THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV2016-01587

BETWEEN

TOTA DHANIRAM

First Claimant

MEIRA DHANIRAM

Second Claimant

CAMALA ALI

Third Claimant

BEESHAM PERSAD

Fourth Claimant

RENISHA PERSAD

Fifth Claimant

AND

SIEUDAT PERSAD

First Defendant

SUSAN ALEXANDER

Second Defendant

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV2016-01888

BETWEEN

HEMAWATEE BUCHOON

First Claimant

JANKIE MASTAY

Second Claimant

AND

SIEUDAT PERSAD

First Defendant

SUSAN ALEXANDER

Second Defendant

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Mr. Stephan A.H. Mungalsingh for the Claimants
Ms. Leandra Ramcharan for the Defendants

Date of Delivery: November 22, 2018

JUDGMENT

Procedural History

1. The claim intituled CV2016-01587 Tota Dhaniram, Meira Dhaniram, Camala Ali, Bheesham Persad and Renisha Persad -v- Sieudat Persad and Susan Alexander ("the First Matter") was commenced by Fixed Date Claim Form and Statement of Case filed on the 12th of May, 2016.

2. About two weeks later, by Fixed Date Claim Form and Statement of Case another claim was commenced intituled CV2016-01888 Hemawattee Buchoon and Jankie Mastay -v- Sieudat Persad and Susan Alexander ("the Second Matter").

3. Both claims were consolidated by order of Justice Kokaram on the 25th October, 2016. There were interlocutory proceedings. The recital of those are not relevant to the court's fact finding and decision-making. The pleadings were settled, after amendments on the 17th January, 2017.

4. The issues for the court's determination are whether:
    a. the Defendants' legally registered estate is lost by virtue of the Claimants, or any of them, being in adverse possession of those parcels of land claimed by them;
    b. the Claimants, or any of them, are statutory lessees, whose leases have expired as a result of the operation of law;

c. a tenancy granted by a person with a life interest binds the remaindermen with free hold interest in that estate;
d. what parcel or parcels of land are the Claimants occupying; and
e. are the Defendants entitled to possession of any parcel or parcels of land claimed by the claimants.

The Claimants' Case

5. Both matters concern the possession, by the Claimants, of various portions of two contiguous parcels of land measuring Two Acres One Rood and Thirty Eight Perches (2A 1R 38P) and Two Acres Three Roods and Nine Perches (2A 3R 9P) respectively, located in the Ward of Tururе in the Island of Trinidad and Tobago (hereinafter collectively referred to as the "Larger Parcel"). The Larger Parcel was formerly owned by the Defendants' predecessors namely, Ramroop Newal Persad and Harry Persad ("Harry") for their respective natural lives and after their deaths to the children of Harry, namely Bisnath Persad ("Bisnath") and Palacknath Persad ("Palacknath") as joint tenants. Thereafter, the Larger Parcel was transferred to the Defendants who are currently the legal title holders.

6. The Claimants claim to have been in continuous possession of their respective portions of the Larger Parcel at all material times for a period in excess of sixteen (16) years prior to the commencement of these claims in 2016. The Claimants aver that they have had the intention of occupying their respective portions and continue to occupy the same as their own to the exclusion of the Defendants and the world at large. The Defendants are therefore not entitled to possession of the Claimants' respective portions as the registered title has been extinguished.

7. The Claimants state that in or around May, the Defendants and/or their servants and/or agents physically entered their respective parcels in a high handed, insulting and oppressive manner without the licence or consent of the Claimants for the purpose of conducting a survey. Upon entry, the

Defendants, their servants and/or agents sprayed the Claimants' crops located on their respective parcels with poison and further destroyed trees by cutting and/or burning. Additionally, the Claimants in the Second Matter assert that the Defendants and/or their servants and/or agents entered and dumped rubbish unto their parcels of land.

8.The Claimants aver that the acts referred to above were done maliciously and out of spite with the intention to injure their feelings and cause them to be ridiculed by their family, friends and neighbours. As a result, the Claimants suffered mental distress, loss of their trees and crops and have been subjected to loss and damage.

9.I will now proceed to itemize the evidence adduced to support the claims of possession for each of the seven Claimants. The Claimants will be referred to by name for ease of reference.

- Tota Dhaniram's Possession

10.Tota Dhaniram ("Tota") claims possession of his portion of the Larger Parcel ("Tota's Rented Parcel") measuring approximately 120 feet by 50 feet bounded on the North by lands of the Defendants, on the South by De Gannes and Jawahir Road Cunaripo, on the West by lands of the Defendants and on the East by lands of Meira Dhaniram.

11.Tota claims to be in possession of his Rented Parcel from about 1975 and continues to reside thereon to the present day. When Tota entered into possession, he erected a wooden structure. In 1975, Tota paid yearly rent to Harry and continued to do so until 1976. In 1977 Tota attempted to make his yearly rental payment. However, this was futile as Harry was bedridden and unable to collect rent. Since that time, Tota has not paid any rent. In or around 2009, Tota gave his son Deodath Dhaniram permission to build a house on the western portion of Tota's Rented Parcel. He continues to live thereon to the present day.

12. Since commencing possession of Tota's Rented Parcel, Tota has been planting on another portion of land ("Tota's Agricultural Parcel") measuring approximately 50 feet by 120 feet to the north of his parcel without permission. The two pieces of lands occupied by Tota is separated by a ravine dividing Tota's Rented Parcel from Tota's Agricultural Parcel. Tota plants and cultivates lime trees, mango trees, coconut trees, a chatigne tree, dasheen, tipitambo, avocado, cinnamon and yam on his agricultural portion and continues on to the present day.

- Meira Dhaniram's Possession

13. Meira Dhaniram ("Meira") claims possession of her portion of the Larger Parcel ("Meira's Rented Parcel") measuring approximately 100 feet by 50 feet bounded on the North by lands of the Defendants, on the South by De Gannes and Jawahir Road Cunaripo, on the West by lands of Tota Dhaniram and on the East by lands of the Defendants.

14. Meira claims to be in possession of her parcel from about 1971 and continues to reside thereon to the present day. When Meira first entered onto her parcel, she erected the first wooden structure. In 1971, Meira paid yearly rent to Harry and continued to do so until 1976. In 1977 when Meira went to make her rental payment to Harry, he told her that he was unable to collect rent and that someone would come to collect it. However, she avers that no one ever came to collect the rent. Since that time, Meira has not paid any rent.

15. A few months after commencing occupation of Meira's Rented Parcel, Meira instructed her husband to clear the bush on both sides of the ravine. Thereafter she began planting on Meira's Rented Parcel and extended to the other side of the ravine ("Meira's Agricultural Parcel") without permission. The two pieces of lands occupied by Meira is separated by a ravine dividing Meira's Rented Parcel from Meira's Agricultural Parcel.

Meira planted string beans, pimento, bhodi, pakchoi, sweet peppers, lettuce and cauliflower on her agricultural parcel from 1972 to 2015. Since then, she gave her son-in-law, Aroon Ali, permission to plant on Meira's Agricultural Parcel.

16. In or around 1979, Meira built and moved into a second wooden structure in which she currently resides. In or around 1980 Meira gave her brother Harry Persad Samlal permission to live with his wife in the first wooden structure. They are still in occupation to this date. In 1998, Meira granted permission to her son, Anselmo Dhaniram to construct an extension to the second wooden structure. The said Anselmo Dhaniram continues to live thereon to the present day. In about 2003, she granted permission to her son Fidel Dhaniram and her daughter Francillia Mark to use the southern portion of her house as a mini-mart, which remains in operation to date. Meira further granted permission to her daughter Marissa Ali to build a board extension to the second wooden structure in 2010, but this is no longer in existence.

- Camala Ali's Possession

17. Camala Ali ("Camala") claims possession of her portion of the Larger Parcel ("Camala's Rented Parcel") measuring approximately 100 feet by 50 feet and 2 roods bounded on the North by lands of the Defendants, on the South by De Gannes and Jawahir Road Cunaripo, on the West by lands of the Defendants and on the East by the Cassim Trace .

18. Camala claims to be in possession of her parcel from about 1976 and continues to reside thereon to the present day. When Camala entered onto her parcel she erected a wooden house. In 1976, Camala paid yearly rent to Harry and continued to do so until 1977. In 1978 when Camala went to make her rental payment to Harry, he told her that he was unable to collect rent. Nonetheless, Camala asserts that she gave the rent money

to Harry's caretaker to purchase things for Harry. Since that time, Camala has not paid rent to anyone.

19. Located to the west of Camala's Rented Parcel is an island bounded on the east, west and north by a ravine. An extra 2 roods was given to Camala by Harry within the island because part of the 100 feet by 50 feet granted fell inside the ravine. Camala avers that in 1976, she planted coconut trees, lime trees, a mango tree, sugar cane, yam, along with flowers used for puja on Camala's Rented Parcel. Additionally, at that same time, her husband built a wooden bridge to access the island where she planted ornamental flowers. Camala affirms that the area she occupied on the island was not limited to the 2 roods granted.

