

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(TOBAGO)**

Claim No. CV2019-00270

DAZEL E. TAYLOR

**(By her lawfully appointed Attorney by virtue of
the Power of Attorney dated 21 April 2017
and registered as No. DE201701321572)**

Claimant

AND

RODNEY SURAJBALLY

RUSSELL SURAJBALLY

RICKEY SURAJBALLY

THE REGISTRAR GENERAL OF TRINIDAD AND TOBAGO

Defendants

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery 21 May 2021

APPEARANCES

**Mrs Marion Ingrid Melville instructed by Ms Simone Neptune Attorneys at law for the
Claimant**

**Mrs Rekha P Ramjit instructed by Ms Gina N Ramjohn Attorneys at law for the First,
Second and Third Defendants**

JUDGMENT

1. The instant action concerns the ownership of **ALL AND SINGULAR** that certain piece or parcel of land situate at Carnbee in the Parish of St Patrick in the Island of Tobago comprising **ZERO POINT TWO ZERO FOUR FIVE HECTARES** (being portion of a larger parcel of land comprising Two Acres described in the Second Part of the Second Schedule to Deed registered as No 1645 of 1996) and bounded on the North by Lot D on the South by a Road Reserve 10.06 metres wide on the East by lands of Mano Cowie and John Smith and on the West by other portion of the said lands known as Lot 2 and which said piece or parcel of land is shown coloured pink as Lot No 1 on the General Plan thereto annexed and marked A to the said Deed of Conveyance (“the disputed lands”).

2. The Claimant claims that she is the owner of the disputed lands by virtue of a Deed of Conveyance dated 29 February 2000 and registered as DE2000068120BF (“the 2000 Deed”) and that the Deed of Conveyance dated 18 June 2012 and registered as DE201400751474D001 (“the 2014 Deed”) which is the First, Second and Third Defendants’ (“the Defendants”) title to the disputed lands was obtained by fraud. She therefore seeks the following orders:
 - (a) A declaration that that the Claimant is the sole owner and entitled to exclusive possession of the disputed lands by virtue of the 2000 Deed.
 - (b) A declaration that the 2014 Deed was not executed by the Claimant and is therefore fraudulent and null, void and of no effect and should be expunged from the Register of Deeds of the Registrar General.
 - (c) A declaration that the Defendants never paid the Claimant the sum of \$750,000.00 or any other consideration for the disputed lands.
 - (d) A declaration that the Registrar General should expunge the 2014 Deed from the Register of Deeds of the Registrar General.
 - (e) A declaration that the right to possession of the entirety of the disputed lands in accordance with Part 68 of the Civil Proceedings Rules 1998 which said right to possession is not subject to any statutory restrictions.

- (f) Mesne profits
- (g) Costs
- (h) Such further and/or other reliefs as this Honourable Court deems fit

3. This action is between the Claimant and the Defendants as the Fourth Defendant did not file any defence and took no part in the proceedings.

The Claimant's position

4. The Claimant contends that her name is Dazel Elizabeth Taylor and that from 1989 to present, she has resided outside of Trinidad and Tobago. The Claimant lived in England from 1989 to 2009 and from 2009 to present she has been residing in Jamaica. Sometime between 1999 and early 2000 the Claimant became aware that the disputed lands were being sold. In mid-February 2000, the Claimant travelled to Tobago to finalize the sale and transfer of the disputed lands to herself and Messrs JB Kelshall and Company were the Attorneys at law who had conduct of the sale.
5. Subsequent to purchasing the disputed lands, the Claimant hired Martineau and Company to clear the trees to grade down and level the disputed lands and to conduct a topographic survey. She paid \$11,000.00 for the said works.
6. Thereafter, the Claimant returned to the England and whilst there she retained the services of Tractor Pool to maintain the disputed lands twice per year from 2000 to 2017. Sometime between late 2016 and early 2017 the Claimant gave her sister Sharon Taylor ("Sharon") (who holds Power of Attorney for her) about Five Thousand Square Feet ("5000 square feet") of the disputed lands to construct her house. The Claimant had a letter prepared and notarized in which she stated that she had granted Sharon permission to construct on the disputed lands and to establish a water and electricity connection thereon.

7. Upon visiting WASA, Sharon was instructed to visit the Inland Revenue Office where she was informed that the disputed lands were registered in the names of the Defendants. The Claimant then caused her Attorneys at Law to conduct a title search of the disputed lands, which revealed that it had been sold to the Defendants by the 2014 Deed.
8. The Claimant's position was that the 2014 Deed is fraudulent as she did not sell the disputed lands to the Defendants. She contended that after leaving Trinidad and Tobago, she had only visited twice in 2000 and 2006; she has not had a bank account in Trinidad and Tobago since 1989; she is not a holder of a Trinidad and Tobago National Identification Card and her attempts to obtain one in 2019 proved unsuccessful as she holds dual citizenship from the UK and Jamaica. The Claimant also asserted that the signature on the 2014 Deed is not hers.

