The Republic of Trinidad and Tobago

IN THE COURT OF APPEAL

Civil Appeal No. S077 of 2015
Civil Appeal No. S079 of 2015
Claim No. CV2006-02985

Between

ROODAL RAMPERSAD

Appellant

And

DEOSARAN DWARKA
(In his personal capacity and as the Legal Personal Representative of BALROOP DWARKA, deceased)

RAJKUMAR DWARKA
RAMKISSOON DWARKA
KRISHEN DWARKA
PRAMCHAND DWARKA
PREMATIE DWARKA

Respondents

PANEL:

N. BEREAUX J.A.
C. PEMBERTON J.A.
A. DES VIGNES J.A.

Date of delivery: January 31, 2020

APPEARANCES:
Mr. N. Harrikissoon instructed by Mr. A. Ramlal Attorneys-at-law for the Appellant
Mr. S. Saunders instructed by Ms. N. Maharaj Attorneys-at-law for the Respondents

JUDGMENT

Delivered by Bereaux J.A.

Introduction

(1) The issue in this appeal is whether, pursuant to sections 3, 9 and 22 of the Real Property Limitation Act Chap 56:03 (the Act), the respondents, by their occupation, for sixteen years or more, have extinguished the appellant's paper title in certain lands situated at Cunupia, Central Trinidad. The trial judge, in agreement with the respondents, held that they had. There is also the question as to whether the appellant has properly pleaded his title. The judge ruled that he hadn't. The respondents have cross-appealed with regard to the judge's refusal to grant a declaration that they were statutory tenants under the Land Tenants (Security of Tenure) Act.

(2) The respondents are occupants of residential lots and agricultural land for which the appellant had paper title. The lands were tenanted by their father Balroop Dwarka (Balroop), from the appellant's predecessor, one Madoo. It was a yearly tenancy. There was no formal lease. No rent has been paid since 1970. Balroop died on 20th March, 1983. The appellant ultimately succeeded Madoo as owner of the lands. The lands were supposed to have been purchased for him by his sister Baby Rampersad (Baby) with moneys he provided. She did purchase the lands but registered title in her name. The appellant then brought an action to obtain title to the lands. That action, HCA 1370 of 1980 and the appeal Civil Appeal No. 135 of 1996, took nineteen years to be completed during which time the respondents continued their exclusive occupation while paying no rent.

(3) This raises the issue whether the appellant's action to obtain title to the

lands from Baby stopped time running in favour of the respondents until that action was determined.

Summary of decision

(4)

(i) The appellant's pleading at paragraph 1 of the statement of case is sufficient to constitute a pleading of his title to the land. The trial judge was wrong to hold that he had not pleaded title.

(ii) The appellant's action in 1980 against Baby to recover possession stopped time running against him. By then nine years had already accrued (1971-1980). A further nine years elapsed before he took action against the respondents in 2005 (1996 – 2005). By that time more than sixteen years had elapsed (2003) and his action was statute-barred. The appeal must be dismissed.

(iii) The judge found that the respondents were in adverse possession of three residential lots and two and a half acres of agricultural land. Those were findings of fact which she was entitled to find on the evidence. In light of those findings, there was no necessity for her to rule on the respondents' claim that they were statutory tenants. The cross appeal must be dismissed.

Facts

(5) In or about the year 1971, the appellant returned to Trinidad from the United Kingdom for a four week visit. He made arrangements with Charbhan Madoo the eldest son of the deceased Madoo to purchase from him the parcel of land which is the subject of this dispute. (He also arranged to purchase other parcels but those parcels are not relevant to these proceedings.) The parcel contained several tenants one of whom was Balroop. Before his return to the United Kingdom, the appellant arranged to have the property purchased on his behalf by Baby. He

returned to the United Kingdom and forwarded monies to Baby to facilitate the purchase.

(6) Upon returning to Trinidad in the late 1970's the appellant discovered that Baby had purchased the parcel of land in her name in August 1971. She refused to convey the property to him. She contended that all of the monies that he had forwarded to her were gifts to assist with her living expenses. The appellant instituted legal proceedings, HCA No. 1370 of 1980 against Baby for, inter alia, a declaration that she held the parcel in trust for him.