20. Camala and her husband also placed a dog kennel on the island to house their dogs which her daughter continues to maintain to the present day. Furthermore, in or about 1981 Camala began to rear chickens and goats and continues to maintain the chicken coop to date. In 2005 Camala instructed her son to build a fence around Camala's Rented Parcel but could not afford to do so around Camala's Agricultural Parcel.

- Bheesham Persad's Possession

21. Bheesham Persad ("Beesham") claims possession of his portion of the Larger Parcel ("Bheesham's Parcel") measuring approximately 50 feet by 100 feet bounded on the North by De Gannes and Jawahir Road Cunaripo, on the South by lands of Narain Persad, on the West by lands of Alexandrine Sylvester and on the East by lands of Renisha Persad.

22. Bheesham's evidence is that Harry gave Hans Persad (Bheesham's father), permission to build a dirt house on Bheesham's Parcel. Following the death of Harry, Hans and thereafter Bheesham paid the Land and Building Taxes in respect of the Larger Parcel from 1988 to 2008.

23. In or around 1997, Hans handed over control of Bheesham's Parcel to Bheesham who demolished the dirt and wood structure and erected a concrete house. During the construction of the concrete house, Bheesham decided to clear most of the large trees and bush surrounding the house. He also planted a row of coconut trees along the western and southern boundaries to demarcate the land his father Hans used to occupy, so that he could continue to do the same. It is Bheesham's case that he has never paid rent or obtained permission from the Defendants or their predecessors in title at any time since he retained control of his father's portion in 1997.

24. In or around 2001, Bheesham commenced the construction of an extension to his concrete house. In 2002, Bheesham began rearing chickens and constructed a coop to the southern portion of his parcel. Additionally, in 2010 Bheesham constructed a shed made of clay blocks and galvanize to the north of his parcel.

- Renisha Persad's Possession

25. Renisha Persad ("Renisha") claims possession of her portion of the Larger Parcel ("Renisha's Parcel") measuring approximately 5000 square feet bounded on the North by De Gannes and Jawahir Road Cunaripo, on the South by lands of Narain Persad, on the West by lands of Bheesham Persad and on the East by lands of the Defendants

26. It is Renisha's claim that she has lived on her parcel for her entire life. Throughout her life, she has known her father Sookdeo Persad ("Sookdeo") to be the person in charge of Renisha's Parcel.

27. In or about 2005, Sookdeo granted his brother, Dhanmaharaj Persad ("Dhanmaharaj") permission to erect a house to the east of Sookdeo's house. Dhanmaharaj constructed a galvanise structure. In or about 2010, Sookdeo gave control of Renisha's Parcel to Renisha who erected a

concrete house. Neither Renisha nor her father Sookdeo has ever paid rent or obtained permission from the Defendants or their predecessors in title to occupy Renisha's Parcel.

- Hemawatee Buchoon's Possession

28. Hemawatee Buchoon ("Hemawatee") claims possession of her portion of the Larger Parcel, ("Hemawatee's Parcel") measuring approximately 200 feet by 200 feet bounded on the North by the lands of the Defendant, on the South partly by lands of Jankie Mastay and partly by lands of the Defendants, on the West by lands of the Defendants and on the East by Cassim Trace.

29. In or around 1966, her parents, Phulmatee Persad ("Phulmatee") and Suruj Persad ("Suruj") rented Hemawatee's Parcel from Harry where they constructed a two-bedroom concrete house. They paid a yearly rent to Harry from 1965 to 1971 and Phulmatee continued to do so until 1976. Suruj lived there till his passing on the 15th November 1971. Phulmatee and Hemawatee have lived there since and continues to reside therein to the present day. Neither Phulmatee nor Hemawatee has paid rent or obtained permission from the Defendants or their predecessors in title any time after 1976.

30. When Suruj came to live on Hemawatee's Parcel in 1966, he planted coconut trees on the northern and western boundaries and orange trees on the southern boundary to demarcate the area he was occupying. From then and continuing to the present day, they have planted coconut trees, orange trees, dasheen, cassava, plantains, eddoes, mangoes, pine trees, chataigne, pommecythere, plums, avocado, peewah and cashews on Hemawatee's Parcel.

31. In or around 2013, Phulmatee who had been exercising physical control and custody over Hemawatee's Parcel from 1966, handed over control to

Hemawatee. In or about 2014, Hemawatee obtained a House Grant and constructed an extension to the existing two-bedroom concrete house for Phulmatee to live. Phulmatee continues to live there presently. In or about April 2014, Hemawatee granted permission to her son Shiva Buchoon who also lives on Hemawatee's Parcel, to construct a shed along the face of the house to facilitate his wedding.

- Jankie Mastay's Possession

32. Jankie Mastay claims possession of her portion of the Larger Parcel ("Jankie's Rented Parcel") measuring approximately one acre bounded on the North by the lands of Hemawatee, on the South by the lands of the Defendants, on the West by lands of the Defendants and on the East by Cassim Trace.

33. In or around 1972 Jankie and her husband purchased a one bedroom board house from Tota's brother and moved into the same. Jankie and her husband paid rent to Harry for the one lot of land the wooden house was on. Shortly after they occupied the house, permission was sought from Harry to plant on the area behind the house. The permission was granted. Jankie and her husband planted short crops such as ochroes, corn, tomatoes, cucumbers, plantain, cassava, dasheen, eddoes, pumpkin, peas and sweet potatoes.

34. Yearly rent was paid to Harry from 1972 to 1976 but ceased as Harry passed away. Since then Jankie has not paid rent or obtained permission from the Defendants or their predecessors in title. Gradually, Jankie and her husband started occupying more land further away from where the short crops were originally planted. By 1974 they occupied the entire area of land for the cultivation of coconuts ("Jankie's Agricultural Parcel"). Jankie's husband dug trenches around Jankie's Agricultural Parcel to demarcate the boundaries.

35. Since 1980 Jankie began to plant and reap coconuts grown on Jankie's Agricultural Parcel to sell wholesale to vendors which she does up to the present day. In 1983, Jankie and her husband constructed a three-bedroom concrete house on Jankie's Rented Parcel which she moved into in or around 1985 and continues to live therein to the present day.

The Defendants' Defence and Counterclaim

36. It is the Defendants' case that on the 24th July 2015, they purchased the Larger Parcel from his cousin Palacknath Persad, the surviving remainderman of the Larger Parcel. New Certificates of Title were issued to the Defendants for each of the two contiguous parcels of land comprising the Larger Parcel, along with the respective Memorandums of Transfer. Therefore, the Defendants aver that they are the legal owners of the Larger Parcel and are entitled to the various portions occupied by the Claimants.

37. The Larger Parcel was originally described in Certificates of Title in Volume 379 Folio 611 and Certificate of Title in Volume 380 Folio 27. By Memoranda of Transfer dated the 6th of November, 1948 the Larger Parcel was transferred. Ramroop and Harry Persad became owners of a life interest with the remainder to Bisnath Persad and Palacknath Persad as joint tenants. Ramroop died in 1960 and Harry Persad died on the 19th September, 1978. Bisnath Persad died on the 27th of May, 2008. The Larger Parcel was sold by Palacknath Persad to the Defendants on the 24th of July, 2015 and later registered in Volume 5711 Folio 423 and Volume 5711 Folio 411.

38. The Defendants aver that Tota is an occupant of a portion of the Larger Parcel belonging to them. They claim that Tota was the statutory tenant of their predecessors in title namely Ramroop, Harry Persad, Bisnath Persad and Palacknath Persad up until the expiry of Tota's automatic thirty (30) year statutory lease on the 31st May 2011 (as it was not renewed),

which later came to an end on 1st June 2011 pursuant to the provisions of the Land Tenants Security of Tenure Act Chapter 59:54 ("The Land Tenants Act").

39. The Defendants also say that Meira is an occupant of a portion of the Larger Parcel belonging to them. The Defendants claim that Meira was the statutory tenant of the said predecessors in title up until the expiry of Meira's automatic thirty (30) year statutory lease on the 31st May 2011 (as it was not renewed), which later came to an end on 1st June 2011 pursuant to the provisions of the Land Tenants Act. In addition, it is the Defendants' case that Meira unlawfully sublet portions of their lands and the subject matter of her tenancy to her brother and son among others.

40. Similarly, the Defendants state that Camala is an occupant of a portion of the Larger Parcel belonging to them. The Defendants assert that Camala was the statutory tenant of the said predecessors in title up until the expiry of Camala's automatic thirty (30) year statutory lease on the 31st May 2011 (as it was not renewed), which later came to an end on 1st June 2011 pursuant to the provisions of the Land Tenants Act.

