

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY SAN-FERNANDO**

CLAIM NO: CV2017-02966

BETWEEN

SURUJ RAMBHAROSE

FIRST CLAIMANT

PARBATEE RAMOUTAR

SECOND CLAIMANT

PREMNATH RAMBHAROSE

THIRD CLAIMANT

ISHA RAMNATH

(By her Attorney by virtue of Power of Attorney Parbatee Ramoutar)

FOURTH CLAIMANT

KUNTI HARRILAL

FIFTH CLAIMANT

AND

INDRA RAMBHAROSE

DEFENDANT

Before the Honourable Madame Justice Quinlan-Williams

Date of Delivery: 24th May, 2019

Appearances: Ms. Pavitra Ramharack for the Claimants
Mr. Jeevan Andrew Rampersad for the Defendant

ORAL JUDGMENT

1. The claimants herein by claim form filed on the 14th August 2017 claimed against the defendant the following reliefs:
 - a) A Declaration that the Claimants have an equity together with an irrevocable beneficial interest in the house known as and situated at No. 58 Gandhi Village, Debe.
 - b) A Declaration that the chattel deed dated 20th March 2013 and registered as DE201300808931 whereby Indra Rambharose as Executrix of Chitram Rambharose transferred ALL and Singular that two (2) storey dwelling house situate at No. 58 Gandhi Village, Debe in the Ward of Siparia comprising four bedrooms, toilet, bath, kitchen, covered with galvanised sheets standing on lands tenanted from Caroni (1975) Limited and bounded on the North, South and East by lands of Caroni (1975) Limited and on the West by a road to herself be set aside as it was obtained by fraud and/or fraudulent misrepresentation and/or mistake and is therefore void and of no effect.
 - c) An Order that the said deed by and is hereby set aside and that the Registrar General be directed to *expunge* the said deed from the Protocol of Deeds.
 - d) Alternatively, a Declaration that the Claimants have been in continuous, uninterrupted and exclusive possession of the said house for a period exceeding 16 years.
 - e) An Order that the Defendant whether by herself, her servant and/or agents or otherwise howsoever cease any acts of trespass on the said house.
 - f) Damages for trespass.
 - g) Costs.
 - h) Interest.
 - i) Such further or other relief as the nature of the case may require.

Summary of Evidence:

The Claimant's case

2. Popo Rambharose (hereinafter referred to as "Popo") and Rambharose Gajadar (hereinafter referred to as "Rambharose") were the parents of a number of children. The claimants were among those eleven children surviving at the time of their parents deaths. The defendant is the widow of the eldest of those eleven children; Chaitram Rambharose. Chaitram Rambharose is also referred to and is the same person known as Chitram Rambharose (hereinafter referred to as "Chaitram").
3. Rambharose died in 1975 and his wife, Popo, died in 2001. Popo and Rambharose were married in a traditional Hindu marriage ceremony, "under the bamboo". Their marriage was never registered in the Marriage Register of Trinidad and Tobago.
4. During his lifetime, Rambharose became the tenant of a parcel of land known as No. 58 Gandhi Village, Debe (hereinafter referred to as "No. 58"). Sometime in or about 1960, Rambharose who worked at Caroni Limited, took a loan from the Sugar Industry Labour Welfare Committee. Rambharose and Popo used the proceeds from the loan to construct a two storey wooden and concrete home at No. 58. Upon completion, they moved into the home with the six children that they had at that time. Sometime after, Chaitram and the Defendant started their family with the birth of their first child. The Chaitram family were also residing at No. 58.
5. Sometime around 1970, Chaitram made a down payment on lot No. 38 Gandhi Village (hereinafter referred to as "No. 38"). There is dispute as to what occurred thereafter. Suffice it, for the purpose of the court's judgment, a house was built on No. 38. Upon completion of that house in the early 1980s, the Chaitram family moved from No. 58 to No. 38

where they resided until Chaitram's death and where the defendant resides up to this date. The ownership of No. 38 is not in dispute and does not form part of this claim.

