

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-01616

BETWEEN

JOAN BALLANTYNE

CLAIMANT

AND

KRISHNA RAMPERSAD

DEFENDANT

Before the Honourable Madame Justice Margaret Y. Mohammed

Dated the 16th March, 2018

APPEARANCES:

Ms. Angelique Bruce Attorney at law for the Claimant.

Ms. Denyse Gouveia instructed by Ms. Karen Gonzales Attorneys at law for the Defendant.

JUDGMENT

1. The Defendant is the paper title owner by virtue of a Deed registered as No DE 198600461065 (“the 1986 Deed”) of a parcel of land known as Lot 17 and situated at L.P. 52 Foster Road, Jerningham Junction, Cunupia comprising four thousand, seven hundred and thirty six square feet (being portion of a larger parcel of land described in deed No. 3546 of 1952 (“the 1952 Deed”)) and bounded on the North by other lands, on the East by Lot No 16, on the West by Lot No. 18 and on the South upon Foster Road (“the disputed property”). He is also the owner of a chattel house (“the chattel house”) situated on the disputed property by virtue of an agreement dated the 4th May 1986 (“the 1986 Agreement”).

2. The Claimant has instituted the instant action against the Defendant seeking the following orders: (a) damages for trespass to disputed property and the chattel house; (b) a declaration that the Claimant is a statutory lessee of the disputed property pursuant to the Land Tenants (Security of Tenure) Act Chapter 59:54 (“the Act”); (c) a declaration that 1986 Deed is null, void and of no effect; (d) a declaration that 1986 Agreement is null, void and of no effect; (e) damages for trespass to the disputed property and the chattel house; possession of the disputed property and the chattel house; (f) an injunction restraining the Defendant whether by himself, his servants and/or agents or any of them howsoever from entering upon and/or remaining upon the disputed property; (g) interest and (h) costs.

The Claimant’s case

3. The Claimant claims that she has been in continuous and uninterrupted possession of the disputed property since 1977. The Claimant’s case is the disputed property is part of a larger parcel of land owned by the Boodram family and that her father Norris Lall (“Mr Lall”) was a tenant of the disputed property for fifty years and paid rent to Hassina Boodram the owner of the disputed property. Mr Lall built a house on the disputed property land and the Claimant lived there with him and her mother since her birth in 1957. The Claimant’s parents separated while she was attending primary school and her father moved out and left her and her mother, Irma Whittaker, in occupation of the disputed property. However Mr Lall continued paying the rent for the disputed property. While the Claimant was still in primary school, her mother built a house on lands opposite the disputed property and both the Claimant and her mother vacated the chattel house and thereafter Mr Lall rented the chattel house to various persons.
4. The Claimant averred that she moved back into the chattel house on the disputed property at age 20 and that time it was still being occupied by tenants. However the tenants left between 1987 and 1988.
5. After Mr Lall died in 1997 the Claimant averred that he left her an interest in the disputed property by virtue of a statutory tenancy of the disputed property and his ownership of the chattel house. The Claimant pleaded she became the tenant of Hassina Boodram and she

paid an annual rent of \$200.00. After Hassina Boodram died on the 16th November 2003 she continued to pay rent to the executors of Hassina Boodram's estate namely Mr Bassari Mohammed ("Mr Mohammed") and Jeewan Boodram ("Mr Boodram").

6. The Claimant averred that on the 30th November 2010 she sent a renewal notice to Mr Mohammed and by letter dated the 12th September 2011, Mr Mohammed offered to sell her the disputed property at half the current open market value thereby recognizing her as a statutory tenant. The Claimant responded by letter dated 5th April 2013 indicating that she was willing to purchase the disputed property at a price to be negotiated and agreed and she requested a tax assessment for the disputed property from the executors to submit to the Trinidad and Tobago Mortgage Finance Company.
7. Later in the same month, on the 25th April 2013, the Defendant's attorney at law wrote the Claimant asserting that he was owner of the disputed property and the chattel house and he requested her to vacate same. The Claimant responded through her attorney at law on the 16th May 2013 indicating that the Defendant had never spoken to her about his ownership of the disputed property and the chattel house. About one year later there was a dispute between the Claimant and the Defendant which was reported to the Chaguanas Police Station.
8. By letter dated the 28th February 2015 the Claimant was given a Notice to Quit to vacate the disputed property and the chattel house within 30 days. The Notice also stated that the Defendant intended to demolish the chattel house and replace it with a new structure. The Claimant's attorney at law responded by letter dated the 26th March 2015, giving the Defendant notice that she had an interest in the disputed property by virtue of a statutory tenancy and that she would like to purchase same.
9. The Defendant's Attorney at law indicated to the Claimant in writing by letter dated the 28th July 2015 that by the 1986 Deed which was registered the Defendant was the owner of the disputed property and that by the 1986 Agreement Mr Lall had conveyed the chattel house to the Defendant's father, Rampersad Mistry for the sum of \$16,500.00.

