

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2014-02139

BETWEEN

TIMOTHY ST. CYR

Claimant

AND

LAURENCE CEASAR

First Defendant

VENTURE CREDIT UNION CO-OPERATIVE SOCIETY LIMITED

Second Defendant

And Between

VENTURE CREDIT UNION CO-OPERATIVE SOCIETY LIMITED

Ancillary Claimant

And

LAURENCE CEASAR

Ancillary Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. R. Boodoosingh for the Claimant

Mr. R. Ramoutar for the Second Defendant

Judgment

1. This is an action for possession of property situate at No. 9 St. Mary's Village, Carapichaima, in the Ward of Chaguanas, comprising of one lot (5,230 square feet) together the house standing on the said land (the house and land are hereinafter referred to as "the subject property").
2. By Fixed Dated Claim Form filed on the 16th June, 2014, the claimant claims that he has acquired possessory title of the subject property since he has been in exclusive, undisturbed possession and occupation of same for about thirty-one (31) years since the death of his grandmother, Theresa Prince ("Theresa") in the year 1973. The claimant's mother, Ruby St. Cyr is the daughter of Theresa. The land was conveyed to Theresa by Royal Grant dated the 20th March, 1906 and registered in Volume CLXII (162) Folio 325. According to the claimant, he has undertaken numerous renovations to the house since the death of Theresa. The claimant further claims that the right and/or title of all and any paper title holder to the subject property was extinguished sometime in the year 2009 by virtue of section 3 of the Real Property Limitation Ordinance Chapter 5, No. 7.
3. Consequently, the claimant claimed a declaration that he is entitled to possession of the said land and an injunction preventing the defendants either by themselves and/or their servants, agents, employees from entering and remaining on the said land and from evicting the claimant from the said land. This claim was initially brought against the first defendant only. It was during the course of case management that it was discovered that the first defendant had previously secured a mortgage of the subject property and so the second defendant was joined as a party.
4. The first defendant is the nephew of the claimant, as the first defendant's mother, Lynette St. Cyr ("Lynette") is the sister of the claimant. Theresa was therefore the great grandmother of the first defendant. By his defence filed on the 8th April, 2015, the first defendant alleges that the claimant was allowed to live at the subject property with the

knowledge and consent of the then lawful owner, Aubrey Prince (deceased) and was therefore a licensee of Aubrey. Aubrey is the son of Theresa and therefore is the uncle of the claimant and the great uncle of the first defendant. The first defendant avers that in or about 1987 to 1990, his mother, Lynette refurbished and renovated the said house. The first defendant further avers that he was born to Lynette in 1971, while she was still in occupation of the subject property. According, to the first defendant, Theresa died on the 27th August, 1973 leaving a Will dated the 20th January, 1973. The Will was probated on the 7th March, 2008. By this Will Theresa bequeathed the subject property to the first defendant. However, the first defendant was two years old when Theresa died, therefore the subject property was held in trust by Wilfred Wellington (“Wellington”), the executor of Theresa’s estate until the first defendant could have dealt with the subject property. By Memorandum of Assent dated the 15th April, 2008 and registered in Volume 5018 Folio 379, the subject property was conveyed to the first defendant. The first defendant did not appear at the trial and his attorney at law, Mr. Kerr was granted leave to cease acting on his behalf.

5. By virtue of Memorandum of Mortgage No. 71 dated the 30th November, 2009 and registered in Volume 5183 Folio 355, the subject property was mortgaged by the first defendant to the second defendant pursuant to a loan agreement and in consideration of the sum of five hundred thousand dollars (\$500,000.00). Upon default having been made by the first defendant the second defendant in exercise of its statutory power of sale attempted to sell the subject property but was unable to do so because of the actions of the claimant. The second defendant joined issue with the first defendant and denied that the claimant has been in sole, exclusive, continuous and undisturbed possession of the subject property. As such, by its defence and counterclaim filed on the 24th November, 2015 the second defendant counterclaims for a declaration that it is entitled to the subject property, damages for trespass and damages for consequential losses.
6. Further, by Ancillary Claim Form filed on the 28th January, 2016 the second defendant/ancillary claimant claimed against the first defendant/ancillary defendant the following;

