

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2007-00058

BETWEEN

HAMZA HASSANALI

CLAIMANT

AND

HAFFIZA MOHAMMED

AND

SAYEED MOHAMMED

DEFENDANTS

BEFORE THE HONOURABLE MADAME JUSTICE TIWARY-REDDY

JUDGMENT

Appearances:

Garnet Mungalsingh instructed by Prem Persad Maharaj for the Claimant

Ronnie Bissessar for the Defendants

INTRODUCTION

1. The Claimant commenced this action initially against the First Defendant alone, seeking a declaration that he has an equity in the property known as and situated at 24, Siparia-Erin Road, Debe (the family home). His claim is based on proprietary estoppel. The Claimant contends that his father, Hassan Ali, deceased (Hassan) made representations to

him that should the Claimant fund the demolition and reconstruction of the family home, he (Hassan) would convey a life interest in the home to himself with remainder to the Claimant.

2. Relying on these representations the Claimant contributed sums of money in demolishing and rebuilding the family home in the expectation that the new home would eventually be his. However, unknown to the Claimant, by Deed dated 4.3.91 and registered as No. 5813 of 1998 Hassan had transferred his interest in the family home and land to himself for life, with remainder to the First Defendant.
3. The Claimant therefore pleaded that the Defendants are estopped from denying that the Claimant owned the dwelling house and as a consequence, the said deed of conveyance vesting the property in the First Defendant should be set aside.
4. The Claimant seeks, inter alia:
 - A Declaration that the Deed of Conveyance dated 4.3.91 and registered as No. 5813 of 1998 be set aside;
 - An Order setting aside the said Deed of Conveyance;
 - Alternatively, rectification of the said Deed to include the Claimant as a legal owner and/or alternatively a rectification of the said Deed to exclude the words “*save and except the building thereon owned by the purchasers*” and to insert therein “*save and except the building thereon owned by Hamza Hassanali.*”;
 - A further Declaration that the Claimant has an equity coupled with an irrevocable interest in the said property;

- Further and alternatively a Declaration that the Claimant be declared the legal owner of the said property and/or given such legal interest as the Court may decide.
5. The First Defendant is a sister of the Claimant and the Second Defendant is her husband. The First Defendant filed a Defence on 20.4.07 but did not file a Witness Statement and did not testify, although she was present in court for the trial. The Second Defendant was joined as a Defendant by Order of the Court made on 24.5.07 and did not file a Defence. He filed a Witness Statement in support of the First Defendant's pleaded case and gave evidence. The gist of the evidence for the Defendants is that they are the owners in fee simple of the house and land upon which the house stands by virtue of Deed dated 4.3.91 and registered as No. 5813 of 1998 and by Deed dated 30.11.05 and registered as No. 200503098805.
6. The combined effect of both these Deeds is that Hassan was seised of the land and building thereon described for life and after death, to the First Defendant. Hassan passed away on 24.2.00. Thereafter the First Defendant conveyed the said property (house and land) to herself and the Second Defendant by way of gift.
7. The First Defendant counterclaims against the Claimant for:
- An Order that the Defendants be allowed into occupation of the family home together with all the siblings who may wish to occupy the family home (including the Claimant); and
 - An Order that the Claimant do pay *mesne* profits to the Defendants referable to the Claimant's occupation of the family home from 1.1.2001 to the present.

8. The Claimant, his wife Sati Hassanali (Sati) and his brother Afzal Hassanali (Afzal) as well as Glenn Parmassar, Forensic Document Examiner testified for the Claimant, while the Second Defendant and Roy Manlal gave evidence for the Defendants. The Claimant, his wife and brother, Afzal live in Florida while the Defendants live in Ontario, Canada.

BACKGROUND

9. Hassan and his wife had ten children, namely:

- (i) Shamin Hassanali aged 60
- (ii) Afrose Hassanali aged 57 (now deceased)
- (iii) Hamza Hassanali aged 56 (the Claimant)
- (iv) Afzal Hassanali aged 54
- (v) Mohammed Hassanali aged 52
- (vi) Fazal Hassanali aged 50
- (vii) Haffiza Hassanali aged 47 (the First Defendant)
- (viii) Fareed Hassanali aged 45
- (ix) Shaheeda Hassanali aged 43
- (x) Azim Hassanali aged 41.

