REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
Sub-Registry, San Fernando.

Claim No. CV2007-03190
H.C.A. No. S-1295 of 2005

Between

SURUJBALLY SAMAROO

Claimant

And

KISHORE RAMSAROOP

ANN-MARIE RAMSAROOP

Defendants

BEFORE THE HONOURABLE JUSTICE RICKY RAHIM

Appearances:

Mr. A. Ashraph instructed by Mr. R. Gosine for the Claimant

Mr. V. Maharaj instructed by Ms. B. Maharaj for the Defendants

REASONS

1. On the 27th January 2012, the Court delivered an oral judgment in this matter. The following are the reasons for its decision.

The Claim

2. This was an action for possession of land. The land in dispute is situate at Lothians Branch Street, formerly Circular Street, Princes Town, Savana Grande comprising Eighteen Thousand, Seven Hundred and Ninety-four (18,794) square feet and bounded on the North partly by a drain reserve six (6) feet wide and partly by Lot No. 7A and partly by a road reserve twenty (20) feet wide and on the South partly by a drain reserve six (6) feet wide and partly by Lot No. 16A on the East by a ravine reserve twenty (20) feet wide and on the West partly by Lot No. 7A and partly by a road reserve twenty (20) feet wide (hereinafter referred to as "the said land").

3. The Claim Form and Statement of Claim were filed on the 15th July 2005 by which the Claimant asserted that they had acquired possessory title of the said land through undisturbed and continuous possession since 1950 through occupation by his grandfather, father and then him.

4. Consequently, the Claimant claimed the following at page 8 of his Claim Form and Statement of Claim:

a. *A declaration that the Plaintiff have by virtue of continuous and undisturbed possessed acquired a possessivory title to ALL AND SINGULAR that parcel of land situate at Lothians Branch Street, formerly Circular Street, Princes Town in the Ward of Savana Grande in the Island of Trinidad being portion of "Hope" Estate comprising 18,794 square feet and bounded on the North partly by a drain reserve six feet wide; partly by Lot No. 7A and partly by a road reserve 20 feet wide and on the South partly by a drain reserve 6 feet wide and partly by Lot No. 16A on the East by a ravine reserve 20 feet wide and on the West partly by Lot No. 7A and partly by a road reserve 20 feet wide (hereinafter called "the said lands").*

b. *An Order that the Defendants' [sic] claim is barred by Section 3 of the Real Property Limitation Ordinance and their right and title (if any) to the said lands have been extinguished by virtue of the said Ordinance.*

c. *Damages for Trespass.*

d. *An injunction restraining the Defendants whether by themselves or by their servants or agents or otherwise howsoever from entering, remaining or crossing the said lands.*

e. *An injunction restraining the Defendants whether by themselves or agents howsoever from interfering, molesting and/or threatening the Plaintiff.*

f. *Such further and/or other relief.*

g. *Costs.*

The Defence and Counterclaim

5. The Defence and Counterclaim were filed on the 2nd February 2006.

6. The Defendants denied the Claimant's claim and pleaded that they purchased the said land on the 22nd April 1988 by virtue of Deed No. 7873 of 1988 and further, that the Claimant entered the said land in 1993 and cultivated a portion of the said land and in 1996, built a wooden structure. As a result the Defendants counterclaimed at page 13 of their Defence and Counterclaim for the following:

    a. *Possession of the said lands*
    b. *An order that the Plaintiff do vacate the said lands.*
    c. *Damages for trespass.*
    d. *Costs*
    e. *Interest*
    f. *Such further and or other relief as the court may deem just.*

7. The Defendants pleaded that they would visit the said land every year since purchase picking the various fruits available and until January 1993 there was no sign of occupation of the said land by the Claimant. However, in or about 9th January 1993 the Defendants visited the said land and noticed that an area of no more than Twenty Five Hundred (2500) square feet was ploughed for cultivation by the Claimant and his father.

Reply and Defence to Counterclaim

8. The Reply and Defence to Counterclaim were filed on the 3rd April 2006.

9. The Claimant in his Reply admitted that the Defendants were the paper title owner of the said land. However, he denied that the Defendants were ever in possession and stated that they were not entitled to possession of the said land.

The Case for the Claimant

10. Evidence in chief for the Claimant was given by the Claimant, Sirujbally Samaroo and Mervyn Sirju. Their Witness Statements were filed on the 23rd March 2010.

11. The facts according to the Claimant were that his father had been in continuous occupation of the said land through his great grandfather and grandfather and father. He claimed that his father cultivated several crops on the said land from as far back as he could remember and that they sold some of these crops at the Junction of Circular Road and Manahambre Road.

12. In his Witness Statement, the Claimant testified that the house in which his great grandfather, grandfather and father lived is now occupied by his brother, Krishna and is approximately two and one half lots.