- i. The sum of five hundred and ninety-six thousand, seven hundred and seven dollars and sixty-eight cents (\$596,707.68);
 - ii. Interest at the rate of 6% per annum or ninety-eight dollars and two cents (\$98.02) per diem from the date of issuance of the Ancillary Claim to the date of full payment, or at such rate and for such period as the Court deems just and fit;
 - iii. Pending the determination of the substantive claim herein, delivery by the first defendant/ancillary defendant of the subject property;
 - iv. Pending the determination of the substantive claim, an order that the mortgage may be enforced by sale and/or an order for sale of the mortgaged premises together with all necessary and consequential directions;
 - v. Damages and consequential losses suffered by the second defendant/ancillary claimant;
 - vi. Costs; and
 - vii. Such further and/or other relief as the Court deems just and convenient.
7. On the 23rd June, 2016, the Court determined the Ancillary Claim save and except for the issue of possession which was adjourned pending the determination of the original claim. The following was ordered in relation to the Ancillary Claim;
- i. *Judgment against the ancillary defendant in favour of the applicant/second defendant/ancillary claimant in the following terms:-*
 - a) *The first defendant/ancillary defendant herein do pay to the applicant/second defendant/ancillary claimant the sum of five hundred and ninety-six thousand, seven hundred and seven dollars and sixty-eight cents (\$596,707.68) being the sum due and owing pursuant to Memorandum of Mortgage No. 71 dated the 30th November, 2009 and registered in Volume 5183 Folio 355.*
 - b) *The first defendant/ ancillary defendant do pay to the applicant/second defendant/ancillary claimant interest at the rate of 3.5% per annum or ninety-eight dollars and two cents (\$98.02) per day on the above mentioned sum from the 28th January, 2016 to the date of Judgment.*

- ii. *The ancillary defendant is to pay to the ancillary claimant 55% of the prescribed costs of the ancillary claim.*

The case for the claimant

8. The claimant called four witnesses in addition to his testimony, Agnes St. Cyr, Juliana Gabriel, Joseph Greenidge and Hilton Gopicharan.
9. The claimant was born on the 22nd August, 1961 and is therefore fifty five years old. He has been a fruit vendor since 1985 and has been residing in the subject property since he was a child, save and except for a period of time between the 28th December 1978 and sometime in December 1982 when he lived in the United States of America (“USA”). It means that he was seventeen years of age at the time he left for the USA. He testified that at the time he left for the USA, his sister Jennifer was living in the said house. That when he returned from the USA, Agnes St. Cyr (“Agnes”), his other sister was residing in the house.
10. Theresa, his grandmother, departed this life on the 29th August, 1973 having left her last Will and Testament in which she bequeathed the subject property to the first defendant. During cross-examination, the claimant testified that he used the word purported to describe the Will since neither he nor his siblings knew anything about the Will. Further, according to him, during the last few years of her life, Theresa never signed anything as she was not in any state to do so. The claimant further testified that his sister collected Theresa’s pension and signed for it. He did not identify which one of his sisters he was referring to. It seems as though the claimant had some doubt that the Will executed by Theresa was her true Will. However, this was not a pleaded issue and the claimant did not seek any relief in setting aside the Will.
11. The claimant testified that since the death of Theresa, he, his mother and his siblings had been in occupation of the subject property. That after the death of Theresa, the first defendant and his mother, Lynette lived on the subject property for about one year. During

cross-examination, the claimant testified that when Lynette and the first defendant came to live on the subject property for the year, Lynette had to ask for permission from Ruby St. Cyr (the claimant's mother) to do so since she had already moved out.

