

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-00193

BETWEEN

MANIC RAMDEO

1st Claimant

DALE AVINASH RAMDEO

2nd Claimant

LYNDON DENVER NAVIN RAMDEO

3rd Claimant

KERON TRAVIS NIRVAN RAMDEO

4th Claimant

AND

ALVIN SEUNARINE

1st Defendant

GIMEL SIEUNARINE

2nd Defendant

GERSHON SIEUNARINE

3rd Defendant

ASHLELAN SIEUNARINE

4th Defendant

AVIEAN SIEUNARINE

5th Defendant

DEAN RAMPERSAD

6th Defendant

GINEL SEUNARINE

7th Defendant

Before the Honourable Mr. Justice Frank Seepersad

Appearances:

1. Mr. E. Koylass S.C, Ms. D. Roopchand instructed by Ms. S. Mohammed for the Claimants
2. Mr. W. Campbell for the Defendants

Date of Delivery: May 3, 2017

DECISION

1. In this action the Claimants have claimed for
 - a. A declaration that the Claimants do have an equitable interest in the parcel of land situated in the Ward of Siparia ALL THAT parcel of land situated at L.P. No. D82 Delhi Road, Fyzabad and comprising 0.412 hectares (being a portion of a larger parcel of land describe in Certificate of Title Volume 3442 Folio 221) and bounded on the North by lands of Jacob Brijlal, on the South by lands now or formerly Ramdhun, on the East by lands now or formerly Elnathan Brijlal and on the West by a road and lands of Jacob Brijlal (hereinafter referred to as the “subject land”) and is entitled to possession of same.
 - b. A declaration that the Claimants have a right of way and is entitled to use an access roadway being approximately 250 feet in length by 10 feet in width that leads to the subject lands (hereinafter referred to as the said “right of way”).
 - c. An Order that the Defendants do transfer the subject lands to the Claimants and in default the Registrar of the Supreme Court shall be empowered to do so; or

- d. Alternatively, an Order that the said Certificate of Title Volume 3442 Folio 221 be set aside and the Registrar General do issue a new Certificate of Title in the names of the Claimants with respect to the subject lands.
 - e. An injunction restraining the Defendants his agents and/or servants from entering and or interfering with the subject lands and the property situated thereon in any manner whatsoever.
 - f. Damages for trespass of the subject lands.
 - g. An injunction restraining the Defendant whether by himself, his servants and/or agents or otherwise howsoever from entering and/or excavating the said right of way.
 - h. Costs.
 - i. Any further and/or other reliefs.
2. The Defendants counterclaimed and sought interalia an order for possession of the subject land.

Issues to be Determined

- i. Whether the Claimants acquired the right to remain in occupation of the subject lands by virtue of the doctrine of adverse possession;
- ii. Whether the Claimants have the right to use the said roadway as a right of way to access the subject land; and
- iii. Whether the Claimants are entitled to Damages for trespass as a result of the damage caused by acts carried out by the Defendants and/or their servant and/or agents;
- iv. Whether the Defendants' are entitled to possession of subject lands.

The Claimant's Claim

3. By their Statement of Case, the Claimants pleaded that their family houses rests upon land that they have been in occupation and possession of and which said land has shown on the Survey Plan which was exhibited as 'A' to the Statement of Case.

4. The Claimants contend that the 1st Claimant and his wife:
 - a. Entered the subject lands which was overgrown with grass and bush, cleared it, and planted same with fruit trees, short crops and flowering plants.

 - b. Constructed a goat pen at the northwestern boundary and reared goats which were sold.

 - c. Constructed a house, being a two storey wooden three bedroom dwelling house, and moved into same in 1982, and continued to occupy and be in possession of the subject lands year to year and continued to plant, reap and reared goats and poultry, and that they constructed a new house in replacement of the old wooden dwelling in 2002.

 - d. They accessed the subject lands and their home by what was first a dirt track 4 feet in width by 250 feet in length and that on or about 2002 they improved the track by widening same and they paved it with oil sand and used this access road continuously without interference or interruption by anyone from 1982 to 2015.

 - e. That on the 22nd January 2016, the First Defendant, an excavator operator and excavator, entered upon the access road and dug it up thereby rupturing the water line to the Claimants' house.

 - f. That on the 23rd January 2016 the excavator operator, under the Defendants' direction, proceeded to enter the subject lands, broke the Claimants' chain link fence and damaged all the vegetation in its path up to 6 feet to the front of the

Claimants house. The First Claimant then prevented closer entry and destruction by standing with his wife in front the bucket of the excavator.

