THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2013-00306

BETWEEN

LYDIA RAMDATH

(Substituted Claimant by Court Order of the Hon. Justice Mr. R. Mohammed dated 28th February 2019 for HENRY RAMDATH, deceased, who died on 19th October 2018)

Claimant

AND

PETER SEECHARAN

(Substituted Defendant by Court Order of the Hon. Justice Mr. R. Mohammed dated 4th May 2018 for GLORIA MONICA SEECHARAN, deceased, who died on 20th September 2017)

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: **28 May 2019**

Appearances:

Mr. Samuel Saunders instructed by Ms. Annesa Rahim for the Claimant

Mr. Bindra Dolsingh instructed by Mr. Chris Selochan for the Defendant

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JUDGMENT

I. Procedural History

[1] The Original Claimant (hereinafter referred to as Henry) commenced these proceedings by way of Claim Form and Statement Case filed on 24 January 2013 for a declaration that he is the tenant and entitled to possession of the property situate at No. 100 Cacandee Road, Felicity, Chaguanas known as Lot No. 17 Felicity Section together with the buildings thereon and the appurtenances thereto belonging (hereinafter "the tenanted land"). Henry also claimed for damages for trespass and an injunction restraining the Defendant and/or her servants and/or agents from entering upon and/or remaining upon the tenanted land.

[2] The Original Defendant (hereinafter referred to as Gloria) entered an appearance on 4 March 2013. The parties agreed to an extension of time of 45 days from 25 March 2013 to 9 May 2013 for the filing of the Defence pursuant to **Part 10.3(6) of the Civil Proceedings Rules 1998 ("the CPR")**. Gloria, thereafter, filed her Defence and Counterclaim on 9 May 2013. She counterclaimed for possession of, and a declaration that she is entitled to an equitable interest in, the tenanted land and the dwelling house by virtue of the doctrines of promissory estoppel and/or proprietary estoppel.

[3] The matter was then assigned to Justice Pemberton (as she then was) and the Case Management Conference was listed for 17 June 2013. On this date, Justice Pemberton ordered as follows:

1. **The Claim filed against the Defendant by the Claimant on 24 January 2013 be and is hereby dismissed.**
2. **Permission be and is hereby granted to the Defendant to discontinue the Counterclaim against the Claimant.**
3. **The Claimant to pay the Defendant's costs in the sum of $84,700.00.**

[4] Henry, however, filed a Notice of Appeal (**P-158 of 2013)** on 26 June 2013 of the above decision. The Court of Appeal ordered as follows:

1. **The Appeal is allowed.**
2. **The Order of the Court below is set aside.**
3. **Matter is remitted to the High Court before a new Judge.**

4. **Defendant's counterclaim is re-instated.**
5. **Leave to Appellant/Claimant to file a reply on or before 13th day of September 2013.**
6. **Respondent to pay costs of this appeal to the Appellant to be assessed by the Registrar.**

Henry, subsequently, filed his Reply and Defence to the Counterclaim on 13 September 2013.

[5] The matter was then re-assigned to my docket. The Case Management Conference was listed for 10 December 2013. On this date, I gave directions for the filing and serving of the relevant documents for trial. The Pre-Trial Review was then fixed for 27 May 2014 and the trial was fixed for 16 and 17 July 2014.

[6] The trial was heard on 16 July 2014 and directions were given for the filing of closing written submissions. Thereafter, closing submissions on behalf of the Original Defendant were filed on 4 November 2014 and submissions in response, by the Original Claimant on 27 March 2015.

[7] On 20 September 2017, the Original Defendant, Gloria Seecharan, died. On 18 April 2018, Peter Seecharan, the Sole Executor and Trustee of Gloria's estate applied to the Court by Notice of Application to be appointed the representative of the estate of Gloria Seecharan for the purposes of maintaining an action for recovery of possession of land and/or receiving judgment.

By Order dated 4 May 2018, this Court ordered that Peter Seecharan be appointed the Substituted Defendant for Gloria Monica Seecharan who died on 20th September 2017 for the purpose of these proceedings only and be named as the Defendant in place and instead of Gloria Monica Seecharan and that the proceedings do stand amended accordingly.

[8] On 19 October 2018 the Original Claimant, Henry Ramdath, died. On 22 January 2019, Lydia Ramdath, the lawful widow and sole person entitled to apply for Letters of Administration of Henry's estate, applied to the Court by Notice of Application to be appointed the representative of Henry for the purposes of these proceedings.

By Order dated 28 February 2019, this Court ordered that Lydia Ramdath be appointed the Substituted Claimant for Henry Ramdath who died on 19th October 2018 for the purpose of these proceedings only and be named as the Claimant in place and instead of Henry Ramdath and that the proceedings do stand amended accordingly.

II. Factual Background

[9] It is undisputed that Ramdath Sewsarran, deceased (hereinafter referred to as Mr. Sewsarran) was a tenant of Caroni (1975) Ltd in respect of the tenanted land. However, Gloria averred that the tenanted land comprised of one lot and not two lots as pleaded by Henry.

Mr. Sewsarran died testate on 13 November 1965 leaving his wife, Rajee Ramdath (hereinafter referred to as Mrs. Ramdath) and his three sons, Harry, Henry, and Harbanse (Gloria's common law husband), as his beneficiaries. In his will dated 23 September 1959, Mr. Sewsarran named Mrs. Ramdath as his sole executrix. It is uncontested that in his will, Mr. Sewsarran devised and bequeathed all his real and personal property to Mrs. Ramdath, Harry, Henry and Harbanse as joint tenants. Mrs. Ramdath obtained a Grant of Probate of the Will of Mr. Sewsarran on 18 January 1974.

[10] It is Henry's pleaded case that Mrs. Ramdath requested that Caroni (1975) Ltd transfer the tenanted land to Harry, Henry and Harbanse as joint tenants. He added that Harry died[1] without severing the joint tenancy leaving Henry and Harbanse, the joint tenants by virtue of the doctrine of survivorship. Henry averred that after Harry's death, Caroni

[1] Harry's date of death is unknown; the date of his death was not stated neither in the pleadings nor the evidence before the Court.

