an offer of eight hundred thousand dollars (\$800,000.00) however, after further negotiations he agreed to purchase the partitioned land for one million dollars (\$1,000,000.00).
83. Heeralal was challenged on material aspects of his evidence. He stated that it was Indira who approached him in the middle of November 2014 about the sale of the partitioned land to him. Yet he later changed this to state that he approached Indira. He was asked if the process for the sale of the partitioned land started earlier than November 2014 to which he agreed. He stated that Indira had told him that she had given Maniram the first option to purchase the partitioned land. He said that he was only aware of one valuation report which was prepared by Raymond & Pierre and that the said valuation was done in July 2014. When the valuation was conducted he only saw a tank stand on the partitioned land since he could not see the front of it.

84. In my opinion Heeralal's evidence confirmed that Indira did not give the family the first option to purchase the partitioned land since she and Heeralal began the process in July 2014 when the valuation was done.
85. Having considered all the evidence on this issue I concluded that the weight of the evidence supported the Claimants case that Indira represented to them that they would retain a life interest in the partitioned land and that if it was to be sold the family had to get a first option to purchase it. It was clear to me that Indira was well aware that the partitioned land was transferred to her on the condition that should it be sold the first preference be given the family which was admitted to by Indira in cross examination.
86. However, it appeared to me that Indira did not intend to give the family the first option to purchase the partitioned land, even when she knew that this would have pleased Jasso. Before the execution of the Agreement for Sale Heeralal said that he approached Indira to sell him the partitioned land and she permitted him to proceed with obtaining valuation of it. If Indira intended to give the family the first option to purchase she would not have permitted Heeralal to proceed with the valuation. But that was not all, even after obtaining the valuation Indira engaged in negotiations with Heeralal about the price that the partitioned land was to be sold to Heeralal and Savitri. After the execution of the Agreement for Sale with Heeralal and Savitri, Indira informed Heeralal that he should go and inform the Claimants. So clearly Indira had no intention of giving the family the first preference although she represented to the Claimants that she would do so. Even Andrew's evidence substantiated the position since he said *"The Third and Fourth Defendants were living next door to the land hence my mother felt the need to offer them the first opportunity to purchase the property"*.
87. This brings me to the merits of the Defence by Indira and Andrew on the reason that the Claimants transferred the parent parcel in 2004 to Indira and Stephanie and the reasons Indira sold the partitioned land.
88. In Indira and Andrew's Defence they pleaded that the reasons the Claimants did not wish to give Maniram any interest in the parent parcel was because in 2003 he was charged

with a criminal offence and the parent parcel was used to secure bail; in High Court No. CV 2006-00372 RBTT Bank Limited was seeking bankruptcy proceedings against Maniram, his wife and L&S Import and Export Limited and on 30th April 2007 in High Court No. CV 2006-03996 judgement on admission was entered against the First Claimant.

89. The Claimants called upon Indira and Andrew to prove these aforesaid allegations. However there was no evidence from neither Indira nor Andrew to support same. Indira's evidence at paragraph 3 of her witness statement was:

“At this point in time, my parents indicated that they no longer wished to give my brother any land in his name because he had disgraced the family name as he was charged with a criminal offence and had pending proceedings in the High Court against him and his wife. My parents further indicated that they were not will to take the risk of losing their land.”

90. In cross examination Indira admitted that although she was put to proof of the aforesaid allegations she did not produce any evidence in support. Indira also admitted in cross examination that although she had pleaded in her Defence that Maniram had exerted pressure on the Claimants to institute and pursue the instant action, she did not plead any particulars in her Defence, nor in her witness statement how Maniram would benefit from the outcome of the instant action. She also agreed that she did not state any particulars in her Defence of any previous dispute between Maniram and her which caused the Claimants to institute the instant action.