10. The Claimant averred that on the 17th September 2015, the Defendant and his servants wrongfully entered the disputed property and destroyed her trees and plants whereby she suffered the total loss of \$22,400.00 inclusive of the cost of the valuation.
11. The Claimant averred that her sister was served with a Notice to Quit on the 23rd September 2015 by one Selwyn Mark demanding that the Claimant vacate the disputed property on or before the 30th September 2015. On the 4th October 2015, the Claimant contends that the Defendant and his servants wrongfully entered the disputed property, removed the Claimant's household items and personal effects, placed them on the streets, demolished a wooden shed she had constructed on the disputed property and took away some building material which the Claimant bought for the renovation of the chattel house.

The Defence and Counterclaim

12. The Defendant averred that by the 1986 Deed he and his parents Rampersad Mistry and Moonia Rampersad became the owners as joint tenants of the disputed property and that after his parents died he became the sole owner. He pleaded that he is unaware of the contents of the 1952 Deed.
13. The Defendant averred that by virtue of the 1986 Deed he is the owner of the disputed property and before the 1986 Agreement Mr Lall rented the chattel house to tenants. Mr Lall entered into the 1986 Agreement whereby he sold the chattel house on the disputed property to the Defendant's father for the sum of \$ 16,500.00 and after the purchase, Ms Hassina Boodram ceased to have any interest in the disputed property. Neither he nor his parents collected rent from Mr Lall. Upon obtaining ownership of the chattel house, the Defendant's father allowed Mr Lall to continue to rent the chattel house to third parties and collect the rents for his sole use and benefit because Mr Lall was unemployed at the time. Mr Lall continued to sublet the chattel house until 1993.
14. The Defendant averred that at the time of Mr Lall's death in 1997 he had no interest in the disputed property since he had stopped being a tenant in 1985. Therefore, the Claimant did

not acquire any interest in or title to the disputed property or the chattel house through Mr Lall.

15. The Defendant also denied that the Claimant was the tenant of Hassina Boodram since she ceased to be the legal owner of the disputed property in December 1985 and she was therefore not entitled to collect rent for the disputed property. Additionally, neither the Defendant nor his parents authorized the collection of rent for the disputed property by Hassina Boodram as such she was not their agent or servant.
16. The Defendant however pleaded that Hassina Boodram owned various parcels of land in Cunupia (“the lands”) and the disputed property is a smaller parcel of one of the parcels of land which Hassina Boodram was entitled to. However the Defendant is unaware of the lands which remained vested in Hassina Boodram at the time of her death but no reference was specifically made to the disputed property in Hassina Boodram’s will.
17. The Defendant denied that the Claimant was in continuous and uninterrupted possession of the disputed property from 1977 to present. The Defendant averred that from the time he and his parents became the owners of the disputed property in 1986 neither the Claimant’s mother, Irma Whittaker nor Mr Lall occupied it. Irma Whittaker occupied the property directly opposite the disputed property at all times and the Claimant lived with her.
18. The Defendant admitted that he was not aware of the exact time when the Claimant commenced occupying the chattel house but when it was purchased in 1986, he and his parents entered into an oral agreement with the Claimant that she could occupy the chattel house until the Defendant and his parents asked her to give up possession. It was further agreed that no rent would be collected from the Claimant for her occupation of the chattel house.
19. The Defendant denied that the Claimant maintained or cultivated the disputed property. The Defendant averred that he and his father maintained possession of the disputed property and would regularly tend to it by cutting and clearing the grass and planting trees

and crops. The Defendant and his father also planted various fruit trees on the disputed property and the Defendant and his wife continued to maintain the disputed property by cultivating short crops at the back of the chattel house.

20. The Defendant averred that in 1996, the Defendant offered to sell the disputed property to the Claimant in an effort to obtain revenue to develop another parcel of land. However, the Claimant did not accept the offer. A few months later the Defendant sought to obtain vacant possession of the chattel house in accordance with the oral agreement. However, the Claimant refused to vacate the chattel house while the Defendant continued to maintain and secure the disputed property.
21. The Defendant pleaded that in 2012 the Claimant began construction of a wooden structure upon the disputed property adjacent to the chattel house. The Claimant persisted with the construction despite the Defendant's repeated requests to cease and desist. The Defendant reported the incident to the police however no report was taken because the Defendant was told that the matter was a private one. The Claimant subsequently moved her personal belongings into the wooden structure. In 2013 the Claimant ceased occupation of the chattel house and began removing the windows and changing the roofing. The Defendant instructed his attorney at law to write to the Claimant to cease and desist. The Claimant responded by letter indicating that her parents transferred their tenancy of the disputed property and gifted the chattel house to her. However, the Claimant provided no documents to support the alleged transaction.
22. The Defendant averred that in 2014, the Claimant's sister trespassed on the disputed property with a coconut vendor to pick coconuts from his trees. Despite repeated request by the Defendant for the Claimant to vacate the disputed property and remove her belongings from the chattel house, the Claimant refused to comply with his requests. On the 17th September 2015, the Defendant went onto the disputed property to clean it when he noticed that one of the coconut trees he planted was close to a neighbour's property so he cut it down and cleared some bushes. The pommerac and mango trees had been cut down several years before and only the stumps remained. The Defendant denied that he chopped, cut or destroyed the ixora or any other trees on the disputed property. He averred

that he was unaware of any palm trees or orchids or potted plants on the disputed property. He denied trespassing unto the disputed property or causing the Claimant any loss, as a result the Claimant is not entitled to any damages.

