

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2009-04498

BETWEEN

ANGELA BADREE

Claimant

AND

NIGEL SINGH

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. P. Persad-Maharaj for the Claimant.

Mr. A. Rajkumar for the Defendant.

Judgment

1. This claim is for, *inter alia*, recovery of possession of a parcel of land situate at Palm Street, Williamsville ('the disputed land'). The land in question belonged to Caroni (1975) Ltd.

2. The claim shall be disposed of in manner hereinafter appearing. There shall be Judgment for the Claimant as follows:
 - i. The Defendant shall deliver up possession to the Claimant of ALL AND SINGULAR that certain piece or parcel of land comprising 2 Acres 2 Rods and 32 Perches bounded by the north by an estate trace on the south by an estate trace on the east by parcel C and on the west by parcel A and shown as parcel B on the survey plan of Harvey Ramrekha dated 15th June 2011 (hereinafter referred to as 'the disputed land').
 - ii. The Defendant shall pay to the Claimant nominal damages for trespass to land in the sum of \$10,000.00.
 - iii. The Defendant whether by himself, his servants, agents, or otherwise is hereby restrained from remaining upon or in any way trespassing on the disputed land.
 - iv. The Defendant shall demolish and remove the chain link wire fence erected by him and which encroaches upon or barricades the disputed land.
 - v. The Defendant shall pay to the Claimant damages for destruction of the Claimant's crops on the disputed land in the sum of \$50,000.00.
 - vi. The Defendant shall pay to the Claimant the prescribed costs of the claim in the sum of \$16,000.00.
 - vii. There shall be a stay of execution of 30 days.

3. The Claimant, a farmer, claims a possessory title over the disputed land having been in possession since 1975. According to the Claimant, she and her husband, Jattan Badree, went into occupation of the disputed land cultivating sugar cane and selling same to Caroni (1975) Ltd ('Caroni').
4. The Claimant avers that following the closure of Caroni in or around 2005, she began cultivating the disputed land with short crops such as cassava, corn, eddoes, string beans, black eye bodi, tomatoes, sweet potatoes and pumpkin.
5. This continued until 2008 when the Defendant on the 24th September 2008 unlawfully entered upon the disputed land and ploughed most of the land occupied by the Claimant destroying her crops. The Claimant also claims that the Defendant erected a wire fence across the disputed land, dug a drain to the side of the said land bordering the roadway and placed gravel on it preventing the Claimant from entering or accessing it.
6. Accordingly, on the 2nd October 2008, the Claimant complained to the Defendant about his unlawful trespass and damage to her crops. The Claimant avers that the Defendant alleged that he had bought 14 acres of land and that the Defendant along with other farmers, namely, Solomon David and Ramnarine Hanooman would all have to leave their land. According to the Claimant, the Defendant has refused to vacate the disputed land despite repeated requests.
7. The Defendant is a police officer and claims to be a lawful tenant of Caroni in respect of the disputed land.
8. The Defendant's case is that he and his family, including his father, Chaitnarine Singh, have been in occupation of three parcels of land, which includes the disputed land, at Palm Street, Williamsville since 1985. The Defendant avers that he resides with his family on one of these three parcels of land ('the portion of land') in a dwelling house constructed by his father in or around 1990. The Defendant claims that in 2002 he and his

father started to build a concrete structure on the portion of land and it is this structure in which the Defendant now resides. The Defendant says he began paying rent to Caroni in 2002 for all the land occupied by him.

9. The Defendant further claims that he fenced approximately one half of the portion of land in or about March 2009 to prevent other individuals in the area from depositing materials on the land allegedly occupied by him. The Defendant avers that he dug a drain to the border of the portion of land in order to facilitate the erection of a fence.
10. The Defendant denies that the crops on the disputed land were planted by the Claimant and aver that he planted them.
11. The Defendant claims that on the 2nd October 2008, the Claimant and some other people approached him and stated that they were squatting in the vicinity of his land and wanted permission to occupy a portion of his land. The Defendant says he refused to allow the Claimant and the accompanying persons to build on his land.