41. The Defendants' defence against Hemawatee's possession is that she occupies a house situate on lands belonging to them with the consent of her mother Phulmatee, the former statutory tenant. Therefore, since she herself was not the statutory tenant of Hemawatee's Parcel pursuant to the Land Tenants Act, she has no claim whatsoever of her own.

42. The Defendants aver that Jankie is an occupant of a portion of the Larger Parcel belonging to them. The Defendants assert that Jankie was the statutory tenant of the said predecessors in title up until the expiry of Jankie's automatic thirty (30) year statutory lease on the 31st May 2011 (as it was not renewed), which later came to an end on 1st June 2011 pursuant to the provisions of the Land Tenants Act.

43. It is the Defendants' case that upon the termination of the statutory leases referred to above, Tota, Meira, Camala, Hemawatee, Phulmatee and Jankie failed to serve a Notice of Renewal of the Statutory Lease pursuant to section 4(3) of the Land Tenants Act within the prescribed period on the owners of the Larger Parcel. The Defendants assert that two of the abovementioned Claimants and the former owner of the Larger Parcel, Palacknath Persad, were related and was easily accessible by telephone, electronic mail and post. Furthermore, the Claimants were at all material times able to ascertain the whereabouts of the land owner to discharge their respective duty to renew their statutory leases. As a result, the said leases were determined for the respective portions of land occupied by them. The Defendants state that they are entitled to the reversion of the said portions free of any interest that the aforementioned Claimants may have had therein.

44. What's more is that the Defendants affirm that none of the Claimants had possession of the land to the exclusion of the owner since the predecessor, Bisnath Persad lived in a house on the Larger Parcel until his untimely death on the 27th May 2008. Therefore, the Defendants assert that the Claimants have not acquired a possessory title to their respective parcels of land and/or any rights therein pursuant to section 22 of the Real Property Limitation Act.

45. In relation to Bheesham's possession, the Defendants claim that he too is an occupant of a portion of the Larger Parcel belonging to them. They affirm that Bheesham was granted a bare licence from his close relatives to occupy and build a chattel house on a strip of the Larger Parcel and remained there with the consent of his said relatives. However, when the Larger Parcel was transferred to the Defendants on the 24th July 2015, the said licence was determined. Furthermore, the Defendants aver that they called upon Bheesham to regularize his position by letter but due to his failure, any licence he had to occupy the land was determined.

46. With respect to Renisha's Parcel, the Defendants state that she is an occupant of a portion of the Larger Parcel belonging to them. The Defendants allege that Renisha is a trespasser on Renisha's Parcel and it was only in 2012 when the construction of her concrete house was completed Renisha began occupation of the premises. Therefore, she has no right to remain in or occupy the same.

47. The Defendants filed a counterclaim. The First Defendant, Sieudat Persad ("Sieudat") was the son of Phulmatee and Suruj Persad and lived with his parents on Phulmatee's Parcel. At the age of thirteen (13) Sieudat began working the Larger Parcel by rearing animals along with reaping crops such as cocoa and coffee for sale. Two years before Harry passed, he handed over the running of the land to Sieudat. Additionally, the Defendants aver that permission was also granted to Sieudat by Bisnath and Palacknath, the new owners after Harry's death, to occupy the land and act on their behalf in the running of the land.

48. Therefore, in keeping with the permission, Sieudat maintained the land, ensured that the occupants remained on their respective portions that were being rented, collected the rents, ensured there were no trespassers and paid the land tax and other outgoing payments related to the land. The Defendants allege that Sieudat demanded the overdue rent of the Claimants who were tenants on the land as they always acknowledged they had rent to pay the owners. The Defendants therefore allege that the Claimants did not treat the land as if it were theirs to the exclusion of the true owners. Furthermore, it is the Defendants' case that the Claimants stated to Sieudat that they knew they remained on the land with the consent of Palacknath and Bisnath and that if the owner wanted back their land they would reap their crops and move off as they knew the land did not belong to them.

49. The Defendants assert that upon the purchase of the Larger Parcel, they wrote letters to all the Claimants seeking inter alia, discussions relating to the various portions of land on which they occupied. Camala and Jankie responded in writing acknowledging the existence of a statutory tenancy and the former indicated her willingness to purchase Camala's Rented Parcel.

50. In relation to the allegation of the Defendants spraying the Claimants' crops and parcels of land, the Defendants aver that Sieudat has been spraying the land with weedicide since 1990 to keep control of the overgrowth with no complaints from the Claimants. Additionally, Anselmo Dhaniram was also employed and paid by Sieudat.

The Law

51. In a case of adverse possession, to cause the time to run and continue running, the Claimants must prove that they were in possession for a continuous period of sixteen (16) years in accordance with Section 3 of Real Property Limitation Act Chapter 56:03:

> "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."

52. Lord Brown-Wilkinson explained at paragraph 40 in the case of *J.A. Pye (Oxford) Ltd. & Anor. V Graham & Anor.* [2002] 3 WLR 221 that to be in possession the squatter must demonstrate not only factual possession through physical control and custody, but also the intention to possess the land:

> "… there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control ("factual possession"); (2) an intention to exercise such custody and control on

one's own behalf and for one's own benefit ("intention to possess"). What is crucial is to understand that, without the requisite intention, in law there can be no possession.

Remarks made by Clarke LJ in Lambeth London Borough Council v Blackburn (2001) 82 P & CR 494, 499 ("It is not perhaps immediately obvious why the authorities have required a trespasser to establish an intention to possess as well as actual possession in order to prove the relevant adverse possession") provided the starting point for a submission by Mr Lewison for the Grahams that there was no need, in order to show possession in law, to show separately an intention to possess. I do not think that Clarke LJ was under any misapprehension. But in any event there has always, both in Roman law and in common law, been a requirement to show an intention to possess in addition to objective acts of physical possession. Such intention may be, and frequently is, deduced from the physical acts themselves. But there is no doubt in my judgment that there are two separate elements in legal possession. So far as English law is concerned intention as a separate element is obviously necessary. Suppose a case where A is found to be in occupation of a locked house. He may be there as a squatter, as an overnight trespasser, or as a friend looking after the house of the paper owner during his absence on holiday. The acts done by A in any given period do not tell you whether there is legal possession. If A is there as a squatter he intends to stay as long as he can for his own benefit: his intention is an intention to possess. But if he only intends to trespass for the night or has expressly agreed to look after the house for his friend he does not have possession. It is not the nature of the acts which A does but the intention with which he does them which determines whether or not he is in possession."

53. The necessity of these elements of possession and its application in this jurisdiction were confirmed by Bereaux J.A. in the Court of Appeal in Civil Appeal No: 86 of 2009 *Paul Katwaroo v Majid Abdul Kadir and Anor.*

54. The relevant intention that must be proved by the squatter is not his "intention to own" the land he is upon, but only his "intention to possess". This is substantiated at paragraph 42 of J.A. Pye [supra]:

"42. In the Moran case (1988) 86 LGR 472, 479 the trial judge (Hoffmann J) had pointed out that what is required is "not an intention to own or even an intention to acquire ownership but an intention to possess". The Court of Appeal in that case [1990] Ch 623, 643 adopted this proposition which in my judgment is manifestly correct. Once it is accepted that in the Limitation Acts, the word "possession" has its ordinary meaning (being the same as in the law

of trespass or conversion) it is clear that, at any given moment, the only relevant question is whether the person in factual possession also has an intention to possess: if a stranger enters on to land occupied by a squatter, the entry is a trespass against the possession of the squatter whether or not the squatter has any long term intention to acquire a title."

55. Once possession for sixteen (16) years together with the requisite intention is proven on a balance of probabilities, the legal title to the possessed property will be extinguished pursuant to Section 22 of Real Property Limitation Act Chapter 56:03:

> **"**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."

56. There is also the issue of successive squatters. The Claimants relied on the case of *Kenneth Lashley v Patricia Marchong and Anor* Civil Appeal No 266 of 2012 where Jones J.A. stated the position of joint or successive squatters:

> "[62] It is clear on the law that the interest of a squatter even before the statutory period has elapsed is transmissible and if that squatter is succeeded in possession by one claiming through him who holds until the expiration of the statutory period the successor has as good a right to the possession as if he himself had occupied for the whole period: Halsbury's Laws of England.
>
> [63] Indeed relying on the authority of the case of Willis v Earl Howe [1893]2 Ch. 545 Megarry states "If a squatter is himself dispossessed the second squatter can add the former period of occupation to his own as against the true owner. This is because time runs against the true owner from the time when adverse possession began, and so long as adverse possession continues unbroken it makes no difference who continues it. But as against the first squatter, the second squatter must himself occupy for the full period before his title becomes unassailable."
>
> [64] Nichols LJ in Mount Carmel Investments v Peter Thurlow put it this way: "If squatter A is dispossessed by squatter B, squatter A can recover possession from squatter B and he has 12 years to do so, time running from his dispossession. But squatter A may permit squatter B to take

over the land in circumstances which, on ordinary principles of law, would preclude A from subsequently ousting B. For example, if A sells or gives his interest in the property, insecure as it may be, to B."