91. On the other hand, Jasso's evidence in her witness statement was that in 2004 Maniram did not want the parent parcel on his name since he preferred that it to be placed in Stephanie's name and at that time Indira was renting. Therefore the Claimants executed the 2004 Deed of Gift whereby they conveyed it to Indira and Stephanie but they reserved a life interest in it to them.

92. Maniram's evidence at paragraph 14 of his witness statement was that HCA No. 1952 of 2000 was pertaining to a dishonoured cheque and that the debt was fully satisfied in 29th

December 2011. He annexed a copy of the notice of full satisfaction¹⁰. This evidence was not challenged by Indira and Andrew in cross examination. Notably this action was against Maniram, the Claimants and three other persons.

93. Further, Maniram denied at paragraph 15 of his witness statement that there were bankruptcy proceedings filed against him by RBTT. Indira and Andrew did not challenge this evidence. At paragraph 16 of Maniram's witness statement he stated that the judgement by the Export Import Bank of Trinidad and Tobago in HCA No CV 2006-03996 had been paid off on 20th June 2012¹¹. This also was not challenged by Indira and Andrew.
94. Maniram also stated that he never exerted any pressure on the Claimants because of revenge to institute the instant proceedings. He stated that on the partitioned land, the Claimants had a kitchen garden, water tanks and stand, a wash area, a dog kennel and fruit trees. He explained that his debt in HCA 1952 of 2000 was satisfied by notice of satisfaction filed 29th December 2011.
95. Maniram also denied that the 2004 Deed of Gift was done in Stephanie's name because of his financial difficulties. He stated that the parent parcel was given with his consent to Stephanie since she was his parents favourite granddaughter and he would have eventually given it her. He denied that the parent parcel was featured in a 2004 matter and that an attempt was made to sell it to pay his debt.
96. In my opinion, Indira and Andrew failed to produce any credible evidence to support their allegation that the Claimants did not want to transfer the parent parcel to Maniram in 2004 since he had matters before the Court. The evidence produced by Maniram clearly contradicted Indira and Andrew's allegation since during the life of the High Court matters the Claimants partitioned the parent parcel by virtue of Deed No DE 2011000773596 dated 18th February 2011 and Deed No. DE 201100013866 dated 26th October 2011.

¹⁰ Exhibit "M.J.4"

¹¹ Exhibit "M.J.5"

97. Indira and Andrew also averred that the reasons they sold the partitioned land were because: after the 2010 Deed of Gift Maniram started to trespass on it; Maniram began fencing the eastern boundary and he erected a tank stand, four water tanks, and a dog kennel; by letter dated 17th August 2012 Indira and Andrew caused an attorney at law Ms Himauty Mary Ramcharitar to write Maniram to cease and desist from such actions but he failed to do so; and to avoid further conflict between Indira and Maniram. They did not plead that they sold it due to financial difficulties.
98. However, Indira's evidence in cross examination was that before the parent parcel was partitioned, the Claimants had their tanks, tank stand, wash area, and dog kennels of a portion of the partitioned. Both Indira and Andrew included an additional reason for selling the partitioned land which was because of financial difficulties. It appeared to me that the reasons pleaded by Indira and Andrew in their Defence had nothing to do with their financial problems and this again undermined their credibility on the reason they sold the partitioned land.
99. I have therefore concluded that the Claimants conveyed the partitioned land to Indira and Andrew based on Indira's representations that they would retain a life interest in it. It was plausible that the Claimants wanted to retain a life interest since they had their kitchen garden, water tanks and stand, wash area and dog kennels on it. Indira failed to ensure that the Claimants retained a life interest since the Claimants were taken to her husband's attorney at law, Mr Shivan Jadoo to prepare the 2010 Deed of Gift. Indira paid the attorney at law and she did not ensure that the Claimants retained a life interest in the partitioned land since she was unable to dispute that when the Claimants signed the 2010 Deed of Gift it gave them a life interest in the partitioned land. I have also concluded that before the Claimants transferred the partitioned land to Indira, she represented to them that the family would have a first option to purchase it if it was to be sold. In my opinion, this representation by Indira was plausible since the Claimants were aware that Indira was going to use the partitioned land to obtain a loan, and they knew that they occupied part of it.

