

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-00077

Between

JAMES MICHAEL

Claimant

And

THACKOOR PERSAD MICHAEL

(Appointed to substitute SAMDAIE MICHEAL,

Also referred to as Samdaye Michael, Deceased)

First Defendant

THACKOOR (TACKOOR) MICHAEL

Second Defendant

SUNDREE (SOONDREE) MICHAEL

Third Defendant

Appearances:

Claimant: Robert Boodoosingh.

Defendants: Orrin Kerr *amicus curiae* for the First and Second Defendants

Third Defendant not appearing and unrepresented

Before The Honourable Mr. Justice Devindra Rampersad

Date of delivery: November 1, 2018

JUDGMENT

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Introduction

1. In his fixed date claim form accompanied by a statement of case commenced on 9 January 2015, the claimant sought the following reliefs:
 - 1.1. A declaration that he was entitled to possess and occupy All and Singular that certain piece or parcel of land situated at L.P. No. 233 St. Helena Village, Caroni South Bank Road, in the island of Trinidad, comprising 5000 ft.² be the same more or less and bounded on the North by the Caroni South Bank Road, on the South by lands of Sanchez, on the East by lands of Samdaye Michael and on the West by lands of Francis Daniel (hereinafter called “the said lands”); or in the alternative
 - 1.2. Specific Performance of an Agreement for Sale dated the 25th day of June, 1993 to wit the claimant paid to the 1st named defendant the sum of \$6000 towards the purchase price of \$11,500 for the said lands described at the paragraph above;
 - 1.3. A declaration that the claimant has a lien on the said lands as a result of the payment of \$6000 to the 1st named defendant on 25 June 1993;
 - 1.4. An injunction preventing the defendants either by their servants, agents, employees or howsoever otherwise from entering and remaining on the said lands and from evicting the claimant from the said lands;
 - 1.5. An injunction preventing the defendants from in any way disposing of the said lands;
 - 1.6. Costs;

- 1.7. Such further and/or other reliefs as the Honourable Court deems fit in the circumstances of the case.
2. The defendants denied any agreement or equity in the land and have counterclaimed for possession.

The Pleadings

The Statement of Case

3. On all fronts, this was a claim in equity based on an alleged agreement between the claimant and the first defendant¹, who was his mother and who is now deceased, allegedly made on or about 25 June 1993. That agreement was that the first named defendant promised to sell him the said lands at and for the price of \$11,500. At that time, the second defendant, his brother, was getting married and the first named defendant needed money to host the wedding. The claimant said that, in the presence of the first and third named defendants and in the presence of his wife, he paid the sum of \$6000 to the first named defendant towards the purchase price for which he never got a receipt. He also alleged that he contributed the sum of \$5000 and purchased drinks for the said wedding but he has not suggested that this further sum was applied to the agreed price.
4. The claimant pleaded that the agreement was that the first named defendant promised to sell him the said lands at and for the price of \$11,500. At that time, the second defendant, his brother, was getting

¹The first defendant, Samdaie Michael also referred to as Samdaye Michael died during the course of these proceedings and was substituted by the second defendant. All reference to the first defendant in this judgment is to the said Samdaie Michael also referred to as Samdaye Michael

married and the first named defendant needed money to host the wedding. The claimant said that, in the presence of the first and third named defendants and in the presence of his wife, he paid the sum of \$6000 to the first named defendant towards the purchase price for which he never got a receipt. He also alleged that he contributed the sum of \$5000 and purchased drinks for the said wedding but he has not suggested that this further sum was applied to the agreed price.

5. In summary, his claim in equity is that he has been living on the said lands since 1979 with the first named defendant's permission in a house he built out of wood and galvanize roofing, he paid the sum of \$15,500 to backfill the said lands², planted crops such as patchoi and cabbage which were destroyed by the second defendant about seven years prior to the filing of his statement of case, which would have been somewhere around 2008 by the court's calculation, maintained the said lands and was promised the sale of the said lands to him in respect of which there was part performance.