13. The Claimant testified that behind the spot on which Krishna's house is built, his brother Parmanand built a house on lands given to him by his father about twenty-five years ago. The Claimant stated that behind the area on which Parmanand built his house there was a garden shed and an outhouse. He said his father gave him land and the garden shed behind Parmanand's house and that he had over time converted the garden shed into a wooden house and the outhouse was converted into a toilet and bath.

14. The Claimant gave evidence that he had been in continuous occupation of the house for approximately twenty years. He testified that he started staying in the house permanently about two years before he got married and that his oldest child was born there three years after he got married. He explained that he got married when he was twenty-one years and that his oldest child was fifteen.

15. He explained that Parmanand occupied approximately one and one half lots and that he, the Claimant, occupied four lots of land.

16. The Claimant gave evidence in his Witness Statement that one of his neighbours, David Rampersad, claimed to be the owner of the land occupied by Krishna and part of the land occupied by Parmanand.

17. The Claimant testified that around 2003 the Defendants gave him a copy of a Survey Plan dated 22nd March 1975 from which the Claimant produced two sketch plans showing the land occupation and has annexed same to his witness statement marked "A" and "B".

18. The Claimant further stated that after the Defendants claimed the lands he occupied, he erected a fence along the southern boundary and western boundary of his land. He asserted that the Defendants never entered the said land to pick any fruits and that although the Defendants did attempt to stop them from using the land his father and he refused.

19. Mervyn Sirju, in his Witness Statement, asserted that he had always known the Claimant and his family to be in occupation of the said land and that he has been living to the north of the Claimant since 1989. He affirms that the Claimant's family has always cultivated the said land and has reared goats, cattle, ducks and fowls on the said land.

20. The Court noted that many of the things contained in the Claimant's pleadings were not borne out by the evidence given by the Claimant.

The Case for the Defendants

21. Evidence in chief for the Defendants was given by Richard Mollineau, David Rampersad and the Second named Defendant, Ann-Marie Ramsaroop. Their Witness Statements were filed on the 24th November 2009. David Rampersad died on the 9th May 2011. Consequently, a notice of intention to give hearsay evidence of Mr. Rampersad's Witness Statement was filed on the 27th September 2011. There has been no counternotice. The Defendants have failed to produce the witness Mr. Mollineau in court and in so doing indicated to the court that they were not relying on the evidence of the said witness. The court therefore has not considered such evidence in determining this case.

22. The facts according to the Defendants were that they purchased the said land by virtue of Deed No. 7873 of 1988 from Bonoo Ramtahal (a copy of the Deed of Conveyance was attached to the Witness Statement of the Second Defendant).

23. According to the Defendants, there were several large trees on the said land which had been planted by their predecessor. They claimed that every year since purchase they would visit the said land and pick the fruits of these trees but at no point was there cultivation or buildings on the said land, as alleged by the Claimant.

24. On or about 7th January1993, when the Defendants visited the said land, they discovered that an area of no more than half a lot of land had been ploughed for cultivation. Inquiries lead to the identification of Boywah Ramlochan, the Claimant's father, and the Claimant as the responsible parties. At the time, the Defendants asserted that the Claimants were living on the land of Richard Mollineau, the Claimant's uncle. The Defendants claimed they then approached the Claimant and his father and stated their claim to the said land by showing the Claimant and his father their deed.

25. The Second Defendant asserted in her Witness Statement that the Defendants caused a letter to be written on the 19th January 1993 instructing the Claimant and his father to desist from planting on the said land and that Constable Davis Ramsamooj hand delivered the letter to the Claimant on the 20th January 1993. The said letter is contained in the Defendants' list of documents.

26. The Defendants affirmed that in the years 1994 and 1995 the Claimant committed no trespass. However, a trespass occurred when they re-entered the said land and constructed two wooden structures, a house and outhouse, in 1996. Consequently, the Defendants instructed their attorney, Mr. Bhan Ramcoomarsingh, dated 7th June 1996, to the Claimant and his father to remove the structure. The Second Defendant confirmed that there was no reply to this letter.

27. The Defendants asserted that they continued to visit the said land and pick fruits but were constantly threatened and cursed by the Claimant and his father. Nevertheless, in September 2003 they delivered a notice of survey to the neighbours surrounding the said land and on that occasion encountered the Claimant and gave him a copy of the notice of the said survey. On that visit the Second Defendant testified that she informed the Claimant that they intended to sell the said land and the Claimant expressed an interest in purchasing same. Consequently, on the 1st October 2003 a letter was sent to the Claimant offering the said land for the sum of $145,000.00. According to the Second Defendant, a copy of the valuation report was given to the Claimant on the 9th October 2003. A copy of the Valuation Report was attached to the Second Defendant's Witness Statement.

