

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2016- 00729**

**Between**

**SHAMCHAND NANKISSOON**

**Claimant**

**and**

**ALISHA WARREN  
(also known as ALICIA WARREN  
also known as NATASHA WARREN)**

**Defendant**

**Before the Honourable Madam Justice Margaret Y Mohammed**

**Dated the 17<sup>th</sup> July 2017**

**APPEARANCES:**

Mr. Ronnie Bissessar instructed by Ms. Saskia Samlal Attorneys at law for the Claimant.  
Ms. Adanna Walker Attorney at law for the Defendant.

**JUDGMENT**

1. The Claimant is the registered proprietor and owner of a parcel of land comprising 1,254.5 square metres situated at Corner Rochard Douglas Road and Moruga Road, St. Mary's Village, Moruga and more particularly described in the Certificate of Title registered in Volume 5319 Folio 471 ("the larger parcel of land").

2. The Defendant and her children have been in occupation of a house (“the dwelling house”) on a smaller parcel of land consisting of 240.1 square metres (“the smaller parcel of land”) which is part of the larger parcel. The Claimant has instituted the instant proceedings for possession of the smaller parcel of land together with the dwelling house erected thereon; for an order that the Defendant and the persons in occupation of the smaller parcel of land and the dwelling house to give vacant possession within 30 days of being ordered to do so; a declaration that the Defendant is a trespasser in respect of the smaller parcel of land and the dwelling house; damages for trespass; costs and other relief.
  
3. The Claimant’s case was that by Memorandum of Transfer dated 28<sup>th</sup> February 1994 and registered as No. 3662/1994 the Claimant’s father, Roopchand Nankisson (“Roopchand”) became the registered proprietor of a parcel of lands comprising approximately 1 acre which he purchased for \$22,000.00 from one Vishnudath Maharaj. The lands purchased by Roopchand included the larger parcel of land and the smaller parcel of land. Roopchand, also purchased the dwelling house which was abandoned. In or about 1996 one Elviris Antoine (“Elviris”) without Roopchand’s consent or approval, unlawfully entered the smaller parcel of land and began occupying the dwelling house which was by then in a state of complete disrepair. Roopchand and the Claimant confronted Elviris in relation to her trespass and unlawful occupation of the smaller parcel of land and the dwelling house whereupon Elviris alleged that she had been living there since the early 1980’s and threatened Roopchand and the Claimant with personal violence if Roopchand tried to evict her. Roopchand then agreed to give Elviris a license to remain in the dwelling house for the rest of her natural life provided she signed a written agreement with him in those terms. Elviris, in the Claimant’s presence, informed Roopchand that he should send the agreement to her for her to consider it.
  
4. Thereafter Roopchand unsuccessfully tried to arrange for Elviris to visit his attorney at law to review a draft agreement by which she would receive a license to remain on the dwelling house for the rest of her natural life. In or about early June 1999 the Claimant as agent for Roopchand, instructed Mr. R.G. Bunsee, attorney at law, to prepare a written

license agreement in *draft* to be delivered to Elviris inviting her to review and sign the license. By letter dated 9<sup>th</sup> June 1999, a *draft* license agreement was prepared by Mr. R.G. Bunsee and delivered to the Elviris. The Claimant was present when the letter dated 9<sup>th</sup> June 1999 and the draft agreement was hand delivered to Elviris and he attached copies.

5. Elviris refused to review or sign the *draft* license agreement and refused to cease her unlawful trespass of the smaller parcel of land and/or to vacate the dwelling house. On the 5<sup>th</sup> November 1999 (HCA S1178/1999) (“the 1999 action”) Roopchand instituted an action against Elviris seeking possession of the smaller portion of land and the dwelling house against Elviris. In the 1999 action the smaller parcel of land was misdescribed as comprising 1001.2m<sup>2</sup> being Lot 2 when, in fact, it should have been 240.1m<sup>2</sup> being Lot 3A. The 1999 action was abated and not determined at trial.
6. On the 29<sup>th</sup> May 2003 Elviris departed this life and following her death the dwelling house remained unoccupied until 2003 when Elviris’ nephew, who is known to the Claimant as Strongman, (Elton Antoine) entered the smaller parcel of land and unlawfully occupied the dwelling house. Strongman remained in unlawful occupation for several months and then left the dwelling house. At no point during his unlawful occupation did Strongman undertake and/or carry out any maintenance, repairs or renovation to the trespassed portion or the dwelling house. The smaller parcel of land remained vacant for approximately one month after Strongman’s departure until in or about early 2004 when the Defendant entered the smaller parcel of land and unlawfully occupied the dwelling house with her two (2) young children and since then she has been in unlawful occupation of it.
7. The Claimant also averred that the dwelling house was occupied by Angelina Duntin also known as Brownie Duntin or Ms. Brownie (“Ms Brownie”) from the early 1980’s until her death in March 1990. After Ms Brownie’s death, the Defendant’s grandmother Elviris occupied the dwelling house until her death on the 29<sup>th</sup> May 2004. The Claimant contended that the Defendant did not occupy the dwelling house while it was occupied by Elviris and that she did not receive the benefit of any right and/or interest which Ms. Brownie or Elviris may have had in relation to rights to occupy the dwelling house.