Issues

12. For the reason that the Defendant is not the paper title owner to the disputed land, a claim of adverse possession against him is not maintainable. A party may still recover possession of such land, if he shows that he has a greater possessory title to the land than the person alleged to have interfered with this right to possession.
13. Therefore, the issues to be determined by the court are as follows:
 - i. Whether the Claimant was in possession of the disputed land and whether she was dispossessed by the Defendant.

- ii. If the answer to (i) above is yes, whether the Defendant has shown a better entitlement to possession.
- iii. If the answer to (ii) above is no, whether the Claimant is entitled to damages for trespass.

The First Issue

14. As was noted by Lord Brown Wilkinson in *JA Pye (Oxford) Ltd v Graham [2002]UKHL 30* possession of land, entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession.
15. 'Possession' is given the meaning of that degree of occupation or physical control, coupled with the requisite intention, that would entitle a person to maintain an action of trespass in relation to the relevant land. Dispossession therefore denotes the taking of possession in such sense from another without the other's licence or consent.
16. Whether the Claimant was in possession and whether she was subsequently dispossessed by the Defendant are issues of fact to be determined on the evidence.

Evidence

17. Giving evidence for the Claimant in relation to her possession of the disputed land was the Claimant herself, Ramnarine Hanooman, Solomon David and Washington Demas. Harold Koorasingh is a valuator and gave evidence in relation to damage to crops on the disputed land which the Claimant alleged she planted.
18. The Claimant's evidence was that in 1975 she and her husband went into occupation of the disputed land which comprised of approximately 3 acres of land. The Claimant and her husband occupied and planted sugar cane thereon and sold same to Caroni under

contract number 57314. The sale of sugar cane to Caroni on the contract number 57314 is evidenced by an excerpt for the period 1992 to 1998. The Claimant testified that her possession of the disputed land arose when Caroni abandoned cultivation of it and surrounding lands.

19. According to the Claimant the disputed land is represented as Plot B in survey plan of Harvey Ramrekha and dated 15th June 2011. The plan shows the disputed land as comprising 2 acres 1 rod and 32 perches.
20. The Claimant gave evidence that in addition to the cane she would sometimes plant cassava and eddoes on the disputed land and that she employed Ramnarace Ramnanan, his son Baitoy and his wife Radica to cut, burn and cart the cane. In addition, the Ramnanan family also assisted in reaping the cassava and eddoes.
21. The Claimant stated that to the West of the disputed land was Ramnarine Hanooman who occupied approximately 1 acre of land and Mr. Solomon David occupied lands to the west of Mr. Hanooman. To the East of the disputed land was the defendant's now deceased uncle Mr. Kanhai Singh. According to the Claimant, Kanhai Singh's occupation did not exceed 1 acre and it was only on the death of Kanhai Singh 10 to 11 years before the date of filing of the action that the Defendant and his father went into occupation of that small area of land. This area was not any part of Plot B or Plot A as shown on the survey plan.
22. The Claimant testified that in or about 2002, the Defendant and his father began building a concrete structure and eventually a two storey building was erected to the east of the disputed land.
23. The Claimant gave evidence that both she and her husband were in receipt of notices from Caroni requesting that they vacate the disputed lands since before 2003 and on the

13th September 2003 a squatter notice directed to her husband was delivered to her home. The Claimant claims to have been shown similar notices sent to Mr. Hanooman and Mr. David in respect of the lands they both occupied. While the Claimant referenced the notice to her husband of the 13th September 2003 she actually annexed a notice addressed to Mr. Hanooman with reference to his occupation of 1.25 acres of land. However, the notice of the 13th September 2003 to her husband was in fact annexed to the Claimant's Unagreed Bundle of Documents. It is not that the document was not annexed because no notice was received, as Counsel for the Defendant alluded to in cross examination, but that it appeared the wrong notice was annexed to the witness statement in error. The notice to the Claimant's husband does exist; it is in her Unagreed Bundle of Documents.