28. On the 12th October 2003, according to the Second Defendant, there was an incident involving the Claimant and his father and the land surveyor, his workmen and a police officer when the land surveyor attempted to carry out the survey. The Second Defendant

testified at paragraph 19 of her Witness Statement that the Claimant expressed that he had no desire to purchase the said lands by saying:

> *'Mrs. Ramsaroop and Mr. Kishore have a false deed and I was only joking, I not buying any land from you all I just wanted to see what papers all you had he said to me that he wants to put me in court and I will show you that the court will give me your lands for free".*

29. Through the assistance of the police on that occasion, the survey was completed. The Second Defendant gave evidence that when they were leaving the said land after the survey, the Claimant handed the Defendants a letter dated 10th October 2003 from the Claimant's attorney, Mr. R.G. Bunsee indicating that the Claimant had no intention of purchasing the said land. The Defendants' attorney replied by letter dated 6th November 2003, to which they received no response.

30. It was the evidence of the Second Defendant that after the incident of the 12th October 2003, the Claimant cultivated more of the said land and started erecting a "soak-a-way" for toilet facilities, erected a drywall on the said land and filled up a drain reserve 1.83m wide and began using it as a driveway so as to park his car under the house.

31. The Second Defendant testified that on the 9th May 2005, the Claimant also cut down three hog plum trees, a calabash tree and a starch mango tree.

32. On the 13th May 2005, the Second Defendant asserted that the Claimant hastily fenced the whole portion of the said land and placed two pit bull dogs within the fence. The Defendants included pictures of the fence constructed by the Claimant in their List of Documents.

33. David Rampersad, who is now deceased, having died on the 9th May 2011, in his Witness Statement, reaffirmed the Defendants position that the Claimant and his father had ploughed a portion of the said land in 1993 and erected a chattel house on a small portion of the said land and began living there in or about the year 1996.

34. He verified the Defendants' claim that there were no further trespasses in 1994 and 1995 but that in 1996 the Claimant erected a wire fence enclosing the whole portion of the said land.

35. He testified that the Defendants on several occasions spoke with the Claimant about his trespass but the Claimant continued occupation and constantly abused and cursed the Defendants. According to Mr. Rampersad, the said land is situated approximately 200 feet from the northern boundary of his land.

The Claimant's claim of Adverse Possession

36. The Claimant pleaded their entitlement to the said land by way of adverse possession.

37. The **Real Property Limitation Act Ch. 56:03 sections 3**, provides:

> "**3.** *No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same."*

38. Thus, the Claimant in the instant matter must show (a) factual possession of the land for a period of 16 years before the commencement of an action for possession; and (b) the *animus possidendi*, or the intention to possess the land and exclude the paper title owner so far as is reasonably practicable: ***Megarry's Manual of the Law of Real Property. A.J. Oakley; 8th Edn pgs. 551-552***

39. In the instant case, it is not in debate whether the Claimant had been in factual possession of the said land nor is it being contended that the Claimant did not have the necessary *animus possessendi*. What is in dispute is whether the Claimant had been in possession of the said land for the statutorily required time, that is a period of 16 years preceding the claim, to have the effect of ousting the Defendants' entitlement to possession.

40. The Claimant did not give a precise date as to when he began his occupation of the said land, either in his Witness Statement or otherwise. He sought to establish his occupation of the house which he built by reference to the birth of his son and his marriage but he has also given the date of neither.

41. At paragraph 2 of his Witness Statement, the Claimant stated that his oldest son was fifteen years old. This, from the tense of the Witness Statement, would have by implication meant fifteen years old at the time of filing the Witness Statement in March 2010. It would mean that at the time of filing the action his son would have been about ten years old.

42. He stated further, that he started to stay permanently where he now occupies about two years before he was married and that his son was born about three and a half years after he was married. This meant that he began his occupation of his house some fifteen and a half years before the filing of this action. Consequently, when he testified in his Witness Statement that at the 3rd March 2010, he had been in continuous occupation of the said land for about twenty (20) years, this could not possibly be correct as the instructive date for the purpose of these proceedings is the date of filing the action.

43. The Court therefore did not believe the Claimant when he stated that he had been in continuous occupation for about twenty (20) years. In submissions, the Claimant agreed with the estimation but has erroneously relied on the date of the Witness Statement as being the operative date of calculation.

44. By his evidence therefore the Claimant had placed his possession of the house he now occupies within less than sixteen (16) years.

45. It was clear on the evidence, that the house occupied by the Claimant, was not the same as the house occupied by his great grandfather, grandfather and father, which according to him is situated on the western side of the house he occupied and which itself is now occupied by his brother Parmanand.

46. In his Witness Statement the Claimant stated that he was given a garden shed, in local parlance an ajoupa, when he left school and he turned that ajoupa into a house over the years. The inference can only be, from his evidence that the house he occupied stood in the stead of the ajoupa. The Court noted that with regard to the age that the Claimant left school, no evidence was given of his age at all. So that attempting to make an inference in relation to the ajoupa with reference to the age that the Claimant left school is not possible.