8. On 22<sup>nd</sup> September 2010 Roopchand departed this life .The Claimant contended that he has, on numerous and repeated occasions, demanded that the Defendant cease her trespass of the smaller parcel of land and so deliver vacant possession therefor including the dwelling house to him but the Defendant refused. Notwithstanding the threats to him and his family's personal safety and well-being, the Claimant was constrained to file a claim in order to obtain possession of the smaller parcel of land.
  
9. The Defendant averred in her Defence and Counterclaim that she has been in occupation of the dwelling house, a front lot and a back lot for the past forty (40) years. She did not describe the boundaries of the front lot and back lot and she did not attach any survey plans identifying the said lots. Sometime in 1919 her great-grandmother, Ms Brownie, came into occupation of the front lot on which she built the dwelling house and where she occupied with her husband, children and grandchildren. The Defendant contended that the front lot was transferred from Eugene Herrera Limited to Ramnanan Maharaj in 1963 at which time Ms. Brownie continued paying rent for the front lot. The Defendant averred that it was Ms. Brownie who had built the dwelling house on the front lot and she cultivated the back lot with crops which were used for personal consumption.
  
10. The Defendant averred after Ms. Brownie died on 30<sup>th</sup> March, 1990, Elviris, Ms Brownie's daughter and the Defendant's grandmother remained in occupation of the front lot, back lot and the dwelling house. The Defendant denied that the dwelling house was abandoned and that it was only until 2004 thereabout that the Defendant resumed living in the dwelling house. The Defendant contended that the dwelling house was occupied by family members from generation to generation as it was considered a "family house". The Defendant averred that she lived there from the age of 5-6 years old as her mother worked shift, and she would visit her mother who lived at another property at the Beach Road Moruga ("the Beach Road property") from time to time. Her mother migrated in or around the year 1999 and she continued living at the dwelling house with her grandmother. Eventually everyone moved out of the dwelling house leaving the Defendant and her children, who continued living until present.

11. The Defendant further contended that on numerous occasions her grandmother, Elviris and later she, went to the Claimant's father, Roopchand offering to continue paying the rent for the front and back lots but he refused to accept any payment. The Defendant averred in her Counterclaim that significant improvements were made to the dwelling house including rebuilding and renovating it amounting to a total, in excess of \$60,000.00 (inclusive of material and labour).
  
12. Based on the aforesaid defence the Defendant has counterclaimed for the following orders namely : a declaration that she is entitled to possession of the front lot, the back lot with the dwelling house; a declaration that the Defendant has an equitable interest in the front lot, back lot and the dwelling house; an injunction restraining the Claimant whether by himself, his servants and/or agents from obstructing and/or dispossessing the Defendant, her servants and/or agents from entering and/or remaining upon the front lot, back lot and the dwelling house which she occupies or otherwise in any manner whatsoever harassing or molesting her or interfering with her use and occupation of the front lot, back lot and dwelling house which she occupies; costs; interests; and such further and/or other relief as the nature of this case may require.
  
13. The issues which arose from the pleadings are:
  - (a) Has the Defendant established a basis for seeking possession of the dwelling house, the front lot and back lot?
  - (b) Has the Defendant established that she has an equitable interest in the dwelling house?
  
14. At the trial the Claimant gave evidence and he called Devon Charles, Andy Weston and Mr Harvey Ramrekha, land surveyor as his witnesses. The Defendant gave evidence and she called her common law husband, Mr Clayton Christopher, her uncle, Elton Antoine ("Elton") Alexander Rodney and other family members Monica Mc Gilvery, Christine Antoine and Alicia Wells as her witnesses.

**Has the Defendant established a basis for seeking possession of the dwelling house, the front lot and back lot?**

15. It was submitted on behalf of the Defendant that she has established a claim in adverse possession since she has been in continuous undisturbed possession of the dwelling house, the front lot and the back lot for more than 16 years.
16. Counsel for the Claimant submitted that the Defendant's case in relation to a claim for adverse possession for the front and back lots failed since the Defendant did not plead particulars to support a claim in adverse possession to impeach the Claimant's title. It was also argued on behalf of the Claimant that even if the Defendant had pleaded a case for adverse possession of the front lot the evidence did not support any basis for the Court to make such a finding. Further, with respect to the back lot the Claimant averred that he was not the proprietor of the back lot and the Defendant did not join the paper title owner of the back lot as a party to the counterclaim so no orders may be entered against him/her. In any event, the Defendant did not object in early January 2017 to the fencing/partitioning off of the back lot from the front lot which ended her *purported* possession of the back lot.
17. Sections 3 and 22 of the **Real Property Limitation Act**<sup>1</sup>(“ **the RPLA**”) creates a right of possession in favour of an adverse possessor who has been in continuous undisturbed possession of property for 16 years and prevents his ouster from the land by the paper title owner.
18. **Section 3 of the RPLA** provides that “*No person shall make an entry of distress, or bring an action to recover any lands or rent, but within 16 years after the time at which the right to make such entry or distress, or to bring such an action, shall have first accrued to some person...*”.

