

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. 2015-03541

BETWEEN

**FRANK MATHISON
PATRICIA MATHISON
LOUIS MATHISON**

Claimants

AND

ZOBEEDA HOSEIN

Defendant

Before the Honourable Madam Justice Margaret Y Mohammed

Dated the 20th September, 2017

APPEARANCES:

Mr. Samuel Saunders instructed by Ms. Rhea Holford Attorneys at law for the Claimants.

Mr. Faraaz Mohammed instructed by Ms. Crystal Jalim Attorneys at law for the Defendants.

JUDGMENT

1. On the 24th October 2001 the Defendant became the owner of the parcels of land situated in the Ward of Siparia and described in Certificate of Title Volume 941 Folio 439 comprising of SIX ACRES AND SEVEN PERCHES be the same more or less delineated and coloured pink in the plan attached to the Crown Grant in Volume XXI Folio 439 and bounded on the North by

the lands of Tahul and on the South by Crown Lands, on the East by the lands of Tahul and Crown Lands and on the West by Lands of Charles Julien and being intersected by the road to San Francique (now known as Timital Road) and the parcel of land situated in the Ward of Siparia and described in Certificate of Title Volume DCCHXXIX Folio 179 comprising of SIX ACRES TWO ROODS AND TWENTY NINE PERCHES be the same more or less being the remaining portion of the lands delineated in the diagram attached to the Crown Grant in Volume LV11 Folio 629 and shown in the plan annexed to Memo of Transfer No. 78 dated 29th June, 1906 and in the margin hereof and bounded on the North by the lands of Richard Julian, on the South and East by Crown Land and on the West by lands of Montoute Vidale (“the larger parcel of lands”).

2. The First and Second Claimants are husband and wife and the Third Claimant is one of their children. The Claimants case is that in 1957 they entered into possession of two pieces of land situated at Saltmine Trace Siparia namely tenanted land situate at No. 314 Saltmine Trace, Siparia Old Road, Siparia (“the tenanted land”) and the land situated at L.P. No.60 G Saltmine Trace, Siparia Old Road, Siparia. They averred that in about the year 1957, they rented the tenanted lands from Bobby Austin and upon entering into possession of the same, they also entered into possession of a part of the northern portion of the larger parcel of lands namely FOUR ACRES more or less and bounded on the North by Saltmine Trace, on the South partly by lands of Zobeeda Hosein, on the East by lands of the Crown then Banhunsingh and on the West by lands of Zobeeda Hosein (“the disputed land”). The disputed land is a portion of the larger parcel of land which comprise SIX ACRES SEVEN PERCHES be the same more or less more particularly described in Certificate of Title in Volume 64 Folio 439.
3. The Claimants averred that in 1957 the First Claimant cleared most of the plants and overgrown grass on the disputed land after which the First Claimant began cultivating 1 ½ lots with bananas, sweet potatoes, cucumbers and spinach. From 1959, the First Claimant and the Second Claimant with the assistance of their children began clearing more and more of the disputed land extending their cultivation to include other crops such as hot peppers, tomatoes, cassava, sugar cane, pigeon peas, coconuts and pumpkins. Sometime in or about the year 1972, the First Claimant and his daughter Bernadine Mathison entered into possession of about 3 lots of the

larger parcel of land and constructed a wind ball cricket ground to host matches and tournaments for the youths in the community. The Claimants abandoned the area where the said cricket ground was located in 1977 and it was subsequently occupied and built upon by a neighbour known only as Popola in the years 1992.

4. The First Claimant and the Second Claimant averred that by 1975 they were occupying about 1 ½ acres of the disputed land and together with their children began cultivating crops such as bodi, corn, sweet potato, ginger, sim, sorrel, cabbage, sweet pepper, cauliflower, plantain, dasheen, tania, eddoes, plum, oranges, barbadine, sapodilla, guava, portugal, soursop and pawpaw.
5. Sometime in the year 1975, the First Claimant and the Second Claimant were approached by a man whose name they do not know while on the disputed land. The said man was armed with a gun, accompanied by a large dog and claimed to be the rightful owner of the disputed land. As a result of the above encounter, the Second Claimant commissioned a title search in respect of the larger parcel of land at the Registrar General's office in Port of Spain, where it was discovered that it was owned by one Dolly Joseph.
6. Between 1975 to 1980 the First Claimant and the Second Claimant cleared and cultivated the remainder of the disputed land so that by 1980, the First Claimant and the Second Claimant were in possession of and cultivating all of the disputed land. The Claimants averred that over the years in clearing the disputed land, the First Claimant and the Second Claimant did not fell all of the trees but left some trees such as cocorite, puadu and barahar as shade and windbreak.
7. During the period 1989 to 1994, the son of the First Claimant and the Second Claimant, Neil Mathison, Dwayne Mathison and the Third Claimant sold the agricultural produce grown by the First Claimant, the Second Claimant and their children at the Siparia market on weekends.
8. Sometime in the year 1991, pursuant to the permission granted to him by the First Claimant and the Second Claimant, the Third Claimant constructed a board house measuring

approximately 15 feet by 15 feet on the disputed land in which he lived from 1991 until March, 2002.