(7) On 19th July, 1996 (sixteen years later) Warner J (as she then was) gave judgment for the appellant holding, inter alia, that the sixteen acre parcel of land was held on trust for him by Baby absolutely. Baby's appeal was dismissed on 27th October, 1999. All of the original tenants of the parcel had by this time vacated same except for Balroop's children (the respondents) as well as Dipchan and his family.

(8) The appellant alleged that during those court proceedings he visited Balroop, who was ill, on approximately five occasions. The appellant said that Balroop at *"all times … rented only two lots of land of the said parcel, one for a house spot and the other lot for gardening purposes. Whilst speaking to him I told him that I had purchased the said parcel including the two lots of which he was occupying. I also informed him that I had a problem in relation to same as my sister was also claiming the land in the High Court Proceedings I had instituted but that I was optimistic that I would eventually be successful."*

(9) He added that *"I personally lived only a quarter of a mile away from the said parcel and during the court proceedings I used to visit the said lands approximately three to four times a week in order to monitor the said parcel pending the determination of the matter."*

(10) Both the appellant and his sister unsuccessfully tried to collect rent from the respondents. In 1999, the appellant attempted to assert his ownership by placing notices on the land. The respondents removed the notices. In 2000, the appellant attempted to spray the land. The respondents drove him off.

(11) The appellant went to inform the respondents that because Baby's appeal had been dismissed he was unquestionably the legal owner of the land that they were living on. The first respondent refused to acknowledge him as the owner and demanded proof of his right to ownership of the parcel.

(12) Thereafter the parties exchanged several letters, the appellant asserting his title to the lands and the respondents requesting copies of title documents as proof of ownership.

The present proceedings

(13) The appellant commenced these proceedings on 9th May, 2005. He was not yet formally registered as owner and was only so registered in 2006. He sought, inter alia, possession of *"two lots of land and the other portions of land currently occupied by the Defendants comprising approximately six acres more or less being portion of that … parcel of land comprising Sixteen Acres and Fifteen Perches"* as well as injunctive relief. Although he speaks of the respondents being in possession of six acres, in his witness statement he alleges that parts of the six acres were vacant. This evidence is supported by the witness statement of Prabudial Dipchan at paragraphs 8 to 11.

(14) In their defence the respondents stated that they had been living on three lots of land rented from Madoo and that they had always been willing and able to pay rent to anyone producing proof of ownership of

the subject lands. In their counterclaim, the respondents sought, inter alia, a declaration that the tenancy of the building land is protected under the terms of the Land Tenants (Security of Tenure) Act.

The respondents asserted that they had been in adverse possession of an area of land used for agricultural purposes and were the statutory tenants of a smaller residential plot. The remedy sought by the counterclaim was quite imprecise. They sought a declaration that the title, *"if any, of anyone to the agricultural land has been extinguished under the terms of the Real Property Limitation Ordinance"*. The actual acreage was not set out but at paragraph 17 of the Defence, which was adopted by the counterclaim, the respondents spoke of occupying three lots of *"tenanted lands"* and *"2½ acres of agricultural lands"*.

The Judgment

(15) While she does not expressly say it in her judgment, the judge considered the evidence of the appellant and rejected it. He had made a number of allegations about encroachment by the respondents. The judge noted that Balroop occupied four lots of land one of which he gave to Dipchan. She found that the respondents had been in continuous, undisturbed possession for more than thirty years. After the rent was last paid in 1970, Balroop asserted ownership of the land by building a concrete structure, and expanding it. It was completed over a period of three years and was extended in 1988 and 1994. Balroop also farmed and reared cattle on the two and a half acre parcel. After his death in 1983 his sons continued use of the land. The respondents asserted their ownership by refusing to pay rent, by removing the notice placed on the premises and by forcefully expelling the appellant from the land when he attempted to spray in 2000. The continuous, undisturbed occupation of the land by Balroop and his descendants operated to extinguish the title of the paper-title holder, Baby Rampersad.