---

<sup>1</sup> Chapter 56:06

19. Accordingly, any action for recovery of any land that may have accrued by an entry on land by an unauthorized third party after 16 years of interrupted possession is barred by **section 3 of the RPLA**.
20. **Section 22 of the RPLA** provides for the extinguishment of the title of the owner of the land where 16 years have lapsed from the date of the accrual of the right to bring an action if no action for recovery was brought. It provides that:
- “At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action or suit respectively might have been made or brought within such period shall be extinguished”.*
21. Slade J. in **Powell v. McFarlane**<sup>2</sup> is instructive in providing guidance on what constitutes “possession”. The Court stated that:
- “(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 prima 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”).* (Emphasis added).
22. “Factual possession” was described by Slade J. in **Powell v. McFarlane** as:
- “Factual possession signifies an appropriate degree of physical control. It must be single and conclusive possession, though there can be a single possession exercised by or on behalf of 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*

---

<sup>2</sup> [1977] 38 P & CR 452

*at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which the land of that nature is commonly used or enjoyed. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants": West Bank Estates Ltd. v. Arthur [1967] AC 665, 678, 679; [1966] 3 WLR 750, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession... 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."*

23. The "intention to possess" was described by Slade J as:

*"The animus possidendi, which is also necessary to constitute possession, was defined by Lindley MR in Littledale v Liverpool College [1900] 1 Ch. 19, as "the intention of excluding the owner as well as other people." This concept is to some extent an artificial one because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that the animus possidendi involves the 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.” (Emphasis added)

24. Based on the aforesaid learning, if a party intends to assert a claim based on adverse possession the onus is on that party to satisfy the Court that he not only had factual possession of the land for more than 16 years but that he also had the requisite intention to possess same to the exclusion of others.
25. The Claimant pleaded that he is the paper title owner of the larger parcel of land and the smaller parcel of land by virtue of his Certificate of Title dated 22<sup>nd</sup> July 2009 registered in Volume 5319 Folio 471<sup>3</sup>. The Claimant’s Certificate of Title disclosed no interest which is adverse to him as proprietor<sup>4</sup>. Therefore his title is absolute and indefeasible pursuant to section 37 of the **Real Property Act**<sup>5</sup> (“the RPA”). In **Lincoln Dillon v Mary Almandoz and anor**<sup>6</sup> Bereaux J (as he then was) stated that the conclusiveness of the Certificate of Title was:

*“It is a fundamental principle of the system of registered conveyancing that the title of every proprietor registered thereunder is absolute and indefeasible and cannot be impeached or affected by the existence of an estate or interest which, but for the registration, might have had priority. The Register is conclusive. All interests are set out on its face. Nothing else is determinative<sup>7</sup>.”*

26. However, **Section 45 of the RPA** sets out two exceptions where the indefeasibility of a registered proprietor’s paper title can be challenged namely in cases of fraud or adverse possession. It states:

*“45. Notwithstanding the existence in any other person of any estate or interest..., the proprietor...shall, except in the case of fraud hold the same subject*

---

<sup>3</sup> Appendix A to the statement of case at Vol. 1 p. 13; paragraphs 1-2 of the statement of case [Vol. 1, pp. 4-5 of the trial bundle]

<sup>4</sup> Vol. 1, pp. 13, 14

<sup>5</sup> Chapter 56:02

<sup>6</sup> HCA 75/2000

<sup>7</sup> HCA No. 75/2000 page 1 para 1

*to such mortgages, encumbrances, estates or interest...but absolutely free from all other encumbrances, liens, estates or interests whatsoever except the estate or interest of a proprietor claiming the same land under a prior grant or certificate of title... and any rights subsisting under any adverse possession of such lands...*" (Emphasis added).

27. The law provides a party with a basis in adverse possession to challenge the title of the paper owner of lands. How is a party to establish such a claim? The learning in **Zanim Ralphy Meah John v Courtney Allsop and Ors**<sup>8</sup> by Kokaram J is instructive where he stated:

*"Claims of 'adverse possession' must be carefully drafted and the pleader must make it clear that this is the case which is being set up in the defence of a claim for possession.*

...

*It [adverse possession] is therefore a very serious and significant claim where that type of occupation [adverse possession] will trump a legal right.*

*The claim must therefore be carefully scrutinized to determine the character of the land, the nature of the acts done upon it and the intention of the occupier.*

*The onus of establishing the defence of adverse possession is on the Defendant who put it forward. The facts relied upon to establish adverse possession must be cogent and clearly stated in the defence.*" (Emphasis added).

28. Did the Defendant plead sufficient particulars to ground a claim for adverse possession? In my opinion she has failed to do so. The Claimant contended that he is the owner of the larger parcel of land and that the Defendant is a trespasser on the smaller parcel of land<sup>9</sup>. In support of this pleading he annexed a copy of the Certificate of Title, a survey plan dated the 28<sup>th</sup> September 2010 identifying the larger parcel of land and a survey plan dated the 29<sup>th</sup> September 2015 showing the smaller parcel of land.

