

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2016-04106

BETWEEN

LUTCHMIENARINE RAGOONANAN

PREMA WHEATLEY

VINDRA RICHTER

BISSOONDATH RAGHOONANAN

ANGIE JUBB

KRISHNA RAGHOONANAN

SURESH RAGHUNANAN

KOKELA SUZIE TAYLOR

HAYMAN RAGHOONANAN

Claimants

AND

VASHTI RAMLAL

OMAR RAMLAL

RAVI OMAR

Defendants

Before the Honourable Madame Justice Margaret Y. Mohammed

Dated the 21st May, 2018

APPEARANCES:

Mrs. Kamini Persaud Maraj Attorney at law for the Claimants.

Mr. Omar Jokhan instructed by Ms. Vidya Jokhan Attorneys at law for the Defendants.

JUDGMENT

1. The Claimants, the First Defendant and Chandra Soomai otherwise Chandra Raghoonanan (“Chandra”) are siblings and the children of Raghoonanan Gookool (“the Deceased”). The Second Defendant is the First Defendant’s spouse and the Third Defendant is a child of the First and Second Defendants. The instant action concerns a parcel of land comprising Four Acres Three Roods and Twenty-Six Perches more or less described in Certificate of Title in Volume 1861 Folio 299, which is situated at Suchit Trace, Penal in the Island of Trinidad (“the subject land”) registered in the name of the Deceased and which comprised the bulk of the Deceased’s estate.

2. The Claimants have brought this action seeking the following reliefs against the Defendants:
 - a. Damages for trespass of the subject land by the Defendants their servants or agents when they unlawfully fenced a portion of the subject land and unlawfully commenced the construction of a concrete two storey structure on a portion of the subject land without the consent or authority of the Claimants in an attempt to oust or dispossess the Claimants of the said portion of the subject land.

 - b. A declaration that the Defendants, their servants or agents in constructing a structure upon a certain portion of the subject land known as the “land on the hill” (“the land on the hill”) without the subject land being partitioned between the owners and subdivided to allocate to each beneficiary his/her respective portion of land which should be mutually agreed by all owners is illegal.

 - c. An order that the Defendants do forthwith pull down and remove the concrete structure which the Defendants, their servants or agents commenced building on or about June 2016 on the land on the hill.

 - d. An order that the Defendants do forthwith remove all fencing together with their possessions and belongings placed on the land on the hill.

- e. An injunction restraining the Defendants whether by themselves or their servants or agents or howsoever otherwise from continuing the construction of a concrete structure on the land on the hill until the hearing and determination of this action or until further ordered.
3. The Claimants also seek orders for aggravated and/or exemplary damages, costs and interest.
4. In response the Defendants have counterclaimed seeking the following orders from the Court:
 - (a) A declaration that the First Defendant is entitled to the land on the hill.
 - (b) A declaration that the structure being constructed is on the First Defendant's share of the subject land and is therefore not illegal.
 - (c) A discharge of the interim injunction granted by consent and that the Defendants are entitled to continue the construction of the said structure without interference from the Claimants.
5. The Defendants also seek an order that the Claimants pay the costs in this matter.
6. Before I deal with the premise of each parties case I will set out the following facts which are not in dispute namely:
 - (a) The Claimants, the First Defendant, Chandra and another sibling are the named beneficiaries ("the beneficiaries") under the Deceased's **last** will and testament dated the 27th December, 1995 ("the Will").
 - (b) By the Will the Deceased gave the subject land to his wife Dora Raghoonanan ("Dora") (now deceased) for and during the term of her natural life and after her death unto the beneficiaries in equal shares.
 - (c) Probate of the Will was granted on the 4th January, 2013, to Chandra the sole executrix named therein. Dora died subsequent to the grant of probate.
 - (d) To date there has been no assent to the beneficiaries.

- (e) The First and Second Defendants began to live in an existing chattel house (“the chattel house”) on a portion of the subject land upon their marriage in 1982.
- (f) That portion of subject land upon which the chattel house stood is known as the land on the hill.
- (g) That chattel house was being used by the Deceased and Dora as a garden house.
- (h) Sometime in 2016, the Defendants demolished the chattel house on the land on the hill and in its place they commenced the construction of a concrete dwelling house for the Third Defendant.
- (i) On the 14th day of November, 2016, the Claimants commenced proceedings against the Defendants for among other things trespass to the subject land and certain injunctive relief.
- (j) On the 21st November, 2016, by a consent Order the Defendants refrained from continuing the construction of the concrete house until further order.

The Claimants case

7. The Claimants contended that they together with the First Defendant and Chandra are the joint owners/beneficiaries of the subject land and they are equally entitled to it. They averred that the Defendants action to fence the land on the hill and to construct the concrete structure thereon constituted a trespass upon the subject land since it has not been partitioned and that the actions by the Defendants were undertaken without the Claimants’ permission and/or by agreement.
8. The Claimants denied the Defendants contention that the Deceased promised the First Defendant the land on the hill. They contended that the Deceased gave the First Defendant a licence to stay in the chattel house with her family shortly after she got married until she could make better accommodation for her family. They asserted that any permission for the Defendants’ occupation was qualified and finite and that the permission for the First Defendant to occupy the chattel house situated on the land on the hill came to an end after the First and Second Defendants vacated it to live with the Deceased and Dora at No.7

Debe Main Road. They averred that the chattel house situated on the land on the hill was built for the Sixth Claimant who occupied it and permitted the First and Second Defendants to reside there at the Deceased's request. They also pleaded that there was no agreement that the First Defendant was to be entitled to the land on the hill.

The Defendants case

9. The Defendants contended that the land on the hill was given to the First Defendant by the Deceased as her share in the subject land and that the Claimants knew and acknowledged the Deceased's actions. The Defendants relied on the following facts to support their contention.
10. The Defendants averred that they lived at the chattel house for some time prior to the death of Deceased. They pleaded that with the consent of the Deceased they were in occupation of a portion of the subject lands comprising approximately four (4) lots inclusive of the spot where the chattel house stood and which is located at the North Eastern corner of the subject lands and bounded on the North by a chain link fence which runs along the Northern boundary of the subject lands, on the South by a portion of the subject lands occupied by the First Claimant, on the East by the Eastern boundary of the subject lands and on the West by the remaining portion of the subject land. The Defendants averred that the portion of the subject land they occupy is the share of the subject land apportioned to the First Defendant by the Deceased
11. According to the Defendants shortly before the marriage of the First and Second Defendants in 1982, the Deceased took the First and Second Defendants to the land on the hill which included the spot where the chattel house was situated. The Deceased pointed out the land on the hill to them and told them that he would give the First Defendant that portion of land as her share in the subject land. Upon the marriage of the First and Second Defendant in 1982, they began to live in the chattel house on the land on the hill with the permission of the Deceased. After their marriage the First and Second Defendants went to live in the chattel house and they assisted the Deceased and Dora in cultivating the subject land including the land on the hill. In the following years the First and Second Defendants

raised their children, maintained and carried out substantial repairs to the chattel house as their own.

