

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA NO.S1103 of 1994

BETWEEN

Haroon Salamat

Plaintiff

AND

**Raffick Clyde Rajack
Rafeek Isaac Mohammed
Hamid Subhan
Jaitoon Mohammed
(also called Jaitoon Hosein)
Shaffina Mohammed
Nazir Rajack
Hazrah Mohammed
Hazoon Ali**

Defendants

Before the Honourable Mr. Justice G. Smith

Appearances:

Mr. W. Senath for the Plaintiff

Mr. R. Kawalsingh for the First and Sixth Defendants

REASONS

1. The Plaintiff is the owner of the majority of the legal estate in a 16 acre parcel of land. The legal estate in that 16 acre parcel of land is vested in the Plaintiff and allegedly, the Defendants as tenants in common. The Plaintiff now seeks a partition of the 16 acre parcel of land or alternatively, a sale of the same with a division of the proceeds of sale according to the entitlement of the Plaintiff and the Defendants.

Only the First Defendant and the Sixth Defendant (hereafter referred to as the Defendants) defended this claim of the Plaintiff. They contend that they have been in adverse possession of a specific portion of the land. Their adverse possession of this specific portion of land has extinguished the title claims of the other tenants in common, and more specifically, of the Plaintiff, to their portion.

On a balance of probabilities I accept the evidence presented on behalf of the Defendants and I grant declarations of their entitlement to the portions of land they occupied. I also order the Plaintiff to pay the costs of the Defendants in respect of the Claim and the Counterclaim.

Adverse Possession:

2. There are two areas of the law on adverse possession which are relevant to this case. Firstly, the issue of adverse possession as between co-owners of property (as are the Plaintiff and the Defendants in this case). Secondly the requirements to prove adverse possession.

3. With respect to the first issue; It is settled law that one or more co-owners of property can claim adverse possession as against the other co-owner/s. (See Paradise Beach and Transportation Co. Ltd v Price Robinson [1968] 1 All ER 530, P.C. and see Wills v Wills P.C. Appeal No.50 of 2002).

As a matter of law, the Defendants can set up a title by adverse possession of the land they occupied to defeat the legal title of the Plaintiff and all the other co-owners of the 16 acre parcel of land.

4. The issue to be resolved in this case is whether the Defendants have proved a title by adverse possession of the lands they occupied (the second issue).

“The law of adverse possession is grounded in the Real Property Limitation Ordinance Ch.5 No.7 sections 3 and 4 which requires that to succeed in a claim for adverse possession the Claimant must show (1) factual possession of the land for 16 years or more and (2) the animus possessendi, that is, the intention to exclude the world.” (Per Deyalsingh J. in Lyder v De Freitas H.C.A. 1310 of 2001 at pages 20 and 21 and see Poyer v Freitas Cv 2005 – 00632 at pages 17-79).

“Factual possession signifies an appropriate degree of physical control ... Everything must depend on the particular circumstances, but broadly ... what must be shown 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 (per Lord Browne-Wilkinson in Pye v Graham [2002] 3 WLR 221 [P.C.] at page 234 e-f).

As for the animus possessendi “what is required is not an intention to own or even an intention to acquire ownership but an intention to possess “(see Pye op cit pg 235 A-B).

“The important point ... is that it is not necessary to show that there was a deliberate intention to exclude the paper title owner. The word adverse does not carry that implication. The only intention which has to be demonstrated is an intention to occupy and use the land as one’s own.” (See Pye op cit pg 236 C-D). The relevant intention is not an “animus dispossessendi”, or a conscious intention to dispossess the true owner, but an intention in the mind of the squatter to possess the land as his own. (See Lyder v De Freitas op cit pg 20 and 21 and see Poyer v Freitas op cit pgs 18 and 19).

5. In this case I find that on a balance of probabilities, the Defendants have proved their continuous adverse possession of certain portions of land for more than 16 years. This continuous adverse possession had extinguished the legal title of the Plaintiff and the other co-owners of the portion of lands occupied by the Defendants. I will now set out my reasons for this conclusion in my analysis of the facts.

ANALYSIS OF THE FACTS:

6. The entire 16 acre parcel of land was originally owned by two sisters, Paiagi and Sugia as tenants in common since 1894. Paiagi and Sugia occupied various portions of the land in seemingly equal proportions. Over time, various descendants of Paiagi and Sugia also occupied different portions of the land. These portions of land were informally divided into six blocks. The tenancy in common of Paiagi and Sugia was never partitioned among their descendants, however, various descendants purported to occupy and convey “their” blocks. The Plaintiff claims to be the purchaser of the majority of these Blocks, but since there has been no formal partition of the 16 acre parcel of land, the Plaintiff seeks to enforce his right to possession by this partition action.

The disputed portion of land between the Plaintiff and the Defendants is referred to as Block 1.