(1975) Ltd transferred the tenanted land to Henry and Harbanse and they both paid the annual rent in their joint names. Henry pleaded that Harbanse died, on 21 November 2010, without severing the joint tenancy. Accordingly, Henry averred that he was the sole tenant and entitled to possession of the tenanted land.

[11] It is undisputed that Gloria was the common law wife and cohabitant of Harbanse. By Court Order dated 19 May 2011 in Family Court Proceedings **No. FH02445/2010**, the Family Court declared and affirmed that there existed a co-habitational relationship between Gloria and Harbanse immediately preceding the death of Harbanse and that Gloria was entitled to the entirety of the estate of Harbanse pursuant to **section 25(3) of the Administration of Estates Act, Chap 9:01**.

[12] Henry pleaded that prior to Harbanse's death, Harbanse and Gloria lived in the dwelling house standing on the tenanted land. He added that after Harbanse's death, Gloria continued to live in the dwelling house on the tenanted land. Henry averred that Gloria, as cohabitant of Harbanse, applied for Letters of Administration of his estate and included the tenanted land in the inventory. Consequently, Henry lodged a caveat in the estate of Harbanse, which resulted in Gloria issuing a warning to the caveat. However, Henry did not enter an appearance to the warning, based on advice that he received, and so nothing else was done in those proceedings.

[13] It is Henry's case that by letter dated 14 August 2012, his attorney at law wrote to Gloria's attorney at law requesting that Gloria vacate the tenanted land. Gloria's attorney at law responded by letter dated 28 August 2012 and Henry's attorney at law replied by letter dated 8 October 2012. Henry averred that despite the letters, Gloria continues to remain in possession of the tenanted land.

[14] Gloria admitted that Mr. Sewsarran was the tenant of Caroni (1975) Ltd in respect of the tenanted land. She, however, denied that Mr. Sewsarran was the owner of the dwelling house, which at present stands on the tenanted land. This is undisputed. Henry admitted that Mr. Sewsarran was not the owner of the dwelling house on the tenanted land. Gloria

averred that the first house which belonged to Mr. Sewsarran was destroyed by fire in 1986. This, also, is undisputed.

[15] Gloria averred that she and Harbanse began constructing the dwelling house on the tenanted land in or around 1992. It is undisputed that the construction of the dwelling house was carried out with the consent of Henry. It is Gloria's case that Henry assured Harbanse that he would not be returning to the tenanted land; he did not want anything to do with it as he had his own property and was well off financially. Consequently, based on those assurances, Harbanse and Gloria constructed the house. She added that both she and Harbanse contributed financially to the construction of the dwelling house and that she also made non-pecuniary contributions to the construction of the dwelling house.

[16] It is Gloria's pleaded case that she and Harbanse pooled together their respective savings and started the process of obtaining the necessary approvals for a building to be constructed on the tenanted land. When the necessary approvals were granted, Harbanse contracted Praim Motee to begin the construction of the dwelling house. Gloria pleaded that she invested the following monies in the construction of the dwelling house - US$7,000.00 which she received upon the death of her brother; CAN$4,000.00 which was a gift from her brother in Canada and $75,000 which she received from her previous husband.

[17] Gloria sought to set out the details of the construction of the dwelling house as follows:

(i) She and Harbanse hired a backhoe to clear the rubble and dig the ground for the laying of the foundation.

(ii) Mr. Motee and his workers dug the trenches, put up the pillars and the boxing and tied the steel for the laying of the foundation.

(iii) Readymix was hired to fill the pillars and the foundation and the decking. Gloria and Harbanse paid Readymix approximately $18,000.00.

(iv) Harbanse would load a hired pick-up truck with the building materials for the day and drop it off on the tenanted land.

(v) Harbanse and Gloria paid Mr. Motee $28,000.00 to construct the upstairs portion of the dwelling house comprising 4 bedrooms, 2 toilets and baths, 1 living room and 3 porches. They paid him an additional sum of $7,000.00 to construct the downstairs portion of the dwelling house comprising 2 utility rooms, 1 prayer room, 1 kitchen, 1 dining room, 1 toilet and bath, 1 porch and garage/port.

(vi) Harbanse and Gloria paid Colour Cald Limited (a roofing company) $50,000.00 to do the roofing.

(vii) They paid a person named "Deo" $16,000.00 to do the windows.

(viii) They paid $23,000.00 for the window glass which was installed by Central Glass Limited.

(ix) They bought the doors from Vishnu Sookdeo for approximately $7,000.00.

(x) They paid a person known as "Redman" $3,500.00 to install the locks on the door.

(xi) The ceiling of the house cost approximately $50,000.00 which was done by Mr. Motee, Harbanse and another worker named Joe.

(xii) They paid approximately $11,000.00 for the wiring of the dwelling house. The cost of labour was approximately $4,000.00. Harbanse and Gloria paid $6,000.00 to T&TEC for the two metres which were installed as well as for the inspection.

(xiii) The plumbing cost approximately $4,800.00 and was done by a person named "Cassie" who took about 6 weeks to complete the plumbing works.

(xiv) Toilets and face basins were purchased from Southern Wholesalers Ltd at a cost of $9,000.00 with labour installation costing $2,800.00.

(xv) Harbanse and Gloria painted the dwelling house and it amounted to approximately $19,000.00. Both Harbanse and Gloria grinded and primed the wall before painting.

[18] Gloria averred that the dwelling house took about 8 months to be constructed. She pleaded that she and Harbanse both lived together in this house for several years until Harbanse's death in 2010.

[19] Gloria averred that Harbanse paid all utility bills associated with the dwelling house in his name. She admitted that the rent for the tenanted land was in fact paid in the names of Henry and Harbanse. She, however, added that it was Harbanse who paid the rents as well as maintained the tenanted land since Henry never returned to the tenanted land after he got married.