Roy Manlal is the widower of Afrose Hassanali.

10. In order to give his sons a start in life, in or about 1980 Hassan bought four lots of land at Wellington Road, Debe in the names of Afzal, Fazal, Mohammed and the Claimant. Fareed was originally chosen to live with the Claimant's parents. However, Fareed subsequently built his home on the Claimant's lot.

11. The subject property is one of several two-storey buildings situate on the Siparia-Erin Road at Debe Junction in south Trinidad where doubles, aloo pies, saheenas,

katchowries, jalebis and other Indian delicacies are sold all day, everyday and late into the night. This is a very popular and inexpensive fast food strip in the heart of the southland. A single storey shed or stall has been erected near the pavement in front of each building and these Indian foods are sold in these outlets. Some outlets also provide seating and running water. The stall or annexe in front of the subject property as shown in the photographs contained in the valuation of Roy Gumansingh appears to be quite substantial.

12. The evidence is that the Claimant's parents were pioneers in the doubles business which they started many years ago. The Claimant's mother and other female relatives would prepare and cook the items in the kitchen on the ground floor or at the back of the annexe and the Claimant's father would do the actual selling. As the years went by the Claimant's father permitted his children and later their children to sell their own items, at first in the evenings, and later on, on separate days or evenings on a rotation basis. Throughout his lifetime the Claimant's father controlled the rotation.

13. This state of affairs continues to today with different siblings and their children selling on a rotation basis. The Claimant has stated that he does not intend to interfere with the rotation established by his father on the subject property. The Defendants contend that the Claimant wishes to take control of the entire vending business and exclude the other family members. At present, the Claimant's two daughters, two sons of Afrose and Mohammed, Fazal and Fareed share the rotation.

CLAIMANT'S EVIDENCE

14. The Claimant is the eldest son and stated that he and his nine siblings grew up with their parents (both now deceased) in the family home until each of his siblings got married and

left the family home during the 1980's. The Claimant who was married in 1976, lived in the family home with his parents, his wife and three children until his parents passed away in 2000, save for a short period from 1979 – 1982 when he and his family lived with his wife's relatives in Arima.

15. In or about 1989, due to the age and the deteriorating condition of the family home, the Claimant suggested to his father that the house needed rebuilding and his father agreed. The Claimant then brought the family builder, Ali Mohammed to meet with his father to discuss rebuilding the family home. Present at the meeting were the Claimant, his wife, his sister Afrose since deceased, and her husband Roy Manlal as well as the Claimant's parents. At this meeting the Claimant's father informed them of his intention to rebuild the family home and to give the house to the Claimant. Afrose agreed that the Claimant should have the house. The decisions taken at this meeting were later communicated to the other siblings, including the First Defendant.
16. At a subsequent meeting between the Claimant and his father, it was agreed that the father would purchase the freehold in the land upon which the house stood and the Claimant would fund the rebuilding. The Claimant's father assured the Claimant that both their names would be on the Deed for the house and land. Thus the property would belong to both father and son.
17. The following excerpts of the cross-examination of the Claimant are instructive:

“In early 1989 Narisha's leg went through the floor and she was damaged. I spoke to my wife, the builder Roy Manlal, Afrose and my parents. (7 persons) held discussions in early 1989 where my father said he would buy the land, I would pay for the building materials and labour and that after his death I'd be the rightful owner of the land ...

... I would provide all the materials and labour costs for construction of the building. The existing house would be demolished and a new building erected. The agreement was between my father and self ...

... The first part is father would buy the land. Next I would build the building. We would be joint owners because father and myself would be on the deed. Father said I'd be the rightful owner of the land not in those exact words but words to this effect ...