100. I have also concluded that Indira never intended to give the family the first option to purchase the partitioned land since she started the process since July 2014 when she permitted Heeralal to have a valuation conducted. Lastly, there was no merit in certain aspects of Indira and Andrew's Defence namely the reasons that the Claimants transferred the parent parcel in 2004 and the reasons for Indira and Andrew selling the partitioned land in 2014.

Whether Savitri and Heeralal are bona fide purchasers for value without notice?

101. **Snell's on Equity**¹² describes "*a bona fide purchaser for value without notice*" as a person who in good faith without notice of any interest adverse to property has acquired the legal interest in it by giving consideration.

102. In the case of **Pilcher v Rawlins**¹³, Sir W. M. James, L.J. in his discussion on bona fide purchaser for value without notice had the following to say –

"I propose simply to apply myself to the case of a purchaser for valuable consideration, without notice, obtaining, upon the occasion of his purchase, and by means of his purchase deed, some legal estate, some legal right, some legal advantage; and, according to my view of the established law of this Court, such a purchaser's plea of a purchase for valuable consideration without notice is an absolute, unqualified, unanswerable defence, and an unanswerable plea to the jurisdiction of this Court. Such a purchaser, when he has once put in that plea, may be interrogated and tested to any extent as to the valuable consideration which he has been given in order to shew the bona fides or mala fides of his purchase and also the presence or the absence of notice; but when once he has gone through that ordeal and has satisfied the terms of the plea of purchase for valuable consideration without notice, then according to my judgement, this Court has no jurisdiction whatever to do anything more than to let him depart in possession of that legal estate, that legal right, that legal advantage which he has

¹² 33rd Ed at paras 4-25 to 4-26

obtained, whatever it may be. In such a case a purchaser is entitled to hold that which, without breach of duty, he had conveyed to him.” (emphasis mine.)

103. According to **Snell’s Equity**¹⁴ a purchaser is prejudicially affected by notice in equity in 3 cases:-
- (a) Actual notice where the equity is within his own knowledge.
 - (b) Constructive notice where the equity would have come to his knowledge if proper enquiries had been made and
 - (c) Imputed notice where his agent in the course of the transaction had actual or constructive notice of the equity.¹⁵
104. The general principle with respect to constructive notice is that a purchaser is deemed to have constructive notice where, whether deliberately or carelessly, he or his agent abstained from making enquiries that a prudent purchaser would have made. A purchaser also is said to have constructive notice if a reasonable purchaser acting on skilled advice would have discovered had proper enquires been made.
105. It was submitted by Counsel for the Claimants that their case against Savitri and Heeralal was based on constructive notice.
106. Therefore the onus of proof was on Savitri and Heeralal to prove that at the time of the completion of the sale of the partitioned land they had no notice of the interest being claimed by the Claimants. If notice was received before all the money was paid and even after the conveyance was executed, but before it was registered Savitri and Heeralal would be subject to the interest being claimed by the Claimants.¹⁶
107. Heeralal’s evidence in his witness statement was that in 2014 he approached Indira and told her that he was interested in purchasing the partitioned land. She told him that she

¹³ (1872) 7 Ch App 259/269

¹⁴ 33rd ed at para 4-32 to 4-39

¹⁵ Supra at para 4-31

¹⁶ Snell’s Equity 33rd ed at. 4-027 and Barclays Bank v Bird (1984) Ch.274.

was giving Maniram the first option to purchase but a few weeks later she indicated to him that she was interested in selling the partitioned land to him. He was also told by Indira that the Claimants were occupying the partitioned land and that she was in the process of building accommodation for them at her residence and that after the completion of the sale, she would move them off the partitioned land so that he could use it for his personal needs.