9. Sometime in 1996, the Second Claimant while on the disputed land was approached by one Doodnath Deepack Ramroopsingh (“Mr Ramroopsingh”) who showed her a Memorandum of Transfer dated the 4th day of April, 1996 and demanded that she stop cultivating the disputed land. The Second Claimant refused.
10. The Second Claimant subsequently visited the office of the Land Tenants, Ratepayers and Squatters Union where she was advised of her entitlement to the disputed land and referred to Attorney at Law, Mr. Subhas Panday. By letter dated the 5th day of October, 1996 Mr. Subhas Panday wrote to Mr Ramroopsingh indicating that the Second Claimant had been in continuous undisturbed possession of 1 ½ acres of the disputed land. There was no reply to the said letter.
11. In or about the year 1999, two agents and/or servants for Mr Ramroopsingh wrongfully and without the permission of the First Claimant and the Second Claimant entered the disputed land with a backhoe. The First Claimant and the Second Claimant informed the workmen that they were owners of the disputed land and the men subsequently left.
12. The Second Claimant returned to the office of Mr. Panday who advised her to go to the police. Mr. Panday gave the Second Claimant a letter dated the 16th day of October, 1999, to take to the Siparia Police Station. In the said letter Mr Panday stated that the First Claimant and Second Claimant were in occupation of 1 ½ acres of the disputed land for 30 years. After the above incident neither Mr Ramroopsingh nor his servants and/or agents ever entered the disputed land.
13. Sometime in the year 2000, the First Claimant and the Second Claimant were informed by a neighbour that the Defendant’s husband, one Ferose Hosein also known as Bill Hosein (“Mr Hosein”) threatened to move them off the disputed land. As a result, the Second Claimant again visited the Land Tenants, Ratepayers and Squatters Union and a warning letter was sent by the above Union to Mr Hosein.

14. The Claimants also averred that in or about 2002 Mr Hosein visited the Second Claimant at her home and enquired as whether she had applied for the disputed land. The Second Claimant refused to answer him and he left.
15. On the 2nd day of March, 2002, the Defendant's servants and/or agents together with five police officers, two tractors and a bulldozer entered the disputed land, demolished the board house of the Third Claimant using the bulldozer and destroyed all of the crops of the First Claimant and the Second Claimant. The Defendant's servants and or agents placed a guard booth and a disposable toilet on the disputed land. The Defendant's servants and/or agents also excavated two hills situate to the south of the disputed land and removed numerous truckloads of soil passing over the disputed land.
16. By letter dated the 25th day of March, 2002, the Attorney at Law of the First Claimant and the Second Claimant, Mr. Winston Seenath, wrote to the Defendant's husband demanding that all equipment, a guard booth and disposable toilet be removed from the disputed land. On the 26th day of March, 2002, the Defendant's servants and/or agents removed the guard booth, the disposable toilet and all the equipment from the disputed land.
17. However, by letter dated the 17th day of April, 2002 Attorney at Law Hynia Harrikissoon acting on behalf of Mr Hosein responded to Mr. Seenath's letter. The Second Claimant although advised to commence litigation against the Defendant and Mr Hosein did not do so, due in large part to their inability to pay legal fees. The First Claimant and the Second Claimant and their children however recommenced the cultivation of their crops on the disputed land.
18. The Claimants also pleaded that over the years, the First Claimant and the Second Claimant never cultivated all of the disputed land at the same time. The Claimants averred that for about 5 to 10 years they would cultivate part of the disputed land leaving the rest of the land to lie fallow and for natural vegetation to grow thereon; after which, they would let the cultivated lands lie fallow and cultivate the lands which were previously lying fallow.

