

**IN THE HIGH COURT OF JUSTICE  
(Sub-Registry, Tobago)**

Claim No. **CV2010-03959**

BETWEEN

**MIRELDA SAMUEL-MOORE**

Claimant

AND

**LASHAWN WILLIAMS**

**KURT WILSON**

**EDRIS GEORGE**

(Sued in her capacity as the Administratrix of  
the estate of Martha Daniel, deceased)

Defendants

**Before the Honourable Mr. Justice R. Rahim**

Date of Delivery: January 26, 2022.

Appearances:

Claimant: Mr. S. Saunders and Mr. D. Redman.

Defendants: Ms. S. Lawson.

## JUDGMENT

1. In this claim, the claimant seeks an order for possession of land as against the defendants. The claimant contends that she is the owner of the disputed property by virtue of a deed of gift in which Joanna Barton, deceased, conveyed to her eight hundred and ninety six point six square metres (896.6m<sup>2</sup>) as delineated on the survey plan. She seeks among other relief, a declaration that she is the lawful owner of the disputed property.
  
2. The first and second named defendants were tenants of the third named defendant but no longer reside within this jurisdiction. Therefore, for convenience, the third defendant will be referred to as the defendant and where applicable there may be mention of the first and second named defendants.
  
3. The defendant filed a counterclaim to set aside the deed of gift and sought a declaration that the defendant is entitled to possession of the disputed property.

### **History of the disputed property**

4. By deed of assent dated April 20, 1961 and registered as No. 4937 of 1961, the beneficiaries in estate of James Barton (Lucy Ann Elizabeth Barton, Frederick Barton, Martha Clothilda Daniel nee Barton, James Barton, Evangeline Victoria Cook nee Barton, Byron Barton, Fitzroy Barton, Joanna Barton) became joint tenants of a parcel of land comprising two (2) roods twenty (20) perches ("the larger parcel of land") situate at Guy Street, Canaan<sup>1</sup>.
  
5. Of relevance to the present proceedings, Martha, one of the beneficiaries, passed away on November 27, 1993 after the deed of assent was registered. She was the mother of the defendant. It is the case for the defendant that in 1936 Martha constructed a one bedroom wooden house. A few years later Martha married the defendant's father Thomas Daniel and sometime in 1940 the wooden house was completed. Thomas passed away on November 9, 1996.

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<sup>1</sup> See MSM 2 of the SOC, PDF 19.

6. On May 29, 1998, Fitzroy Barton, Joanna Barton and Byron Barton (the surviving beneficiaries) executed a deed of partition registered as No. 12591 of 1998. From the larger parcel of land, parcel 2, measuring eight hundred and ninety-six point six square metres (896.6m<sup>2</sup>) (“the said land”) situate at Guy Street, Canaan was conveyed to Joanna<sup>2</sup>.
7. On May 2, 2007, Joanna Barton, by registered deed of gift conveyed to the claimant and her husband, the said eight hundred and ninety-six point six square metres (896.6m<sup>2</sup>)<sup>3</sup>. Joanna departed this life on December 17, 2010.
8. At present, there are two buildings on the said lands. The disputed property is a two-storey house with concrete pillars standing upon an unconfirmed boundary. By a survey plan dated May 28, 2009, commissioned by Peter Goodridge, identified the said buildings, Joanna’s house on the eastern portion of the said land and Martha’s house (the disputed property) on the south-western portion of the said land.
9. In summary therefore, the claimant claims the subject land by way of conveyance by deed of gift in 2007 from Joanna subsequent to a deed of partition of the said land in 1998. That gifted land includes the parcel upon which the defendant says her mother Martha (sister of Joanna), also a beneficiary in whom the land was vested together with the others, held a share before her death, she having taken by way of a deed of assent of 1961.
10. Finally, while on the evidence, the defendant and her witnesses are related to the original title owners of the land including Joanna deceased, the claimant is not. It is the claimant’s case that she knew the deceased Joanna from church and assisted her in her old age.

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<sup>2</sup> See MSM 3 of the SOC, PDF 27.

<sup>3</sup> See MSM 1 of the SOC, PDF 11.

## Preliminary issue

11. On the date of the first day of trial, Attorney for the claimant argued that the defendant cannot challenge the validity of the deed of gift of May 2, 2007 on the basis that all parties to the deed are not parties to the claim. He referred to the decision of **Savitre Lochan v Keith Farfan and Republic Finance and Merchant Bank Limited<sup>4</sup>**, in which Rampersad J stated at page 12 that all the necessary parties to an action must be named, especially where a party's rights may be affected by a pronouncement of the court.
  