12. At the time of the marriage of the First and Second Defendants the Second, Fourth, Sixth and Seventh Claimants were already living abroad and over the course of the ensuing years Chandra and the other Claimants except the First Claimant migrated to live abroad and on their occasional visits to Trinidad the First and Second Defendant accommodated them at their home at the chattel house as their guests. As such the Defendants averred that the Claimants were aware that the First Defendant's share in the subject lands was the land on the hill which comprise approximately four (4) lots inclusive of the spot where the chattel house stood and that the Deceased told them so. Further, the Defendants contended that the Claimants by their conduct have recognized and accepted that the portion of the subject lands occupied by the Defendants and upon which the structure is being constructed, is the First Defendant's share of the subject land.
13. According to the Defendants, in January, 1989, the Deceased transferred ownership of the chattel house to the Second Defendant. In 2004, the First and Second Defendants and other members of their family moved to the home of the parents of the First Defendant namely the Deceased and Dora at Debe Main Road, Debe, leaving the Third Defendant to live in the chattel house. However, the First and Second Defendants continued to occupy and cultivate the land on the hill.
14. The Defendants also averred that in 1989, the Deceased pointed out to the First Claimant his share in the subject land in the presence of the First and Second Defendants. The portion of the subject land which was given to the First Claimant is located south of the chattel house and adjoins the portion of the land on the hill which the Deceased gave to the First Defendant as her share. The First Claimant was allowed to occupy the same and he began construction of a two storey wooden and concrete dwelling house a year later which he occupied with his family. The First Claimant also carried out his business as an auto mechanic at his dwelling house as well as at another location. The Defendants averred further that in that same year, the Deceased changed ownership of the chattel house giving it to the Second Defendant and that he informed his other children.

15. In February, 2016, the Defendants demolished the chattel house on the land on the hill and in its place they commenced the construction of a concrete dwelling house to be used as a residence for the Third Defendant. Upon the commencement of this action the Defendants ceased construction of the dwelling house in obedience to a consent order made on the 7th November, 2016, but they continued occupation of the land on the hill since the First and Second Defendants continued to maintain the curtilage surrounding the incomplete dwelling house while the Third Defendant continued his mechanic business in a shed on the land on the hill.
16. Based on the orders sought by the parties the following issues arise for determination:
 - (a) Can the Claimants maintain an action for trespass against the Defendants?
 - (b) Is the First Defendant's share of the subject land the land on the hill?
 - (c) What are the outstanding costs?
17. At the trial the three witnesses for the Claimants were: the First Claimant, the Sixth Claimant, and the Claimants and First Defendant's maternal uncle, Gopaul Ramlatchan. The Defendants witnesses were the First Defendant, Chandra and the Second Defendant.

Can the Claimants maintain an action for trespass against the Defendants?

18. It was submitted on behalf of the Defendants that the Claimants action in trespass must fail since they are not the legal owners of the subject land and none of the Claimants are in possession of the land on the hill. In other words the Claimants have no locus standi to institute an action in trespass against the Defendants as beneficiaries in waiting. It was also argued on behalf of the Defendants that the Claimants were put on notice from the plea in their defence that their locus standi was being challenged and that Counsel for the Defendants indicated this and provided the learning in support of this argument to Counsel for the Claimant at the hearing on the 21st August 2017.
19. It was argued on behalf of the Claimants that the Defendants did not specifically plead that the Claimants had no standing to bring an action in trespass. The Claimants also submitted

that as beneficiaries in waiting there were special circumstances which permitted them to bring the instant action since the duly appointed executrix of the Deceased's estate took no action against the Defendants and she gave evidence for them. In support of this proposition, Counsel for the Claimants relied on the learning in a Court of Appeal decision in **Fong Wai Lyn Carolyn v Kao Chai-Chau Linda and others**¹.

20. The Defendants pleaded in their Defence that "*The Defendants will contend that the Claimants Claim Form and Statement of Case disclose no or no reasonable cause of action against the Defendants*" In my opinion this was sufficient to put the Claimants on notice of the Defendants' intention to raise the issue of locus standi. In any event, even if the Defendants did not raise this plea the Claimants still bore the burden to prove that the Defendants committed acts of trespass and one of the hurdles which the Claimants had to cross was to prove that they can maintain such an action.
21. This approach was adopted by Rampersad J in **Phyllis Crawford v Frankie Ramkalawan**². In that case the assets of the deceased comprised of a certain leasehold property, part of which housed a business described as a Beer Garden. During his lifetime the deceased transferred the business to the Defendant under a certain agreement for a re-transfer of same to the deceased during his lifetime. No such re-transfer was done. The deceased died and left that leasehold property to his wife, his son the Defendant and his daughter the Claimant. The deceased also left the Beer Garden business to the Claimant. Probate of the deceased's will was granted to joint executrices one of whom was the Claimant and the other the Claimant's daughter. Subsequent to obtaining probate of the deceased's will, the Claimant and her daughter as joint executrices assented the property to themselves and the Defendant as tenants in common. There was no reference to the Beer Garden in the Assent or in any other document for same.
22. The Claimant brought an action against the Defendant in her personal capacity as a beneficiary under the deceased's will seeking (a) a declaration that she is entitled to

¹ [2017] SGHC 111,

² CV 2007-04441.

possession of the Beer Garden (b) an order that she recover possession of the Beer Garden from the Defendant and (c) an order that the Defendant transfer the Beer Garden to her.

23. One of the issues which the Court had to determine but which was not raised by the Defendant in his pleadings was whether the Claimant had sufficient locus standi to bring the action in her personal capacity as opposed to her capacity as legal personal representative of the deceased. At paragraph 15 of the judgment Rampersad J stated:

“it is trite law that a deceased’s assets vest in the executor of the estate [in the event of testacy] and in the Administrator General [in the event of an intestacy] upon the death....Those assets must be divested by the executors/administrators to the beneficiaries out of the estate by some manner. In the case of real property, those assets are distributed by a deed or other instrument of assent...”