19. In 2010, the First Claimant and the Second Claimant erected two concrete tables each with an umbrella and surrounded by 3 concrete benches on the northern part of the disputed land. By letter dated the 26th day of April, 2011, the Attorney at Law for the Defendant's son wrote to the First Claimant and the Second Claimant directing them to cease cultivating the disputed land. By letter dated the 11th day of May, 2011, Attorney at Law, Mr. Herbert Charles on behalf of First Claimant and the Second Claimant, responded to the aforesaid letter.
20. By Case No. 6064/11 and 6965/11, the Defendant filed a private complaint against the Third Claimant for trespass and nuisance at the Siparia Magistrate's Court in the year 2011. The matters were dismissed for non-appearance of the Defendant.
21. By letter dated the 11th day of November, 2013, the Defendant's Attorney at Law, Mr. Faraaz Mohammed wrote to the Third Claimant. The Third Claimant consequently instructed Attorney at Law, Mr. Herbert Charles on the 21st day of November, 2013, to respond to the above letter.
22. In or about the month of November, 2014, the Third Claimant pursuant to the permission granted to him by the First Claimant and the Second Claimant rebuilt a board house on the disputed land in which he lived until it was demolished by the Defendant's servants and/or agents on the 14th day of October, 2015.
23. By letter dated the 9th day of December, 2014, the Defendant again by her Attorney at Law, Mr. Faraaz Mohammed again wrote to the Third Claimant requesting that his new house as well as the crops and benches of the First Claimant and the Second Claimant be removed from the disputed land within seven days. The Third Claimant never removed the said new house or the crops of the First Claimant and the Second Claimant and benches.
24. In or about August, 2015, the First Claimant and the Second Claimant erected twenty five fence posts along the northern boundary of the disputed land and fenced about two hundred feet of the aid northern boundary with chain link wire.

25. By letter dated the 25th day of August, 2015, the Defendant's Attorney at Law wrote to the Third Claimant and his Attorney at Law. Mr. Dexter Bailey replied by letter dated the 3rd day of September, 2015 stating the Third Claimant and his family were in occupation of the disputed lands for over forty-eight (48) years and over the years they planted crops and maintained the disputed land and that their home is located there.
26. During the period the 1st day of September, 2015, to October 2015, the Defendant, her servants and/or agents without the permission of the Claimants entered unto the disputed land and did the following:
- i. Entered the disputed land with backhoes, tractors, motor vehicles and other heavy equipment and machinery.
 - ii. Cleared the disputed land of trees, crops and vegetation.
 - iii. Excavated a road about 10 feet wide on the western side of the disputed land.
 - iv. Excavated at the front and the back of the Third Claimant's house.
 - v. Authorized a surveyor to enter upon and survey the disputed land.
 - vi. Authorized a valuator to enter upon and value the disputed land.
 - vii. Deposited steel sheets, fence posts and chain link wire on the disputed land.
 - viii. Removed the fence posts and chain link wire of the First Claimant and Second Claimant.
 - ix. Erected a guard booth and disposable toilet on the disputed land.
 - x. On the 14th day of October, 2015, bulldozed the new house built by the Third Claimant.
 - xi. Prevented the Claimants and their licensees and/or servants and/or agents from entering unto and/or remaining on the disputed land.
 - xii. Prevented the Claimants' surveyor from completing a survey of the disputed land.
27. Based on the aforesaid facts the Claimants have instituted the instant action against the Defendant seeking the following orders from the Court:
- (a) A declaration that the First Claimant and the Second Claimant are the owners of and entitled to possession by adverse possession of the disputed land.
 - (b) Damages for trespass to the disputed land.

- (c) An Order for possession of the disputed land.
- (d) An Order that the Defendant break and/or remove any structure and/or fence erected by her, her servants and/or agents on the disputed land.
- (e) An Order that the Defendant remove all motor vehicles and machinery parked by the Defendant her servants and/or agents on the disputed land.
- (f) An Order that the Defendant restore the disputed lands to its original state or alternatively pay to the First Claimant and the Second Claimant the cost of restoring the same.
- (g) An injunction restraining the Defendant whether by herself, her servants and/or agents or otherwise from: excavating and/or continuing to excavate, constructing any road(s), entering; preventing and/or denying the Claimants and their licensees, servants and/or agents access to the disputed land; fencing the disputed land or any part thereof; constructing and/or building and/or erecting any structure and/or building on the disputed land.; clearing and/or felling and/or cutting the crops and fruit trees of the First Claimant and the Second Claimant on the disputed land.
- (h) Interest.
- (i) Costs.

28. The Defendant admitted that she is the owner of the disputed land since 2001. However she averred that the Claimants occupied a property opposite the disputed land. The Defendant averred that in or about 2nd March, 2002 her servants and/or agents entered, worked and occupied a portion of the disputed land. After the works were completed, the Defendant did not observe the Claimants conducting any activity on the disputed land. In 2003, the disputed land were then further cleared, graded and quarrying was done without any interference or interruption by the Claimants.

29. However, after Mr Hosein suffered a stroke and was confined to a wheel chair in 2009, in 2011 the Claimants unlawfully entered and trespassed on the disputed land. In or around November, 2014, the Claimants constructed a wooden structure on the disputed land. The Claimants then erected 25 fence posts along the northern boundary of the disputed land and proceeded to fence approximately 200 feet with chain link wire fencing. In or about late August, 2015 or early

September, 2015, the Defendant's servants and/or agents began performing various works on the disputed land. On 14th October 2015, the Claimant's wooden structure was demolished.

