

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2015-02563

BETWEEN

RADICA SINGH
(as Legal Representative of the Estate of KRISHNA SINGH)
1st CLAIMANT

SACARDIP SINGH
2nd CLAIMANT

PAMIN KATWAROO
3rd CLAIMANT

MURTIE SINGH
(as Legal Representative of the Estate of Bhim Singh)
4th CLAIMANT

And

CHANIN SINGH
1st DEFENDANT

LUTCHMAN OUDANE SINGH
(incorrectly named as DUDANE SINGH)
2nd DEFENDANT

Before the Honourable Madame Justice C. Pemberton

Appearances:

For the Claimants: Mr. R. Gosine
For the First Defendant: Mr. S. Seunarine
For the Second Defendant: Ms. P. Ramharack instructed by
Ms. N. Khan

DECISION

[1] **BACKGROUND FACTS**

This is a family matter in which all parties are joint owners of 11 acres of land, which is to be divided amongst them. The Claimants claim that there is an oral agreement between the parties and in 2011 a survey was conducted, after which it was decided how the land would be divided among the 6 parties. The Defendants paid the Surveyor's fees but have refused to sign the Deed of Partition. As a result of this, the Claimants filed this action against the Defendants on 28th July, 2015.

[2] The Claimants sought the following relief:

1. *Damages for breach of contract entered into amongst the Claimants and the Defendants in May 2011 and May 2012 to divide ALL AND SINGULAR that piece or parcel of land comprising 11 acres situate at St. Croix Road and bounded on the North by St. Croix Road on the South by lands of Dhanow and St. Croix Road on the East by lands of Sookrally and by lands of Matthew and on the West by lands of Sinanan and Shavlah pursuant and is more particularly described in Deed No. DE18822 of 1978 (hereinafter referred to as the "said lands") in the following manner:*
 - a. *The 1st Claimant would get Plots 7 and 12.*
 - b. *The 2nd Claimant would get Plot 1.*
 - c. *The 3rd Claimant would get Plot 2.*
 - d. *The 4th Claimant would get Plots 13 and 14.*
 - e. *The 1st Defendant would get Plot 3.*
 - f. *The 2nd Defendant would get Plots 15 and 16.*
2. *Specific performance of the Agreement in terms of paragraph 1(a) to (f) hereinabove.*
3. *An Order for Partition of the said lands.*
4. *An order that the Defendants do sign the Deed of Partition and in default, the Assistant Registrar do execute same.*

5. *Alternatively, an Order that the Defendants' interest and/or share in the said lands be valued by a reputable Valuer and the Claimants purchase the said interest and/or shares at the said market value.*
6. *Costs.*
7. *Such further and/or reliefs as this Honourable Court may deem just.*

[3] The Second Defendant filed his Defence on 12th February, 2016 in which he claimed, *inter alia*, that there is no existing contract between the parties, as the elements for a valid contract do not exist and that the parties do not have Town and Country approval to partition the lands.

[4] On the 25th February, 2016, the Court ordered parties to file submissions on the preliminary issue of the enforceability of an Order of the Court in the circumstance where Town and Country approval has not been secured for partition. Consequently, parties were ordered to file submissions on this issue.

[5] **ISSUE**

The immediate issue for determination is ***whether the Court is empowered to grant the reliefs sought by the Claimants, given that there is no Town and Country Planning Division permission to subdivide the said parcel of land.***

[6] **LAW**

TOWN AND COUNTRY PLANNING ACT (TCP Act)¹

Section 8(1) and (2) of the **TCP Act** addresses the partitioning of lands and its provisions are clear.

(1) Subject to the provisions of this section and to the following provisions of this Act permission shall be required under

¹ Chap. 35:01, Sec. 8

this Part for any development of land that is carried out after the commencement of this Act.