23. The Defendant admitted to serving the Claimant's sister with the Notice to Quit and that on the 4th October 2015, the Claimant's items were removed from the wooden structure and placed along the roadway and access way to the front of the disputed property and were covered with a blue tarpaulin. He denied that the Claimant is entitled to the reliefs sought.
24. The Defendant has counterclaimed for the following orders: (i) a declaration that he is the owner and entitled to vacant possession of the disputed property; (ii) an injunction restraining the Claimant from entering and/or remaining upon or in any way trespassing upon the disputed property; (iii) interest; and (iv) costs.

The Claimant's Reply and Defence to Counterclaim

25. The Claimant denied that the Defendant is the owner of the disputed property. She contended that the piece of land referred to in the 1986 Deed is not the disputed property. She admitted that Mr Lall built a chattel house and sublet it to various tenants and that he was not in occupation of the disputed property but he continued to pay his rents for the disputed property to Hassina Boodram.
26. The Claimant averred that she began construction of the wooden structure and moved in 2014 to effect renovations on the chattel house. However, she did not remove the windows. The Claimant contended that her belongings were removed; left uncovered in the streets and were stolen while on the streets. She averred that during her occupation from 1977 to 2015, she was never informed by the Defendant or Hassina Boodram or the executors of the estate of Hassina Boodram that ownership of the disputed property had changed or that the Defendant was the owner. The Claimant averred that she never ceased her occupation of the chattel house but in 2014 she moved temporarily out of the chattel house due to its dilapidated state to effect renovations. She also contended that the Defendant fenced only the front of the disputed property and seized her building materials. Her personal items

including jewelry and alcohol were never returned to her. Her refrigerator was returned without the shelves and her stove was without the burners. The Defendant also burnt the Claimant's wardrobes, two chairs from her living room set, bookcase, bed and mattress.

27. In order for the Claimant to succeed with her claim she must prove that: (a) she is a statutory lessee; (b) the 1986 Deed is null and void; (c) the 1986 Agreement is null and void; and (d) the Defendant was not authorized to enter onto the disputed property and the chattel on the 4th October 2015.
28. At the trial the Claimant gave evidence on her own behalf and she called two witnesses who are the executors of the estate of Hassina Boodram namely Mr Mohammed and Mr Boodram. The Defendant gave evidence and he called Silochan Ramsaroop, Sumintra Bannah and Grace Samaru.

Is the Claimant a statutory lessee?

29. It was submitted on behalf of the Claimant that she had a relationship with Mr Lall whether it was a father and daughter relationship or not and therefore Mr. Lall was the Claimant's predecessor in title of the disputed property. As a result, he effectively left an interest in it by virtue of a statutory tenancy and the chattel house to the Claimant and that this was the reason she continued paying the rent to Hassina Boodram whom she considered to be the owner and her landlord and not the Defendant.
30. Counsel for the Defendant argued that the Claimant has failed to demonstrate that the tenancy of Mr Lall was assigned to her during his lifetime. She failed to prove any familial relationship between Mr Lall and her and she has not produced a Grant of Probate for the estate of Mr Lall to demonstrate that the tenancy has been assigned to her by operation of law. Further the Claimant cannot be defined as a tenant at will or at sufferance as there was never a tenancy relationship between herself and Hassina Boodram.

31. The Claimant's evidence in chief with respect to her right as a statutory lessee was that she moved to the disputed property and the chattel house on it in 1978 with her common law husband and daughter when she was 21 years old and that she lived there until 2015. They occupied two rooms in the chattel house since one of the rooms was already occupied by a tenant Rudolph, his wife and daughter who moved out shortly after and the Claimant occupied the entire chattel house. The Defendant lived two houses away from the Claimant but he never approached her or told her that he was the owner of the disputed property. She continued to pay her yearly land rent to the Boodrams. In 2010, she instructed her attorney at law to complete her renewal of statutory lease notice and sent it to Mr Mohammed who instructed his attorney at law to offer her to purchase the disputed property at half the current market value. She instructed her attorney at law to indicate to Mr Mohammed that she was willing to purchase it at a price to be negotiated.
32. In April 2013, the Claimant said that she received a letter from the Defendant's attorney at law informing her that he was the owner of the disputed property and demanded that she vacate it by the 29th May 2013. She instructed her attorney at law to write a letter in response indicating that the Defendant never spoke to her of his ownership of the disputed property. According to the Claimant, she commenced renovations to the chattel house and constructed a temporary wooden structure for her to place her possessions and live. She was back and forth between her daughter's home and she spent a lot of time there while the work was going on.
33. The Claimant stated that she received a notice to quit from the Defendant informing her that he intended to demolish the chattel house and to vacate the disputed property in 30 days. She also received a pre-action protocol letter together with the 1986 Deed along with land and building tax receipts which did not indicate the address for which taxes were being paid and she was given until the 30th September 2015 to vacate the disputed property. The Legal Aid and Advisory Authority advised her not to vacate and they wrote to the Defendant on her behalf on the 27th August 2015 denying his right to possession. Sometime thereafter she was served the eviction notice.

