

**THE REPUBLIC OF TRINIDAD AND TOBAGO:**

IN THE HIGH COURT OF JUSTICE

Claim No. C.V. 2012-00434

BETWEEN

**Evelyn Phulmatti Ranjitsingh Joseph**

Claimant

AND

**Indra Singh**

AND

**Svetlana Dass**

AND

**Lenny Ranjitsingh**

AND

**Ravi Dass**

AND

**Carl Mohammed**

Defendants

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

**Appearances:**

Mr. C Seepersad for the Claimant.

Mrs. K. Pilgrim Thornhill for the Defendants.

## **Reasons**

1. On the 26<sup>th</sup> November 2012, the court made the following order:
  - i. *The Claim is dismissed.*
  - ii. *The Claimant shall pay the prescribed costs of the Defendants in the sum of \$14,000.00 each.*
  
2. The following are the reasons for this decision.

## **Background**

3. The undisputed facts of this case were that by Deed of Gift Registered as No. 17464 of 1992, Nattoo Ramjitsingh (the Claimant's father) conveyed a parcel of land described in the Second Schedule of this said deed (the said parcel), to the Claimant, the First Defendant (the Claimant's mother) and Raj Krishen Ranjitsingh (deceased) as joint tenants. By Deed of Gift registered as No. DE200703261697, the First Defendant conveyed her undivided share in the said parcel to the Second and Third Defendants reserving a life interest in herself. It was the latter deed that was the subject of contention in the instant matter.
  
4. The Claimant's case was essentially based on an oral agreement made she allegedly made with her father and the First Defendant, by which it was agreed that:
  - i. The Claimant would meet all the costs associated with the construction of a new house situated on the said parcel;
  - ii. The Claimant would be the sole owner of the said parcel and the house situated thereon and;
  - iii. The Defendant would not deal in the title to the land.

5. The Claimant claimed that upon these representations being made by the First Defendant and her father she paid for the entire construction of the new house with her own money. It was the Claimant's case that notwithstanding the promise by her father and the First Defendant, the First Defendant nevertheless conveyed to the Second and Third Defendants her (the First Defendant's) share in the said parcel.

### **Issues**

6. The court found that the claim was thus one which was fundamentally founded in estoppel. Therefore, in making a determination in the matter, the court highlighted the following issues:
  - (i) Whether there was an agreement in the terms as alleged by the Claimant;
  - (ii) If the answers to (i) above is yes, whether the Claimant acted in reliance of such agreement and;
  - (iii) Whether she acted to her detriment;
  - (iv) Whether there had been a severance of the joint tenancy by the First Defendant by letter dated 17<sup>th</sup> November 1995.
  - (v) Whether there had been fraud on the part of the First Defendant.

### **The First Issue**

7. The first issue was determined on an analysis of the evidence. The evidence on behalf of the Claimant's case was given by the Claimant and Ms. Elaine Rampersadsingh.
8. The evidence of Ms. Rampersadsingh in the court's view was very limited. Ms. Rampersadsingh testified in cross examination that what she knew in relation to the present matter was as a result of her being told of those particulars by the Claimant. The court determined that she was not an independent witness, having observations of her own on matters in issue and so the court gave little weight to her evidence.

9. The sole event which Ms. Rampersadsingh claimed to have witnessed herself was the First Defendant signing a letter dated the 17<sup>th</sup> November 1995 to the Town Planner which purported to relinquish the rights of the First Defendant to the Claimant. This evidence, however was applicable only to the fourth issue identified by the court as it related solely to the issue of the First Defendant relinquishing her rights to the parcel of land and so will be dealt with at the appropriate stage.
10. The evidence of the Claimant and the First Defendant were material in determining whether there was an agreement in terms as alleged by the Claimant.
11. The only evidence of the oral agreement between the Claimant and her father and the First Defendant was the Claimant's assertion. The First Defendant of course denied the existence of any such agreement.
12. In an attempt to prove that such an agreement existed, the Claimant testified that she made all the payments to the contractor who built the house. However, there was evidence of a joint account which the Claimant opened with the First Defendant. The Claimant's evidence was that she opened the account with the First Defendant so that if the need arose the First Defendant could pay the contractor from the account.
13. The First Defendant testified that she received USD \$25,000.00 from her son (now deceased) before he died and that she and the Claimant deposited it into the joint account. She gave evidence that when the Claimant went back to the USA she paid the contractor from the joint account and from her personal account.
14. The court was of the view that there would be no need to open a joint account if the intention was for the Claimant only to pay the contractor. This is particularly so in light of the Claimant's own evidence that she paid the contractor in the USA. If, as the Claimant would have the court believe, she paid the contractor in the USA, then there would be no reason for the opening of the joint account except to facilitate shared responsibility for payment for construction of the house.