12. The claimant further testified that since the death of his mother Ruby, sometime in the year 1991, he has been in continuous, exclusive and undisturbed occupation of the subject property. During cross-examination, the claimant testified that subsequent to 1991, he was living on the subject property alone since his older brothers and sisters moved out in 1978 and Agnes moved out in 1985. It is noted that in the claimant's reply to the first defendant's defence filed on the 28th May, 2015, the claimant stated that Agnes and her family moved out of the subject property sometime towards the ending of the year 1990.
13. The claimant categorically denied that he was a licensee of Theresa or that he was given permission by Wilfred Wellington ("Wellington") to continue occupying the subject property. The claimant testified that he does not know Wellington and has never seen him. During cross examination, the claimant testified that he later found out that Wellington was claiming to be a cousin of Theresa. Further during cross-examination, the claimant testified that neither he nor his mother needed permission to live in the said house because the said house was a family home left for everybody. The claimant further testified that he initiated this action in order to keep the subject property in the family not for his own benefit but for the entire family's benefit. According to the evidence of the claimant, after the death of his mother, the subject property became vested in his siblings and him. The claimant testified that his siblings did not have a problem with him occupying the subject property as they agreed that he would stay there and take care of same. The claimant further testified that Agnes or Bernadette (the claimant's sisters) were welcome to come onto the subject property since as far as he was concerned the subject property belongs to all of the siblings.
14. According to the evidence of the claimant, since the death of Theresa, he has undertaken certain repairs of the said house. He has changed the roofing, cast a foundation to the front of the house, cast around the house, cast the floors inside of the house, installed concrete counter tops in the kitchen, tiled the kitchen area, plastered the walls of the house, installed a toilet and bath inside the house, cast a bridge and a walkway to enter and exit the said

land, installed water and electricity, built a concrete structure to sell fruits at the front of the house, painted, backfilled the yard in certain areas, maintained and cleaned the yard. During cross-examination, the claimant testified that he did not build the said house but simply did renovations to same. The claimant did not attach any receipts evidencing the money he allegedly spent in renovating the house.

15. During cross-examination, the claimant testified that his fruit shed is in front of the house, close to the main road. The fruit shed is not a part of the house. The claimant developed the fruit shed from wood into concrete in or around 1991. The claimant further testified that the wooden fruit shed is still standing. That the wooden fruit shed is in front of the concrete fruit shed.

16. The claimant was approached by one Ved Ramlogan to purchase the said house. During cross-examination, the claimant testified that he was not serious about selling the said house and that he was not going to sell the said land as same is not solely owned by him.

17. In an effort to prove his occupation of the subject property, the claimant exhibited the following documents;

- i. A house card from the Insect Vector Control Division, Health Department. This house card was however no use to the court as it simply stated that work was done on the 23rd April, 1999 in the District of Caroni and in the locality of Beaucarro. It did not state that the claimant was the owner or occupier of the subject property.
- ii. A letter from the Trinidad and Tobago Water Services (“TTWS”) dated the 19th February, 1999 which was sent to the claimant at the address of the subject property. By this letter TTWS informed the claimant that during a survey, it was unable to obtain his account number for billing purposes and requested the claimant to clarify the account number for the subject property. During cross-examination, the claimant testified that he never responded to this letter.
- iii. A letter from the American Embassy dated the 28th January, 2003 which was sent to the claimant at the address of the subject property; and

iv. An Elections and Boundaries Commission Electoral Card which was sent to the claimant at the address of the subject property and which shows the address of the subject property to be his registered address. The photocopy of the Electoral card did not show a date.

18. During cross-examination, the claimant testified that the house was supplied with electricity some time ago but there is no electricity now. He further testified that the electricity bills were in his name for a short period of time, that he paid land and building taxes for the land on a couple of occasions but he could not recall the dates. According to the claimant, the land and building taxes for the land were paid by any member of the family, the main person being his Uncle Aubrey.

19. It was also his evidence that neither of the defendants have done anything either individually or jointly to interrupt his possession and occupation of the subject property, save and except that the second defendant issued a Notice to Quit dated the 30th October, 2013 which prompted the claimant to initiate these proceedings. The claimant denied that he told a person in the employ of the second defendant, who purportedly visited the subject property that he was not the owner of the same and that he had been given permission by the owner to occupy the subject property. According to the claimant, the only time he spoke to anyone from the second defendant's offices was when he visited same to find out about the mortgage on the subject property. During cross-examination, the claimant testified that he visited the second defendant's offices after he saw an advertisement in the newspapers about the mortgage on the subject property. The claimant was told by an employee of the second defendant that he could not be given any information pertaining to the mortgage and that he should speak to the first defendant. According to the claimant, he left the second defendant's office after being told he could not receive any information on the mortgage.