[20] It is Gloria's pleaded case that after Harbanse's death, she continued to occupy the dwelling house on the tenanted land since it was her home and she was the joint owner of this house with Harbanse. By Court Order dated 19 May 2011 in **No. FH 02445/2010**, she was declared the cohabitant of Harbanse and the sole beneficiary of his estate. Gloria averred that when she applied for Letters of Administration of Harbanse's estate, she included the dwelling house only and not the tenanted land in the inventory of the application. She pleaded that the dwelling house is valued at approximately $1,500,000.00 and the tenanted land is valued at approximately $400,000.00.

[21] Gloria pleaded that from 1992 to 2010, she made a home garden of almost 5000 square feet at the back of the dwelling house where she planted short crops which she sold to Xtra Foods Supermarket. She averred that this was within the knowledge of Henry and he made no objection.

[22] It is Gloria's pleaded case that Henry never showed any interest in the tenanted land nor made any effort to claim any interest in the tenanted land during the lifetime of Harbanse. She pleaded that Harbanse repeatedly assured her that Henry would not make any claims for the tenanted land and that he promised her that the dwelling house together with the tenanted land would be hers solely should he predecease her. On Gloria's pleadings, she stated that she has acquired an interest in the tenanted land by virtue of acquiescence and promissory estoppel and/or proprietary estoppel or alternatively, she has acquired an equitable interest in the dwelling house and the tenanted land on the basis of promissory and/or proprietary estoppel.

[23] Henry, in reply, contended that Gloria never contributed to the construction of the dwelling house. The house was built by Harbanse with the consent of Henry subject to the condition that they would continue to hold the tenanted land as joint tenants. Henry averred that at the time the dwelling house was built, Gloria was not living with Harbanse; Harbanse started construction in 1986 and it took about 3-4 years before part of it became habitable. He further averred that Harbanse moved into the dwelling house before it was completed sometime in or about 1989 or 1990. Henry pleaded that he did not need to claim any interest in the tenanted land since he and Harbanse held the same as joint tenants.

III. Submissions

[24] Counsel for the Defendant submitted that the tenanted land was excluded from the inventory of the Application for the Grant of Probate of the estate of Mr. Sewsarran. Therefore, the tenanted land was never properly transferred in law to his beneficiaries. It was further submitted that Henry has failed to establish sufficient interest in law in the tenanted land to bring this action as no deed of assent was ever prepared or executed.

[25] Counsel contended that the house, which presently stands on the tenanted land, is not the same house that was owned by Mr. Sewsarran as the old house was destroyed by fire in 1986. It was further contended that Harbanse and Gloria built the entire house which is presently on the tenanted land. Thus, Counsel submitted that the new house ought to be viewed as separate and distinct from the tenanted land. Counsel submitted that the house situate on the tenanted land is separate and distinct in fact and law from the land.

Counsel relied on the case of **Mitchell v Cowie**[2] for the principle that the fixture goes with the land. He, however, noted that the relationship of landlord and tenant between the parties was present in that case unlike this matter. He also relied on **Seepersad Ramkhalawan v Dhan Alexander**[3].

[2] (1964) 7 W.I.R. 118
[3] Civil Appeal No. 1 of 2002 per Mendonca J.A. at paragraphs 10 and 11

Counsel, in considering what would amount to a chattel house, referred to the definition in **section 2 of the Land Tenants (Security of Tenure) Act Chapter 59:54**. He also relied on the authority of **Gopaul (HV Holdings Ltd) v Baksh (Incorporated Trustees of the Presbyterian Church of Trinidad and Tobago)**[4] which referred to the definition of a chattel house in the above Act. **Section 2** provides that a "chattel house" *includes a building erected by a tenant upon land comprised in his tenancy with the consent or acquiescence of the landlord and affixed to the land in such a way as to be incapable of being removed from its site without destruction*.

[26] Counsel for the Defendant contended that Harbanse, by his actions, acted inconsistently with the joint tenancy and thus, severed the joint tenancy prior to his death. It was further contended that Henry gave his consent to Gloria and Harbanse to build on the tenanted land; he promised and/or assured Harbanse that he was not interested in the tenanted land since he had his own property. Counsel stated that if the Court accepts this, any joint tenancy is said to have been severed.

Counsel relied on the case of **Williams v Hensman**[5] for identifying the three circumstances which amount to the severance of a joint tenancy. These are: (i) act of joint tenant operating upon his/her own share; (ii) mutual agreement; and (iii) mutual conduct. Counsel also referred to **The Land Laws of Trinidad and Tobago by J.C.W. Whylie (1986)**. Counsel advanced that from the facts, Harbanse, prior to his death, acted upon his share of the land in a manner, which was inconsistent with the joint tenancy. In doing so, he manifested an intention to no longer be part of the joint tenancy. Counsel relied on **Burgess v Rawnsley**[6]. It was, therefore, submitted that any joint tenancy, which may have existed between Henry and Harbanse, was effectively severed prior to Harbanse's death.

[4] [2012] UKPC 1
[5] (1861) 70 ER 862
[6] [1975] CH 429

[27] Counsel for the Defendant advanced that Gloria's claim in equity is premised on the doctrines of proprietary estoppel and/or promissory estoppel. He relied on the learning in **Snell's Equity 31st Edition at para 10-08** and the authority of **Taylor Fashions Ltd. v Liverpool Victoria Trustee Co. Ltd**[7] for what amounts to promissory estoppel and proprietary estoppel, respectively.

Counsel advanced that Gloria must establish that Henry had represented that she will obtain an interest in the tenanted land either by making an expressed promise or by encouraging Gloria's belief that she will obtain such interest by words or conduct or by encouraging Gloria's belief passively by remaining silent. It was further advanced that it is not necessary for Gloria to prove that Henry agreed that the promise or assurance would be irrevocable since it is Gloria's detriment which makes the assurance binding and irrevocable provided that it was clearly intended to be acted upon.

