**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2017-03228**

**In the Estate of DHANRAJ RAMLAKHAN also called SHARMA RAMLAKHAN also called NARAD DHANRAJ, who died on the 2nd day of July, 2015.**

**BETWEEN**

**MOONIAH RUBEN**

**Claimant**

**AND**

**ZAIBUN RAMLAKHAN**

**CHATERAM RODNEY RAMLAKHAN**

**RIA RAMLAKHAN**

**DARANE RAMLAKHAN**

**Defendants**

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Appearances:**

Ms Amerelle T.S. Francis-Baptiste for the Claimant
The Defendants not appearing and unrepresented

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**JUDGMENT**

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## I. **Background**:

[1] Mooniah Ruben, the Claimant herein, is the common-law spouse of the deceased, Dhanraj Ramlakhan. Dhanraj died on the 2nd July, 2015 but left a Will executed on the 23rd June, 2015. In this Will, Dhanraj names Chateram Ramlakhan- his son (the 2nd Defendant herein), as his executor and proceeds to make provisions for Mooniah, his grandson-Steffon Ramlakhan and Chateram only in his Will. In particular, Dhanraj bequeaths the dwelling house in which he and Mooniah lived to Steffon alone. It is with this particular devise that Mooniah takes issue.

[2] Mooniah claims that at the time of the Will's execution, Dhanraj was mentally unsound due to his sickness and was in such condition of the mind that he was unable to understand the nature and effect of what he was doing. Her case is that the 2nd to the 4th Defendants visited Dhanraj while he was ailing and unduly influenced him to pass the dwelling house to Steffon alone. She views that such a devise was improper as the dwelling house did not belong to Dhanraj exclusively and thus, he was not entitled to pass any interest in same in his Will.

[3] In support of her plea that Dhanraj did not possess an undivided share in the dwelling house, Mooniah avers that they moved into the property in 1991 with permission from Chochan Boodan's daughter (i.e. Mooniah's uncle's daughter). No deed, however, was attached evidencing the uncle's daughter's ownership of the land. Mooniah averred that because Dhanraj had no money at that time, it was she, Mooniah, who gave him $8,000.00 to purchase the interest in the land, which at that time was owned by Caroni before it was converted to State Lands. Thereafter, she pleaded that a wooden structure was erected and eventually replaced by a flat concrete structure in 1997. No pleading was made as to who constructed or paid for these structures.

[4] She however averred that in 2010, both she and Dhanraj *"began and completed the building of the upstairs portion of the house"*. Mooniah says that she paid for the construction of this upstairs portion with two manager's cheques, the monies for which came from a joint account shared between herself and Dhanraj. Mooniah attached receipts which she stated evidenced the purchase of materials to build the upstairs portion of the house in 2010. On the receipts dated between 1994 and 1998 only Dhanraj's name

appears. However, Mooniah's name is contained on several receipts dated from 2013 onwards.

[5] Therefore, Mooniah maintains that the property was held by both herself and Dhanraj equally as Joint Tenants prior to his death and that Dhanraj never severed the joint tenancy. There is however, no Deed produced to show how such property was held.

[6] In those circumstances, Mooniah seeks declarations to, *inter alia*, have the Will declared invalid and to have the dwelling house declared to be solely in her name.

Oddly enough, the Claimant included a Certificate of Value, (incorrectly entitled a Certificate of Truth) affirming that the value of the damages claimed was likely to exceed $50,000.00 as per **Part 8.7 of the CPR 1998**. However, given that no damages were sought in the Claim, this Certificate was not applicable to these proceedings.

[7] The Defendants entered neither an Appearance nor a Defence to the fixed date claim and statement of case filed on the 6th September, 2017. Thus, having considered the affidavits of service of the process server, Mr Selwyn Mark, filed on the 27th September, 2017 and on the 13th March, 2018 respectively, and being satisfied that the Defendants were all duly served with these proceedings and the Notice of the adjourned date of the trial, pursuant to **Part 72.6 (3) of the CPR 1998**, the Court ordered, at the hearing of the 14th March, 2018, that this matter proceed to trial and that the Claim be tried on the affidavit evidence filed by Mooniah on the 6th September, 2017. Further, the trial date was set for the 18th April, 2018.