12. **Savitre Lochan** was appealed<sup>5</sup> and one of the issues before the panel was a non-joinder of a necessary party. The panel opined that Part 11.4 (application to be made in writing) should be read in conjunction with 19.5 (procedure for adding and substituting parties) of the Civil Proceedings Rules 1998, as amended (“the CPR”) with or without an application.
  
13. It held that a court can act on its own motion and add a party. The panel later considered that to join a party at that advanced stage would increase litigation expenses and also considered the court’s resources.
  
14. The court notes the explanation given by the defendant’s Attorney that an application before Ventour J, as he then was, to add Peter Barton was refused. In the result, another application was not filed before this court. The court also considered previous High Court proceedings (CV2008-04233 and CV2009-03627) filed by Peter Barton and Esther Alleyne to set aside the said deed of gift. Those matters were withdrawn.
  
15. This issue is however one that need not trouble the court as the operation of the law remains clear. When Martha died, by operation of the principle of survivorship (she having held as a joint tenant with the others), her share would have merged into the shares of the survivors with the result being that Fitzroy Barton, Joanna Barton and Byron Barton (the surviving beneficiaries) would then have been vested with the whole. They were then within their right and entitlement to partition the land, which they did. Joanna was therefore properly vested with her portion after

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<sup>4</sup> CV2008-02015

<sup>5</sup> Civ. App No. 262 of 2010

the partition, despite the fact that it included the spot that was previously occupied by Martha (as a matter of title). It also follows that Joanna could have conveyed or gifted to whomsoever she desired and this she did by deed of gift of 2007, to the claimant.

16. The court was therefore of the view that even if it was the case that all the parties to the deed of gift were not made parties to this claim, (the complaint is primarily the absence of the LPR of Joanna), it was in any event wholly necessary to add such a party as the defendant was bound to fail on the issue of the setting aside, there being no proper basis in law for same having regard to the history of the title.

17. Further, the defendant would have had several opportunities to join the estate of Joanna but failed so to do. At this late stage of the proceedings the benefit of so doing would have far outweighed the disadvantages to all of the parties of this claim having to the applicable law set out above. As a consequence, the defendants cannot seek a declaration that the deed of gift is invalid and if they could in any event, the court finds that the law as applied in this case demonstrates that there can be no valid challenge to that deed on the grounds set out and the court so finds.

### **Issue to be determined**

18. Following the decision of the court the only issue to be determined is whether the estate of Martha Daniel is entitled to possession of the disputed property specifically the south-western building, and the land on which it stands. Adverse possession has not been pleaded by the defendant but the defendant has counterclaimed for an order that the claimant is not the owner of the house and an order for possession of the house.

### **Case for the claimant**

19. The claimant gave evidence for herself and called two other witnesses, Claude Roberts and William Wilton Noel.

20. The claimant's evidence shows that she shared a close relationship with Joanna and attended to her daily needs. The claimant also explained that Joanna was not close to the third named defendant nor the rest of her family. It is the claimant's case that the defendants are trespassers and on July 10, 2010, the claimant contracted one Wilton Noel to fence the disputed property and affix a 'no trespassing sign'.
21. The claimant pointed out that the disputed property is a one-storey building situate at LP 17 Guy Street, Canaan but the description of the property set out in the inventory attached to the application for Letters of Administration of the estate of Martha Daniel is a two-storey building situate at LP 66 Guy Street, Canaan<sup>6</sup>.
22. The claimant says that if Martha had an interest in the disputed property it was by virtue of joint tenancy and upon her demise the interest passed to Joanna in 1998.

Cross-examination by the defendant

23. Attorney questioned the claimant on the extent of her relationship with Joanna. The claimant testified that they prayed together and she, the claimant, would run errands for Joanna. She maintained that they had a long standing friendship prior to 2006 for twenty-five years.
24. The claimant testified that she is familiar with the both buildings on the disputed property. According to her, when the property was conveyed to her, no one occupied the disputed property and it was vacant for a period of time. However, she testified that she observed that the galvanize roofing on the property was replaced.
25. When further questioned, the claimant accepted that Martha's husband occupied the said property in 1996 after Martha's death in 1993. The claimant also accepted that there were various

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<sup>6</sup> See exhibit MSM 10 of her WS, PDF 119 namely an application for Letters of Administration dated December 8, 2005. The inventory describes a property at LP 66 Guy Street, Canaan a two-storey chattel house comprising three bedrooms, a kitchen, a living room, a dining room, and a porch.

tenants and observed that one, Sonny Chapman lived in the disputed property as a tenant for approximately three months.