24. Rampersad J went on to state at paragraph 27 of the judgment that:

“The Claimant has submitted that the Defendant has not made any issue of this lack of capacity and has never objected to her right to bring the action. While this may be so, it hardly stands to reason that this can, or ought, to vitiate the live question as to locus standi in this matter. The burden is on the Claimant to bring and substantiate a claim in law and the issue of locus standi is an issue of law which, to my mind, cannot be waived by the Defendant in failing to raise it as an objection. This is an issue which ought to have been dealt with earlier and could therefore impact upon the costs which may be ordered in this matter. But, in law, this Claimant cannot substantiate a right or entitlement to judgment in her favor. As a result, I am of the view that the Claimant’s claim should fail on this ground alone.”
(Emphasis added)

25. Having found that the Claimants were put on notice that their locus standi would be challenged I now turn to the basis of the Claimants claim.

26. **Clerk & Lindsell on Torts**³ at paragraphs 19-01 describes a trespass to land as “an

³ 19th ed

unjustifiable intrusion by one person upon land in the possession of another". **Halsbury's Laws of England**⁴ identifies certain categories of persons who may sue for trespass to land. At page 396 paragraph 575 it states:

"Trespass is an injury to a possessory right and therefore the proper claimant in a claim of trespass to land is the person who was or who is deemed to have been in possession at the time of the trespass. The owner has no right to sue in trespass if any other person was lawfully in possession of the land at the time of the trespass, since a mere right to possession is not sufficient to support a claim for trespass." (Emphasis added)

27. The aforesaid principle was applied in this jurisdiction by Jones J (as she then was) in **Joanne Charles-Isidore v Stephanie Claudette Pierre and ors**⁵ when she stated at page 7 of the judgment that:

"The law with respect trespass is clear it is an injury to a possessory right. In the circumstances the proper claimant is the person who was or is deemed to have been in possession at the time of the trespass. Even an owner of land subject to a tenancy cannot maintain an action in trespass since "a mere right of property without possession is not sufficient to support an action in trespass"⁶".

28. In **Dale Khan v Kenneth La Crete**⁷ Pemberton J (as she then was) referring to the judgment of Hamel Smith J. in **Walcott v Alleyne**⁸ repeated the principles which govern the actions by beneficiaries of a deceased's estate. In **Dale Khan** the Claimant was in occupation of lands owned by the defendant's deceased mother. The defendant as executor and sole beneficiary of his mother's will entered the lands occupied by the claimant and tried to evict him allegedly causing damage to the property. The claimant brought a claim against the defendant for trespass. The defendant counterclaimed for possession of the said lands, not as executor but as the sole beneficiary under his mother's will. Pemberton J (as she then was) referred to the principles in **Walcott** and stated at paragraph 2 of the

⁴ 5th edition Volume 97

⁵ CV 2012-02477 at page 7

⁶Halsburys Laws of England, 4th ed volume 45 page 637, paragraph 1396

⁷ CV 2007-0311

⁸ HCA 92 of 1985

judgment:

“The first hurdle is whether Mr. La Crete had locus standi to issue and maintain the counterclaim. Hamel Smith J. (as he then was) in **Walcott v Alleyne** gave a succinct exposition of the law. Suffice it to say the following principles once extracted do not assist Mr. La Crete’s cause:

1. An unproved will is of no effect;
2. A beneficiary under the will cannot seek any benefit, title rights or interest whatever until the will has been proved;
3. A beneficiary cannot claim anything whether in law or equity;
4. A conveyance is required to vest real estate in those beneficially entitled;
5. A beneficiary cannot commence or maintain an action in trespass.”
(Emphasis added)

29. Pemberton J (as she then was) found that the defendant who was the beneficiary of the said land and who did not hold title could not maintain an action in trespass.
30. In **Glenroy Harper v Agnes Harper & Miriam Thomas**⁹ Pemberton J (as she then was) struck out the claimant’s statement of case at the case management conference on the basis that he had no locus standi to bring the action. In **Glenroy Harper** the parcel of land was registered in the name of the claimant’s father who was deceased and the first defendant as tenants in common. The first defendant was the claimant’s maternal aunt. The lands have not been partitioned. By his will the claimant’s deceased father devised his undivided share to his nine children including the claimant. There was no evidence before the Court that the deceased’s will was probated or that a Memorandum of Assent had been executed. There was a wooden house on the said lands which the claimant alleged to have lived in for more than 20 years. In his absence the house was demolished allegedly by the defendants. The claimant brought an action against the defendants for among other reliefs a declaration that he is the beneficiary under the will of his late father, a declaration that he is the owner of the house, a stated sum as damages for the destruction of the house, damages for trespass and injunctive relief.

⁹ CV 2010-03327

31. Counsel for the claimant had argued that his case was not based on the fact that he was a devisee/beneficiary under the deceased's will, but it was based on his claim to have a better right to occupy and or possess the said property other than the defendant at the time of the demolition, where the defendant herself has not shown any better title than that of the claimant except her own claim for possession of the subject property.
32. At a case management conference Pemberton J (as she then was) struck out the claimant's Statement of Case pursuant to the CPR Part 26.2 (1) (c) as disclosing no grounds for bringing the claim since the claimant had no locus standi. At paragraph 7 under the heading "Grounds for the Claim and Locus Standi" Pemberton J (as she then was) stated:
- "This ... is a matter for declaratory relief as to the ownership of a chattel house, damages for trespass and injunctive relief. Given the fact situation as pleaded by Mr. Selvon, both Ms Solomon and this court proceeded on the notion that GH was suing as a beneficiary in waiting. Ms Solomon produced a very commendable analysis of this issue and concluded that as a beneficiary in waiting or as a beneficiary of an un-probated will, GH did not have locus standi to bring or maintain this action".
33. At page 4, paragraph 9 of the judgment and in dealing with the response by Counsel for the claimant Pemberton J (as she then was) proceeded to state:
- "GH's father is dead and for all intents and purposes the legal title to the property still vests in the executor of his will. In that respect Mr. Selvon is right to say that GH's claim cannot be based as a "devisee/beneficiary" under his fathers will. GH cannot sue his aunt in that capacity." (emphasis mine)
34. The statement of law propounded by Pemberton J (as she was) in **Dale Khan** was adopted by **Rahim J** in **Anthony Miller v Judith Bourzoung Isaac and ors**¹⁰ at paragraph 13 where he stated that:

¹⁰ CV 2013-03159

“Quite simply the law as set out by my sister Pemberton J reflects the present state of the law. To vest jurisdiction in a beneficiary to bring suit on the part of a deceased person the intended claimant must be appointed legal personal representative of the estate of the deceased whether by way of court appointment or by way of Grant of Probate in the case of testacy. In respect of an Executor the position is somewhat different. The estate of the deceased vests in the executor upon the death of the deceased pursuant to section 10(1) of the Administration of Estates Act...”

