

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2017-01320**

BETWEEN

DEODATH SOOKDEO

Claimant

AND

SYLVIE RAMGOHAN

First Defendant

VIDYA RAMGOHAN

Second Defendant

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

Dated of Delivery: April 8, 2019

Appearances:

Claimant: Ms. Mohanie Maharaj-Mohan

Defendants: Mr. K. Walesby instructed by Ms. W. Panday

REASONS DELIVERED ORALLY

Whether the Claimant was a tenant of the two acre parcel of land

The court finds that there is a clear inference to be drawn from the evidence presented that the claimant's father was the original tenant of the subject property and that the claimant subsequently became a tenant himself, a tenant of the purported owners of the land Lila Boodoosingh and her heirs. In so finding the court has accepted the submission of the defendant that the claimant's evidence of the rental receipts are unreliable and his evidence is not credible in respect of some of the receipts. In particular, the court finds that the claimant sought to purposely deceive this court by testifying that Lila and Jenny Boodoosingh were one and the same person. That it is only after the Defendants filed their witness statements in which they annexed a copy of the death certificate of Lila that the claimant attempted to make an about face by correcting his evidence to say that they are separate persons. In that regard it is clear that he attempted to deceive the court in his witness statement and in his statement of case. He has also now accepted in cross examination that they are two different persons and Lila is deceased. Further, the court finds that the claimant's attempt at deception was that of knowingly producing receipts and alleging that they were in fact signed by Lila who was long departed by the time the receipts were issued.

A court is however free to accept or reject the whole of a witness's evidence on an issue or accept part and reject part. In this case the court rejects the evidence of the receipts allegedly signed by Lila after she had died and which have been produced by the claimant. However, there are many other receipts which have been produced. Those receipts in the court's view are not challengeable on the same basis. The court therefore does not accept the submission of the defendants that the evidence of all of the receipts must

therefore be disregarded because of the witness's credibility issues on some only for the following reasons: firstly, the claimant has explained in cross examination that he did not fill out those receipts but in fact paid the rent and received the receipt as purportedly signed by Lila from the person he paid. This is quite plausible and the court accepts the explanation. It is clear when one looks at all of the receipts presented that subsequently, the person collecting the rent began at some stage to sign on behalf of Lila. Secondly, there are other receipts made in the claimant's name and that of his father from many years ago, as far back as the 1950's which purport to be rent paid for two acres of land on the very road the subject property is located and signed by Lila while she was alive.

The court also does not accept the submission of the defendants that the address set out on the receipts do not accord with the address at which the subject land is situated. To the contrary the reasonable and weighty inference is that it does so in fact accord.

For those reasons the court finds that the claimant was in fact the tenant of the two-acre parcel of land.

Whether there was an agreement between the deceased and the claimant and what was the nature of that agreement

The court finds that there was in fact an agreement between the deceased and the claimant. The court finds that they were in fact on friendly terms with each other and it is more likely than not that the deceased approached the claimant to build a house on the land as is the claimant's case. This in the court's view occurred sometime in 1982 and it has been accepted that the board house was constructed somewhere around 1982.

The only evidence of the arrangement that was made between the deceased and the claimant has come from the claimant himself. The defendants have admitted that they are not in a position to say and common sense and logic dictates that they are really not in a position to say whether there was an arrangement between the claimant and the deceased and to give details of that arrangement. It follows that in the court of law there remains no evidence of weight to dispute the evidence of the claimant in this regard. The court has therefore examined his evidence with utmost caution having regard to the fact that the deceased is not present to answer the allegations. The court has noted that while the case for the defence is that they did not need permission of the claimant and did not therefore seek his permission to move onto the land, they have failed to put into evidence the rent receipts attached to their pleading. Those receipts purport to be receipts made between the claimant and the deceased. Those receipts not being in evidence, the court gives no weight to them.

The only evidence left therefore is that of the claimant. The court therefore finds that the claimant's evidence has not been negated on this issue by the defendants. Further, it accords with common sense and it is more likely than not that the claimant would not permit the deceased to live for free in the circumstances where he himself is paying rent and that it is more likely than not that he would have asked the deceased to pay either part of the rent that he was paying or to pay rent to him. His evidence is that the rent was paid in fact to him and that that rent was \$50.00 per annum for the one lot on which he give permission. It is not implausible that he would have charged rent to the deceased even though he and the deceased were friends. Further, the defendants have failed evidentially to provide an explanation to the court as to the circumstances in which they came to be on the land. They attempted so to do at the last minute as it were by inserting that very material information into

the witness statements when in fact it was never included in their pleaded case. As a consequence the court struck out that evidence and so there remains no explanation before the court as to how the defendants came to live on that land according to them. The evidence of the claimant on the issue must therefore be accepted and the court finds that the claimant did in fact rent the land to the deceased. So that the deceased was put into occupation by the claimant who then became his landlord. It must be made clear that what the claimant did essentially was that of subletting the land to the deceased the one lot of land. The court accepts that this would have been for one lot upon which to build the wooden house as testified to by the claimant.