It was contended that Henry repeatedly told Harbanse that he would not be returning to Felicity and he did not object to a house being constructed. It was submitted that Harbanse also told Gloria that the tenanted land would be hers should he predecease her. It was further submitted that Gloria acted on the belief that the new house and the tenanted land on which it stands would be hers should Harbanse predecease her. In that regard, she expended huge sums of money for the construction of the house. It was submitted that Gloria acted to her detriment as well as incurred huge amounts of expenditure.

[28] Counsel for the Defendant contended that in order to sue for trespass, Henry must have a right to possession of the land. It was submitted that if Henry is the legal owner of the tenanted land, this would give rise to presumptive proof of property and is sufficient to allow Henry to take action against someone who has committed an act of trespass. Counsel contended that Henry has not provided any proof that he is either in possession of or the legitimate owner of the tenanted land nor has he provided any documentary evidence that his tenancy was renewed in accordance with the **Land Tenants (Security of Tenure) Act** or that the tenancy rights were properly passed to him. It was further

[7] [1982] QB 133

contended that Gloria has been in possession of the tenanted land since on or about the year 1990 without any interference by Henry. Furthermore, Gloria and Harbanse had the consent of Henry to enter, remain and build on the tenanted lands and thus, Henry's claim for trespass ought to fail.

[29] In opposition, Counsel for the Claimant submitted that the relationship between the parties is immaterial in determining if a house is a chattel or a fixture. Counsel also relied on the authority of **Mitchell v Cowie (supra)** to determine whether the house is a chattel or fixture. It was submitted that the house is a substantive 2-storey structure with a concrete and steel foundation and decking. Counsel highlighted that Gloria, in cross-examination, admitted that the house was a concrete one which could not be lifted and moved away. Counsel, therefore, advanced that the house satisfies the requirements set out in **Mitchell v Cowie** and is, therefore, a fixture which would pass whenever the interest in land passes. Counsel further submitted that neither **Mitchell v Cowie** and **Gopaul (HV Holdings Ltd) v Baksh (supra)** supports the Claimant's contention that the house and land are two separate things.

[30] Counsel submitted that the Defendant's contention that the premises was never properly transferred in law and that as a result, the Claimant failed to establish sufficient interest in law in the premises to bring this action is without merit. It was further submitted that on the evidence, Mr. Sewsarran left the premises to Henry, Harbanse, their sibling and their mother as joint tenants. Thus, unless it can be shown that Harbanse severed the joint tenancy established by the will, then the parties would have held the tenanted land as joint tenants regardless of the fact that there was no Deed of Assent. Counsel submitted that Henry admitted that the dwelling house on the tenanted land is not the same house which was owned by Mr. Sewsarran. However, it was further submitted that this does not make a difference since it was contended that the house is a fixture which passed with the tenanted land upon the death of Harbanse.

[31] Counsel for the Claimant advanced that Gloria did not plead that Harbanse, by his actions, acted inconsistently with the joint tenancy and thus, severed the joint tenancy prior to his

death. It was submitted that this is a relevant fact which ought to have been pleaded by Gloria pursuant to **Part 10 of the CPR.** Counsel added that the severance of the joint tenancy was not pleaded and in any event is not in consonance with the law as stated in **Williams v Hensman (supra)**. Counsel submitted that the evidence in this case does not support any of the three ways to sever a joint tenancy. Counsel advanced that in any event, whether there is a severance does not benefit Gloria because she is party to this case in her personal capacity. Although she is beneficially entitled to Harbanse's estate, she never sought to make the estate a party to this matter and as such, she has no locus standi to claim a severance of the joint tenancy.

[32] Counsel for the Claimant on the doctrine of proprietary estoppel referred to the law stated in **Nancy Singh v Marina Goorahlal & Others**[8] which quoted from **Taylor Fashions Ltd v Liverpool Victoria Trustee Co. Ltd (supra)**. He also relied on **Thorner v Major**[9] wherein the House of Lords reinforced the nature of assurance which must be established.

Counsel submitted that Gloria must plead her case with particularity in order to establish proprietary estoppel. It was further submitted that Gloria is under a duty to plead that Henry had represented to her that she will obtain an interest in the tenanted land if she built the dwelling house and that Gloria, in reliance on that representation or assurance, expended monies in the construction of the tenanted land thereby acting to her detriment.

Counsel highlighted that Gloria in her pleadings averred that she and Harbanse decided to start construction of a house for themselves and that Henry consented to same. However, Gloria's evidence does not support this contention. From the evidence, Henry and Gloria did not speak and she had not spoken to Henry for 21 years; therefore, no representations were made by Henry to her. Gloria, however, admitted that she was not present when Harbanse and Henry spoke, thus, she could not have known what they spoke about.

[8] CV2007-04515
[9] (2009) 3 All ER 945

[33] Counsel advanced that Gloria's pleadings seem to be setting a claim in proprietary estoppel for herself in respect of the house against Harbanse's estate. Counsel added that Gloria, in cross-examination, admitted that the house belonged to the estate of Harbanse. Counsel contended that Gloria seems to be relying on representations made to her by Harbanse and not Henry. Counsel submitted that Gloria ought to have joined the estate of Harbanse as a party and make a claim on behalf of the estate as the estate was entitled to an equity in the said house and the land on which it stands or alternatively, she was entitled to an equity in the house as against the estate.

Counsel contended that if the Court holds the view that the estate may have obtained an equity or that Gloria is entitled to equity in respect of the dwelling house, the Court cannot make any declaration to that effect since the estate is not a party to the claim. Counsel further contended that the Court has to decide the case merely in respect of the parties to this case and to the pleadings and evidence.

[34] Counsel for the Claimant submitted that it is clear from the evidence that Henry made no representation to Gloria; Gloria gave no evidence of any representations made by Henry to her. Counsel added that taken in the context of Henry's unchallenged evidence that he gave permission to Harbanse to build the dwelling house subject to the condition that they continue to hold the tenanted land as joint tenants, must lead the Court to conclude that Gloria has no equity in the dwelling house as claimed.