30. The Defendant has counterclaimed seeking the following orders:
- (a) Declaration that she is the lawful owner of the larger parcel of lands.
 - (b) An injunction restraining the Claimants and/or their servants and/or his agents from entering and trespassing on the larger parcel of lands.
 - (c) An injunction restraining the Claimants and/or their servants and/or agents from harassing, threatening, molesting and/or assaulting the Defendant and/or her servants and/or agents;
 - (d) An injunction restraining the Claimants and or their servants and/or agents from blocking preventing and/or otherwise obstructing the Defendant and/or her servants and/or agents from entering upon the larger parcel of lands or any part thereof
 - (e) An injunction restraining the Claimants and/or their agents and/or servants from cultivating crops and/or constructing and/or erecting and/or extending any other structures on the larger parcel of lands.
 - (f) Damages for trespass.
 - (g) Costs; and
 - (h) Interest
31. The issues which arise for determination are:
- (a) Whether the Claimants are entitled to the disputed land by reason of adverse possession.
 - (b) If yes, have the Claimants proven their damages?
32. At the trial the Claimants, Mr Dwayne Mathison, Mr Paul Williams and Mr Faizal Hosein (valuator) gave evidence for the Claimants. The only witness for the Defendant was the Defendant's grandson Mr. Fawwaaz Hosein. There were two other witness statements filed on behalf of the Defendant to call as experts namely by Dr Dexter Davis a photogrammetric Engineer and Mr Sheldon Phillip a valuer. The Defendant had proposed to call both witnesses,

as experts but their evidence was not permitted since there was a failure to comply with Part 33 CPR.

Whether the Claimants are entitled to the disputed land by virtue of adverse possession?

33. Section 3 of the Real Property of Limitation Act¹ prevents the paper title owner from the right to recover lands either by action or entry within 16 years from the time when the right to bring the action or make an entry first accrued. Section 22 provides that where after the expiration of the limitation period prescribed by section 3 (i.e. 16 years) the person entitled to do so has not brought an action or made an entry for the recovery of the land his right and title to the land shall be extinguished. The conjoint effect is the person making the claim extinguishes the right of the title of the paper title owner to the land at the end of the statutory period. Time stops running when the owner either makes an effective entry on the land or takes legal proceedings.
34. The law will presume that the paper title owner, in this case the Defendant was in actual possession of the disputed land. At paragraph 40 in **J A Pye (Oxford) Ltd v Graham**² the House of Lords approved the following statement from **Powell v Mc Farlane**³:
- "(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prime facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner. (2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ('animus possidendi')."
35. According to the learning in **J A Pye (Oxford) Ltd v Graham** the two elements necessary for legal possession are (a) a sufficient degree of physical custody and control ("the factual

¹ Chapter 56:03

² [2013] 1 AC 419

³ 39 P&CR 470

possession”) and (b) an intention to exercise such custody and control on one’s own behalf and for one’s own benefit (“an intention to possess”).

36. In **Bligh v Martin**⁴, Pennycuik J opined that:

“(1) Possession is a matter of fact depending on all the particular circumstances of a case. In very many cases possession cannot, in the nature of things, be continuous from day to day, and it is well established that possession may continue to subsist notwithstanding that there are intervals, and sometimes long intervals, between the acts of user.”

37. Slade J in **Powell v Mc Farlane** described “factual possession” as⁵:

“Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances of the case in particular, the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so”.

38. Slade J in **Powell v Mc Farlane**⁶ described the “necessary intention to possess” as:

“3. ‘intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow”.

⁴ [1968] 1 WLR 804 at 811 F

⁵ [1977] 38 P& CR 452 at page 470-471

⁶ [1977] 38 P&CR 452 at page 470

39. When did the statutory period of 16 years of continuous undisturbed possession begin to run for the Claimants?
40. It was argued on behalf of the Claimants that their period of undisturbed possession started since 1957 and that the Defendant's action in March of 2002 were insufficient to dispossess them. It was also argued that only in 2011 after the First and the Second Claimant erected concrete tables and benches along Saltmine Trace on the northern part of the disputed land that the Defendant filed a private complaint against only the Third Claimant in the Siparia Magistrate's Court. She then failed to appear and the complaint was dismissed.
41. The Defendant submitted that in 2002 when Mr Hosein with five police officers, two tractors and a bulldozer entered onto the disputed land, bulldozed the land and demolished the Third Claimant's house such acts amounted to a re-taking of possession by the Defendant. Therefore statutory period of 16 years started to run from 2002.
42. Was the Defendant's action in March 2002 sufficient to constitute an act of re-entry? In the text **Adverse Possession**⁷ the learned authors referred to the case of **Randall v Stevens**⁸ to describe what the Courts have found to be a sufficient act of re-entry by the paper title owner. In that case, P occupied a cottage as tenant at will for nearly 21 years. Just before the expiry of the limitation period, in 1839, the owners entered, turned out P and his family, and removed nearly the whole of his furniture and goods. On the same day, he returned and held possession for another 13 years, when the owners entered and destroyed the cottage. It was held that the owners had resumed possession so that the statute ran a fresh from the subsequent entry."⁹
43. At paragraph 17 of the First Claimant's witness statement he stated that in 2002, the Defendant's servants and/or agents, Mr Hosein caused all of their crops and the Third Claimant's board house to be bulldozed and over two thousand loads of backfill sand from the exaction of two hills to the south of the disputed land were removed. He confirmed this under cross-examination.