... I invited Ali Mohammed to that meeting. Ali Mohammed was a family builder. I invited him to explain to him what we wanted done in the building process. By we I meant wife and I and my parents. I would not have been able to go ahead with the rebuilding unless my parents agreed. ... Without father's agreement I could not build. ...

... I didn't say I wanted to rebuild. I tell him there was a need to rebuild and the urgency. Father said yes. On that basis I invited Ali Mohammed to the meeting. ...

... At this meeting I didn't tell father that I wanted to be the rightful owner of land after the house was rebuilt. Father suggested I should be the rightful owner. So did Afrose. I brought the builder as an adviser. When the builder came I had not yet decided to foot the expense. At that time it was expected that father would foot the expense ..."

18. Thus the Claimant maintained that he had the incentive to actively take on financing and rebuilding the family home and that he made this intention known not only to his father, but also to his wife, his sister Afrose and her husband as well as the Claimant's mother.

19. Pursuant to the said agreement with his father in late 1989, the Claimant caused building plans for the new house to be drawn and submitted for approval in the name of the Claimant's grandfather, Hasmooolal Hassan Ali (Hassan's father), who was the original tenant of the land. The Claimant and his family along with his parents then moved into two rooms which were constructed at the back of the lot to allow for the old house to be demolished and the filling up of the land for some four feet. The Claimant was solely responsible for getting the electrical certification for the new house (which certificate bears the Claimant's name). The new home was insured in the name of the Claimant and his wife as the policy holders and the evidence suggested that they paid the monthly instalments faithfully.

20. The Claimant said that he was able to pay for the rebuilding of the house from cash earnings from the sale of doubles and other Indian delicacies and further that in any event, his father was not then in a financial position to finance the rebuilding of the family home. According to the Claimant:

"I bore the total cost of rebuilding the house - \$500,000.00. During February 1991 to August 1992 I took a loan for the cupboards (\$75,000.00). The remaining \$425,000.00 was met from my own resources. I paid 90% by cash and balance by cheques."

21. The Claimant produced receipts which suggested that the Claimant and his wife paid for a portion of the cost of demolishing the old house and the filling up of the land. But the Claimant insisted that he paid the entire cost of the demolition and the rebuilding. Sati's evidence does not stray too far from his. However, both the Claimant and his wife failed to produce receipts for the sum total of what they alleged was spent on demolition and rebuilding. Both the Claimant and his wife maintained that the total cost of rebuilding was in excess of \$500,000.00 which included a loan of \$75,000.00 for the cupboards, while the total of all receipts produced was \$183,000.00. Further, quite a number of these receipts were not dated or signed and some bore no indication by whom they were

issued. The receipts from unnamed sources totalled approximately \$72,000.00. In his Witness Statement the Claimant had explained that these receipts were for materials purchased by the builder, Ali Mohammed on his behalf. In his Statutory Declaration, Mohammed (since deceased) had admitted assisting the Claimant and his wife in obtaining materials, during the construction. Ali Mohammed also stated in his declaration that the Claimant and his wife had paid him approximately \$75,000.00 for his labour during the construction. The Claimant therefore was only able to provide evidence of having spent \$258,000.00 (183,000 + 75,000) in the construction. Further, the Claimant provided no documentary evidence of the loan of \$75,000.00 for the cupboards. But he was not challenged on this omission.

22. The Claimant's chequing account records provided by him revealed that the said account was not in existence in 1991 and was only opened in 1996. When faced with this evidence the Claimant admitted that the cheques could not have been issued from that particular account but he could not say from which other account the cheques were drawn. In fact, the Claimant went so far as to say that the cheques could have been managers' cheques issued by the bank, but produced no evidence to support this statement.

23. The Claimant insisted that his father was not financially able to fund the cost of rebuilding the family home, and therefore, he (the Claimant) undertook to rebuild. However in his evidence the Claimant stated:

"Earlier I said I was not sure that father could afford to repay for the building ... During 1986 to 1989 I had earned $\$1400 \times 36 = \$50,400.00$. I also had other savings in bank account at Royal Bank in Cross Crossing. I'm saying that although father was earning \$30,000.00 per month and I, \$1400.00 I didn't know if father could afford to rebuild but I knew that I could."