The Defence and Counterclaim

6. In their defence and counterclaim, which was later amended, the defendants alleged that it was not until 1998 that the first defendant became seized and possessed of a parcel of land comprising 2.2636 ha (the property), which includes the said lands, therefore the first defendant could not have agreed with the claimant to a sale of the said lands in 1993 since she did not own it at the time. The defendants lived together in a concrete one-story dwelling house on the parent parcel. It was not until 1996 or 1997 that the claimant got permission from the first defendant to

² The receipts attached to his statement of case were dated 10 April 1989 and 14 July 1988 so that it seems that the allegation of having made payments in 1998 in the statement of case may be a typographical error.

erect a temporary board house on the parent parcel to house himself, his common-law wife and newly born son until he found suitable accommodation for himself and his family. They remained on the land rent free since then and the first defendant supplied the claimant with electricity and water from her house.

7. There was a denial of the allegation of any agreement for sale or the payment of any \$6000 as alleged by the claimant. Instead, it was asserted that the claimant was let into occupation as a mere licensee in or around 1996 or 1997. In any event, reliance was placed on section 4 (1) Of the Conveyancing and Law of Property Act Chapter 56:01 in relation to the requirement that contracts for the sale of land have to be in writing and that there was no sufficient act of part performance on the part of the claimant.
8. The backfilling of the land was denied and the alleged receipts annexed to the statement of case were described as forgeries. Instead, the first and second defendants were said to have been the ones who paid for backfilling and they produced receipts commencing in 1984.
9. The defendants denied that the claimant ever planted crops until recently and, in that regard, it was a small garden. Instead, it was contended that the second defendant, who is a registered farmer, planted on the said lands.
10. The defendants went on to counterclaim that the claimant deliver up vacant possession of the said lands occupied by him under the license immediately along with damages for trespass, costs and such further or other relief as the court deems fit. In the counterclaim, they raise allegations that it was the second defendant who provided 75% of the purchase money for the purchase of the property in 1998 and that the relationship between the claimant and the defendants was strained

because of the claimant's antisocial and violent behaviour. In that regard, reference was made to certain protection orders made in or around 23 November 2009 for a period of two years. A further protection order was made with effect from 17 October 2014 for a duration of three years. As a result, the claimant no longer had the first defendant's license to occupy the said lands.

The Defence to the Counterclaim

11. In response, the claimant insisted that he had been living separately on the said lands since 1993³, denied that he had electricity from the defendants because they had raised the amount of his contribution for the same, altered his down payment on the land from \$6000 to \$5000 in cash and changed his voluntary contribution from \$6000-\$7500 to pay for the orchestra, mike and tassa⁴. He admits that the relationship between himself and the defendants broke down because they do not like his wife. He said that the third named defendant had not spoken to him for over forty years.
12. He admitted the protection orders made against him but explained that he was not given an opportunity to defend himself at the magistrate's court and did not have the knowledge or financial resources to appeal the matter.
13. For the first time, in the defence to the counterclaim, he sought to raise the issue of adverse possession having been on the land since 1993 in

³ This allegation of living on the land since 1993 was struck out by this court in December 2015 pursuant to an application made by the attorney at law for the defendants at the time as being contrary to the case pleaded on the statement of case.

⁴ This new version was also struck out by this court in December 2015.

continuous, undisturbed, unchallenged and peaceful occupation. As a result of an application made, this allegation was struck out.

The Trial

14. Witness statements were filed by the claimant and one Nandalal Maikoo, to support the claim, and by the defendants, in opposition. During the course of the proceedings, the first defendant died leading to a hearsay notice being filed annexing the first defendant's witness statement. The court was subsequently informed that the third defendant is also now deceased although no hearsay notice was filed in respect of her witness statement.
15. The trial was put off on several occasions due to the ill health of the second defendant who was also representing the interest of his mother, the first defendant. After several adjournments, during which time the attorney-at-law for the defendants came off record leaving the defendants' interest unrepresented by attorney, the trial proceeded with the claimant alone giving evidence at the first instance.
16. At that hearing, the second defendant was in attendance without an attorney at law and had not made any efforts as far the court is aware in that regard. Consequently, the claimant's evidence went in as unchallenged since there was no cross examination. The matter was then adjourned and on the adjourned date, the court pointed out that there were witness statements for the defendants which resulted in the second defendant giving viva voce evidence and being cross-examined on his witness statement.
17. The matter was then fixed for submissions and on that adjourned date, Mr. Orrin Kerr attended *amicus curiae* and he proceeded to orally submit on

behalf of the defendants. The claimant's attorney at law also made oral submissions.

