

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-00031

Between

SHEILA RAMROOP

Claimant

And

THERESA MOOTOO

First Defendant

RYAN MOOTOO

Second Defendant

JASON MOOTOO

Third Defendant

NIGEL MOOTOO

Fourth Defendant

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: October 27, 2020.

Appearances:

1. Mr. Keith Scotland instructed by Mr. Kashif Forbes Attorneys-at-law for the Claimant.
2. Mr. Orrin Kerr, Attorney-at-law for the Defendant.

DECISION

1. Before the Court for its determination is the Fixed Date Claim Form filed on 7 January 2016 as well as the counterclaim filed on behalf of the Defendants. Essentially the Court has to determine whether or not the Defendant should give up possession of that portion of land situated Kelly Village in the Ward of Tacarigua described in Deed registered as Number 2564 of 1973 which the Defendants and in particular the Defendant who testified before the Court, Ryan Mootoo, is currently in occupation of.
2. In essence the case as pleaded by the Claimant is that her nephew, Ganese Ramroop, and by extension his wife and his children including Ryan Mootoo were in occupation of the land by virtue of permission and a family arrangement.
3. The property was initially owned by the Claimant's father then her mother, Baby Ramroop, and on her mother's death she became the sole beneficial owner of same on or about 1984. She indicated that her nephew, Ganese, continued his occupation with her consent and permission from 1984 until his death in 2001.
4. The Claimant's evidence is that a Notice to Quit was served on or about 2006 and the instant action commenced in 2016. According to the Claimant the Defendants are not in adverse possession of the premises and she is entitled to possession of same.
5. The Defendants on their counterclaim asserted that they have been in possession of the property for a period in excess of 16 years and that same has been undisturbed, exclusive and continuous. They pleaded that they entered into possession of Lot 22 on or about 1980 and then between 1983 to 1984 Ganese constructed his separate dwelling house adjacent to the standing dwelling house on or about 1983 to 1984.

6. The family, according to the Defendants, remained in possession of this dwelling house. An electricity supply was obtained and eventually further work was done. According to the Defendants, the requisite 16 year time period to establish adverse possession began to run from 1984.
7. The Court heard two witnesses in support of the Claimant's case namely the Claimant herself and her brother, Sampson Ramroop. The Second Defendant Ryan Mootoo, testified and the witness statement of his deceased mother, Theresa Mootoo, was tendered before the Court as Court Exhibit A and B by consent. The transcribed evidence which was given by Mrs. Mootoo before Mr. Justice Ramcharan was tendered by consent as Court Exhibit B. That prior trial was vacated by the former trial judge.
8. The Court considered all of the material evidence that was before it. In relation to Ms. Ramroop's evidence, the Court found that there were no material inconsistencies between her responses in cross examination and what was outlined in her witness statement in evidence in chief.
9. The Court found that the witness appeared to be frank and forthright and generally she instilled in the Court a significant feeling that she was a witness of truth.
10. The Court also formed the impression that Mr. Ramroop was a forthright witness and noted that there were no material inconsistencies between what he outlined in his witness statement and what he indicated before the Court during the course of his cross examination.
11. The Court also found that Mr. Mootoo appeared to be generally forthright and he too was consistent during cross examination.

12. Ultimately, the Court resolved the issues before it by considering the pleaded case as outlined by the parties and it determined on a balance of probabilities the advanced version which is more likely than not in the circumstances.
13. The first issue that the Court addressed its mind to was whether or not there operated, on the factual matrix of this case, a license for the Mootoo family and Mr. Ganese Ramroop to occupy the premises at Kelly Village in the named Lot 22.
14. Pursuant to Section 10(1) of the Administration of Estates Act Chap 9:01, there is no uncertainty in the Court's mind that after the death of her mother, Baby Ramroop, and as the main executrix of the estate of Baby Ramroop, the Claimant would have been empowered, in addition to having beneficial interest created under the will, to take steps to preserve the estate and as the executrix, she could have lawfully given permission for the occupation of the premises. A similar approach was adopted in CV2013-03159 Anthony Miller v Judith Bourzoung Isaac and others where Rahim J at paragraph 51 stated:

“51. The finding of the court is that a licence to occupy was granted to the First Defendant by the Claimant. The Claimant as mentioned above holds a beneficial interest in the estate of the Deceased by virtue of the last Will and Testament of the Deceased. The Claimant was therefore entitled to continue the permission granted by the Deceased to the First Defendant to occupy the house both as someone entitled to a beneficial interest in the house and the tenancy.”

15. The Court found it more likely than not that up until the death of Ganese Ramroop that Ganese and his family occupied the premises pursuant to a license and with the initial permission of Baby Ramroop and her husband, and thereafter Sheila Ramroop's consent.