24. It was put to the Claimant that from February 1991 to August 1992 because of the rotations given to other family members, he was only given from 6:30 pm to 11:30pm on one evening per week and not all day as he alleged. He denied this but could not say how he and his wife got two full days' rotations when the evidence was that there were at least 8 other persons in the rotation at that time. Moreover, the Claimant's father was actively involved in the business and the unequivocal evidence was that he was in control of the daily sales and his children's rotations which were basically in the evenings (6.30 to 11.30 p.m.). The Claimant accepted that his father operated the doubles stall until 1997 in rotation with his children. Thereafter he collected rent from his children who were operating the stall.
25. At first the Claimant said that he paid for rebuilding the family home from his account at RBTT, Cross Crossing. However, the total deductions made from the Claimant's RBTT account at Cross Crossing did not exceed \$80,000.00 during the period February 1991 to August, 1992. The Claimant then said that the monies came from daily cash sales of Indian delicacies at the family home and at the Cocoyea Roundabout. The Claimant's parents operated the food stall from Monday to Friday all day, while the Claimant and his wife only operated on one evening per week. The Claimant said that he also sold Indian delicacies at the Cocoyea Roundabout in San Fernando on Sundays, Mondays and public holidays. He maintained that his profit from the sales at the Roundabout was \$3,000.00 per weekend being \$12,000.00 per month. Further, that he also earned \$12,000.00 per month profit from selling two days at the family stall
26. He said that each full day's sales from 6:30 a.m to closing were \$1200.00. Later, his evidence changed so that he was now earning \$1800.00 profit on public holidays which the Court computed to be \$24,000.00 profit per month. In other words the Claimant's evidence is that he funded the building costs from monthly profits of \$24,000.00. This Court notes that gross monthly sales to achieve a profit of \$24,000.00 from the sale of Indian delicacies some 20 years ago would require an extremely high volume of sales. It

is well known that the selling price of doubles is \$3 – \$4 each, today. Twenty years ago (1991) the selling price would have been about half of that, being \$1.50 – \$2.00 each.

27. This Court finds that the Claimant was only permitted to sell on one evening per week at the family stall and that he earned approximately \$6,000.00 per month therefrom. Further this Court notes that from the Claimant's own evidence he would have earned at most a total of \$18,000.00 (12,000 + 6,000) per month during the period of construction being $18,000 \times 18 = \$324,000.00$. From this sum the Claimant had to meet the family's living expenses.

28. The Claimant's wife generally supported the Claimant's account that together they both financed the construction of the family home from cash sales of Indian delicacies, save for a loan of \$75,000.00 in 1996 for the cupboards. However, she produced no documentary evidence in support.

29. The Claimant's sibling Afzal, who has lived abroad since 1987 gave a short Witness Statement dealing with Hassan's purchase of the four lots of land for four of his sons and Hassan's deposit of \$10,000.00 towards the purchase of the freehold at 24 Siparia Erin Road. In his Witness Statement he said that he knew that Hassan had paid the \$10,000.00. In cross-examination he admitted that he was not present when this sum was paid and that he had received information to this effect.

30. The following excerpts of his cross-examination are instructive:

"To Mr. Bissessar: In 1991 when father came to Toronto, he was not financially independent ... In 1991 my parents were still rotating the doubles shed. Monies earned from the shed were their own ...

To Court: I accept that father gave all his children a start in life ...

Father was financially sufficient but not financially independent. By Financially sufficient – he had everything he wanted so he was never without anything. By Financially independent – never depend on anybody. I say father was not financially independent. Father depended on others.

To Mr. Mungalsingh: Financially sufficient was whenever he needed finance he would get it.”