[65] This is not, strictly speaking, a case of successive squatters. In the instant case the occupation of the appellant and his mother were not adverse to each other. They occupied the premises jointly. This was a case of a single possession exercised by them jointly. Under ordinary principles of law therefore the right of the survivorship would operate. Accordingly the appellant would be entitled to include the period of his joint occupation with his mother in computing the time."

57. The Defendants' defence is that the Claimants are statutory lessees whose tenancies have ended by virtue of the operation of the law. All tenancies, protected by the Land Tenants (Security of Tenure) Act, that were in existence on the 1st June, 1981, *"the appointed day"* were converted to statutory leases pursuant to Section 4(1) of the Land Tenants (Security of Tenure) Act:

> "4. (1) Notwithstanding any law or agreement to the contrary but subject to this Act, every tenancy to which this Act applies subsisting immediately before the appointed day shall as from the appointed day become a statutory lease for the purposes of this Act."

58. Section 4 of the said Land Tenants (Security of Tenure) Act, states that a statutory lease, is a lease for thirty (30) years commencing on the appointed day of the 1st June, 1981. The Land Tenants (Security of Tenure) Act also outlines the procedure for the renewal of those leases.

59. The claims and counterclaim raise the issue of whether the Claimants, or any of them, had subsisting tenancies on the "appointed day". The law is that ordinarily a tenant who does not pay his rent, becomes a squatter. Such squatters in possession, in certain circumstances may be entitled to claim title by adverse possession. Narine J.A. in Civil Appeal No: 86 of 2009 *Paul Katwaroo v Majid Adbul Kadir and Anor* (supra) at paragraphs 26-27 indicated the reasons the court will be more ready to infer a prior tenant's adverse possession of lands he once rented on:

"[26] In Hayward & ors. v. Challoner [1967] 3 All E.R. 122, it was held by the English Court of Appeal that, once the period covered by the last payment of rent has expired, the possession of a tenant becomes adverse as against the landlord for the purposes of limitation. This case was applied by the English Court of Appeal in Williams v. Jones & Ors. [2002] 3 EGLR 69. However, Buxton L.J. (at para 21) accepted the submission of counsel that in the case of a former tenant, because the freeholder has permitted the tenant into possession, he will normally continue in possession just as he did before he stopped paying rent. However, the judge did not exclude the possibility that the tenant might have so feeble a connection with the land (as for example a tenant who goes off to Australia, leaving the door of the premises open) that on the determination of the tenancy he could not be said to be in possession at all.

[27] Accordingly, a tenant who remains in possession at the determination of a tenancy does not have as onerous a burden as a trespasser, in proving that he has continued in possession with the requisite intention to possess. The court will more readily infer from his continued possession that he has the requisite intention to possess."

60. These claims and the counterclaim also require a consideration of issues around estates in the Larger Parcel. A predecessor in title to the Defendants and the person who granted a number of tenancies, was the owner of a life interest. The remaindermen held the freehold estate. An issue therefore is what is the law, as it relates to any existing tenancies, upon the death of the person holding a life interest. The author J.C.W. Wylie in his treatise The Land Laws of Trinidad and Tobago highlighted the disadvantages of life estates and its impact on those title holders. Wylie states at paragraphs 3.30 – 3.31:

"Life estates suffered from two major drawbacks, as compared with other freeholds. One was the estate was of much more limited duration and so the person or persons entitled to the property after determination of the estate had an obvious interest in how the holder of the life interest looked after the property. This gave rise to the law of waste, which did not apply to the fee simple or fee tail owners. The other drawback was that in addition to the estate being of limited duration, it was of very uncertain duration – the persons for whose life it was granted might have a fatal accident or die from an unexpected illness within a few days, even hours, of the estate being granted to him. The estate was, therefore, of little or no commercial value and so the holder would often find that he could not lease the

land to raise income or mortgage it to raise capital. This problem had to be corrected by legislation governing settlements."

61. Wylie then went on in paragraph 3.37 to discuss the powers the Leases and Sales of Settled Estates Ordinances of 1865[1] ("the Ordinance") conferred upon the court and the holders of limited freehold estates (such as a life estate) to deal with the land, including but not limited to, the grant of a lease on receipt of rent which had the effect of increasing the commercial value of the life estate:

> "The plight of tenants for life, and holders of other limited freehold estates, outlined above, was tackled in Trinidad and Tobago, as in England, by legislation enacted in the last century. The Leases and Sales of Settled Estates Ordinance of 1865 empowered the court to authorize certain dealings with the land, such as outright sales of it and the granting of leases to third parties. It also gave the court the power to vest leasing powers in trustees and to confer the power to exercise the powers conferred by the Ordinance on the tenant for life or other person entitled to possession of the land or the receipt of its rents and profits. The power to grant certain leases of limited duration, without need to apply to the court, was conferred on a tenant for life. Such sales and leases would bind successors of the tenant for life and the interest of those successors were protected by ensuring that any capital money raised was paid either to trustees or to the account of the court and was applied and invested under the court's supervision."

62. Section 32 of the Ordinance is instructive to determine whether a lease of a limited duration was created by the life estate owner without an application to the court:

> "It shall be lawful for any person entitled to the possession or to the receipt of rents and profits of any settles estates for an estate for life, or for a term of years determinable with his life, or for any greater estate, either in his own right or in right of his wife, unless the settlement shall contain an express declaration that it shall not be lawful for such a person to make such a demise; and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the courtesy, or in dower, or in right of a wife who is seized in fee, without any application to the Court, to demise the same or any part thereof from time to time for any term not exceeding twenty-one years to take effect in possession: Provided

[1] N.B. the Ordinance was repealed by Act 20 of 1981 Land law and Conveyancing Act which is not yet in force

that every such demise be made by deed, and the best rent that can be reasonably obtained be thereby reserved, without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impeachment of waste, and do contain a covenant for payment of the rent, and such other usual and proper covenant for payment of the rent, and such other usual and proper covenants as the lessor shall think fit, and also a condition of re-entry on non-payment for a period not less than 28 days, of the rent thereby reserved, and on non-observance of any of the covenants and conditions therein contained."

63. Section 33[2] of the Ordinance then confirms that once the demise is made in accordance with Section 32, it shall not only bind the person granting the same, but also all other subsequent persons entitled to the estate. This position was taken and explained by the authors Megarry and Wade, The Law of Real Property Fourth Edition in their writings of the Settled Land Act 1925 of England, (similar to Trinidad and Tobago's Leases and Sales of Settled Estates Ordinances of 1865) and its alteration of the common law:

> "A tenant for life can of course deal with his limited interest in the land as he likes, subject only to the law of waste. Therefore, he may lease it rent-free, or give away valuable rights over it such as easements, but these transactions will not bind his successors since they can take effect only out of his own interest. But his successors will be bound by transaction authorized by the Act or by any additional powers given by the settlement, and it is therefore important that the extent of the statutory powers should be understood."

Analysis

64. The court will now consider the following issues:

    a. Whether the Defendants' legally registered estate is lost by virtue of the Claimants, or any of them, being in adverse possession of those parcels of land claimed by them;

[2] Every demise authorised by the last preceding section shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement, if the estates be settled, and in the case of unsettled estates against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same, and against the wife of any husband making such demise of estates to which he is entitled in right of such wife.

b. Whether the Claimants, or any of them, are statutory lessees, whose leases have expired as a result of the operation of law;
c. Whether a tenancy granted by a person with a life interest binds the remaindermen with free hold interest in that estate;

65. The Defendants have not disputed that Tota entered his Rented Parcel in or around 1975. Tota pleads this in paragraph one of the Statement of Case and in paragraph two of his witness statement. The Defendants admit this in paragraph one of their Amended Defence. In fact Tota's father rented the land some three years earlier, from Harry, and occupied it by preparing the land for the house that Tota later built. Tota's father paid the rent for the land for those three years and thereafter Tota paid rent to Harry for the period 1975 to 1977. Tota's father was a yearly tenant of Harry's. Thereafter Tota became a yearly tenant of Harry's. The proof of Tota's tenancy comes from Tota's evidence and the receipts for the years 1975 to 1977 annexed to the Fixed Date Claim Form as "A".