IV. Issues for determination

[35] Having considered the pleadings, evidence and submissions, the Court views that the following are the live issues for determination:

1. **Was the joint tenancy between the Claimant and Harbanse severed prior to the date of his death?**
2. **Is the dwelling house a chattel or fixture which passes with the tenanted land?**
3. **Does the Claimant have any interest in the tenanted land?**
4. **Does the Defendant have an equitable interest in the tenanted land by virtue of promissory estoppel and/or proprietary estoppel?**

V. Law and Analysis

Issue 1: **Was the joint tenancy between the Claimant and Harbanse severed prior to the date of death of Harbanse?**

[36] Mr. Dolsingh, on behalf of the Defendant, submitted that Harbanse, prior to his death, acted upon 'his share' of the tenanted land in a manner which was inconsistent with the joint tenancy. Therefore, he manifested an intention to no longer be a part of the joint tenancy. It was further submitted that any joint tenancy which may have existed between Henry and Harbanse was effectively severed prior to his death.

[37] Mr. Saunders, in response, submitted that the Defendant did not plead severance of the joint tenancy in her Defence and Counterclaim. It was further submitted that this was a relevant fact which ought to have been pleaded pursuant to **Part 10 of the CPR**.

[38] The Court agrees with the submission of the Claimant and finds that this was not a pleaded issue in the Defendant's Defence and Counterclaim. The Defendant ought to have included this argument in her Defence and Counterclaim in accordance with **Part 10.5(1) and 10.6 of the CPR**.

[39] Having failed to plead this issue, the Defendant cannot now rely on this argument. It would be unjust to the Claimant for the Court to consider this argument as the Claimant would not have had the opportunity to respond to this new issue in his pleadings and witness statement. As such, the Court makes no finding on this issue. In any event, from the evidence before the Court, the facts do not support any of the three circumstances which may result in the severance of a joint tenancy.

Issue 2: Is the dwelling house a chattel or a fixture which passes with the tenanted land?

[40] Both parties correctly cited the authority of **Mitchell v Cowie (supra)** as providing the test by which the Court could determine whether or not a structure is a chattel house.

Wooding CJ in **Mitchell v Cowie** identified the following as the principles which should be applied in determining whether a house is a fixture or chattel:

1. *A house may be a chattel or a fixture depending upon whether it was intended to form part of the land on which it stands. But the intention is to be determined objectively rather than subjectively, that is to say, according to the circumstances as they appear and by the application of rules such as are set out hereunder.*
2. *To distinguish chattel from fixture, a primary consideration is whether or not the house is affixed to the land.*
3. *If the house is not affixed to the land but simply rests by its own weight thereon, it will generally be held to be a chattel unless it be made to appear from the relevant facts and circumstances that it was intended to form part of the land, the onus for so doing being upon him who alleges that it is not a chattel.*
4. *If the house is affixed to the land, be it however slightly, it will generally be held to form part of the land unless it be made to appear from the relevant facts and circumstances that it was intended to be or continue as a chattel, the onus for so doing being upon him who alleges that it is a chattel.*
5. *Specifically as regards a house affixed to land by a tenant thereof, a circumstance of primary importance is the object or purpose of the annexation.*
6. *To ascertain the object or purpose of the annexation, regard must be had to whether the affixation of the house to the land is temporary and for use as a chattel or is permanent and intended to be for the better enjoyment of the land. But for this purpose it must at all times be borne in mind that the intention or right of the tenant to remove the house from the land on the cesser of his interest as tenant with the result that no improvement will accrue to the landlord's reversionary interest does not make the affixation (albeit that it is in one sense) temporary. The critical consideration, therefore, is whether the tenant in affixing*

his house to the land has manifested a purpose to attach it thereto so that it becomes and remains a part thereof conterminously with his interest as tenant"

[41] What constitutes sufficient annexation will depend on the facts of the particular case. In **Mitchell v Cowie**, Wooding CJ endorsed the statement made by Blackburn J in **Holland v Hodgson**[10] where the learned Judge stated:

"There is no doubt that the general maxim of the law is that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention viz, the degree of the annexation and the object of the annexation."

[42] Lord Lloyd in **Elitestone Ltd. v Morris and another**[11] stated at page 690 as follows:

"If a structure can only be enjoyed in situ, and is such that it cannot be removed in whole or in sections to another site, there is at least a strong inference that the purpose of placing the structure on the original site was that it should form part of the realty at that site, and therefore cease to be a chattel."

In **Elitestone (supra)**, the structure in question was a bungalow, and in examining the purpose of annexation, the following was said at page 692-3:

"A house which is constructed in such a way so as to be removable, whether as a unit, or in sections, may well remain a chattel, even though it is connected temporarily to mains services such as water and electricity. But a house which is constructed in such a way that it cannot be removed at all, save by destruction, cannot have been intended to remain as a chattel".

[10] (1872) LR 7 CP 328
[11] [1997] 1 WLR 687

[43] From Gloria's evidence, the ground was dug for the laying of the foundation and the pillars which were made of concrete as well as the tying of steel for the foundation[12]. In cross-examination, Counsel for the Claimant questioned Gloria on the nature of the dwelling house on the tenanted land. The cross-examination was as follows:

Q: Now this house is a concrete house?

A: Yes.

Q: It have pillars?

A: Yes.

Q: Pillars cast down in the ground?

A: Yes sir.

Q: He built a foundation.

A: Yes.

Q: With concrete?

A: Yes.

Q: Steel?

A:……

Q: You can't lift up this house and move it someplace else can you?

A: No.

Q: So if you try to move this house you would break it up?

A: Yes. Nobody could move a house. Whether it be concrete or board[13].