20. During cross-examination, the claimant was examined on an email which formed part of the second defendant's evidence. This email which purportedly reported the claimant's visit to the second defendant's offices was sent by Patricia Seethal-Mohammed, a credit supervisor employed with the second defendant and was dated the 7th October, 2013. The email stated as follows;

“Someone by the name of Timothy St. Cyr visited the office today stating he has permission from Lawrence Caesar to reside on the property, he has a fruit stall at the front and a shack at the back.

This arrangement occurred after the mortgage was done. From what we are told, he is not there on a continuous basis.

Can you prepare a letter requesting he vacate the premises. Also your guidance in this matter is required.”

21. The claimant denied that contents of the email were true.
22. During cross-examination, the claimant testified that he was unaware that valuation reports were issued in respect of the subject property. Two valuation reports dated the 4th July 2008 and the 2nd September 2013 were carried out on the subject property by onsite visits. Among other things, the reports set out that the house is un-ceiled and is void of cupboards. The claimant however testified that the house does in fact contain cupboards but admitted that it is un-ceiled. He could not recall the date of the installation of the cupboards. When pressed as to how persons could visit the subject property without his knowledge, the claimant answered that the valuation reports were untrue.
23. **Agnes St. Cyr** (“Agnes”) is the claimant’s sister. She is sixty-two years of age. Agnes testified that she lived on the subject property until the death of her mother, Ruby. Thereafter, Agnes left the residence, leaving the claimant in occupation. Agnes would regularly visit the claimant at the subject property and over the years, she noticed that the claimant had undertaken certain repairs to the house.
24. **Juliana Gabriel** (“Gabriel”) is the claimant’s cousin. She testified that the claimant has been living on the subject property for most of his life, save and except for a period of time when he went to the USA. Gabriel further testified that the claimant operates a fruit stall at the front of the said house.
25. **Joseph Greenidge** (“Greenidge”) is a good friend of the claimant’s brother, Gregory William St. Cyr. Greenidge is seventy-three years of age and lives about a quarter mile

away from the subject property. He testified that he attended primary school with the claimant and his siblings. After the death of Theresa, the claimant, his mother and siblings remained in occupation of the subject property and after the death of Ruby, the claimant remained in occupation of the subject property. Greenidge testified that the claimant still resides in the subject property from where he sells fruits at a concrete stall which he constructed at the front of the house.

26. **Hilton Gopicharan** (“Gopicharan”) is a good and long standing friend of the claimant’s family. He currently resides in close proximity to the subject property. According to the evidence of Gopicharan, after the death of Theresa, the claimant, his mother and siblings remained in occupation of the subject property and after the death of Ruby, the claimant remained in occupation of the subject property. Gopicharan testified that the first defendant and his mother also lived on the subject property for a short time. He further testified that the claimant is still living on the subject property and he sell fruits from a concrete stall which he built at the front of the house.

27. The testimony of these witnesses was of no assistance in relation to the material issues to be decided in this case and their evidence is dealt with later on in that regard.

The case for the second defendant

28. Evidence for the second defendant was given by one of its employees, Steve Khadaroo (“Khadaroo”), a Collections Supervisor. Khadaroo is responsible for the recovery of monies outstanding on delinquent accounts and the realization of securities to satisfy loans given by the second defendant which are in arrears. Khadaroo took over the conduct of the collection of the first defendant’s mortgage from Mr. Gopichan Sookoo (the previous Collections Manager who is no longer employed with the second defendant).

29. From an examination of the second defendant’s files, computer records and accounts, Khadaroo discovered that the first defendant became a member of the second defendant in or around May, 2006 and was assigned account No. 9214. The first defendant operated a savings account and a shares account. In or around September, 2009, the first defendant

approached the second defendant for a loan facility and offered the subject property as partial security for the sum of five hundred thousand dollars (\$500,000.00). According to the evidence of Khadaroo, the first defendant indicated that he was the owner of the subject property as he had inherited same from his great grandmother.