35. Therefore, even where a will has been proven, the assets of the deceased, including any real property are vested in the executor of the estate of the deceased until the executor vests the real property in the name of the beneficiary¹¹.
36. In the case of **Fong Wai Lyn Carolyn v Kao Chai-Chau Linda and others**¹² the action was brought by Carolyn Fong Wai Lyn (“Ms Fong”), one of Peter Fong’s daughters and a beneficiary of the estate of Peter Fong (“the estate”). The subject matter of the action relates to 600,000 ordinary shares in Airtrust (approximately 6% of total shareholding in Airtrust) held on trust by the first defendant, Linda Kao Chai-Chau (“Ms Kao”), formerly the managing director of Airtrust, under a trust deed dated 20th January 2000 (“the 2000 Trust Deed”). Ms Fong sought a declaration that those shares are held on trust by Ms Kao for the estate. Ms Kao in the course of the dispute offered different and conflicting case theories as to the fate of those shares, though ultimately her final landing point – which only emerged at the hearing itself – was that those shares are held on trust by her as absolute gifts by Peter Fong to the other existing shareholders in proportion to their shareholding as at the date of Peter Fong’s demise.
37. Ms Kao objected to the application. She argued that in the absence of “special circumstances”, it should have been brought by the executors of the estate, that is, HSBC

¹¹ See section 12 of Administration of Estates Act Chapter 9:01

¹² [2017] SGHC 111,

Trustee (Singapore) Limited instead. HSBC was added as the third defendant and supported Ms Fong's application.

38. The judgment examined the underlying rationale of the rule requiring such actions to be brought by the executors and whether the reasons which compelled Ms Fong to make this application in place of the executors qualify as "special circumstances".

39. Among the issues the Court had to determine was whether Ms Fong in her capacity as beneficiary of Peter Fong's estate had *locus standi* to seek a declaration on behalf of the estate.

40. Justice Steven Chong stated the general proposition of the law on *locus standi*, with respect to estate matters at paragraph 7 of the judgment as:

"Ordinarily, the proper party to obtain a remedy on behalf of and for the benefit of the estate is the executor. Since a beneficiary has no vested equitable interest in an administered estate but only a right to have it administered properly, he or she would, in commencing any action on behalf of the estate, be seeking to assert the estate's right of property¹³."

41. The Learned Judge set out the exception to the general rule at paragraph 8 as:

"It is widely accepted that in special circumstances, the court will permit an action to be brought by a beneficiary on behalf of the estate (Wong Moy Case). The obvious situation in which it would be appropriate for the beneficiary to have conduct of proceedings is where the executor's position has been compromised in some way. Thus in Joseph Hayim Hayim and another Citibank NA and another [1987] AC 730, Lord Templeman summed up the authorities as follows (at 747C and 748F):

The authorities ... only demonstrate that when a trustee commits a breach of trust or is involved in a conflict of interest and duty or in other exceptional circumstances a beneficiary may be allowed to sue a third party in the place of the trustee. But a

¹³ Wong Moy (Administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy [1996] 3 SLR(R) 27

beneficiary allowed to take proceedings cannot be in a better position than a trustee carrying out his duties in a proper manner.

...

These authorities demonstrate that a beneficiary has no cause of action against a third party save in special circumstances which embrace a failure, excusable or inexcusable, by the trustees in the performance of the duty owed [sic] by the trustees to the beneficiary to protect the trust estate or to protect the interests of the beneficiary in the trust estate...” (emphasis added)

42. The Court held that Ms Fong had locus standi to seek the relief on behalf of the estate. At paragraph 9 of the judgment the Court noted:

“Special circumstances” are however not confined to an executor’s default. It is not a closed category and is a fact-specific inquiry. A review of the authorities will demonstrate that the courts have adopted a flexible approach to “special circumstances”, taking cognizance of factors such as the executor’s unwillingness or inability to sue, the merits of the case, and the potential loss to the beneficiaries.

43. In his analysis, Justice Steven Chong noted in order to determine if special circumstances exist, it is vital to consider the reasons why the action was commenced by Ms Fong in July 2016 and why the executor, HSBC, did not or could not bring the action instead. The Court found that there were special circumstances which justified Ms Fong in making the application as beneficiary instead of the executor: (a) Consent: First, the executor’s consent is an important consideration. The rationale underlying the rule requiring special circumstances was not engaged. Ms Fong was able to show that the circumstances required her urgent action, which allowed her to proceed in the case. The Court held that this was not tantamount to encouraging executors to abdicate their duties to the estate and the merits of an action are relevant to establishing special circumstances. In the Court’s view, Ms Fong’s case had merits and was allowed to proceed. The Court also held that it would have been prejudicial to the estate to deny Ms Fong locus standi to bring the application because all parties agreed that the same substantive arguments would be raised if HSBC were to start a fresh application. If that were to occur, further costs would be incurred by all parties,

including the estate. As such the Court held that the prudent course was to permit Ms Fong's application to proceed¹⁴.

44. In order for the Claimants to succeed with their claim for trespass they must prove that they are the owners of the subject land or they have been in possession of it. Alternatively they must demonstrate that there were special circumstances which existed which caused them to institute the instant action.
45. Based on the undisputed evidence, the Claimants, the First Defendant and Chandra are still only beneficiaries of the subject land since no Memorandum of Assent has been executed and registered to vest the legal title in them. At the time of the institution of these proceedings the title to the subject land was and still is vested in Chandra who is the executrix of the Deceased's estate, having obtained the Grant of Probate and Chandra was not one of the Claimants. With respect to the claim between the First Claimant and the First Defendant, the First Claimant has to prove that his possession was superior to the First Defendant's possession but there was no evidence from the First Claimant to prove that his possession was superior to that of the First Defendant.
46. The Claimants as beneficiaries of the subject land but who do not hold the title and who are not in possession of the land on the hill cannot maintain an action in trespass against the Defendants. In particular, the Claimants have no title which is superior to that of the First Defendant who is equally entitled to an undivided share and interest in the subject land.
47. Were there special circumstances which caused the Claimants to start the instant action? It was submitted on behalf of the Claimants that the special circumstances were the high-handed and selfish use of the chattel house on the land on the hill by the Defendants; violent altercations between the Third Defendant and his siblings against one of the Claimant and the executrix response to their concerns was to write to the First Claimant demanding that he cease and desist from any work while she allowed the Defendants to

¹⁴ Paragraph 35 of the judgment.

do as they pleased.

48. In my opinion, there were special circumstances in the instant case which permitted the Claimants to institute the instant action. In the affidavit of the First Claimant filed on the 21st August 2017 in support of the Claimants second application for injunctive relief he attached as exhibit “A” two emails dated the 9th July 2014 (“the First Email”) and the 22nd March 2016 (“the Second Email”) which demonstrated that since 2014 the Claimants had concerns about the alleged trespass by the Defendants and they were calling upon the attorney at law, Messrs JB Kelshall who handled the processing of the estate of the Deceased, to bring to the executrix their concerns. However, it appeared that no steps were taken by the executrix to address their concerns. In my opinion, the failure by the executrix to act was sufficient to constitute special circumstances for the Claimants to institute the instant action.