[8] The trial was heard on the 18th April, 2018, the Defendants not appearing and unrepresented. Evidence was taken from the Claimant and accordingly, directions were given for the filing of submissions by the Claimant only.

## II. Law & Analysis:

[9] Considering that the Defendant never appeared in these proceedings, it meant that all of the facts and evidence adduced by the Claimant remained unchallenged. In those circumstances, the only issues for determination in this matter are issues of law i.e.

whether, in law, the Claimant is entitled to the reliefs/declarations sought given the undisputed evidence.

The reliefs sought in the Claim are as follows:

1) **That the Will executed on 23rd June, 2015 be declared invalid in solemn form.**

2) **A Declaration that any interest, share and title in the house and land situate at 69 Calcutta Road, number 3 Upper Carapichaima belongs solely to the Claimant.**

3) **A declaration of the portion of the deceased's estate to which the Claimant is entitled.**

**Relief 1: That the Will be declared invalid**:

[10] The legal requirements for the validity of a Will are set out both in statute and in common law. In statute, **Section 42 of the Wills and Probate Act, Chap 9:03**, sets out the requirements for the due execution of a Will:

> *"Save as hereinbefore provided, no Will executed after the commencement of this Act shall be admitted to probate or annexed to any letters of administration or be deemed to have any validity for any purpose whatsoever unless such Will is in writing and executed in manner hereinafter mentioned, that is to say,—**it shall be made by a person of the age of twenty-one years or more, it shall either be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses of either sex competent to attest a Will according to the law of England, present at the same time, and such witnesses shall attest and subscribe the Will in the presence of the testator and of each other but no form of attestation shall be necessary.** No person shall be a competent witness to any Will executed or purporting to be executed after the 16th of May 1921, who has attested*

*such Will by making a cross or mark or otherwise than by his signature in his own proper handwriting."*

The Claimant has made no challenge to the due execution of the Will under this provision.

[11] However, counsel for the Claimant, Ms Francis-Baptiste, referred to **Section 9 (1) of the Succession Act, Chap 9:02,** which effectively states that any gift given to a person who has witnessed the Will shall be void notwithstanding that the witness is still competent to prove/witness the execution of the Will:

1) *"Subject to subsection (2), if a person who attests the execution of a Will is a person to whom any interest is given by the Will (whether by way of gift or by way of exercise of a power of appointment, but other than and except charges and directions for the payment of debts), the gift or appointment is void, so far as it concerns such an attesting witness or any person claiming under the witness; but the attesting witness is competent as a witness to prove the execution, or to prove the validity or invalidity of the Will, notwithstanding the gift or appointment mentioned in the Will.*

2) *Attestation of a Will by a person to whom there is given or made any such disposition as is described in subsection (1) shall be disregarded if the Will is duly executed without his attestation and without that of any other such person or if the attesting witness is the testator's spouse.*

3) *This section applies to the Will of any person dying after the passing of this Act, whether executed before or after the passing of this Act."*

[12] However, this submission fails for two reasons: Firstly, and most importantly, **Section 9 of the Succession Act** is found under **Part II of the Act**, which has not yet been proclaimed. Indeed, in the **Note on Section 1 (2)** at page 2 of the **Succession Act**, it is stated that only **Part VIII of the Act** has been proclaimed:

***A. "Part VIII (sections 94 to 116 inclusive) (w.e.f. 6.11.2000) (By LN 271/2000).***

***B. Parts I, II, III, IV, V, VI, VII and IX (On Proclamation) (i.e., These Parts are not yet in operation)"***

[13] Secondly and in any event, Counsel for the Claimant, submits that one of the witnesses to Dhanraj's Will *"is the common law spouse of the beneficiary named in the Will and as such benefits from a gift or disposition under the purported Will."* In those circumstances, she contended that the dispositions to Chateram Ramlakhan in the Will should fail.