108. However even with the aforesaid information Heeralal, said that he shortly after he instructed his attorney at law to conduct a title search which revealed that the partitioned land was mortgaged and he also instructed his attorney at law to prepare the Agreement for sale. After the Agreement for Sale was executed Indira told Heeralal that he should inform the Claimants that he had entered into the Agreement for Sale with her to purchase the partitioned land.
109. According to Heeralal, he did as Indira requested and that the First Claimant pointed out the boundaries of the partitioned land and the Claimants did not communicate any objection to him about proceeding with the sale. However, at that meeting, while Heeralal was speaking to Jasso, she informed him that she would inform Maniram about the sale of the partitioned land. Heeralal's evidence was that Jasso also told him that she didn't know why Maniram didn't want to pay Indira for the partitioned land and that during the conversation, Jasso asked him how much he was paying for the portioned land and he indicated one million dollars (\$1,000,000.00). It was after the conversation, the First Claimant proceeded to show Heeralal the boundaries for the partitioned land and they did not communicate any objection to him.
110. Heeralal further stated that in January 2015, which was before the completion of the sale of the partitioned land, Jasso visited Heeralal at his residence and asked to purchase the partitioned land from him. He refused and shortly after he started receiving threats via telephone but he disregarded the said threats since his Attorney at law told him that based on the title search Indira and Andrew were the true owners of the partitioned land which were subject to a mortgage.

111. In cross examination, Heeralal admitted that when the valuation was done in July 2014 he saw a tank stand on the partitioned land but he could not see the front of the partitioned land. He agreed that it was only after the Agreement for Sale was executed he approached the Claimants and indicated that he was purchasing the partitioned land and that it was Indira who told him to inform the Claimants that he was purchasing it. He denied that he went back to visit Jasso on the 5th December 2014 and insisted that it was only once he visited Jasso before the sale was completed. He confirmed that the First Claimant pointed out the boundaries of the partitioned land to him but neither Claimant told him that the family had a first option to purchase the partitioned land.
112. Heeralal also admitted in cross examination that when Jasso came to him and he started receiving threats about the purchase of the partitioned land this raised doubts about the sale so he went to his attorney at law. He was advised by his attorney at law that the title was good so he was not concerned of other issues. He agreed that in January 2015 he did not own the partitioned land as yet and all that he had was the Agreement for Sale, therefore he could not sell the partitioned land to Jasso.
113. Heeralal further admitted in cross examination that he received a letter dated 7th April 2015 which advised him and Savitri that the Claimants had commenced a “ High Court Action” against Indira and Andrew and that if Heeralal and Savitri were to purchase the partitioned land they would be joined in the proceedings . He accepted that he could not complete the purchase of the partitioned land at the time stated in the Agreement for Sale. On the 23rd February 2015 he asked for an extension to complete and on the 20th March 2015 he paid the balance and completed the sale. He said that although the title search was done in November 2014 he left it up to his attorney at law to determine if an updated of the search was required.
114. Jasso’s evidence in her witness statement was that on the 5th December 2014 Heeralal informed the Claimants that he was purchasing the partitioned land. The Claimants hired an attorney at law to write Indira and Heeralal calling upon them to cease and desist from selling the partitioned land. She admitted in cross examination that the copy of the letter dated 8th December 2014 was addressed to Andrew and not Indira or Heeralal. She also

admitted that she did not present any letter to Heeralal to the Court. She admitted that neither she nor the First Claimant indicated to Heeralal that they had an objection to him purchasing the partitioned land. She also admitted that she did not tell Heeralal that Indira did not have her permission to sell the partitioned land. Jasoo also stated that on the 13th March 2015 her then Attorney at law filed a lis pendens.