⁷ 2nd Edition by Stephen Jourdan QC, Oliver Radley-Gardner

⁸ [1853] 2 E & B 641

⁹ Page 139 paragraph 7-77

44. The Second Claimant's evidence in her witness statement was similar to that of the First Claimant. In cross examination she admitted that when Mr Hosein entered the disputed land they were afraid of him because he said he was not Mr Ramroopsingh since he "had a gun and he have money."
45. The Third Claimant stated in his witness statement that in March, 2002, Mr Hosein together with other workmen destroyed the board house and the crops on the disputed land. The men returned and excavated two hills to the south of the disputed land and took truckloads of soil from it despite his protests. He also stated that every day for the estimated three weeks the men were on the disputed land. He tried to go unto the same to observe what they were doing and to report to the First Claimant and Second Claimant. On some days he was stopped by the guards, but other days he was able to walk to the south of the disputed land, parts of which were being excavated. On the 25th of March, 2002, he saw all the men pack their equipment, machinery, guard booth and disposable toilet and leave the disputed land. He let the disputed land lie fallow for about one month after the crops were destroyed as the soil's fertility was affected by the constant passing over and activity of the Defendant's workmen on the disputed land and thereafter re-commenced his cultivation of the disputed land.
46. Therefore by the Claimants own evidence, Mr Hosein did not only re-enter upon the disputed land but made substantial use of it by mining and removing soil. In so doing, the Claimants were prevented for a three week period during that time by the Defendant's servants and or agents from occupying and/or using the disputed land. In my opinion the actions by Mr Hosein who was the servant and/or agent of the Defendant was sufficient to dispossess the Claimants in March 2002. At that time in March 2002, the Claimants were no longer in "continuous, undisturbed possession". Rather, at that time it was appropriate for the Claimants to pursue their claim for possession and damages and I do not accept that pecuniary difficulties are an adequate excuse for not asserting their claim.
47. The actions of Mr. Hosein having amounted to dispossessing the Claimants, any claim they have for adverse possession started to run afresh only from the re-entry upon the disputed land

in 2002, That being the case, the Claimants claim for adverse possession cannot be maintained as the requisite statutory sixteen year time period elapses in May 2018.

48. However, even if the Court is wrong and found that the date of re-entry by the Defendant was 2011 in my opinion the Claimants action would still fail since they failed to demonstrate the actual size and boundaries of the disputed land which they were in possession and they failed to prove that they cultivated the entire disputed land.

49. The issue of adverse possession is a question of fact and the onus is on the Claimants who have asserted ownership by adverse possession to prove such matters.

50. In the text **Adverse Possession** the learned authors had the following to say on the importance of the physical demarcation of property where a claim for adverse possession lie. At Page 222 paragraph 9-106 they stated that:

“In order for a squatter’s action unequivocally to indicate an intention to possess land, that land must be clearly demarcated from other land which the squatter does not possess. In *Prudential Assurance Co. Ltd v Waterloo Real Estate Inc* [1999] 2 EGLR 85 at 88- Peter Gibson LJ said: It is of course important, as the judge recognised that there should be a clear and defined physical division between that part of the wall possession of which the claimant claims and that part of the wall possession of which it does not claim.”

51. The Claimants pleaded that they have been in factual possession of the 1 ½ lots of the disputed land from 1957 to 1980 and from 1980 to 2002 the entire disputed land.

52. At paragraph 11 of the Amended Statement of Case the Claimants pleaded:

“11. Between 1975 to 1980 the First Claimant and the Second Claimant cleared and cultivated the remainder of the Disputed Land so that by the year 1980, the First Claimant and the Second Claimant were in possession of and cultivating all of the Disputed Land”.

