

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2011 - 02270

BETWEEN

JASSODRA DOOKIE

First Claimant

AND

REYNOLD DOOKIE

Second Claimant

v

EZCON READY MIX LIMITED

First Defendant

AND

RATTAN RAMKISSOON

Second Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. B. Charles and Ms. S. Charles for the Claimants.

Mr. R. Huggins and Ms. C. Dottin for the First Defendant.

Mr. R. Boodoosingh for the Second Defendant.

Judgment

1. Before the court is an action for possession of land. The land is situate in the Ward of Arima and forms part of a larger portion of land purportedly owned by the Claimants.

The facts according to the Claimants

2. The Claimants claim to be the owners of a parcel of land comprising four acres two roods and eleven perches and shown as Lot No. 6A on the General Plan annexed and marked "A" to Deed dated the 17th November 1964 and bounded on the North by Lot 5A on the South by lands of Aziz Andrews on the East by a road reserve fifty links wide and on the West by lands of L. Ibrahim ("the said land"). The land in dispute forms part of the said land and measures seventeen thousand two hundred and fifty five square feet and is located on the southern portion of the said land ("the disputed portion of land").
3. It is the Claimants' case that from the 19th April 1971 the First Claimant and her husband rented the said land from Alan Joseph Netto. Mr. Netto died on the 4th January 1982 leaving John Michael Bayne as the executor of his will. Pursuant to his powers as legal personal representative of the estate of Mr. Netto, on the 22nd May 2001, Mr. Bayne agreed with the Claimants for the sale of the said land at the price of \$70,000.00 to be paid by instalments. Upon the completion of the payments for the purchase of the said land, Mr. Bayne by Deed No. DE2008001112397 registered on the 16th January 2008 transferred the said land to the First Claimant, her sons Kumar Pooran, Tony Ryan Pooran and the Second Claimant.
4. The Claimants allege that in 1980 persons claiming to act on the authority of the landowners at the time, entered onto the disputed portion of land and began construction of a concrete wall and wire fence along the boundary between the disputed portion of land and the remainder of the said land. The Claimants claim that they asserted their right over the disputed portion of land and the persons trespassing ceased their trespass and

abandoned construction of the wall. The Claimants allege that the wire fence was then broken down.

5. According to the Claimants, after this trespass they continued in undisturbed possession until approximately 2009 when the First Defendant entered onto the disputed portion of land with trucks and tractors. The Claimants aver that the First Defendant removed the top soil and filled the two ponds, which the Claimants allege they had dug between 1971 and 1974. The Claimants claim that the First Defendant began storing gravel and other equipment and parking vehicles on the disputed portion of land.
6. The Claimants claim that prior to this trespass by the First Defendant the ponds which they had constructed on the said land acted as drainage since the disputed portion of land was located on the lowest part of the said land. Additionally the Claimants aver that they were used as a catchment for holding and storing water which was then used to irrigate the crops on the remainder of the said land. As a result of the alleged trespass by the First Defendant, the Claimants claim that the remainder of the said land now becomes flooded when rain falls and destroys the Claimants' crops which are planted on the said land.
7. The Claimants therefore claimed, *inter alia*, a declaration that they are entitled to possession of the disputed portion of land or in the alternative a declaration that they have been in undisturbed possession and occupation of the disputed portion of land for a period in excess of 16 years.

The facts according to the First Defendant

8. The First Defendant claims to have come into occupation of the disputed portion of land in 2007 pursuant to an oral agreement with the Second Defendant.
9. The First Defendant avers that the Second Defendant agreed to rent the disputed portion of land to it at a monthly rent of \$13,000.00 for the purpose of installing a concrete batch to be operated by the First Defendant.