The Defence

9. The Defendants are brothers who denied that the 2014 Deed is fraudulent. Instead they asserted that it was obtained through legal and proper procedures. They asserted that sometime in 2013, they contacted Dazel E Taylor relative to an advertisement in the classified section of the newspaper for the sale of the disputed lands. The address of the Dazel E Taylor that they were aware of was LP#57 Forde Street Arouca and not No 12 Nursery School Street, Lambeau, Tobago. They stated that they had never met Sharon and had no dealings with her until the service of the instant claim.
10. The Defendants' then Attorney at Law, Mr Bhacepatti Singh, guided them through the procedure for the acquisition of the disputed lands. The Defendants met with Dazel E Taylor before the execution of the 2014 Deed at the offices of their Attorney at Law and they were satisfied that she was Dazel E Taylor by her Trinidad and Tobago National Identification Card. Additionally, they were in receipt of a WASA Rates and Charges Clearance Certificate issued to Dazel E Taylor dated 12 March 2013. The Defendants paid \$750,000.00 to Dazel E Taylor as the consideration for the disputed lands and a further \$52,000.00 as Stamp Duty charges.

The Issues

11. It was common ground by the parties that in order for the Claimant to obtain the orders which she has sought, she has the burden to prove that: (a) she became the owner of the disputed lands by virtue of the 2000 Deed; and (b) the Defendants were not bona fide purchasers for value without notice of any fraud in relation to the 2014 Deed.

The Claimant's ownership of the disputed lands by the 2000 Deed

12. In order for the Claimant to prove that she became the owner of the disputed lands by the 2000 Deed, she has to prove on a balance of probabilities that she is the "Dazel E. Taylor" stated as the purchaser on the 2000 Deed. The Claimant sought to prove this by asserting in her evidence that she was in Tobago in mid-February 2000 when she finalised the purchase of the disputed lands and that upon becoming the owner of the disputed lands she did works to and paid to maintain the disputed lands from 2000 to 2017.
13. In my opinion, the Claimant failed to prove her ownership of the disputed lands for the following reasons.
14. First, the Claimant failed to prove that she was in Tobago in 2000 when she asserted she purchased the disputed lands. According to the Claimant's witness statement, sometime between 1999 and 2000 while she was living in the United Kingdom, she was informed by her mother that Marcelle Smith and Hilton Smith ("the Smiths) were selling the disputed lands. She contacted the Smiths and they agreed that she would purchase the disputed lands for \$250,000.00. She then contacted her then Attorney at law Messrs JB Kelshall and Company to initiate the legal process to have the disputed lands transferred to her. In mid-February 2000 she travelled to Tobago to finalise the transfer of the disputed lands, which was completed in mid-March 2000 when the 2000 Deed was registered and she was the new owner.

15. However, the Claimant did not exhibit to her witness statement any proof from her passport that she entered Trinidad and Tobago in mid-February 2000 as she claimed. Therefore, the Claimant failed to provide any documentary proof to support her assertion. The Claimant was cross examined about the copies taken of the stamp pages of her passport which she annexed to her Statement of Case. She admitted in cross examination that she had used her Trinidad and Tobago passport which was valid during the period 25 May 1994 to 24 May 2004 to travel to Tobago in February 2000. She was unable to explain why she had failed to attach to her Statement of Case the page in the said passport which showed that she travelled to Tobago in February 2000. Her only explanation was that she had given her Attorney at law the said passport to photocopy every page.
16. The only other evidence to support the Claimant's assertion that she was in Tobago in February 2000 was from her sister Sharon. In my opinion, the information from the Claimant's passport would have been independent documentary proof to support the Claimant's assertion that she was in Tobago in mid-February 2000. Although Sharon corroborated the Claimant's evidence, I have not attached much weight to her evidence as she is the Claimant's sister who stands to benefit from a favourable outcome of the instant action. In my opinion, the absence of the documentary proof from the Claimant's passport raised serious doubt on the credibility of her evidence that she was in Tobago in mid-February 2000.
17. The only other person who would have been able to give any evidence to corroborate the Claimant's evidence that she was the same Dazel E. Taylor who had purchased the disputed lands in 2000, was the Attorney at law whom she said she retained to conduct the transaction on her behalf. However, there was no evidence from the said Attorney at law or any records from his office to corroborate the Claimant's evidence.
18. Second, the Claimant failed to produce any documentary proof or any corroborating witness to prove that after the 2000 Deed she treated the disputed lands as hers. The Claimant stated in her witness statement that upon becoming the paper title owner of the disputed lands she immediately hired Martineau and Company to clear the

trees that were on it, grade down and level it and conduct a topographic survey. The purported works were conducted on 18 March 2000 and she paid \$11,000.00 for same. She did not attach the receipt for the sum she paid nor a copy of the topographic survey to her witness statement. Even if the Claimant did not have access to these documents, she also did not call any witness from Martineau and Company or anyone who had conducted any of the works at that time to corroborate this aspect of her evidence. In my opinion, the absence of any documentary proof and any corroborating evidence from any witness who did the works undermined the credibility of the Claimant's assertion.

