THE REPUBLIC OF TRINIDAD & TOBAGO

IN THE HIGH COURT OF JUSTICE, SAN FERNANDO

Claim. No. CV2009 – 01979

BETWEEN

DANIEL SAHADEO
ABRAHAM SAHADEO
AGNES SULTANTI
SELEINA SAHADEO

Claimants

AND

PERCIVAL JULIEN
ROLAND JULIEN
BRIAN JULIEN
SUSAN JULIEN

Defendants

BEFORE THE HONOURABLE JUSTICE RICKY RAHIM

Appearances:

Mr. R. Bissessar instructed by Ms. J. Maicoo for the Claimants.

Mr. S. Marcus S.C. instructed by Ms. D. James for the Defendants.

Judgment

1. This is a claim for possession of land. The land in dispute is situate in the Ward of Naparima.

2. The Claimants along with Nathaniel Sahadeo (deceased) were, by virtue of Deed of Conveyance dated 4th July 1975 the joint registered owners of a 6A 2R and 28P parcel of land situated in the Ward of Naparima ("the said land"). Following the death of Nathaniel Sahadeo in 1995, the Claimants by survivorship became the registered legal owners of the said land. The Claimants claim that when they became the registered owners of the said land the First Defendant and his mother were in occupation of parts of the said land as tenants ("the tenanted land'). This tenanted land, according to the Claimants, comprised of **two acres of agricultural land and one lot of building land**. Specifically, the Claimants claim that the building lot included in the tenanted land is a lot known as Lot No. 3. Additionally, the Claimants aver that the Defendants have extended their occupation from the tenanted land and now occupy an additional two acres of agricultural land and three building lots ("the trespassed land"). Thus, the Claimants claim that the Defendants are now in occupation of a total of four acres of agricultural land and four lots of building land.

3. Although the Defendants admit that the Claimants are the owners of the said land and that they occupied part of the said land as tenants, they dispute the Claimants' claim in the following way:

    i. That the agricultural land forming part of the tenanted land comprises of **two acres and eight lots of agricultural land and one lot of building land**.
    ii. That they did not expand their occupation from the tenanted land to the alleged trespassed land.

iii. That the First Defendant became a tenant at will in or about 1988-1989 and thereafter continued in uninterrupted possession and occupation of the tenanted land for upwards of 16 years before the bringing of the present action thus extinguishing the Claimants right and title.

4. The First Defendant, Percival Julien (now deceased) and his mother Edith Julien (now deceased) were the original tenants of the tenanted land rented to them by one John Assing. The First Claimant subsequently became the owner of the said land and landlord to the First Defendant. The Second, Third and Fourth Defendants are the children of the First Defendant and they resided in the dwelling house on the tenanted building land with him. The First Defendant's wife predeceased him and the Second, Third and Fourth Defendants are accordingly his surviving heirs and successors.

Issues

5. The issues to be determined thus are:

i. Whether the agricultural land forming part of the tenanted land comprised **2 acres** as alleged by the Claimants or **2 acres and 8 lots** as alleged by the Defendants.

ii. Whether the Defendants are in occupation of the trespassed land as alleged by the Claimants.

iii. Whether the First Defendant was a tenant at will and has been in continuous and uninterrupted possession and occupation of the tenanted lands for upwards of 16 years before the commencement of action in relation to the land and has thereby extinguished any right title or interest of the Claimants.

iv. Whether the Defendants are liable to pay the amounts claimed by the Claimants as arrears of rent.

The First Issue

6. Harvey Ramrekha a licensed land surveyor gave evidence on behalf of the Claimants. He testified that he was retained by the Claimants to conduct a survey of the said land for the purposes of determining the location of the Defendants' occupation. He conducted site visits of the said lands on the 20th and 26th January 2010 and prepared a Cadastral Sheet dated 28th January 2010. His finding in relation to the agricultural land was that the Defendants occupy 2 acres 3 rods and 12.5 perches.

7. It was submitted on behalf of the Defendants that Nathaniel Sahadeo himself referred to the tenanted agricultural land as comprising 2 acres and 8 lots in his application for fixing and certification of rent for the tenanted agricultural land before the Agricultural Tribunal. However, the court notes that there is an amendment on this very application which reads:

   "Amended to read 2 acres and not 2 acres 8 lots"

8. It was also submitted on the Defendants' behalf that the first receipt for payment of rent to the original landlord, John Assing, exhibited to the witness statement of Percival Julien, refers to the tenement being **"two (2) Acres and Eight (8) Lots'.**

9. The court notes that throughout the proceedings in the Agricultural Small Holdings Tribunal and even on appeal, the tenanted agricultural land was dealt with as comprising 2 acres. Although the receipts from the previous owners described the tenanted agricultural land as 2 acres and 8 lots, the court will not depart from the description adopted at the tribunal and on appeal.

