

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2017-00814**

**IN THE MATTER OF THE WILLS AND PROBATE ORDINANCE CH 8 NO 2**

**AND**

**IN THE MATTER OF THE ESTATE OF SHARIPH GOBIN**

**ALSO CALLED SONNY BOY GOBIN**

**BETWEEN**

**MARILYN HARRY**

**Claimant**

**AND**

**RAMRAJ GOBIN**

**Defendant**

**Before the Honourable Madame Justice Margaret Y. Mohammed**

**Dated the 17<sup>th</sup> April, 2018**

**APPEARANCES:**

Mr. Peter Wharton Attorney at law for the Claimant.

Mr. Anthony Manwah Attorney at law for the Defendant.

**REASONS**

1. On the 16th February 2018 (“the Order”) I made the following order at the end of the trial in the instant matter. I ordered that:

- (a) *The Caveat entered on the 23<sup>rd</sup> day of September, 2015 and renewed by letter dated 7<sup>th</sup> October, 2016 from the Assistant Registrar, Supreme Court, be cleared off the Caveat Book at the Office of the Registrar, Probate Registry.*
- (b) *The Claimant be granted Probate of the Will dated the 27<sup>th</sup> day of March, 2012 of the said Shariph Gobin also called Sonny Boy Gobin, deceased who departed this life on the 23<sup>rd</sup> day of August, 2014 and which said Will is attached to an Application for Probate thereof made by the Claimant and filed herein on the 27<sup>th</sup> day of January, 2015.*
- (c) *The Defendant do pay the Claimant's costs in the sum of Seven Thousand Dollars (\$7,000.00) and that there shall be a stay of execution of forty-two (42) days.*

2. The Defendant has appealed and the Claimant has filed a cross appeal to the Order. I now set out my reasons.

*The Claimant's case*

3. The Claimant was the wife of Shariph Gobin also called Sonny Boy Gobin (“Sonny Boy”) who passed away on the 23<sup>rd</sup> August 2014. She was also the sole executrix and beneficiary named in the Will of Sonny Boy (“Sonny Boy’s Will”).
4. The Claimant applied for a grant of probate of Sonny Boy’s Will in the Court on the 27<sup>th</sup> day of January, 2015. On the 23<sup>rd</sup> day of September, 2015, the Defendant entered a Caveat against the probate application by the Claimant of Sonny Boy’s Will. A warning dated the 14<sup>th</sup> December, 2015 was entered and served on the Defendant and an appearance was entered by the Defendant on the 4<sup>th</sup> day of January, 2016. A copy of the said warning was attached as “F” and a copy of the appearance was attached as “G” respectively to the Statement of Case.
5. The Claimant issued the instant proceedings seeking the following orders:

- (a) An order that the Caveat entered on the 23<sup>rd</sup> September, 2015 and renewed by letter dated 7<sup>th</sup> October, 2016 from the Assistant Registrar, Supreme Court, be cleared off the Caveat Book at the Office of the Registrar, Probate Registry.
- (b) That the Claimant be granted probate of Sonny Boy's Will.
- (c) That the application for a grant of Letters of Administration made by the Defendant for the estate of Gobin Mangroo also called Gobin Mungroo be amended to include Shariph Gobin also called Sonny Boy Gobin as a beneficiary of the estate of Gobin Mangroo also called Gobin Mungroo.
- (d) That the Defendant be restrained from carrying out or causing to be carried out without the consent of the Claimant and all other beneficiaries of the estate of Gobin Mangroo also called Gobin Mungroo any construction work or any work on the parcel of land comprising Two Point Two Four Hectares be the same more or less owned by the said Gobin Mangroo also called Gobin Mungroo and situate at ¼ Mile Mark, Cunjal South Trace, No 5 Scale Rochard Douglas Road, Barrackpore, in the Island of Trinidad and which is shown delineated and coloured on the plan registered in Volume 4519 Folio 241 being portion of the lands described in Crown Grant in Volume 426 Folio 431 and also described in the Certificate of Title in Volume 2292 Folio 121 and shown as Lot No. 3 in the general plan filed in Volume 4519 Folio 233 and now described in the Certificate of Title in Volume 4519 Folio 245 and bounded on the North by land of Babooram then Dolly Nanan and Nanan Maharaj and by the reserve 1.51 metres wide on the South by Jaikaran Trace 8.05 metres wide on the East by Lot No. 2 and on the West by Cunjal Road 20.12 metres wide or in any way interfering with the Claimant's right to the interest of Shariph Gobin also called Sonny Boy Gobin, deceased in the said parcel of land ("the said Property").
- (e) Damages.
- (f) Costs.