Block 1 consists of approximately 2½ acres. Block 1 is split in two parts by Inverness Road, (now called Papouri Road). A portion of Block 1 lies to the East of Papouri Road. There is no dispute that the Eastern portion of Block 1 belongs to the Plaintiff. The other portion of Block 1 lies to the West of Papouri Road. This action deals with the Western portion of Block 1.

7. The Plaintiff alleges that Block 1 devolved to Sugia and her descendants. Eventually by a Deed of 1955 Block 1 was devised to the Plaintiff (see paragraphs 1-9 of his witness statement). The Plaintiff also says that he and his predecessors used to occupy the entirety of Block 1. According to his witness statement, one Shaffie Rajack

constructed a wooden dwelling house on the western portion of Block 1 in 1967 (see paragraph 12 of his witness statement). Shaffie Rajack was the father of the Defendants. In 1974 the First Defendant built his house on the western portion of Block 1 (see paragraph 34 of the Plaintiff's witness statement). Between 1977 to 1980 the Sixth Defendant built his house on the western portion of Block 1 (see paragraph 38 of the Plaintiff's witness statement). Shaffie Rajack and the Defendants are descendants of Paiagi and have no entitlement to any portion of Block 1. The Plaintiff claims that Block 1 devolved from Sugia. The Plaintiff alleges that he came to an agreement with Shaffie Rajack about his house on Block 1. The Plaintiff contends that the Defendants' occupation of Block 1 is illegal.

8. The First Defendant contends that he has been occupying the western portion Block 1 since around 1965. Around 1965 he started to build his house, and he also took charge of an animal farm, teak plantation and cane cultivation on the rest of the western portion of Block 1 from his father. Around 1973 or 1974 he gave his brother, the Sixth Defendant, permission to build a house on Block 1. Around 1994, persons acting on behalf of the Plaintiff wrongfully entered the western portion of Block 1 which he occupied and, cut teak trees and erected a fence around the houses of the Defendants.

9. Cross-examination of the Plaintiff and his witness, one Nadar Ali, revealed several material inconsistencies in their testimony. Their evidence is less than credible. On the other hand, the cross-examination of the First Defendant and his witness, one Ayoub Sulliman, vindicated the Defendants' version of the facts. Further, the

Defendants' version of the facts was supported by independent documentary evidence. On a balance of probabilities I prefer the version of the facts contained in the testimonies of the First Defendant and Ayoub Sulliman. Since this case turns upon its facts, I will now set out my findings on the evidence led in this case in some detail.

The Plaintiff's Evidence:

10. In his witness statement, the Plaintiff stated that one Shaffie Rajack (the father of the Defendants) constructed a house on Block 1 in 1967 (see paragraph 12 of his witness statement), and that the First Defendant constructed his house on Block 1 in 1974 (see paragraph 34 of his witness statement). In cross-examination the Plaintiff contradicted this by saying that the First Defendant continued the occupation of the same house which Shaffie Rajack had constructed on Block 1.

11. As I stated above, the Plaintiff stated in his witness statement that Shaffie Rajack constructed a dwelling house on Block 1 in 1967. In cross-examination, the Plaintiff first contradicted this by saying that Shaffie Rajack built this house on Block 1 in 1974. Later on in cross-examination he contradicted this by saying that this house was built in 1967. Later on in cross-examination he again contradicted this by saying that this house was built in 1974. Finally he alleged that what he had said in his witness statement namely, that Shaffie Rajack constructed his dwelling house in 1967, was incorrect.

12. The Plaintiff stated in his witness statement that he had signed an agreement with the other persons who he alleged were the owners of the 16 acre parcel of land to

partition the same. (See paragraph 15 of his witness statement and the actual agreement in document 97 of the agreed bundle of documents). One of these persons who signed the agreement was Shaffie Rajack. The Plaintiff stated in cross-examination that at the time he signed this agreement he was not aware of other co-owners of Shaffie Rajack's portion of land. He contradicted this later in cross-examination by saying that he was aware of other co-owners of Shaffie Rajack's portion of land. He tried unsuccessfully to explain this apparent contradiction by saying that Shaffie Rajack was the representative of the other parties.

It also emerged from cross-examination that the Plaintiff was aware there were other persons who were entitled to a share in the 16 acre plot of land at the time of the agreement to partition in 1976. He was aware that the parties who signed this 1976 agreement did not have sole ownership of the lands. More specifically, the Defendants were never party to this "agreement" to partition. It did not affect their adverse possession of the land they occupied.