115. Indira's evidence was that she did not inform Savitri and Heeralal that the Claimants wanted her to sell the partitioned land to the family. She admitted that in the Agreement for Sale the Claimants had 12 months after the completion of the sale to move out of the partitioned land. She stated that she told Jasso several times but she did not include this in her witness statement. She also stated that she told Heeralal to inform the Claimants about the sale.
116. Andrew's evidence was that he received the letter dated 8th December 2014 from the Claimants attorney at law calling upon him to cease and desist from selling the partitioned land. He admitted in cross examination that he did not disclose the said letter to Savitri or Heeralal.
117. It was submitted on behalf of the Claimants, that Heeralal had constructive notice that all was not well with the sale of the partitioned land to him.
118. On the other hand Counsel for Savitri and Heeralal submitted that and they cannot be deemed to have had constructive notice because they conducted the relevant searches before the purchase of the partitioned land. Further, at the time of the completion of the sale, Savitri and Heeralal were not given any reason by Indira and Andrew to conduct further enquiries and/or searches on the title of the partitioned land. Savitri and Heeralal only became aware of the lis pendens when they were made a party to the High Court proceedings by service of the Amended Claim Form. By then the sale transaction would have already been completed.
119. Counsel for Savitri and Heeralal also argued that at no time during the transaction were Savitri and Heeralal notified of any conflict concerning the sale of the partitioned land to them. Counsel argued that Savitri and Heeralal remained unaware of any conflict

surrounding the partitioned land until the 7th day of April, 2015 when they received a letter from the Claimants' Attorney-at-Law informing them of the Claimants' objections of the sale of the partitioned land.

120. In my opinion, on a balance of probabilities Heeralal and Savitri had constructive notice that all was not right with the sale of the partitioned land to them on four occasions.
121. Firstly, when Indira told Heeralal to inform the Claimants that he had executed the Agreement for Sale to purchase the partitioned land. Before Heeralal entered into the Agreement for Sale with Indira, he said that he knew that the Claimants tank, tank stand, dog kennels and wash area were located on the partitioned land and that he could not get possession of that portion of the partitioned land until 12 months after the execution of the 2015 Deed since Indira told him that she was making arrangements for the Claimants to move in to live with her. In my opinion, Heeralal's suspicions should have been aroused that something was amiss when Indira told him to inform the Claimants that he had executed the Agreement for Sale. In my opinion if all was well between Indira and the Claimants on the sale of the partitioned land Indira would have informed the Claimants.
122. Secondly, when Jasso asked Heeralal to buy the partitioned land from him in January 2015 and when he started to receive threats. After the Agreement for Sale was executed but before sale was completed, Heeralal admitted that in January 2015 Jasso asked him to buy back the partitioned land and soon after he began receiving threats concerning the sale of the partitioned land to the extent that he spoke to his attorney at law about it. In my opinion, the request by Jasso and the threats constituted sufficient constructive notice that all was not well with the sale of the partitioned land since Heeralal admitted that he became concern over the transaction and he consulted his attorney at law who assured him that Indira and Andrew were the true owners of the partitioned land
123. Thirdly, before the completion of the sale. The lis pendens was filed by the Claimants on the 13th March 2015. In my opinion it would have come to the attention of Heeralal and Savitri if proper enquiries were made to update the search on title before the completion

of the sale. The search on title was done on the 7th November 2014. At that time Savitri and Heeralal would not have had notice of the lis pendens. However, given the events which took place in November 2014 and January 2015 and the fact that Heeralal and Savitri required additional time to complete the sale in my opinion there was sufficient information to put Heeralal and Savitri on notice that due diligence was required before the sale was completed. In my view that due diligence required that the search on title which was done on the 7th November 2014 to be updated. If that proper enquiry was done which is what was required of Heeralal and Savitri then they would have been aware of the lis pendens which was filed on the 13th March 2015.