24. According to the Claimant, when Caroni closed, she allowed the cane to continue growing. By letter dated 17th October 2007 from Caroni to the Claimant and her husband, they were informed of a transitional support period for sugar cane farmers following the closing of Caroni. The Claimant therefore continued to supply and be paid for cane during that period. The Claimant stated that after this transitional period ended, she and her husband cleared the land and began cultivating short term crops from 2008 such as cassava, corn, peas eddoes, string beans, black eyed bodi, tomatoes, sweet potatoes and pumpkin as well as plantain and miniature pommecythere. However, the Claimant was unable to sell any of the crops planted in 2008 as the Defendant entered onto the disputed land and destroyed the crops she had planted. When the Claimant approached the Defendant about his actions, the Defendant is alleged to have stated that he had purchased the land and intended to bulldoze the land. The disputed land was bulldozed a week later. The Claimant claims she made a report of the Defendant's actions to the police but was advised that it was a civil matter and that the police could do nothing. Instead she retained a valuator to assess the damage to the crops.

25. Mr. Hanooman was a cane farmer but now works as a taxi driver. He testified that he went into occupation of a 1 ¼ acre of land. He pointed out that the land he occupied formed part of Plot A on the survey plan mentioned above. Initially he planted cassava

and eddoes on his land but after about 2 years started planting sugar cane and selling to Caroni. According to Mr. Hanooman, when he went into occupation the Claimant was already in occupation of approximately 3 acres of land planting sugar cane and short crops in between. In addition, Mr. Solomon was in occupation of land located to the left of the land occupied by Mr. Hanooman.

26. Mr. Hanooman also testified that that the Claimant hired Ramnarace Ramnanan to assist in cutting, burning. Loading and carting away the cane. He gave evidence that after Caroni shut down, the Claimant left the cane on the land for approximately 1 ½ years. Subsequently, the Claimant returned to the land cleared it and planted a number of short crops. Mr. Hanooman also gave evidence that in September 2008, the Defendant came to his home and told him he had bought land from Caroni and that he should vacate the area he was occupying immediately. When he asked to see the Defendant's documents, the Defendant told him it was not for him to see.

27. According to Mr. Hanooman the Defendant has had a house on Plot C for approximately 10 years. Prior to this, the Defendant's uncle Kanhai Singh had been in occupation of that plot. In cross examination he testified that he was encouraged by one Mr. Kanhai Singh who was the brother of Chaitnarine Singh and the uncle of the Defendant to occupy the land. He stated that Kanhai Singh was the first man who entered into that parcel of land and then Angela Badree. He further explained that Kanhai Singh was in occupation of land approximately 3 acres away and that the Claimant was in occupation of the land between both parcels. Mr. Hanooman gave evidence in cross examination that it was only when Kanhai Singh died that the Defendant and his father came onto the land that Kanhai Singh had been occupying.

28. Solomon David was a cane farmer prior to his retirement. He testified that he was in possession of 11 acres of land since 1956 which he rented from Caroni as well as 3 acres located to the east of the rented lands. This 3 acre parcel had been lands abandoned by

Caroni and is represented as Plot A shown on the survey plan mentioned above. He claims that he started occupying the 3 acre parcel from 1975.

29. According to Mr. David, the Claimant was in occupation of Plot B for over 30 years until the Defendant came and destroyed the crops she planted thereon and fenced her land as well as a portion of the land he occupied on Plot A. He said the Claimant had been planting cane on the portion she occupied but that when Caroni closed down she began planting short crops. These crops are the crops which the Defendant destroyed.

30. Washington Demas was employed at Caroni prior to his retirement attached to Reform Estate, he had been working at Caroni for 34 years. Part of his duties at Caroni included serving squatter notices on persons in occupation of Caroni land. According to Mr. Demas, in 1981 the company ceased cane cultivation. However prior to 1981 some land in the St Margaret block in the Williamsville area had been abandoned and occupied by squatters. He gave evidence that the Claimant's husband was a Staff Foreman employed with Caroni. He recalls that the Claimant and her husband took up occupation of abandoned land in Williamsville. Further, he stated that he would in fact often serve squatter notices on the Claimant's husband from time to time. The land which he knew the Claimant and her husband to be in occupation of is represented as Plot B on the survey plan of Harvey Ramrekha and in fact that they were among the first persons to illegally occupy the land.