30. As part of the loan application process, the second defendant retained Mr. Kwasi Bekoe, attorney at law for the purpose of investigating the first defendant's title to the said land. A copy of the Duplicate Certificate of Title for the subject property dated the 6th February, 2009 and registered in Volume 5098 Folio 501 showing the first defendant as the registered proprietor together with a number of other documents were provided to the second defendant by the first defendant. Those documents provided were as follows;

- i. Memorandum of Assent No. 59 dated the 15th April, 2008 and registered in Volume 5018 Folio 379;
- ii. Statutory Declaration of Wilfred Wellington dated the 14th May, 2008;
- iii. Memorandum of Discharge No. 15 dated the 10th September, 2009 and registered in Volume 5172 Folio 81;
- iv. Clearance Certificate Letter from W.A.S.A dated the 15th June, 2009;
- v. W.A.S.A Bill showing payments for the said land;
- vi. Land and Building Tax Receipt for the said land dated the 04/06/09;
- vii. Valuation Report of Charles B. Lawrence & Associates for the said land dated the 4th July, 2008.

31. Mr. Bekoe prepared and submitted to the second defendant, a Report on the title of the subject property dated the 9th October, 2009. Upon reading the Report, it was discovered that there appeared to be an encumbrance of a Scotia Bank Memorandum of Mortgage registered on the 6th February, 2008 which was executed by the first defendant. Subsequently, the first defendant indicated that he had paid off the Scotia Bank Mortgage and this was confirmed by a Memorandum of Discharge of the said Mortgage dated the 12th December, 2008.

32. As a result of the representations and assurances made by the first defendant, the second defendant granted the first defendant the loan of five hundred thousand dollars (\$500,000.00) with the subject property and his shares being used as collateral.
33. Consequently, by Memorandum of Mortgage dated the 30th November, 2009 and registered as Instrument No. 71 in Volume No. 5183 Folio 355 (“the said mortgage”), the second defendant became the mortgagee of the subject property.
34. According to the evidence of Khadaroo, the record indicated that the first defendant defaulted on the said mortgage which resulted in his account going into arrears. Three notices dated the 27th April, 2011, 13th May, 2011 and 26th September, 2011 respectively, were sent to the first defendant informing him that his accounts were in arrears and calling upon him to regularize his account balance. By letter dated the 24th June, 2013 the second defendant issued a Pre-Action Protocol letter to the first defendant. However, court proceedings were avoided since the first defendant admitted the debt and made arrangements for sale of the subject property. As a result of the first defendant’s he per acknowledgement of his indebtedness to the second defendant for the sum of five hundred and six thousand, seven hundred and seven dollars and sixty-eight cents (\$506,707.68), the subject property was advertised and a successful bid was accepted by the second defendant.
35. It was subsequent to the advertisements and receipt of bids, that the claimant visited the office of the second defendant where he spoke with an employee of the second defendant who he informed that he was given permission by the first defendant to reside on the subject property. Subsequently, Patricia dispatched the aforementioned internal email which reported on the claimant’s visit. Following this email, the second defendant instructed Mr. Dave Persad, attorney at law to take legal action and a letter dated the 30th October, 2013 was sent to the claimant demanding that he vacate the subject property. The claimant responded to that letter by letter dated the 18th November, 2013 whereby the claimant informed the second defendant that its mortgage is subject to whatever legal and equitable share and interest he has in the subject property.

36. After reviewing the records kept by the second defendant on the first defendant which included a copy of the Will of Theresa, a copy of the grant of probate of the Will, Khadaroo reported the following information to the second defendant;

- i. The said land was conveyed to Theresa by Royal Grant for Crown Lands dated the 20th March, 1906 and registered in Vol. CLXII (162) Folio 325;
- ii. Theresa lived on the subject property with her children, grandchildren (including the claimant) and great grandchild (the first defendant) until her death on the 29th August, 1973;
- iii. The subject property was left via the Will of Theresa to the first defendant, who was two (2) years old at the time. At the time the families of both the claimant and the first defendant occupied the subject property as licensees of Theresa.
- iv. Subsequent to the death of Theresa, the subject property was managed by Wellington, the sole Executor and Trustee of the estate of Theresa. Permission was given to the family to continue occupation of the subject property by Wellington and subsequently, by the first defendant.
- v. At the time of the valuations and site visits there was no one in occupation of the said house but there was a fruit shed and a business being conducted.
- vi. Further enquiries revealed that the vendor at the fruit shed indicated to the field investigator that he was not the owner of the subject property but was given permission by the owner to sell his fruits and vegetables on the said land. A visual inspection of the property gave no evidence of it being occupied and this information was also confirmed by the valuation report.
- vii. The first defendant indicated that while the said house was occupied by many relatives, he had inherited it and it was now vacant as the claimant was not in occupation of the house but was selling his fruits and vegetables there with permission from the first defendant.