---

<sup>8</sup> CV 2010-04559 at paragraph 34

<sup>9</sup> Paragraphs 1 and 2 of the statement of case [Vol. 1, p. 4 of the trial bundle]

29. The Defendant did not admit the Claimant's paper title since she made no admissions to paragraph 1 and 2 of the Statement of Case. The Defendant pleading in her Defence with respect to her claim for adverse possession was "*she has been in occupation of approximately two lots of lands including one front lot and one back lot with a dwelling house placed upon the front lot.*"<sup>10</sup> Therefore having asserted that she was claiming to be in adverse possession of the front and back lots the onus was on the Defendant to describe the front lot and back lot. However she did not describe the boundaries of the front and back lots which she is claiming as an adverse possessor and there was no survey plan exhibited to identify the said lots in relation to the larger parcel of land. Therefore there was no description of the lands the Defendant was claiming in order for the Claimant to know what part of his title to the larger parcel of land the Defendant was seeking to have extinguished. At best, based on the Claimant's pleading and the Defendant's evidence in cross examination the two parties acknowledged that the Claimant was the owner of the front lot.
30. In any event the Claimant pleaded in the Defence to Counterclaim that he is not the owner of the back lot and that it was occupied by one Mukesh Beharry, which the Defendant did not dispute. Therefore, based on the Defendant's pleading, the only relief she can obtain with respect to any claim in adverse possession against the Claimant is for the front lot and she cannot obtain relief with respect to the back lot since she has not joined the alleged owner of the back lot as a co-defendant to seek obtain relief against him.
31. Secondly, the Defendant did not identify when the statutory sixteen (16) year period of uninterrupted possession started or ended. At best she pleaded that she has lived in the dwelling house/the front lot for all her life but in so doing she also pleaded that there were other family members namely, Ms. Brownie and Elviris who also lived in the dwelling house/front lot.

---

<sup>10</sup> Paragraph 2 of the defence [Vol. 1. P. 88 of Trial Bundle]

32. Thirdly, the Defendant has not asked the Court to order that based on her adverse possession the Claimant's title to the smaller parcel of land has been extinguished. The Defendant's prayer in the counterclaim for possession was based only on equitable principles namely:-

*“(b) a declaration that the Defendant has an equitable interest in the subject property as described above”<sup>11</sup>*

33. Even if the Defendant's pleading had met the requirement for a claim for adverse possession, in my opinion she failed to cross the evidential threshold to satisfy the Court that she was an adverse possessor of the dwelling house and front lot for the following reasons.

34. Firstly, the onus was on the Defendant to prove that she had a sufficient degree of physical control and intention to possess the dwelling house and the dwelling house/front lot to the exclusion of others for a period of 16 years prior to May 2016.

35. The Claimant's evidence from his witness statement was that he became the paper title owner of the larger parcel of land on the 22<sup>nd</sup> March 2011 when Roopchand transferred it to him. Prior to Roopchand becoming the owner the Claimant said he knew Ms Brownie lived in a wooden house on part of the larger parcel of land. The dwelling house was 20x 30 feet, it was erected on concrete posts 4 feet high and there was no electricity or running water. At that time nobody lived with Ms Brownie. She died in March 1990 and the dwelling house remained unoccupied. Roopchand became the owner of the larger parcel of land in 1994 and he also purchased the dwelling house. In 1996, Elvris went to live in the dwelling house and both Roopchand and the Claimant treated her as a trespasser. At that time the dwelling house was in a state of disrepair with rotting floor boards and nor doors and windows.

36. In 1997 Roopchand had the larger parcel of land surveyed by Mr Harvey Ramrekha. In

---

<sup>11</sup> paragraph (b) of the prayer at Vol. 1 p. 93 of the trial bundle

1999 Roopchand then agreed to give Elviris a license to remain in the dwelling house for the rest of her natural life provided she signed a written agreement with him in those terms. Elviris, in the Claimant's presence, informed Roopchand that he should send the agreement to her for her to consider it. Thereafter Roopchand unsuccessfully tried to arrange for Elviris to visit his attorney at law to review a draft agreement by which she would receive a license to remain on the dwelling house for the rest of her natural life. In or about early June 1999 the Claimant as agent for Roopchand, instructed Mr. R.G. Bunsee, attorney at law, to prepare a written license agreement in *draft* for delivering to Elviris inviting her to review and sign the license. By letter dated 9<sup>th</sup> June 1999 a *draft* license agreement was prepared by Mr. R.G. Bunsee and delivered to the Elviris. The Claimant was present when the letter dated 9<sup>th</sup> June 1999 and the draft agreement was hand delivered to Elviris and he attached copies.

