

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**San Fernando**

**Claim No. CV2018-00749**

**BETWEEN**

**DORIS SEEBALACK**

Claimant

**AND**

**RAMPATH KHEMRAJ**

First Defendant

**AMIT KHEMRAJ**

Second Defendant

**Before the Honourable Mr. Justice Frank Seepersad**

**Date of Delivery:** July 10, 2019

**Appearances:**

1. Mr. Mc Quilkin/ Ms. Hosein instructed by Ms. Hector for the Claimant.
2. Mr. Pariagsingh h/f Mr. Haresh Ramnath for the Defendants.

## **ORAL DECISION REDUCED INTO WRITING**

1. This matter involves a dispute over two portions of land, which form part of a larger parcel<sup>1</sup>. There is no dispute that the Claimant is the owner of the larger parcel.
  
2. The Claimant claims:
  - i. A declaration that the Defendants are not entitled to enter or remain on the Claimant's said lands or at all;
  - ii. An injunction to restrain the Defendants whether by themselves or by their servants or agents or otherwise howsoever from entering the said lands;
  - iii. Damages for trespass;
  - iv. Interest and costs.

### **CLAIMANT'S CASE**

3. The Claimant contends that in 2015 the Defendants wrongfully entered and illegally erected a structure on the larger parcel without the Claimant's knowledge, and was served with a notice from the

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<sup>1</sup> Described as that piece of land in the ward of Siparia in the Island of Trinidad comprising THIRTY FOUR THOUSAND THREE HUNDRED AND SIXTY THREE SQUARE FEET be the same more or less delineated and coloured pink in the plan registered in Volume 2539 Folio 467 and drawn in the margin hereof being portion of the lands described in the Crown Grant in Volume 562 Folio 143 in Certificate of Title dated 1 August 1980 Volume 2539 Folio 469 and shown as lot 13 in the General Plan filed in Volume 2539 Folio 451 and bounded on the North by lots 12, 4, 5 ,6 and 7 and on the South by Ragoonanan Trace 25 feet wide and lots 14 and 15 on the East by lots 12, 23 and 14 and on the West by lots 6, 7, 8 and 10.

Penal/Debe Regional Corporation dated 28 December 2016 to discontinue work in respect of the construction of the said structure.

4. By letter dated 6 February 2017 the Claimant's attorney at law wrote to the Defendants requesting that they immediately demolish a shed that was unlawfully erected on the northern side of the larger parcel measuring approximately 100 square feet. By letter dated 20 February 2017, the Defendants' attorney at law responded stating that the structure would be removed within six months. By letter dated 1 March 2017, the Claimant offered three months to demolish. To date, the structure has not been demolished and the Defendants' continue to be in occupation.
5. The Claimant avers that as a result of the Defendants' trespass she has suffered loss and damage.

#### **DEFENDANT'S DEFENCE AND COUNTERCLAIM**

6. While the Defendants' admit the Claimant is the owner of the larger parcel, they contend that the First Defendant since 1984 and the Second Defendant since 2008 have exercised exclusive custody and control of a portion of the larger parcel comprising 300 square feet ("the disputed portion of land"). The First Defendant also contends that he has been in occupation and control of an additional 300 square feet beyond the disputed portion of land ("the second parcel").
7. From 1984, the disputed portion of land was used to rear ducks, goat, and fine garden and on the second parcel, the First Defendant had fruit trees. In 2008, the Second Defendant constructed a house and shed

which is partly on the lands of the First Defendant and partly on the disputed portion of land as shown in the Gajadhar survey plan annexed as "A" to this decision. He has been living there since.

8. The Defendants' contend that the rights, interest and title of the Claimant in the disputed portion of land and the second parcel have been extinguished by operation of the law and in particular, the Real Property Limitation Act and accordingly they are entitled to exclusive possession.
  
9. The Defendants' contend that in March 2016, the Claimant wrongfully trespassed on the second parcel, destroyed all the First Defendant's fruit trees, and graded down the hill by 15 feet; and by that time in March 2016, they were entitled to ownership and possession of the disputed portion of land and the second parcel.
  