Counsel however, encounters two problems with the submission. Firstly, she failed to attach a copy of the Will to her client's only affidavit of the 6th September, 2017. Therefore, under the rules of evidence and procedure, there is no copy of the Will in evidence before the Court.

Indeed, it is a long established principle of procedure that for a document to be in evidence, it is not sufficient to merely attach it to the pleadings alone. It must also be appended to the witness statement or affidavit evidence. Without a copy of the Will as evidence, the Court has no way of testing the accuracy of counsel's submission.

Secondly, this provision is simply inapplicable to the facts of this case. **Section 9**, as referred to by counsel, only invalidates a gift made in the Will if it is made to one of the witnesses of the Will. Chateram, however, although he receives a devise under the Will, was not one of the witnesses. Rather, Mooniah's unchallenged evidence at para 37 of her affidavit was that one of the witnesses to the Will, Haymatee Sonny Mohammed, is actually Chateram's common law spouse. In those circumstances, the disposition to Chateram may be caught not by **Section 9 of the Succession Act,** but by **Section 45 of the Wills and Probate Act** and thus, be considered void:

> *"**If any person shall attest the execution of any Will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting any estate** (other than and except charges and directions for the payment of any debt or debts) **shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such Will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be null and void**; but such person so attesting may, if otherwise admissible, be admitted as a witness to prove the execution of such Will or to prove the validity thereof, notwithstanding*

*such devise, legacy, estate, interest, gift, or appointment mentioned in such Will."*

In those circumstances, without more, I find that the disposition in Dhanraj's Will to Chateram, as described in Mooniah's affidavit, is deemed invalid.

[14] Moreover, and in any event, Stollmeyer J (as he then was) stated in his judgment of **Lucky v Thomas-Vailloo H.C.A. No. 1396 of 1996,** that the burden of proof lies on the party setting up the Will and that *"where a will is prepared in suspicious circumstances the onus is upon the person propounding it to remove such suspicion and prove that the testator knew and approved of the contents."*

At paragraphs 36 to 38 of her affidavit, Mooniah gives evidence of circumstances which, if true, suggest that the Will was prepared in suspicious circumstances. In particular, it appears that she takes issue with the disposition of the house and land situate at No 69 Calcutta Road, No 3 Upper Carapichaima, Freeport (the Property) where she now resides. Her words were that there is *"some quarrel over the 3 acres of land on which she now resides."* Her evidence is that she wishes to know what portion of Dhanraj's estate she is entitled to as his common-law spouse.

In support of her claim to the Property, she gives evidence that she and the deceased purchased the furniture for the house and that she was involved in its construction. She also states that she lived with the deceased in the house for 24 years in a common law relationship yet the deceased never discussed the Will with her. Thus, Mooniah says she was shocked when she heard about the Will.

[15] Mooniah faces some difficulty in convincing this Court of her Claim because of her omission to adduce into evidence a copy of the Will. However, her evidence as to her involvement in the construction and payment of materials for the house remains unchallenged. Moreover, she has produced documentary evidence of her purchases via receipts attached as **MR 11** and **MR 12** of her affidavit. In the absence of any contradictory evidence, this Court accepts Mooniah's affidavit evidence on this issue.

In those circumstances, I find that a suspicion is raised over the Will, which does not leave Mooniah any share or interest in the Property. Thus, the learning is clear that the

onus would now shift to the Defendants or to any person wishing to challenge Mooniah's entitlement to a share or interest the Property to discharge their burden and/or prove the Will.

[16] Indeed, Stollmeyer J summarised the principles that dictate how the Court is to approach a Will and any challenge to a Will at page 16 of the decision in **Lucky** *supra*:

A. *"The onus of proving a will as having been executed as required by law is on the party propounding it;*

B. *There is a presumption of due execution if the will is, ex facie, duly executed;*

C. *The force of the presumption varies depending upon the circumstances. The presumption might be very strong if the document is entirely regular in form, but where it is irregular or unusual in form, the maxim omnia praesumuntur rite esse acta cannot apply with the same force, as for example, would be the case where the attestation clause is incomplete;*