(16) The judge also held that the appellant failed to plead at the outset that he was entitled to the land. He could not plead this at the start of the proceedings because, in 2005, he was not the registered owner of the land. After becoming the registered owner in 2006, the appellant did not attempt to amend the statement of case to plead his entitlement to the land. Without an amendment to the pleading, any evidence of the appellant's entitlement would be inadmissible. The appellant therefore failed to establish his entitlement to the land and therefore his right to claim possession.

Appellate review

(17) The legal principles upon which an appellate court will proceed in its review of the decision of a lower court were recently summarised by Lord Kerr in **Bahamasair Holdings Ltd. v. Messier Dowty Inc**. **(Bahamas) [2018] UKPC 25**. At paragraph 36, he said:

> ***1. "… [A]ny appeal court must be extremely cautious about upsetting a conclusion of primary fact. Very careful consideration must be given to the weight to be attached to the judge's findings and position, and in particular the extent to which, he or she had, as the trial judge, an advantage over any appellate court. The greater that advantage, the more reluctant the appellate court should be to interfere …" - Central Bank of Ecuador v Conticorp SA [2015] UKPC 11; [2016] 1 BCLC 26, para 5.***
>
> ***2. Duplication of the efforts of the trial judge in the appellate court is likely to contribute only negligibly to the accuracy of fact determination - Anderson v City of Bessemer, cited by Lord Reed in para 3 of McGraddie.***
>
> ***3. The principles of restraint 'do not mean that the appellate court is never justified, indeed required, to intervene.' The principles rest on the assumption that 'the***

judge has taken proper advantage of having heard and seen the witnesses, and has in that connection tested their evidence by reference to a correct understanding of the issues against the background of the material available and the inherent probabilities.' Where one or more of these features is not present, then the argument in favour of restraint is reduced - para 8 of Central Bank of Ecuador."

(18) In deciding whether or not to intervene, the appellate court must consider whether the judge, having heard and seen the witnesses, was entitled to make the findings of fact that he or she did make, having regard to the issues, the evidence as a whole and the inherent probabilities. As Lord Hodge observed in **Beacon Insurance Company Ltd. v. Maharaj Bookstore Ltd. [2014] UKPC 21** at paragraph 12, *"The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions"*.

(19) In so far as the judge made findings of fact, with regard to the respondents' possession and occupation, we will not disturb those findings. However she made the following errors of law:

(i) She wrongly concluded that the appellant did not plead his entitlement to the land. The pleading was clear enough.

(ii) She did not consider whether during the pendency of the appellant's high court action against his sister, time did not run against him in respect of his claim for possession against the respondents.

These were material errors which entitle us to look at the matter afresh. However, despite those errors the judge came to the correct conclusion. When all of the facts of this case are considered, the respondents had extinguished the appellant's title. The appellant, even after Warner J, in 1996, had declared

him the legal owner of the lands, waited a further nine years (1996-2005) before bringing this action. By then the respondents, in 2003, had already extinguished his title.

Issues

(20) The two broad issues which fall for determination are as follows:

(1) Did the appellant sufficiently plead his title to the property? If yes,

(2) Did the respondents extinguish the appellant's paper title by their occupation?

(1) Did the appellant sufficiently plead title?

(21) The appellant did plead his title sufficiently enough to pursue his claim. Paragraph 1 of the statement of claim is a clear pleading to that effect. It states:

> ***By virtue of the Judgment of the Honourable Madame Justice Warner delivered on the 19th day of July, 1996 in H.C.A. No. 1370 of 1980 Roodal Rampersad vs Baby Rampersad the Plaintiff is the declared legal and/or equitable owner of All and Singular Sixteen Acres and Fifteen Perches described in Certificate of Title in Volume 2004 Folio 433 bounded on the North by lands petitioned for by Baldeosingh and by lands petitioned for by Seelal Baranchee, on the South by lands petitioned for by Seebaluck, on the East by lands petitioned for by Geetah and on the West by Crown Lands.***

(22) The order of Warner J is on the record. Warner J ordered the Registrar General to endorse the appellant as the fee simple owner on the certificates of title for the subject land. At the time of filing of this action

the appellant was not yet the registered owner. Relying on the judgment of Warner J was the only way he could plead his title. Paragraph 1 of the statement of claim is a clear pleading of the appellant's title to the property which permits him to pursue his claim and lead evidence. The judge was plainly wrong to have concluded otherwise.