6. After the Chaitram family moved into the home at No. 38, Popo and her children moved back to the home at No. 58. The claimants allege that when they moved back to No. 58, Popo promised her children, other than Chaitram, that No. 58 would belong to them. This promise, the Claimants say, followed what occurred with the arrangements for No. 38.
7. The claimants aver that from the 1980s onwards, the Rambharose children or some of them, from time to time, did construction, renovation and repair works at No. 58. They all considered No. 58 as the family home and that they had the freedom to come and go as they pleased and as the circumstances dictated.
8. The claimants' evidence is that following their father's death and perhaps before his death, the family all looked up to Chaitram as he was the eldest brother. He went to school and could read unlike his parents. No family decision was made, especially with respect to No. 58, unless Chaitram was consulted and gave his approval.
9. Evidence of this comes from Premnath who said he sought and obtained Chaitram's permission to open and operate a bar at No. 58. Premnath's evidence is that he and his brother Suruj, partly from the proceeds from the bar at No. 58, rebuilt the entire home at No. 58. Suruj and another brother, Dwarika operated a parlour at No. 58. Proceeds from the parlour also went into rebuilding and repairing No. 58. The construction and renovation works were always done with Chaitram's approval.

10. There is evidence that one of the brothers, Seepersad, suffered an injury and became medically disabled. The claimants allege that Seepersad used the monetary settlement he was awarded to do renovation and repair works on No. 58. Seepersad lived at No. 58 until his death.
11. The Claimants' case is that Chaitram was never the owner of No. 58 and therefore it could not form part of his estate upon his death. Consequently, the defendant could not have inherited No. 58 as part of Chaitram's estate. Furthermore, the claimants allege that the Chattel Deed registering No. 58 in the defendant's name should be set aside.
12. The claimants would readily agree, the court opines, that no issue of fraud was proved against the defendant.
13. The claimants did not pursue the part of their claim that pleaded adverse possession of No. 58.

The Defendant's Case

14. The defendant avers that she has good title to the house on No. 58, by virtue of a Chattel Deed registered as DE201300808931. The defendant claims that she and her husband, without help from anyone, built the house on No. 58. She also claims that her husband always maintained and exercised control over the home and that this is evidence of his ownership. The defendant relies, among other things, on the receipt that shows the final payment for the loan from the Sugar Industry Labour Welfare Committee as well as certain rent receipts.
15. The defendant did not adduce any documentary evidence to establish how Chaitram came to own the home at No. 58, she relies on inferences to be drawn from the evidence.

16. The defendant counterclaimed to be declared as the sole owner of the house on No. 58.

Issues

17. Based on the pleadings, the undisputed and unagreed facts and the submissions, the issues for the court's determination are:

- a. At the time of Chaitram's death, who owned the house at No. 58;
- b. Who has the beneficial interest in No. 58; and
- c. Can the registration of a Chattel Deed be set aside.

Summary of Court's Findings

18. The court is satisfied on a balance of probabilities, that the house situate on No.58 was first built by Rambharose and his wife. The initial funding came from the loan that Rambharose obtained by virtue of the access he had while working at Caroni Limited. Following this, the home was renovated and repaired over the years. There was no overt or other act that changed the ownership of the house from Rambharose or Popo. When they died, according to the rules of intestacy, their estate is to be distributed per stirpes, among their children alive at the time of their deaths.

The Law

19. Based on the issues the court will have to decide who owned the house at No.58. That decision will determine how the property, No. 58 would devolve to those persons beneficially entitled, either according to the laws of intestacy or by bequest in the last Will and Testament of a Testator and a grant of probate.

20. If No. 58 passed by probate, that would end the claim as the claimants have not taken issue with the grant of probate obtained by the

defendant for her husband's estate. On the other hand, if No. 58 is to pass by intestacy, then the court will be bound to apply the Administration of Estates Act Chapter 9:01, in particular those sections dealing with distribution of estates:

"23. An estate or interest to which a deceased person was entitled on his death in respect of which he dies intestate shall, after all payment of debts, duties, and expenses be distributed or held on trust amongst the same persons being kin or next of kin in accordance with sections 24, 25, 26 and 26A.

24. (1) Where an intestate dies leaving a surviving spouse but no issue, his estate shall be distributed to or held on trust for the surviving spouse absolutely.

(2) Where an intestate dies leaving issue, but no spouse, his estate shall be distributed per stirpes among the issue.

(3) Where an intestate dies leaving a spouse and one child, the surviving spouse shall take one-half of the estate absolutely and the other half shall be distributed to or held on trust for the child.

(4) Where the intestate dies leaving a spouse and more than one child, the surviving spouse shall take one-half the estate absolutely and the remaining one-half shall be distributed to or held on trust for the children."

Analysis and Findings

21. The unravelling of the issues, depends wholly on the evidential findings; what the court makes of and decides on the evidence.