34. In cross-examination the Claimant denied that she lived at the disputed property as a baby but she lived there from a young age. She said she attended school from her mother's premises which was across the road from the disputed property. She accepted that when the chattel house was rented there was no electricity and running water and she acknowledged that she visited her mother's house, which was opposite the disputed property for water and to bathe. She stated that she had moved out since she was doing work on the chattel house. Yet she denied that by 2011 the chattel house was in a dilapidated condition.
35. The Claimant testified that the Defendant did not inform her that he purchased the disputed property and she denied that she told him that she had no place to stay. She also denied that the Defendant told her that when he needed the property he would tell her. She said she did not know that the disputed property belonged to the Defendant until 2013 when he wrote her the first letter and he never offered to sell the disputed property to her.
36. The Claimant also testified that Hassina Boodram died in 2003 and she did not pay rent between 1998-2003 but she started paying rent about 2004 to Mr. Mohammed and Mr Boodram. Yet she said she paid rent to Ms Hassina Boodram from 2000-2003.
37. In my opinion there was no evidence from the Claimant to establish the basis of her paying rent to Hassina Boodram and subsequently to the executors of the estate of Hassina Boodram. There was also no evidence from the Claimant of how she came to be Hassina Boodram's tenant. Indeed if the Claimant was interested since 2010 in purchasing the disputed property from the estate of Hassina Boodram she did not take any steps to do so such as a search on title to ensure that she was purchasing it from the correct owner and that it was not encumbered. Further I was not of the view that the Claimant was being truthful with the Court when she stated that the chattel house was not in a dilapidated condition. In my opinion it is more plausible that she was undertaking such works because the condition of the chattel house had deteriorated and because of the dilapidated condition the Claimant was not living in the chattel house during the time she stated.

38. The evidence of Mr Mohammed in his witness statement was that he is the brother of Hassina Boodram and he had a close relationship with her. He did not know the Defendant personally however the Rampersad family and the Boodram family were next door neighbours for over 50 years. He stated that the first time he saw the Defendant was in court and he had no conversation with him.
39. He testified that Hassina Boodram died testate on the 16th November 2003 and she appointed him and her son Mr Boodram as joint executors of her will. They obtained a grant of probate of Hassina Boodram's estate on the 30th January 2007 and her estate comprised approximately 3 acres of land between Boland Trace and both sides of Foster Road, Jerningham Junction, Cunupia ("the lands"). The lands were subdivided, some were already sold and the others were rented. Hassina Boodram's estate included the lands inherited from her late husband.
40. Mr Mohammed also testified that when the grant of probate was obtained he had discussions with his nephew Mr Boodram, and made efforts to confirm the status of the tenancies of the lands owned by Hassina Boodram. He commissioned Iqbal Mohammed, Licensed Surveyor, to do so in 2004 and his survey plan showed the disputed property to be tenanted.
41. According to Mr Mohammed his sister never indicated to him that she had sold the disputed property to the Defendant's parents or the Defendant and after his sister died, throughout his visits the Defendant never introduced himself to him nor did he ever mention that he was the owner of the disputed property and the chattel house standing on it. Mr Mohammed said that he was informed by the Claimant that she received a letter dated the 25th April 2013 from the Defendant's attorney at law in which the Defendant claimed to be the owner of both the disputed property and the chattel house.
42. Mr Mohammed testified that he never met Mr Lall but that he and Jeewan Boodram continued to collect rent from the Claimant. In 2010, he received the Claimant's renewal of statutory lease notice and thereafter he recognised the Claimant as a statutory tenant which he annexed as "BM 1" to his witness statement. Notably the notice of renewal dated

the 20th November 2010 described the address of the land the Claimant was occupying as “*Foster Rd Cunupia*” and the description of the land was “*4336 sq ft land, Lot 17*”.

43. Mr Mohammed said that he instructed his attorney at law to write the Claimant and offer to sell the disputed property to the Claimant at half the current market value. He said he and Mr Boodram continued to pay the land and building taxes for the lands each year including the disputed property.
44. In cross-examination Mr Mohammed testified that after his sister died, he surveyed the lands and had a questionnaire prepared for all the tenants. He admitted that this information does not form part of his witness statement. He and Mr Boodram said he paid land and building taxes and when he went in to pay the taxes he did not notice that such taxes were being paid by the Defendant for the disputed property. Mr Mohammed also stated that had a title search done for the lands by Mr Iqbal Mohammed however he did not prepare a status report and he testified that he never saw the land and building taxes receipts in the attorney at law’s office.
45. Mr Mohammed was adamant that there is no deed for the disputed property since it was never sold. He said he saw a deed for another lot, Lot 20 but he could not recall the year Lot 20 was sold. He said the 1986 Deed the Defendant exhibited was the wrong deed. However despite Mr Mohammed protestations he admitted that he has never sought to have the 1986 Deed set aside nor did he do anything to rectify it because there was no issue in relation to the disputed property since no one had made claim to it.
46. In my opinion Mr Mohammed’s evidence did not assist the Claimant in proving that she was a statutory lessee for the disputed property. His assertion that the 1986 Deed was not for the disputed property was not credible since he was unable to prove that the 1986 Deed was not valid. He admitted that he knew that the Defendant was the owner of the disputed property since 2013 but he never took any steps subsequently to have the 1986 Deed set aside. In my opinion it was in his interest as one of the executors of Hassina Boodram’s estate to do so if indeed he believed that there was any truth in his assertion. In my opinion it is reasonable to conclude that he took no such action since he accepted that the 1986