Is the First Defendant entitled to the land on the hill as her share of the subject land?

49. The onus was on the First Defendant to prove that the Deceased gave her the land on the hill as her share of the subject land and that the other beneficiaries of the Deceased’s estate knew and acknowledged this. To prove this the First Defendant relied on her evidence, the evidence of Chandra and the Second Defendant’s evidence.
50. The First Defendant testified that the Deceased owned the chattel house situated on the land on the hill and he used and maintained it until 1982 when he gave it to her and the Second Defendant after they got married. According to the First Defendant, prior to her marriage, her parents took her and the Second Defendant to the subject land and pointed out the land on the hill where the chattel house stood and the Deceased told them that he would give them that portion of land as her share in the subject land. At the time no one lived or occupied the chattel house and no one objected. After the First and Second Defendants moved into the chattel house they did minor repairs initially and over the years they carried out more substantial repairs and cleaned up the chattel house to make it more habitable for them to live and maintained it as their own. While living there the First

Defendant stated her parents continue to cultivate the subject land and she and her husband assisted. She would often fix meals for them, provided more comfortable accommodation for them and occasionally they would sleep over at the chattel house with them.

51. The First Defendant also testified that she lived on the land on the hill until she had to move in with her parents at Debe Main Road, Debe to care for them when they fell ill, but the Third Defendant remained at the chattel house. During this time she and the Second Defendant continued to cultivate the land on the hill and they assisted in caring for her parents, financially, contributing to the building of a vehicular access road and legal fees as well as paying the land and building taxes for the subject land when they fell into arrears.
52. The First Defendant also attested that both she and the Second Defendant were present when the Deceased took her brother the First Claimant to the subject land and pointed out a portion to him as his share. She said that the First Claimant got permission from the Deceased to occupy it for the purpose of building his own house which he constructed sometime in 1990 and began to reside there with his family and that he carried out his mechanic business without any objections as all the siblings were aware that the Deceased had given the First Claimant that portion of the subject land as his portion of it.
53. According to the First defendant, the chattel house was demolished in 2016 as it was deteriorating and became uninhabitable. Her son, the Third Defendant began building a new structure in its place since he gotten approval from both her and Chandra as the Executrix to do so. She informed her siblings when she visited the United States in April of 2016 that her son was constructing a dwelling house on land on the hill with her permission. She added that prior to the death of the Deceased and Dora, her siblings never voiced any concern or disagreement with her occupation and use of the land on the hill which she considered and treated as her share of the subject land.
54. Under cross-examination, the First Defendant testified that her siblings visited both her parents' home at No 7 Debe Main Road as well as hers which was the chattel house whenever they visited Trinidad .She testified that she moved into the house at No 7 Debe Main Road in 2004 while her son, the Third Defendant continued living at the chattel

house on the land on the hill.

55. The First Defendant explained that the Deceased agreed to give her and the Second Defendant the chattel house which was vacant since she and the Second Defendant could not have been accommodated at the Second Defendant's parent's home after the marriage. She said that the Deceased did not give them permission to live there but he gave them the land on the hill. She admitted that the Deceased did not give her a deed or any other document which showed that she was the owner of the chattel house or the land on the hill. She denied under cross-examination that the chattel house became dilapidated as a result of it not being maintained as no one lived there but insisted that the Third Defendant, her eldest son remained at the chattel house after 2004.
56. In my opinion the First Defendant appeared to the Court to be a witness of truth since her evidence in chief and cross-examination were consistent with her pleaded case. She was certain of the dates and the various events which occurred. She was also clear that the Claimants were aware that her father, the Deceased had given the land on the hill to her as her share of the subject land.
57. Chandra testified that she is the sole executrix in the Will. She recalled that the Deceased built, maintained and repaired the chattel house and it was used by her parents as a garden house. She stated that the chattel house was not occupied as a residence by anyone except when her parents used it to rest during their work day and to store their tools and produce from the subject land. The chattel house needed to be repaired and cleaned up for it to be habitable and after the First Defendant had moved in the chattel house was repaired and kept in a habitable and good condition. Chandra also testified that the Deceased informed her of his intention to give the First Defendant the chattel house and the land on the hill as the First Defendant's share in the subject land. Around the time the Deceased transferred ownership of the chattel house to the Second Defendant, he also gave the First Claimant permission to build his house on a portion of the subject land next to the land on the hill which was sometime in 1990 and the First Claimant began to live there with his family.
58. Chandra further testified that the First Defendant and her family went to live with and cared

for her parents at Debe Main Road Debe when they fell ill. The First and Second Defendants indicated to her that they wished to demolish and rebuild a new, modern, concrete structure on the land on the hill. The First Claimant was informed of this and it was in this vein that he was asked to relocate his business. She also consented to the demolition of the chattel house which was also in a state of disrepair. According to Chandra her siblings were aware that the land on the hill was given to the First Defendant by the Deceased as her share in the subject land and that subsequently, none of her siblings voiced any concerns objecting to the First Defendant's use and occupation

59. Under cross-examination, Chandra admitted that she was not familiar with the size of the land on the hill. She stated that a document existed which showed that the Deceased gave the First Defendant the land on the hill. She admitted that she did not include the document in the instant matter nor did it form part of the inventory in the Grant of Probate Application for the Deceased's estate.
60. In my opinion, Chandra was not present when the Deceased gave the land on the hill to the First Defendant and therefore I attached no weight to this aspect of her evidence. However, Chandra confirmed that subsequent to the Deceased giving the First Defendant the land on the hill, neither she nor the other Claimants questioned the First Defendant's treatment of the land on the hill as hers. In my opinion this aspect of Chandra's evidence corroborated the First Claimant's evidence that her siblings were aware that the First Defendant's portion of the subject land was the land on the hill.
61. Although the Second Defendant did not give a witness statement he was made available for certain questions to be posed to him by Counsel for the Claimants. His evidence was he did not live on the land on the hill before he got married; the Deceased had a conversation with him and the First Defendant before they got married where the Deceased gave the First Defendant the land on the hill and he told them that they could live in the chattel house after they got married.
62. The contemporaneous documents which the Defendants relied on to support their case were

the First Email and the Second Email from the Third Claimant to Messrs JB Kelshall, the attorneys at law who were dealing with the administration of the Deceased's estate which were attached as " A" to the affidavit of the First Claimant filed on the 21st August 2017 in support of the Claimants application for further injunctive relief filed on the 17th July 2017.