66. When the yearly tenancy was created, Harry was the remaining survivor of the two persons with a life interest. Therefore, he was entitled to create a yearly tenancy; albeit such a tenancy could only be of limited duration, Harry's life. Tota's annual rent, based on the receipts, became due on the 8th of July, 1977. Harry died on the 19th of September, 1978. By that time, Tota was already in arrears of his rent and his possession became adverse as against Harry, per *Paul Katwaroo v. Majid Abdul Kadhir and Anor* (supra). When Harry died, the tenancy created by him, a person with a life interest in the estate ended. There was no evidence that Harry made any application or acted in any way to conform with the provisions of the Ordinance to create an annual tenancy that could bind the remaindermen. Harry was therefore bound by the common law, "nemo dat quod no habet", as explained in Megarry and Wade, The Law of Real Property, 4th Edition. As a tenant for life, Harry's actions could not bind the successors as he could only give what he had to give. By law, the persons entitled to

possession after Harry's death were the remaindermen Bisnath and Palacknath. Their entitlement to the estate in possession was at the 19th of September, 1978. They were therefore entitled to re-enter on that date. Bisnath and Palacknath on that date, were able to decide what, if any, relationship they wanted to have with Tota. No relationship was created between Tota and the remaindermen Bisnath and Palacknath. Tota, meanwhile, continued to be in possession of the parcel, without the permission of Bisnath and Palacknath.

67. Since the tenancy was determined in 1978, when statutory leases were created by law, Tota was not a person with a tenancy that "was existing immediately before the appointed day" of the Land Tenants (Security of Tenure) Act coming into effect. Tota could not be a statutory lessee with the obligations and protections created by that Act. Therefore, there was nothing precluding the running of time necessary to prove adverse possession; per Petty Civil Appeal No. 10 of 2002 *Bikran Ramdial v Trevol Kerry* (supra).

68. The next issue is whether Tota was in possession within the meaning of the Real Property Limitation Act. His undisputed and uninterrupted occupation since 1978, is far in excess of the required sixteen (16) years to prove adverse possession. The evidence shows that Tota's occupation was without the permission of the Defendants' predecessors in title after 1978. Further there is evidence that his possession was intentional. His actions show that it was his intention to maintain his home there. In doing so, he planted and cultivated short crops, he had dogs and built dog kennels to house them and reared ducks. There is further evidence of the intention by Tota to be in possession of the parcel when he exercised control over it by giving his son Deodath Dhaniram permission to build a house.

69. The First Defendant's evidence is that Harry gave him the authority to take control over the management of the Larger Parcel in 1976. He never collected rent from Tota. The Defendant's evidence is that they refused to pay rent to him. This evidence does not make sense as Tota paid rent to Harry in 1975 and 1976. So clearly the First Defendant did not have control since 1976, as he testified to. Tota did not refuse to pay rent, he paid it to the landlord, Harry.

70. The First Defendant suggested that he acted, in an "agent like" capacity, first for Bisnath upon the death of Harry and later to Palacknath upon the death of Bisnath. At paragraph eight of the First Defendant's witness statement, his evidence is that on the 10th of January, 1997 Bisnath gave him permission to occupy the land. At paragraph nine of the First Defendant's witness statement, his evidence is that he had permission to oversee the land from Palacknath. Therefore if he wanted to, he could have taken steps either to collect the rents from Tota, if he was of the view that Tota was a either a yearly tenant or alternatively a statutory lessee. Additionally, he could have taken steps to regain possession of the parcel occupied by Tota firstly for Bisnath and later for Palacknath. The First Defendant says in paragraph ten of his witness statement that:

> "My functions on the land included maintaining and up keeping the land, ensuring the occupants remained on the portion of land that they were renting, collecting the rent from the tenants and ensuring that there were no trespassers coming onto the land, I paid tax and the other outgoings on the land when required"

71. Tota's possession of the parcel occurred in full view of the First Defendant, when he, according to him, had the authority to act. Tota's occupation of the Rented Parcel, obviously established an intention to so occupy, to the exclusion of the world. Based on the evidence, Tota satisfies the requirements of actual occupation and an intention to occupy within the meaning of Section 3 of the Real Property Limitation Act as identified in the case of *J.A. Pye (Oxford) Ltd. and Anor. v. Graham and Anor.* (supra)

and applied in the case of *Paul Katwaroo v. Majid Abdul Kadir, and Anor* (supra).

72. Next is Meira's case. The undisputed evidence is that Meira became a yearly tenant of Harry in 1971. According to Meira, she paid rent to Harry annually, for the years 1971 to 1976. When she went in 1977 to tender the rent, Harry did not receive it and no one came to collect it in 1977 or at any time thereafter. Therefore, as with Tota, before Harry died in 1978, Meira was a squatter since she had not paid rent for the years 1977 or 1978. In any event when Harry died in 1978, Meira's tenancy, if one subsisted up to that time ended. Meira, for the same reasons explained above, was not a Statutory Lessee within the meaning of the Land Tenants (Security of Tenure) Act. Hence, there was no suspension of the running of time to prove adverse possession per Petty Civil Appeal No. 10 of 2002 *Bikran Ramdial v Trevol Kerry* (supra).

73. The remaining issue is whether Meira is able to prove that she was in adverse possession and therefore able, by that possession, to extinguish the title of the First and Second Defendants. Counting from 1978, Meira is able to satisfy the requirement of the number of years, sixteen (16), to be successful in the claim for adverse possession. Meira's possession was without the permission of the Defendants, or their predecessors in title after Harry's death; the remaindermen. With respect to Meira's intention since being occupation of her Rented Parcel, her evidence is that a few months after moving onto the parcel, she commenced planting the western portion. Further evidence of the intention to possess, comes from the fact that Meira gave permission to her brother to reside in the original house she occupied. Additionally, Meira said at paragraph 11 of her witness statement, that she gave permission to her son, Anselmo "to put up a house next to mines because he wanted to get married and start a family…". Meira also gave permission to her son Fidel and daughter Francillia to open a mini-mart to the front of her house.

74. This evidence of use and control confirms Meira's intention to be in possession to the exclusion of all others, including the Defendants and their predecessors in title after Harry's death. Meira's occupation and all that went with it, occurred in full view of the First Defendant, when he says had authority to act. Based on the evidence, the court is satisfied, on a balance of probabilities, that Meira has meet the requirements of Section 3 of the Real Property Limitation Act as identified in the case of *J.A. Pye (Oxford) Ltd. and Anor. v. Graham and Anor* (supra) and applied in the case of *Paul Katwaroo v. Majid Abdul Kadir and Anor.* (supra).

75. Camala's claim is similar to that of Tota and Meira. In 1976 she had a discussion with Harry and became a yearly tenant. Camala paid rent on the 22nd of March, 1976. Camala also paid rent for the year 1977. Thereafter, in 1978 she went to tender the rent but Harry did not collect it. Camala never paid rent and she continued to be in possession of the Rented Parcel claimed by her. Camala therefore became a squatter no later than 1978 and in any event, her tenancy if subsisting, would have terminated upon Harry's death. Like Tota and Meira, Camala was not a statutory lessee as there was no subsisting tenancy at the time the Land Tenants (Security of Tenure) Act came into effect.

76. The next issue is whether Camala was in possession of the parcel, within the meaning of Section 3 of the Real Property Limitation Act. Camala's evidence is that after her house was completed, she moved and occupied it with her husband and family. Camala and her family planted coconut trees, lime trees, a mango tree, sugar cane and yam. She also planted orchids and bourganvilla plants. As a family they kept dogs and constructed a dog kennel. They planted flowers to do puja. They also constructed a chicken coop and kept dozens of chickens mostly for home consumption. Camala and her family also put up a goat shed and kept four (4) goats. In 2004 Camala's husband died and she no longer reared goats and the same quantity of chickens. In 2004 Camala erected a fence around

a portion of the Rented Parcel. The court is satisfied that this evidence is sufficient to show that Camala did have the intention to be in possession of the parcel of land to the exclusion of all others including the Defendants and their predecessors in title after Harry's death.

77. Camala's occupation and all that it entailed, occurred in full view of the First Defendant, when he, according to him, had the authority to act on behalf of the legal title holders. Based on the evidence, the court is satisfied, on a balance of probabilities, that Camala has meet the requirements of Section 3 of the Real Property Limitation Act as identified in the case of *J.A. Pye (Oxford) Ltd. and Anor. v. Graham and Anor* (supra) and applied in the case of *Paul Katwaroo v. Majid Abdul Kadir and Anor* (supra).

78. Jankie's claim is next. According to Jankie, when she was about thirteen (13) years old, in 1966, her father and the family moved to the parcel of land. Jankie had been entrusted to pay the annual rent, up to and until her father died in 1971. Thereafter she paid rent to Harry. Jankie's evidence was that rent was last paid in 1972. After her father's death in 1971, Jankie moved out of the home leaving her mother and sister Hemawatee. In 1972, Jankie married and bought a house that had been previously built by one Baitalal on lands owned by Harry. Jankie bought the house from Baitalal and commenced paying rent to Harry in 1972 for the one lot of land on which Baitalal's house was situated. In 1972 Jankie and her husband moved into what was formally Baitalal's house and is now referred to as the Rented Parcel.