Deed was valid and that despite his close relationship with his sister, she could have sold the disputed property to the Defendant and his parents without telling him.

47. Further while Mr Mohammed asserted that a title search was done for the lands which formed part of the estate of Hassina Boodram he was unable to provide any details on the findings of such search which would have assisted in supporting his bald assertions. While he said he continued to pay the land and building taxes for the lands which he said included the disputed property he could not dispute that the Defendant was paying land and building taxes for the disputed property since 1986.
48. The effect of Mr Mohammed's evidence was that even if he was collecting rent from the Claimant and treating her as a statutory tenant he had no basis to do so since Hassina Boodram was no longer the owner of the disputed property since December 1985 by virtue of the 1986 Deed and without any proper search on title of the lands after Hassina Boodram died he had no basis to do so.
49. Mr Boodram's evidence in chief was that he was the son of Hassina Boodram. He had a close relationship with her and she would tell him everything concerning her business in relation to the lands she owned. Mr Boodram testified that he has known the Claimant all his life and they are neighbours. The Claimant lived with her mother opposite the disputed property and she returned to live on the disputed property with her husband and daughter in or about the year 1977 and 1978. Over the next 19 years Mr Lall occasionally visited the Claimant until his death. He collected rent from her. In 2010, he received the Claimant's renewal of statutory lease and he recognised her as a tenant. He also offered to sell her the disputed property at half the current market value.
50. According to Mr Boodram, his mother appointed him and his uncle Mr Bassari Mohammed as the executors of her will. After they obtained a grant of probate of his mother's estate in in 2007, they sought to verify the status of the tenancies of the lands by commissioning Mr. Iqbal Mohammed, a licensed surveyor to prepare a survey plan.

51. Mr Boodram also testified that although he and the Defendant are next door neighbours, the Defendant never mentioned to him that he was the owner of the disputed property or the chattel house and he never saw the Defendant or his parents on the disputed property cleaning, cutting grass or planting trees and crops. According to Mr Boodram he pays the land and building taxes for the lands each year including the disputed property.
52. In cross-examination Mr Boodram's evidence was entirely discredited since he admitted that he acted upon the instructions from his uncle Mr Mohammed and that Iqbal Mohammed gave his uncle, the search. He admitted he did not know the meaning of the terms "renewal of a statutory lease", or "notice to quit". He said his uncle read the witness statement to him together with the lawyer. He said they did not tell him that he could change what he did not understand.
53. The evidence of Mr Boodram was of no use in assisting the Claimant in proving her case that she was a statutory lessee.
54. The Defendant's evidence on any alleged statutory tenancy by the Claimant in his witness statement was as follows. He is the owner of the disputed property since he and his parents purchased the disputed property from Hassina Boodram for the sum of \$15,000.00. He annexed as "KR 1" to his witness statement a copy of the 1986 Deed which shows that on the 19th December 1985 Hassina Boodram sold a parcel of land described in the attached survey plan dated the 28th June 1985 and which described the boundaries as bounded on the north, east and west by other lands of Hassina Boodram and on the south by Foster Road.
55. According to the Defendant, Mr. Lall was a tenant of Ms. Hassina Boodram and rented the chattel house Mr. Lall was also a good friend of his father and he visited their home when he went to collect rent. After the purchase of the disputed property, Mr Lall agreed to sell the chattel house to his father and by the 1986 Agreement the chattel house was sold by Mr Lall to his father. The Defendant annexed as "KR 3" a copy of the 1986 Agreement between Mr Lall and the Defendant's father Rampersad Mistry.