13. In his witness statement, the Plaintiff stated that he rented Block 1 to one Pinkey Soogrim. He also gave Pinkey Soogrim permission to build a dwelling house on Block 1 and allowed her to "work" the rest of Block 1 (see paragraph 10 of his witness statement where the Plaintiff refers to this parcel as the parcel which he bought from Zamilla). Block one consists of approximately 2½ acres of land. In cross-examination, the Plaintiff contradicted this by saying that Pinkey Soogrim only rented about ½ acre of land around where her house was built on the Eastern portion of Block 1. Pinkey Soogrim was "given permission" to use the rest of Block 1 to plant crops. When confronted with paragraph

10 of his witness statement the Plaintiff again brazenly changed his story and admitted that Pinkey Soogrim rented two acres of land. When he realized his error he again brazenly changed his story and said that he really meant that she rented only a portion of Block 1.

Even this new story about Pinkey Soogrim renting ½ acre of land and planting the rest of Block 1 could not stand up to scrutiny for the Plaintiff admitted that his witness, Nadar Ali used to plant the entirety of Block 1. Again when confronted with the improbability of this other new story about Nadar Ali, the Plaintiff simply changed his story again and stated that Nadar Ali did not plant the land continuously. As will be seen later in this judgment, even this purported explanation of Nadar Ali's occupation is contradicted by Nadar Ali's testimony.

14. In cross-examination the Plaintiff stated categorically that the First Defendant put up a fence around his house on Block 1 in 1974. When confronted with a letter of complaint about the fence from the Plaintiff's own attorney at law dated 2nd January 1980, the Plaintiff admitted that this fence was erected in 1980.

15. In cross-examination the Plaintiff stated that the middle portion of the 16 acre parcel of land was an open portion of land with no demarcation. When further questioned he simply admitted that there were clear lines of demarcation there by virtue of two traces.

16. While these were not the all of the contradictions or varying stories which permeated the Plaintiff's evidence I only highlight these to show how the Plaintiff's evidence proved less than credible. The Plaintiff was willing to change his story to try to make sense of whatever he was saying at the relevant time rather than to focus on the truth of his testimony. I could not rely on his testimony as being truthful.

The evidence of Nadar Ali (the Plaintiff's witness)

17. Nadar Ali's apparently simple and straightforward witness statement portrayed an apparent familiarity with the 16 acre parcel of land since 1949. The most relevant part of his witness statement being an allegation that he and his family used to "occupy" Block 1. In cross-examination, Mr. Ali expanded upon his statement by stating that both the Eastern and Western portions of Block 1 were fully planted with cane and that he and his family reaped this cane on the land till the year after it was surveyed. It is not disputed that the survey was in 1977. Therefore, Mr. Ali and his family allegedly cultivated the entirety of Block 1 with cane up to 1978.

This contradicted the Plaintiff's allegation that one Pinkey Soogrim used to occupy and cultivate Block 1. It also contradicted the Plaintiff's allegation that Mr. Ali did not continuously cultivate Block 1 (see paragraph 13 above). Further, when asked about the First Defendant's occupation of Block 1, Mr. Ali at first stated that the First Defendant's house was on Block 1 at the time of the survey (1977). Soon after, Mr. Ali contradicted this by stating that the First Defendant's house was not on Block 1 at the time of the survey.

18. Mr. Ali admitted that the father of the Defendants, Shaffie Rajack, had a farm near to his house but he stated that this farm was on the side of Block 1 in an area that was outside of the 16 acre parcel of land. He later contradicted this story by stating that Shaffie Rajack's farm was on the 16 Acre parcel of land in question.

19. Both parties accept that when Paiagi and Sugia (the original owners of the 16 acre parcel of land) occupied the land, Paiagi took the middle portion of the land and Sugia took the two end portions. Mr. Ali claims that he knows of the names Paiagi and Sugia but he denies that Paiagi took the middle portion of the land and that Sugia took the two end portions. In fact he was unaware of what blocks Paiagi and Sugia occupied. This belies his apparent familiarity with the 16 acre parcel of land.

20. I find that the apparently simple and straightforward witness statement of Mr. Ali is undermined by these contradictions that I have just mentioned. I could not rely on his evidence as being truthful. Further, by his own admission he is at present the agent or employee of the Plaintiff for the ploughing and transporting of sugar cane from 11½ acres of the 16 acre parcel (see paragraph 9 of his witness statement). He did not impress me as an independent witness.

The evidence of the Defendants:

21. Ayoub Sulliman is a cousin of the Defendants. He lives on a parcel of land that is not on the 16 acre parcel of land in question. However, his parcel of land shares a

boundary with the 16 acre parcel of land. Attorney for the Plaintiff launched a detailed cross-examination of Mr. Sulliman. At the end of it, his testimony remained unshaken in all material particulars. He remained consistent in details concerning the use and occupation of the land. I had no hesitation in accepting him as a witness of truth.

22. In similar vein, the First Defendant's testimony remained unshaken in all material particulars. It also remained consistent with the testimony of Ayoub Sulliman. I also accept the First Defendant as a witness of truth.