63. In the First Email the Third Claimant wrote to Messrs JB Kelshall stating:

"Hi Asha

Per our conversation yesterday and earlier today, I would like the following address with the executor (Chandra Raghoonanan Soomai) for the above referenced estate.

In part of the property (not occupied by Hollis Ragoonanan and Vashti Ramlal) has been recently plough by the husband of Vashti Ramlal, who is not a beneficiary of the estate.

The crops planted on this property includes oranges and avocado trees.

My concern is that this will extend the boundary line of Vashti Ramlal's property.

Additionally, another sibling was about to use this property to store his equipment on a short-term basis and was stopped by the husband of Vashti Omar.

- 1. Please contact the Executor about stopping the use of the crop planting; and*
- 2. We (10 of the 12 beneficiaries) would like to sign a petition that allows the short term use by Hollis Ragoonanan for the storage of his equipment. Upon vesting the property, he will have to secure the permission of the beneficiary of that portion.*

Please let us know if we can proceed with the petition.

Thank you

Kind regards

Vindra Richter”

64. The material information from the First Email were that the Third Claimant referred to the portion of the subject land which the First Defendant occupied as “Vashti Ramlal’s property”. She was writing the correspondence on behalf of 10 out of the 12 beneficiaries. The 10 would have been all the Deceased’s children save and except the First Defendant and Chandra; the complaint was against the actions of the Second Defendant and she was asking the attorney to contact the executrix Chandra to address the 10 beneficiaries concern. The 10 beneficiaries were expressing their permission for the First Claimant to use a portion of the subject land close to the portion which was occupied by the First Defendant. The 10 beneficiaries were not in direct communication with Chandra and the relationship was not cordial since if it was they would have raised it directly with her. The 10 beneficiaries were well aware that the First Claimant occupied a portion of the subject land and it was not the portion occupied by the First Defendant.

65. In the Second Email the Third Claimant stated:

“Dear Mr Kelshall

The estate of my father Raghoonanan Gookool has not yet been distributed to the beneficiaries.

We are working with Sasha Addoo to get the property surveyed for distribution, and understand that it will take approximately one year.

It has come to our attention that a building is being presently erected in an area that includes the house formerly occupied by Vashti Ramlal. Vashti Ramlal is one of the beneficiaries of the Raghoonanan Gookool estate and the building is being erected by Ravi Ramlal the son of Vashti Ramlal.

Our concern is that this building will infringe into areas that will become property of other beneficiaries, and therefore would like the surveying process to be

completed before any building in (sic) erected on the property.

Please advise if you can represent the beneficiaries on this matter and send a ceased and (sic) letter to Vashti Ramlal.

Thank you

Kind regards

Vindra Richter”

66. In the Second Email the 10 beneficiaries acknowledged that the First Defendant occupied the chattel house and they raised concerns about the concrete structure being built in the area where the chattel house was situated.
67. The Claimants case was that the Deceased did not give the First Defendant the land on the hill; the First Defendant's assertion that the Deceased gave her the land on the hill was inconsistent with the Will of the Deceased which stated that the entire subject land is to be divided equally amongst his 12 children; the Deceased did not communicate to the Claimants that he gave the land on the hill to the First Defendant; the First and Second Defendants did not communicate to them that the Deceased had given them the land on the hill.
68. To challenge the Defendants case the Claimants relied on the evidence from the First Claimant, the Sixth Claimant and Gopaul Ramlatchan.
69. The First Claimant testified that the Deceased did not indicate to him that he had given the land on the hill to the First Defendant as her share of the subject land. He stated that the Will set out that all the Deceased's children are to benefit from the subject land which included the land on the hill. He testified that the land on the hill was the only portion of the subject land that is habitable since the surrounding portion is a swamp area. He stated also that his siblings who live abroad had nowhere to stay when they visited Trinidad.

70. The First Claimant also testified that sometime in 1989 he cleared a part of the subject land and built a small house without seeking permission from anyone. In 2004 Chandra and the First Defendant caused the demolition of the front and side portion of the house at No. 7 Debe Main Road, which caused him to have to leave his workplace which he occupied. Thereafter he stated that the First Defendant and her family moved into No. 7 Debe Main Road leaving the chattel house unoccupied.
71. The First Claimant made several material admissions in cross-examination. He admitted the following : the First and Second Defendants were put into occupation of the land on the hill by the Deceased; his parents, the Deceased and Dora cultivated the subject land around the same time; his parents stayed at the chattel house ; the First Defendant planted around the chattel house on the land on the hill; the Deceased owned the chattel house and the subject land; the First Claimant was occupying a portion of the subject land and he believed that the portion should be his share of the subject land; he had no interest in the land on the hill; he was not entitled to a share of the land on the hill which was occupied by the Defendants; he had no desire that his share of the subject land should be the land on the hill; he had no desire to have the Defendants break down and remove the concrete structure being constructed on the land on the hill; the remaining portion of the subject land can be made suitable for building with backfilling and proper access, which can be gained along the banks of an existing drain on the southern boundary; he was unwilling to give the other Claimants a portion of the subject land which he is at present occupying, and on which he has given his son permission to build his own accommodation; the First Defendant looked after their parents and that he and his wife assisted; after the First Defendant left the chattel house in 2004 it was upgraded to concrete; after the First and Second Defendant left the chattel house they continued to plant crops on the land on the hill.
72. The First Claimant also testified in cross-examination that in 1989 when he cleared a portion of the subject land, the First Defendant was already living in the chattel house after she had gotten permission from the Deceased to do so.

73. In my opinion the truth of the First Claimant's evidence was revealed in his admissions in cross-examination which contradicted in a large part his evidence in chief. The First Claimant's evidence in his witness statement was totally undermined by his evidence in cross-examination. I have attached little weight to the First Claimant's evidence in chief and significant weight to the admissions by the First Claimant since of all the Claimants, he was the only Claimant who remained living in Trinidad for the entire period of time. In this regard the First Claimant would have been aware of the Deceased's actions with respect to the subject land and the land on the hill.
74. In my opinion, the First Claimant's admissions in cross-examination assisted the Defendants' case since it was clear that he knew that the Deceased had given the First Defendant the land on the hill as her share of the subject land and that was the reason he did not think that his share of the subject land in the Will was the land on the hill. It was also for this reason he did not want the concrete structure on the land on the hill to be demolished and that when he went and cleared a portion of the subject land to occupy, he did not clear the land on the hill but he cleared another portion.
75. The Sixth Claimant testified that he built the chattel house with his parents' permission. He migrated to the United States in 1979 but returned shortly thereafter. His eldest brother Bissoondath Raghoonanan also returned to Trinidad in 1980 and he moved into the chattel house. During his time in Trinidad, Bissoondath did renovations on the house by adding two additional rooms. However he returned to the United States with his family in 1981. After the First Defendant got married, the Deceased informed him that she needed a place to stay and so he had invited her to stay at the chattel house until they "catch themselves". Shortly thereafter, he moved permanently to the United States.
76. The Sixth Claimant also testified that the Deceased left the chattel house to all his brothers and sisters in equal share in the Will. He did not at any time hear of or know that the Deceased intended to give the First Defendant the chattel house to the exclusion of the other siblings. He said that he was generally unwelcomed to stay at the chattel house. He said he asked the First Defendant to stay at the chattel house when it was unoccupied, but she refused. After an incident involving the First Defendant sons in June 2012 he decided