124. In my opinion, given the circumstances of the instant matters, any reasonable conveyancer would not have completed the sale without making the necessary enquires and title searches as some 4 months had intervened. Indeed it would not have been prudent to proceed with completion of the sale including the stamping and registration of the deed of conveyance until further enquires were made and a clear unencumbered title could have been delivered to Heeralal and Savitri. The effect of the updated searches not having done meant Heeralal and Savitri are bound by the equitable interest claimed by the Claimants.
125. Fourthly, after the conclusion of the sale on the 20th March 2015 but before the registration of the deed of conveyance in July 2015 Heeralal and Savitri became aware by a letter dated the 7th April 2015 that the Claimants had some concerns about the sale of the partitioned land to them. I accept that the said letter did not mention that a lis pendens was filed on the 13th March 2015 and that the sale was completed. However in my view given the series of events which Heeralal had within his knowledge between November 2014 until January 2015, it would have been reasonable for Heeralal and Savitri to take steps to not proceed with the registration of the 2015 Deed due to the concerns raised by the Claimants in the letter.
126. For the aforesaid reasons, I have concluded that Savitri and Heeralal were not bona fide purchasers for value without notice since they had constructive notice that all was not

well with the sale of the partitioned land to them. Therefore any interest they acquired in the partitioned land was subject to the Claimants interest.

Did the Indira and Andrew make negligent and/or fraudulent misrepresentations to Heeralal and Savitri as an inducement to execute the Agreement for Sale?

127. There were two negligent or fraudulent misrepresentation which Heeralal and Savitri pleaded that Indira and Andrew made to them and which they relied on as an inducement to execute the Agreement for Sale. At paragraph 5 of the Ancillary Statement of Case they averred that the Indira and Andrew represented to them that they would be able to utilize the whole or any part of the partitioned land after a twelve (12) month period following the execution of the 2015 Deed. It was also represented to them that Indira and Andrew possessed a good and marketable title to the partitioned land which was to be sold free from encumbrances.
128. Heeralal's evidence in support of the aforesaid particulars in his witness statement was that before he and Indira entered into the Agreement for Sale, Indira told him that the Claimants were, at the time, occupying the partitioned lands, however, she was in the process of building an accommodation for them at her residence and that after the sale of the partitioned land, she would move them across so that he could occupy it and use it for his personal needs.
129. The Agreement for Sale was executed on the 5th November 2014 and paragraph ten (10) expressly provided that Heeralal and Savitri would have use of the portion of the partitioned land occupied by the Claimants twelve (12) months after the execution of the 2015 Deed. On the 12th November 2015 when he went to gain access to the partitioned lands but he was obstructed by Jasso and Maniram who issued threats to him and his family. In December 2015 he was served with documents filed the instant proceedings.

130. Heeralal's evidence on the representations made by Indira that he would obtain vacant possession of the portion of the partitioned land occupied by the Claimants twelve (12) month after the execution of the 2015 Deed was not challenged in cross examination.
131. Indira's evidence was that she did not inform Savitri and Heeralal that the Claimants wanted her to give the family the first option to purchase the partitioned land. She admitted that in the Agreement for Sale she and Andrew had 12 months after the execution of the 2015 Deed to give Savitri and Heeralal vacant possession of the portion of the partitioned land occupied by the Claimants. She confirmed that she represented to Heeralal and Savitri that they would obtain possession of the partitioned land twelve (12) months after the execution of the 2015 Deed. She also stated that she told Jasso on several occasion that the Claimants had to move of the partitioned land.
132. Andrew's evidence was that he received the letter dated 8th December 2014 from the Claimants attorney at law calling upon him to cease and desist from selling the partitioned land. He admitted in cross examination that he did not disclose the said letter to Savitri or Heeralal.
133. In my opinion, Indira and Andrew, represented to Heeralal and Savitri that they had a good and marketable title and that they could give vacant possession for the partitioned land twelve (12) months after the execution of the 2015 Deed as the inducements for Heeralal and Savitri to execute the Agreement for Sale.

If yes, did Savitri and Heeralal directly rely on Indira and Andrew's representations and proceeded to purchase the partitioned land?

