

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2012 03927

Between

RAJKALLIA BIJOO-JOHN

Claimant

And

DALE RAJKUMAR

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: Tuesday July 27, 2021

Appearances

Claimant: Mr. S. Ramkissoon instructed by Ms. K. Moonasar and Ms. C. Singh

Defendant: Mr. S. Saunders instructed by Ms. A. Rahim

JUDGMENT

1. This is a claim for possession of a parcel of land situated in Chaguanas comprising 490.7 square metres by the paper title owner who obtained title by way of Deed No. DE200400118490. Prior to obtaining title in 2004, the claimant was the tenant of the subject land for about thirty years. She then purchased from the landlord. The disputed land is a part only of the entire legal holding of the claimant. The title of the claimant is not in dispute in this case. The house in dispute is a concrete house, which is the last of four houses built on the land overtime.
2. The defendant was once married to the daughter of the claimant and it is his case that he continues to live on the subject land with the permission of the said daughter Kaminee Bijoo, a police officer. It is also his case that Kaminee is entitled to possession of the premises by virtue of promissory estoppel, the house and disputed land having been promised to her by her grandmother Daye Mahadeosingh, her uncle Kumar Singh and the claimant who herself has acquiesced to her possession over the years. Attorney for the defendant has admitted that his is not a case of adverse possession but one of promissory estoppel only.
3. The evidence in this case was led by affidavit and there was cross examination by opposing parties. The defendant has not given any evidence by way of affidavit or otherwise but has instead filed an affidavit by Kaminee, a procedure that he is entitled to employ having regard to the fact that the issue of his entitlement is hinged on the propriety of any entitlement Kaminee may possess, he having been in occupation by virtue of her permission.

4. On another note, Kaminee state in her affidavit that she wished to be joined to the proceedings. However, she made no application to be joined. The history of the proceedings is relevant to the issue of her joinder. This matter was commenced in the year 2012 and was heard once before the High Court and determined by another judge. The order of the court was appealed and the appeal was allowed and the case remitted to be retried. This court is only seized of the order of the Court of Appeal and not the dicta of the said court for reasons that are obvious in law.

5. However, it is clear that since 2012 Kaminee has had the opportunity to apply to be joined so that she may have sought her own relief but she has failed so to do and has not preferred any explanation for so doing. While therefore a court may make such an order of its own motion, this court is of the view that it would be manifestly unfair to the claimant so to do some eight years later, upon the filing of her affidavit in which she makes the bare statement that she wishes to be joined to make a claim in equity. Further joinder is not a matter of course and there are criteria to be met under Part 19.2 (3) and 19.2(7). Kaminee has not led any evidence upon which such an application can be considered particularly since the Case Management stage has long been completed. In any event based on the evidence before the court there are no changed circumstances that became known after the case management conference which makes the addition of Kaminee necessary.

6. Further and in any event, in the view of the court it is not necessary or desirable that Kaminee be joined in order to resolve the issues on the case. The defendant is entitled to rely on the evidence of Kaminee which he has. The claim concerns the issue of whether the defendant is entitled to remain in occupation as against the paper title owner who is prima facie

entitled to possession and that in turn is dependent on Kaminee's entitlement which is a matter of proof. Should it be found that the claimant is estopped from removing the defendant because of the entitlement of Kaminee then the matter would be accordingly determined and the claim would have to be dismissed. An order in favour of Kaminee is not required to determine the claim.

Issue

7. The issue in this case is therefore as follows;

- i. Is the claimant estopped from obtaining possession of the disputed property from the defendant by virtue of the doctrine of promissory estoppel in favour of Kaminee Rajkumar by whose consent the defendant presently occupies.

Evidence

The claim

8. In addition to the facts set out above, it is the case for the claimant, who was at the material time employed with Fit Rite Garment Factory as a seamstress, that she built a board house (the first house) with the help of family and neighbours on what was then rented land. She was pregnant at the time. She funded the entire house and materials which were also donated by her uncle. This house came to be known as the old house. Her daughter Kaminee was born on October 21, 1967 on that property. Kaminee's father Pulchan left the home (first house) five months before Kaminee was born and never returned to live at the premises.

9. In 1984, Kaminee, then sixteen years old married the defendant with the permission of the claimant. The claimant then funded the construction of a new board house (the second house) close to the old one. The claimant purchased the majority of the materials and used some material from the first house to erect the structure. She also paid for labour. Kumar Singh, the claimant's brother also assisted in purchasing material but his contribution was minimal. The second house was built at the back of the first house.