10. The evidence of the surveyor, by his own admission was collated from the use of old survey plans and what was told to him by the First Claimant. He testified in cross examination that when he visited the land to survey, the First Claimant and his brother

was there and that they pointed out certain points of the land to him. He explained that he relied on the survey plan for his perception of what was occupied and together with what was told to him on the field by the First Claimant, he came to the conclusion contained in the Cadastral Sheet dated 28th January 2010. Unfortunately Mr. Ramrekha has not provided the court with the survey plan of which he had recourse, in order to aid the court in understanding how he came to the conclusion about the lands occupied by the Defendants. Additionally, this older survey plan may have assisted the court in ascertaining what comprised tenanted land as opposed to what the Defendants now allegedly occupy in total. The evidence of this witness thus carries very little weight in relation to ascertaining what the **tenanted land** had been.

11. The court finds as a fact therefore that the tenanted land comprises 2 acres agricultural land and 1 lot of building land.

The Second Issue

12. The First Claimant in his evidence testified that after the death of his father, the Defendants "made a grab for" the alleged trespassed land. He testified that they started cultivating an additional acre of agricultural land and planting short crops of the additional 3 lots of building land.

13. The Defendants argued that for the first time in over 40 years of dealings between the original tenants and original landlords has there been a reference to building lots numbered **1, 2, 3 and 4**. Further, it was argued that for the first time the building lot occupied by the Defendants has been referred to as building lot **No. 3**. It was contended that previously there was only one building lot identified, that building lot being the one occupied by the presence of the residential building of the Defendants.

14. It seems to the court that the Defendants have not specifically denied this allegation of occupying more than was tenanted to them, but have argued that there have not been defined plots of land. They argue that the allegation is that they are in occupation of lands, which have not been defined and demarcated, and have encroached on adjacent lands. It was therefore submitted that it is incumbent on the Claimants to demonstrate to the court where the Defendants were in lawful occupation and where the trespass occurred.

15. The Defendant's case thus is that those Lots known as Lot 1, 2, and 4 were cultivated by the Defendants since before the Claimants' father died having never been known as building lots to them.

16. The evidence of Mr. Ramrekha was that the Defendants are now in occupation of 2 acres 3 rods and 12.5 perches of agricultural land and four lots of building land with a dwelling house on only one lot. He testified in cross examination that the information on occupation that he put in pink on the survey plan was a combination of what he was shown and what he saw. However, in relation to Lots 1, 2 and 4 he gave evidence that he saw nothing on the land to indicate that they were occupied and that the lots were vacant. He explained that there was bush but that nothing stood out in particular. He testified that his reason for describing the three lots as building lots was because of location which was that they were nearest the road although he testified that the fact that land adjoins a main road does not preclude it from being agricultural land.

17. In cross examination the First Claimant admitted that no measurements were done to determine the boundaries of the tenanted land but he testified that he heard his father refer to it as Lot 3. He stated that he saw a mango tree and a few bananas on Lots 1, 2 and 4 but there were no other trees just shrubs.

18. Trespass to land is the unwarranted intrusion upon land and interference with certain interests in land in the possession of, or belonging to, another. The intrusion may take the

form of entry onto the land itself by foot or vehicle or other means. In order to succeed in its claim the Plaintiff must therefore, satisfy the Court on a balance of probabilities that- (i) at the time of the alleged trespass it was in lawful possession of the land that is the subject matter of the complaint; and (ii) the Defendant wrongfully entered the said land: ***National Spiritual Assembly of the Baha'is of Trinidad and Tobago v Winston Chen H.C.1833/2004***.

19. Having found previously that the Defendants were tenanted 2 acres of agricultural land and one lot of building land, the court is of the opinion that any occupation in excess of what was tenanted is a trespass. Although Mr. Ramrekha stated that he saw nothing on the Lots 1, 2, and 4 to indicate occupation, the Defendants' case, as put to the First Claimant in cross examination, was that those lands known as Lots 1, 2, and 4 were cultivated by the Defendants even before the First Claimant's father died.