The Issues:

18. Essentially, the burden is on the claimant to prove the equity which he seeks to rely upon. Since his evidence was not challenged in cross examination, the court has to consider it as uncontroverted unless the court is of the respectful view that it does not stand up to scrutiny. This court considered that question in the case of HCA No. 66 of 2002:- **Debbie Mohammed v Archibald Bellamy, The Attorney General of Trinidad and Tobago and Ramnarine Sookdeo**. After reviewing some authorities on the point, this court held as follows:

“4.5. There can be no doubt that where factual evidence is not cross-examined upon, prima facie, it should be accepted unless it is inherently unreliable or incredible. However, it ought not necessarily be accepted where, as Tobias JA said in Multiplex, there is a credible body of evidence of a substantial character in direct contradiction to the non cross-examined evidence or, as said in Precision Plastics Pty Ltd v Demir (1975) 132 CLR 362 at 370-1 that unchallenged evidence will be accepted more readily than challenged evidence and, indeed, a court should not readily decline to act on unchallenged evidence, unless it is glaringly improbable.”

19. So, has the claimant proven that there was an agreement for sale between himself and the first defendant in respect of which he paid the sum of \$6000?

Analysis and discussion

20. First of all, the court must settle on what is the evidence before it. The claimant himself gave his witness statement and he did not call his witness, Nandalal Maikoo, to give evidence. For the defendants, the only person to give viva voce evidence was the second defendant since it was accepted that both the first and third named defendants had passed on by the time of the trial. As a result, the court will allow the evidence of those two defendants to be used in these proceedings and will ascribe such weight as is appropriate in the circumstances to that evidence.
21. On the facts and the documentation annexed to the witness statements of the defendants, it is clear that it was not until 1998 that the first defendant got any title to the land and that was as a result, in large part, to the undoubted financial contribution of the second defendant. In that regard, the evidence which this court has before it and which it accepts is that by deed dated 2 June 1998, registered as No. 17078 of 1998, the first defendant became seized and possessed of the parent parcel for the price or sum of \$29,400⁵. That evidence is a matter of public record by means of the Deed of Conveyance annexed to the witness statement. Further, the court accepts the unchallenged evidence of the second defendant that he contributed \$21,400 out of that purchase price by means of a Manager's Cheque drawn on Republic Bank Limited, Eastern Main Road, Tunapuna and dated 20 February 1998.
22. Therefore, the court rejects the claimant's allegation that he was promised the sale of the subject lands by his mother in 1993 – five years before she became the owner on the strength of the second defendant's significant

⁵ See exhibit "S.M. 2" to the first defendant's witness statement i.e. that of Samadaye Michael referred to in these proceedings as Samdaie Michael

contribution. She could not sell what she did not own and, even when she became the owner five years later, she was not the sole beneficial owner. If anything, it must be that the second defendant ought to have had some sort of say in that transaction and there is no suggestion of that. The court cannot therefore sanction an agreement for sale at a time when the vendor had no title and therefore could not have entered into any binding contract or have had any intention to create legal relations.

23. Even though untested, the claimant's purported payment of \$6000 in 1993 towards the purchase of the land and the further sums of \$15,500 to fill the land in 1988 and 1989 seem rather incredible in light of the claimant's financial situation.
24. The claimant was a very simple person who did not impress the court that he was a person of any significant means. To suggest that he could have spent \$11,000 in 1993 for his brother's wedding i.e. \$5000 to his mother as a down payment on the land and \$6000 as a "contribution" to the wedding, seems far-fetched. He has not put before this court any evidence of his financial status to suggest that he could have afforded that sum twenty-five years ago. But more importantly, from then i.e. 1993, to now, there is not one iota of evidence to corroborate this alleged oral agreement.
25. Instead, there is evidence that at the time of the wedding in 1993, he was selling coconuts at the old airport and cutting cane and working at Centeno. Even up to now, he demonstrated his dire financial situation by the following evidence and information:
 - 25.1. His allegation in his defence to the counterclaim that he did not have the financial resources, or the knowledge, to appeal the

decisions made against him in the magistrates court⁶ or to apply for an injunction in these proceedings⁷;