D. *The party seeking to propound a will must establish a prima facie case by proving due execution;*

E. *If a will is not irregular or irrational, or not drawn by a person propounding the will and benefitting under it, then this onus will have been discharged;*

F. ***If either by the cross-examination of witnesses, or the pleadings and the evidence, the issues of either testamentary capacity or want of knowledge and approval are raised, then the onus on these issues shifts again to the party propounding the will****;*

G. *Even if the party propounding the will leads evidence as to due execution, there is still the question of whether the vigilance and suspicions of the court are aroused. If so, then the burden once again reverts to the party seeking to propound;"*

In the case at bar, there is no evidence that the Will was drawn by the person benefitting or propounding it, however, as stated above, there are suspicions raised by the Claimant in both the pleaded case and the affidavit evidence as to Dhanraj's testamentary capacity and/or his knowledge and approval of what he was doing. Therefore, under principle (6)

above, the burden has shifted to the Defendants to prove that the Will was properly executed.

[17] In **Chookolingo v Chookolingo H.C.A. No. CV2016-00509**, my sister, Quinlan-Williams J cited learning from Wooding CJ (as he then was), in a judgment he delivered **Moonan v Moonan 1963 7 WIR 420**. In **Moonan** *supra*, Wooding CJ stated that, on the issue of testamentary capacity, i.e. whether the deceased was of sound mind, memory and understanding when making the Will, the burden to prove testamentary capacity also lies on the proponent of the Will, which in the case at bar, means the Defendants. Wooding CJ stated:

> *"…**the onus of proving testamentary capacity was on the appellants who were propounding the will. If the matter is left in doubt, then they fail to prove that the testator was capable of making a will.** The resolution of that issue may be in one of three ways: either that the court is affirmatively satisfied that Joseph Moonan was sound in mind, memory and understanding, or that the court is satisfied that he was not sound in any of these respects**, or that the court is left in doubt, with the result that the issue has to be resolved against the appellants who, as I said, were propounding the will."***

Having failed to defend these proceedings, at the very best, it can be said that it is left in doubt as to whether Dhanraj had the testamentary capacity, knowledge and approval of the Will's contents on its execution. In those circumstances, the law is clear: the result must be that the issue must be resolved against the Defendants who would be the party charged with propounding the Will.

[18] The Court therefore declares that the Will is deemed invalid in solemn form.

**Relief 2: That any interest and/or share in the property situate at No 69 Calcutta Road belongs to the Claimant**:

[19] Although I note that (i) the Will has been declared invalid and (ii) Mooniah's affidavit evidence about her history on the Property remains unchallenged, Mooniah has failed to provide any Deeds proving either Dhanraj's, her Uncle's daughter's, or her entitlement or ownership to the Property. In fact there is nothing before the Court to show that any of these parties ever owned the land.

In those circumstances, without such documentary evidence, this Court cannot make any declarations on the ownership of the lands and/or Property.

**Relief 3: The declaration of the portion of the deceased's estate that the Claimant is entitled to**

[20] This third relief sought by the Claimant is rather vague. In similar fashion to my assessment of the second issue, Mooniah has not specifically set out what other parts of the deceased's estate she would like an entitlement to. In her affidavit, she makes reference to several accounts possessed by Dhanraj allegedly in UTC yet no documentary proof was adduced to prove same. Further, in the subsequent paragraph 33, she deposes that Dhanraj left monies in various specified amounts to his children etc. However, again, there is no documentary proof of such disposition especially as the Will is not in evidence. Thus, other than the Property, there is no evidence of Mooniah's entitlement to any other parts of Dhanraj's estate.

## III. Disposition:

**[21] Accordingly, in light of the foregoing analyses, the order of the Court is follows:**

**ORDER:**

1. **That the Will of Dhanraj Ramlakhan executed on the 23rd June, 2015 be and is hereby declared invalid and is hereby set aside.**

2. **That all other reliefs sought by the Claimant in her Claim are hereby dismissed.**

3. **That there be No order as to costs on these proceedings.**

**Dated this 21st day of June, 2018**

**_____**
**Robin N. Mohammed**
**Judge**