15. The First Defendant further testified that she made additions to the house between 1998 and 2010 with her own money, her daughter's money and the fourth Defendant's money. The Claimant did not deny that some of these additions were made but claimed some of the additions were done with her permission. The court simply did not believe the Claimant. The court considered that the Claimant resided abroad and would have little say and knowledge of the activities occurring at the house, far less to dictate and permit what may or may not be built on an individual basis.
16. The court was also very impressed with the evidence of the First Defendant who appeared truthful throughout her evidence. This was in stark contrast to the evidence of the Claimant which at times appeared strained for want of proper explanations.
17. The First Defendant vehemently denied that there was any promise by way of conversation in which either she or her husband agreed with the Claimant that she would renovate the house solely from her funds and that the house would then become her property. In fact the evidence of the First Defendant is to the contrary. Her evidence is that when this issue was raised she indicated that there were other children and she could not so do. The court believed this testimony in light of all the other evidence. It is not likely that the First Defendant being a mother to others and having a terminally ill son at the time who would have given her money to renovate her house would make such an agreement or promise. In any event, the court would have expected that the Claimant would have made efforts to reduce this agreement or promise into writing should that have been the arrangement. This is particularly so considering the Claimant's station in life as a retired Financial Institution Specialist with the U.S. Government. There is no such writing and no explanation has been given as to why she chose not to or failed to secure written proof of the arrangement.
18. On an evaluation of the evidence therefore, the court did not accept that there was any agreement in the terms the Claimant has alleged. Further, the Claimant failed to prove that she was the sole financier of the construction of the new house. The court also took into account the fact that the Claimant had a joint account with the First Defendant but

there was no evidence that the Claimant alone would have deposited money into the account. Additionally, the Claimant failed to produce any evidence at all that payments were made solely from her accounts to the contractors. While the Claimant annexed copies of receipts for work done on the house, this may well be evidence that the Claimant had dealings with the contractor but fails to prove that the money was expended from her personal accounts and not the joint account. For these reasons, the court found that the Claimant had not discharged the burden of proving that there had been an agreement.

19. In the circumstances issues (ii) and (iii) did not arise for consideration.

#### **The Fourth Issue**

20. This was an issue to be determined with reference to both fact and law. In making the determination, the court was called to evaluate the evidence of the signature and the signing of the letter dated 17<sup>th</sup> November 1995 which the Claimant alleged relinquished the First Defendant's interest in the parcel of land. This was the factual element of this issue. If the court found on the evidence that the First Defendant had in fact signed the letter, the court would then consider whether in law, the First Defendant had in effect severed the joint tenancy when the letter was signed and the effect thereof on the share of the property held by the First Defendant.

21. The court considered the ways in which a joint tenancy may be severed. A joint-tenancy may be severed in three ways:

- (1) An act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint-tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the *jus accrescendi*. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund—losing, of course, at the same time, his own right of survivorship.

- (2) By mutual agreement between the parties.
- (3) By any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the other persons interested. You must find in this class of cases a course of dealing by which the shares of all the parties to the contest have been effected.

See Williams v Hensman (1861) 70 E.R. 862 approved in Sookraj v Sookraj HCA No. 550 of 2000.

22. If the court was to believe the Claimant's evidence, it would mean that the First Defendant had in effect severed the joint tenancy at the point in 1995 when the letter was signed and sought to relinquish her share in favour of the Claimant. As to whether these acts would be sufficient in law to override the legal entitlement of the First Defendant conferred by the 1992 Deed of conveyance would therefore have to be considered if the court believes that the letter was in fact signed by the First Defendant
23. The letter of the 17<sup>th</sup> November would thus constitute severance in (1) above if the Claimant proved that the letter was in fact signed by the First Defendant.
24. Ms. Rampersadsingh, the Claimant's witness, testified in cross examination that the building inspector was present on the day the letter dated the 17<sup>th</sup> November 1995 to the Town Planner was written. Ms. Rampersadsingh gave evidence that the building inspector told the Claimant that she needed a letter from the Claimant in order to obtain a Completion Certificate. Ms. Rampersadsingh further testified that the Claimant then wrote the letter and read it to the First Defendant who subsequently signed it.
25. The evidence of the Claimant on this issue differs somewhat. The Claimant testified that it was at her mother's request that the Claimant prepared the letter to Town Planner

thereby relinquishing her rights to the said property. In cross examination the Claimant gave evidence that it was necessary to write the letter to Town Planner because the First Defendant's name was on the records and she (the Claimant) wanted to have only her name set out on the Certificate of Completion. The Claimant testified that other than her mother, Ms. Rampersadsingh and herself no one else was present when the letter was written.