26. She reasserted her position that the defendant did not live at the disputed property but visited when the property was rented out. Despite this evidence, the claimant testified that she never served the defendants with a Notice to Quit. She denied that there was a kitchen garden (cassava, peas, corn, pumpkin, ochro and fig) surrounding the disputed property or that the first and second defendants maintained same. The claimant testified that she was the one who planted on the said property and averred that Joanna had a kitchen garden and the claimant assisted her to shell peas grown in that garden. The claimant later clarified that she planted crops after the property was conveyed to her on the other side of the fence that was dismantled.

27. In relation to the High Court actions brought by Peter and Esther, the claimant was referred to an affidavit of Joanna dated October 24, 2008 whereby she denied conveying the said land to the claimant. The claimant testified that Joanna never pointed out that the disputed property belonged to her or was controlled by her.

28. The claimant agreed that the deed of gift states *building thereon* and not *buildings*. However, she asserted that the disputed property on the south-western portion of the said land forms part of the deed of gift. She testified that the third defendant rented the building to the first and second defendants.

29. Despite the above, the claimant could not say how the disputed property came to be. She also accepted that the WASA utility bill for the disputed property is in the name of the defendant's father and the third defendant paid the said bills.

#### Claude Roberts

30. Roberts knew that Joanna lived at LP 17 Guy Street, Canaan as he has lived there all his life. He also knew that Joanna's sister Martha lived in a dwelling house nearby and after her death, her husband Thomas remained in the house alone.

31. Roberts says that he had a good view of the persons that entered and left the disputed property. Sometime in 1998 he observed Thomas's grandson, Wellington residing at the property for a few months. Thereafter the house remained unoccupied until sometime around 2004/2005 when a Sonny Chapman resided at the house for one year. One year later, the defendant's brother, John, changed the galvanize of the roof of the house and same was then tenanted to the first and second defendants.

#### Cross-examination by the defendant

32. Roberts agreed that Martha's husband continued to live at the disputed property with their children. He knew that the defendant grew up on the said property but at one point Thomas lived alone and the children rarely visited him.

33. Roberts could not say when but testified that Joanna informed him that the southern property belonged to her father. Attorney pointed out to him that this evidence was not mentioned in his witness statement and he accepted same.

34. Roberts continued with the history of the disputed property and testified that after Thomas's death the house remained unoccupied for a period of time. He further testified that Sonny's son lived at the house for over a year. However, he could not say who controlled the property or who the tenants paid rent to. He testified that the defendant on occasions visited the disputed property.

35. He confirmed that the defendant's son, who resided in Germany lived at the disputed property for three months and returned the same year and resided for another three months. He also did not know the names of the first and second defendants but says that they were a couple from Guyana who lived in the house for a period of time.



36. In relation to the kitchen garden, Roberts says that it was customary that persons had a kitchen garden. Therefore, he could not say who specifically planted the crops and trees on the property but observed that the second defendant planted on the disputed property.

#### William Wilton Noel

37. Wilton was contracted by the claimant to erect a fence around the south-western property situate at LP 17 Guy Street, Canaan. During the works he observed the claimant asking the first and second defendants to vacate the property.

#### Cross-examination by the defendant

38. Noel's evidence was short. He testified that he constructed the fence and confirmed there are two buildings on the disputed property. He also confirmed that a kitchen garden existed close to the south-western property but gave no further details. He also observed the first and second defendants staying at the house.

#### **Case for the defendant**

39. The defendant gave evidence for herself and called two other witnesses, Esther Alleyne and Peter Barton.

#### Edris George

40. The defendant says that the south-western house forms part of the estate of Martha Daniel, her mother. In support of her defence she further stated that Martha started the construction of a one bedroom wooden dwelling house sometime in 1936 and same was completed sometime in 1940 after her marriage.

41. Sometime thereafter the house was reconstructed into a three bedroom house with a kitchen, living room and dining room. Her mother occupied the property without the consent of the claimant or anyone else. Therefore, her parents occupied the disputed property from 1937 until their demise and thereafter Edris continued in said occupation of the house and rented same to

several persons including the first and second defendants. She testified that her parents maintained a kitchen garden on the disputed property by planting short crops including tomatoes, peas, corn, pumpkin, sweet peppers, ochroes, bhaji, cassava and bean.