10. The Defendants' counterclaimed for:
  - i. Damages;
  - ii. Damages for trespass;
  - iii. A declaration that the Claimant's rights, title and interest in the disputed portion of land and/or the second parcel have been extinguished;
  - iv. An order that the Claimant do transfer the disputed portion of land and the second parcel to the Defendants;
  - v. A declaration that the Defendants are entitled to occupation of the disputed portion of land and the second parcel;
  - vi. Costs.

## LAW

11. The Real Property Limitation Act Chap 56:03 provides:

At Section 3: “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.”

At Section 22: “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.”

12. In the Court of Appeal case of **Clyde Dipnarine and Others v Esther Dipnarine Civ App N0. 43 of 2010** Mendonca JA summarised the law of adverse possession as follows:

“19. It is well settled that possession in law has two elements which must be established by the alleged possessor: (i) there must be a sufficient degree of physical custody and control (factual possession); and (ii) an intention to exercise such custody and control on one’s own behalf and for one’s own benefit (the intention to possess) (see *J. A. Pye (Oxford) Ltd v Graham* [2003] 1

AC 419 and *Latmore Smith v Benjamin* 78 WIR 421). The Respondent must establish both of the elements of possession. The Respondent's possession must also be exclusive. The paper title owner is deemed to be in possession of the lands vested in him or her. The Respondent must, therefore, show that she dispossessed the Appellants and was in exclusive possession of the disputed lands for the requisite period."

13. In ***Asher v Whitlock (1865) L.R. 1 Q.B. 1***, Cockburn C.J. said:

"But I take it as clearly established, that possession is good against all the world except the person who can show a good title". Slade J summarised the English law with respect to possession in the case of *Powell v McFarlane* [1977] 38 P & CR 452:

"(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").

(3) Factual possession signifies an appropriate degree of physical control. It must be single and conclusive 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. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants": *West Bank Estates Ltd. v. Arthur* [1967] AC 665, 678, 679; [1966] 3 WLR 750, PC, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession.... 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.

(4) The *animus possidendi*, which is also necessary to constitute possession, was defined by Lindley MR, in *Littledale v. Liverpool College* [1900] 1 Ch 19, as "the intention of excluding the owner as well as other people." This concept is to some extent an

artificial one because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow. The question of animus possidendi is, in my judgment, one of crucial importance in the present case. An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. This, in my judgment, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. The position, however, is quite different from a case where the question is whether a trespasser has acquired possession. In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the owner requisite animus possidendi and consequently as not having dispossessed the owner."



## **ANALYSIS**

14. The essential issue for the Court's determination in this matter revolves around the disputed portion of land and the issue as to whether the Defendants have been in use and occupation of the disputed portion with the requisite degree of control and possession over same to extinguish the Claimant's rights by virtue of their paper title.
  
15. The Court in its assessment of the witnesses states that it was generally impressed by the evidence of all the witnesses in this matter and found that their respective testimonies all appeared to be credible.
  
16. What was however evident to the Court on the basis of the evidence adduced by and on the behalf of the Claimant, is neither the Claimant, nor any of the witnesses which she called in support of her claim, were able to make a visual assessment of the disputed portion of land prior to the cutting down of the donkey grass on or about 2015. The donkey grass covered the larger parcel of land.
  
17. All of the witnesses were consistent in that regard. The Claimant herself, who I accepted would visit her land as it is not very far from where she lives and where her business is, could only see the flat portion but could not make any observation of what existed beyond the donkey grass and the hilly area. I also found the Claimant's witness, Goberdhan Ramdeen who cut the land for her, to be extremely forthright and his evidence was also consistent. The Claimant's witness, Samdaye Ragoo never visited nor walked around the back of the Defendant's house to see what was there and she too could not make any observations as to what existed. Consequently, the Claimant's evidence did not assist the Court in its

resolution of the factual issue as to when the shed was erected and secondly what, if any, was the nature of the use of that disputed portion of land prior to the grass being cut down.

