THE REPUBLIC OF TRINIDAD & TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2019-01936

BETWEEN

GAYADATH SADAHEO

(a patient and a person suffering from mental disorder and who is mentally ill, by his next of kin and committee namely GLORIA SAHADEO, SUNIL SAHADEO and MEERA SAHADEO)

Claimant

And

JOYCE SUBERO

Defendant

Before the Honourable Mr Justice Frank Seepersad

Date: March 02, 2021.

Appearances:

1. Mr Reynold Waldropt, Attorney-at-law for the Claimant.
2. Mr Anthony Manwah, Attorney-at-law for the Defendant.

ORAL DECISION REDUCED INTO WRITING:

1. Before the Court for its determination is the Claimant's Claim Form and Statement of Case filed on 7 May 2019 where the Claimant sought the following relief:
    a. Damages for trespass to land;
    b. A mandatory injunction to break and remove the Defendant's wall, which encroaches upon and is constructed upon the Claimant's access road, to his parcel of land located off Waterloo Road, obliquely opposite Albert Street, Arouca;

c. An injunction restraining and/or preventing the Defendant whether by herself, her servants and/or agents, her workmen or otherwise howsoever, from preventing the Claimant, his family and/or workmen from enjoying use of the access road to the Claimant's land located off Waterloo Road, obliquely opposite Albert Street, Arouca;
d. Interest upon such damages awarded at such a rate and for such a period as the Court may think fit;
e. Costs;
f. Further or other relief, which the Court may deem fit.

The Claimant's facts:

2. The Claimant suffers from a mental illness and this action is brought by virtue of the Claimant's next of kin Gloria Sahadeo, Sunil Sahadeo and Meera Sahadeo who were all appointed committee of his property to conduct and defend legal proceedings in his name by virtue of order dated 28 February 2019.

3. The Claimant became owner of the property by virtue of Deed of Conveyance dated 8 December 1986 which is located off Waterloo Road, Arouca ("the said property"). The Defendant's parcel of land upon which she also resides, is situate at No. 19 Waterloo Road, Arouca, and it abuts Waterloo Road on the West, the said property on the East, the access road on the North and lands of another neighbour on the South.

4. The Claimant's parcel of land is landlocked and access to and from the said property is via an access road which runs from Waterloo Road to the said property. The said property was used by the Claimant and his family for the planting of various crops since 1986 via the access route and the Claimant would drive his motor vehicle to the said property and the access route measured 12 feet to 15 feet.

5. Around 2010 the Defendant removed the concrete wall which ran on her northern boundary and began constructing a wall which encroached on a portion of the access route. Though

the Claimant and his family expressed their objection to the Defendant of building of same, construction continued. After construction the access route was reduced in width to about 7 feet resulting in the Claimant being unable to access same via vehicle access.

6. This has greatly inconvenienced the Claimant and his family and their ability to access the said property and although several appeals were made to the Defendant to remove same as well as seeking recourse from the regional corporation and other government agencies, these proved futile.

The Defendant's facts:

7. In the Defendant's defence filed on 15 July 2019 the Defendant agreed that the Claimant's access to the said property is via a passageway but asserted that it never measured 12 feet to 15 feet. She agreed that the Claimant planted crops on the said property and that in 2010 she constructed a concrete wall which she believed she was entitled to do as indicated in the survey plan by Mr Soomarsingh dated 19 December 1980.

8. She further pleaded that the wall does not encroach upon the access route since it was built upon her land.

9. The Court in this case had to determine both issues of fact and law based on the factual matrix which have unfolded before it. Firstly, the Court has to determine whether the Claimant acquired a right of way over the said access route pursuant to Section 2 of the Prescription Ordinance Chap. 5 No. 8. Secondly the Court had to determine the particular dimensions of the said access route and thirdly determine if there was any encroachment by the Defendant.

Legal Principles:

10. Section 2 of the Prescription Ordinance of Trinidad and Tobago, Chap. 5 No. 8 states:

"Where any claim shall be made to any right of common or pasture, or other pasture, or other profit or benefit, except rent and services or to any way or other easement, or to any watercourse or the use of water, to be taken or enjoyed or derived upon, over or from any land or water of the State or any body corporate or person and such right of common or matter as hereinbefore mentioned shall have been actually enjoyed by any person, claiming right thereto without interruption for the full period of sixteen years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing."