DEFENDANTS’ EVIDENCE

31. The Defendants’ evidence was a mere denial of the Claimant’s pleaded case. The Defence basically recited that Hassan (the father) was a wealthy and proud man who could have afforded to pay for the demolition and rebuilding of the family home himself. He did not need the assistance of the Claimant or any other sibling. Secondly, Hassan did not trust the Claimant and therefore did not involve the Claimant in his financial matters. It was very obvious to this Court that the Second Defendant had no direct knowledge of any of the financial transactions concerning the rebuilding of the family home or of the First Defendant’s payment of \$40,000.00 being the balance of the mortgage sum, in respect of the purchase of the freehold land. His evidence basically recited what was pleaded by the First Defendant in her Defence and was of very little assistance to this Court.

32. It is significant that although the Second Defendant alleged that Hassan was a wealthy man, yet according to their evidence, he was unable to purchase the freehold on his own and required the assistance of the First Defendant, in this regard. As a matter of fact, Hassan only made a down payment of \$10,000.00 while the First Defendant paid the balance of \$40,000.00. Secondly, the Defendants alleged that Hassan was a very proud man, who would not have taken assistance from any of the children, yet he accepted financial assistance from the First Defendant. Thirdly, the Defendants claimed that

Hassan did not trust the Claimant and suspected that the Claimant wanted to get control of the entire property, and further, that Hassan trusted Roy Manlal who was his “man of business.” They went further and said that Roy was the person Hassan would turn to, when he (Hassan) needed things done. This Court therefore finds it surprising then that apart from Roy’s say so, at no time during the demolishing and rebuilding of the family home, has there been any evidence that Roy was actively involved. There is not one receipt in Roy’s name or evidence that Roy was ever consulted by Hassan.

33. For his part Roy denied being present as alleged by the Claimant, at the meeting when Hassan agreed that he (Hassan) would purchase the freehold, and that the Claimant would rebuild the house and that they would jointly own same. As a matter of fact, Roy alleged that he was responsible for taking the builder, Ali Mohammed to meet with Hassan. On the other hand the Statutory Declaration dated 28.9.01 of Ali Mohammed, who died on 31.1.03, was to the effect that the Claimant was the one who paid him for the work done on the family home, and was the person with whom he liaised with respect to the work being done on the family home. Further payments were made at times by cash and at other times by cheques issued by the Claimant and his wife.

FINDINGS OF FACT

34. After a careful consideration of all the evidence, this Court makes the following findings of fact:

- a) The Claimant and his family lived with his parents in the family home for approximately 18 years before his father passed away in 2000.
- b) In or about 1980 Hassan purchased 4 lots of land at Wellington Road, Debe for his four eldest sons, namely, the Claimant, Afzal, Mohammed and Fazal. Both sides confirmed that Hassan wanted to give his sons a start in life and he purchased the land to assist them.

- c) Hassan did not purchase a parcel of land for Fareed, his youngest son because Fareed was expected to live with Hassan in the family home. However, Fareed built his home on the Claimant's lot before Fareed migrated.
- d) Since Fareed had built on the Claimant's lot with Hassan's knowledge and consent, it is more likely than not that Hassan told the Claimant that he would give the Claimant some interest in the family home. Further, relying on this promise, the Claimant expended certain monies towards demolishing and rebuilding the family home. The total cost of demolishing the old home and rebuilding the family home was in excess of \$500,000.00.
- e) The Claimant and his wife insisted that they completely financed the demolition and rebuilding of the family home. But they were unable to show from where they got all the funds needed to do so. Further, the Claimant's evidence changed many times on the stand as to the source of his income. Sati's evidence seemed to be tailored to plug the holes left exposed by her husband.
- f) The Claimant was less than forthright when he said that he had no knowledge that his sister, the First Defendant was the registered owner of the house and land. But when confronted with a letter sent by his Attorney to his siblings, which letter acknowledged the First Defendant as the registered owner, the Claimant had no answer.
- g) From the Claimant's own evidence he was not solely responsible for financing the demolition and rebuilding of the family home. At most, the receipts submitted by the Claimant suggested an expenditure of \$183,000.00, which included the receipts (\$72,000.00) from unknown sources in addition to \$75,000.00 for labour. Further, the Claimant did not satisfy the Court that his earnings leading up to and during the period

of rebuilding were sufficient to enable him to finance the rebuilding on his own. It is therefore obvious that the balance of the monies came from the Claimant's father, Hassan, whose income was always considerably greater than that of the Claimant.