31. Mr. Demas gave evidence that the Claimant and her husband would plant cane and cassava and eddoes on the disputed land and sell the cane to Caroni until 2003 when Caroni closed. The Claimant and her husband continued to sell cane to the Sugar Manufacturing Company (Caroni's successor) until they too closed in 2006. In cross examination he stated that he went to the disputed land to see the Claimant's husband and that both the Claimant and her husband used to be cultivating cane on the lands which they sold to Caroni. He stated further that they used to grow other crops on the disputed land.

32. Evidence on behalf of the Defendant's case was given by the Defendant, Neil Singh, Chaitnarine Singh, Kalawatee Singh and Ramdeen Boodram.
33. The Defendant testified that he and his family have been in continuous possession of a large parcel of land owned by Caroni since 1985. Further that in or around 1986 his father, Chaitnarine Singh, owned cattle which he allowed to graze on one parcel of the lands occupied, which comprised of approximately 13.92 acres. The Defendant refers to this 13.92 acre parcel as SM4. According to the Defendant, his father began planting sugar cane on the SM4 parcel in 1990. The Defendant claims he helped his father on the plantation during the time but said that he received a formal farmer contract with Caroni in 1997. He stated that he and his father worked together to harvest the cane along with his father's workers who were paid \$50.00 per tonne.
34. The Defendant in cross examination therefore denied that his uncle Kanhai Singh had previously lived on SM4. He testified that Kanhai Singh would help his father on the land and that both brothers would be pulling cane together so people may have thought that Kanhai was his father. It was the Defendant's evidence that Kanhai Singh lived walking distance away from SM4 at Messiah Street.
35. It was the Defendant's evidence that **at no time** during his occupation of SM4 did the Claimant occupy or plant any crops on the said land.
36. The Defendant gave evidence that in 2002 his father demolished a wooden house which had been placed there by him (his father) in 1992 and began constructing a concrete house. However, his father received a notice from Caroni on the 12th December 2002 instructing them to cease construction as the SM4 parcel was agricultural land. At this time only the first storey of the house had been completed. In cross examination the

Defendant explained that the house he referred to was represented on the survey plan of Harvey Ramrekha as a rectangle on plot C.

37. The Defendant said that as a result of the notice, he wrote a letter dated the **4th December 2002** to the Manager of the Property Development Division of Caroni stating that he was interested in purchasing the land. It is noteworthy that the Defendant says he received the notice on the 12th December 2002 and that **in response** to the notice he wrote the letter **on the 4th December 2002** informing of his interest in purchasing the land. The letter dated 4th December 2002 stated that he has been living on a piece of land for 10 years and expressed his interest in purchasing the land.
38. By letter dated 8th April 2003, the Defendant was informed that if he wished to purchase the lot comprising 5000 sq ft he must first obtain a private licensed land surveyor to survey the land. He was also told that a valuation of the lot on receipt of the survey by Caroni would be done and the lot would be sold at full open market value. Accordingly, on the 25th April 2003, the Defendant employed Mr. Winston Ramcharan to conduct the survey on the designated residential parcel comprising 473.3m². According to the Defendant this designated residential parcel is located on SM4. The survey plan was as a result prepared and the Defendant submitted same to Caroni.
39. Although Caroni wrote a letter dated 5th February 2004 to WASA requesting a water connection to the dwelling house on the SM4 parcel, it was not until 2005 that the Defendant received word that he would be allowed to purchase **the residential parcel** measuring 474.3m² for \$35,000.00. In cross examination the Defendant explained that the spot that Caroni had agreed to sell him was the rectangle area on Plot C represented in the survey plan of Harvey Ramrekha as noted at paragraph 38 above. The sale terms are reflected in letter dated 22nd August 2005 from Caroni to Republic Bank Limited informing the bank that the Defendant was approved for the purchase of the residential parcel for \$35,000.00. However, by notice dated 3rd March 2006 he was given permission

by the Ministry of Planning and Development to carry out **development** on the parcel of land measuring 474.3m².

40. The Defendant testified that in 2005, his family began planting tomatoes on the SM4 parcel and his mother sold same at the side of the road in front the dwelling house. In 2007, as a result of the closing of Caroni, the Defendant and his family ceased sugar cane cultivation and replaced it with short crops such as eddoes, sweet potatoes, corn, peas, pumpkin, cucumbers and other crops. The Defendant said he and his brother, Neil Singh, later replaced those crops with coconut and plantain trees. Nevertheless, by letter dated 17th October 2007 he was informed by Caroni that he was eligible for transitional support.