The Sixth Defendant did not testify at the trial. I make no adverse finding on this.

23. The Defendants also presented items of documentary evidence from two independent sources which lends credence to their testimony.

Firstly, a representative of the Trinidad and Tobago Electricity Commission (T&TEC) presented the consumer records of the Defendants. This shows that the First Defendant's premises were connected for the supply of electricity since the 12th July 1965. The Sixth Defendant's premises were connected for the supply of electricity since the 1st February 1974.

Attorney for the Defendants launched an excessively lengthy cross-examination of the representative of T & TEC which only showed that it was "possible" that the records may not be 100% accurate. On a balance of probabilities, however, I had no hesitation in accepting the correctness of the consumer records. Further, these records tie in with the credible evidence of Mr. Sulliman and the First Defendant.

Secondly, the Defendants produced house assessment certificates from the District Revenue office which showed that the First Defendant's house was assessed for house rates as from the 1st January 1968. The Sixth Defendant's house was assessed as from the 1st February 1974.

Attorney for the Defendants showed this document to the Plaintiff and he accepted it and/or could not doubt its authenticity. Further, attorney for the Plaintiff did not even attempt to attack the authenticity or veracity of this document.

Findings:

24. Based on my analysis of the evidence, and on a balance of probabilities, I find the following facts. The First Defendant occupied the premises on the western portion of Block 1 where he lives, since 1965. The Sixth Defendant occupied the premises on the western portion of Block 1 where he lives, since 1st February 1974. The Plaintiff claims that he is the rightful owner of Block 1 from at least 1955 (see paragraph 7 above). The Defendants' occupation of their premises was admittedly adverse to the Plaintiff. The Plaintiff admitted in cross-examination that their occupation was "illegal" and "against his will", and he never consented to them being on any part of Block 1. After 16 years of this "adverse" possession of their premises, the Defendants extinguished the title of the Plaintiff and all the other tenants in common of the 16 acre parcel of land to this portion of the lands (see sections 3 and 22 of the Real Property Limitation Act Ch 56:03). In the First Defendant's case, this would have occurred 16 years after 1965, namely from

around 1981. In the Sixth Defendant's case this would have occurred 16 years after 1974, namely from around 1990.

When the Plaintiff commenced this action against the Defendants in 1994 his title to the lands where the Defendants lived on Block 1 had been extinguished.

I note in passing that even on the Plaintiff's case, the First Defendant would have extinguished the title of the Plaintiff and all the other tenants in common of the 16 acre parcel to the land where his house on Block 1 is. On the Plaintiff's own case, the First Defendant began to occupy this spot of land since 1974 (see paragraph 34 of the Plaintiff's witness statement). By 1990, (16 years later) the First Defendant would have extinguished their legal title.

25. In addition, I find as a fact that the First Defendant occupied the entirety of the Western portion of Block 1 from at least 1965. His occupation consisted of an animal farm, cane plantation and a teak plantation on Block 1. This was agricultural land and was occupied by the First Defendant as an owner of agricultural land would do. He had the requisite intention to possess and the factual possession of the western portion of Block 1 (see Pye v Graham and Poyer v Freitas op cit). Further, as the Plaintiff admitted in cross-examination, the First Defendant's occupation of the western portion of Block 1 was "illegal" and "against his will". There is no issue as to the "adverse" possession of the First Defendant of the western portion of Block 1 from 1965. The First Defendant extinguished the title of the Plaintiff and the other co-owners in respect of the western portion of Block 1 from 16 years after 1965, i.e., since 1981 or 1982. As from 1981 or

1982, the First Defendant was entitled to a possessory title of the rest of the western portion of Block 1.

Therefore, when Inool Salamat, acting on behalf of the Plaintiff fenced in the Defendants and then started to cultivate cane on Block 1 from 1994, he was a trespasser as against the First Defendant. The First Defendant's counterclaim in this case was commenced in June 2006. The Plaintiff only had 12 years of adverse possession against the First Defendant and not the required 16 years to extinguish the First Defendant's title to the rest of the western portion of Block 1. In these circumstances the First Defendant's counterclaim for possession of the rest of the western portion of Block 1 succeeds.

The Orders

26. Based on my findings, I make the following orders:

1. The Plaintiff's case is dismissed.

2. On the counterclaim:-

(a) I grant a declaration that the First Defendant has acquired title by adverse possession of the parcel of land west of Inverness Road, shown as "1" in survey No. 68216 of S. Kalicharan dated 28th October 1977.

(b) I grant a declaration that the Sixth Defendant has acquired adverse possession of the parcel of land which he occupies at 1132 Papourie Road, Barrackpore.

3. The Plaintiff is to pay costs of the First and Sixth Defendants of the claim and Counterclaim to be taxed in default of agreement.

4.

Dated this 27th day of March 2009.

Mr. Justice G. Smith
JUDGE