79. Jankie and her husband paid rent to Harry for the years 1972 to 1977. Harry died in 1978, before Jankie's rent became due in that year. As noted earlier, Harry was the last surviving person with a life interest in the subject property. There was a valid and subsisting tenancy between Jankie and Harry up to the time of the latter's death. Upon Harry's death the

rental agreement came to an end. No evidence was adduced that Harry entered any agreement that would bind the remaindermen.

80. Since the tenancy ended in 1978, at the time that the Land Tenants (Security of Tenure) Act came into force in 1981, there was no subsisting tenancy that would make Jankie a statutory lessee within the meaning of the Act. Jankie, therefore, became a squatter in 1978 on the Rented Parcel. She did not seek nor obtain permission from Harry's successors in title to occupy the Rented Parcel. The issue for the court is whether Jankie is able to prove that she was in adverse possession of the Rented Parcel within the meaning of the Real Property Limitation Act. Counting from 1978 to the time of the filing of this claim, is well in excess of the sixteen (16) years required by the Real Property Limitation Act to prove adverse possession. This possession, the evidence establishes, is without the consent of the First and Second Defendants predecessors in title, the remaindermen Bisnath and Palacknath.

81. The evidence on the next issue, Jankie's intention, came from her. Her evidence is that after entering into possession, she and her family commenced planting on the land surrounding the house. In 1983, Jankie and her husband moved into a concrete house that took five years to construct. After moving into the concrete home, they continued to do improvements on it until it was completed in 2004. Jankie therefore has demonstrated that her intention was to occupy to the exclusion of all others.

82. All this evidence of Jankie's intention to be in possession occurred, as with the previous Claimants' considered earlier, in full view of the First Defendant, when he, according to him, had the authority to act on behalf of the legal title holders. Based on the evidence, the court is satisfied, on a balance of probabilities, that Jankie has meet the requirements of Section 3 of the Real Property Limitation Act as identified in the cases of

J.A. Pye (Oxford) Ltd. and Anor. v. Graham and Anor. (supra) and applied in the case of *Paul Katwaroo v. Majid Abdul Kadir, and Anor.* (supra).

83. The next claim is Hemawatee's. Hemawatee claims that she occupies an acre of land. Hemawatee's claim is that her parents rented an acre from Harry. Her father and Harry were brothers and this seems to explain why Harry rented a one acre parcel to his brother, Hemawatee's father. The First Defendant and Hemawatee are siblings. They and the rest of their siblings, grew up on that one acre parcel. Hemawatee finds support from Jankie. Jankie and Hemawatee are sisters. Jankie's evidence is that the First Defendant their brother, and the rest of their immediate family, grew up together on the one acre parcel of land. Eventually Hemawatee remained on the one acre parcel with their mother Phulmatee. Phulmatee eventually handed over control of Hemawatee's Rented Parcel to Hemawatee. The First Defendant contradicts his pleadings as they relate to the size of the parcel claimed by Hemawatee. The First Defendant admitted, in cross-examination, that his parents rented one acre of land from Harry. Hemawatee and her sister Jankie both identify the boundaries of that one acre parcel. There is a pond which was dug in 1991, a line of coconut trees on the southern boundary, and the western boundary was planted with short crops.

84. After Hemawatee assumed control of the Rented Parcel, she arranged for the construction of a room downstairs the home for her mother's convenience and comfort. Since 2014, Phulmatee has been residing in that room.

85. However, in relation to Hemawatee, the Defendants submitted that she had no claim in her own right as it was her mother Phulmatee who was the person in possession up to the time of this claim. The evidence of Hemawatee indicates that possession was once vested in Phulmatee. In the year 2013, Phulmatee became very ill and was unable to take care of

herself. As a result, Phulmatee handed over control and possession to Hemawatee. This was illustrated when Phulmatee gave to her daughter all the papers relating to the parcel of land including the Land and Building Tax receipt for 2009 and indicated that she was going to her lawyer to transfer everything to Hemawatee.

86. Hemawatee's control is supported in a number of ways. Her evidence is that she gave her son permission to construct the shed to the front of the house. Further, it was Hemawatee who applied for and received the House Grant and built the extension to the house. These acts are indicative of Hemawatee's possession and control over Hemawatee's Parcel and her evidence was unshaken by cross-examination.

87. Hemawatee's possession was not adverse to her mother Phulmatee since Phulmatee voluntarily gave over control and possession to Hemawatee. The interest of one squatter is transmissible to a successor squatter. It appears that Phulmatee and her husband initially occupied the parcel of land as a tenant of Harry. The evidence is that rent was not paid after 1976. However there is no evidence to contradict that, at the latest, the tenancy ended in 1978 when Harry died. Thereafter, without seeking or obtaining permission from the persons entitled to the remainder, Phulmatee became a squatter, if not before, certainly by 1978. Phulmatee's period of adverse possession commenced from 1978, when Harry died. As time runs against the true owner from the time adverse possession began irrespective of who continues it, it can be concluded that Hemawatee acquired her mother's period of adverse possession and is thus entitled to Hemawatee's Parcel.

88. Next, is Hemawatee's intention to occupy. The evidence establishes that Hemawatee's occupation of the one acre parcel was with the intention of excluding all others, including the predecessors in title after Harry's death and the Defendants. Hemawatee's and her sister Jankie's evidence is that

Phulmatee and her husband used the parcel as the home on which they raised their family and engaged in agriculture. Hemawatee, after this, used the land for agricultural and other family related purposes. She granted permission to construct a shed for a wedding. The evidence shows that Phulmatee and Hemawatee did have the intention to occupy for their family to the exclusion of all others, including the legal title holders. Based on the evidence, the court is satisfied, on a balance of probabilities, that Hemawatee has meet the requirements of Section 3 of the Real Property Limitation Act as identified in the cases of *J.A. Pye (Oxford) Ltd. and Anor. v. Graham and Anor.* (supra) and applied in the case of *Paul Katwaroo v. Majid Abdul Kadir, and Anor.* (supra).

89. In Bheesham's claim, it was pleaded that Bheesham's father Hans Persad was the person who received permission to occupy Bheesham's Parcel from one Ramroop Newal Persad. Ramroop, who died in 1960 was Harry's father. However Bheesham's evidence is that his father was given permission by Harry to build a dirt and wooden house. There is no evidence to establish what year Bheesham's father Hans, went into occupation of the parcel of land. There is also no evidence to prove whether Hans received permission to occupy from Ramroop or Harry. There is no dispute that Hans occupied before Bheesham. The evidence also establishes that Hans gave his son Bheesham permission to build on Bheesham's parcel.

90. At the trial the First Defendant admitted under cross-examination that Bheesham was given permission to build by Hans. The evidence proves that Hans, initially entered into occupation with permission. Whether Hans obtained permission from Ramroop or Harry is now immaterial since permission given by either would have ended, at the latest, in 1978 when Harry died. The common law position of *"nemo dat quod non habet"*, translated to, no one gives what he doesn't have, applies to permission given by either Ramroop or Harry. Certainly, if not before, by 1978, Hans

was occupying as a squatter and the years to prove adverse possession would have commence from then. Hans while not the registered owner, was a squatter who, as against the registered titled owners, was accumulating years of adverse possession. Those years of adverse possession inured to Bheesham's benefit. Bheesham has been in occupation without the consent or permission of the registered legal title owners. The principles with respect to joint or successive squatters presented in the case of *Kenneth Lashley* (supra) is applicable to Bheesham's claim.

91. Bheesham can therefore, easily satisfy the requirement of sixteen (16) years possession to establish adverse possession within the meaning of the Real Property Limitation Act. Evidence of Bheesham's intention to occupy comes from his occupation and use of the parcel since 1997. Particularly, the building of his home in 1997. He made decisions about the landscaping of the parcel; the cutting down of peewah, portugal, mango, chataigne and green cherry trees. His parents also returned to live with him until their respective deaths. He used the parcel to rear common fowl. In 2010, Bheesham constructed a shed to the front of his home and added a car port. Based on the evidence, the court is satisfied, on a balance of probabilities, that Bheesham has meet the requirements of Section 3 of the Real Property Limitation Act as identified in the cases of *J.A. Pye (Oxford) Ltd. and Anor. v. Graham and Anor.* (supra) and applied in the case of *Paul Katwaroo v. Majid Abdul Kadir, and Anor.* (supra).

92. In relation to Renisha's claim, her case is she was born in 1987 and grew up on the parcel she now claims, with her father Sookdeo, and the rest of her immediate family. Throughout her life she knew that her father was the person in charge of the parcel of land. There is no evidence to conclude that Renisha's father was occupying the land other than as a squatter. No tenancy was in existence such as to create a statutory lease within the meaning of the Land Tenants (Security of Tenure) Act.