6. The Claimant's basis for seeking the aforesaid orders were founded on the following facts. On the 21<sup>st</sup> day of November, 2012 the Court declared that Sonny Boy was a child of Gobin Mangroo also called Gobin Mungroo. A copy of the said order was attached to the Statement of Case as "C".

7. Gobin Mangroo also called Gobin Mungroo died intestate on the 10<sup>th</sup> day of July, 2005 and Letters of Administration to Gobin Mangroo's estate were granted to the Defendant on the 11<sup>th</sup> day of May, 2012. In the Defendant's application filed in No. L1189 of 2010 for the said Grant of Letters of Administration for Gobin Mangaroo's estate the Defendant stated that he was the only son of Gobin Mangaroo also called Gobin Mungroo.
  
8. Sonny Boy had applied to the High Court in CV2013-0274 ("the 2013 claim") on the 3<sup>rd</sup> day of July, 2013 for the following orders:
  - a) An order that the Grant of Letters of Administration for the estate of Gobin Mangroo also called Gobin Mungroo made in favour of the Defendant on the 11<sup>th</sup> day of May, 2012 be revoked and a similar grant be made except that the words "his lawful son and the only next of kin" be deleted and be replaced by the words "one of his lawful sons".
  - b) An order that the Defendant do amend his said application for Letters of Administration for the estate of Gobin Mangroo also called Gobin Mungroo by withdrawing his affidavit sworn to on the 16<sup>th</sup> July, 2012 in support of the said application and that he swears to and files a fresh affidavit of similar wording except that at paragraph 6 thereof the words "the deceased did not have any children except myself" be deleted and be replaced by the words "the deceased had another son by name of Shariph Gobin also called Sonny Boy Gobin".
  - c) An order that on receipt of the Grant of Letters of Administration the Defendant do take immediate steps to prepare and register a Deed of Assent to vest in the names of the Claimant and any other beneficiaries of the estate of Gobin Mangroo also called Gobin Mungroo the property described in the inventory of assets as stated by the Defendant in his said application.
  
9. Sonny Boy was granted permission to apply for summary judgment on the 20<sup>th</sup> February 2014 against the Defendant in the 2013 claim. On the 8<sup>th</sup> May 2014 Sonny Boy applied in the 2013 claim for an order that the Defendant be restrained from carrying out or causing to be carried out any construction work on the said property which belonged to Gobin Mangroo also called Gobin Mungroo and which was included in the Inventory of Assets annexed to the application by the Defendant for a Grant of Letters of Administration to the

estate of the Gobin Mangaroo but the Defendant continued to do so despite being called upon to desist.

10. Sonny Boy passed away on the 23<sup>rd</sup> August 2014 and by order of the Court made on the 29<sup>th</sup> January, 2015 in the 2013 claim, the Claimant was substituted for Sonny Boy.
11. The Claimant averred that all of the assets of Sonny Boy would include his interest in the said property and that the Defendant has failed to amend his application for the Grant of Letters of Administration for the estate of Gobin Mangroo also called Gobin Mungroo to include Sonny Boy as a beneficiary or to assent the said property to himself and Sonny Boy or the Claimant by virtue of her appointment as the sole beneficiary of Sonny Boy's estate.
12. Sometime after the grant of Letters of Administration to the estate of the said Gobin Mangroo also called Gobin Mungroo to the Defendant, he together with other persons entered upon the said property and commenced construction work therein but despite being called upon to desist he has continued to do so.

*The Defendant's case*

13. The Defendant challenged the locus standi of the Claimant to bring the instant claim. He did not admit the validity of Sonny Boy's Will and he called upon the Claimant to prove its validity. Notably he did not set out any basis for challenging the validity of Sonny Boy's Will.
14. The Defendant admitted that Gobin Mangaroo had 12 children and that Sonny Boy was one of them. (In making this admission he was in effect admitting that the Grant of Letters of Administration for Gobin Mangaroo's estate was incorrect since Sonny Boy was a child of Gobin Mangaroo and therefore he had an interest in Gobin Mangaroo's estate).

15. The Defendant pleaded that the other persons who are the children of Gobin Mangaroo were in the process of applying to prove paternity and that he and the other children of Gobin Mangaroo were occupying and had built houses on the said property.

*The Issues*

16. The issues to be determined were:
  - (a) Did the Claimant have locus standi to bring the instant action?
  - (b) Could the Claimant obtain any of the reliefs sought?

*Preliminary ruling- Evidential objections*

17. There were two witnesses in this matter. The Claimant gave evidence on her own behalf and the Defendant relied on the evidence of Dipchan Lall.
18. At the commencement of the trial I struck out paragraph 8 of the witness statement of the Claimant on the basis that it was inadmissible hearsay evidence. I also struck out paragraph 4 of the witness statement of Dipchan Lall on the basis that it was a departure from the Defendant's pleaded case and that the exhibit attached was inadmissible hearsay.