- h) Hassan's income, particularly during the period of construction was much greater than that of the Claimant, being \$30,000.00 monthly. Further, Hassan was not a man of straw as the Claimant and his witnesses alleged, and contributed financially and otherwise to the rebuilding of the family home.
- i) The Claimant and his family have been in exclusive occupation of the family home, excluding the doubles stall, since his parents' death in 2000.

PARMASSAR'S EVIDENCE

35. Glen Parmassar, a Forensic Document Examiner examined three documents namely:

- 1. Photocopy of Deed of Conveyance No. 5813 of 1998, dated 4.3.91.
- 2. Photocopy of Deed of Mortgage No. 5814 of 1998, dated 4.3.91.
- 3. Carbon copy of the document at (1) above.

He also examined the originals of the documents at (1) and (2) above at the Registrar General's Office in South Quay and concluded:

- 1. The words "*son HAMZA HASSAN ALI*" had been replaced by "*DAUGHTER HAFFIZA MOHAMMED*" as one of the purchasers in Document 1.
- 2. In Document 2:

- a) Underlying the word “*daughter*” on the first page are remnants of the previous original typed characters, which remnants could not be identified. Next to the name “*Mohammed*” the previous original entry “*ALI*” was identified.
- b) Underlying the name “*HAFFIZA MOHAMMED*” on the fourth page is the previous original entry which appears to be “*HAMZA HASSAN ALI*”.

3. In Document 3:

- a) On the top half of the first page, the previous typed original entries “*son HAMZA HASSAN ALI*” had been crossed out and the handwritten entry “*DAUGHTER HAFFIZA MOHAMMED*” had been inserted.

36. The Claimant has not alleged fraud in the conveyance to the First Defendant or in the mortgage deed. Parmassar’s findings and report supported the Claimant’s contention that his father had promised to convey the subject property to the father for life with remainder to the Claimant.

37. From a review of the documents examined by Parmassar this Court concludes that initially the father had given instructions to attorney at law Eldred Basil Jack to prepare the Deed of Conveyance to the father for life with remainder to the Claimant. However, for some unexplained reason the First Defendant’s name was substituted for the Claimant in both conveyance and mortgage. In any event, this Court is satisfied that the said alterations were contained in the original documents when they were submitted for registration to the Registrar General. No evidence to the contrary has been produced to this Court.

38. Hassan purchased the freehold of the subject property from sisters, Bissoondai and Mahadaie. Bissoondai signed the deed of conveyance on 4.3.91 and Mahadaie signed on 4.7.96. (5 years later). The Deed of Mortgage was signed by Hassan Ali on 4.3.91 and by Haffiza Mohammed on 20.10.96 (also five years later). Both deeds were stamped by the Board of Inland Revenue on 19.9.96. Both deeds were registered on 20.3.98. It is significant that the Claimant's evidence is that construction started in February, 1991. The Deed of Release dated 7.5.98 was executed by Bissoondai and Mahadaie on 7.5.98 and was registered on 26.5.98 as Deed No. 10837 of 1998.

THE LAW – Proprietary Estoppel

39. Attorneys-at-Law for both sides addressed the principle of proprietary estoppel and cited several authorities including the well known cases of **Inwards v Baker 1965 1AER 446**, **Willmot v Barber 1880 15 Ch D 96** and **Taylor Fashions Ltd. v Liverpool Victoria Trustees Co. Ltd. 1982 QB 133**.

40. In **Inwards v Baker (supra)** a father had encouraged his son to build on land owned by the father. In an action brought by the trustees of the father's will, the Court of Appeal of England upheld the right of the son to remain on the land. Lord Denning in his famous dicta, stated at page 448:

“It is quite plain from those authorities that, if the owner of land requests another, or indeed allows another to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with an equity ... So in this case though there is no binding contract to grant any particular interest to the licensee, nevertheless the Court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is

that the licensee should at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the Court will not allow that expectation to be defeated where it would be inequitable so to do.”