26. The differences in the testimony were fundamental in the court's view. Certainly, if the Town Planner was present, that would have been a fact which could have easily been recalled by the Claimant, particularly since the Town Planner was alleged by the Claimant's own witness to have said certain things to the First Defendant.

27. As in all civil trials, the pursuer bears the burden of proving all those of his averments which are essential to his case and are not admitted by the defender, while the defender bears the burden of proving any of his averments which go beyond a mere denial of the pursuer's averments. That burden, however, is not cast on the defender until the pursuer has discharged the burden resting upon him: if the pursuer fails to prove his essential averments the defender's failure to prove his own substantive averments will be immaterial: **Stair Memorial Encyclopaedia. (Reissue)/5. Evidence. The Burden of Proof, Civil Cases. para 275.**

28. In this regard, the Claimant was tasked with proving not only the existence of the letter as alleged but she had to go further and prove that the First Defendant did as a fact sign the letter.

29. The First Defendant has throughout these proceedings whether by way of pleadings or in her testimony (in which she was adamant) **denied** that she signed the letter and further testified that when the Claimant asked her to give the Claimant her share in the property she responded that she could not.



30. The court noted that the letter was not admitted in evidence as it was struck out of the Claimant's witness statement. The letter appeared however in the Claimants unagreed bundle of documents.
31. Ms. Rampersadsingh gave evidence that she witnessed the First Defendant sign the letter. However, the inconsistencies between this witness's account of the events leading to the alleged signing of the letter and the account given by the Claimant on this material issue weighed negatively on the case for the Claimant, particularly since no other means of validating the signature were provided by the Claimant. The Claimant failed to provide any other evidence, by way of handwriting analysis or the like, to prove that the signature purporting to be that of the First Defendant was in fact that of the First Defendant.
32. The circumstances surrounding the alleged execution of the letter therefore became paramount in making a determination as to its authenticity. The result was that the court did not believe that Ms. Rampersadsingh witnessed the signing of any letter. The evidence also therefore cast great suspicion on the evidence of the Claimant that she also saw the First Defendant sign the letter.
33. The court must also comment that in assessing the evidence of the parties it was quite clear to the court that the First Defendant was of limited educational background. The court could not help but wonder whether in those circumstances the First Defendant may have been subject to the influence of her daughter who was ordinarily resident abroad but who it appears to the court was able from afar to make a bold attempt to have her old widowed mother relinquish her rights to her property to the exclusion of all others upon the passing of her father.

### **The Fifth Issue**

34. The Claimant claimed that the First Defendant committed fraud when she, knowing that an agreement had been made in the terms as alleged by the Claimant, made assurances to the Claimant that she would not and did not at anytime deal or part with title to the said

parcel. The Claimant stated that notwithstanding this she discovered through her attorney that the First Defendant had conveyed her undivided share in the said parcel to the Second and Third Defendants and had concealed this transaction from her.

35. Fraud may be actual or constructive. Actual fraud arises from acts and circumstances of imposition. It usually takes either the form of a statement of what is false or a suppression of what is true: *Halsbury's Laws of England 5<sup>th</sup> Edition Volume 16(2) para 413*. Constructive fraud is made out on grounds of undue influence, unconscionable bargain, public policy or abuse of confidence.
36. From the particulars of fraud the Claimant alleged actual fraud on the part of the First Defendant. That is, that the First Defendant, having made the assurances as alleged suppressed the truth of her actions from the Claimant.
37. The finding of the court above was that there had been no agreement, promise or assurances in the terms as alleged by the Claimant, consequently, the court found that there was no fraud on the part of the First Defendant.
38. In the circumstances the Claimant failed to discharge the burden of proving her case and the claim was therefore dismissed.
39. For these reasons, the court therefore disposed of the Claim in the manner set out at paragraph 1 above.

Dated this 15<sup>th</sup> day of May 2013

Ricky Rahim  
Judge