- g. On the said 23rd January 2016 the Claimants obtained an injunction that restrained the bulldozing and excavation and though the order was served, the Defendant persisted in wreaking havoc and destruction with the excavator upon the subject lands and only stopped on the 24th January 2016 at 12 noon when the Claimants enlisted the aid of Assistant Superintendent Hunt of the San Fernando Police Station.
- h. The Claimants stated that they suffered loss and damage by reason of the excavator's entry and trail of destruction upon the subject lands.

The Defendant's Case

- 5. By the Defendants' Defence and Counterclaim, filed on the 9th March 2016, the Defendants denied that the Claimants entered and went into possession of the subject lands in 1982 and did any of the acts of occupation and possession as they alleged.
- 6. They claimed that the Claimants' new house was only built in 2010 and that the chain link fence was erected in 2015. They denied that the Claimants were never asked to vacate the subject lands and stated that the call was made by four letters between September 2011 and August 2015.
- 7. The Defendants stated that the access road was originally a dirt track but claimed that its widening with gravel and stone was done by the First Defendant and his predecessors in title.
- 8. The Defendants claimed that the access road was the only means of access to the First Defendant's 6-acre parcel and that they continuously used same and that the Claimants originally occupied only one lot of land upon which the dwelling house stood.

9. The First Defendant stated that the access road was “merely graded and somewhat widened” but not excavated at the front of the Claimants’ house and accepted that the chain link fence was removed and they denied that there was any destruction of flowering plants.
10. The case presented outlined that the First Defendant holds a life interest in the 10 acre parcel of land with the other Defendants holding the remainder interest.
11. The Defendants contend that the Claimants occupation and possession was interrupted by the following acts:
 - (a) The First Defendant blocking an application to T&TEC in 1987.
 - (b) Letters between 2012 and 2014 were issued.
 - (c) A Notice of Survey dated the 19th August 2015 was served.
 - (d) They used the access road continuously.
 - (e) They planted electrical poles upon the subject lands in 2006 and 2015.
12. The Defendants stated that the Claimants continue to have access to their new home by foot and vehicle and they have a water supply by a water hose.
13. Based on the aforementioned, the Defendants counterclaimed and sought an Order for the Claimants to vacate the subject lands and they claimed damages and costs.
14. The Claimants filed a Reply and Defence to Counterclaim and they pleaded as follows:
 - (i) That the access road ended at their home.
 - (ii) That the Defendants’ access to the 6 acre block was to the north of the subject lands and the Defendants did not enter the lands controlled by the Claimant so as to access the 6 acre block.

- (iii) That the First Claimant gave permission for the planting of the electrical poles.

Analysis of the Evidence and Findings of Fact

15. **Graham** [2002] 3 All ER 865 where it was established that a claim to title by adverse possession is comprised of the elements of factual possession and intention to possess (animus possidendi). The law requires that a Claimant must be in possession of the subject land with the intention to exclude the world at large including the paper title owner, for a continuous period of at least 16years.

16. **Section 3 of the Real Property Limitation Act Chap 56:03** provides:

“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.”

17. **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.”

18. In order for the Claimants to have a right to the subject land, they must be clothe with the requisite intent, have been in possession for at least 16 years prior to the commencement of the claim.

19. The Court accepted the First Claimant’s evidence that prior to his entry upon the subject lands he had spoken to one Mr. Abraham Brijlal and Mr. Brijlal subsequently pointed out

to him the area which he occupied and that he proceeded to clear same and thereafter reared goats and poultry and planted the said land. At paragraphs 4b and c of the Statement of Case, the 1st Claimant stated that a goat shed was built on the north-west portion of the land but under cross examination he said that the pen was built on the north eastern portion of the lands.