47. In total, the Claimant therefore appeared to be saying, by inference that his father gave him the ajoupa when he was just out of school, but he did not permanently live there until he converted it to a house. The Court noted that the manifest failure of the Claimant to give dates or even an average of dates resulted in the Court having to draw inferences from the evidence which themselves may not be precise due to the state of the evidence.

48. Further, the Claimant accepted in cross examination that the ajoupa may have in fact been situated on land belonging to another person as he was unsure as to the precise boundaries at the time.

49. The Court therefore found that there was not continuous occupation of the said ajoupa to bestow the Claimant with possession of the land upon which it stood even if one accepted that it existed where the house now stands. While the Claimant may have had the necessary animus to occupy the area upon which his house is situated, the Claimant failed to prove on a balance of probabilities that he so possessed for the statutory period required to extinguish the title of the Defendant.

50. The court found there to be a particularly disturbing aspect of the Claimant's evidence in cross examination which impacted gravely on his credibility. What appeared to be two survey plans were put into evidence. Both plans appeared to be similar in so far as they show the same property. However the area allegedly occupied by the Claimant is coloured over in each plan. The coloured area on one plan however seems to cover a larger area than the coloured area on the other. The larger coloured area appears to be in keeping with the area set out in the Defendant's title. The Claimant admits in cross examination that he was not aware of the boundary of his occupation until he received the survey plan from the Defendant. And even then, according to him he was still not aware of the boundary of his possession. He admits that he at first coloured the plan (the smaller portion) with the help of his brothers and he then adjusted the boundaries by colouring another copy of the plan (the larger portion). The court found that this was done by design in an attempt to bring his occupation in line with the boundaries of the land set out

in the Defendants' deed, the copy of the plan being handed over to the Claimant. This the court found was done in an attempt to bolster the case for the Claimant. The court noted that the Claimant agreed in cross examination that he and his brothers took the plan and *"fixed up the thing"*. This in the court's view had a deleterious effect on the credibility of the Claimant's evidence in relation to his claim for possession.

51. The Court found the Second Defendant to be forthright and believable and accepted her evidence that she supplied the plan to the Claimant as he appeared to be interested in purchasing the said land. The Court accepted the evidence of the Second Defendant that the Claimant subsequently shouted to her in October 2003 that he just wanted to see the papers and was not interested in buying the said lands after the documents including the survey plan were handed over to the Claimant in 2003 by the Defendants.

52. The Court also accepted the evidence of the Second Defendant that the Claimant only fenced the premises in 2005, after having received the survey plan. The Claimant in fact admitted that he erected a fence on two sides after the Defendants claimed the said land.

53. Having regard to the findings above the Court was not satisfied that the Claimant had proven on a balance of probabilities that he had been in possession and occupation of the entire parcel of land as described in the Defendants' deed and shown on the survey plan prior to erecting the fence in 2005, this action having commenced in 2005.

Adverse Inference

54. The Court noted that although Richard Mollineau gave a Witness Statement on behalf of the Defendants, he was not called as a witness for the Defendants in the proceedings and no reason was offered for his absence.

55. It has been established that where a party does not call a witness who has given a witness statement touching on a relevant matter who is not known to be unavailable and/or who has no good reason for not attending, and the other side has adduced some evidence on the relevant matter, the trial judge is entitled to draw an inference adverse to that party and to find that matter proved. See ***Wisniewski v Central Manchester Health Authority [1998] P.I.Q.R. p 324; Ramroop v Ganeias and others*** CV 2006-00075 HC of T&T. However, the party seeking to rely on such an inference must establish a *prima facie* case on the matter in question.

56. In ***Wisniewski (supra)*** the Court of Appeal considered the case of ***Mc Queen v Great Western Railway Company*** (1875) L.R. 10 Q.B. 569**.** In that case Cockburn C.J. explained at page 574 that if a *prima facie* case is made out against a party and it is capable of being displaced and that party omits to call particular witnesses or give evidence then the inference arises that the lack of the evidence can be due to the fact that even if adduced the evidence would not displace the *prima facie* case.

57. In ***Wisniewski*** the Court set out the following principles:

"(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."

58. Thus the Court must be satisfied first that a prima facie case had been made out on a material issue or that there is a case to answer on that issue. It is then for the Court to consider whether the proposed witness may have been expected to give material evidence on that issue. If the answer is yes, the Court must then have regard to the reason for the witness' absence and can then draw adverse inferences due to the absence of evidence.

Prima facie case on a material issue

59. As previously stated the Court did not consider the Claimant's evidence to be credible on the issue of possession. Notwithstanding the weakness of the Claimant's evidence, there was a case to answer on the issue of possession. Thus a *prima facie* case was made out on a material issue as the establishment of the element of possession is pivotal to the case for the Claimant.

Was Mr. Mollineau expected to give material evidence on that issue.

60. In considering whether Mr. Mollineau was expected to give evidence on the issue of possession, the Court considered the evidence proffered by the Second Defendant.