11. In **Gale on Easements 19th Edition (2011) at 9-03** under the rubric "Extent of Rights of Way Acquired by User" the authors stated that:

"Where a right of way is acquired by user, since user is not continuous and may vary, there may be difficulty in determining the scope of the right acquired. The general rule is that, where a right of way is acquired by user, the extent of the right must be measured by the extent of the user. Although Coke classified ways into an ascending hierarchy of footway, packway or driftway and cartway, each category including and extending those below, there is no presumption in English law that by establishing a particular right one necessarily becomes entitled to the lesser rights on the principle that the greater include the lesser. So a right to drive vehicles does not necessarily include the right to drive cattle.

There is not, then, in English law any positive division of rights of way into distinct classes. Applying the general principle that every easement is a restriction on the rights of property of the party over whose land it is exercised, the real question appears to be, on the peculiar facts of each case, whether proof has been given of a right coextensive with that amount of inconvenience sought to be imposed by the right claimed. It is obvious that, in some cases, a right to drive cattle, might be productive of greater inconvenience than a right to drive carts, and vice versa. It

will, therefore, be for the court to infer the extent of the supposed grant from the actual amount of injury proved under all circumstances attending it."

The Evidence:

12. The Claimant relied on the witness statement of Sunil Sahadeo and Gloria Sahadeo and the Defendant relied on her own witness statement at the trial.

Resolution of the Issues:

13. The Court feels compelled to register that, at best, the Claimant's case was clumsily pleaded as it did not reveal with absolute clarity the case as outlined by the Claimant nor did it accord with the usual practice as to pleadings in relation to claims where an access route by way of necessity is being relied upon.

14. The Court had regard to the case as outlined in the Statement of Case and focused upon Paragraphs 5 to 12 so as to determine the nature of the case advanced.

15. In the pleading, the Claimant outlined the access route as being the road by which the Claimant gained access from the Waterloo Road east towards the Claimant's parcel of land. The Claimant also outlined that his land is landlocked at Paragraph 6 of the witness statement.

16. In the defence, Paragraph 6 was admitted save for the plan that was annexed. Consequently, there was an acceptance by the Defendant, that the Claimant's land was landlocked and that this route or roadway was the only way by which the Claimant could access his parcel of land.

17. At Paragraph 7 of the Statement of Case, the Claimant pleaded that he and his family always gained access to the said parcel via the access route and cultivated the lands with a number of fruit trees and other plants. He said they enjoyed the use and benefit of the land as a recreational area since it was acquired in 1986.

18. At Paragraph 4 of the defence, Paragraph 7 of the Statement of Case was referenced and the Defendant admitted that access to the Claimant's land was via the passageway. Paragraph 7 was neither admitted nor denied on the ground that the Defendant did not know if it is true. Ultimately, the Defendant could not dispute the assertion as outlined in the pleaded case that the land was used in the manner as pleaded by the Claimant.

19. At Paragraph 8 of the Statement of Case it was outlined that the Claimant drove his motor vehicle to access the land which roadway he says was 12 feet to 15 feet wide.

20. Paragraph 8 of the Statement of Case was specifically admitted at paragraph 5 of the defence.

21. The effect of the admissions was an acceptance that the Claimant drove his car along the roadway and that when he was doing so the access route, which the Defendant accepts wide enough to accommodate a vehicle. In addition it was accepted that this use occurred from 1986 to 2010.

22. The Claimants pleaded at Paragraph 9 of the Statement of Case that it was around the year 2010 that the construction of the wall restricted the access route by reducing the width to 7 feet.

23. Paragraph 9 was also admitted at Paragraph 6 of the defence. The Defendant accepted that the road was in fact narrowed at the time she undertook her construction. If one considers the accepted timeline between 1986 and 2010 the access route was able to accommodate the Claimant's car. This time period exceeds the period referenced in Section 2 of the Prescription Ordinance. There is therefore, in the view of the Court, no major conflict on the evidence as it relates to the access route.

24. The issue of fact is what was the width of the access route from 1986 to 2010.

25. At paragraphs 12 and 13 of the Statement of Case photographs were referenced and these photographs were placed before the Court in exhibits SS4 and SS5 .

26. The photograph at SS5 at page 28 of the Trial Bundle shows what the access route would have been prior to the construction of the wall in 2010. Based on the photograph the lawyers agreed that the road must have been at least 9 feet wide. The photograph showed two pillars placed where the wall was rebuilt in 2010. The agreed distance from the pillars to the edge of the access route is 7 feet and the pillars appeared to be at least 2 feet away from the Defendant's pre-2010 wall.