18. Both Defendants struck the Court as credible witnesses and they instilled in the Court a general feeling that they were witnesses of truth.
19. The First Defendant's evidence is that his son built his house upon lands upon which he (the father) reared ducks. In response to a question posed by the Court, the Court was told that the duck run or duck pen was approximately 30 feet by 30 feet and it is upon that area that the Second Defendant constructed his home and the duck pen was then relocated to the back of this structure.
20. The Second Defendant's evidence was also consistent in this regard. The witness testified that there were ducks being reared by the family and that upon the portion of land where the duck shed/ duck run was situated he constructed his house in or about 2008 in anticipation of his marriage.
21. The Court had regard to the documentary evidence in the matter and in particular the letter issued by Attorney at law Mr. Ramnath. The letter identified 2008 as being the time that the dwelling structure was erected.
22. This is a rural community and the Court found that it was highly probable that the Defendants, given the geographic local of this land and the nature of his and his son's respective employment that they would engage in some form of agriculture and animal rearing. The Court therefore found as a fact that the Defendants reared ducks on a portion

of land to the back of the father's house for upwards of a decade before 2008. The Court also found as a fact that the duck run was relocated and the Second Defendant's house was constructed upon the said piece of land.

23. The Court then considered the issue as to why the Second Defendant volunteered to move in 6 months when Mr Ramnath issued the letter in response. The Court posed the said question to the Second Defendant and found that his response was highly probable, credible and plausible. At the time they received the legal letter, his father was gainfully employed by the Seebalack family and he was fearful that if he did not move, his father would lose his job.

24. The response issued by Mr Ramnath did not deal with the time at which they went into possession and addressed solely the issue as to when the structure was erected.

25. The Court also found as fact that after the Second Defendant erected his structure in 2008, the family relocated the duck run behind the said structure. Traditionally, for adverse possession the Court must be satisfied that the use and possession was continuous and it was characterised by an intention to possess the land. The law has developed and it is no longer necessary to establish an intention to dispossess.

26. The evidence adduced by the Defendants in this Court's mind, on a balance of probabilities, established that the duck pen was set up in the mid 1980's and the family's use of the land was characterised by the requisite degree of possession and control and intent to possess. Their control of the land was continuous and undisturbed for over 16 years.

Consequently, the Claimant cannot now exercise any legal right over same.

27. The Court however, while it accepts that the First and Second Defendants may have also planted on portions of the land by planting fruit trees to the back of the area occupied by the Second Defendant's structure, that is the second parcel, the Court cannot find based on the evidence adduced, on a balance of probabilities, that the said use establishes that they are in adverse possession of same.
28. The Court is of the view that the use of the area of land beyond where the structure of the Second Defendant was erected was a bit ad hoc, somewhat transient in nature, and no sufficient control was demonstrated on the adduced evidence for the period prior to 2008. After 2008, the use became more entrenched as the area that they used previously i.e. the duck run area, was no longer available. The use after 2008 until this action was instituted, falls short of the requisite period of 16 years.
29. The Court also accepted the evidence of the Second Defendant in relation to the Penal/Debe Corporation letter and the Town and Country Planning letter. The Court formed the view that it was probable that the said letters referred to the First Defendant's house, which was remodelled or renovated from a board house into a concrete structure and no reference was made to the Second Defendant's house in the said letters.
30. In any event, those two letters provided no assistance as to the duration and the nature of the use of the land upon which the Second Defendant's house was constructed.

31. For the reasons outlined and based on the Court's findings of fact the Claimant cannot recover possession of the portion of land upon which the Second Defendant's house stands but is entitled to the portion of land to the back of the Second Defendant's house.

32. The Court is not inclined to grant the relief pleaded nor is the Court prepared to grant the injunctive relief sought by the Claimant. In relation to damages for trespass, based on the Court's finding of fact, the Defendants did commit an act of trespass with respect to the portion of the Claimant's land to the rear of the Second Defendant's structure.

33. The Claimant however did not adduce the requisite evidence so as to enable the Court to make a proper determination as to the quantum of damages which should be awarded in relation to the area of land. No evidence to establish the size of the area beyond the Second Defendant's structure was adduced nor was the Court furnished with any evidence as to the value of the said land.