[44] From Gloria's evidence, it clear that the house was not movable and could not be removed without being destroyed. Accordingly, assessed objectively, the dwelling house on the tenanted land which is a two-storey concrete structure could not have been intended to remain a chattel and must have intended to form part of the realty. Thus, the dwelling house is indeed sufficiently annexed to the tenanted land. Consequently, in accordance with the test in **Mitchell v Cowie**, the dwelling house on the tenanted land should be regarded as a fixture which passes with the tenanted land.

[12] Para 21 of Gloria's Witness Statement
[13] NOE 16 July 2017, page 53, lines 28-47

<u>Issue 3</u>: Does the Claimant have any interest in the tenanted land?

[45] It is undisputed that Mr. Sewsarran was a tenant of Caroni (1975) Ltd at the date of his death. However, there is no information on when the tenancy commenced and its duration but that it was subsisting in 1965 at the time of his death. Though there is no documentary evidence of the tenancy before the Court, the tenancy would have given Mr. Sewsarran an interest over the tenanted land. Consequently, Mr. Sewsarran's interest in the tenanted land (i.e. the 'tenancy rights') formed part of his estate and fell to be distributed in accordance with the provisions of his will.

[46] It is trite law that a deceased's real property vests in the Executor of the estate [in the event of testacy] and in the Administrator [in the event of intestacy] upon death. This is explicitly stated in **<u>sections 10(1) and 10(4) of the Administration of Estates Act, Chap 9:01</u>** as follows:

> *"10. (1) Where any real estate is vested for any term or estate beyond his life in any person without a right in any other person to take by survivorship, it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or executors or the administrator or administrators of his estate (who and each of whom are included in the term "representative") as if it were a chattel real vesting in them or him. And if such estate is held upon any trust or by way of mortgage, it shall likewise legally devolve on the representative of any person deceased in whom it has been vested during his life.*
>
> *10. (4) On the death of any person all his estate real and personal whatever within Trinidad and Tobago shall vest in law in the Administrator General until the same is divested by the grant of Probate or Letters of Administration to some other person or persons: Provided that the Administrator General shall not, pending the grant of such Probate or Letters of Administration, take possession of or interfere in the administration of any estate save as in this Act and in the Wills and Probate Act provided."*

[47] However, a beneficiary will not obtain the legal estate until the representative has by a Deed of assent in writing so vested it in him. This is provided for in **section 12(1) of the Administration of Estates Act, Chap 9:01** as follows:

> *"12. (1) At any time after the death of the owner of any land, his representative may by Deed assent to any devise contained in his Will, and may convey or transfer the land or any estate or interest therein to any person entitled thereto as next of kin, devisee, or otherwise, and may make the assent, conveyance, or transfer either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent, conveyance or transfer, subject to a charge for all moneys (if any) which the representative is liable to pay, all liabilities of the representative in respect of the land shall cease, except as to any acts done or contracts entered into by him before such assent, conveyance, or transfer."*

[48] Accordingly, on the death of Mr. Sewsarran, his interest in the tenanted land, was vested in his legal personal representative, Mrs. Ramdath, who obtained a grant of probate as the sole executrix of his will. However, there is no evidence that the interest in the tenanted land was assented to by Mrs Ramdath to herself, Harry, Henry and Harbanse as joint tenants.

[49] The Court, therefore, agrees with the Defendant's submission that the interest in the tenanted land was never properly transferred to the beneficiaries of Mr. Sewsarran's estate under his will. The Court was furnished with the Grant of Probate of Mr. Sewsarran's estate dated 18 January 1974 but there was no Deed of Assent purporting to transfer the interest in the tenanted land to his beneficiaries.

[50] Therefore, having regard to the fact that there is no document vesting the interest in the tenanted land to the beneficiaries, the reasonable inference to be drawn is that no such document exists and therefore, Henry has no legal interest in the tenanted land. Consequently, Mr. Sewsarran's legal interest in the tenanted land remains in his estate

unadministered; it was not transferred to his beneficiaries. In that regard, Mrs. Ramdath did not fully administer the estate of Mr. Sewsarran.

[51] From the affidavit of Henry dated 29 April 2011 deposing to his interest in the estate of Harbanse, he stated that Mrs. Ramdath died intestate in or about 1981. Pursuant to **section 14(1) of the Wills and Probate Act, Chap 9:03**, an executor of a sole or last surviving executor of a testator is the executor of that testator. **Section 14(3)(a)** of the said Act further provides that the chain of representation is broken by an intestacy.

Consequently, since Mrs. Ramdath died intestate, there is a break in the chain of representation as there is no executor who would have been able to continue administering Mr. Sewsarran's estate as the executor of his will. As a result of her failure to complete the administration of Mr. Sewsarran's estate, the appropriate grant to obtain thereafter would have been a Grant of Letters of Administration ***de bonis non administratis***[14]. However, there is no evidence that this was done. In that regard, this Court can reasonably infer that Mr. Sewsarran's interest in the tenanted land remains in his estate unadministered.

[52] Furthermore, Henry pleaded and gave evidence that his mother requested that Caroni (1975) Ltd transfer the tenancy to himself, Harry and Harbanse as joint tenants. However, there is no documentary evidence in support of this contention. He also stated that after Harry's death, Caroni (1975) Ltd transferred the tenancy to himself and Harbanse as joint tenants. Again, there is no documentary evidence in support of this averrment. In this regard, the Court finds that Henry is not a tenant of the tenanted land and therefore, has no legal interest in the tenanted land.

[53] Nonetheless, even if the Legal Personal Representative(s) of Henry (he now being deceased) were to now seek a Grant of Letters of Administration *de bonis non*

[14] A grant of administration de bonis non administratis (a grant de bonis non) is made in respect of a deceased's unadministered estate. Such a grant is by its nature limited as to the property to which the grant extends, its purpose being to enable the administration of the estate to be completed: **Parry & Clark's The Law of Succession, 10th edition**.

administratis to complete the administration of his father's estate, Mr. Sewsarran's interest in the tenanted land would, by now, be terminated by effluxion of time.