22. When the loan was taken to first build on No. 58, the defendant admits that Chaitram was a teenager still attending school. Further, the defendant also admits that the loan was taken out by Rambharose. By the time that house was completed, Rambharose and his wife had six children. The court is satisfied on a balance of probabilities that the first home was built by Rambharose, using the loan he took from the Sugar Industry Labour Welfare Committee.

23. A few years later, Chaitram by then had his own family and moved into the home on No. 38. By that time the original house built on No. 58 was

uninhabitable. The claimants' evidence is that they – the children, not including Chaitram, did those repairs. The defendant's version is that the house did not need any repairs. Income generated from the bar or parlour was not used on the upkeep of the house at No. 58. The court does not believe the defendant's version.

24. The defendant's evidence suggests that she was not sure about repairs, if any, were undertaken at No. 58. She prevaricates about her knowledge of what happened there. The claimants, on the other hand, called a witness, Mr. Rampersad, whose evidence remained unimpeached after cross-examination. Mr. Rampersad did repairs and renovation on the house at No. 58. He was paid for those works by different brothers of the Rambharose family. He was quite clear that he was never engaged by Chaitram. He also said that he saw Chaitram at No. 58 on only a few occasions over the periods of time he worked on the house.

25. The court did not believe the defendant's evidence that her husband, alone, financed the construction of No. 58. There is no evidence about his means to do so at the time when that house was originally constructed. The court is also satisfied that, over a period of time, renovation and repair works were carried out on the house. This is distinct from the defendant's evidence that the house is today, the same as it was when it was built in the 1960s.

26. The defendant relies on the receipt from the Sugar Industry Labour Welfare Committee dated the 14th March 1979, to prove that Chaitram was the owner of the house at No. 58. Even a cursory examination of the receipt will dispel that assertion. The receipt clearly states, on its face, that the payment of the sum of \$1010.32 was made by "Chitram Rambharose" for the Rambharose estate. The "Rambharose estate" referenced could not be Chaitram Rambharose's estate but had to be

Rambharose's, for two facts. Firstly Chaitram made the payment and secondly Chaitram was alive when the payment was made.

27. The defendant has not produced any other receipts showing that her husband made other payments towards the loan. The receipt also states that the loan being paid off was a "Housing Loan". The evidence leaves the court satisfied that after Rambharose died in 1975, his widow Popo and the children came to the realisation that monies were still due and owing on the housing loan. The Court is also satisfied that the family raised the money – by selling cattle as they averred, and gave Chaitram the money. With this money, Chaitram paid off the outstanding balance on behalf of his father's estate, collected and secured the receipt that so evidenced that fact.

28. In addition to that final receipt, the defendant exhibited the Sugar Industry Labour Welfare Fund Pass Book for Rambharose with her father-in-law's picture. The Pass Book showed that Rambharose secured a loan for \$1750.00 with a repayment period of fifteen years. The loan was for the purpose of "Erecting a house" and was to be repaid at monthly instalments of \$10.40. The first payment was due on the 1st of May 1965 and fifteen years from then would take you to 1979. Chaitram made the payment in May 1979. This supports the court's findings that it was Rambharose and not Chaitram, who secured the loan which was used to build the house on No.58.

29. The defendant also exhibited two receipts which she says is proof that Chaitram was the tenant of the land on which the house was built and at the time of his death, was the sole owner of the house on No. 58. On examination of those two receipts the court makes note of a few details. The receipts are for the years 1977 to 1978 and 1980 to 1981. Those years Chaitram was alive and is the purported payer. However, the "received from" line on the receipt notes that the payment was

received by Caroni Limited on behalf of the “Estate of Rambharose”. The payment was not received on behalf of Chaitram.