- 25.2. His evidence up until now that the extent of his house is still of a seemingly temporary nature constructed of wood and galvanize without any utilities or other modern facilities. In fact, his evidence is that he is not even living at the house at present.
26. Further, despite suggesting that he had spent the \$15,000 in 1988 to 1989 to fill the land using funds that he borrowed from the Agricola Credit Union Society Limited, he provided no corroborating documents for that transaction nor did he provide any explanation for his failure to do so. He did not even show that he was a member of that credit union nor did he produce the purported receipts for the alleged backfilling at the trial annexed to his witness statement.
27. In any event, the contention that his crops were damaged by the second defendant about seven years ago and then frequently thereafter since the filing of these proceedings, was not at all supported by any corroborating evidence. There was no police report made, malicious damage proceedings brought in the magistrate's court, valuation of crops done and produced, correspondence from any attorney citing such damage or anything to suggest the veracity of this allegation. Against that was the evidence of the second defendant who appeared before this court and was cross-examined and was never asked anything about these alleged incidents.
28. Not that the second defendant was any bit more credible. He was a very belligerent witness. He obviously has very little regard for process and for

⁶ See paragraph 17

⁷ See paragraph 14

the law. Over the last couple of hearings when he attended, he would show disrespect to the court by talking out of turn and talking back in an almost hostile manner. When giving evidence, when the court explained to him that he could not rely on documents which had not been disclosed, he flat-out asked "Why?" in an adamant and recalcitrant almost quarrelsome tone. It is obvious that there is a lot of bad blood between him and the defendant and he was not willing to agree to anything. Even without hearing this court's decision, he indicated that he would appeal if he lost without any regard for the fact that his case may or may not have been defective.

29. He spoke about purchasing the land for \$53,000 even though the documentary evidence is that it was \$29,400. Afterwards, even though he said he purchased the land and that it was his, he then changed slightly to say that when his mother and sister died, he got the said lands. He was adamant that there was no agreement between his mother and the claimant. He did, however, tell the claimant that he could build on the land until he could find somewhere to go. He said that he would bring the papers to show what he paid for the land but when I asked him why he did not bring it on that day, he could give no answer. However, there were documents before the court on his witness statement.
30. He gave the impression that he was a stubborn and arrogant person who was rejecting what had been happening without having taken any steps to secure his legal position before this court. However, he was obviously not of good health, having been wheeled into the court in a wheelchair and the court having seen him and being informed by attorney at law for the claimant that he had in fact suffered seven strokes during the course of these proceedings.

31. It is difficult, however, to equate his belligerence with incredibility especially since the documents seemed to be generally supportive of his case. Other than the documents mentioned before, there was clear evidence of the protection orders made against the claimant in favour of the first defendant, now deceased, and it is clear that the claimant did not have a good relationship with his mother, at least from since the first order made in 2009. Obviously, the protection orders ought to have caused him to take steps to secure his own legal position but he still took no steps whatsoever to assert the alleged agreement until the commencement of these proceedings on 8 January 2015.
32. Having regard to all of the evidence and the matters mentioned, the court is not impressed with the claimant's case and rejects it outright.
33. On the counterclaim, the court is prepared to accept that any license that the claimant may have had from his mother came to an end and that she wanted him off the land as she alleged in her witness statement. At paragraph nineteen of her witness statement, which the court accepts, she said:
- "19. I no longer want James on the St. Helena Property I am afraid of him."*
34. There is no doubt that the first defendant's home is one of permanence and the court accepts the evidence from the defendants that that house was renovated by the third defendant. This degree of permanence and the evidence of impermanence of the claimant's occupation suggests that the case for the defendants is more probable and more plausible. As a result, the court will grant the reliefs sought. Since the claimant has suggested that he is no longer residing on the premises⁸, the court can accede to the

⁸ See paragraph 18 of his witness statement

relief for immediate possession. There is no evidence, however, of damages for trespass and therefore that claim is rejected.

The Order

35. The claim is dismissed and in light of the fact that the parties are relatives, are of little means and the second defendant did not conduct himself before this court in a respectful manner, the court will make no order as to costs. Any order as to costs would likely not be satisfied without a great deal of effort and would continue to stoke the “bad blood” between the siblings. As a result, the court will not prolong that feud.
36. On the counterclaim, it is ordered that the claimant immediately deliver up to the first defendant vacant possession of the said lands and, for the same reasons given above, there will be no orders to costs on the counterclaim.

/s/ D. Rampersad J.