20. The court is guided the words of Rajnauth-Lee J (as she then was) in ***Disha Moorjani v Deepak Kirpalani and Ors CV 2007-00485:***

> *"... the Court must take special care in examining what these deceased persons said or did not say, and did and did not do. The evidence ought to be thoroughly sifted and jealously scrutinized and the mind of the court ought to be in a state of suspicion."*

21. The Defendants are attempting to argue that the 8 lots of extra agricultural land are in fact, Lots 1, 2 and 4 and that these were occupied by them prior to the deceased's death. It is not a case where the Defendants are asserting that they are not in occupation, but they are saying that the land was never known as Lots 1, 2, 3, and 4 and that they have always been in occupation. The court notes that the evidence on behalf of the Defendants have not been tested in cross examination. The onus however lies on the Claimants to show that the (i) at the time of the alleged trespass they were in lawful possession of the land that is the subject matter of the complaint; and (ii) the Defendant wrongfully entered

the said land. The court accepts the evidence of the Claimants and finds that (i) at the time of the trespass the Claimants were in lawful possession of the trespassed land and (ii) the Defendants, by their own admission, entered the trespassed land, and wrongfully so.

22. Thus the court finds that the Defendants have trespassed on the Claimants land to the extent that their occupation exceeds the tenanted area of **2 acres agricultural land and 1 lot of building land**.

The Third Issue

23. The Defendants submitted that the First Defendant became a tenant at will of the Claimants both in respect of the agricultural lands and the building lots from 1989 and since more than sixteen years have passed since the proceedings were filed by the Claimant (2nd June 2009) that the Claimants' title has been extinguished by virtue of section 3 of the ***Real Property Limitation Act Chap 56:03***.

24. The Claimants challenged the First Defendant's claim on two bases:-

    (1) The First Defendant has not demonstrated a sufficient degree of physical custody and control for 16 years or more of the tenanted lands (**"*the factual possession***"); and

    (2) The First Defendant has not demonstrated that he has had the requisite *animus possidendi*, that is to say, the intention to exercise control over the tenanted lands and to exclude the world for the requisite period of 16 years or at all ("***the animus possidendi***").

25. The Claimants submitted the claim of adverse possession must be carefully settled and the pleader must make it clear that this is the case which is being set up in defence of a claim for possession. Further, the Claimants contended that because the *onus* of establishing the defence of adverse possession is on the First Defendant, he must carefully and clearly identify the land which is the subject of the *plea*, establish where and when entry by the claimants became unlawful and the commencement date of the *animus possidendi*.

26. Thus, the Claimants contend that the First Defendant has not pleaded *when* his tenancy began or indeed ended. Although the Defendants aver at paragraph 2 of the defence that the First Defendant and Edith Julien came into occupation of the tenanted land and rely on a receipt dated 19th March 1960 issued by one John Assing the Claimants contend that there is no nexus or connection in the witness statement between the lands which are the subject of the adverse possession claim and the lands identified in the receipt.

27. The court cannot accept this argument. There is no challenge to the assertion that the Defendants were tenants on the land before the Claimants became the legal owners of the said land. In fact in previous proceedings the First Claimant admitted to the Defendants being tenants from 1975. The court is of the view that the Defendants plea of adverse possession is sufficiently clear: the Defendants claim to have begun possession in or around 1960. They claim that from 1988-1989 they became tenants at will having ceased payment of rent for the tenanted land. Whether these assertions are sufficiently made out for the claim of adverse possession to succeed is a question of evidence. Whether the Defendants have proven that they became tenants at will in 1989 at latest is a question to be determined on the evidence.

28. For the Defendant's claim in adverse possession to be made out he must prove both factual possession and an intention to possess the land. This factual possession should be exclusive, uninterrupted and ought not to have been by force, hidden or with the paper owner's permission. This factual possession must have been for the statutorily defined

period. He must also show an intention to take possession on his own behalf and for his own benefit to the exclusion of all other persons including the owner with the paper title so far as is reasonably practicable: ***JA Pye (Oxford) Ltd v Graham [2002]UKHL 30***.

29. Section 8 of the Real Property Limitation Act provides:

> *When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined.*

30. A tenant who holds over without paying rent, does so either as a tenant at will or tenant at sufferance dependent on whether there can be implied consent by the landlord, consent being required for the creation of a tenancy at will. Consent may be implied by acquiescence: ***Meye v Electric Transmission Limited [1992] Ch. 290***

31. Thus, if the court believes the evidence of the First Defendant, the Claimant's right to make an entry for recovery accrued one year after the Defendants allege the First Defendant became a tenant at will.