41. According to the Defendant, his father opened a bar in the first storey of the dwelling house in 2007. The bar is now being run by his brother Neil Singh.

42. The Defendant further testified that in 2007, he was informed by one Rishi of Caroni that Caroni was no longer operational and would not be accepting payment for the purchase of the residential land. According to the Defendant, since he had already obtained the loan from Republic bank, he used the funds to continue extending the house on the residential parcel. The Defendant gave evidence that in 2008, he fenced a portion of SM4 to prevent persons from depositing material and possibly squatting on the parcel of land and in addition dug a drain to border the parcel to facilitate the erection of the fence. The Defendant testified that he was approached by the Claimant along with several other persons on the 2nd October 2008 requesting his permission to occupy a portion of SM4 to build a house for her son. He claims he refused to allow the Claimant and others to access the SM4 parcel and the Claimant and her friends left.

43. The Defendant has annexed a receipt for the payment of land rent for 2005 in the sum of \$1097.60 (calculated as \$274.40 per acre) and a further receipt for the payment of land

rent for the period July 2006 to June 2008 in the sum of \$2922.80 (calculated as 274.40 per acre). However, in cross examination, the Defendant stated that he had been paying rent in respect of the entire SM4 since 2002. When questioned about the receipts for 2002 to 2005, the Defendant stated that they were kept by the Land Settlement Agency. The Defendant was questioned further on why there were no receipts before 2002 and what had been the position before that period. The Defendant testified that prior to 2002 he had made an application to purchase **the entire SM4 parcel** because he had been squatting on that parcel of land.

44. The Defendant gave evidence in cross examination that he was in occupation of a further parcel of land located in the Ben Lomond area. He stated that he was a tenant of those lands. He agreed that when you are a tenant of Caroni there is a certain number that is assigned to the tenancy. By letter dated 21st October 2011 from Caroni to Mr. Rennie Gosine Caroni identified lands of which the Defendant was a tenant. In the letter the plots were linked to the tenancy no. 47093 with an annual rent of \$274.40 per acre.

45. When the Defendant was shown the first receipt dated the 15th April 2008 during cross examination, he testified that that receipt was in relation to the land situated at Ben Lomond. It was noted that the tenancy number on that receipt was 47093. When the Defendant was asked to what parcel of land did the second receipt dated the 23rd September 2008 relate, he stated that it was in relation to the SM4 parcel of land. This is despite the receipt carrying the same tenancy no. 47093. The Defendant explained that Caroni would put all of your lands under the same tenancy number and you will only have one tenancy number although you have lands in all different areas. When questioned on that issue further the Defendant stated that Caroni records were not updated.

46. When the Defendant was questioned further on the acreage of the parcel of land represented in the receipt dated 23rd September 2008 ('the second receipt') he stated that it was 3.92 acres of land in **the Ben Lomond area**. Council pointed out that he had previously said that the second receipt related to the SM4 parcel and the Defendant

responded that he had never said so. The exchange that followed is material and will be repeated for clarity:

Q: So let's go back to the other receipt which is the one, and I have suggested to you that the payment on this receipt represents payment towards the Ben Lomond area, Ben Lomond parcel and you're saying it's not so could you explain to the court why it is this is not the Ben Lomond area.

A: Because this is for the SM4 field is 13.92 acres of land multiply by 7 you will get seventy dollars you will get nine hundred and seventy dollars per annum and it was paid here for three years.

Q: So you're saying that the amount per acre is seventy dollars.

A: Yes.

Q: But in your witness statement you haven't mentioned that the amount that you paid per annum is seventy dollars.

A: Okay it wasn't mentioned, that's right.

Q: And in fact when you look at both receipts it appears that the rent and it appears when you look at the receipts that the rental is two hundred and seventy dollars and forty cents per annum.

A: This two hundred and seventy dollars and thing when I went Caroni to pay back for this same land rent the girl is only seeing on the system but I suppose to be paying two hundred and seventy-four dollars and she who had written in on my original land receipt, if you see the original you will see yes and you will see it's a different hand writing from this total old hand writing. You can identify it.