*Did the Claimant have locus standi to bring the instant action?*

19. It was submitted on behalf of the Defendant that in Rule 72.2 (2) of the Civil Proceedings Rules ("the CPR") there is a requirement that the claim form in contentious probate proceedings must be indorsed with a statement of the interest of the claimant and the defendant in the estate of the deceased to which the proceedings related. It was argued by Counsel for the Defendant that the Claim was not indorsed as required by the aforesaid rule and based on the intitlement the Claimant had brought the action in her personal capacity and she had sued the Defendant in his personal capacity. Therefore, the Defendant did not know the nature and interest of the Claimant and the capacity in which he was sued.
20. Counsel for the Defendant also argued that the Claimant had only applied to have the caveat removed and for her to be granted probate of the estate of Sonny Boy in her capacity as the

legal personal representative of the estate of Sonny Boy and that the Claimant in her own right has no case against the Defendant.

21. Counsel for the Claimant submitted that the instant matter was contentious probate proceedings arising from the caveat lodged by the Defendant to the application by the Claimant for the grant of probate of the estate of Sonny Boy and that the relief sought were as a result of the actions by the Defendant.

22. Rule 72. 2 CPR makes provision on how to commence probate proceedings. It states:

“72.2 (1) Probate proceedings must be begun by issuing a fixed date claim.

(2) The claim form must be indorsed with a statement of the nature of the interest of the claimant and the defendant in the estate of the deceased to which the proceedings relates.

(3) The claimant must file with his claim for his statement of case.”

23. Counsel for the Defendant did not provide any authority to the Court which stated that the failure to make such an indorsement was fatal to the claim.

24. I accepted that the action as intituled did not set out that the Claimant had instituted the action against the Defendant as the executrix of Sonny Boy’s Will. I also accepted that on the face of the intitulement the Defendant was sued in his personal capacity.

25. I was of the opinion that despite the shortcomings in the intitulumt it was clear from paragraphs 1, 2 and 9 of the Statement of Case that the Claimant had instituted the action against the Defendant in her capacity as the executrix of Sonny Boy’s Will and who had applied for the grant of probate of the estate of Sonny Boy and that from paragraphs 3, 4, 12, 13 and 14 of the Statement of Case, the Defendant was sued in his capacity as the appointed legal personal representative of the estate of Gobin Mangaroo.

26. I was therefore satisfied that based on the substance of the Statement of Case the Claimant had demonstrated that she had locus standi to institute the action against the Defendant and that he was aware of her capacity she sued and the capacity in which he was sued.

Could the Claimant obtain any of the reliefs sought?

27. It was argued on behalf of Counsel for the Defendant that even if the Claimant crossed the first hurdle of proving locus standi she failed to provide evidence to prove the validity of Sonny Boy's Will. He argued that according to rule 3 (b) of **the Non- Contentious Business Rules of the Wills and Probate Act**<sup>1</sup> there must be evidence from one of the attesting witness of Sonny Boy's Will in order to prove it and that the Claimant was not an attesting witness. He argued that the Claimant's evidence was an attempt to place evidence of an affidavit of due execution since she said she was present with Sonny Boy when Sonny Boy's Will was executed but she was not an attesting witness. Further, Counsel for the Defendant submitted that there was no evidence in the Claimant's witness statement that she said she saw Sonny Boy sign Sonny Boy's Will. It was also argued that there was no evidence before the Court by the Claimant to account for the failure by an attesting witness to give evidence at the trial.
28. Counsel for the Claimant submitted that the Claimant had complied with the requirement to submit the testamentary scripts; the Defendant did not give evidence to challenge Sonny Boy's Will and the evidence of Mr. Lall did not challenge the validity of Sonny Boy's Will.
29. The Claimant testified that she was personally present on the 27<sup>th</sup> day of March, 2012 together with Roopnarine Rambachan, attorney at law, Parbatie Bachu and Farida Mohammed, all persons over eighteen years of age when she saw Sonny Boy sign and publish Sonny Boy's Will which was annexed to her application dated 26<sup>th</sup> January, 2015, filed herein on the 27<sup>th</sup> January, 2015 and marked "A.1". According to the Claimant Parbatie Bachu and Farida Mohammed did then and there together sign and attest to Sonny Boy's Will as witnesses in his presence and in the presence of each other. She also stated that the signature "Sonny Boy Gobin" which was affixed at the bottom of the said page at page 1 was the true and proper handwriting of him. She testified that Sonny Boy's Will was executed at 13-15 Mary Street, Siparia, in the Island of Trinidad and that Sonny Boy was at the time of his death of the age of 66 years or thereabouts. The Claimant also testified that the signatures "Parbatie Bachu" and "Farida Mohammed" on Sonny Boy's Will

---

<sup>1</sup> Chapter 9:03



subscribed as those of the witnesses attesting the signing and publishing of Sonny Boy were the true and proper handwritings of the said Parbatie Bachu and the said Farida Mohammed. She also stated that Roopnarine Rambachan was physically unable to attend Court at the present time and the whereabouts of the other two witnesses were unknown.