10. The First Defendant alleges that prior to the agreement a site visit was conducted on the disputed portion of land and it was observed that the disputed portion of land appeared to be an abandoned chicken farm with old sheds and runs. Further, the First Defendant says that there was a concrete wall extending along the entire back of the disputed portion of land. When the First Defendant entered into possession the sheds and runs were broken down and a permanent structure was constructed by the First Defendant.
11. It is the First Defendant's case that the Claimants knew of the First Defendant's erection and further, that at all material times it was believed by the First Defendant that the disputed portion of land belonged to the Second Defendant.
12. From 2007 to about May 2011 the First Defendant claims to have been in undisturbed possession of the disputed portion of land. By letter dated 9th May 2011, the Claimants claimed that the First Defendant had trespassed onto their land.
13. Owing to the fact that the First Defendant occupied the disputed land on the understanding that the disputed land belonged to the Second Defendant, the First Defendant claims that the Claimants are not entitled to the reliefs claimed against it. Further the First Defendant seeks an indemnity against the Second Defendant for all expenses, loss, damage, liability and cost arising out of the claim.

The facts according to the Second Defendant

14. The Second Defendant does not deny that the disputed portion of land forms part of the said land. However the Second Defendant claims that he has acquired adverse possession of the disputed portion having been in possession in excess of 16 years. Further, he affirms that he rented the disputed portion of land to the First Defendant in or around June 2007.

15. The Second Defendant claims that in or about the year 1976 he purchased lands south of the said land. However, prior to purchasing same, he rented this land inclusive of the disputed portion of land from Roddy Hayden Gangadeen and Ahamad Kassim Francis for approximately 15 years. During this tenancy, he erected a wall made partly of concrete and partly of wire fence separating his lands from that of the Claimants to secure his chicken farm from chicken thieves. The Second Defendant claims that the First Claimant was employed by him to feed the chickens on the farm. The Second Defendant also claims to have dug a pond on the disputed land to rear fish.
16. It is the Second Defendant's case that he is the paper title owner of a parcel of land situate in Arima comprising two acres three rods and thirty-six perches described in Deed of Conveyance registered as No. 15205 of 1976. He claims that this land is located on the southern boundary of the Claimants' land and that the Claimants have actually earmarked a portion of his land as the disputed portion of land. Consequently the Second Defendant has counterclaimed that the title of any other paper owner to the disputed portion of land has been barred by section 3 of the Real Property Limitation Ordinance Chap 5 No. and that the Claimants' right and title have been extinguished by virtue of section 22 of the said Ordinance.
17. The Second Defendant therefore counterclaimed, *inter alia*, for a declaration that he is the owner and entitled to possession of the disputed portion of land.

Issues

18. It is not in dispute that the disputed portion of land falls within the land purchased by the Claimants. In fact the Second Defendant in paragraph 3 of his Defence admits that the disputed portion of land does fall within the land purchased by the Claimants and described in paragraph 3 of the Amended Statement of Case. The issues left to be determined are therefore as follows:

- i. Whether the Second Defendant has acquired title to the disputed portion of land;
- ii. If the answer to (i) above is no, whether the Claimant is entitled to possession of the disputed portion of land;
- iii. Whether the First Defendant committed a trespass onto the disputed portion of land.

The First Issue

19. In determining this issue, the court notes that it is one which hinges primarily on fact and the evidence proffered by all parties.

20. Three witnesses were called on behalf of the Second Defendant, including the Second Defendant himself.

21. The Second Defendant testified that he purchased the lands south of the Claimant's in 1976 by Deed of Conveyance registered as No. 15205 of 1976. His evidence was that prior to purchasing the lands he rented them for approximately 15 years. During that rental period, the Second Defendant erected a wall separating his land from the Claimants' land on his northern boundary and the Claimants' southern boundary. The wall was constructed partly of concrete blocks, iron and chain link wire. The Second Defendant gave evidence that during the construction of the said wall there was no opposition from the Claimants or by anyone on their behalf. As a result, the Second Defendant says that he has title to all the lands south of the said wall either by possession since 1976 and/or by his deed.

22. Mr. Joseph Riley and Mr. Munish Seedhu, gave evidence for the Second Defendant. They testified that they along with the First Claimant were employed by the Second Defendant on his chicken farm. They gave similar evidence that after the Second Defendant fired the First Claimant, she went to live north of the Second Defendant's land

in a forested area. It was their evidence that Prior to the First Claimant being fired she lived on the Second Defendant's farm. Both Mr. Riley and Mr. Seedhu gave evidence that at that time there was a wire fence which was replaced by a concrete block fence.