that he was going to build a house on the subject land for himself and his other siblings to stay when they visited Trinidad. In preparation for this he graded the portion of land located to the east of the chattel house outside of the fenced area and on the eastern boundary of the subject property. He did not finish the house but instead he returned to New York. A few days later the First Claimant informed him that the land he had graded was ploughed and peas and corn was subsequently planted in the area by the First Defendant and her family. Chandra, the executrix of the Deceased's estate, wrote to him and some of their siblings stating that no construction should take place on the subject land until the Will was probated and the subject land was subdivided. The Will was probated in or about January 2013.

77. The Sixth Claimant testified that he returned to Trinidad in 2016 and he noticed that the chattel house had been demolished and a high shed was built over the area. He also noticed that the Third Defendant was in the process of constructing a house on the land on the hill. He re-graded a portion of the subject land again. He also purchased sand, gravel, cement and steel to start a structure as he intended to rebuild but the Defendants prevented him from having the work done.
78. Under cross-examination, the Sixth Claimant testified that while the chattel house on the land on the hill belonged to the Deceased it was for his benefit. He maintained that the First Defendant was allowed to live in the chattel house here until she could "catch herself". He further testified under cross-examination that he had no issue with the Third Defendant building a house on the land on the hill as he too wanted to build a house but he was prevented from doing so by the First and Second Defendants.
79. I have attached very little weight to the Sixth Claimant's evidence since he was not present when the Deceased told the First Claimant that the land on the hill was her share of the subject land. Therefore, he had no direct knowledge of such events and he was in no position to dispute the fact that such conversation took place. In my opinion the credibility of his evidence that the Deceased did not give the First Defendant the land on the hill as her portion of the subject land was undermined by his admission that he had no issue with

the Third Defendant building a concrete structure on the land on the hill. In my opinion this material admission demonstrated that he was well aware that the First Defendant's share of the subject land was the land on the hill.

80. Gopaul Ramlatchan is the brother of Dora, the Claimants, First Defendant and Chandra's maternal uncle. His evidence in chief was that the chattel house on the land on the hill was constructed for the Sixth Claimant. The First Defendant went to live at the chattel house on the land on the hill under less than desirous circumstances for a finite period. The chattel house on the land on the hill was not given to her, as asserted by the Defendants. In 2003, the First and Second Defendants demolished and rebuilt her parents' primary residence on Debe Main Road and moved into the same as their residence. In his subsequent visit to the subject land, he realized that the condition of the chattel house and the surrounding area appeared overgrown and unkempt. In 2017, most recently, he noticed that the chattel house was demolished. He also noticed new construction in the surrounding areas.
81. Under cross-examination, he recalled that the Deceased planted on the subject land from the time they purchased it
82. I attached no weight to this witness' evidence since there was nothing contained in the witness statement or from relevant parts of his evidence in his short cross-examination which was of assistance in resolving the dispute between the parties as it appears that this witness' ability to recall was somewhat impaired due to his age.
83. Based on the evidence, on a balance of probabilities I have concluded that the First Defendant's share of the subject land is the land on the hill for the following reasons.
84. Firstly, there was no evidence adduced by the Claimants to contradict the First Defendant's evidence that the Deceased gave the First Defendant the land on the hill. The fact that none of the Claimants were around did not necessarily mean that such event did not take place.
85. Secondly, the Claimants reliance on the Will of the Deceased does not assist them. In the Will the Deceased gave the subject property to all the 12 children including the First Defendant. In my opinion, the Will is a document, which was consistent with the First

Defendant having the land on the hill as her share since it did not exclude her from getting a share of the subject property.

86. Thirdly, the First Claimant's admissions in cross-examination assisted the Defendants case since it was clear that he knew that the Deceased had given the First Defendant the land on the hill as her share of the subject land and that was the reason he did not think that his share of the subject land in the Will was the land on the hill. It was also for this reason he did not want the dwelling house on the land on the hill to be demolished and that when he went and cleared a portion of the subject land to occupy he did not go and clear the land on the hill but he cleared another portion
87. Fourthly, the Claimant's own contemporaneous documents namely the aforesaid emails clearly demonstrated that in 2014 they referred to the land on the hill as the First Defendant's.
88. Lastly, the gift by the Deceased of the land on the hill to the First Defendant was consistent with his gift of the chattel house to Second Defendant.
89. Having found that the First Defendant's share of the subject land is the land on the hill, the Claimants cannot succeed with the reliefs which they seek in the claim and the Defendants are successful with their Counterclaim.

What are the outstanding costs?

90. At the pre-trial stages of the instant matter there were two applications which the Claimants had filed and which the Court deferred the issue of costs to be determined at the end of the trial. The Claimants have submitted that they are entitled to have the costs of the said applications.
91. Rule 67.11 deals with assessed costs for procedural applications not dealt with at the case management conference, pre-trial review or trial. It provides that:

“Assessed costs-procedural applications

67.11 (1) On determining any application except at a case management conference, pre-trial review or the trial, the court must-

- (a) decide which party, if any, should pay the costs of the application;
- (b) assess the amount of such costs; and
- (c) direct when such costs are to be paid.

(2) In deciding what party, if any, should pay the costs of the application the general rule is that the unsuccessful party must pay the costs of the successful party.

(3) The court must, however, take account of all the circumstances including the factors set out in rule 66.6(5) but where the application is-

- (a) one that could reasonably have been made at a case management conference or pre-trial review;
- (b) an application to extend the time specified for doing any act under these Rules or an order or direction of the court;
- (c) an application to amend a statement of case; or
- (d) an application for relief under rule 26.7.

the court must order the applicant to pay the costs of the respondent unless there are special circumstances.

(4) In assessing the amount of costs to be paid by any party the court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing and must allow such sum as it considers fair and reasonable.”