53. However at paragraph 28 of their Amended Statement of Case the Claimants pleaded that:
- “28. In cultivating the Disputed Land over the years, the First Claimant and the Second Claimant have never at any time had all of the Disputed Land under cultivation at the same time. The Claimants for about 5 to 10 years would cultivate part of the Disputed Land leaving the rest of the land to lie fallow and for natural vegetation to grow thereon; after which, they would let the cultivated lands lie fallow and cultivate the lands which were previously lying fallow.”
54. There were no particulars in the pleading of what area they did not plant.
55. The evidence of the First and Second Claimants was that since in or about the year 1957 they entered into possession of the northern portion of the disputed land comprising about one and a half lots which they cultivated. The First and Second Claimants further indicated that between the period 1957 to 1980 they increased their occupation of the disputed land from the initial one and a half lots to four acres.
56. Under cross-examination, the Claimants maintained this account. The First Claimant indicated that he was able to estimate his initial occupation of a lot and a half by comparing the land space that he was renting from Bobby Austin to the North of Saltmine Trace. The First Claimant further explained that when planting short crops the soil gets less fertile which caused him to have to continue cultivating more and more land. When asked under cross-examination how he was able to identify the measurement of four acres of land the First Claimant indicated that he became aware of the extent of land occupation only *after* it was surveyed.
57. The Second Claimant likewise indicated that by 1980 all of the disputed land was being occupied. At paragraphs 10 to 19 of the Second Claimant’s witness statement she related the Claimants version of the events between 1996 and 2002. She stated that:
10. Sometime in the year 1996, my neighbour Doodnath Deepack Ramroopsingh visited me and claimed to be the owner of the Disputed Land. He came holding a document dated the 4th of April, 1996. I now know that this was a Memorandum of Transfer is exhibited at No 6 on the Agreed List of Documents. I asked him how he

could obtained the document when he knows that I have been planting the Disputed Land for many years and have a house on it. I told him to stop bothering me and that I would not move off of the Disputed Land.

11. As a result of the incident with Mr. Ramroopsingh I went to the Land Tenants, Ratepayers and Squatters Union where I was advised. I realized that I was only a tenant of the tenanted lands and that they could not assist me in anything concerning the Disputed Land. I was then referred to Attorney at Law, Mr. Subhas Panday. After speaking with him, he wrote a letter on my behalf dated 5th October, 1996. He gave me a copy of the letter. After Mr. Ramroopsingh was given the said letter he did not bother me again until about 3 years later. If I were to see this letter again I would recognize it by the Name of the Attorney "Subhas Panday" at the bottom left corner of the letter, the dated "5th October, 1996", my name in the first line of the body of the letter "Patricia Mathison". The copy of the letter is exhibited at No. 6 on the Claimants' List of Documents.

12. In the year 1999, two agents and/or servants of Doodnath Deepack Ramroopsingh entered the Disputed Land with a backhoe without my permission. I went to them and asked them why they were there. I again instructed Attorney at Law Subhas Panday to write a letter on my behalf. Mr. Panday gave me a letter dated 16th October, 1999, to take to the Siparia Police Station. If I were to see this letter again I would recognize it by the Name of the Attorney "Subhas Panday" at the bottom left corner and the top left corner of the letter, the date "16th October, 1999", my name "Patricia Mathison" in the subject line of the letter. The copy of the letter is exhibited at No. 6 on the Claimants' List of Documents. I gave a copy of the letter to Mr. Ramroopsingh and neither he nor his servants and/or agents ever returned. I delivered the original letter to the Police Station.

13. In the year 2000, I was speaking with a neighbour and realized that the Defendant was the new owner of the Disputed Land. I had seen the Defendant before

as she lives in the community with her husband Ferose Hosein also called Bill Hosein and son Salim Hosein.

14. During the same conversation with the said neighbour I realized that Ferose Hosein was going around the community saying that he is not like Ramroopsingh, that he has guns and I have to move. I became afraid and returned to the Land Tenants, Ratepayers and Squatters Union. I spoke to Anthony Geoffroy who wrote a letter on behalf dated June 7, 2000. If I were to see this letter again I would recognize it by the letterhead "The Land Tenants, Ratepayers and squatters Union", the name "Anthony Geoffroy" at the bottom left corner of the letter and the date "June 7, 2000". The copy of the letter is exhibited at No. 8 on the Claimants' List of Documents.

15. About 2 years later Ferose Hosein approached me at my home. He asked me questions. I told him I was not answering whether I had applied for the Disputed Land. I asked him if he had a deed. He did not answer me and walked away.

16. On March 2, 2002, the Defendant's servants and/or agents together with 5 police officers entered the Disputed Land and bulldozed Louis' board house. The said servants and/or agents came with 2 tractors and a bulldozer. After they bulldozed Louis' house, they destroyed all my crops and excavated two hills to the south of the Disputed Land. They removed numerous truckloads of soil from the same while passing over the Disputed Land. I was on the Disputed Land picking peas when they came to bulldoze. The men were aggressive and I was afraid of them.