Issue

37. The main issue that falls to be determined by the court is whether the claimant is entitled to possession of the subject property based on the doctrine of adverse possession.

Adverse Possession

Law

38. In relation to the principle of adverse possession, **Section 3 of the Real Property Limitation Act Chapter 56:03** provides that;

“No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.”

39. Further, **Section 22 of the Real Property Limitation Act** provides that;

“At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.”

40. The law on adverse possession is not in dispute. For the claimant’s claim in adverse possession to be made out, he must prove both factual possession and an intention to possess the subject property. This factual possession should be exclusive and ought not to have been by force, hidden or with the paper owner’s permission. He must also show an 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: **JA Pye (Oxford) Ltd v Graham [2002] UKHL 30.**

41. Whether the claimant has met the requirements of adverse possession turns on the evidence before the court. The claimant submitted that by virtue of his undisturbed possession of the subject property since 1984, the right of the defendants to bring an action and make an entry to recover the subject property is barred, their title have been extinguished and he has acquired title thereto. Further, the claimant submitted that sixteen (16) years from 1984 came to fruition sometime in the year 2000, therefore by the time the second defendant had granted the mortgage to the first defendant, the first defendant's title had been extinguished. Consequently, it was the submission of the claimant that the mortgage was ineffectual to pass any title or interest to the second defendant in the subject property. In so submitting the claimant relied on the authority of *Republic Bank Limited v Manichand Seepersad, Raymond Chance a/c Shazam Chance and Zorena Ghany Chance Civil Appeal No: S268 of 2014.* (a decision of the Court of Appeal in which the first instance decision of this court was upheld)

Findings

42. The second defendant agreed that if the claimant could prove that he has been in adverse possession of the subject property for sixteen (16) years preceding the execution of the mortgage, then the claimant may be able to assert his rights that the paper title owner and/or the mortgagee's right to possession are null and void and barred by the operation of the Real Property Limitation Act, as confirmed by *Manichand* supra. However, the second defendant submitted that any occupation and/or possession by the claimant of the subject property could not and did not constitute adverse possession in law in the circumstance of this case. The second defendant further submitted that throughout all of the investigations and dealings with the subject property, at no time was there ever any indication of the claimant being in occupation, possession and control of the subject property as alleged.

43. According to the evidence of the claimant, he has been in occupation of the subject property since he was a child, save and except for a period of time when he went to the USA. The claimant testified that after the death of Theresa in 1973 he, his mother and his siblings had been in occupation of the subject property. However, in 1973 the claimant would have been

a minor of tender years, therefore, he could not have had the intention to possess the subject property in 1973 neither would he have had factual possession. It cannot be the case that he had the capability to form the intention to possess while still a toddler or certainly in his early teens. In addition to his obvious mental incapacity to form such an intention at such a stage of his life, it is clear that as a child living with his parents who were responsible for his care, he could receive no benefit from the principle of adverse possession unless his parents themselves were in adverse possession but there simply is no evidence to support such an argument in this case.

44. During cross-examination, the claimant testified that his older brothers and sisters moved out of the subject property in 1978 and Agnes moved out in 1985. Further, it was the testimony of the claimant that after the death of Theresa, the first defendant and his mother, Lynette lived at the subject property with Ruby's permission. This evidence therefore demonstrated that the claimant was not in occupation of the subject property by himself before 1985. On the claimant's evidence, it was only after the death of his mother Ruby, sometime in the year 1991, that he was in continuous occupation of the subject property. Consequently, if time had to begin to run against the paper title owner of the subject property, on claimant's evidence, the year 1991 would have been the starting point.