61. The evidence of the Second Defendant was that when she and the First Defendant visited the said land to pick fruits around 7th January 1993, they noticed a half lot of the said land was ploughed and two persons were planting vegetables on the said land. On enquiring, the Second Defendant gave evidence that Mr. David Rampersad identified the Claimant and his father as the persons responsible for the cultivation and informed the Defendants that the Claimant and his father were, at the time, squatting on lands belonging to Mr. Mollineau.

62. The evidence of Mr. David Rampersad, provided in his Witness Statement, was that he had been questioned by the Defendants in 1993 about the persons responsible for cultivating a portion of the said land and that he identified the Claimant and his father as the culprits. He confirmed that the Claimant and his father were at that time squatting on lands belonging to Mr. Mollineau, the brother of the Claimant's father.

63. Neither the Second Defendant, nor Mr. Rampersad in his Witness Statement, gave evidence of the exact location of Mr. Mollineau's land. The question of the Claimant's occupation prior to 1993 and up to 1996 when the Defendants alleged that the Claimant erected a wooden structure on the said land is important to the issue of whether the Claimant was in possession of the said lands for the statutorily required period. Thus, Mr. Mollineau's evidence of the Claimant's alleged occupation of his land until 1996 may have been expected in order to displace the issue of possession.

Did the Court draw an adverse inference.

64. Having regard to the fact that there was no explanation for the absence of the witness Mr. Mollineau, he having given a Witness Statement, the Court was entitled to draw an adverse inference against the Defendants on this issue.

65. However, to do so in the face of what the Court considered to be clear evidence from the Second Defendant on the same issue coming from not only the Second Defendant but also from the witness Rampersad, coupled with the cross examination of the Claimant

which severely impacted his credibility and from which evidence favourable to the Defence on the very issue was elicited, would not have led to a fair assessment of the evidence.

66. It is not the duty of a party to call every witness which may speak to the facts which they allege exist. In some cases one witness may be enough. The absence therefore of the witness Mr. Mollineau in the absence of an explanation, given the evidence in this case, was not sufficient for the court to draw an adverse inference against the Defendants on the main issue of possession and so the court drew no such inference.

67. The court did however consider the absence of the witness in the round when considering the credibility and reliability of the case for the defence as a whole, and concluded that his unexplained absence was not sufficient on its own to create an impact on the credibility and reliability of the case for the either party.

The Defendant's Counter-Claim for possession

Claimant's Submission

68. Counsel for the Claimant submitted that the Defendants' bare assertion that they purchased the said land by Deed dated 22nd April, 1988 and registered as Deed No. 7873 of 1988 was inadequate in their claim for possession.

69. Counsel averred that the law necessitates proof of a sufficient root of title of twenty year and all the links from that root to their present title.

70. Counsel for the Claimant cited the case of ***Randolph B. Murray v Hendrickson Biggart H.C.A. No. T101 of 1998 (Trinidad and Tobago High Court)*** as authority for this proposition. **Smith J** stated the law at page 3 of the judgment:

> *"Unless a Defendant is in possession of land with the consent of a Plaintiff (e.g. a tenant), a Plaintiff who seeks possession of land from a Defendant must prove his title to the land strictly. He must set out all the links in his title, showing a good root of title and establishing that he is the owner of the land. In a claim for possession, a Plaintiff succeeds on the strength of his own title and not on the weakness of the Defendant's title."*

Defendants' Submissions

71. Counsel for the Defendants disagreed with this proposition of law. He claimed that the last two lines of that statement were not aligned. That is, that, "*He must set out all the links in his title, showing a good root of title and establishing that he is the owner of the land. In a claim for possession, a Plaintiff succeeds on the strength of his own title and not on the weakness of the Defendant's title".*

72. In examining the last line in the statement of law, Counsel for the Defendants concluded that the effect of the statement was to impose a burden on a Claimant, in an action for possession claiming through title, **to show that he has a present right to possession** and

not, as is propounded in the second sentence to the statement of law, that he must set out all the links in his title to show a good root of title.

73. Counsel for the Defendants, therefore, did not agree that the Claimant's title must be subject to an examination to evaluate its strengths and weaknesses. Counsel, in his arguments, referred to several cases all affirming the proposition of law in ***Randolph B. Murray v Hendrickson Biggart (supra)***, and concluded that the statement of law has been wrongly interpreted. Particularly, Counsel submitted that the cases wrongly assumed that proof of title was the only method by which possession may be recovered and that the Claimant was obliged to set out the links in his title.

74. Counsel for the Defendants, referring to the case of ***Ramnarine Ramdhan and Sookhandaye Ramdhan v Nora Solomon (unreported) H.C.A. 522 of 1975 (Trinidad and Tobago High Court)*** submitted that the rationale used in that case for requiring proof of title for forty years was wrong. He was of the opinion that the learned trial judge, **Mustapha J**, had erroneously interpreted the statement of the law in the case of ***Olga Charles v Harrichand C.A./Civil No. 50 of 1960 (Trinidad and Tobago Court of Appeal)*** that it was necessary to show that the vendor of the lot had a right to sell, that is a title which could be passed to mean proof of title for forty years.