17. I went to an Attorney at Law, Mr. Winston Seenath. I had about 2 acres of the Disputed Land under cultivation at the time. Mr. Seenath by letter dated March 25, 2002, wrote to Ferose Hosein. I know this because he gave me a copy of the letter he wrote on my behalf. The copy of the letter is exhibited at No. 7 on the Agreed List of Documents. At the time that I gave instructions to Mr. Seenath, I did not have an accurate understanding of land measurements.

18. Within an hour of the letter being hand delivered to Ferose Hosein, all the equipment, disposable toilet and guard booth from on the Disputed Land were removed. Neither the Defendant nor her servants and/or agents came unto the Disputed Land until September, 2015 as far as I am aware.

19. Sometime after I was given a letter by Attorney at Law Hynia Harrikissoon dated April 17, 2002, in response to a letter from Mr. Seenath. The copy of the response letter is exhibited at No. 8 on the Agreed List of Documents.”

58. In cross-examination the Second Claimant stated that she became aware of the size of the disputed land when gardeners who passed by told her it was 1 ½ acres to 2 acres.

59. However, the evidence of the First and Second Claimants on the actual size of the disputed land which they occupied since 1957 were contradicted by certain letters which they had written on their behalf to Mr Ramroopsingh and then to Mr Hosein, the servant and or agent of the Defendant. The said letters were also annexed to their Amended Statement of Case. The Second Claimant admitted Mr Ramroopsingh spoke to her in 1996 about her family’s occupation of the disputed land. The Second Claimant admitted that she caused Mr Subash Panday to write a letter on her behalf to the predecessor in title of the disputed land, Mr Ramroopsingh on the 5th October 1996. Counsel for the Defendant put to the Second Claimant that the said letter stated that the Second Claimant and her family was in undisturbed possession of 1.5 acres of the disputed land. In response the Second Claimant who admitted that she had given Mr Subash Panday the instruction to have the said letter prepared stated that the 1.5 acres was a mistake.

60. Counsel for the Defendant also questioned the Second Claimant about another letter which was written on her behalf by Mr Subash Panday dated the 16th October 1999 to the Senior Superintendent of Police, Siparia. The Second Defendant acknowledged that she had instructed Mr Panday to write this letter which stated that the Second Claimant and her family occupied 1 ½ acres of the disputed land but again she stated that this was a mistake since her family was occupying four acres.

61. In cross-examination the Second Claimant admitted that in 2002 Mr Hosein came onto the land but she could not remember for how long. She admitted that she instructed Mr Winston Seenath, Attorney at law to write a letter to Mr Hosein indicating that her family had been in undisturbed occupation of the disputed land for 43 years. Counsel for the Defendant put to the Second Claimant that in the letter Mr Seenath stated that she and her family was in occupation of two lots on the disputed land. The Second Claimant again denied that she told Mr Seenath that they were occupying two lots.

62. In my opinion it is highly unlikely that the authors of the three letters issued on behalf of the Claimants during the period 1996 to 2002 made a mistake by stating that the Claimants were in occupation of 1 ½ acres of the disputed land and not the entire four acres. It is clear that the authors of the said letters acted upon the instructions of the Second Claimant and that it was not simply a mistake. What is even more puzzling was that while the Claimants were asserting a claim in undisturbed possession of 1 ½ acres of the disputed land in each letter they asserted a different period. The First and Second Claimants' evidence was that they had been in occupation of a portion of the disputed land since 1957. In the 1999 letter the Claimants said that they had been in undisturbed possession for 30 years (ie 1969). In the 2002 letter they said they had been in occupation for 43 years (ie 1959) and in a letter dated 11th May 2011 from Mr Herbert Charles attorney at law he asserted that the Claimants had been in occupation of the disputed land for 50 years(ie 1961) and in a letter dated 3rd September 2015 from Mr Dexter Bailey Attorney at law for the Claimants he said that the Claimants have been in occupation for 48 years (ie 1966).

63. The evidence of the Third Claimant corroborated the First Claimant's and Second Claimant's evidence in their respective witness statements but it did not remove the doubt cast by the contemporaneous documents namely the aforesaid letters which were written on behalf of them.

64. Therefore, the Claimants failed to prove the actual size of the disputed land they asserted they were in undisturbed possession of since 1957.