20. The Court found this witness to be credible and felt that his evidence was generally truthful and accepted his evidence that he went onto the lands in 1982 and that his occupation extended well beyond one lot of land. The Court also accepted that he reared goats on the land. The Court did note however, that there were inconsistencies in his evidence with regard to when he first engaged in rearing goats but the Court accepted the witness's evidence that he considered himself as the occupier of that piece of land. The Court also accepted the evidence of the witness Mr. Flynn Ramsingh who stated that there was always in existence a path which was used as an access route.
21. The Court noted that, although the Defendants in their Defence denied that the Claimants entered into the subject lands in 1982, nowhere in their Defence did they proffer the year that the First Claimant entered the land and constructed his wooden house. During his evidence, in response to a question posed to him by the Court, the 1st Claimant said that he viewed himself as an occupier of that parcel of land. Ultimately, the Court found that the events as outlined by the 1st Claimant in relation to his entry unto the lands was more probable and plausible than the position advanced by the Defendants.
22. The Court noted that the Defendants title to the lands in dispute was only obtained on or about the 7th March, 2014. There was no evidence that any of the Defendants' predecessors in title took any steps to interrupt the Claimants' possession of the lands they occupied and the Court found that the Claimants were in possession of lands which included the area upon which their dwelling house stands and that their occupation was accompanied with the requisite intention to deprive the paper title holders of any entitlement to same. Accordingly, the paper title owner's right to the land occupied by the first named Claimant and his family would have extinguished by 1998.

23. All the letters referred to by the Defendants in support of their contention that the Claimants were not in occupation of the lands for the requisite time period were issued from 1999 by which time the Claimants had obtained, by virtue of the doctrine of adverse possession, the right to occupy the said lands.
24. The next issue that the Court had to consider was the extent of the area of the land that was occupied as between 1982-1999 and further, whether after 1999 there was any other area of land which the Claimants exclusively occupied.
25. The Court carefully considered the evidence of the Claimants' witnesses and those called by the Defendants and also placed heavy reliance on its own observations which were made at the site visit that was conducted.

The Site Visit

26. The Court saw the location and condition of the homes of the 1st Claimant and 1st and 2nd Defendants, the area where the parties claimed that the access road ran, the area of land upon which the Claimants still have crops and animals and the area where the pond is located.
27. When one stands facing the front of the Claimants' house it was evident to the Court that the area of land to the right of the house showed signs of continuous occupation and use and the Court saw structures standing thereon which looked old. One such structure which was made of wood appeared to be more of a goat pen than a chicken coup as stated by the Claimants. On the other hand, the piece of land to the left of the Claimants house (when facing the front of same) that extended beyond the area where the access route ran, showed no visible signs of use or occupation up to the area where the 2nd Defendant's house now stands. This area is to the north of the access route. The Claimants stated that they maintained this area as a savannah area and that they had a goat shed located on same and that portions were planted with short crops as well as palm trees. The Court noted that the witness, Mr. Flynn Ramsingh, testified that he cleared the subject lands for

the 1st Claimant and it was therefore logical to conclude that the Claimants would have used all the lands that Mr. Ramsingh had cleared but the Court had to consider whether the use of the entire area was exclusive to the Claimants. The 1st Claimant's children testified that they used this area to the north of the access road to play when they were small and that the area was always kept clean and cleared by them.

28. The Court also noted that the Defendants' witness, Mr. David Nelson, testified that although he cleaned and cut the Defendants' land, he limited his cutting to a certain area and did not cut over into the areas that were under the Claimants occupation. This witness gave no evidence that he ever cut the area of land to the north of the access road, which is also the area to the left of the Claimants house when one is facing the front of the Claimants house and shed area and the Court noted that no evidence which depicted the state of this area of land prior to the "excavation" was produced by the Defendants. The Defendants sought to establish that this area was the area upon which their horses fed, however the Court noted that the 2nd Defendant's house abuts this area of land. It is possible that the horses were tethered upon the area of land upon which the 2nd Defendant's house now stands.

29. When the Court considered all the evidence, it formed the view that the evidence adduced by the Claimants was more credible and plausible than the evidence adduced by the Defendants and accepted the Claimants evidence in relation to the important issues that fell for its determination. The Court felt that the Defendants appeared less credible and they all instilled in the Court a feeling that they were prepared to compromise the truthfulness of their testimony so as to support their defence and counter claim. Some of the Defendants even denied the existence of a prior close relationship with the Claimants while others accepted that at one time both families were very friendly. Ultimately, the Court found that the Claimants were able to withstand cross examination and their evidence, especially in relation to the important issues instilled in the Court the unshakable feeling that their version of events was more probable and plausible than the Defendants. The Court also found that the Defendants' attempt to limit the Claimants

occupation to one lot of land defied logic and was inconsistent with the reality as to the extent of occupation which was evident to the Court at the site visit.