Q: So you are saying that there are problems with this receipt.

A: *There is a problem. When I went Land and Settlement they said they did not have any records of this piece of land showing up on the system, that that needed to be clarified at Caroni.*

47. The Defendant again testifies that the apparent error was that of Caroni.

48. The Defendant has also annexed receipts for the payment of building tax arrears for the years 2005-2009.

49. Chaitnarine Singh is the Defendant's father. He gave evidence that he is a farmer and that he and his family has been in possession of one large parcel of Caroni land since 1985.

50. According to Chaitnarine, in 1986 he began rearing cattle on one parcel of the land which comprised of 13.92 acres (SM4). He did this for approximately 11 years. In 1990 he began planting sugar cane on the SM4 parcel. He stated that when the Defendant was about 7 years old he started assisting him with the cane cultivation on the SM4 parcel and harvesting. It was not until 1997, that the Defendant became fully involved in the sugar cane industry and officially registered as a farmer with Caroni. In cross examination however Chaitnarine testified that the Defendant was born in 1977. Council pointed out to him that the Defendant would have been 7 years old in 1983/1984 thus when he says the Defendant started helping with the sugar cultivation at 7 years old, it could not be true. Chaitnarine in answer stated that they had a garden and cattle before the cane was planted and the Defendant would help with that. He admitted that there was no sugar cane on the SM4 parcel when the Defendant was 7 years old but stated that there was sugar cane on his other piece of land at "American Flats" and that the Defendant would help there.

51. Chaitnarine stated that he built a wooden house on SM4 in 1992 and in 2002, broke it down and began construction of a concrete house in its place. On the 12th December 2002, he received a letter from Caroni requesting that he cease construction. At this stage only the first storey of the house had been built. Mr. Chaitnarine claims that **in response** to this notice he went to the Land Section of Caroni on the **4th December 2002** to deliver a letter from the Defendant expressing his interest in purchasing the land and completing the construction of the house. In cross examination Chaitnarine stated that the letter to Caroni was in relation to the entire SM4 parcel and not just the house spot. As was stated above, the letter dated 4th December from the Defendant stated that he had been living on the land for the past 10 years and was interested in purchasing the land. The letter makes no mention of any interest in completing the house, as Chaitnarine testified, nor did the letter speak of occupation prior to 1992.
52. Chaitnarine's evidence was that he received the letter of the 8th April 2003 in which the Defendant was informed of the procedure to follow to purchase a residential parcel located on SM4. Pursuant to these instructions, Mr. Winston Ramcharan was employed to conduct a survey of the residential parcel of land and a survey plan dated 25th April 2003 was prepared. It was also Chaitnarine's evidence that in 2005 his family began selling tomatoes on the SM4 parcel which his wife sold at the side of the road in front of the house.
53. According to Chaitnarine, he opened a bar in the first storey of the house in 2007 since Caroni had closed down and it made no sense to him to continue sugar cane production. Subsequently he gave the bar to his son, Neil Singh, to run. Also in the year 2007, the family began planting small crops on the land but in the latter part of 2007 replaced the small crops with coconut and plantain trees.
54. Chaitnarine testified that in 2008 he, the Defendant and Neil reconstructed a duck pen and tractor shed on the SM4 parcel which had been previously there. He gave evidence

that in March 2008, the Defendant fenced half of the SM4 parcel to prevent trespassers from dumping materials on the said land.

55. Kalawatee Singh is the mother of the Defendant and the wife of Chaitnarine. Her evidence is a repetition for the most part of the evidence of Chaitnarine and the Defendant. So too, is the evidence of Neil Singh, the Defendant's brother.

56. According to Neil, he is the owner of the bar located in the house on SM4 parcel. He stated that his family has been in possession of the Sm4 parcel as long as he remembers. At the time of his witness statement (Aug 2012) he was 26 years.