(23) I turn to the next issue, which is whether the respondents extinguished the appellant's title.

(2) Did the respondents extinguish the appellant's title?

The Law

(24) The provisions of sections 3, 9 and 22 of the Act are relevant. They provide as follows:

Section [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.***

Section [9]: ***When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time***

when any rent payable in respect of such tenancy shall have been received (which shall last happen).”

Section [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.”***

(25) The effect of sections 3 and 9 of the Act was considered by the Privy Council in **Ramroop v. Ishmael and Heerasingh [2010] UKPC 14** at paragraphs 15 and 16. Lord Walker giving the advice of the Board said:

“An issue of law which did arise before the Board was as to the effect of sections 3 and 9 of the Real Property Limitation Act (Ch. 56.03). Section 3 lays down the general rule as to a 16-year limitation period for actions for recovery of land. Section 9 lays down a special rule for the running of time for periodic tenancies when there is no written lease: if rent is not paid, and remains unpaid, time starts to run at the end of the first rent period in which rent was not paid …

The effect of section 9 of the Real Property Limitation Act is however limited. It does no more than meet the objection that time cannot run in favour of a tenant because his possession as a tenant is not adverse to the interest of his landlord. It is still necessary, under the law of Trinidad and Tobago as under the law of England and Wales, for him to be in actual, exclusive possession of the property in question: Ramnarace v Lutchman [2001] 1 WLR 1651, para 9.”

(26) **Ramnarace v Lutchman [2001] 1 WLR 1651** was a decision of the Board from this jurisdiction on whether a tenant at will had extinguished the paper owner's title by adverse possession pursuant to section 8 of the Real Property Limitation Ordinance. Section 8 provided that the right of the owner to bring an action to recover or make an entry or distress shall be deemed to have first accrued either at the determination of the tenancy or one year after the commencement of such a tenancy, at which time (the end of the year) such tenancy shall be deemed to have determined. Starting at paragraph 9 of the decision, Lord Millett stated:

> ***"The Ordinance substantially reproduces the provisions of the English Real Property Limitation Act 1833 (3 & 4 Will 4,c 27). The limitation period for an action to recover land is 16 years, and the period starts when the right to bring the action first accrues to the person bringing the action or someone through whom he claims: section 3 of the Ordinance (corresponding to section 2 of the 1833 Act). …***
>
> ***[11] It follows that if a tenancy at will is determined during the first year the owner's right of action accrues immediately; otherwise it accrues automatically by virtue of section 8 at the end of the first year …***
>
> ***[12] The effect of sections 3 and 8 of the Ordinance taken together is that if no action is taken by the true owner his title is extinguished after the expiration of 17 years from the commencement of the tenancy even though the possession of the occupier is permissive throughout: see Lynes v Snaith [1899] 1 QB 486. It was the deliberate policy of the legislature that the title of owners who allowed others to remain in possession of their land for many years with their consent but without paying rent or acknowledging their title should eventually be***

extinguished."

(27) That statement of policy is of general application to all of the provisions of the Act, including section 9. Section 9 applies to yearly tenancies. Unlike section 8, which provides for the automatic determination of the tenancy at will at the end of the expiry of the first year if it is not expressly determined prior thereto, section 9 does not expressly provide for the determination of the yearly tenancy per se.