41. In **Willmot v Barber (supra)** Fry J proffered five guidelines to be applied in determining a plea of proprietary estoppel. However, recent cases have doubted the need to apply all five tests in any particular case. The real test is said to be whether upon the facts of the particular case the situation has become such that it would be dishonest or unconscionable for the Plaintiff or the person having the right sought to be enforced, to continue to seek to enforce it.

42.

“The Equity

(a) The Rule. In Taylor Fashions Ltd. v Liverpool Trustee Co. Ltd. (supra) Oliver J provided the following statement of the elements of the doctrine:

‘If A, under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a Court of Equity will compel B to give effect to such expectation. This remains the most important and authoritative modern statement of the doctrine although it must now be qualified by the position that the Court must be proportionate to the detriment suffered and that the Court is not always required to satisfy his or her expectation by awarding the promised or expected interest in land.’” Snell’s Equity 31st Edition Para 10-16.

43. The main thrust of this case is whether or not equitable estoppel is applicable to the Claimant. Lord Denning in **Crabb v Arun District Council [1975] 3 AER** at p. 871

explained the basis of equitable estoppel, (i.e. proprietary estoppel and promissory estoppel) thus:

*“The basis of this proprietary estoppel – as indeed of promissory estoppel – is the inter position of equity. Equity comes in true to form, to mitigate the rigours of strict law. The early cases did not speak of it as ‘estoppel’. They spoke of it as ‘raising on equity’. If I may expand that, Lord Cairns said in **Hughes v Metropolitan Railway Co.**, ‘... it is the first principle on which all Courts of Equity proceed ...’ that it will prevent a person from insisting on his strict legal rights – whether arising under a contract, or on his title deeds or by statute, when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties.”*

44. Both forms operate against a person seeking to enforce his legal rights, where it would be unconscionable to permit him so to do. According to the well established case of **Ramsden v Dyson [1886] LR 1HL 129/140** in order to invoke the doctrine, the litigant is required to prove the existence of four essential ingredients:

- Detriment;
- Expectation or belief;
- Encouragement; and
- The absence of any bar in equity.

45. This Court concludes that the Claimant acted to his detriment by expending between \$150,000.00 to \$250,000.00 in the re-construction of the family home. He did so with his father’s encouragement and in the expectation that he would own the property after his father’s death. To this end the father had initially instructed his attorneys to prepare such a deed.

DISCUSSION

46. This Court does not accept that the father intended the house to be a home for all his children. During the late 1980's most of the children had their own families and were already living on their own either in this country or abroad. Only the Claimant remained in the family home with his parents. However this Court believes that the father intended that all his children should continue to share in the rotation of the doubles stall and use the facilities on the ground floor to this end.

47. The principal issue for this Court is to determine who actually funded the construction. Was it the Claimant as he alleges or was it his father Hassan Ali as the Second Defendant maintained? It is not disputed that the family home was rebuilt during 1991 – 1992 at a cost in excess of \$500,000.00. At this time both father and son were living in the property with the father travelling back and forth to Canada. The old house belonged to the father, who owned and operated the doubles stall thereon. He permitted some of his children, including the Claimant, to operate the stall on evenings (one evening per week per child). The father ceased operating the stall in the late 1990's but he collected rent from each of his children who operated the stall.

48. This Court is satisfied that the father's income was always much larger than the Claimant's, especially during the construction period.

49. The Claimant has produced a number of receipts in his name from named and unnamed sources. He also produced a declaration dated 2001 from the builder, Ali Mohammed who died in 2003 at the age of 46. In this declaration Ali Mohammed said that he received approximately \$75,000.00 for labour from the Claimant towards the construction. But it is not clear whether the Claimant used his own monies to pay for the labour and materials or whether his father contributed any monies towards labour and/or materials.