57. Ramdeen Boodram is a friend of the Defendant and his father for over 30 years. He testified that he lives 5 minutes away from the SM4 parcel. According to Mr. Boodram he has personally seen Chaitnarine rearing cattle on the SM4 parcel since 1986 for about 11 years. He stated that in 1990 he was employed by Chaitnarine to cultivate sugar cane on the SM4 parcel and did so intermittently for approximately the next 17 years. Mr. Boodram testified that during this time, the Defendant and his brother Neil would often work by his side on the sugar cane plantation. Mr. Boodram gave evidence that he assisted with both cultivation and harvest and was paid approximately \$50.00 per tonne.

58. It was Mr. Boodram's evidence that at no time did he witness the Claimant residing or planting on the SM4 parcel. He testified that he gave a statutory declaration in which he stated that he was well acquainted with the Defendant. However in that statutory declaration he declared that the Defendant was in occupation of a piece of land since 1992. The declaration does not say that the Defendant or his family occupied the land before 1992. Mr. Boodram stated that although the declaration has this year as the year of occupation, he in fact knew the Defendant and his family to have been in occupation for approximately 25 years.

59. Mr. Boodram testified that the only structure on the land at that time was the wooden house which he witnessed being built by Chaitnarine in 1992 and which he noticed was broken down in 2002 and a concrete house was being built. According to Mr. Boodram, the construction of the first storey of the house was soon completed and remained as a one storey dwelling for approximately 10 years. He noticed the second storey was complete in about 2006.
60. Mr. Boodram also testified that in 2005, the Defendant and his family began planting tomatoes which Kalawatee sold at the side of the road in front the house spot. He stated further that after Caroni closed in 2007, he witnessed the Defendant and his father planting small crops on the SM4.
61. When describing the wooden house that the Defendant says his father built on the land, there were inconsistencies in the testimonies of the Defendant's witnesses. Chaitnarine stated in cross examination that the house had two bedrooms and a kitchen. Further that there were three windows and three doors in the entire house, one window in each bedroom and one in the kitchen, one door at the entrance, one by the kitchen and one between the bedrooms. He stated that the house was built on short wooden pillars but that there were no stairs to enter the house. Kalawatee testified that there were two windows and two doors. One door was the entrance to the house and the other was a back door. Further, she stated that the house was flat and not on pillars. Mr. Boodram testified that there was one room and the kitchen portion in the house. Further that there was one door and two windows. He stated that the house was on small pillars and that there were about three steps to the entrance. Nigel Singh stated that the house was flat and contained two bedrooms and a kitchen. Further that there was one step to enter the house, three windows and one door. Neither witness could properly describe the house which Chaitnarine allegedly built.

62. It is abundantly clear to this court having evaluated the evidence of all of the Defendant's witnesses, that they were far from truthful having regard to the material inconsistencies clearly set out at Paragraphs 48 to 60 above as well as the inconsistencies with the documentary evidence. This appears to the court to be a bold attempt to grab much more land than that which was occupied by the Defendant in the first place and further, it is an attempt by all of the witnesses for the defence to deceive the court by way of their sworn testimony. The documentary evidence proves that the lands for which rent was paid related to one piece of land comprising 3.92 acres of land. It is not that the two receipts related to two different parcels of lands. Even when Chaitnarine attempts to mislead the court into so believing, he is not consistent in his own testimony, having said at first that the second receipt related to SM4. It was only when confronted in cross examination upon it being revealed that the acreage is not 13.92 as the Defendant alleges to be the size of the SM4 parcel, that he attempts to cover recant his testimony by saying that it related to the land he owned in Ben Lomond area. The evidence contained in these receipts amount to potent evidence on the material issue in this case and gravely affects the credibility of not only the Defendant by his case as a whole.

63. Additionally, Attorney for the Claimant has set out the inconsistencies between the defence witnesses at paragraph 8.15 of his submissions in a manner which is both helpful to the court in terms of substance and form. Suffice it to say that having reviewed the evidence the court agrees that the inconsistencies pointed out therein also detract from the credibility of the case for the Defendant.

64. The court therefore found that in the round the evidence of there having been a wooden structure which was occupied by the Defendant and his relatives prior to the construction of the concrete structure for the number of years as claimed by the defence and that rent was paid for the entire parcel over those years is not believable. It therefore appears to the court to be more likely than not that the Claimant was in possession of the disputed land and was dispossessed by the Defendant in the manner that she testified that she was so dispossessed.