45. It is equally clear that in order for the claimant to prove that he has been in adverse possession of the subject property, he must satisfy this court that he not only had factual possession of the land for more than sixteen years but that he also had the requisite intention to possess same. He must demonstrate the exclusivity of his possession by way of not only physical possession but the intention to possess to the exclusion of all others.

46. In the seminal case of Pye supra at paragraph 41, Lord Browne-Wilkinson approved a passage from Slade J's judgment in *Powell v McFarlane* (1977) 38 P&CR 452 in which the latter stated as follows;

"Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that

land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.”

47. According to the evidence of the claimant, after the death of his mother, the subject property became vested in him and his siblings on intestacy. The claimant testified that his siblings did not have a problem with him occupying the subject property as they agreed that he would stay there and take care of same. The claimant further testified that Agnes or Bernadette (the claimant's sisters) were welcome to come onto the subject property since as far as he was concerned the subject property belongs to all of the siblings. This evidence demonstrated to the court beyond a shadow of a doubt that the house was at all times considered as and used as family premises and that the claimant's occupation was therefore not exclusive. Further, when asked if he was going to sell the said land when approached by Ved Ramlogan to purchase the house, the claimant testified that he was not, as the land did not belong to him solely. This evidence demonstrated clearly to the court that the claimant understood that the subject property did not belong to him exclusively and further that he did not have an intention to occupy same to the exclusion of the other members of his family.

48. This court also noted that the claim was not brought by the claimant on behalf of himself and on behalf of his siblings. It is not, nor was it ever his case, that the property is family property and that he has brought the case as one of those entitled. In other words it is not his case that his single possession is exercised by or on behalf of several persons jointly in keeping with the learning as set out by Slade J (supra). His case as pleaded is that he is the sole owner having acquired title by means of adverse possession.

49. Additionally, even though the evidence given for the claimant by Agnes, Gabriel, Greenidge and Gopicharan supported the fact that the claimant was in occupation of the

subject property, this evidence did not assist the court in asserting whether the claimant had an intention to possess the subject property to the exclusion of others. The court is also not satisfied that their evidence assists in relation to actual occupation of the house itself at the time of the filing of the claim.

50. Moreover, the court is not satisfied that the claimant did in fact continue to occupy the house up to the date of filing the claim, but has found that the claimant has only occupied his fruit stall which is situated at the front of the abandoned house. During cross-examination he testified that even though the said house did have electricity at one time, it does not have any at the moment and that the electricity bill was only in his name for a short period of time. He failed to mention this fact in his witness statement when treating with his exclusive possession and the court must ask itself why. Is it that he chose to keep this fact from the court so as to hide the fact that the house was abandoned. That evidence left on its own may not necessarily lead the court to such a conclusion but when it is added to the other evidence set out hereafter, the picture becomes abundantly clear.

51. Additionally, it is not plausible that valuers would visit the premises and gain access to the house without his knowledge if the claimant was in occupation. As a matter of common sense, the valuers would only be able to gain entry in one of three circumstances. Firstly, with the permission of the occupier, secondly by breaking and entering the locked doors of the occupier or thirdly by open entry into the abandoned house. In this regard there is no evidence of breaking and entering and the claimant is unaware of how they would have gained entry. This leads the court to find that the claimant is not being truthful when he testified that he remained in occupation of the house up to the time of the filing of the claim. The inference is that the valuers would have had entry to an abandoned house and would more than likely have gone there at a time when the claimant was not at his stall at the front of the house.

52. In this regard the court notes that he has not objected to the evidence of the valuation reports but made an attempt to discredit it in cross examination by saying the reports were untrue. The court does not believe him. The only way that the valuers would know that there are no cupboards would have been by way of entry into the house. The claimant has not

produced any receipts or other evidence to support his testimony that there were cupboards in the house. Neither has any reason been suggested for the valuers to have lied in their reports. In such circumstances, the court finds that the claimant in fact abandoned occupation of the house at some point but remained in occupation of the fruit stall which he constructed at the front of the property where he plied his trade and has continued to so do.