42. The defendant denied that the claimant shared a close relationship with Joanna and says that Peter and Esther conducted errands for her, Joanna, and washed her clothing. She testified that she paid the land and building taxes from 1993 to 2008. Further, that her father paid the water rate for the said property<sup>7</sup>.

43. The defendant also testified that although she moved out from the disputed property, she regularly visited Joanna. Further, sometime in 2008, she gave permission to the first and second defendant to occupy the house.

#### Cross examination by the claimant

44. The defendant confirmed that she grew up in the disputed property and explained that she and her family planted anywhere on the said land. She was referred to the inventory dated December 8, 2005 attached to the application for Letters of Administration which reads a two-storey chattel house situate at LP 66 Guy Street, Canaan on one lot of land.

45. She was then referred to the amended inventory dated June 7, 2006 which described the same house but on two (2) roods twenty (20) perches of land which placed the house on the larger parcel of land<sup>8</sup>. The defendant clarified and accepted that Martha did not own the entire parcel of land, subsequently described in the amended inventory and also stated that the disputed property is not a two-storey house but stands on stilts.

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<sup>7</sup> See exhibit EG 8 PDF 51, namely a WASA customer statement in the name of Thomas Daniel from 1996 to 2011 for a service connection at Guy Street, Canaan (mailing address LP 17 Guy Street, Canaan).

<sup>8</sup> See MMS 10 attached to the WS of the claimant, PDF 119 and 123 respectively.

46. George maintained she visited the disputed property regularly and never observed Joanna in the company of the claimant except on one occasion.

47. Attorney for the claimant pointed out to her that some of the land and building tax receipts reflected payment for a building only. The defendant testified that the said receipts also reflect payment for land and building. However, it was at a later point that she understood that the larger parcel of land was portioned<sup>9</sup>.

### Esther Alleyne

48. Esther is the sister of the defendant and also a niece of Joanna. She said she shared a close relationship with Joanna and at one point in 1980, she lived with Joanna for one year. Esther says that as Joanna advanced in age, she, Esther conducted her errands, paid her utility bills, washed and cooked for her.

49. In support of the defendant's case, Esther testified after the death of her parents, the defendant controlled the disputed property. According to her, the said property was always occupied by family members and thereafter rented out. She also says that her parents maintained a garden and planted short crops. Further, Esther herself planted short crops around the disputed property.

### Cross-examination by the claimant

50. Esther currently lives on the lands of Byron Barton and has a clear view of Joanna's house from her home. Esther says she never saw the claimant visit Joanna. Esther also testified that growing up, she was informed by her father and grandfather that he gave a parcel of land on the southwestern portion of the said land to her mother to build. She asserted that despite the deed of partition the disputed property was owned by her mother Martha. She passed away prior to execution of the said deed.

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<sup>9</sup> See EG6 PDF 25 namely land and building tax receipts bearing assessment number ZE-124 paid for James Barton and assessment number ZE-124 paid for Joanna Barton. The exhibited receipts state the following: (i) ZE-124- building, 1993, 1994, 1996, 1997; land and building- 1995, 1998. (ii) 3ZG 72- building, 1999, 2005, 2006, 2007.

## Peter Barton

51. Peter is one of the executors of Joanna's estate. His evidence surrounded the execution of the deed of gift. Peter was of the view that the deed of gift states that there is one building on the disputed property and does not refer to the other building on the south-western portion.
52. He says that the claimant has never been in possession of the disputed property and the said house forms part of Martha's estate. As far as he was aware, Martha and her children have always been in possession of the dwelling house and the surrounding parcel of land (the disputed property).
53. Peter also confirmed that sometime in 2008, the first and second defendant were tenants of the disputed property.

## Cross-examination by the claimant

54. Peter testified that Joanna owned the parcel of land referred to in the Second Schedule of the deed of partition.

## **Discussion**

### **Who is entitled to possession of the house**

55. The defendant based her argument on the questionable validity of the deed of gift and her claim for possession. The former is of no longer of relevance to the claim. In response, the claimant submitted that the defendant has not identified the boundaries of the disputed property and there is no evidence from the defendant's witnesses of continuous and uninterrupted possession of the disputed property.
56. The only evidence in this case that treats with the history of the disputed house comes from the case for the defendant. It is the evidence of Edris that her mother Martha began the construction of a one bedroom dwelling house on the spot in 1936 and same was completed after her marriage. There is no evidence whatsoever to contradict this evidence which on its own is highly plausible.

The court therefore accepts this as proof that Martha was the owner of the house to the exclusion of all others. It follows that the house would have been lawfully renovated or improved upon by her heirs one of whom is the defendant.