19. The Claimant also stated in her witness statement that during the period 2000 to 2017 while she was living in the United Kingdom she paid Tractor Pool at least twice a year to maintain the disputed lands. She failed to produce any documentary proof of these payments to Tractor Pool and she did not call any witnesses from Tractor Pool to corroborate her evidence of the said retainer, the works or the payments. Her explanation in cross-examination that she did not keep the receipts is plausible. However, she gave no explanation for failing to call any witnesses from Tractor Pool.

The Defendants being bona fide purchasers for value without notice of any fraud of the 2014 Deed

20. The particulars of fraud which the Claimant pleaded in her Statement of Case were:
 - (a) The 2014 Deed was not executed by the Claimant.
 - (b) The Claimant has no knowledge of the transaction purportedly reflected in the 2014 Deed.
 - (c) The signature on the 2014 Deed is not the Claimant's signature. The initial "C" in the signature is not aligned with the Claimant's name since the Claimant is Dazel Elizabeth Taylor. Her middle initial is "E".

- (d) From 1989 the Claimant has resided outside of Trinidad and Tobago. The Claimant resided in England from 1989 to 2009. During that period, she visited Trinidad and Tobago in 2006.
- (e) From 2009 to present the Claimant has lived in Jamaica. In that duration she visited Trinidad in 2016.
- (f) The Claimant was not present in Trinidad and Tobago when the 2014 Deed was allegedly executed.
- (g) The Claimant has never met the Defendants. She first became aware of their names from the 2014 Deed.
- (h) The Claimant denied any knowledge of Bhacepatti Singh, the Attorney at Law who executed the 2014 Deed in San Fernando or his law clerk. She was never in San Fernando between the years 2012 to 2014 as over the past 20 years she was only in Trinidad in 2006 and 2016.
- (i) The Claimant never received the sum of \$750,000.00 stated in the 2014 Deed as the purchase price or any other consideration for the disputed lands.

21. Based on the aforesaid particulars the Claimant's challenged the 2014 Deed on the grounds that: (a) the purported signature of Dazel E Taylor was not authentic; (b) she was not present in Trinidad and Tobago when it was executed; (c) she never met the Defendants and /or their Attorney at law, Mr Bhacepetti Singh; and (d) she never received the sum of \$750,000.00 as the purchase price for the disputed lands.

22. Section 21 of the **Real Property Limitation Act**¹ provides:

“ In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered: Provided that nothing in this section contained shall enable any owner of lands or rents

¹ Chapter 56:03

to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents on account of fraud, against any bona fide purchaser for valuable consideration who has not assisted in the commission of such fraud, and who at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed.”

23. Boodoosingh J (as he then was) in **Mohan Ramoutar & Ors and Ronald Moser & Ors**² explained the aforesaid provision at page 5 as follows:

“By the proviso in section 21, an owner can only seek to recover land which he or she has been deprived of due to fraud from a subsequent purchaser if it can be shown that:

- a) the purchaser acted in bad faith in knowing of or by assisting in the commission of the fraud, that is, he was not a bona fide purchaser;
- b) there was no valuable consideration for the purchase;
- c) the purchaser had some reason to believe that such fraud had been committed.”

24. At page 6, Boodoosingh J (as he then was) continued:

“In order to set aside the deeds of the defendants and recover possession of those lands on account of fraud, the claimants must, in my view, prove that the defendants were not bona fide purchasers for valuable consideration; that they assisted in the commission of the fraud; or knew or had reason to believe that such fraud had been committed at the time of purchase.”

25. The only evidence that the signature of Dazel E Taylor on the 2014 Deed was not that of the Claimant came from her. I have attached little weight to this evidence as this is

² CV 2009-01545 and CV 2009-01846

her subjective opinion and she failed to call any handwriting expert to give evidence on the authenticity of the signature of Dazel E Taylor on the 2014 Deed.