37. Elviris refused to review or sign the *draft* license agreement and she refused to cease her unlawful trespass of the smaller parcel of land and/or to vacate the dwelling house. Roopchand instituted the 1999 action against Elviris seeking possession of the smaller portion of land and the dwelling house against Elviris. In the 1999 action the smaller parcel of land was misdescribed as comprising 1001.2m<sup>2</sup> being Lot 2 when, in fact, it should have been 240.1m<sup>2</sup> being Lot 3A. The 1999 action was abated and not determined at trial.
38. The Claimant also stated that he knew the Defendant from visiting his family's grocery to purchase snacks and that she did not live with Elviris but she lived at the Beach Road property. He also stated that after Elviris died on the 29<sup>th</sup> May 2003 the dwelling house remained unoccupied until late 2003 when Elton went to live there for a few months until early 2004. About one (1) month after Elton left the Defendant moved into the dwelling house. Upon becoming aware that the Defendant had trespassed on the smaller parcel of land, the Claimant said he ordered her off it but she told him that she refused to leave and threatened him with violence.
39. The Defendant's pleaded in her defence and she stated in her witness statement that she was born in and lived all of her life at the family home/front lot. However, she

contradicted her pleading and the evidence in her witness statement t several times during cross examination since she first stated that from ages 10-12 she lived at the Beach Road, property<sup>12</sup> then she corrected this to say from ages 5-6 she started living at the dwelling house/front lot<sup>13</sup> and later in cross examination when she was challenged she agreed that prior to 1990 when her mother Marian Ann-Marie Coley emigrated to the USA (she was then 15 years old) that she lived with her mother at the Beach Road property but she used to “*be backwards and forwards from my mom to my grandmother*”<sup>14</sup>. However she later changed this in cross examination where she stated that:

*“I lived in [the family home] from the age of ten. I used to be backward and forward from my mother. I never left the [family home]”<sup>15</sup>.*

40. Therefore based on the several material contradictions which arose from the Defendant’s evidence in cross examination it was clear that the Defendant did not live in the dwelling house/ the front lot for a continuous period of time from her birth.
41. Secondly, the evidence from the Defendant and her witnesses was that before Elviris death in May 2003, the dwelling house was owned by Elviris and treated as a family home. According to the Defendant the dwelling house was a family home owned by Ms Brownie prior to her death in 1990 and thereafter by Elviris until her death in 2003. The dwelling house was used as communal property and any family member was free to stay there from time to time so that its occupiers were transitory in character. At paragraph 3 of the Defendant’s witness statement she stated:

*“3. Growing as a child I always knew the said house to be a family home as my cousins, aunts and uncles all lived in the house at some point in time and some of the family members were sometimes back and forth”<sup>16</sup>*  
(Emphasis added).

---

<sup>12</sup> Appendix C-p. 42 lines 18-31

<sup>13</sup> Appendix C-p. 44 lines 14-32

<sup>14</sup> Appendix C-p. 47 lines 11-29

<sup>15</sup> Appendix C-p. 47 lines 40; p. 48 lines 1-2

<sup>16</sup> paragraph 3 of Alisha’s witness statement; Vol. 2 p. 235

42. The Defendant's evidence was corroborated by Elviris' brother Elton who at the end of his cross examination agreed that the dwelling house was used by all the family members to come and go:-

*“Q: You would agree with me that [the family home] was used very much by all members of the family particularly the children as a place they would come and stay and visit and spend holidays and that sort of thing?”*

*A: Yes Sir.*

*Q: It was really and truly a family property, yes?”*

*A: Yes Sir.*

*Q: And all the nephews and nieces would come and spend time there?”*

*A: Yes, that's correct*

*A: Yes. They would also go to the High Street, Princes Town Property and also their own homes as well. But you would agree with me that people were always coming and going?*

*A: Yes. The entire family is like that”<sup>17</sup> (Emphasis added).*

43. The evidence of the other family members, Monica McGilvery, Christine Antoin and Alicia Wells was that the dwelling house was considered by the members of the family to be a family home where members of the family visited and spent time freely.

44. Therefore based on the Defendant's evidence and corroborated by her witness Elton, the Defendant was not in exclusive possession of the dwelling house prior to Elviris death on the 28<sup>th</sup> May 2003 since it was treated as a family home where Elviris was regarded as the owner and not the Defendant's home. As such while Elviris was alive the Defendant was not in possession of the dwelling house and front lot.

45. For the Defendant to succeed she needed to demonstrate her possession of the dwelling house and the front lot from 23<sup>rd</sup> June 2000. But from the evidence it was clear that she

---

<sup>17</sup> Appendix C-p. 209 lines 18-34

was already out of time by some three (3) years since Elviris died in 2003. Therefore the Defendant's *possession* of the family home/front lot (in the context of the adverse possessor's requirements) was 28<sup>th</sup> May 2003 when Elviris died.