10. Kaminee needed a place for them to live upon marriage so the claimant told Kaminee that she could stay in the first house on the said lands until she got a place to purchase and move out. Eventually the claimant allowed Kaminee and her husband to move into the second house with her and she demolished the first house. It is her evidence that at the time Kaminee knew that the claimant had plans to develop the property.

11. The claimant left for a period of two years and returned in 1996. By then the defendant and Kaminee were separated. Upon return she observed that the defendant had constructed a small wooden house on the premises without her permission at the front of her home (the second house). By process of reasoning, it follows that she is saying that a small wooden house was constructed in the general area where the first house once existed. The claimant expressed her objections to the defendant who promised to leave as soon as she required. Upon purchase in 2004, she informed the defendant of her purchase and asked him to vacate. He asked to stay until the end of December 2004 and she agreed. He however failed to keep his promise. In January 2005, she once again asked him to leave and he asked for six weeks to do so. She agreed. He refused to leave. In

July 2005, she once again spoke with him and asked him to leave and he said he had difficulty getting a place.

12. There is no direct evidence that contradicts the evidence above of the conversations between the claimant and the defendant. Kaminee purports to say that she was informed that those conversations did not occur but as the defendant himself did not testify as to the non-occurrence of the conversations the truth of Kaminee's assertion could not be tested. The court therefore gives no weight to her assertion that the conversations did not occur.
13. Additionally, no explanation has been given for the failure to call the defendant to testify when it is reasonable to conclude that he would have been able to give material evidence about the conversations. In that case the court draws an adverse inference against the defendant on the issue of the conversations and finds that the claimant did in fact speak with the defendant as she testified to.
14. A letter was written to the defendant by the claimant's lawyer on January 16, 2006 demanding that he vacates and threatening legal proceedings. No response was received. In September 2006, the claimant filed an action against the defendant in the High Court. The defendant left the property and the claimant withdrew the claim. In or around 2009 he however returned.
15. On September 5, 2010 and on January 31, 2011 the claimant again wrote to the defendant through her lawyer calling upon him to vacate but he never did. This claim was then commenced in 2012. The former letter was addressed both to Kaminee and the defendant. There were two letters

sent to Kaminee on April 25 and May 3, 2004 which Kaminee admitted receipt of but there was no response to these letters.

16. In relation to the letter of September 5, 2010, Kaminee responded through her lawyer by letter dated October 14, 2020. In that letter Kaminee stated that she lived on the premises all of her life, had demolished the first house and built another one out of concrete on the land. It follows that the concrete house that is now occupied by the defendant was built in the general vicinity of the first house (which had been demolished and replaced by a third house before it was converted to a concrete structure). The claimant has also testified that she has never promised the land to Kaminee.

17. Having sifted through the evidence of both parties the court therefore understood the events in summary as follows. The claimant built the first house and lived in it with her husband. When she was pregnant with Kaminee her husband left. After Kaminee was born, Kaminee lived with her grandmother in a house close by but not situated on the land of the claimant. After Kaminee married, she and her husband were allowed to live in the first house and the claimant built the second house and lived in it. She later allowed Kaminee and her family to move into the second house with her, she demolished the first house and left the country from time to time. Kaminee and her husband the defendant broke up and Kaminee moved away from the second house. The defendant built a small wooden house on the spot once occupied by the first house. He left for sometime but returned subsequently. He demolished the small wooden house and replaced it with a concrete house very close to the spot once occupied by the first house. These are the facts as the court finds them.

Cross Examination

18. The evidence in cross examination was in large measure unremarkable in the context of the issue to be tried. The claimant denied that the second house was built by her mother. It was suggested that Kaminee and Daye were the ones who built the house. According to the claimant however the house was built when Kaminee was only five years old so that was impossible. She accepted that Daye used to plant rice but stated that she never made an income from that venture. It was made clear that that house is also no longer in existence. She admitted that she broke down the first house a couple of weeks after Kaminee and her husband had moved into it and moved them into the new board house.

19. As set out earlier, the court understood the claimant to be saying that her mother lived in her own house on her own land which was at the back of the claimant's land and the court so finds. It is therefore quite plausible that the mother paid for her own house through the sales of rice but it is also clear that Kaminee may not have been born when the mother's house was built. The tenor of the cross examination appeared to be designed to give the impression that Daye and Kaminee built the second house but the court understood from the evidence that this was not the case and the claimant was clear in cross examination as to where her mother's house was located.