32. The evidence of the First Defendant is that sometime between 1984 and 1985 the First Claimant refused to accept rent payments, as he requested a higher sum. The Defendant testified that he attempted to pay the rent through the First Claimant's then attorney. In 1991 when the First Defendant attempted to pay two years arrears for rent due on both the building and agricultural lot, the First Defendant was unable to pay as the First Claimant's then attorney returned the cheque stating that he was no longer acting for the

First Claimant. The last receipt for payment of rent, submitted by the First Defendant was however for the period 1983 to 1984 with respect to the building lot of tenanted land.

33. There are two possibilities from the First Defendant's evidence; (i) that the last payment of rent being made in or around 1988 as evidenced by letter dated 3rd April 1991 forwarding a cheque for arrears of rent for two years; or (ii) that the last payment had been for the period ending 1984 as evident by receipt No. 4 dated 4th July 1984.

34. The First Claimant however, claims that the Defendants were in arrears with respect to the building lot of tenanted land from 1988 and with respect to the agricultural tenanted land from 1985.

35. Even if the court is to accept the First Defendant's evidence that the last rent payment would have been in or around 1988, and that he became a tenant at will from 1989, and the period to recover possession began to run from then on, the court has not seen on the evidence that this period would have been uninterrupted. The First Claimant made demands for rent on several occasions, through court action, by attorney's request in 1996 (letter dated 10th April 1996) and again by pre action protocol letter dated 22nd January 2008. There has not been 16 years of continuous and uninterrupted occupation by the First Defendant as a tenant at will. Further, by the Defendants' own admission, when the First Claimant offered the tenanted and trespassed land for sale by letter dated 10th April 1996, the Defendants claim:

> *"…their efforts to obtain financing to accept the Claimants' offer were unsuccessful since the lending institution claimed to have found the claimants' title defective."*

36. This averment is inconsistent with an intention to take possession on one's own behalf and for one's own benefit to the exclusion of all other persons including the paper title owner.

37. Further, the First Defendant has not satisfied the court of the exact period he became a tenant at will. The period being important in determining when time began to run for recovery of possession.

38. Having determined that the Defendants have trespassed onto the Claimants' land to the extent that their occupation exceeds the tenanted area of 2 acres agricultural land and 1 lot of building land the court must consider the subsidiary issue of whether the Claimants' right and title have been extinguished by reason of the Defendant's possession. In other words, has the Defendants been in adverse possession of the trespassed land.

39. As noted above, the Defendants must prove must prove both factual possession and an intention to possess the land. The factual possession must have been for the statutorily defined period of 16 years.

40. The Defendants' case, was that those lands known as Lots 1, 2, and 4 were cultivated by the Defendants even before the First Claimant's father died. However, the Defendants' evidence of when this is alleged to have occurred is severely lacking. No evidence has been brought to prove their assertion of possession, and like the tenanted land, the Defendants have not satisfied the court of the exact period when this occupation is alleged to have commenced in order that the court determine whether the statutorily defined period has lapsed.

41. Further, the principle at paragraph 36 above applies equally to the trespassed land. By his response by way of reply, supra, and the efforts to obtain financing for the trespassed lands, the Defendant has not demonstrated the required animus for possession of the trespassed land sufficient to avail him of the plea of adverse possession. His actions in actively seeking finance appeared to be a recognition on his part that he was in fact a

trespasser and is inconsistent with the actions of one who intends to possess exclusively to exclusion of the title holder.

42. Consequently, the court finds that the First Defendant has not made out a claim in adverse possession of either the tenanted lands or the lands upon which he has trespassed. His counter claim therefore is dismissed.

The Fourth Issue

43. The Defendants submit that the claim for arrears of rent is not maintainable, since the claim was filed on the 28th May, 2009 in respect of rent falling due between 1988 and 2008 (twenty years). According to the Defendants section 4 of the ***Limitation of Personal Actions Ordinance, Chap. 5. No. 6*** precludes the recovery of rent in arrears of **6 years** or more. Further, it was contended that when the ***Limitation of Personal Actions Ordinance*** was repealed by Section 21 of the ***Limitation of Certain Actions Act, No. 36 of 1997 (Chap. 7:09)*** the latter Act preserved the 6-year bar of Section 4 of **Chap.5. No. 6** thus:

> "*21. Nothing in this Act shall enable any action to be brought which was barred before the commencement of this Act by any enactment repealed by this Act …".*