The circumstances surrounding the arrangement in relation to the permission to construct the concrete house are somewhat different. The claimant claims that the arrangement he made with the deceased was that the deceased construct a concrete house next to the wooden house and that when the concrete house was completed the deceased would occupy the concrete house and surrender the land upon which the wooden house is located upon its demolition. The defendants say this is not the case. That they originally occupied four lots of land, the wooden house was on one and they cultivated three. When they built the concrete house they demolished the wooden house and that lot became part of the yard of the concrete house so that the two lots are occupied by house and yard and two are used for planting.

The difficulty with this evidence given by the defence is that it finds no place and is patently absent from the pleaded case of the defendants. Nowhere in the pleaded case do the defendants aver that they occupied four lots, three of which they were planting upon until the concrete house was built and then they occupied two as containing house and yard and the other two for planting. In fact, at paragraph 14 of the defence they aver that the two lots at the back

upon which they purport to have always been cultivating are waterlogged. So that the pleaded case is diametrically opposed to the evidence that the defendants have given.

Further, although the defendants have filed a counterclaim upon which they bear the burden of proof they have failed to lead evidence of the layout and location of the four lots they allege they have occupied since 1981. The claimant has in fact annexed a survey plan conducted in 2012 which purports to show the land tenanted to him.

In relation to the submission of the defence that the claimant's evidence on the date the wooden house was built was wholly unreliable, namely between 1982 to 1985, the court does not accept that the claimant's apparent vacillation in cross examination represented anything more than he being somewhat confused in relation to the question that was being asked. The question was when he was approached by the deceased to rent the land and his response was between 1982 and 1985. The court interpreted this to mean that the witness was saying that rent was paid during this time and so misunderstood the question. Essentially, his evidence amounted to the approach being made in 1982 and the request for permission to build the concrete house being made in 1995. In the court's view this evidence is not such that it renders the evidence of the witness completely unreliable or unworthy of belief on that issue.

In those circumstances, the court finds that the evidence of the claimant is to be preferred as it accords with common sense and is credible as opposed to that of the defendants. The court therefore accepts that the claimant would have granted permission to the deceased to construct a concrete house on the condition that the deceased and his family would then move in to that concrete house and surrender the land which contained the wooden house upon

demolition of the wooden house. Further the court does not believe the defendants when they say that they have been occupying some four lots of land since 1981. It is clear to this court that the defendants and the deceased have attempted to gradually increase the size of their occupation without regard for the tenancy rights of the claimant and the arrangements made between the deceased and the claimant.

Finally, the court accepts the submission of the defendants that should it find that they were tenants of the claimant, no notice to quit was served on them and no notice to quit having been served on them as required by law, the claimant cannot obtain possession of that one parcel of land that they occupy with the concrete house situated upon it. However, in the court's view, that position applies only to that parcel of land upon which the concrete house is situated and in respect of which the arrangement was made.

It follows that the court finds that in respect of the two back lots, the claimant has a better entitlement to possession. Further, that having regard to all of the evidence, the claimant also holds the better entitlement to possession of the lot upon which the wooden house once stood.

Additionally, the claimant has asked for damages for trespass and means profit for the occupation by the defendants over the period of 2009 to the present. To be clear the court finds that the concrete house was in fact completed in 2009 and therefore in keeping with the agreement that the lot of land ought to have been surrendered to the claimant at that point, the lot upon which the wooden house once stood. The claimant will therefore be awarded nominal damages for trespass from that date in the sum of \$5,000.00.

The order of the court is therefore as follows;

1. It is declared that the defendants are entitled as against the claimant to remain in possession as tenants of the claimant of the one lot of land situate in the ward of La Brea forming part of a larger parcel of land comprising 0.8094 hectares and known as No. 70 Neeranther Trace Boodoosingh Road Rousillac and to possession of the concrete dwelling house standing thereon (referred to as the subject land).
2. It is declared that the claimant is entitled as against the defendants to possession of the one lot of land that adjoins the subject land and upon which there once existed a wooden structure which has since been demolished (referred to as the original lot) and two lots of land abutting the subject land and the original lot respectively which all form part of a portion of the land measuring 0.8094 hectares shown on the survey plan of Mr. Harvey Ramrekha dated the 10th day of March 2012 (referred to as the claimant's land).
3. The defendants are to surrender and deliver possession of the claimants land to the claimant forthwith.
4. The defendants are restrained whether by themselves or through their servants and/or agents howsoever from obstructing and/or denying access to the claimant's land.
5. The defendants shall pay to the claimant nominal damages for trespass in the sum of \$5,000.00.
6. The defendants shall pay to the claimant 75% of the prescribed costs of the claim based on the value of the claim being one for \$50,000.00.

7. The claimant shall pay to the defendants 25% of the prescribed costs of the counterclaim based on the value of the counterclaim being one for \$50,000.00.
8. Stay of execution forty two days.

Ricky Rahim
Judge