56. The Defendant testified that he lives about one block away from the disputed property. He said that he grew up with the Claimant in Cunupia and they were neighbours. The Claimant's mother had her own home opposite the disputed property where the Claimant lived and she did not grow up on the disputed property from birth as she claimed.
57. According to the Defendant, after he bought the disputed property with his parents, they never collected any rent from the tenants. They allowed Mr. Lall to keep the rent money he collected from the tenants of the chattel house for his own use and benefit because it was his only source of income and Mr. Lall continued to do so until 1993. After the Defendant and his parents purchased the property neither of the Claimant's parents lived there and the Claimant and her mother occupied the premises directly opposite the disputed property.
58. The Defendant stated that he could not say exactly when the Claimant began occupation of the disputed property but he was certain it was not from birth. The Claimant was told that they were the owners of the chattel house and the disputed property in the presence of the Defendant and his parents, and they allowed her to continue in occupation until they required her to surrender possession of same. They agreed that no rent would be collected from the Claimant for her occupation of the chattel house and the disputed property.
59. According to the Defendant, he and his father maintained possession of the disputed property by cutting and cleaning the grass and planting trees and crops so the Claimant did not have exclusive occupation of it. He planted various fruit trees on the subject property such as: coconut trees, pommerac trees, mango trees and cane. He and his wife maintained the property by cultivating short crops such as bodi and ochro to the back of the chattel house. The Claimant never maintained or assisted in cultivating the property.
60. The Defendant stated that neither he nor his parents authorized anyone to collect rent from the Claimant after they became the owners of the disputed property and the will of Hassina Boodram did not refer to the disputed property. The Defendant stated that he reminded the Claimant that he was the owner of the disputed property and he paid land and building taxes for it. He annexed as "KR 4" copies of the land taxes which he paid for 1986, 1990

to 1995, 1997 and 1999. He also annexed copies of house rates which he paid for 2000 to 2008.

61. According to the Defendant, in 1996, he offered to sell the disputed property to the Claimant in an effort to obtain revenue to develop another parcel of land but she did not accept the offer. A few months later the Defendant sought to obtain vacant possession of the chattel house in accordance with their oral agreement, however the Claimant refused to vacate the chattel house and continued in occupation while he continued to up keep, maintain and secure the disputed property.
62. The Defendant testified that in 2012, the Claimant began construction of a wooden structure upon the disputed property adjacent to the chattel house and despite his repeated request of her to cease and desist she persisted. He reported the matter to the Cunupia Police Station but they refused to do a written report or investigate same because it was private matter. Shortly thereafter, the Claimant moved her personal belongings into the wooden structure and ceased occupation of the chattel house in 2013. She began removing the windows and the roof. As a result the Defendant instructed his attorney at law to write a letter to the Claimant. The Claimant responded by alleging that her parents had transferred their tenancy to her and gifted the chattel house to her. However, no documents were attached evidencing same.
63. The Defendant denied having any physical or verbal altercation with the Claimant. However, in 2014, the Defendant had to speak to the Claimant's sister about her unauthorized sale of coconut on the disputed property. According to the Defendant despite verbal requests made to the Claimant by the Defendant, she refused to move from the property and surrender vacant possession to him. On the 17th September 2015 the Defendant said he cut down a rotten coconut tree on the disputed property which was leaning close to the premises of a neighbour. He also cleared some bushes on the disputed property. He denied interfering or cutting any of the Claimant's plants.
64. According to the Defendant in 2012, he served a notice to quit for the Claimant on her sister because he did not see the Claimant for a long time between 2011-2012. He said the

notice to quit informed the Claimant that failure to remove her items from the disputed property by the 30th September 2015 would result in the said items being removed by a bailiff. The Claimant failed to remove her belongings and on the 4th October 2015 her items in the wooden structure were removed and placed along the roadway at the front of the disputed property and covered with a blue tarpaulin. The Claimant's belongings were subsequently removed by her family who live directly opposite the disputed property. All the Claimant's building material are still on the disputed property on the eastern side of the chattel house and is now overgrown by bush. He denied burning anything belonging to the Claimant. The bailiff was accompanied by the police and his workers and he was present to ensure that the work was done.

65. In cross-examination the Defendant confirmed that Hassina Boodram was the previous owner of the disputed property and he and his parents purchased it from her and that Mr Lall was Hassina Boodram's tenant before he became the owner. He said he was present with his mother when his father gave the Claimant permission to occupy the disputed property. He admitted that he offered to sell the Claimant the disputed property and he said he was present when the bailiff removed the Claimant's property. He stated that he planted on the disputed property with his father and later his wife. He said the Claimant did not plant on the disputed property and it was not possible that she planted and he did not see.
66. In my opinion the Defendant's evidence was unshaken in cross-examination and supported by his contemporaneous documents. The totality of his evidence which I accept was that by the 1986 Deed he and his parents purchased the disputed property from Hassina Boodram. His parents knew Mr Lall and they knew that he was Hassina Boodram's tenant and by the 1986 Agreement the Defendant's parents purchased the chattel house from Mr Lall. They did not collect any rent from Mr Lall. He was not the Defendant and his parents tenant and they did not treat him so. The Defendant and his parents were aware that Mr Lall was collecting rent from tenants of the chattel house and after they purchased it from him they permitted him to continue to collect the rent for himself since he had no other income. I also accept the Defendant's evidence that he told the Claimant that he was the owner of the disputed property and the chattel house and that his parents had permitted her

to stay in the chattel house until they required it and that he and his family planted and maintained the disputed property since he owned it.