23. Further, Mr. Riley testified that the First Claimant did not have a water supply on the lands on which she went to live and that she dug a trench under the wall and connected a pipe to one of the water tanks on the Second Defendant's chicken farm to obtain water.

24. Counsel for the Second Defendant therefore submitted that in compliance with the principles laid down by the House of Lords in the case of **Pye (J.A.) Oxford Ltd. v Graham** (2000) 3 WLR 242, the Second Defendant has exercised rights of ownership over the disputed portion of lands.

25. Giving evidence for the First Defendant was a representative of the First Defendant Company, Mr. Amrith Maharaj a Director at the First Defendant. He testified that in or around June 2007, the First Defendant agreed with the Second Defendant for the rental of the Second Defendant's land. It was his evidence that at all time, the First Defendant operated under the impression that the land belonged to the Second Defendant. He testified that prior to the rental of the land, representatives of the First Defendant visited the land and observed that it was properly fenced off with a concrete wall extending along the back of the land.

26. Giving evidence on behalf of the Claimants' case was the Claimants themselves, Kumar Pooran, Garth Davis, and Merrydale Banfield. The First Claimant testified that she lived on the lands to the north from 1971 and that sometime in 1980 someone came onto the disputed portion of land and began building a concrete wall and run a wire fence between the disputed portion of land and the rest of the Claimants' land. She testified that she instantly ordered the persons to stop and that the fence was broken down. It was the First Claimant's evidence that after this incident no other person came onto the disputed portion of land until the First Defendant's entry with trucks and tractors. However, in

cross examination, the First Claimant testified that the wall was built in 1982 and must have been done when she was not at home.

27. The First Claimant however testified that there was a concrete wall and chain link fence separating the land of the Second Defendant from the land of on Ibrahim but not separating her land. To illustrate this, the First Claimant attached a copy of a survey plan dated the 24th February 1975 which was attached to the deed conveying the Second Defendant's land to him. It is important to note that this survey plan shows only the portion of land purchased by the Second Defendant. It does not show the layout of the land in relation to the portion of land purchased by the Claimants. Further, the part of the plan which shows the chain link between the Second Defendant's land and that of Ibrahim is also reflected in a survey plan dated the 22nd September 2011. This does not necessarily mean that the fence was not present at the time of the 1975 survey since it is obvious to the court that the survey does not show the full extent of the land in relation to the Claimants' land.

28. The Second Claimant has attached two surveys, one he says is from 2000 and the other the September 2011 survey. Both surveys show the concrete and chain link fence between the Claimants' land and the Second Defendant's land. It shows the disputed portion of land being included in the Second Defendant's land. The 2000 survey, like the 1975 survey, does not show the full extent of all the land. It shows the Claimants' land but not the full extent of the Second Defendant's land so that it does not show the fence between the Second Defendant's land and that of the land leased to Ibrahim. The only survey that shows the entire area in totality is the September 2011 survey.

29. The court notes that the Claimants have not asserted that the fence was rebuilt at any subsequent stage. Further, the evidence from the survey plans is unclear as to the date of the construction of the fence separating the disputed portion of land from the Claimants' land.