93. Sookdeo's occupation was with the intention to occupy, to the exclusion of all others. The evidence is that he built his home and raised his family on the parcel. He planted coconut, bananas, dasheen, peas, corn, cassava, chataigne and breadfruit trees. Sookdeo during his occupation of Renisha's Parcel, gave his brother Dhanmaharaj (known as "Daddypunks") permission to live and build on the land in 2005. Sookdeo later handed over control of Renisha's Parcel to Renisha in 2010.

94. The Defendants' case is that Renisha did not commence occupation of her parcel until 2010. However, the principles with respect to joint or successive squatters presented in the case of *Kenneth Lashley* (supra) is applicable to Renisha's claim. There was no denial by the Defendants that Sookdeo lived on Renisha's Parcel since the 1980's. In fact, Sieudat under cross-examination accepted that Sookdeo was living in a house on the subject property.

95. The First Defendant also accepted that the wooden house was built long before the year 1999 (16 years before the claim or counterclaim was filed). The First Defendant, in cross examination accepted that Sookdeo put his house up since in the early 1970s. In addition, the First Defendant also accepted that Sookdeo gave his brother Dhanmaharaj permission to put up a house on Renisha's Parcel and that he had done so without any lease or licence from the Defendants or their predecessors in title.

96. The Defendants' witness Jewan gave evidence that he knew of Sookdeo's occupation and that Sookdeo gave his brother permission to build on the parcel, about five (5) years prior.

97. The evidence suggest that Sookdeo was occupying Renisha's Parcel without permission of the Defendants or their predecessors in title, but rather with the permission of his father Hans. This is very likely especially since Sieudat accepted that Sookdeo previously lived with his father and put up a wooden structure next to his father's house. Akin to Bheesham's

case, Hans was not a previous owner of the Larger Parcel. Therefore, as aforementioned, Hans cannot give what he does not have thus, invalidating any permission granted to Sookdeo.

98. Prima facie, the evidence suggest that Sookdeo was in possession of Renisha's Parcel since 1983 without permission from the title owners. He did acts consistent with illustrating his possession and in 2010 passed over control to his daughter, Renisha. This was not disputed by the Defendants. Applying the principle prescribed in *Kenneth Lashley* [supra] of joint and/or successive squatters, Renisha is able to acquire the transmissible period of possession from her father thereby entitling her to claim Renisha's Parcel to which she is in current occupation.

99. The court will now consider the following issue:

d. what parcel or parcels of land are the claimants occupying

100. Tota, Meira, Camala and Jankie all claim to be in possession of Agricultural Parcels of land, separate and apart from their Rented Parcels of the Larger Parcel. Two issues arise in relation to the Agricultural Parcels: firstly, whether in fact the respective Claimants occupied the Agricultural Parcels and secondly, what is the effect of their occupation of those Agricultural Parcels.

101. The Claimants' relied on the writings of the learned authors in Adverse Possession by Stephen Jourdan QC, and Anor, Second Edition at page 540 which states:

> "Sometimes a tenant under a lease takes possession of land belonging to the landlord, but not included in the demise, by virtue of his possession of the demised premises. If the tenant does this, that land is presumed to be an addition to the land demised to the tenant, so that it becomes subject to the terms of the lease and must therefore be given up to the landlord when it ends, unless the tenant's conduct shows that he occupied the lands for his own benefit, and not as part of the demised premises."

102. As a result, there is a presumption that if the Defendants were in possession of the Agricultural Parcels not included in their tenancy, such would form part of the rented portions demised by Harry. In such cases, the burden of proving continued possession with the requisite intention is less onerous and more readily inferred by the courts. The Claimants claimed that they planted crops and reared animals inter alia on their respective agricultural portions while living on their rented portions as evidence of possession.

103. In opposition of the Claimant's evidence, the Defendants attached a survey plan of Ronnie K. Ramroop to their Defence and alleged that each of the Claimants occupied the portions that were identified in the survey plan. The evidence of both Defendants, was that the ravine running behind Tota's and Meira's Rented Parcels and to the west of Camala's Rented Parcel was the boundary to the rented portions that they each occupied. Furthermore, those Claimants never extended their occupation beyond the ravine. This was supported by the witness for the Defendants, Jewan Dhaniram (Jewan). Jewan's evidence is that the Claimants started expanding their occupation in 2008 after Bisnath died. His evidence is also that he was present with the Overseer when the Claimants were stopped. His evidence is that they also expanded again about 2010. The Claimants expansion accelerated further in 2015 after the Defendants purchased the Larger Parcel. His evidence is that before 2015, none of the Defendants occupied any land over the ravine. He claims that behind Hemwatee's and Jankie's houses there was a playground and so nothing was planted there.

104. Tota's evidence is that he began planting on a portion of land measuring approximately 50 feet by 120 feet to the north of his Rented Parcel, on the other side of the ravine. The undisputed evidence is that the ravine was an obvious boundary to the Rented Parcels. If, as Tota claims, he commenced occupation of the Agricultural Parcel at the same time or shortly after he rented his Rented Parcel from Harry, the court finds that

it is reasonable that he would have also discussed this with Harry. He paid his rent, diligently, until Harry fell ill. If as Tota claims, he planted on that parcel, he did not do so upon entering into possession of his Rented Parcel. Harry, from all the evidence, was a meticulous landlord. He pulled his tape for all the persons he rented land to. He carefully measured the parcels he rented out. With the exception of his brother, Harry rented out about the same size parcel, 100 feet by 50 feet with the ravine serving as the natural and obvious boundary. Harry collected the rents annually, until the time came when ill health prevented him from doing so.

105. It makes no sense and the court does not accept that Harry would allow Tota to plant on a parcel of land, on the other side of the ravine, without knowing the dimensions of the additional land he was allowing Tota to plant. Or for that matter, without making arrangements to rent the additional lands to Tota. Tota's evidence is that he planted the Agricultural Parcel since 1975. Harry was alive and collecting rent in 1975. The court does not accept that Harry would not have collected rent for the Agricultural Parcel.

106. Further support for the court's finding that Tota did not occupy the Agricultural Parcel as he alleged and from when he alleged comes from Tota's behaviour. Tota's decision to give his son, Deodath Dhaniram, permission to build a concrete house on the western portion of the Rented Parcel and not on the Agricultural Parcel confirms the court's finding that Tota occupied, with the intention to occupy, only the Rented Parcel. He may have used the parcel over the ravine for planting and other purposes, however the court is not satisfied that Tota occupied the Agricultural Parcel for sixteen (16) years or more.

107. It seems that Tota did make efforts, in recent years, to lay claim to the Agricultural Parcel. Perhaps after Bisnath died and after the Defendants acquired the legal title in the Larger Parcels.

108.The First Defendant's evidence is that from 1976, he was asked to run and oversee the Larger Parcel. While he did not take any action to interrupt Tota's adverse possession of the Rented Parcel, the court is satisfied on a balance of probabilities that he did ensure that the persons in possession were and remained in possession of those parcels that were originally rented to them by Harry. In Tota's case, it is what the First Defendant described as one lot with 100 feet running along the De Gannes and Jawahir Road and 50 feet into the land more or less. The parcel occupied by Tota is what is shown and marked as A3 in the annexure to his witness statement marked "T.D.2".

109.Tota's evidence does not satisfy the court that his occupation of the Agricultural Parcel, if any, is sufficient to extinguish the Defendants legal titles within the meaning of the Real Property Limitation Act.

110.In Meira's case she claims a portion of land behind the ravine marked as A4A in the exhibit annexed to her witness statement marked "M.D.1". Meira's evidence is that she commenced planting on the Agricultural Parcel in 1972 and have continued planting thereon. Her evidence is also that she paid rent to Harry from 1971 to 1976. Further she went to Harry in 1976 and discovered that he could no longer collect the rent. It makes sense that if Meira was in fact occupying the portion of land over the ravine, as she claims since 1972, then given the relationship and her use of the land since she first occupied, she would have made the same or other arrangements with Harry to occupy the additional parcel of land.

111.It is noted, again, that the evidence adduced by the Claimants, show that Harry was very careful to ensure that he measured and identified the parcel to be rented, in the presence of the person renting.

112.Further, Meira's evidence shows that her intention was to occupy the Rented Parcel only. In 1979, she commenced building a board house on the west of the original house on the Rented Parcel. She gave her brother

permission to occupy the "old house" on the Rented Parcel. In 1998, she gave her son permission to put up a house on the Rented Parcel. In 2003, she gave her son, Fidel and daughter, Francillia permission to open a mini-mart in front of her house on the Rented Parcel. In 2010, she gave her daughter Marissa, permission to build an extension to her home on the Rented Parcel. The decisions made, were all to do with activity on the Rented Parcel.