67. The evidence in chief of Sumintra Bannah was that she knew the Claimant and the Defendant and she has known the Defendant since childhood. The Claimant now lives with her daughter in Lange Park and as a child the Claimant lived with her mother opposite the disputed property. The house in which the Claimant and her mother lived was owned by the Claimant's mother but the land was owned by Mr Boodram. There were several rented houses across the road from where the Claimant and her mother lived. After Mr. Lall vacated the disputed property, the Claimant moved into the disputed property with her husband and daughter. She said the Claimant would come and go for lengthy periods. The chattel house had become extremely dilapidated and eventually the Claimant abandoned the disputed property in 2011 and only returned to construct a wooden structure. From the time of the Claimant's departure from the chattel house the Claimant never returned and with the passage of time the roof fell off. The Claimant did not plant anything on the disputed property since it resembled a jungle with bush everywhere. Neighbours complained about snakes coming into their yard from the disputed property, as a result, the Health Personnel visited it. The Defendant visited the disputed property on several occasions and planted fruit trees. He planted vegetables with his wife at the back of the disputed property.
68. In cross-examination Ms Bannah testified that she did know who the Claimant's father was. She testified that the Claimant abandoned the house in 2011 because she was not living there and the roof fell off around 2011. She said she did not know if it is possible that the Claimant planted on the disputed property since she did not see. Yet she said she saw the Defendant and his wife plant on the disputed property.
69. In my opinion Ms Bannah's evidence corroborated the Defendant's evidence that he and his wife planted on the disputed property and the Claimant had left the chattel house in 2011. Her evidence was of no value in determining the status of the Claimant as a statutory lessee.

70. Grace Samaru's evidence in chief was that she began living on Foster Road in 1959 and she was approximately four years old. They moved into the house across the road from the disputed property. At that time only the Claimant and her mother lived in the house. She continued to live next door to the Claimant's mother but the Claimant has not lived there in a while. The Claimant now lives in Lange Park with her daughter. In the past she has seen several tenants occupying the chattel house. She admitted that she did not know Mr. Lall personally. She only knew him whenever he went to collect rent from the tenants. She testified that the disputed property has been abandoned since the Claimant left the house in 2011. The Claimant did not take care of the place; it was overgrown with bush and snakes went into the neighbour's land. The Claimant returned some years later and built a plywood house. She took things from the chattel house and put in the new house. She said she saw the Defendant and his father planting crops at the back of the disputed property.
71. In cross-examination she confirmed that she moved to the property on the opposite side of the road from the disputed property. She did not know the exact time the Defendant owned the disputed property. She did not know what types of crops the Defendant and his father plant at the back of the disputed property. She said she saw them going with tools to the back of the disputed property. She testified that she did not see the Claimant plant on the disputed property and she did not know that the Claimant planted ixora and guava trees.
72. Grace Samaru's evidence corroborated the Defendant's evidence that he and his father planted on the disputed property and the Claimant had left the chattel house in 2011 and she returned and built a structure thereafter.
73. In my opinion the Claimant has failed to prove that she was a statutory lessee of Hassina Boodram and later of the Defendant for the following reasons. Firstly, the Claimant admitted at paragraphs 3 and 11 of her Statement of Case that Mr Lall was the original tenant of Hassina Boodram. Section 2 of the **Land Tenants (Security of Tenure) Act**¹ defines a "tenancy" as "*any person entitled in possession to land under a contract of tenancy whether express or implied, and whether the interest of such person was acquired*

¹ Chapter 54:54

by original agreement or by assignment or by operation of law or otherwise; and includes a tenant at will and a tenant at sufferance and “tenancy” shall be construed accordingly”.

74. The Claimant failed to demonstrate by the production of any documentary evidence that the tenancy of Mr Lall was assigned to her during his lifetime. Additionally, there was no documentary evidence that a familial relationship between Mr Lall and the Claimant existed. The Claimant failed to produce any will of Mr Lall or any grant of probate of Mr Lall’s estate showing that she was entitled to this so that the tenancy has not been assigned to her by operation of law.
75. Secondly, the Claimant has not shown that there was a contract of tenancy between herself and Hassina Boodram and therefore she was neither an expressed or implied tenant of the Hassina Boodram. Therefore the Claimant also cannot be defined as a tenant at will or at sufferance.
76. Thirdly, even though the Claimant exhibited to her Statement of Case rent receipts in her name for the years 2004- 2015 inclusive, these receipts are not evidence of any tenancy by the Claimant of the disputed property as the payment of rent alone does not create a statutory tenancy.
77. Fourthly, having accepted the Defendant’s evidence that he and his parents became the owner of the disputed property in 1986 at the time of Hassina Boodram’s death, the disputed property was not vested in her name and therefore any rent paid to her or her executors subsequent to 1986 did not create any tenancy in favour of the Claimant since the rent was not paid to the owner of the disputed property.
78. Lastly, even if there existed a statutory tenancy which I have not so found, the new statutory tenant, the Claimant would have been required to pay rent to the new landlord, that is the Defendant and she would have had to serve notice of renewal of the tenancy on the new landlord but neither of these steps were taken by the Claimant.

Is the 1986 Deed is null and void?