26. On the other hand, the unshaken evidence of Mr Bhacepatti Singh was that on two occasions he met the vendor Dazel E Taylor and on both occasions the person he met was the same person in the National Identification Card which she produced. According to Mr Singh, in 2013 he was approached by the Defendants to do the legal work concerning their purchase of the disputed lands. He received a copy of the 2000 Deed and a copy of the National Identification Card of the vendor Dazel E. Taylor, which he forwarded to a search clerk to conduct a search on title for the disputed lands. He also requested and received from the vendor Dazel E. Taylor a WASA Clearance Certificate and Tax Receipt for 2009. He prepared the Agreement for Sale with Dazel E Taylor as the vendor and the First Defendant as the purchaser and they both attended at his office to execute it. He obtained the vendor's National Identification Card and saw her photograph and when he compared the photograph with the card holder it was the same person. Mr Singh also testified that he prepared the 2014 Deed and he was present at his office, with the vendor Dazel E Taylor and the Defendants when it was executed on 18 June 2013.
27. Further, the evidence of the Third Defendant was that he and the other Defendants met Dazel E Taylor, the vendor, at the office of Mr Singh on the day the 2014 Deed was executed. He said he saw Ms Taylor's National Identification Card and the photograph on the said Card matched the vendor.
28. It was submitted on behalf of the Claimant that the affidavit of due execution of the 2014 Deed failed to comply with the **Registration of Deeds Act**³, as the 2014 Deed was executed by Dazel Eva Taylor of LP #57 Forde Street Arouca, Trinidad and not Dazel E Taylor of Nursery School Street, Lambeau, Tobago and the date of the execution was also not evident.

³ Chapter 19:06

29. Section 7 of the Registration of Deeds Act provides:

“7. (1) Any Deed may be registered —

(a) if the execution thereof by every party who, in Trinidad and Tobago, executes the same is made and attested as follows; that is to say, the Deed must be executed in the presence of one witness at least not being a party thereto and of a qualified functionary, and the signing and delivery thereof must be attested by one such witness at least subscribing his name with the addition of his place of abode or business and his profession, occupation or condition in life, and by the qualified functionary subscribing his name with the addition of his qualification under this section; and

(b) if the execution thereof by every party who, out of Trinidad and Tobago, executes the same is made and attested according to this Act.”

30. In my opinion, there was no merit to the aforesaid contention on behalf of the Claimant for two reasons. The Claimant did not plead that the 2014 Deed was fraudulent due to any lack of compliance by the affidavit of due execution. In any event, Mr Singh was cross examined on the different dates on the 2014 Deed. He confirmed that the date at the beginning of the preamble of the 2014 Deed and in the affidavit of due execution sworn to by Zaheeda Ali-Rampersad was 18 June 2012. He explained that the date 18 June 2012 on the Deed was incorrect and a mistake from his office. He also denied the suggestion that he had not requested a title search for the disputed lands in 2013. Therefore, there was compliance with the Registration of Deeds Act.

31. For these reasons, the Claimant failed to prove this particular of fraud.

32. The Claimant asserted that she was not present in Trinidad and Tobago in June 2013 when the 2014 Deed was executed. However, she failed to produce any of the stamp

pages from her passports to demonstrate that she was not in this jurisdiction during that period. The Claimant's evidence in cross examination on when she was in Trinidad and Tobago during the period 2000 to 2019 varied, as for the first time she stated that she was in Tobago in 2016 and 2017 although her witness statement stated that she was only present in 2000 and 2006. Therefore, the Claimant's evidence on when she was in the jurisdiction was unreliable.

33. Further, the evidence from the Claimant's sister Sharon did not assist the Claimant's case on her whereabouts as it was vague and lacking in details.
34. The Claimant also asserted that she did not receive any valuable consideration, in the instant case, the sum of \$750,000.00 as the purchase price for the disputed lands. However, she was unable to challenge the evidence from the Defendants that they paid over the sum of \$750,000.00 to the vendor Dazel E Taylor.
35. The evidence of the Third Defendant was that the Defendants paid for the disputed lands by a Manager's Cheque made out to Dazel E Taylor and that he was unable to find a copy of the said cheque. He also stated that they paid the Stamp Duty in the sum of \$52,000.00. Mr Singh corroborated the payment of the consideration by cheque as he stated that it was handed over to the vendor by one of the purchasers for the balance of the purchase price. Although Mr Singh was cross examined on whether the cheque which was handed over was for the full amount or part of the consideration, his evidence that the Defendants handed over a cheque to the vendor was not challenged. In any event, the 2014 Deed stated that the consideration of \$750,000.00 was paid by the purchasers to the vendor and which the vendor acknowledged same.

Order

36. The Claimant's action is dismissed.

37. Pursuant to Rule 67.5 (2) (c) Civil Proceedings Rule 1998 as amended, the Claimant to pay the First, Second and Third Defendants costs of the action in the sum of \$14,000.00.

/S/ Margaret Y Mohammed

Judge