(28) A yearly tenancy continues indefinitely unless determined by notice. See **Megarry and Wade's The Law of Real Property 4th Edition**, page 633, under the rubric "*Yearly tenancies"* which states the law as it applies to yearly tenancies in Trinidad and Tobago today:

> ***"A yearly tenancy is one which continues from year to year indefinitely until determined by proper notice, notwithstanding the death of either party or the assignment of his interest. It is not affected by the rule against leases of uncertain maximum duration, for originally it is treated as a grant for one year which, if not determined at the end of that year, will automatically and without any fresh letting run for another year, and so on from year to year; similar rules apply to all periodic tenancies. Thus the law treats each successive yearly term, when it takes effect, as part and parcel of the original term, which therefore grows as the years pass; after 50 years, for example, the tenant's interest is regarded in retrospect as a 50-year term, but as to the future as a yearly tenancy."***

(29) Balroop's yearly tenancy thus continued after his death and would have devolved to the respondents on intestacy upon administration of his estate. Deosaran Dwarka did take out letters of administration and in

this appeal, we have had no objection by the appellant that the respondents had no locus to defend the action or to claim the benefit of the tenancy.

(30) Under the common law, Balroop's tenancy would ordinarily continue yearly from 1971 to date unless ended by notice. But the legislature, by sections 9 and 22, has intervened to provide that the paper owner's title is extinguished sixteen years after the end of the first period in which rent was not paid.

(31) The Act thus provides that a sixteen year possession, even though it is by virtue of a tenancy, operates to dispossess the true owner if no rent is paid, title is not acknowledged and the true owner takes no action to evict. The tenant is not a squatter per se because he is there with the consent of the owner. Mr. Harrikissoon submitted that the respondents did not have the *animus possidendi* because they were prepared to pay rent. But applying Lord Browne-Wilkinson's dictum in **J A Pye (Oxford) Ltd and Another v Graham and Another [2003] 1 AC 419** at paragraphs 42 to 46, the fact the respondents may have been prepared to pay rent is not inconsistent with an intention to possess.

(32) In this case, the respondents were not squatters. As Lord Walker stated in **Ramroop**, section 9 negatives the objection that time cannot run in favour of a tenant. In my judgment what is required to succeed pursuant to section 9 is simply proof of the yearly tenancy, proof of actual exclusive possession for the sixteen year statutory period and proof of the non-payment of rent for that period. In any event the fact that the respondents were in exclusive possession and the fact that they were paying no rent, were sufficient to show the relevant *animus possidendi*, to the extent that *animus possidendi* may be required.

Did the appellant's action against Baby stop time running?

(33) The question is: when did the right to bring an action to recover the premises *"first accrue"* to the appellant under section 3? Section 3 provides that ***"No person shall … bring an action to recover any land… but within sixteen years next after the time at which the right to … bring such action, shall have first accrued to some person through whom he claims ….."***. The right to take action to recover the lands would have *"first"* accrued to Madoo in 1971 being one year after the last time rent was paid in 1970. Baby fraudulently put the property in her own name and the appellant did not bring proceedings against her until 1980. Time certainly started running in 1971 against Madoo and would have continued running against the appellant as Madoo's successor in title in 1971 had he then acquired from Madoo. But he didn't *"acquire"* from Madoo until the judgment of Warner J in 1996. Two questions arise: Did time run in favour of the respondents prior to the 1980 action; that is to say, between 1971 and 1980 and if yes, did the 1980 action stop time running? The answers to both questions are in the affirmative.

(34) As to the first question, that is to say, whether time continued running in the respondents' favour up until the 1980 action, the appellant could take no legal action against the respondents until he obtained title to the property. The right of action did not accrue to him until 1996 when Warner J gave judgment in his favour.

(35) It seems quite unfair that time should run against the appellant during a time when he had no legal recourse against the respondents. But the policy of the Act is to punish prolonged inaction on the part of paper title owners, who permit tenants to occupy their lands without paying rent or acknowledging title. In this case Baby was the paper title owner. In my judgment, time would have continued running against Baby when she became the paper title owner in August 1971. It was for Baby to take

action against the respondents.