30. The court also notes that the payments were for a Lot No. 072, from a Tenant No. 08 and section No. 23. On the face of the receipt, it does not appear to have any relationship with No. 58 Gandhi Village on which the house was built. The court’s view that these two receipts have no relevance. This was fortified and confirmed by the Agreement found at pages 437 to 443 of Trial Bundle Volume 3. The house on No. 58 is described by the defendant as: on lands situated at No. 58 Gandhi Village, Debe in the Ward of Siparia and bounded on the North, South and East by lands of Caroni (1975) and on the West by a road.
31. The Agreement dated 1989 at pages 437 to 443 of Trial Bundle Volume 3, is said to relate to Tenant 23/08/072. Those are the same numbers on the receipts referred in paragraph 26 above. The Agreement was made between Caroni (1975) Limited on the one part and Popo Rambharose and Chaitram Rambharose both of Gandhi Village on the other part. The agreement refers to a House lot No. 23/08/072 located at Hermitage Village La Fortune Section of Caroni (1975) Ltd bounded on the North by Private Lands on the South by Estate Trade on the East by a Drain 1.0m wide and on the West by Hermitage Debe Road.
32. It is clear that the receipts and the Agreement have nothing to do with No. 58 and the house thereon. The Agreement is dated after the two receipts, however the identification of the Lot and Tenant No. on the receipts and the Agreement match. The receipts and the Agreement may be related, in some way, to each other but the court is satisfied that neither are related to No. 58 Gandhi Village.
33. Based on the evidence the court is satisfied that Rambharose, worked at Caroni Limited for some time during his life. The court is satisfied he because of his employment, was able to access a loan from the Sugar

Welfare Union. The loan was for the specific purpose of building a house. The court is satisfied that Rambharose built that house on lands that he rented at No. 58 Ghandi Village Debe.

34. There is no dispute that during Rambharose's and Popo's lifetime, Popo and her children moved to No. 38 on lands rented by Chairtram and that they moved back to No.58. The circumstances surrounding the move are disputed however the court is not required to make any findings on that issue to resolve this claim.

35. What the court is satisfied about is that Popo and her children, over the years and up to the filing of this claim considered No. 58 to be the family house. In keeping with that consideration, different children renovated and repaired the family house. Their responsibility for the family home, owned by their parents, is also shown by the fact that the siblings, except Chaitram, paid the rates and taxes.

36. The court is therefore satisfied that the house was owned by Rambharose and Popo although they were not married according to the laws of Trinidad and Tobago. On Rambharose's death therefore his share went to his children and on Popo's death her share went to her children. Since neither Rambharose nor Popo left any Wills, their estates would be distributed, according to the Administration of Estate Act Chapter 9:02. Section 24 of the said Act states such estates are to be distributed per stripes among the issue. Rambharose and Popo's issue are the eleven children alive at their respective deaths. These children include the claimants and the defendant's husband Chaitram (Chaitram having departed his life after his parents).

37. The evidence leads the court to conclude that the defendant held a genuine but mistaken belief of fact. This belief may have arisen as a result of the dynamics of the family life and approach towards the "big" brother Chaitram. However, the siblings seeking Chaitram's advice,

approval or consent is distinct and independent of his legal entitlement to his share of his parent's estate.

38. The defendant's husband, Chaitram had no entitlement to any greater share than his other siblings. Therefore he could not bequeath any share greater than his share in his Will. Chaitram certainly could not bequeath the entire home at No. 58 to his wife.

39. Consequently what formed part of Chaitram's residual estate is his share. According to the Claimants' claim, Rambharose and Popo had eleven children survive them, therefore each of the claimants are entitled to one eleventh share of the house at No. 58. So to the defendant's husband was entitled on one eleventh share in the house at No. 58.

Disposition

40. Based on the court's findings on the evidence and its application to the law it is hereby ordered that there be judgment for the claimants against the defendant on the claimants' claim:

- a. The court ORDERS AND DECLARES that the Claimants each have a one-eleventh share in equity together with an irrevocable beneficial interest in the house known as and situated at No. 58 Gandhi Village, Debe.
- b. The court ORDERS AND DECLARES that the Chattel Deed dated 20th March 2013 and registered as DE201300808931 (the said Deed) whereby Indra Rambharose as Executrix of Chaitram Rambharose also known as Chitram Rambharose transferred ALL and Singular that two (2) storey dwelling house situate at No. 58 Gandhi Village, Debe in the Ward of Siparia comprising four bedrooms, toilet, bath, kitchen, covered with galvanised sheets standing on lands tenanted from Caroni (1975) Limited and bounded on the North, South and East by lands of Caroni

(1975) Limited and on the West by a road to herself be set aside as it was obtained by mistake and is therefore void and of no effect.

c. The court Orders that the said Deed be and is hereby set aside and that the Registrar General be directed to *expunge* the said Deed from the Protocol of Deeds.

d. The defendant shall pay the claimants' prescribed Costs in the sum of \$14,000.00.

41. The defendant's counter claim against the claimants is dismissed. There are no orders for Costs on the counter claim.

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Avason Quinlan-Williams

JRC Romela Ramberran