46. Thirdly, the two sets of contemporaneous documents which were filed in the matter undermined the credibility of the Defendant's assertion that she was an adverse possessor namely the Court proceedings in the 1999 action and the will of Ms Brownie ("the Brownie will") dated 20<sup>th</sup> February 1984 which was exhibited as part the 1999 action<sup>18</sup>.
47. In the 1999 action, Roopchand sought possession of the dwelling house and the lands upon which it was erected from Elviris on the basis that the latter was a trespasser. In the statement of claim<sup>19</sup>, Roopchand contended that prior to 1994 it was occupied by Ms Brownie who died in 1994 (she died, in 1990) but it remained vacant until 1996 when Elviris and her brother started living there and resisted all of Roopchand's efforts to obtain vacant possession.
48. In responding to the 1999 action, Elviris filed an affidavit on the 1<sup>st</sup> June 2000<sup>20</sup> challenging Roopchand's claim in which she said that she had rebuilt the dwelling house in 1983 and that when Ms Brownie died on 30<sup>th</sup> March 1990 (it was really 28<sup>th</sup> March 1990)<sup>21</sup> Ms Brownie left the dwelling house to her (Elviris). Elviris exhibited Ms Brownie's will<sup>22</sup> in those terms.
49. Elviris also filed a defence on 23<sup>rd</sup> June 2000 in similar terms to her affidavit but in answering Roopchand's claim, she averred that she (Elviris) had the benefit of a statutory lease of the front lot pursuant to **the Land Tenants (Security of Tenure) Act**<sup>23</sup>. The 1999 action was never determined by the Court since it became abated. Elviris did not mention in either her affidavit or defence, the Defendant in relation to the dwelling house or the front lot whether as co-owner, co-possessor, co-tenant or even as a visitor.

---

<sup>18</sup> Vol 1 page 56

<sup>19</sup> Vol. 1 p. 134-135 of the trial bundle

<sup>20</sup> Vol. 1, p. 158-160 of the trial bundle

<sup>21</sup> Vol. 3 p. 283

<sup>22</sup> Vol. 1, p. 161

<sup>23</sup> Chapter 59:54.



50. In cross examination Counsel for the Claimant put to the Defendant whether she would be surprised if Elviris made no reference or mention of her in the defence and affidavit filed in the 1999 action to which she stated she would be “*because she was living there [the family home/front lot] at the time*”<sup>24</sup>.
51. In my opinion the 1999 action demonstrated that:-
- (i) The Defendant was not in possession of the dwelling house or the front lot on 23<sup>rd</sup> June 2000 being the start date for her to be an adverse possessor; and
  - (ii) Elviris’ claim that she was a secured tenant in relation to the dwelling house means that an actionable claim for adverse possession of the front lot could only start on 1<sup>st</sup> June 2011 when the secured tenancy ended and was not renewed. This was on the footing that a statutory tenancy is inconsistent with the *animus possidendi* of the *purported* adverse possessor.
52. Notably, the Defendant did not plead that she benefitted from a statutory tenancy that Elviris had in relation to the front lot but even if she did, it was not in dispute that the tenancy ended on 31<sup>st</sup> May 2011 by the effluxion of the 30 year term and there was no evidence that the Defendant had the benefit of a renewal or that she complied with the requirements of the renewal provisions.
53. The other contemporaneous document was Ms Brownie’s will. According to Ms Brownie’s will she gave all her property to Elviris. In my opinion Brownie’s will established that the ownership of the dwelling house from Brownie to Elviris but not the front lot which was rented land and that the ownership of the dwelling house from Elviris passed after her death on 28<sup>th</sup> May 2003. Therefore the Defendant could not have been exclusive possession of the dwelling house before 2003 since Elviris was the owner and in exclusive possession.

---

<sup>24</sup> Appendix C-p. 53 lines 4-21

54. Fourthly, the Defendant did not even become the new owner of the dwelling house after Elviris death in 2003. According to the evidence of Elton in cross examination, Elviris died leaving a will where the dwelling house was willed to him. He stated that he gave permission to the Defendant to occupy it. Elton's evidence was corroborated by the Elviris will which was dated 12<sup>th</sup> August 2000.
55. The Defendant stated in her defence and witness statement that she had inherited the dwelling house/front lot<sup>25</sup>. Her witness statement was silent that Elton gave her permission to live in the dwelling house. However she changed her evidence in cross examination by way of explanation that she could not recall saying that in her defence. The Defendant also later admitted in cross examination that the dwelling house/front lot was *owned* by Elton who *was allowed to live there* and that the front lot was never the subject of the inheritance and that it was, always rented lands<sup>26</sup>. She also admitted in cross examination that she is not the *owner* of the dwelling house but merely a licensee.
56. In my opinion the Defendant's admissions in cross examination corroborated the chain of *ownership* of the dwelling house and the front lot from Ms Brownie to Elviris and after the latter's death on 28<sup>th</sup> May 2003 to Elton who gave the Defendant permission in early 2004 to occupy the dwelling house. Indeed any occupation by the Defendant immediately following Elviris' death on 28<sup>th</sup> May 2003 or several months later in early 2004 is immaterial since for the Defendant to succeed in her assertion as an adverse possessor she had to prove that she was in exclusive possession since June 2000. Moreover, even if Alisha was given permission to occupy the family home nothing was said about the front lot which in any event was rented lands.
57. The Defendant's evidence was also consistent with the Claimant's witness statement that after Elviris' death on 28<sup>th</sup> May 2003, the dwelling house remained unoccupied for several months and then Elton lived there for a few months before moving out in early 2004 and then the Defendant came a month later<sup>27</sup>.