30. The Defendants' attempt to confine the Claimants occupation to one lot of land was demonstrative of their complete lack of candour. It was patently obvious to the Court at the site visit, that the area of land upon which the Claimants house stands and the lands to the right of the house, when one stands facing the front of the house, far exceeds one lot of land. The Court also rejected the Defendants evidence which sought to constrain the Claimants' occupation of the existing house plot, to 2010. The evidence clearly established that the Claimants were on the land decades prior to 2010 and the Court found the 1st Claimant's evidence that the renovated house stands on the area where his initial wood house stood, to be more plausible than the version advanced by the Defendants. The Court also noted that by letter dated 18th August, 2015 which was exhibited as "D" to the Statement of Case, the Claimants expressly claimed a stated area of land but by their response which was exhibited as "B" to the Statement of Case, the Defendants did not challenge the Claimants' contention in relation to the size of the land claimed.

31. The Court found that the Defendants evidence lacked credibility and could not be accepted and preferred the evidence adduced by the Claimants as to the extent of their occupation of the lands claimed and, therefore, found as a fact, that the area of lands to the north of the access route, being the area that the Claimants described as the savannah like area, and which said piece of land is to the left of the front of the Claimants house and shed if one is facing same, was in the Claimants continuous possession and control since 1982. Further, the Court accepted the 1st Claimant's evidence that the Defendants sought and obtained his permission to erect the electricity poles which were placed on the subject lands. The Court, having seen the nature of the land to the right of the Claimants homes felt it was more probable that the Claimants would have also maintained and cleared this area and the Court viewed the Defendants assertion that this area was left in bush to be highly improbable.

The Site Visit - The Access Road

32. At the site visit the Court was shown by each side the area of land upon which it was claimed that the access route ran. The Court noted that there were patches of pitch that were still visible and the Court accepted the Claimants evidence as to the course that the access route took and the route pointed by them seemed to be more plausible than the route pointed out by the Defendants. Along the route, as outlined by the Claimants, the Court observed visible areas of sand pitch which looked weathered and old and the Court therefore felt that it was more probable that the route ran along the said path and that the areas of sand pitch which were observed were part of the access route. The Court also found as a fact, that it was the Claimants and not the Defendants, who developed and maintained the said access route which was destroyed by the Defendants. It was also evident to the Court that the lands were not just bulldozed but that it was excavated. The Court noted the area of land in the vicinity of the mango tree and saw the obvious difference in the height of the land in relation to where the road was, prior to the excavation. There was also an evident height difference in the vicinity of the 2nd Defendant's fence wall. The Court, based on what it saw was inclined to accept the Claimants evidence in relation to the damage to their water line and the route along which same ran.

33. In the circumstances, and for the reasons that have been outlined, the Court formed the view that the access route as outlined by the Claimants was the only viable means of access to their home. In the circumstances, the court declares that the Claimants have the right to use as an access route, that area of road way being approximately 250 ft. in length by 10 ft. in width that leads to the subject lands. The Court further declares that the Defendants, by their actions in January 2016, without lawful authority and/or justification, excavated the said access route and rendered same in an unacceptable state.

Issue 3: Are the Claimants entitled to Damages

34. The Court accepted the unchallenged evidence of the Claimants' witness, Mr. Christopher Persad, as to the cost to reconstruct the road being the sum of **One Hundred and Twenty Four Thousand Dollars (\$124,000.00)** as well as the Claimants evidence as to cost to repair their water lines in the sum of **Nine Thousand, Three Hundred Dollars (\$9,300.00)** and for the repair of their fence in the sum of **Twenty Six Thousand, Five Hundred Dollars (\$26,500.00)**. The Court formed the view that by virtue of the Defendants' actions the Claimants were made to endure severe stress and inconvenience and noted that the said access route would be impassable during the rainy season in its current state. Accordingly, the Court formed the view that the Claimants are entitled to general damages in the sum of **Twenty Five Thousand Dollars (\$25,000.00)**.

35. The Defendants shall therefore pay to the Claimants the sum of **One Hundred and Eighty-Four Thousand Eight Hundred Dollars (\$184,800.00)** as aforementioned within 21 days and interest is to accrue on the said sums at the statutory rate of interest from the date of this judgment. The Defendants are hereby permanently restricted from interfering with the Claimants use of the said access route and from entering upon or interfering with the lands occupied by the Claimants which includes the area of land to the north of the access route as described in the body of this judgement. The Defendants counter claim is hereby dismissed and the parties shall be heard on the issue of costs.

FRANK SEEPERSAD
JUDGE