30. The Second Claimant in cross examination testified that from 1974 to present there was a wall separating their land from the Second Defendant's land. He gave evidence that this wall, made partly of concrete and partly of wire, still remains up to today. This evidence is in direct conflict with the averment contained in the statement of case and the evidence on chief of the First Claimant that the 1980 encroachment was immediately stopped and the fence broken down.
31. It is nonetheless a startling and telling admission which is consistent with the case for the Second Defendant. It is quite apparent to the court that even if the fence which had been erected in 1980 was erected by persons not a party to these proceedings, that fence was not broken down and has continued in place as a boundary up to the present although its physical condition may have been altered.
32. The Claimants testified that there were ponds on their land which were built by them. Although Mr. Davis testified that there were the two ponds, a concrete fence and a wire fence he gave evidence in cross examination that one of the ponds was situated inside the wall and one outside of the wall.
33. Ms. Banfield testified that she first saw the pond sometime in 2002 and at that time there was no fence around the ponds. She testified that there was wire on the ground but no concrete fence. She gave evidence that although there is a fence now, she first noticed it in 2011.
34. Both the First and Second Defendants submitted that the Claimants' witness statements and the witnesses under cross examination have failed to corroborate the Claimant's claims as it relates to the allegations of the destruction of the shed and ponds and allegations of trespass as against the First Defendant. Further, that there are several inconsistencies among all the Claimant's witness statements together with notable weaknesses, flaws and contradictions in their evidence while under cross-examination. The court agrees and is of the view that the evidence of the Claimants' witnesses was

unhelpful in determining the issue. The Claimants' witnesses all gave evidence that was inconsistent in relation to the material issue of possession.

35. On the other hand, the witnesses for the Second Defendant appeared truthful in their testimony. They attested to the fact that when the First Claimant was fired by the Second Defendant sometime in late 1980's or early 1990's the wall and fence separating the disputed portion of land was already there. Their evidence was that before the First Claimant was fired she lived on the Second Defendant's farm.

36. In making its assessment the court believed the evidence of the Second Defendant. The evidence of the witnesses for the Second Defendant was that the fence was already there when the First Claimant was fired. According to the Second Defendant he rented the premises prior to 1976 for 15 years and it was during this rental period that fence was erected. Although there were no receipts evidencing the Second Defendant's rental of the land, the court nevertheless believed this averment of the Second Defendant. The Second Defendant and his witnesses appeared to be truthful and consistent. Further, it has not been disputed, either on the pleadings or the evidence that he rented the premises as he claimed. The evidence of the Second Defendant's witnesses corroborates the Second Defendant's averment that the fence was built in 1976 since they say that it was already there in the late 1980's. Consequently, the court is of the view that at latest the fence would have been erected in 1976.

37. Counsel for the Claimants submitted that the pleading of the Second Defendant must establish that the entry on the land was unlawful; that the possession was for a period of at least 16 years; and that there was an the intention to dispossess. Anything short of establishing this will not suffice. Further, it was submitted that the Second Defendant's pleadings are deficient to support a pleading for adverse possession. Counsel submitted that the pleading in the defence do not provide a comprehensive response to the particulars of claim that are clearly set out in the Claimants' Amended Statement of Case. Specifically, Counsel argued that that the Second Defendant's claim of adverse

possession is conflicting as there is ambiguity in the subject matter, that is, in respect of the location of the disputed land. That the facts he sought to rely upon to establish adverse possession were not cogent and clearly stated in the defence as required by *Zanim John v. Courtney Allsop and Others* CV2010-04559 and the CPR.

38. The court does not agree with this submission. The Second Defendant's Defence and Counter claim clearly sets out a claim in adverse possession. The court understands the counter claim of the Second Defendant to have always been follows:

- i. That he was in possession of a parcel of land having rented same from the previous owners prior to 1976.
- ii. That he purchased same in 1976.
- iii. That prior to purchasing, during the rental period he constructed a wall separating the Claimants' land from his.
- iv. That although the disputed portion of land is part of the land purchased by the Claimants in 2007, he had been in possession and occupation of the disputed portion of land prior to 1976 as is evident by the fence separating the parcels.

39. The obligation of the Second Defendant is to prove this pleaded case on the evidence. Thus evidence ought to be brought to show that he had (1) factual and exclusive possession and occupation of possession of the land for sixteen years or more. (2) the animus possidendi, that is, the 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: *Halsbury's Laws of England, Volume 68 (2008), 5th Edition/2. Possession of Land para. 1080 Intention to possess; JA Pye (Oxford) Ltd v Graham (supra).*

40. On the evidence of the Second Defendant, accepted by the court, the fence was in existence for at least 20 years prior to the commencement of this claim. The evidence of the fence is accepted by the court to be evidence of the Second Defendant's factual

possession. It is important to note again at this stage that the Claimants alleged that in 1980 they broke down the fence which unnamed trespassers attempted to construct and it has not been alleged that the fence was rebuilt subsequently. The fence is also sufficient evidence of the Second Defendant's intention to possess, taken with the lease of the land to the First Defendant.