75. Counsel for the Defendants therefore submitted that there were three methods by which a Claimant may set out his case in an action for recovery of land. He proposed:

(i) *He may rely on the strength of his pleading absolutely in such a case he must set out the relevant parts of title to show it devolving a good title onto him;*

(ii) *He may claim that the Defendant is stopped from denying his title; or*

(iii) *He may claim prior possession where he has been wrongfully ejected by the party in possession.*

The Law

76. The law on the requirements in a claim for possession by title has been stated and restated in a number of cases. In ***Randolph B. Murray v Hendrickson Biggart (supra)***, a case on which Counsel for the Claimant relied, the law was stated in no imprecise terms at page 3 of the judgment. The Court unequivocally stated that there was no dispute that the relevant root of title had to be deduced to 30 years. The issue in that case was whether the documents presented by the Plaintiff could be considered a good root of title. In holding that the Deeds of Assent offered as proof of title were not sufficient, the Court concluded that since the Plaintiff failed to prove his title to the land, he could not prove that he was entitled to possession as against the Defendant.

77. In ***Bhupane Tewari v Sherrick Solomon Ishmael; Bhupane Tewari v Juliette Nisha Boos CV2006-01895; CV 2006-01896 (High Court Trinidad and Tobago)*** **Pemberton J** in answer to the question of what the Claimant must plead and prove in order to

succeed in an action, affirmed the law as that propounded in ***Randolph B. Murray v Hendrickson Biggart (supra)***. The Court found that in not pleading his case in accordance with the requirements of pleadings in matters such as these and his failure to put into evidence his title (deed) his claim could not succeed.

78. In ***Dileni David v Vishnoo Jaimungal CV 2009-04646 (Trinidad and Tobago High Court)*** **Boodoosingh J** in giving judgment agreed with the statement of law in ***Olga Charles v Harrichand (supra)***. In that case, Counsel for the Defendant invited the court to strike out the claim under Part 26 of the CPR on the basis that the statement of case disclosed no grounds for bringing the claim since the claimant had not proved his title as required showing a good root of title for twenty years. Counsel proposed that the Deed presented was incapable of forming a good root to title. The Court, relying on s. 12(7) of the Conveyancing and Law of Property Act Chap 56:01, found that since at the time the Claimant contracted with Mohammed for the assignment of his term of interest in the property in 1996 they would have been relying on a Deed from 1966, the recitals were sufficient proof of title and so declined the application to strike out the claim.

79. In ***Merle Thomas v Aslyn Campbell Petty Civil Appeal No. 5 of 1996 (Trinidad and Tobago)*** an appeal was filed on the ground that, inter alia, the Petty Civil Court judge had erred in law in holding that the appellant had not proved title to the disputed land. The appellant claimed title by Deed and the Court had to decide whether the appellant had established a sufficient title to recover possession. Counsel for the appellant had relied on the case of ***Ocean Estates Ltd. V Norman Pinder (1969) 2 A.C. 19 (Privy Council)*** for

the proposition that the appellant was not required to prove her title other than by presentation of a deed. The Court of Appeal found no reason to go against the authority of ***Olga Charles v Harrichand (supra)*** and consequently reaffirmed the law in the area and dismissed the appeal.

80. In ***Ocean Estates Ltd. V Norman Pinder*** *(supra)* the issue of title was raised in the Court of Appeal of the Bahamas. The Court of Appeal, in upholding the established law found that although title was proven at trial, it was proven for a period less than the thirty years statutorily required and considered the Plaintiffs as being in no better position than if they had no documentary title at all. For that reason, the Court treated the action as if it were one between trespassers, and held that the Plaintiffs had failed to establish a possessory title. The Privy Council had a contrary view and said at pages 24 and 25:

> *"In their Lordships' view the question of what documentary title a vendor is entitled to insist on forcing upon a purchaser has no relevance to the present action. At common law as applied in the Bahamas, which have not adopted the English Land Registration Act, 1925, there is no such concept as an "absolute" title.* ***Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants****. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon the land was made as a trespasser a plaintiff who can prove any documentary title to the land is*

entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser.