30. The Claimant's evidence on being present when Sonny Boy's Will was signed by Sonny Boy and when the witnesses attested to and signed Sonny Boy's Will was unshaken in cross-examination. Her evidence on the signatures of Sonny Boy and the attesting witnesses on Sonny Boy's Will was also unshaken in cross-examination.
31. To challenge the Claimant's case the Defendant relied on the evidence from Dipchan Lall. He testified that his father was Lall Mangaroo who had 11 brothers and sisters. He listed the names of his father's brothers and sisters as Sonnyboy Gobin, the Defendant, Sookdayah Lall, Chandrmatie Gobin, Dhanrajee Dhanasan Seeraj, Mahadai Sherry Larsen, Ramdath Gobin, Niranjanie Latchman, Chandramattee Chamraji, Sharmatee Chamraji Goberdhan, Bharath Gobin, Sookraj Budhoo Gobin, Mukesh Gobin and Rajdaye Gobin. He also testified that Bharath Gobin died in 1990.
32. Mr Lall's evidence in cross-examination did not challenge any of the pleaded facts or evidence of the Claimant.
33. **Rule 3 (1) (b) of the Non Contentious Business Rules of the Wills and Probate Act** provides that one of the documents which is required to be filed with the non-contentious probate application is an affidavit by one of the attesting witnesses of the will.
34. I was of the opinion that while one of the witnesses of Sonny Boy's Will would have assisted the Claimant in proving its validity, in contentious probate proceedings the failure of such a witness giving evidence on behalf of the Claimant was not fatal to the Claimant's case since the Court had to assess all the evidence which was presented and make a finding on a balance of probabilities.
35. Based on the evidence of the Claimant I was satisfied on a balance of probabilities that although she was not an attesting witness to the Sonny Boy's Will she was present when it

was executed by Sonny Boy and when the attesting witnesses also affixed their signatures. I also took into account that her evidence that the signature on Sonny Boy's Will and that of the attesting witnesses was unshaken in cross-examination and there was no evidence presented by the Defendant to contradict the Claimant's evidence. For these reasons I was of the opinion that the Claimant had discharged her burden of proving the validity of Sonny Boy's Will. Therefore, I ordered that the Caveat entered on the 23<sup>rd</sup> day of September, 2015 and renewed by letter dated 7<sup>th</sup> October, 2016 from the Assistant Registrar, Supreme Court, be cleared off the Caveat Book at the Office of the Registrar, Probate Registry. I also ordered that the Claimant be granted Probate of the Will dated the 27<sup>th</sup> day of March, 2012 of Sonny Boy.

36. I did not grant the Claimant the relief sought that the application for a grant of Letters of Administration made by the Defendant for the estate of Gobin Mangroo also called Gobin Mungroo to be amended to include Sonny Boy as a beneficiary of the Deceased since I was of the opinion that it was premature. In my opinion, the issue before the Court was the validity of Sonny Boy's will and not the validity of the grant of Letters of Administration of the estate of Gobin Mangaroo also called Gobin Mungroo to the Defendant. In my opinion since the Claimant had the order of paternity for Sonny Boy, the proper procedure was after the Claimant obtained the Grant of Probate for Sonny Boy's estate she could then make an application to obtain this relief. In any event, when that time comes the Claimant had already secured the Defendant's admission in the Defence in the instant action that Gobin Mangaroo had 12 children and that Sonny Boy was one of them. In making this admission he was in effect admitting that the Grant of Letters of Administration for Gobin Mangaroo's estate was incorrect since Sonny Boy was a child of Gobin Mangaroo and therefore he has an interest in Gobin Mangaroo's estate.
37. I also did not grant the injunctive relief sought against the Defendant with respect to stopping the Defendant from carrying out works on the said property since I was of the view this application ought to have been made in the 2013 claim. Further in light of the Defence that there were other persons who were in occupation of the said property; those person were not before the Court in the instant action and the said property was not yet

subdivided. For these reasons, I was of the opinion that there was no basis for the Court to grant such relief.

38. No award was made for damages since there was no evidence adduced to prove any loss by the Claimant.
39. I ordered that Defendant to pay the Claimant \$7,000.00 in costs since I treated the claim as one without a value for which costs was \$14,000.00. I ordered half of this sum since the Claimant was only successful with respect to 50% of the reliefs which she sought.

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