113. The court is also satisfied that the First Defendant is well positioned to say what portion of land Meira occupied as his major responsibility from 1976 was to ensure that Harry's "tenants" remained on the land that was rented to them. For Meira that was on one lot of land with 100 feet running along the De Gannes and Jawahir Road and 50 feet into the land more or less. Even if Meira occupied occupied A4A, the court is not able to find when that occupation commenced and if it is in excess of sixteen (16) years.

114. With respect to Camala, her evidence is that Harry measured the Rented Parcel and he decided to include an extra 20 feet on the west, because part of the 100 feet by 50 feet fell inside the ravine. As shown with all the rentals, Harry was very particular about the measurement of the land. Camala's evidence is that she occupied the remainder of the "island" from the time she occupied the rented parcel. Why would Harry measure an extra 20 feet because the boundary fell inside the ravine and then allow Camala to immediately occupy the rest of the island over the ravine. It makes no sense and the court does not believe this evidence.

115. Harry's pattern of behaviour would not have allowed this to happen, at the time that Camala claims it occurred. Camala paid rent for the years 1976 and 1977. It appears logical that Harry would have made proper arrangements, or in the least have discussions with Camala about the additional lands. Having rejected Camala's evidence as to when she

occupied the "island", the court is satisfied on the evidence of Sieudat and Jewan, that Camala did not occupy the "island" in excess of sixteen (16) years. At the most, Jewan's evidence is that Camala had chickens and dogs on the island which she put there about fifteen (15) years before. Camala has not been in adverse possession of the Agricultural Parcel as she claims.

116. In relation to Jankie, her evidence is that she occupied the Agricultural Parcel soon after she entered into occupation of the Rented Parcel. Her evidence is that she and her husband asked Harry to occupy the vacant land behind her house. Jankee claims that Harry agreed to this as they used to carry food for him and would also give him some of the crops they reaped. Jankie said that by 1974, she and her husband had occupied the entire area shown in A6A in the Survey Plan annexed as "J.M.1" to Jankie's witness statement. This area is approximately one acre. Her evidence is that she and her husband sold the crops they reaped from that land, including coconuts. To support her contention, Jankie exhibited receipts for the sale of coconuts. Interestingly, those receipts were all for the years 2015 and 2016. The court takes note of the letter written on her behalf which is annexed to the amended Defence and CounterClaim and marked "J". That letter is dated the 3rd December, 2015. This letter states that Jankie occupied a parcel of land, with Harry's permission, of approximately one acre.

117. Harry, from all the evidence adduced, by the Claimants and Defendants, was careful and meticulous when excising the parcels for rental. It makes absolutely no sense that Harry would rent a lot of land to Jankie and then allow her to occupy an acre without a formal arrangement. Further Jankie claims that she occupied this acre by 1974 when according to her, Harry was still collecting rent for one lot. The court does not accept her evidence that Harry would allow her to occupy one acre and collect rent for one lot. Not the Harry she described in her evidence as being so precise that her father was able to point out the boundaries to the acre of land he rented

from Harry. The land Jankie claims Harry agreed she could plant was not delineated by Harry, and gradually increase in dimensions until by 1974 it had expanded to what is shown as A6A. The court does not accept this evidence. The court is satisfied that Jankie and her husband did plant on land outside of the Rented Parcel. However, the court is not able to determine how much land and when Jankie entered into occupation of that land. The court is not satisfied that Jankie occupied A6A since 1974 or for at least sixteen (16) years. The court is fortified in its view in light of the evidence of Sieudat and Jewan. Both say that Jankie occupied only so much of the land that was rented to her by Harry.

118. The last issue, for the court's consideration: is what parcel or parcels of land

> e. are the defendants entitled to possession of any parcel or parcels of land claimed by the claimants

119. This issue addresses parts of the claims and parts of the Defendants' counter-claim. The findings above, also serve to answer this issue. The court has already determined what parcels of land each Claimants is entitled to and therefore by deduction, the Defendants are entitled to possession of any additional lands claimed by the Claimants.

120. As a consequence, the court's judgment is as follows:

a. With respect to Claim No. CV 2016-01587:

   i. IT IS HEREBY ORDERED that there be judgment, in part, for Tota Dhaniram, against the First and Second Defendants. IT IS HEREBY DECLARED that Tota Dhaniram is the owner and entitled to possession of All and Singular that piece of land located in the Ward of Turure, in the Island of Trinidad measuring approximately 120 feet by 50 feet and bounded on the North by the lands of the Defendants, on the South by De Gannes and

Jawahir Road, Cunaripo and on the West by the Lands of the Defendants and on the East by the lands of Meira Dhaniram. The Defendants' legal title to the said piece of land is extinguished by Tota Dhaniran being in adverse possession thereof.

ii. IT IS HEREBY ORDERED that there be judgment, in part, for Meira Dhaniram, against the First and Second Defendants. IT IS HEREBY DECLARED that Meira Dhaniram is the owner and entitled to possession of All and Singular that piece of land located in the Ward of Turure, in the Island of Trinidad measuring approximately 100 feet by 50 feet and bounded on the North by the lands of the Defendants, on the South by De Gannes and Jawahir Road, Cunaripo and on the West by the Lands of Tota Dhaniram and on the East by the lands of the Defendants. The Defendants' legal title to the said piece of land is extinguished by Meira Dhaniram being in adverse possession thereof.

iii. IT IS HEREBY ORDERED that there be judgment, in part, for Camala Ali, against the First and Second Defendants. IT IS HEREBY DECLARED that Camala Ali is the owner and entitled to possession of All and Singular that piece of land located in the Ward of Turure, in the Island of Trinidad measuring approximately 100 feet by 50 feet and 2 roods and bounded on the North by the lands of the Defendants, on the South by De Gannes and Jawahir Road, Cunaripo and on the West by the lands of the Defendants and on the East by Cassim Trace. The Defendants' legal title to the said piece of land is extinguished by Camala Ali being in adverse possession thereof.

iv. IT IS HEREBY ORDERED that there be judgment, for Bheesham Persad, against the First and Second Defendants. IT IS HEREBY DECLARED that Bheesham Persad is the owner and entitled to possession of All and Singular that piece of land located in the Ward of Turure, in the Island of Trinidad measuring approximately 50 feet by 100 feet and bounded on the North by De Gannes and Jawahir Road, on the South by lands Narain Persad, on the West by the lands of Alexandrine Sylvester and on the East by the lands Renisha Persad. The Defendants' legal title to the said piece of land is extinguished by Bheesham Persad being in adverse possession thereof.

v. IT IS HEREBY ORDERED that there be judgment, for Renisha Persad, against the First and Second Defendants. IT IS HEREBY DECLARED that Renisha Persad is the owner and entitled to possession of All and Singular that piece of land located in the Ward of Turure, in the Island of Trinidad measuring approximately 5000 square feet and bounded on the North by De Gannes and Jawahir Road, on the South by the lands of Narain Persad, on the West by the lands of Bheesham Persad and on the East by the lands of the Defendants. The Defendants' legal title to the said piece of land is extinguished by Renisha Persad being in adverse possession thereof.

b. With respect to Claim No. CV 2016-01888:

i. IT IS HEREBY ORDERED that there be judgment, for Hemawatee Buchoon, against the First and Second Defendants. IT IS HEREBY DECLARED that Hemawatee Buchoon is the owner and entitled to possession of All

and Singular that piece of land located in the Ward of Turure, in the Island of Trinidad measuring approximately 200 feet by 200 feet and bounded on the North by the lands of the Defendants, on the South partly by lands of Jankie Mastay and partly by lands of the Defendants, on the West by the lands of the Defendants and on the East by Cassim Trace. The Defendants' legal title to the said piece of land is extinguished by Hemawatee Buchoon being in adverse possession thereof.

ii. IT IS HEREBY ORDERED that there be judgment, in part, for Jankie Mastay, against the First and Second Defendants. IT IS HEREBY DECLARED that Jankie Mastay is the owner and entitled to possession of All and Singular that piece of land located in the Ward of Turure, in the Island of Trinidad measuring approximately one acre and bounded on the North by the lands of Hemawatee Buchoon, on the South by lands of the Defendants, on the West by the lands of the Defendants and on the East by Cassim Trace. The Defendants' legal title to the said piece of land is extinguished by Jankie Mastay being in adverse possession thereof.

c. On the counterclaim filed by the Defendants:

i. There be judgment for the Defendants against the Tota Dhaniram, Miera Dhaniram, Camala Ali and Jankie Mastay. The Defendants are entitled to possession of the additional parcels of land claimed by those Claimants

121. With respect to Costs, after consideration of the relative successes of the parties on their claims and counterclaims, Claimants are

entitled to recover there be Costs to the value of 60% of the prescribed Costs. IT IS HEREBY ORDERED that the Defendants pay the Claimants Costs in the sum of $8,400.00

122.There are no orders as to Costs on the counterclaim

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Avason Quinlan-Williams

Judge

Romela Ramberran (JRC)