In the present case, where the defendant made no attempt to prove any documentary title in himself or in any third party by whose authority he was in occupation of the land it would have been sufficient for the plaintiffs to rely upon the conveyance of the land to themselves of March 30, 1950; for where a person has dealt in land by conveying an interest in it to another person there is a presumption, until the contrary is proved, that he was entitled to the estate in the land which he purported to convey. In fact, however, the plaintiffs went further than was strictly necessary. They proved a devolution of title going back through a series of intervening conveyances to the conveyance of the fee simple in the land by Mrs. Key to the Chipper Orange Co. Ltd. of May 3, 1937*."[emphasis mine]*

81. The very recent case of ***Baby Nagasar v Xavier Goodridge CV 2009-00771 (Trinidad and Tobago High Court)*** considered the implication of the judgment in ***Ocean Estates Ltd. V Norman Pinder (supra)*** on our jurisdiction. At paragraph 57 of the judgment **Rampersad J** opined that the decision in ***Ocean Estates Ltd. V Norman Pinder (*****supra)*** was a turning point with respect to the issue of proof of title in actions for possession in our jurisdiction moving from a requirement for absolute title to one of relative title instead, he said:

"57. It is this court's respectful view that the decision of the Privy Council in Ocean Estates was a major turning point in respect of this issue of the proof of title in actions for possession in our jurisdiction – moving from a requirement for absolute title to one of relative title instead. This court finds it rather difficult to understand the correlation between an action for possession and the imposition of the proof of title required under the Conveyancing and Law of Property Act (formerly Ordinance). In fact, the Privy Council confirmed this quite clearly when Lord Diplock said:

> *In their Lordships' view the question of what documentary title a vendor is entitled to insist on forcing upon a purchaser has no relevance to the present action."*

82. In ***Baby Nagasar v Xavier Goodridge (supra)*** my brother **Rampersad J** explored the issue of whether a Defendant claiming possession of disputed property by asserting title is required to prove a sufficient root of title to succeed in the claim.

83. The learned judge reasoned that ***Ocean Estates Ltd. V Norman Pinder (supra)*** was a Bahamian case, which territory's legal framework and principles on the issue were the same as that which applied in our jurisdiction. Consequently, the Court considered whether they were at liberty to depart from ***Olga Charles v Harrichand (supra)*** and accept the reasoning put forward by the Privy Council in ***Ocean Estates Ltd. V Norman Pinder (supra)***.

84. The Court in ***Baby Nagasar v Xavier Goodridge*** concluded that the Claimant had satisfied the burden of proof in respect of her title as per the requirements in ***Ocean Estates Ltd. V Norman Pinder (supra)*** and consequently was entitled to succeed on her claim for possession.

85. In this regard, this Court sought assistance and invited further submissions in writing from Counsel on this issue and in particular the effect of the case of ***Baby Nagasar v Xavier Goodridge*** *(supra).*

86. The Claimant filed further submissions in this regard, but at the date of delivery of the oral decision in this matter the Defendants had not and had given no explanation for so doing.

87. The dicta articulated in ***Baby Nagasar v Xavier Goodridge*** *(supra)* supported the contention that the burden on a Claimant, in an action for possession claiming through title was simply to show that he has a present right to possession.

88. These proceedings raised the issue as to which of the parties was entitled to possession of the premises as an issue between them only. The Claimant appeared to be relying on the length of his possession to oust the right to possession of the paper title holders who in turn were relying inter alia on their paper title as conferring a right to possession. This was not a case of two competing titles per se. Nor was it a case of a vendor forcing a title on another pursuant to an agreement for sale.

89. The Court did not have to be satisfied that as against the world, the Defendants had a good title but the Court only has to be satisfied that as between the parties to this action, the Defendants' entitlement to possession is better than those competing for it. This appeared to be the rational expressed in the decision of **Hamel-Smith JA** in ***Bernadine Seebaran Guy v Selwyn Baptiste CA appeal No.12 of 2001 (Trinidad and Tobago Court of Appeal)***.

90. The facts in ***Bernadine Seebaran Guy v Selwyn Baptiste (supra)*** are somewhat similar to the present case. The appellant had taken possession of a parcel of land owned by the NHA in Arima comprising approximately Six Thousand, Two Hundred and Fifty (6250) square feet. She built a house on the land and lived there for less than 16 years. In 1996, the respondent trespassed on approximately Three Thousand (3000) square feet of the land and erected a shack thereon. According to the appellant, the respondent did not live there but came there from time to time.

91. It was this admission of 'squatting' however that led to the no-case submission that was up-held by the Judge. The respondent had submitted that the appellant had no title to the land and therefore had no right to dispossess him. Counsel for the appellant on the other hand had contended that there was no need to prove title since the appellant had actual possession of the land.

92. At the hearing of the appeal, counsel for the appellant repeated his submission and contended that the Judge was wrong in law to conclude that the appellant had to prove 'title' in order to sustain a claim for possession in the circumstance of this case. **Hamel-Smith JA** delivering the decision of the court had this to say:

> *"The submission of counsel for the appellant is correct. This was a claim by a person in actual possession of a parcel of land against a trespasser who has not shown that he had a better right or interest to the land. The law is clear on the point. If a trespasser peaceably enters or is on land, the person in actual possession or the person entitled to possession may request him to leave, and if he refuses to leave may remove him from the land, using no more force than is reasonably necessary (see* ***Hall v Davis*** *(1825) 2 C & P 33). To justify the expulsion of a trespasser, however, the person must be in possession or acting under the authority of the person in possession. (see* ***Monks v Dykes*** *(1839) 4 M & W 567). If resort to legal proceedings is required, it is open to the Court in its discretion to grant an injunction preventing further trespass. (see* ***Kelsen v Imperial Tobacco Ltd*** *[1957] 2 All E.R. 342)*
>
> *It follows that the person in possession can maintain an action against the trespasser to recover possession without having to prove 'title', whether the property is realty or personal. Possession is the key to recovery in such circumstances.*
>
> *It seems to me that counsel for the respondent misconstrued the true nature of the claim, obviously led on by the relief claimed viz., possession of the land and from*

*the authority he relied upon (**Murray v Biggart** HCA 1101/98 (unreported)). In that case there was no suggestion that the plaintiff was in actual possession. The plaintiff's case was that he was owner of the land, having acquired it by way of two deeds of assent that he produced as proof of title. **The plaintiff was obviously seeking to regain possession on the strength of his title only**. The trial Judge found that title had not been proved and dismissed his claim for possession.*

When the chaff is dusted off and the particulars of claim are gleaned in their proper perspective there is little doubt that in the instant appeal the claim is in trespass brought by a party in actual possession with the consequential relief being the recovery of land. In those circumstances, all the appellant had to establish was that she was in actual possession of the land and that the respondent had entered the land without her consent. Whether the appellant was a 'squatter' or otherwise was not material to the claim."

93. The evidence in the present case on the part of the Defendants from the Second-named Defendant showed that since purchase in 1988, the Defendants visited the said land periodically to pick fruits and to ensure that there were no trespassers on the said land.

94. It appeared from the evidence that from the time of purchase by the Defendants there were no trespassers on the said land up until the Defendants noticed a part of the said land had been ploughed by the Claimant in 1993. So that, as testified to in cross-examination by the Second Defendant, the Defendants visited the said land and picked

fruits and ensured that there were no trespassers thereon for some five (5) years before the Claimant moved onto the said land.

95. The Defendants therefore asserted their rights of ownership over the subject land by, inter alia, their presence thereon and their actions in securing same. It is to be noted that the Defendants accepted that the Claimant's father was living on land situated to the west of their land since 1975 but not on their land.

Conclusion

96. It was therefore the Court's finding that having regard to the evidence set out above, the Defendants were in possession of the subject land since their purchase in 1988 and prior to the occupation by the Claimant. Further therefore, having regard to the Court's findings in relation to the length of occupation of the Claimant, the Claimant is in law a trespasser.

97. Consequently, the Court found that the paper title holder who entered into possession pursuant to that title is entitled to reclaim possession from the person who trespassed unto the said land some five (5) years later with no claim to a better title, right or interest to the said land. Therefore, the Defendants' claim stands not only by virtue of their paper title but also by their actual possession in respect of which there has been an attempted ouster.

98. This Court accepted and is bound by the authority of ***Guy v Baptiste*** which remains good law. The principles set out therein remain applicable to the circumstances of this case.

99. While this Court makes no pronouncement on whether the case of ***Ocean Estates*** ought to be followed, there being in the Court's view, adequate applicable authority from the Court of Appeal having regard to the circumstances of this case, the Court does note that although their Lordships did not refer to ***Ocean Estates*** in ***Guy v Baptiste***, the ratio decedendi in ***Guy v Baptiste*** is not necessarily inconsistent with the principles set out in ***Oceans Estate***.

Dispensation

100. The Court therefore gave the following judgment on the 27th January 2012:

> 1. *The Claim is dismissed.*
> 2. *The Claimant is to deliver up possession to the Defendants of ALL AND SINGULAR that certain piece or parcel of land situate at Circular Street, Princes Town in the Ward of Savana Grande in the Island of Trinidad being portion of "Hope" Estate comprising EIGHTEEN THOUSAND SEVEN HUNDRED AND NINETY-FOUR SUPERFICIAL FEET more or less shown coloured pink on the plan marked "C" annexed to the Deed registered as Number 18327 of 1975 and bounded on the North partly by a drain reserve six feet wide, partly by Lot Number 7A and partly by a road reserve twenty feet wide on the South partly by a drain reserve six*

feet wide and partly by Lot Number 16A on the East by a ravine reserve twenty feet wide and on the West partly by Lot Number 7A and partly by a road reserve twenty feet wide being the lands described in the Schedule to Deed Registered as number 7873 of 1988.

3. *The Claimant shall pay to the Defendants nominal damages for trespass in the sum of $5,000.00.*
4. *The Claimant shall pay the prescribed costs of the Defendants on the Claim assessed in the sum of $14,000.00.*
5. *The Claimant shall pay the prescribed costs of the Defendants on the counterclaim assessed in the sum of $14,000.00.*
6. *There shall be a stay of execution of 90 days in respect of the order for possession.*

Dated this 28th day of March 2012

Ricky Rahim

Judge