41. The court therefore finds that the Second Defendant has succeeded on his counterclaim. The Claimants claim in this regard will therefore be dismissed.

42. Given the court's findings above, the second issue therefore does not arise for consideration.

The Third Issue

43. A person's unlawful presence on land in the possession of another is a trespass to land: *Halsbury's Laws of England, Volume 97, 5th EDITION*/3. *Torts to specific interests*/(3) *Torts to land*/(i) *Trespass to land*/A. *What constitutes trespass to land: para 562.*

44. It was submitted by Counsel for the First Defendant, and the court agrees, that in a claim of trespass to land, the first task is to show that there has been an unlawful presence by persons on land in the possession of another. It is therefore incumbent on the Claimants to show that the First Defendant's entry was unlawful.

45. The Claimants' allege that the First Defendant's occupation of the lands south of their land began three years prior to the commencement of the claim (2008) but that their entry onto the disputed portion of land was in 2011. Even if the court is to accept the evidence of the Claimants as to when the alleged trespass occurred (2011) such an entry would have been made outside the time required for recovery by the Claimants. Thus, when the First Defendant entered onto the disputed portion of land, it was at a time when the

Second Defendant had already acquired title to the disputed portion of land by possession, having regard to the court's findings above.

46. Further, it was submitted on behalf of the First Defendant that there was no "intrusion" when the First Defendant sought to erect a shed on the lands upon which it operated its business for 3 years without any objections from the Claimants. Additionally, it was submitted that the First Defendant at all material times, operated "in front of the said concrete wall" as this, it appeared for all intents to be a boundary between the Second Defendant's land and that of the Claimants. This the court understands to mean that the First Defendant at all times operated within the confines of the boundary wall. There appears to be no evidence to the contrary and the court accepts this submission.

47. Counsel further contended that when the First Defendant first entered the premises in 2007 and began operating its business in 2008 and determined the concrete wall to be their boundary, the Claimants never took any necessary steps to make it known to the First Defendant by way of letter, that the "disputed lands" belonged to them. In this regard, the court is of the view that if, as the Claimants assert, the land belonged to them a notice of their interest would have been sent at the initial trespass.

48. Additionally, the First Claimant, in cross examination testified that when the First Defendant went into occupation, it only occupied the Second Defendant's land and not the disputed portion of land. The court does not accept this evidence. This is so, having regard to the court's finding supra, as to the time at which the fence separating the parcels of land was constructed. Taken together with the evidence given by the First Defendant it is clear to the court that the First Defendant only took possession of that portion to which the Second Defendant was entitled by way of possession.

49. Since a wrongful entry is at the heart of trespass, the court finds that the First Defendant's entry was not wrongful and was under the authority of the Second Defendant who had acquired title by possession. The Claimant's claim in this regard therefore fails.

Disposition

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

- i. The First Defendant is relieved from the undertaking given on the 28th July 2011.
- ii. The Second Defendant is relieved from the undertaking given on the 17th November 2011.
- iii. The Claim is dismissed.
- iv. Judgment for the Second Defendant on his counterclaim as follows:
 - a. It is declared that the Second Defendant is the owner and entitled to possession of All and Singular the disputed portion of land.
 - b. The Claimants shall forthwith remove the plywood and galvanise structure constructed by the Claimants on the disputed portion of land failing which the Second Defendant shall be at liberty to break and remove same.
 - c. The Claimants shall pay to the Second Defendant the prescribed costs of the counterclaim in the sum of \$14,000.00
- v. The Claimants shall pay to the First and Second Defendant the prescribed costs of the claim in the sum of \$14,000.00 each.

Dated this 18th day of April 2013

Ricky Rahim

Judge