(2) *In this Act, except where the context otherwise requires, the expression “development” means the carrying out of building, engineering, mining or other operations in, on, over or under any land, the making of any material change in the use of any buildings or other land, or **the subdivision of any land**, except that the following operations or uses of land shall not be deemed for the purposes of this Act to involve development of the land, that is to say—*

- a. the carrying out of works for the maintenance, improvement or other alteration of any building, if the works affect only the interior of the building or do not materially affect the external appearance of the building;*
- b. the carrying out by a highway authority of any works required for the maintenance or improvement of a road if the works are carried out on land within the boundaries of the road;*
- c. the carrying out by any local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;*
- d. the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;*
- e. the use of any land for the purposes of agriculture or forestry (including afforestation);*

f. in the case of buildings or other land that are used for a purpose of any class specified in an Order made by the Minister under this section, the use thereof for any other purpose of the same class.

[7] **CLAIMANTS' SUBMISSIONS**

The Court received no submissions from the Claimant on this issue.

[8] **FIRST DEFENDANT'S SUBMISSIONS**

The First Defendant did not provide the Court with any assistance on this issue, as no submissions were filed in accordance with the Order.

[9] **SECOND DEFENDANT'S SUBMISSIONS**

Attorney at Law for the Second Defendant, Ms. Ramharack, directed the Court to Section 4 of the **CONVEYANCING AND LAW OF PROPERTY ACT**² which provided support for the position that all transactions dealing with land must be in writing. Ms. Ramharack highlighted that *"no action may be brought upon any contract for the sale or other disposition of and or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised."* Based on this, she submitted that any oral agreement for the sale of land, is unenforceable.

[10] Further, Ms. Ramharack noted that whilst Section 3 of the **PARTITION ORDINANCE**³ empowers the Court to sell lands without the consent of all parties, any such order would be contrary to law as the requisite approval was not yet received from Town and Country. She relied on Section 8 of the **TCP Act**, which states that *"permission shall be required"* for the development of land, which includes partitioning. Without this approval, Ms.

² **Chap. 56:01.**

³ Chapter 27 No. 14

Ramharack submitted that the survey upon which the Claimants are relying is an illegal document, as it is unapproved by the necessary authority. Ms. Ramharack noted that the only relief which may be available to the Claimants is an order for partition through the sale of the lands.

[11] **ANALYSIS**

I want to thank Counsel for the Second Defendant for providing the Court with some assistance in the determination of this preliminary issue. I am pained to express my disappointment at not having received any Submissions on this issue from Counsel for the Claimants, especially since the issue surrounds the viability of the grounds of reliefs claimed. Counsel for the Second Defendant has made unassailable submissions as to the reasons why the matter is a non-starter and, in fact the provisions of the **TCP Act** must be taken into account that the Act mandates the Town and Country Planning Development to receive applications for determining land use in Trinidad and Tobago. In fact, the long title reads,

An Act to make provision for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities thereof; for the grant of permission to develop land and for other powers of control over the use of land; to confer additional powers in respect of the acquisition and development of land for planning; and for purposes connected with the matters aforesaid.

[12] The Act sets out a framework within which its mandate is to be carried out by the Town and Country Planning Development. One of the first steps is a matter such as this in an application for subdivision. None of this evidence is before the Court. Thus any Order of this Court allowing physical partition will be in contradiction of the clear provisions of this Act. The Court cannot order the Defendants or the Registrar for that matter, to execute any Deed of Partition in violation of the need for a scheme for partition as mandated by the **TCP Act**.

[13] The **PARTITION ORDINANCE** provides certain avenues for the resolution of the matter. Section 3 allows the Court to act *ex proprio motu* the other circumstances referred to in Section 3 and will encompass the hurdle which the Claimant face – no Town and Country Development Planning permission to subdivide, as at the time of writing this decision. Therefore, I will order a sale of the property and a distribution of the proceeds, as I believe this “will be more beneficial for the parties interested” instead of a “*division of the property*” which is not in accordance with the TCP Act.

IT IS HEREBY ORDERED AS FOLLOWS:

1. That a valuation on the disputed parcel of land be commissioned.
2. That the disputed parcel of land be sold.
3. That the proceedings of the sale of the land be distributed in 1/6 shares, as per Deed of Ownership.
4. No orders to Costs.

Dated this 13th day of June 2016.

/S/ CHARMAINE PEMBERTON
HIGH COURT JUDGE