92. Rule 66.5 CPR provides that:

“(5) In particular it must have regard to-

- (a) the conduct of the parties;
- (b) whether a party has succeeded on particular issues, even if he has not been successful in the whole of the proceedings;
- (c) whether it was reasonable for a party-
 - (i) to pursue a particular allegation; and/or

- (ii) to raise a particular issue;
- (d) the manner in which a party has pursued-
 - (i) his case;
 - (ii) a particular allegation; or
 - (iii) a particular issue;
- (e) whether a claimant who has won his claim caused the proceedings to be defended by claiming an unreasonable sum; and
- (f) whether the claimant gave reasonable notice of his intention to issue a claim.”

93. The first application was the Claimants application filed on the 17th July 2017 (“the July injunction application”) whereby the Claimants sought an injunction restraining the Defendants, their servants and/or agents from using the land on the hill to carry out the business of a garage or a mechanical shop to vehicles; parking vehicles and/or other commercial purpose until the hearing and determination of the instant matter. The Claimants also sought an injunction to stop the Defendants, their servants and/or agents from carrying out any agricultural work and planting the land on the hill and a mandatory injunction compelling the Defendants, their servants and/or agents to remove all locks and/or impediments so that the Claimants may have access to the said property. The July injunction application was supported by an affidavit filed by the First Claimant.

94. It was submitted on behalf of the Claimants that they are entitled to be paid the costs for the July injunction application since the Defendants refused to give any undertaking or reach a compromise on the issue of use of the land on the hill, despite there being a previous injunction; the Defendants insisted on cross-examination of the deponent of the affidavit in support namely the First Claimant which caused a delay in the hearing of the July injunction application and the delay on hearing of the July injunction application resulted in it being heard close to the trial which made the necessity for immediate resolution

unnecessary.

95. The July injunction application came up for hearing at the Pre Trial Review on the 17th July 2017. At that hearing the Court deemed it fit to be dealt with during the Court's Long Vacation and scheduled the hearing for the 22nd August 2017. The trial was also scheduled for the 23rd and 24th January 2018.
96. The First and Third Defendants filed affidavits in response to the July injunction application on the 4th August 2017. Both affidavits disputed the facts of the affidavit of the First Claimant. At the hearing on the 22nd August 2017 Counsel for the Defendant obtained permission to cross examine the First Claimant on the contents of his affidavit. The Court granted this permission due to the acute factual differences on the July injunction application. The July injunction application was adjourned since Counsel for the Claimant indicated that there were certain Claimants who resided outside of the jurisdiction and who were not present and who wanted to be present for the hearing. The hearing was adjourned and came up on the 22nd November 2017 where the First Claimant was cross-examined on the contents of his affidavit in support of the July injunction application. At the end of the cross-examination, in light of certain admissions which were made by the First Claimant the Court stood down the matter in order for respective Counsel to have a discussion. When the matter was recalled the Court gave the Claimants permissions to withdraw the July injunction application.
97. In my opinion, the cross-examination of the First Claimant on the contents of his affidavit in support of the July injunction application was necessary since it undermined the credibility of its contents. The Claimants were not successful in the July injunction application and the Defendants were able to successfully resist it. For these reasons I order that the Claimants are to pay the Defendants the costs of the July injunction application to be assessed by the Registrar in default of agreement.
98. I now turn to the second application which was filed by the Claimants on the 26th October 2017 for specific disclosure of certain documents. ("the specific disclosure application"). In that application the Claimants sought disclosure of all relevant T&TEC and WASA bills

for a period of at least two years from October 2015 to present or alternatively for the Court to give permission for T&TEC and WASA to produce a duplicate copy of the said bills issued in the First Defendant's name for the period October 2015 to October 2017 with respect to the land on the hill and which may have been addressed to Parmawatee V Ramlal at 7/9 Debe Main Road, Debe. In support was an affidavit of the First Claimant filed on the 26th October 2017. According to the First Claimant the said bills were critical to the Claimants substantive claim since based on his observations the Defendants had not been in occupation of the chattel house situated on the land on the hill for 12 years or more and that he had seen an electricity bill dated the 23rd August 2016 for \$21.00 for a two months cycle and that this amounted to establishing no occupation.

99. It was submitted on behalf of the Claimants that the documents which were requested were delivered only after the specific disclosure application was made since the Defendants had refused to produce them prior to the said application and as such the Claimants should be awarded their costs.
100. The specific disclosure application came up for hearing on the 9th November 2017. At that hearing the Claimants sought and obtained permission to withdraw the specific disclosure application. There were no affidavits filed in opposition to the specific disclosure application and the hearing on the 9th November 2017 was very brief. The specific disclosure application was not ventilated since the documents which were requested were provided before the hearing. For these reasons, I order that each party is to bear his/ her own costs of the specific disclosure application.

Conclusion

101. I have concluded that although the Claimants failed to prove that they are the owners of the subject land and that they were not in possession of the land on the hill, there were special circumstances which caused the Claimants to start the instant action, particularly the failure by the executrix to act and address the concerns of the Claimants about the alleged trespass by the Defendants.

102. The First Defendant's share of the subject land is the land on the hill as such the reliefs which the Claimants sought cannot be granted. The Defendants are successful in their counterclaim.
103. Although the July injunction application was withdrawn after the cross-examination by the deponent of the affidavit (the First Claimant) in support of the said application, I have decided to order the Claimants to pay the Defendants the cost of the July injunction since the evidence elicited from the cross-examination of the First Claimant undermined the credibility of the affidavit in support of the said application.
104. Further I have also decided to order each party to bear his/her own costs of the second application filed by the Claimant for specific disclosure of certain documents on the 26th October 2017 since it was withdrawn by the Claimants because the documents which were requested were provided before the hearing.

Order

105. The Claimants claim is dismissed.
106. Judgment for the Defendants on the counterclaim namely:
- (i) It is declared that the First Defendant is entitled to the portion of the subject land referred to in the Claimants' Statement of Case as "the land on the hill" comprising approximately 4 lots more or less being a one undivided twelfth share in the larger parcel of land comprising Four Acres Three Roods and Twenty-Six Perches more or less described in Certificate of Title in Volume 1861 Folio 299, which is situated at Suchit Trace, Penal in the Island of Trinidad.
 - (ii) It is declared that the structure being constructed by the Defendants on the subject land is on the First Defendant's share of the subject land and is therefore not illegal.

(iii) The Injunction order granted herein by consent is discharged and that the Defendants are entitled to continue the construction of the said structure without interference from the Claimants.

107. The Claimants are to pay the Defendants the costs of the claim and the counterclaim in the sum of \$28,000.00.

108. The Claimants are to pay the Defendants the costs of the Claimants notice of application filed on the 17th July 2017. The said costs are to be assessed by a Registrar in default of agreement.

109. Each party is to bear his/her costs of the Claimants notice of application filed on the 26th October 2017.

.....
Margaret Y Mohammed
Judge