53. The claimant further testified that he paid land and building taxes but same was usually paid by any member of the family. The claimant did not produce any documentary proof of the electricity bill being in his name and/or any land and building tax receipts paid by him. The first defendant however provided the second defendant with a land and building tax receipt dated the 4th June, 2009 paid by the first defendant and a copy of a Clearance Certificate letter from W.A.S.A dated the 15th June, 2009. The court therefore finds that on the facts of this case, the claimant would have in any event done nothing adverse to the title of the first defendant.
54. According to the evidence of the claimant, he did numerous renovations on the said house. However, the claimant did not provide any documentary proof to substantiate the renovations he allegedly undertook. Further, a comparison of the two valuation reports demonstrates that no mention was made of any substantial repairs and renovations to the said house. In fact the total capital value of the subject property decreased from four hundred and thirty-five thousand dollars (\$435,000.00) in the 2008 valuation to four hundred thousand dollars (\$400,000.00) in the 2013 valuation.
55. The claimant therefore cannot succeed on the claim for adverse possession. Consequently, the learning in *Manichand* supra does not apply to the facts in this case as this court has found them. It follows that the title of the first defendant was not extinguished prior to the mortgage. Therefore, the second defendant holds a valid and subsisting charge on the property capable of enforcement.
56. Finally on this issue, it follows that any structure built by the claimant on the premises once affixed to the land runs with the land. In this case, the evidence demonstrates that the claimant built a fruit stall out of concrete. He claimed that he no permission for so doing.

The fact that he conducted his business at the stall located at the front of the premises does change the findings of the court in relation to the principle of adverse possession of the subject property having regard to his clear testimony set out above on the issue of his intention to possess. He therefore cannot sustain a claim for the expenses associated with the construction thereof against any of the defendants and he has not sought to so do.

Trespass

57. A claimant is entitled to nominal damages for trespass to land even if no loss or damage is thereby caused. Such damages will be given for largely innocuous invasions, or in cases where the claimant has been fully compensated by some other remedy. If the trespass is more serious, for example involving substantial interference with property or with privacy, then substantial damages may be recovered. Consequential losses may be claimed, as can damage to the land itself or buildings or fixtures on it: ***Halsbury's Laws of England, Volume 29 (2014), para 420.***
58. The second defendant initially made a claim for damages for trespass and consequential losses incurred in respect of the advertisement, valuations, legal advice and services. However, the second defendant failed to provide the court with any documentary evidence to substantiate the losses it allegedly incurred in respect of the advertisement, valuations, legal advice and services. Further, the second defendant failed to demonstrate and/or articulate its claim for damages for trespass. Consequently, the court will not award any damages for trespass and consequential losses.
59. The judgment of the Court is therefore as follows;
- i. The claim is dismissed;
 - ii. Judgment for the second defendant on its counterclaim and ancillary claim as follows;

- a) It is declared that the second defendant as Mortgagee is entitled to possession of the subject property more particularly described in the Certificate of Title registered in Volume 5098 Folio 501 pursuant to the Memorandum of Mortgage Instrument No. 71 registered in Volume 5183 Folio 355 as No. 9 St. Mary's Village, Carapichaima, in the Ward of Chaguanas, comprising of one lot (5,230 square feet) be the same more or less, delineated in the diagram attached to the Crown Grant in Volume CLXII, Folio 325 and bounded on the north by lands of Benji Legiez and by lands of Hy Petez, on the south by the San Fernando Royal Road and by lands of Jos Alleyne, on the east by lands of Benji Legiez and by the San Fernando Royal Road and on the west by lands of Hy Petez and by lands of Jos Alleyne together with the buildings thereon and the appurtenances thereto belonging ("the subject property")
- b) The claimant and the first defendant/ancillary defendant are to surrender and deliver possession of the subject property to the second defendant.
- c) The claimant shall pay to the second defendant the prescribed costs of the claim and the counterclaim in the sum of fourteen thousand dollars (\$14,000.00) each.
- d) The mortgage may be enforced by the sale of the mortgaged premises pursuant to the mortgagee's powers of sale under the terms of the mortgage.

Dated this 6th day of June, 2017

Ricky Rahim
Judge