20. She denied saying in her own evidence on affidavit that she left the country between 1994 and 1996 and stated that she only left for five days. She admitted having moved out of the second house to live with a man named Mr. Holder but testified that she would return on weekends. She seemed to have a lot of trouble with the recall of dates and years under cross

examination and she explained that being seventy-six years old, it was difficult to remember all of the dates. The court accepts that because of her age and the length of time that has since elapsed that the claimant's memory on certain matters may have been affected but she appears to have stood her ground on the important facts and her testimony in that regard remains unblemished.

21. It was also her testimony that she is being prevented from going into her house or on the land as a gate has been erected and it was locked on every occasion that she visited, including the day before testifying at trial. She affirmed that on the several occasions that she spoke to the defendant asking him to leave Kaminee was never there as she had long moved out. She could not specifically recall the letters. It must be noted that the evidence of the claimant was first sworn on September 27, 2012 so a relatively long time has elapsed between that date and her testimony at this second trial.

22. It was also her testimony that as it stands now, her houses have all been broken down by the defendant and he has built a mechanic garage attached to the concrete house which is the only house left standing.

23. Finally, it was suggested to her that her stepdaughter's son had been charged with the offence of larceny committed against Kaminee's daughter and she accepted same. It was also suggested to her that she told Kaminee that if her stepdaughter's son went to jail she would sell the land. She denied so saying. This evidence appeared to the court to be grounded more in scandal and speculation than reality as the evidence of the times of the chain of letters tell a different story. The court does not believe that

this entire case is as a consequence of the actions of a stepdaughter's son.
That simply makes no sense.

The defence

24. The defendant testified that at the date of her marriage she lived in the first house which was built by her father and not her mother. She said that the second house was built at the expense of she and her grandmother at the back of the first house. She and the defendant demolished the first house in July 1984, they having been married in May 1984. She then moved into the second house and began living there. The claimant was not living there at the time. She denied that letters were sent to the defendant but admits receiving letters from herself. She separated from the defendant in 2004 and left. Her daughter initially left with her but returned to live with the defendant shortly after. The defendant left the premises for a while because of a protection order she obtained against him. The defendant lives on the premises with their son at present.
25. She testified by affidavit that she has always lived on the land except for the period 2004 to 2006. Eventually she left and consented for the defendant to return in 2009. The defendant never tried to stop her from constructing or living on the land.
26. From the time she was a little girl, her grandmother Daye, father, uncle Kumar Singh and the claimant always referred to the land on which she lives as "Kaminee's land". She grew up hearing the land is her own. The claimant said this on many occasions. It was only after the incident involving theft from her daughter in 2003 that things changed and the claimant told her if Randoll went to jail she would sell the land.

Cross Examination

27. She admitted that she produced no supporting evidence that she expended any sums in building any of the houses or the garage or the fence. She admitted that she has never made a claim in equity against the claimant.

Findings of fact

28. The court finds the following as a matter of fact prior to the consideration of the applicable law and its effect on the issues;

- a. The first house and second houses were built by the claimant. This is so as the evidence of Kaminee is implausible in that regard. Firstly, in respect of the first house, Kaminee testified that her father told her he built the first house but she has failed to call her father to give such evidence. While first hand hearsay is admissible, the absence of the father means that the veracity of the evidence could not be tested in cross examination. This must be weighed up against the first hand evidence of the claimant that she built the house and her source of income at the time. The court therefore prefers the evidence of the claimant in that regard.
- b. In relation to the second house, the court is of the view that she has attempted to blur the line between the second house and the house owned and occupied by her grandmother which were two different houses. It was her evidence that she is the one who assisted in the funding of that house but it is equally clear that she would have been about five years old at the time so that it would

have been nigh impossible to assist in the construction of the second house or the grandmother's house in fact.

- c. The court also finds that the second house was in fact constructed after Kaminee married and not before as testified to by Kaminee. It is clear on Kaminee's evidence that after she married, she and her husband lived in the first house for a very short time, about two months until it was broken down. They then moved into the second house. It follows that the then owner and occupier of the first house, the claimant, would have built the second house as she said for her own benefit. The court accepts the evidence of the claimant that she is the one who constructed the second house and rejects the evidence that sixteen years old Kaminee built the second house with assistance from her uncle.
- d. The court finds that the claimant permitted Kaminee and her husband to move into the second house and she the claimant subsequently moved out to reside with Mr. Holder. The court also finds that the claimant's testimony that she visited the property every weekend thereafter is somewhat implausible. It may well be that she visited from time to time but not as often as every weekend. It is equally clear that the claimant would have begun another family elsewhere so that as a matter of common sense and logic such visits would be limited by practicality.
- e. The court also finds that the claimant did in fact leave Trinidad between 1994 and 1996 as she stated in her evidence filed in 2012. So that her attempt to reduce the period of her absence in cross examination is either a mistake or an attempt to mislead so as to shore up her case. The court has carefully considered many factors

in this regard including her demeanor in cross examination and the tenor of her answers and is satisfied that her intention was not to mislead. The court finds that her age and the passage of time contributed significantly to her inability to provide accurate answers at times.