65. The Claimants also failed to prove that they cultivated the entire disputed land with the crops, which they alleged.
66. At paragraph 13-30 of **Adverse Possession**, the authors in referring to the case of **Neilson v Poole** (1969) 20P&C 909 stated:
“The cultivation of land involves breaking up the surface of the land, planting in it, and, in the case of arable land, harvesting crops. It thus amounts to the complete physical control of the land and is an unambiguous act of possession. The courts have consistently treated the cultivation of both arable land and land used as garden as amounting to possession, provided that there is a clear boundary marking out the extent of the land cultivated.” (Emphasis added)
67. In **JA Pye (Oxford) Ltd v Graham** the Court was of the view that “The possession must be open and not concealed.”
68. The Claimants’ claimed they cultivated short term crops sweet peppers, hot peppers, spinach, tomatoes cauliflower, bananas, plantain, pawpaw, cabbage, peas, root crops-sweet potatoes dasheen, tania, cassava, ginger, eddoes, pumpkin and permanent fruit trees such as sapodilla, guava, plums, coconuts and oranges.
69. The Second Claimant claimed under cross-examination that there were about 20-30 trees.
70. Mr. Paul Williams, registered Land Surveyor and Photogrammetric Engineer who was called by the Claimant prepared a report dated 17th June 2016. At paragraph 25 of his report he made the following findings:
“ 25. After examination of the aerial photography for the years, 1980, 1994, 1998 and 2003 stereoscopically, in three dimensions, having examined the digital mapping of 1994 and having plotted the area using the aerial photography of 1998 and 2003, I can now conclude that:
a. The front, north and north eastern portions of the disputed lands were maintained since 1980.

- b. That the large trees were removed in the sections of the disputed lands were being maintained or used for agriculture between 1980 and 1994.
- c. That almost the entire Disputed Parcel was maintained and large trees removed in 1998.
- d. The large portions of the disputed lands were bulldozed between 1998 and 2003.”

71. Mr. Williams under cross-examination stated that coconut trees and bananas are easy to identify and that if he had seen that he would have mentioned it in his report. There was no mention of the appearance of these and Williams could not make a distinction between maintenance and defined agriculture.

72. In my opinion, the evidence of Paul Williams at paragraph 25(a) that the front, north and north-eastern portions of the disputed lands were maintained since 1980, contradicted the Claimants contention that the entire disputed lands were under cultivation.

73. The Claimants also failed to prove that they cultivated the disputed land with the type of crops, which they alleged.

Damages

74. The issue of damages does not arise since the Claimants action has failed. In any event, the valuation report done by Mr. Faizal Hosein was entirely based on hearsay since the information was given by the Claimants, which he could not independently verify.

Conclusion

75. The Claimants action is dismissed since they have failed to meet the statutory requirement that they have been in continuous undisturbed possession for 16 years after 2002 which is the date of re-entry by the Defendant.

76. Even if the Court found that the date of re-entry by the Defendant was 2011 the Claimants action still failed since they have failed to demonstrate the actual size and boundaries of the disputed land which they were in possession. They also failed to prove that they cultivated the entire disputed land with the crops which they asserted.

Order

77. The Claimants action is dismissed.

78. Judgment to the Defendant on the counterclaim.

79. It is declared that the Defendant is the lawful owner of the larger parcel of lands situated in the Ward of Siparia and described in Certificate of Title Volume 941 Folio 439 comprising of SIX ACRES AND SEVEN PERCHES be the same more or less delineated and coloured pink in the plan attached to the Crown Grant in Volume XXI Folio 439 and bounded on the North by the lands of Tahul and on the South by Crown Lands, on the East by the lands of Tahul and Crown Lands and on the West by Lands of Charles Julien and being intersected by the road to San Francique (now known as Timital Road) and the parcel of land situated in the Ward of Siparia and described in Certificate of Title Volume DCCHXXIX Folio 179 comprising of SIX ACRES TWO ROODS AND TWENTY NINE PERCHES be the same more or less being the remaining portion of the lands delineated in the diagram attached to the Crown Grant in Volume LV11 Folio 629 and shown in the plan annexed to Memo of Transfer No. 78 dated 29th June, 1906 and in the margin hereof and bounded on the North by the lands of Richard Julian, on the South and East by Crown Land and on the West by lands of Montoute Vidale.

80. The Claimants and/or their servants and/or his agents are restrained from entering and trespassing on the larger parcel of lands.

81. The Claimants and/or their servants and/or agents are restrained from harassing, threatening, molesting and/or assaulting the Defendant and/or her servants and/or agents.

82. The Claimants and or their servants and/or agents are restrained from blocking preventing and/or otherwise obstructing the Defendant and/or her servants and/or agents from entering upon the larger parcel of lands or any part thereof.
83. The Claimants and/or their agents and/or servants are restrained from cultivating crops and/or constructing and/or erecting and/or extending any other structures on the larger parcel of lands.
84. No award is made for damages for trespass since no evidence was lead in support of this claim.
85. The sum claimed by the Claimants as special damages in the Amended Statement of Case was \$160,044.00. Pursuant to Rule 67.5(2) (b) (i) Civil Proceedings Rules, the Claimants to pay the Defendant's costs in the sum of \$33,006.60.

.....
Margaret Y Mohammed
Judge