---

<sup>25</sup> Appendix C-p. 64 lines 12-24

<sup>26</sup> Appendix C-p. 68 lines 21-37

<sup>27</sup> paragraph 27 of the Claimant's witness statement; Vol. 2 p. 112-113

58. Fifthly, Further, although the Defendant stated that all her children were born at the dwelling house and she has been paying the utility bills from 2004 she did not adduce any evidence such T&TEC bills, WASA bills, her national identification card or the birth certificates of her children to support her possession of dwelling house and front lot.
59. It was undisputed that the front lot was rented lands which was the subject of a statutory tenancy in Elviris' favour; the tenancy ended on 31<sup>st</sup> May 2011 and there was no evidence that the Defendant renewed it. Therefore the Defendant and her family are trespassers on the front lot *after* 1<sup>st</sup> June 2011. Further based on the Defendant's evidence her adverse possession of the front lot accrued from 1<sup>st</sup> June 2011 but even so when the counterclaim was filed on 23<sup>rd</sup> June 2016, the requisite 16-year period has not elapsed; in fact only five (5) years had passed.
60. Although the Defendant failed to establish that she exercised factual control of the dwelling house and the front lot since May 2000 I will still examine the evidence on the aspect of her claim that she occupied the dwelling house/ front lot with the intention to possess it as her own.
61. The Defendant's evidence at paragraphs 19 and 20 of her witness statement was that sometime in 2006 she approached the Claimant asking him to purchase the front and back lots but he declined. In 2007 she again approached him requesting him to purchase or rent the front and back lots but he never responded. In cross examination, the Defendant admitted that Elton *inherited* the dwelling house from Elviris and that Elton *allowed her to live there*. This inheritance occurred after Elviris' death on 28<sup>th</sup> May 2003. The Defendant then agreed in cross examination that because Elton was the owner and he allowed her to live in the dwelling house, she would not have to buy it from anyone or rent it from anyone. However she later stated that the reason the Defendant stated she wanted to buy the front lot from the Claimant was that:-

*“Q: ...why would you approach [Shamchand] to either buy it [the family home] or rent it from him, if it is you recognized that your Uncle Elton was the owner of the property and Elton was allowing you to live there?”*

A: *I never said he [Elton] was the owner of the [family home]. He is the owner of the house*"<sup>28</sup>

62. The Defendant never explained why, if Elton was the owner of the dwelling house, she asked the Claimant to sell the front lot to her. Elton was surprised that the Defendant tried to buy the front lot from the Claimant:-

*“Q: ...would you be surprised...if you receive information that Alisha tried to buy [the property] from [Shamchand]?”*

*A: How could she buy the house when she know the house belong to me.*

*Q: Well, that’s exactly the question I am asking*"<sup>29</sup>

63. Yet the Defendant admitted that she asked the Claimant to sell her or rent her the front lot in 2006 but he refused to sell her it and that she only asked him to purchase it since she knew that he was the owner of it. However she later stated in cross examination that sometime in 2008 she requested to see his deeds for the lands. When probed, the Defendant agreed that not only her but Elviris was also satisfied that the Claimant’s father Roopchand was the owner of the front lot where the dwelling house was erected. When confronted with this inconsistency she was unable to provide any explanation why she wanted to buy the front lot from the Claimant if he was not the owner. She also admitted that in 2008 the Claimant prevented her uncle from assisting her in erecting a market stall to the front of the dwelling house.

64. In my opinion the aforesaid inconsistencies in the Defendant’s evidence undermined her *animus possidendi*. Her evidence was that in 2006 she accepted that the Claimant was the owner of the front lot since she asked him to purchase it. This was inconsistent with her evidence that in 2008 she requested to see his deeds and therefore proof of ownership in 2008. Further, her acknowledgement that in 2008 the Claimant stopped her and her uncle from erecting the market stall at the corroborated the Claimant’s evidence that he owned the front lot and the dwelling house, he exercised dominion over it and it was inconsistent

---

<sup>28</sup> Appendix C-p. 68 lines 17-28

<sup>29</sup> Appendix C-p. 208 lines 37-40; p. 209 lines 1-8

with her *animus possidendi*.

**Has the Defendant established an equitable interest in the dwelling house?**

65. The Defendant's claim to possession of the dwelling house was based on her acquisition of an equitable interest through works of repairs and renovations. The Defendant averred in her Counterclaim that since Ms Brownie, Elviris, Elton and she have been in occupation of the dwelling house, significant improvements were done to it. In particular she pleaded that between the years 1984-1986, Elviris rebuilt and extended the dwelling house to a size 30x30 sq. ft. Sometime between the years 1993-1994 Elton renovated, repaired and painted the dwelling house. Sometime between the years 2004-2005 the Defendant did further renovations and repairs to the dwelling house including replacing walls and flooring and replacing the old louvers with new ones. The renovations amounted to the approximate sum of \$30,000.00-50,000.00 however, the Defendant was unable to retrieve all/ any receipts as most of the major works were carried out over 6 years ago. Sometime in or around May, 2015 the Defendant purchased material amounting to \$9,936.00 to repair the roof, rebuild the kitchen and replace walls throughout the dwelling house. She however was able to retrieve the most recent being a receipt from C&A Agro-Chemical & Hardware which she exhibited to her Defence.
66. The Defendant's evidence in her witness statement on the equitable interest in the dwelling house was set out at paragraphs 7 to 10 where she stated that:
- “7. *Sometime in or around the year 1986 my grandmother Elviris Antoine rebuilt and extended the said house. The back portion of the house including two bedrooms, the kitchen and living room area were broken down completely and rebuilt. The old house had old broad cedar boards and the new house was rebuilt using pitch pine boards, some of which remain there to date.*
8. *We continued living in the house while the rebuilding was taking place. One bedroom was completed, the old living room was converted into a kitchen, and a living, dining room and gallery was also built. I remember*