50. With respect to the purchase of the freehold, it is not disputed that the Claimant made no contribution to this transaction. The Claimant's father paid a deposit of \$10,000.00 and raised the balance of \$40,000.00 by way of a mortgage. The Second Defendant said that the First Defendant paid the balance of \$40,000.00 but there is no documentary evidence of this. And further, the First Defendant never gave evidence since her father had originally instructed the conveyancer to convey the freehold to himself for life with remainder to the Claimant. It would have greatly assisted the Court if she had given evidence to explain the reason for the father's change of instructions.

51. This Court has noted that the Claimant's brother, Fareed, built a house on the Claimant's lot at Wellington Road, with the knowledge and consent of the father. Further the Claimant lived in the family home with his parents instead of Fareed. This Court is convinced that in 1991 Hassan Ali intended to convey the subject property to himself for life with remainder to the Claimant. However, during 1991 to 1996 there was some change in the Claimant's relationship with his father which caused the father to replace his daughter, Haffiza Mohammed as the remainder-man.

52. From a review of the correspondence passing between the parties leading up to the litigation, it is clear that the Claimant was attempting to exclude other siblings/relatives from operating the doubles stall, or to have the authorities close down the stall or to take over the stall himself. Haffiza has lived abroad since 2005 and neither she nor her children ever shared in the rotation. For the foregoing reasons it is more than likely that the Claimant's father changed his mind about giving the Claimant the remainder share in the subject property because of the Claimant's attitude to his siblings in respect of the operation of the doubles stall.

53. This Court accepts that at all material times the Claimant's father, Hassan Ali was in control of the doubles stall and the rotation right up to his death in 2000. Since then

(2000) the Claimant has had exclusive control over the new house and has excluded all his siblings and their children, save for Afzal. In cross-examination the Claimant said:

“If my name is on the deed I would exclude my siblings and their children from occupying the family home. I have not attempted to exclude any family member from operating the doubles shed ... In 2005 I did not put a fence to exclude my siblings from accessing the doubles shed. Narisha and I spoke with them, including Haffiza explaining that everyone would have a key ... At some time my siblings used the back of the house to prepare doubles. I did not stop them.”

54. And the Second Defendant said in cross-examination:

“I don’t know if Haffiza paid the balance of the purchase price for the land. I believe what Haffiza said, that father put her name on the deed to prevent the Claimant from taking the property for himself and excluding the others, is true ... It was Hassan Ali’s intention that all the children would continue to have access to the house and continue to sell in the shed ...”

LACHES – DELAY

55. The Defendants complained of undue delay. The Claimant explained that he filed the instant proceedings in 2007 and that the reason for the delay was because:

“there was always an offer and counter-offer and discussions ...”

This Court notes that this was a family matter with respect to a property on which a business was being carried on by numerous siblings and their off-spring. In the circumstances it was not unreasonable for the Claimant to have taken some time to

initiate this action in their expectation that the matter would have been resolved having regard to the family arrangement re the doubles stall and the fact that all the parties were closely related.

CONCLUSION

56. This Court holds that the Claimant has proven all the elements of proprietary estoppel and has acquired an equity in the subject property. This Court must now decide how to give effect to the Claimant's said equity in the subject property.

57. The valuation of Gumansingh dated 20.12.07 estimated the building and improvements to be valued \$1.6 million and the land \$900,000.00. Having reviewed the evidence and taking into consideration that the Claimant has been in exclusive occupation of the house for more than 10 years, this Court considers that the Claimant has acquired a 30 percent interest in the subject property (house and land).

ORDERS

- 58.
1. This Court declares that the Claimant is entitled to a thirty per cent share or interest in that property including the doubles stall, known as and situate at 24, Siparia-Erin Road, in Debe (the subject property).
 2. The First and Second Defendants do convey to the Claimant a thirty per cent share or interest in the subject property within 60 days hereof. In default, the Registrar of the Supreme Court is hereby directed to execute the necessary conveyance.

3. The Counterclaim is dismissed.
4. The Defendants do pay to the Claimant the costs of the Claim and Counterclaim to be assessed in default of agreement by the Master in Chambers on a date to be fixed by the Registrar.

Dated this 27th day of May, 2011

Amrika Tiwary-Reddy
Judge