From the evidence, there was a building constructed on the land which was used as a dwelling house but was destroyed by fire in 1986. In that regard, it was likely that the tenancy was converted to a statutory lease for a term of 30 years from 1 June 1981 pursuant to **section 4(1) and (2) of the Land Tenants (Security of Tenure) Act, Chap 59:54**. In fact, Henry confirmed that the tenancy was converted into a statutory tenancy in his affidavit dated 29 April 2011 wherein he deposed to his interest in the tenanted land.

Consequently, the statutory lease for the tenanted land would have expired on 31 May 2011. As a result of the effluxion of time, the tenanted land would have reverted to the State as all Caroni (1975) Ltd lands were vested in the State in 2005 by the provisions of the **Caroni (1975) Ltd and Orange Grove National Company Limited (Divestment) Act, Chap 64:08**. There is no evidence before this Court that the statutory lease was renewed or the option to purchase was exercised. In fact, in his affidavit dated 29 April 2011, Henry stated that he visited the Office of the Commissioner of State Lands to purchase the tenanted land but he was unsuccessful.

[54] Accordingly, as of 31 May 2011, Mr. Sewsarran's estate would not have included any interest in the tenanted land. Therefore, there will be no interest in the tenanted land to transfer to Henry. Consequently, the Court is of the view that when Henry initiated this action, he had no interest in the tenanted land.

[55] The Court, therefore, finds that Henry had no locus standi to bring this Claim before the Court and it ought to be dismissed.

<u>Issue 4</u>: Does the Defendant have an equitable interest in the tenanted land by virtue of promissory estoppel and/or proprietary estoppel?

[56] The doctrine of promissory estoppel according to **Snell's Principles of Equity 31st Ed. 2005 para 10-08** is stated as follows:

> *"Where by his words or conduct one party to the transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it."*

[57] **Snell's Principles of Equity 31st Ed. 2005 para 10-16 to 10-17** explaining the doctrine of proprietary estoppel cited Oliver J in **<u>Taylor Fashions Ltd v Liverpool Victoria Trustee Co Ltd</u>**[15] as follows:

> *" If A, under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a Court of Equity will compel B to give effect to such expectation."*

[58] Having determined that Henry has no interest in the tenanted land, the same can also be said for Harbanse based on the reasoning above. The fact that both Henry and Harbanse had no interest in the tenanted land to transfer to Gloria, neither of them could have assured or promised Gloria that she could have any interest therein; therefore she cannot succeed on her counterclaim in relation to the tenanted land. Consequently, on that basis, Gloria's counterclaim for possession of the tenanted land by virtue of the doctrines of promissory and/or proprietary estoppel ought to be dismissed.

[15] (1979) [1982] Q.B. 133n

[59] Moreover, this Court is not minded to grant Gloria an equitable interest in the tenanted land nor grant any order in relation to possession of the tenanted land since it appears that the legal estate is vested in the State. The State, through its representative, the Commissioner of State Lands, ought to have been a party to this action for Gloria to succeed on her counterclaim for possession of the tenanted land.

Any further proceedings, which entails possession of the tenanted land, must include the State as a party, through its representative, the Commissioner of State Lands. For the time being, the Court can only make a pronouncement that Gloria is entitled to an unquantifiable equitable interest in the dwelling house on the tenanted land.

[60] From the evidence before the Court, it is clear that Gloria contributed to the construction of the dwelling house on the tenanted land both financially and non-financially. She maintained her pleaded case that she assisted Harbanse and contributed to the construction and maintenance of the dwelling house from 1992. She specified the different works that were done on the dwelling house and the costs associated thereto. However, Gloria did not exhibit any documentary evidence in support of these acts.

[61] Gloria, however, exhibited a few receipts to her witness statement which were all made out in Harbanse's name and ranged from the year 1993 to 2002. There were no receipts for anything construction-related in her name. However, she exhibited T&TEC and WASA bills in her name but they were for the years 2012 and 2014 after Harbanse's death. I attached little weight to these receipts and bills as they did not support her case that she contributed financially to the construction of the dwelling house with Harbanse.

[62] Nevertheless, her pleaded costs of the construction works on the dwelling house remained unchallenged in cross-examination. Counsel for the Claimant also did not challenge Gloria on the pleaded acts of her non-pecuniary contribution towards the dwelling house.

Gloria initially admitted in cross-examination that she contributed at least 60% of the money towards the construction of the dwelling house[16] and that Harbanse did not put out most of the money[17]. However, after refreshing her memory from her affidavit dated 29 December 2010, which she deposed to in her application for a declaration that a co-habitational relationship existed between herself and Harbanse and that she is the sole beneficiary of Harbanse's estate, Gloria admitted that Harbanse spent about 60% and she spent about 40% towards the construction of the dwelling house[18]. She admitted that it was a mistake on her part when she said that she contributed 60% of the money[19].

She stated that she would put about $4,000.00 - $5,000 from her income towards the dwelling house[20]. However, there was no documentary evidence in support of this statement. She stated that it took about $450,000.00 in total to build the house[21]. Though Gloria stated that the money she used towards the construction of the dwelling house was gotten from her brother and her ex-husband, she did not produce any documents to support that she did in fact do so. Nevertheless, Gloria, in my opinion, remained unshaken in cross-examination; she maintained that she did contribute financially towards the construction of the dwelling house alongside Harbanse.

[63] I accept that Gloria partly contributed financially towards the construction of the dwelling house alongside Harbanse. While I accept that Gloria did not have any documentary evidence to support the sum of money she expended on the said construction works, this evidence was not challenged. In fact, Henry, in cross-examination, admitted that he did not know where the money for the construction of the house came from[22] and he did not know if Gloria's money was spent on the house[23].