*this because when the gallery was constructed I wrote common entrance about 1-2 months after.*

9. *In or around the year 1994 my uncle Elton changed the flooring in the living room, dining room, kitchen and the gallery. He also painted the majority of the inside of the house.*
10. *Sometime in or around 2007 my common-law husband, Clayton Christopher and I changed the flooring of two bedrooms, the gallery and kitchen.”*

67. In cross examination the Defendant was unable to recall the costs of the repairs and renovations to the dwelling between 2004-2005 although in her defence she said it was between \$30,000.00 to \$50,000.00. The Defendant was also unable to explain why in her witness statement she said she spent over \$9,000.00 to purchase roofing materials in May 2015 but elected not to carry out roofing repairs until July 2016 when she was complaining that the roof was leaking badly. She eventually said that she deferred the works because she could not afford the labour costs but when confronted with the evidence that Clayton Christopher was carrying it out free out of charge, she changed her evidence again stating that Clayton Christopher only did temporary works in July 2016. Notwithstanding that it was only temporary works she said that the roof was now fine save for the kitchen. Counsel for the Claimant put to her that her evidence was inconsistent since at paragraph 25 of her witness statement she said that dwelling house was in a state of disrepair as she has been unable to accumulate the funds to carry out repairs<sup>30</sup>. The Defendant maintained her position.

68. In my opinion the Claimant was not able to prove that she paid for repairs and renovations to the dwelling house which may ground an equitable interest in the dwelling house. However, it was submitted on behalf of the Claimant that he is not averse to an order permitting the Defendant to remove the dwelling house which is a wooden structure that can be severed from the front lot, provided that these removal works were carried out over a reasonable period which he suggested as 7 days.

---

<sup>30</sup> Appendix C-p 120 lines 11-25

69. In light of the concession by the Claimant, although unsupported by the evidence I am minded to permit the Defendant to remove the dwelling house from the front lot within 30 days from the date of this order.

### **Conclusion**

70. The back lot was not owned by the Claimant and the alleged owner was not joined by the Defendant who was claiming it as an adverse possessor. In the circumstances, no order is made with regard to the back lot.
71. I have found that the Defendant's pleading with respect to any claim that she was an adverse possessor of the front lot and dwelling house was deficient and did not meet the pleading requirements. Even if the Defendant had met the pleading requirements as an adverse possessor, she did not satisfy the evidential burden to prove that she was an adverse possessor of the front lot/dwelling house. I have concluded that the front lot was rented lands and that Elviris was a secured tenant. Elviris' secured tenancy ended on 31<sup>st</sup> May 2010 and it was never renewed. Therefore, the Defendant's occupation of the front lot after 31<sup>st</sup> May 2010 meant that she has not completed the 16 year statutory period to be declared an adverse possessor. Further, the unchallenged evidence put the Defendant in the dwelling house and the front lot from early 2004 but not before. The 2004 timeframe is still four (4) years outside of the threshold of 23<sup>rd</sup> May 2000 which means that the Defendant has not demonstrated her continuous and uninterrupted occupation of the front lot for 16 years prior to the filing of her counterclaim.
72. With respect to the Defendant's claim to an equitable interest in the dwelling house, I have found her evidence did not support such a claim, and as such I do not find that she has proven she has an equitable interest in the dwelling house. However in light of the Claimant's generous concession in his closing submissions I would permit the Defendant to remove the dwelling house which is a wooden structure that can be severed from the front lot within 30 days of this order.

## **ORDER**

73. The Claimant is the registered proprietor of and entitled to possession of the smaller parcel of land comprising 240.1square metres together with the dwelling house thereon which forms part of the larger parcel of land comprising 1,254.5 square metres situated at Corner Rochard Douglas Road and Moruga Road, St. Mary's Village, Moruga and more particularly described in the Certificate of Title registered in Volume 5319 Folio 471.
74. The Defendant and such other persons in occupation of the smaller parcel of land and the dwelling house erected thereon are to give vacant possession within 30 days of this order and in default the Claimant is entitled to exercise the remedy of self-help.
75. The Defendant is permitted to remove the dwelling house which is a wooden structure that can be severed from the front lot within 30 days of this order.
76. The Court declares the Defendant to be a trespasser of the smaller parcel of land and the dwelling house.
77. No award is made for damages for trespass since no evidence was led by the claimant to support such an award and it was not pursued by the Claimant in his closing submissions.
78. The Defendant being represented by Legal Aid, no order is made with respect to costs.

**Margaret Y Mohammed**  
**Judge**