34. Accordingly, the orders of the Court are as follows.

1) The Claimant's rights, interest and title in relation to the disputed portion of land, which is shown, on the Gajadhar plan has been extinguished. This area must include a 4 feet perimeter around the Second Defendant's structure.

2) The Defendants shall pay to the Claimant nominal damages for trespass in the sum of \$3,500.00.

3) There shall be a stay of execution on the payment of damages of 28 days.

4) The Defendants are to pay their half of the survey cost in the amount of \$3,000.00 on or before 9 August 2019.

5) Each side to bear their respective legal costs.

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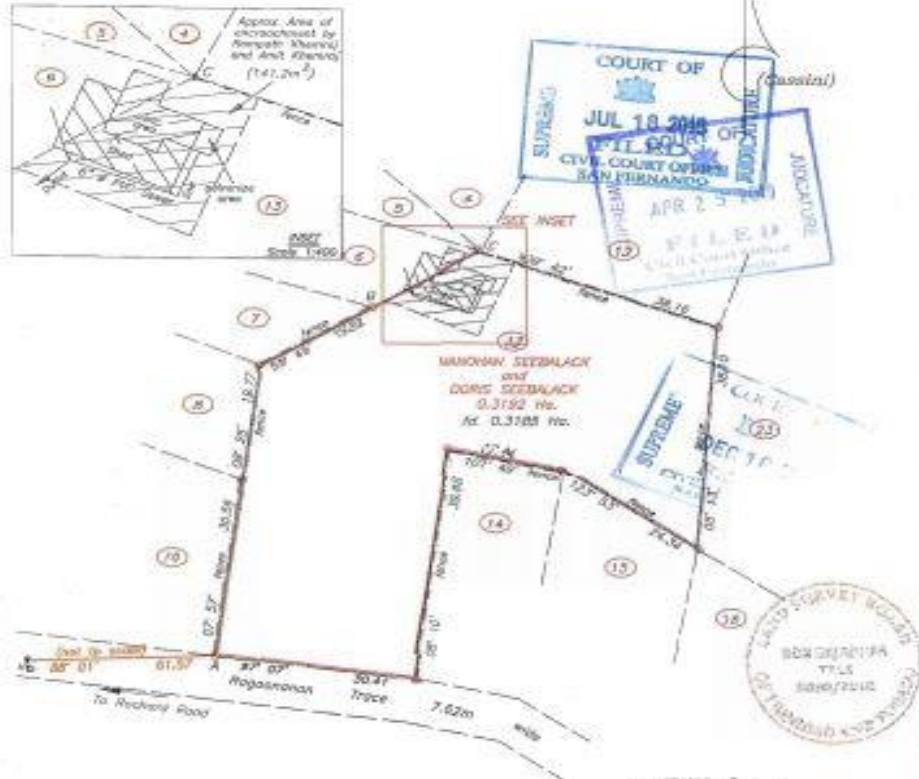
**Frank Seepersad**

**Judge**

"A"

U.P.R.N. ....  
 R.P.O Vol. 562 Fol. 143  
 C.T. Vol. 2839 Fol. 489  
 Address - Lot#13  
 Ragoonan Trace,  
 Off Richard Road,  
 Penal.

Ward of Siparia  
 County of St. Patrick  
 Cadastral Sheet G.14.M. 84D  
 3/c



Note - UTM (Map 1855-Zone 20) Coordinates obtained from hand held GPS receiver  $\pm 5.0000$

© Denotes iron found except stated otherwise  
 Note: Bearings are Cassini grid based on solar observations

Plan of a Parcel of land coloured pink in the Ward of Siparia.  
 Containing zero point three one eight five hectares.  
 Surveyed by me, with due authority, in June 2015 for High Court Matter GV2015-00749.  
 Certified correct in accordance with Regulation 25(1) of the Land Surveyors' Regulations 1998.

Checked by .....

Entered on .....

Trinidad & Tobago Land Surveyor 10/7/2015

L.S.