57. The court also finds that the claimant and/or Joanna has never been in control or occupation of the house, as on the evidence same was controlled and occupied by Martha and her husband and then the defendant. The fact that the house may have been vacant from time to time does not mean that the defendant or her mother or father would have not been in control and so in possession of the house. This house clearly belonged to Martha and her husband and she was free to do with it as she wanted, including putting persons into occupation whether they were tenants or not.

58. The court is fortified in its view by the strong inference that arises from the description of the house situate on the land as set out in the will of Joanna. That will, dated April 21, 2008, bequeathed the property to Esther and Peter from Joanna. Clause 1 described the land as having thereon one building. In that regard, it was clear that there stood two houses on that land at that time. The inference is that Joanna had accepted that only the house she occupied (the eastern building) was in fact owned by her and that the house once occupied by Martha (the southern building) did not belong to her.

59. Additionally, the deeds of partition that conveys the parcel to Joanna and the deed of gift of May 2, 2007 from Joanna to the claimant, while purporting to convey the entire parcel, both refer specifically to one house thereon in the relevant schedule. The very strong inference is that only the house that was not occupied by Martha was conveyed to Joanna upon partition and that is the very house she transferred by way of deed of gift.

60. The court therefore has no difficulty in finding that the house owned by Martha was never owned or occupied by Joanna or the claimant. The defendant therefore has a better right to possession of that house and an order will be made accordingly.

## **Who is entitled to ownership of the land upon which the disputed house stands**

61. The history of the deeds set out above show that the entire parcel of eight hundred and ninety-six point six square metres (896.6m<sup>2</sup>) (nine thousand, six hundred and fifty point nine square feet (9,650.9ft<sup>2</sup>)) was conveyed to Joanna upon partition despite the existence of Martha's house thereon. The claimant has argued that the boundaries of the land occupied by the defendant are undefined therefore the court cannot and ought not to make any order thereon. In that regard, there exists a survey report commissioned in 2009, dated May 28, 2009 by Land Surveyor Peter Goodridge. That survey's plans shows both houses, that of the defendant at the south-western corner of the plot of land and the other house to the east of the land.

62. In the court's view, the transfer of the land is a valid transfer and there appears to be no proper basis in law to dispute the said transfer. It must therefore be the case that the claimant is the person entitled to the title in land. The area that Martha's house occupies on the land is clearly demarcated, however the precise boundary of what is occupied is unclear. The burden lies with the defendant to prove the boundaries and the failure so to do leaves the court with the only available option in the circumstances, namely, that of making an order in relation to occupation of the house spot on which the house stands.

63. In relation to the issue of costs, the result of the claim and counterclaim is that the claimant has not recovered the lands claimed but the defendant has been successful, in so far as, she claimed a declaration that the claimant is not the owner of the said dwelling house and a declaration that she is entitled to the house. She has not been successful on her counterclaim that she is entitled to the land. The court is of the view that, nonetheless, the defendant has had more success in part of the proceedings than the claimant has had. The court is of the view therefore that the claimant should pay to the defendant the costs of the claim and 50% of the costs of the counterclaim.

## **Disposition**

64. The court makes the following order:

- a) It is declared that the third named defendant is entitled to possession of the dwelling house situated on the south-western portion of the land owned by the claimant and described in deed of gift dated May 2, 2007 registered on February 8, 2008 as DE200800314836 and described as all and singular that piece of parcel of land situate at Canaan in the Parish of St. Patrick in the Island of Tobago comprising eight hundred and ninety-six point six square metres (896.6 m<sup>2</sup>) (being portion of a larger portion measuring two thousand, six hundred and sixty-four square metres (2,664 m<sup>2</sup>) and bounded on the North by Lot No. 1, on the South by Lot No. 3, on the East by a Road Reserve seven point eight two square metres (7.82 m<sup>2</sup>) and on the West partly by Lot C and Partly by Lot B which said parcel of land is shown as Lot 2 together and is more particularly delineated, described and coloured pink on the plan attached to the said deed registered as DE200800314836 (the said house) together with an irrevocable licence to occupy and use the house spot of land upon which the house stands.
- b) It is declared that the claimant is not the owner of the said house.
- c) The claimant shall pay to the defendant the prescribed costs of the claim in the sum of fourteen thousand dollars (\$14,000.00).
- d) The claimant shall pay to the defendant 50% of the prescribed costs of the counterclaim in the sum of seven thousand dollars (\$7,000.00).

Ricky N. Rahim

Judge.