- f. In so saying the court is also of the view that the truth must lie in the fact that the claimant was absent for some two years as it was during this period that Kaminee and the defendant broke up and Kaminee moved out. It is clear that the claimant was unaware of this until she visited in 1996 and observed what she referred to as a small wooden structure in front of her house. It follows that having broken up with Kaminee the defendant constructed a small wooden house on the spot once occupied by the first house and moved in and the court so finds.
- g. The court also finds that the claimant did in fact have several conversations with the defendant for him to quit the premises and sent several letters to him. This find is based both on the adverse inference drawn as set out above and the fact that the letters are all annexed to the proceedings in this case.
- h. The court accepts also that Kaminee and the defendant expended sums of money on the property even though her evidence is unsupported by any receipts or other documents. This is so as there is no denial of same and no evidence to the contrary has been led. In fact, it appears to be accepted by the claimant that a concrete house with a mechanic garage has been constructed on the premises. That would no doubt have entailed expenditure.

- i. Finally, the court rejects the evidence of Kaminee that this entire case has been brought by the claimant because of an incident between the daughter of Kaminee and the step grandson of the claimant for the reasons set out earlier.

The Law

Promissory Estoppel and Proprietary estoppel

29. Halsbury's Laws of England provides the following in relation to promissory estoppel.

“The principle of promissory estoppel is that, when one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but must accept their legal relations subject to the qualification which he himself has so introduced.¹”

Promise

30. In CV2010-03575 ***Fulchan v Fulchan***, Rajkumar J, as he then was, defined promissory estoppel as follows:

“11. Promissory Estoppel Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations

¹ Halsbury's Laws of England, Estoppel (Volume 47 (2014)), Nature, Classification and Principles of Estoppel, para. 308

between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it , altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it.²”

31. In the Court of Appeal decision of CA T243 of 2012 **Mills v Roberts**, a distinction in the nature of the promise between the law of promissory estoppel and proprietary estoppel was considered. Jamadar JA stated:

“19. Whereas in promissory estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect, in the law of proprietary estoppel there is no absolute requirement for any findings of a promise or of any intentionality.”

Expectation or belief

32. In CV2012-00164 **Juramanie Gayapersad v Danraj Gayapersad (By Original Claim)**, Rajkumar J, as he then was opined:

“75. It is not necessary for the claimant to prove that the defendant agreed that the promise or assurance would be irrevocable since it is the claimant’s detriment which makes the assurance binding and irrevocable provided that it was clearly intended to be acted upon.

² See also CV2011-04300 Esther Mills v Lloyd Roberts, per Rajkumar J, (as he then was) para. 119

76. 2. Expectation or Belief

She must have acted in the belief either that she already owned sufficient interest in the property to justify the expenditure or that she would obtain such interest. See Snell's Principles of Equity 31st Ed. Para. 10-18."

Detriment

33. In assessing the detriment allegedly suffered by the claimant, the court would consider any benefit and/or advantages enjoyed by the claimant from the subject property. In Fulchan, supra, at p. 7:

"The law as set out in Snell's Equity (ibid) is clear. It will recognize such an interest in circumstances where a party asserting such interest was led to act to his detriment, and it would be inequitable not to recognize such an interest."

34. Further at paragraph 17, the Honourable Judge noted that not every contribution made to a property would give rise to an equitable interest.

"Routine maintenance activities on property that is occupied by such a claimant, such as cleaning or painting, would not usually fall into the category of detrimental actions that require compensation by the award and recognition of an equitable interest in property. This is activity to be expected of anyone who occupies and has the benefit of occupying property."

35. There is one major distinction between promissory and proprietary estoppel, namely that the latter treats with a promise to an enforceable

right in land. The applicable principles of law remain the same for both however. It is also to be noted that acquiescence or non-objection may qualify as a promise in appropriate circumstances.

Applicability to the present case/finding on the sole issue

The promise

36. In relation to a promise by words, the evidence is extremely poor and unsatisfactory. The only evidence in this regard that is the bald statement by Kaminee that her parents and grandmother and uncle referred to the place as her place since she was small. This evidence on its own falls way short of the clear and unequivocal promise or assurance necessary to affect legal relations between them. She has not provided particulars of the promises as to when they were made and by whom on which occasion. Neither does the nature and meaning of the words allegedly used give rise to a promise on the face of it in the court's view. Further, promises by persons who did not own an interest in the property and so were not in a position to give an interest do not qualify.