134. It was submitted on behalf of Counsel for Heeralal and Savitri that subsequent to the execution of the Agreement for Sale, Indira and Andrew failed to exercise their duty to disclose to the former that the Claimants did not want them to sell the partitioned land. In particular, Indira and Andrew failed to disclose that the Claimants would not have moved off the portion of the partitioned land. Therefore this was a material change of circumstances which misled Heeralal and Savitri into completion of the purchase of the

partitioned land. The failure has caused the Heeralal and Savitri to wrongfully rely on the statements made by Indira and Andrew to enter and complete the purchase of the partitioned land. Therefore, Heeralal and Savitri should be indemnified by Indira and Andrew if the Claimants succeed in the instant matter.

135. In my opinion, Indira and Andrew became aware after the execution of the Agreement for Sale, between November 2014 to December 2014 that the Claimants did not want them to sell the partitioned land to Heeralal and Savitri and as such they would not have been able to give vacant possession twelve (12) months after the execution of the 2015 Deed since the Claimants did not want to vacate. Indira and Andrew also knew that the failure to get the Claimants to vacate meant that their title was encumbered by the Claimants claim. Indira and Andrew also knew that if they had disclosed the conflicts within the family and the letter dated the 8th December 2014 to Heeralal and Savitri, some 3 months before the completion of the sale they would not have proceeded with the sale.
136. Further, given paragraph ten (10) in the Agreement for Sale, it is highly probable that Heeralal and Savitri would not have purchased the partitioned land if they were not promised vacant possession of the entire partitioned land.
137. Therefore, I have concluded that Indira and Andrew knowingly misled Heeralal and Savitri into purchasing the partitioned land because if Heeralal and Savitri had known that the Claimants were unwilling to clear the water tanks, tank stand, dog kennels and wash area so that vacant possession could have been delivered, they would have not completed the sale.
138. For these reasons, I have concluded that the Claimants having succeeded in their claim, Heeralal and Savitri are to be indemnified by Indira and Andrew.

Order

139. The Court declares that the Claimants are entitled to a life interest in All and Singular that certain piece or parcel of land situate at Clarke Road, Charlieville in the Ward of

Chaguanas in the County of Caroni in the Island of Trinidad comprising ONE THOUSAND AND FIFTY FIVE POINT ZERO SQUARE METRES (1,055.0m²) be the same more or less being portion of the parcel of land described in the First Schedule in Deed registered as No. DE20110013866 and bounded on the North by lands now or formerly of John Barron on the South partly by Clarke Road (East) and partly by lands of Harry Sahdoo on the East by Plot B being lands of Jagmohan Mykoo and Jasso Jagmohan and on the West partly by lands now or formerly of John Barron and partly by lands now or formerly of John Barron and partly by lands of Harry Sahdoo and which said piece of parcel of land is delineated and shown coloured pink as Plot No. A on the Survey Plan attached and marked "X" to Deed registered as No. DE201100013866.

140. It is declared that the First and Second Named Defendants hold the partitioned land subject to a life interest of the Claimants.
141. The Deed registered as DE 201502034958 between the Ancillary Claimants and the Ancillary Defendants is set aside.
142. The Third and Fourth Defendants Counterclaim is dismissed.
143. The Claimants having succeeded, the First and Second Defendants/Ancillary Defendants do indemnify the Ancillary Claimants for any damages, cost and interest in relation to the Claimants claim.
144. The Ancillary Defendants to pay to the Ancillary Claimants the cost of purchasing the partitioned land in the sum of \$1,000,000.00 and the legal charges and stamp duties in the sum of \$78,050.00.
145. The First and Second Defendants/Ancillary Defendants do pay the Claimants and the Ancillary Claimants the costs of this action.
146. Pursuant to Rule 67.5(2) (c) CPR the First and Second Defendants to pay the sum of \$14,000.00 in costs to the Claimants.

147. Pursuant to Rule 67.5 (2) (b) (i) CPR the Ancillary Defendants to pay the Ancillary Claimants prescribed costs on the sum of \$1,078,050,00 which is the sum of \$114,252.50.

Margaret Y. Mohammed
Judge