The Second Issue

65. Where a Claimant was in possession of property for a number of years without legal title and is dispossessed by a person who could not show a better right, he is entitled to be restored to possession: *Bernadine Seebaran Guy v Selwyn Baptiste Civ. Appeal No.12 of 2001*.
66. The court ought to weigh the relative strengths of title.
67. As was stated above the court does not believe that the Defendant was in possession of the disputed land since 1985. The court also does not believe that the Defendant's father built the wooden house in 1992. The inconsistent description of the wooden house leaves the court to deduce that the Defendant and his family neither built nor lived in the wooden house (which they may have found on those lands) at any time. The court believes that the Defendant and his family, at the earliest, entered onto lands represented as plot C on the survey plan of Harvey Ramrekha and dated 15th June 2011 when Kanhai Singh passed away. On the evidence, this would have been in or around the year 2002. Further, that the Defendant and his family, who had been living at Coconut Drive proceeded to break down the wooden house and build a concrete structure in its place. In this regard the court notes the evidence in cross examination that the Defendant would return to the house at Coconut Drive to do homework and sleep. This also appears to the court to be a clear attempt to deceive the court into thinking that the Defendant was residing at both places at the material time. The court is also finds that the Defendant and his family disposed the Claimant of the entire parcel which she then occupied in the year 2008.
68. The Claimant's case that she and her husband were in possession of what is shown as plot B since 1975 has not been disproven and the court therefore finds this to be the case as a fact.

69. The Defendant has therefore not shown a better title to possession and the evidence of the Claimant's title is strong and quite frankly, overwhelming.

The Third Issue

70. A person trespasses upon land if he, inter alia, wrongfully sets foot on it, or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or places or fixes anything on it: *Halsbury's Laws of England (Volume 12(1) (reissue) para. 562.*

71. As a result of the forgoing the court is of the view that the Defendant trespassed onto the disputed land, there being an unwarranted intrusion upon land which had been in the possession of another. Further, the evidence is that a fence was constructed over and encompassing the disputed land.

72. A Claimant is entitled to nominal damages for trespass to land even if no loss or damage is caused. If damage or loss is caused substantial damages may be recovered, and the Claimant is entitled to the diminution in the value of the land which may be the cost of repair and reinstatement: *Halsbury's Laws of England (Volume 12(1) (reissue) para. 870.*

73. On the evidence, there has been no actual damage to plot B but continued possession by the Defendant since 2008 to date. The court believes the evidence of the Claimant that on plot B she had planted thereon a number of crops which were destroyed by the Defendant. While the Claimant has therefore not proven damage to the land she has through her evidence and that of Harold Koorasingh a Real Estate Valuator proven the destruction of her crops.

74. In that regard, the evidence of Mr. Koorasingh was that he was retained by the Claimant in late September 2008 to carry out a valuation of the disputed land. The Claimant had informed him that the Defendant had damaged her crops in Williamsville. He testified

that he visited the area that morning and observed that some crops were trampled upon and destroyed by the passage of a tractor. Owing to the fact that he had not gone prepared on that day to take information, Mr. Koorasingh returned on or about the 28th September 2008 with the Claimant and conducted his survey.

75. The result was that Mr. Koorasingh valued the damaged crops at \$50,000.00 which sum included his valuation fee (\$2400.00) as well as the cost to replant the crops. His evidence of the value of the damaged crops was not challenged in cross examination and the court accepts this figure as representative of the crops damaged by the Defendant.

76. Where goods have been destroyed or taken permanently from him, the measure of damages is their value, and where the goods still exist and have been restored to him but have depreciated in value, the measure of damages is the extent to which they have depreciated: *Halsbury's Laws of England (Volume 12(1) (reissue) para. 860*.

77. The court will therefore award a nominal sum of \$10,000.00 for trespass to land and \$50,000.00 for damage to crops.

Disposition

78. The Claimant has abandoned the relief sought for a declaration that she is entitled to possession and/or a statutory lease on the basis that Caroni is not a party to proceedings.

79. For these reasons the court would dispose of the claim in manner appearing at paragraph 2 hereof.

Dated this 9th day of April, 2014.

Ricky Rahim
Judge