27. There were evident uncertainties by the Claimant as to what the width of the road was and contrary to what was pleaded, in a legal letter sent on behalf of the Claimant which was exhibited as SS2 and which was dated 14 August 2009 the Claimant's then lawyer suggested that the road was about 8 feet.

28. Having gone through the evidence and having outlined the portions of the Statement of Case which the Court referenced and how they were addressed in the defence, the Court finds the following facts:

    a) The Court finds that there existed an access route as depicted on the photograph exhibited as SS5 at page 28 of Trial Bundle 2 and which said access route stands at the west of the Defendant's property and partially to the north of the Claimant's property.
    b) The Court also finds as a fact having regard to what was pleaded at paragraph 7 of the Statement of Case and the manner in which it was addressed at paragraph 4 of the defence, that the Claimant used this access road from 1986 as a passageway to gain access to his parcel of land which he cultivated with fruit trees and enjoyed as a recreational area.
    c) Having regard with what was pleaded at paragraph 8 of the Statement of Case which was admitted save for the width of the roadway at paragraph 5 of the defence, the Court finds as a fact that from 1986 the Claimant would often drive his motor vehicle along the said access route to gain access to his land to remove his produce.

d) At paragraph 9 the Claimant outlined that it was in 2010 that the road was interfered with when the wall was constructed and at paragraph 6 of the defence that was accepted. The Court therefore finds as a fact that for the period 1986 to 2010, the Claimant enjoyed use of an access route that accommodated vehicular access and that pursuant to section 2 of the Prescription Ordinance the requisite statutory time period would have been elapsed so as to entrench that entitlement as a matter of law.

e) The Court finds as a fact that on or about 2010 the Claimant's ability to use the access route was curtailed when the Defendant moved her wall some 2 feet outwards to enclose a portion of the access route.

29. The Court's finding that the wall on a balance of probabilities was moved 2 feet outwards comes from its consideration of the photographic evidence which is contained at page 28 of Trial Bundle 2.

30. There are assertions by the Defendant that what she did was simply to conform with the boundaries of her land and the Court was not in a position to either dispute or confirm same.

31. Whether or not the 2 feet area which was enclosed by the wall belonged to the Defendant, the Defendant's right to do so would have been curtailed by 2010 having regard to the use of that area as an access route for vehicular access since 1986.

32. The Court, though mindful that the Claimant did not plead as outlined in its relief the need for a declaration, has an inherent jurisdiction at the end of a trial to award any relief which is deemed fit, applicable and just in the circumstances. Having regard to the evidence the Court hereby declares that there is in fact in existence an access route to the west of the Defendant's house and partially to the north of the Claimant's property.

33. The Court declares that the access route was approximately 9 feet in width and was enjoyed by the Claimant between the period 1986 to 2010.

34. The Court further declares that the Defendant unjustifiably interfered with the width of that access road on or about 2010 by enclosing 2 feet of same.

35. The Court hereby issues a mandatory injunctive order and directs that the Defendant shall on or before the expiration of 30 days remove the existing wall and reconstruct same if she chooses 2 feet to the east of the existing wall thereby restoring the access route to its original width of 9 feet.

36. The Court is of the view that there is no entitlement to a claim for damages other than nominal damages in this matter for the interference which was asserted in the witness statement and which on a balance of probabilities occurred because the Claimant failed to adduce the requisite degree of evidence that could assist the Court in quantifying damages.

37. In the circumstances, the Claimant is entitled to damages in the sum of $2,500.00 being nominal damages for the interference with his ability to use the said access route.

38. It is unfortunate that this case was poorly structured and there was a lack of clarity as there was conflicting evidence as to the width of the access route.

39. There were an obvious contradiction based on the pleaded case and what was contained in the lawyer's letter which was sent on the Claimant's behalf by the firm of Lalla and Company exhibited at page 19 of Trial Bundle 2.

40. Based on these inconsistencies and the lack of clarity, the Court is of the view that the Defendant was placed in a somewhat compromised position in fully understanding and determining how to defend this action.

41. In those circumstances the Court in the exercise of its discretion is of the view that the most appropriate cost order is that each party shall bear their own legal costs.

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FRANK SEEPERSAD
JUDGE