79. The Claimant did not plead any particulars setting out the basis for alleging that the 1986 Deed was null and void. In any event I agree with Counsel for the Defendant that the Claimant failed to establish that she has locus to ask for the 1986 Deed to be declared null and void and of no effect since the only persons who can ask for such a declaration is the land owner or in this case the executors of the estate of Hassina Boodram.
80. Mr Mohammed, one of the executors of the estate of Hassina Boodram, stated in his witness statement that in his numerous discussions with his sister, she never told him that she sold the disputed property. Yet he affirmed in cross-examination that because the disputed property was hers she was entitled to sell it to whomever she pleased. Mr Mohammed was asked if he did not consider he had an obligation as the legal personal representative to do something about the fraud relating to the 1986 Deed. He stated “*if there is something to do I will*” and “*We had no problem in thirteen years*”. He further stated when questioned by Attorney for the Defendant why he had not done anything to correct the issue with respect to the claim by the Defendant that they had purchased the disputed property, Mr Mohammed stated nothing was done “*because there was no issue. Nobody had made claim to Lot 17 before*. In my opinion, there was no interest by the persons with the locus, that is the executors of the estate of Hassina Boodram, to institute proceedings to set aside the 1986 Deed and indeed if they so intended by their own evidence they knew since 2013 and by 2018 they still had not taken any steps.
81. I therefore have no basis for making a finding that the 1986 Deed is null and void.

Is the 1986 Agreement null and void?

82. Similarly the Claimant did not plead any basis for alleging that the 1986 Agreement was null and void. The Claimant also failed to establish that she has locus to make this claim as there exists no relationship between herself and Mr Lall nor does she have a Grant of Probate for the estate of Mr Lall to entitle her to make any claims on behalf of his estate.

83. I therefore have no basis for making a finding that the 1986 Deed is null and void.

Was the Defendant authorized to enter onto the disputed property and chattel house on the 4th October 2015?

84. **Clerk & Lindsell on Torts**² defines a trespass to land as: “*Trespass to land consist in any unjustifiable intrusion by one person upon land in the possession of another*”³. At paragraph 19-13 the learned authors continued that “*proof of possession is prima facie proof of possession, unless there is evidence that another person is in possession; but if there is a dispute as to which of two persons is in possession, the presumption is that the person holding title to the land is in possession and even a long continued assertion of title, without proof of title, can be of significance “ in that it attaches to the activities of those claiming under it a quality of acts of possession.”* At paragraph 19-15 it further states that “*A person claiming as against the true owner cannot be said to have possession unless the true owner has been dispossessed....Moreover to found a claim in trespass possession must be exclusive.*”
85. In order to maintain a claim for trespass the Claimant must show that there was some form of unauthorized and unjustifiable entry upon the disputed property and that she was in possession of it. At the time the Defendant entered the disputed property on the 4th October 2015 he was the owner of the disputed property and the chattel house and he had already served the Claimant a Notice to Quit in February 2015 and he had served a notice to quit on the Claimant’s sister . At that time the Claimant thought of herself as a tenant but she knew that the person she thought was the owner was not the Defendant. Given those circumstances the Defendant was authorized and justified when he entered onto the disputed property on the 4th October 2015.

² 17th ed

³ Para 19-01

86. In any event, with respect to the Claimant's claim that she suffered a loss of her items as result of the Defendant's actions, she was not present and she did not produce any witnesses to dispute the Defendant's evidence that on the 4th October 2015 the Claimant's items in the wooden structure were removed and placed along the roadway at the front of the disputed property and covered with a blue tarpaulin. The Claimant's belongings were subsequently removed by her family who live directly opposite the disputed property. All the Claimant's building material are still on the disputed property on the eastern side of the chattel house and is now overgrown by bush.
87. In the circumstances I find that the Defendant was authorized to enter the disputed property and the chattel house and he did not commit any acts of trespass.
88. Having found that the Claimant was not a statutory lessee, there is no basis to set aside the 1986 Deed and the 1986 Agreement and that the Defendant did not trespass on the disputed property when he entered on the 4th October 2012 it follows that the Claimant is not entitled to an order for possession of the disputed property and the chattel house and an injunction to prevent the Defendant from entering thereon.
89. In such circumstances the Defendant is entitled to the reliefs sought in his Counterclaim.

ORDER

90. The Claim is dismissed.
91. Judgment for the Defendant on his counterclaim namely:
- (a) it is declared that the Defendant is the owner of a parcel of land registered in Deed NO DE 1986000461065 and known as Lot 17 and situated at L.P. 52 Foster Road, Jerningham Junction, Cunupia comprising four thousand, seven hundred and thirty six square feet (being portion of a larger parcel of land described in deed No. 3546 of 1952 ("the 1952 Deed")) and bounded on the North by other lands, on the East by Lot No 16, on the West by Lot No. 18 and on the South upon Foster Road.

- (b) The Claimant is restrained from entering and/or remaining upon or in any way trespassing upon the aforesaid land.
92. No order is made with respect to costs against the Claimant since she is represented by an attorney at law appointed by Legal Aid and there were no exceptional circumstances for me to order otherwise.

Margaret Y Mohammed
Judge