[16] NOE 16 July 2014 page 36, lines 6-10
[17] Ibid, page 41, lines 36-43
[18] Ibid, page 43, lines 20-38
[19] Ibid, page 43, lines 39-46
[20] Ibid, page 38, lines 21-30
[21] Ibid, page 39, lines 23-26
[22] Ibid, page 28, lines 40-42
[23] Ibid, page 29, lines 14-20

I also accept that Gloria performed non-pecuniary acts towards the construction; which included the grinding, priming and painting of the walls of the house. Gloria's evidence on her contributions towards the house was corroborated in part by Ramchan Rampersad. He admitted in cross-examination that he saw her spend her money as he would take her to the hardware and that he saw her working on the house, cleaning the driveway and taking up bricks[24]. He stated that when he took Gloria to the hardware, she bought paint, sand paper and cement[25]. However, he admitted that he did not know whether it was her personal money or Harbanse's but he assumed that it was her money since she went to the hardware[26]. Mr. Rampersad, in cross-examination, maintained that it was both Harbanse and Gloria who contributed financially towards the building of the house[27].

[64] In this regard, on a balance of probabilities, I accept that Gloria contributed both financially and non-financially towards the construction of the house which gave her an unquantifiable equitable interest in the dwelling house.

It is undisputed that Harbanse also contributed financially and non-financially towards the construction of the dwelling house; the receipts put forward by Gloria totals approximately $23,100.00. However, she stated that $450,000.00 was spent to build the dwelling house and that Harbanse contributed about 60%. The Court is of the view that the evidence put forward is not the extent of Harbanse's contribution and finds that Harbanse also had an unquantifiable equitable interest in the dwelling house.

[65] Harbanse died intestate on 21 November 2010 and Gloria by Notice of Application dated 29 December 2010 applied to the Family Court for a declaratory order affirming that a cohabitational relationship existed between herself and Harbanse and that she was entitled to a share and interest in Harbanse's estate acquired during the cohabitational relationship.

[24] Ibid, page 66, lines 36-45
[25] Ibid, page 67, lines 23-28
[26] Ibid, page 67, lines 39-47
[27] Ibid, page 69, lines 18-21

By Court Order dated 19 May 2011 in the Family Proceedings **No. FH 02445/2010**, the Family Court declared and affirmed that a cohabitational relationship existed between Harbanse and Gloria in accordance with the provisions of the **Administration of Estates Act, Chapter 9:01**. The Family Court also declared that pursuant to **section 25(3) of the Administration of Estates Act, Chapter 9:01**, Gloria was entitled to the **entirety** of the estate of Harbanse.

[66] It was Gloria's evidence that she applied for a Grant of Letters of Administration of Harbanse's estate. In the inventory of the Application Gloria included the dwelling house standing on the tenanted lands. There is, however, no evidence before the Court that the Grant was ever issued. Nevertheless, as previously ordered by the Family Court on 19 May 2011, Gloria was the sole beneficiary of the entire estate of Harbanse which includes the dwelling house standing on the tenanted land. As Gloria is now deceased, her interest in the estate of Harbanse can be pursued by her Legal Personal Representative, the Substituted Defendant, Peter Seecharan.

[67] The Original Defendant, Gloria Monica Seecharan, therefore succeeds on her counterclaim only to the extent that the Court has determined that she was entitled to an unquantifiable equitable interest in the dwelling house. It is unquantifiable because Harbanse's estate would also be entitled to an unquantifiable equitable interest in the said dwelling house. Although Gloria would have been entitled to this share as well, being the surviving cohabitant entitled to the entirety of Harbanse's estate, no grant has yet been issued and Gloria herself is now deceased. It is for Gloria's legal personal representative to follow through with obtaining a grant so that the entirety of the interest in the dwelling house can be vested in the estate of Gloria.

[68] The Court wishes to highlight, however, that no order can be made in relation to the tenanted land since the legal interest therein is vested in the State. As such, any order affecting such interest must include the State as a party.

VI. Disposition

[69] Having regard to the foregoing analyses and findings, the Claimant's Claim ought to be dismissed. The Defendant's Counterclaim for possession of and an equitable interest in the tenanted land by virtue of the doctrines of promissory and/or proprietary estoppel ought also to be dismissed. However, the Defendant has proven to the Court that she has an unquantifiable equitable interest in the dwelling house because of the contributions she made to the construction of the house.

[70] The Defendant, having successfully defended the Claim and succeeded in part on her Counterclaim, is entitled to her costs of the Claim and a percentage of her costs on the Counterclaim pursuant to **Part 66.6(1) of the CPR**. The Court is of the opinion that having regard to the issues involved in the counterclaim and the Defendant's partial success thereon, a fair percentage of costs will be 55% on the counterclaim, there being much overlap of the evidence on the claim. Since the parties never applied to stipulate a value of the Claim and Counterclaim, they are both regarded as non-monetary claims and therefore each will be deemed a claim for **$50,000.00** in accordance with **Part 67.5(2)(c) of the CPR**.

Quantification of costs in this matter is based on the prescribed scale, which in accordance with **Part 67, Appendix B of the CPR**, costs will be quantified in the sum of **$14,000.00** each for the Claim and the Counterclaim, but on the Counterclaim only 55% of the costs will be allowed.

[71] Accordingly, the Defendant will be entitled to the total sum of $14,000.00 on the Claim and 55% of $14,000.00 ($7,700.00) on the Counterclaim making a total sum of $21,700.00. The order of the Court is as follows:

ORDER:

1. **The Claimant's Claim filed on 24 January 2013 be and is hereby dismissed.**
2. **On the Defendant's Counterclaim, the Defendant is entitled to an unquantifiable equitable interest in the dwelling house situate at No. 100 Cacandee Road, Felicity, Chaguanas.**
3. **The Claimant shall pay to the Defendant full costs of the Claim and 55% of the costs of the Counterclaim to be quantified on the prescribed scale of costs.**
4. **Costs of the Claim have been quantified in the sum of $14,000.00 and costs of the Counterclaim have been quantified in the sum of $7,700.00 making a total of $21,700.00.**

_____

Robin N Mohammed
Judge