37. Fundamentally, it must be noted that at the time the vague promises were made, in any event, none of the alleged promisors, including the claimant owned any interest in the land beyond that of a tenancy. The highest that therefore could have been promised at that time was a tenancy and nothing more and the court so finds. As a result, the court does not accept that any promises were made to Kaminee that the property belonged to her since she was a child.

38. However, in this case a distinction must be made between alleged promises made to Kaminee as a child and promises alleged and actions of the claimant after Kaminee married. This is where the fulcrum of the facts lies. The evidence of a promise made after Kaminee was married is patently absent. Nowhere in her evidence does Kaminee testify that upon putting she and her husband to live in either the first or second house, her mother promised that the property belonged to her. All of her evidence in that regard appears to be based solely on the conduct of the claimant by way of acquiescence. This evidence must therefore be examined.

39. In so doing it is clear that the claimant is the one who gave occupation of the second house to Kaminee and her husband. However, the evidence of the claimant is that upon Kaminee's marriage in 1984 she expressed to Kaminee that she could stay on the property until she was able to find somewhere else³. Kaminee's only answer to this evidence was a bare denial and a statement that she was born on the land⁴. So that Kaminee has not relied on any expressed promise made after her marriage. Her case when distilled is therefore predicated solely in the fact that according to her the claimant was aware of her construction and did nothing.

40. However, the evidence tells a different story. It is clear on the evidence and the court has found that the claimant spoke with the defendant (who remained the occupier of the land) on several occasions and also wrote him almost annually calling upon him to quit but he refused. In fact, not only did he refuse but he continued to extend his business by construction of the garage in the face of the persistent calls to quit.

³ See paragraph 6 of the affidavit of the Claimant filed September 27, 2012.

⁴ See paragraph 6 of the Kaminee affidavit.

41. Additionally, in the court's view, very potent evidence of the consistent objections by the claimant was the filing of the court action and her reason for the withdrawal. The fact that she filed demonstrates clearly to the court that she was attempting to assert her rights and lend credibility to her evidence that she never made a promise to Kaminee or her husband and dispatched letters and spoke to the defendant on several occasions asking him to leave.
42. In the court's view therefore, there was no acquiescence on the part of the claimant who consistently asserted her rights to the property. In that regard it is somewhat of an obverse argument to say that someone who has consistently asserted her right to the premises over many years has acquiesced to the continued occupation of the land and construction thereon. To the contrary, this is one of those clear cases in which the title holder has been at pains to assert her rights annually if not more often.
43. The court therefore finds that there was no promise to Kaminee either expressed or by or through the conduct of the claimant and therefore there was no expectation or detriment on the part of Kaminee. The defendant therefore being on the premises with the permission of Kaminee it follows equally that he must vacate, she having no interest in the property. It appears to the court that this was a brazen take-over of property in the face of every lawful type of objection on the part of the owner who was kind enough to permit her daughter to reside thereon with her family until better could be done.
44. In those circumstances the persons who chose to expend money to construct the concrete house and extend the garage would have done so at their own risk as the building runs with the land in law.

45. It follows that the claimant is also entitled to damages for trespass/or illegal occupation from the first day that she revoked her permission in the year 1996. The claimant has however not led any evidence capable of assisting the court in qualifying such, but she is nevertheless entitled to a nominal sum. The court therefore awards the sum of \$10,000.00 as nominal damages.

Disposition

46. The order of the court will therefore be as follows:

- a. The defendant shall deliver possession to the claimant of ALL AND SINGULAR that certain piece or parcel of land situate in the Ward of Chaguanas, in the island of Trinidad, comprising Four Hundred AND NINETY POINT SEVEN (490.7) SQUARE METRES of land more or less (being portion of a larger parcel of land comprising THIRTY SEVEN (37) ACRES more particularly described on the Third Part of the Schedule to Deed registered as No. 4727 of 1976) and bounded on the North by land of L. Ramdass, on the South by lands of E. Ojar and which said piece or parcel of land is delineated and shown coloured pink on the Plan annexed to Deed No. DE200400118490 (as set out in the plan therein) together with the buildings thereon and appurtenances thereto belonging. (hereinafter referred to as “the property”).
- b. The defendant shall pay to the claimant damages for trespass/ illegal occupation in the sum of \$10,000.00.

- c. The defendant shall pay to the claimant the costs of the claim on the prescribed scale on the basis that the value of the claim is one for \$50,000.00 in the sum of \$14,000.00.
- d. Stay of execution 28 days.

Ricky N. Rahim

Judge