16. In arriving at the aforesaid position, the Court had significant regard to the responses which were given by Ms. Theresa Mootoo under cross examination as reflected in Court Exhibit B. In particular the Court had regard to the evidence as outlined under pages 8, 9, 10, 11, 12 and 13 into 14 of the transcript evidence. In her evidence Ms. Theresa Mootoo accepted that her family's occupation was premised upon permission which was given to her husband. She accepted that she was aware that her mother-in-law, Baby Ramroop, had given permission to her husband to occupy the premises.
17. The witness during the course of her cross examination accepted at page 13 that there was a family arrangement for her husband and herself to be in occupation of the premises. Mr. Scotland expressly asked the witness whether Ganese took occupation of the premises with the expressed permission of Baby Ramroop and at line 24 of page 14 of the transcript Ms. Theresa Mootoo said yes.
18. At line 17 of page 15 Mr. Scotland's then posed the following question: *"Up to the time Baby died in 1984 it was with the permission your occupation was with the permission of Baby"* and again Ms. Theresa Ramroop said yes. The cross examination then addressed the situation which unfolded after Baby Ramroop's death. At page 16 of the transcript line 2 Mr. Scotland asked the following question, *"And therefore, the occupation continued with the permission of the new owner, Sheila"*, Mrs. Mootoo responded "yes".
19. At page 17 line 14, Mr. Scotland said *"I am not doubting that"* in response to her assertion that she continued to live in the premises. Mr. Scotland then went on to say, *"and that was with the permission of the new owner Sheila"* at line 16 of page 17 of the transcript and Theresa Mootoo's evidence was as follows, *"I didn't get any permission, my husband did"*. Mr. Scotland then said yes *"so the, answer ok? Good?"* Mrs. Mootoo's responded *"My husband did"*. The question was then posed at line 21, (Mr. Scotland) *"and that permission then, that your husband got from Sheila, that also because of it is strength on which you occupied"*. At line 24 Mrs. Mootoo responded "yes". Mr. Scotland next asked

at page 18 line 1, *“you got that on his strength?”*. Mrs. Mootoo responded *“yes”*. Then at line 5 Mr. Scotland asked, *“and that occupation with your husband getting permission from Sheila, that continued until your husband died, what year did your husband die?”*. Mrs. Mootoo responded, *“2002”*.

20. Having considered the evidence given by Mrs. Mootoo as recorded and reflected in court exhibit B, having considered what the Court believes to be the frank and forthright evidence of Ms. Sheila Ramroop supported by her brother Mr. Ramroop, the Court found on a balance of probabilities that it is more likely than not and more inherently plausible to conclude that a familial arrangement did in fact exist in relation to Ganese's occupation of the premises and that arrangement continued up to his death. Ganese occupied the premises not as a squatter, nor did he have the requisite intent to dispossess. His possession was with the express permission of Baby Ramroop and then of Sheila Ramroop.
21. That permission ended when he died. The Court accepted Ryan's evidence that family communication with the Claimant ceased from the time his father died. Unfortunately as occurs in many family arrangements, after Ganese's death the in-laws were then treated as outlaws. The permission which Ganese enjoyed was not extended to his wife and children and as regrettable as that situation is, sadly, from 2002 until 2016 when this action was instituted the requisite time period in law of 16 years would not have accrued so as to vest in Theresa Mootoo or her children, the entitlement to remain on the subject premises pursuant to the requirements of Section 3 of the Real Property Limitation Act Chap. 56:03.
22. The Court also considered the law as outlined in **JA Pye (Oxford) Ltd and another v Graham and another [2002] 3 WLR 221** and the dicta of Slate J in **Powell v McFarlane (1977) 38 P&CR 452** which has been adopted and followed in this jurisdiction.

23. The Court cannot on a balance of probabilities conclude that the Defendants were in adverse possession of the subject parcel of land for the requisite period of 16 years prior to the commencement or institution of the instant proceedings.
24. The Court found as a fact that the Defendants would have been in possession for a period of 14 years after the death of Ganese Ramroop without the requisite permission as the previous familial arrangement was not continued when Ganese died in 2002.
25. Accordingly, and for the reasons that have been outlined, the Claimant has established an entitlement to the reliefs claimed and the Court therefore grants to the Claimant on the Claim the following relief:
 - a. The Court orders that the Defendants are to deliver up vacant possession of the premises situate at Kelly Village in the ward of Tacarigua being a portion of the larger parcel of land comprising 3 Acres, 1 Rood and 13 Perches described in the Deed registered as Number 2564 of 1973 comprising 465.4 square meters, the same known as Lot 22 bounded on the North by Lot 20 on the South by Caroni South Bank Road on the East by Road Reserve 4.02 meters wide and the West by Lot 21 which said piece of parcel of land together with the building standing thereon is situate at Lamp Pole 70 at the corner of Hydraulic Road and Main Road (Caroni South Bank Road), Kelly Village, Caroni.
26. The Court does have before it the evidence which it accepted of Mr. Ramroop who is Sheila's brother as well as Ryan Mootoo's evidence, that other structures would have been erected on these lands other than the initial structure which would have been erected by Ramroop's father in the 1950's.
27. The Defendants shall be entitled to remove any part or portion of structures erected by them.

28. With respect to the claim for damages for trespass, the Court finds that between 2002 and 2006 when the Notice of Quit would have been served on Theresa no trespass occurred as there was no call on the family to vacate. Although the act of trespass would have commenced from the date of service of the notice the Court finds that there is insufficient evidence before it to enable it to make an award, other than a nominal award, for damages for trespass.

29. The Court therefore awards the nominal sum of \$5000.00 in damages for trespass.

30. The Court also finds that there is insufficient evidence before it to justify the quantification of any award for mesne profits and the Court is therefore not inclined to make any award for mesne profits.

31. It is the order of this Court that the Defendants are to deliver up vacant possession of the subject premises on or before April 30th, 2021 in default of so doing leave is granted to the Claimant to issue a writ of possession so that the appropriate steps can be taken with a Marshall to ensure that vacant possession of the subject premises is had.

32. The Court found that the issues both on the Claim and the Counterclaim were intricately tied together makes no orders as to cost on the counterclaim. On the claim there is no justification for the Court to depart from the usual cost order that cost follows the event. The Claim will be deemed to be valued at \$50,000.00 and accordingly the Defendants are to pay to the Claimant costs in the sum calculation on a prescribed cost basis of \$14,000.00.

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FRANK SEEPERSAD
JUDGE