44. The Defendants maintain that as the 1997 Act contained no provision similar to **Section 4 of** the ***Limitation of Personal Actions Ordinance*** prescribing a 6- year limitation period for the recovery of arrears of rent, then section 3 (1) (a) for **"actions founded on contract"** is the applicable provision for arrears of rent arising after 1997. Thus it was submitted that:

a. Rent due from 1988 to 1997 – ***Recovery barred*** by **Section 4 of** the ***Limitation of Personal Actions Ordinance*****.**

b. Rent due from 1997 to 2005 - Recovery ***barred*** by **Section 3 of the 1997Act.**

c. Rent due from 2005 to 2009 – (subject to what is said below on (a tenant at will prescribing by Adverse possession***) Recoverable.***

45. The Claimants submitted that section 3 (1) (a) of the **Limitation of Certain Actions Act Chap 7:09** provides that an action founded on contract is statute barred after the expiration of a four (4) year period. Having regard to this provision the Claimants contend that they are entitled to rent for a period of four (4) years rent predating their claim as follows-:

(i) one (1) lot building land at $36.00 per annum for the period 2005 to 2009; and

(ii) two (2) acres of agricultural lands at $32.00 per annum per acre from 2005 to 2009.

46. The court notes however that the **Limitation of Certain Actions Act** attributes the following definition to "action":

"action" means any civil proceedings in a Court of law other than those relating to real property;

47. Thus, it is clear from definition of "action" in the **Act** that this legislation does not cover actions relating to real property and neither the Claimants nor the Defendants can rely on it. The applicable legislation is the ***Real Property Limitation Act Chap 56:03*** and section

3 which prescribes a 16 year limitation for the recovery of land **and rent** is the applicable section.

48. The Claimants' claim rent from the period 1988 to 2008 with respect to the building land and 1985 to 2008 with respect to the agricultural land. If the court is to believe the Claimants on the issue of when rent became due, this is well beyond the 16 year limitation.

49. The court is faced with the same difficulty as with the Defendants' argument of when they became tenants at will. The evidence on the time period after which rent became due is lacking by both parties. The court is left to speculate as to when that period could have been. This the court will not do. For the purpose of determining this issue, if the court is to take the latest date proffered by both parties, 1989, it is clear that the Claimants are out of time in their claim for recovery of rent in any event from 1989 to 2009 when the action was brought. It has long been the case that the expiry of the limitation period serves only to bar the remedy and not to extinguish the right of action: **Halsbury's Laws of England Volume 68 (2008) 5th Edition, para 942**. Thus the action for the recovery of rent is barred in relation to the arrears accrued before the commencement of this claim. The limitation bars the right to the recovery of rent after the expiry of 16 years. However the existence of the tenancy is not dispute. The Claimant has acknowledged the existence of the tenancy by the filing of this claim. The Defendants themselves have also acknowledged the tenancy in their pleadings. Thus the court is of the view that the Claimants are able to recover arrears of rent from 2009 to the present in the following terms:

    (i) one (1) lot building land at $36.00 per annum for the period 2009 to 2013 (date of judgment) - $144.00.

(ii) two (2) acres of agricultural lands at $32.00 per annum per acre from 2009 to 2013 (date of judgment) - $256.00.

Damages

50. A plaintiff is entitled to nominal damages for trespass to land even if no loss or damage is caused: ***Halsbury's Laws of England Vol 12(1) PARA 870***.

51. In the present case, the court found that the Defendants have trespassed onto the Claimants' land to the extent that their occupation exceeds the tenanted area of 2 acres agricultural land and 1 lot of building land. The Claimants have however not proven any particular loss or damage, having not been able to show the court the specific extent of the Defendants' occupation.

52. In the circumstances the court considers the sum of $1000.00 to be an appropriate award of nominal damages for trespass to land.

53. The judgment of the court is therefore as follows:

a) Judgment for the Claimants as follows:
    i. The Defendants shall surrender to the Claimants possession of all that land occupied by the Defendants in excess of the two lots of agricultural land and one lot of building land tenanted to the First Defendant which land forms part of a larger parcel of land described in deed number 9219 of 1975.
    ii. The Defendants shall pay to the Claimants $1000.00 as nominal damages for trespass to land.

iii. The Defendants shall pay to the Claimants the sum of $400.00 representing rent due and owing for one lot of building land and two acres of agricultural land for the period 2009 to the date of judgment.

iv. The Defendants shall pay to the Claimants the prescribed costs of the claim in the sum of $14,000.00 on the basis of the value of the claim being treated as if it were a claim for $50,000.00.

b) The Defendants' counterclaim is dismissed.

c) The Defendants shall pay to the Claimants the prescribed costs of the counterclaim in the sum of $14,000.00 on the basis of the value of the counterclaim being treated as if it were a claim for $50,000.00.

Dated this 4th day of March, 2013.

Ricky Rahim

Judge