(36) It was also in his best interest to commence his action against Baby as soon as he discovered her fraud. If it were otherwise then the appellant could have delayed taking action against Baby for the full statutory sixteen year period without any detriment to his claim. That would frustrate the policy of the Act as well as the respondents' rights which flow from it. It was the appellant's responsibility to ensure that title to the parcel was put in his name when he repatriated the funds from England to Trinidad for its purchase. His failure to do so cannot affect the rights of the respondents under section 9. Therefore, while he could take no immediate action to remove the respondents, his first recourse in his efforts to remove the respondents was to take action against Baby and obtain title. Baby made one demand for rent but she did not pursue it.

(37) As to the second question Mr. Harrikissoon submitted that the 1980 action against Baby stopped time running against the appellant. He cited this Court's decision in **Pooran v. Roop, Civil Appeal No. 223 of 2010**. It is of no assistance. He also relied on section 66 of the Trustees Ordinance which, put shortly, is totally irrelevant to the issue. Mr. Saunders for the respondent was content to simply deny the applicability of section 66 of the Trustees Ordinance and no more.

(38) The learning suggests that time will only run against the paper title owner if he does in fact have the right to bring an action to recover the land. See **Adverse Possession 2nd Edition by Jourdan and Radley-Gardner** at page 91, sections 6-12 to 6-13. Such a right of action would not have *"accrued"* to the appellant (pursuant to section 3 of the Act) until he had obtained title to the land and title only became vested in him upon Warner J's grant of judgment in his favour. In my judgment, it was necessary for the appellant to first obtain title by initiating action against Baby in the High Court.

(39) Once that action was initiated, it had the effect of stopping the running of time in favour of the respondents (as against the appellant) until that action was determined. In my judgment time stopped running against the appellant because he was taking steps to assert his title and to enable his cause of action. It follows that time stopped running in the respondents' favour against the appellant in 1980 when he took action against Baby. It would only have re-started against the appellant after he obtained judgment against Baby from Warner J in July 1996. Because Baby was still the paper title owner, it was always open to her, until the appellant's matter was determined, to take action to evict the respondents. Time would continue to run against her during the pendency of the appellant's claim against her until it was determined.

(40) At page 91, under the rubic *"Whether owner has the right to take possession"* the authors say:

> ***6-12 Except in the cases of an oral periodic tenant who is not paying the rent, and an absolute beneficial owner, time will only run if the owner has in fact the right to bring an action to recover the land. Whether this is so must be determined by reference to the general law. However, the fact that there is some procedural step which the owner must take before he can take possession, or that his right to possession is governed by a statute, will not prevent time from running.***
>
> ***6-13 In other branches of the law of limitation, the courts have distinguished between two types of case. In the first, a cause of action accrues, but there is a procedural bar which prevents the claimant enforcing his rights. In such cases, time runs from the accrual of the cause of action, even though no claim could have been issued immediately. In the second situation, no cause of action accrues, because some essential fact needed to***

establish a cause of action does not exist, and time does not run. It is not always easy to decide into which type a particular case falls. The same approach has been applied in adverse possession cases."

(41) On that reasoning, the appellant's action against his sister was not a mere procedural bar. It was a fundamental step, necessary for establishing his cause of action. Obtaining a judgment declaring him legal and/or equitable owner was an essential fact needed to establish his cause of action.

(42) The decided cases provide helpful guidance on this question. In **Coburn v Colledge [1897] 1 QB 702**, a solicitor brought an action for the amount of a bill of costs. Section 37 of the Solicitors Act 1843, prohibited a solicitor from commencing an action for recovery of fees until the expiry of one month after the solicitor delivered the bill of costs to his client. The question for decision was whether time started to run when the work was completed or one month after the bill of costs was delivered.

(43) The Court of Appeal, affirming the decision at first instance, held that the cause of action arose when the work was completed and therefore the statute of limitations (6 years) began to run from that time and not from the expiry of a month after the delivery of the bill of costs. Delivery of the bill of costs was a procedural requirement of the Solicitors Act 1843 s 37.

(44) At page 706 Lord Esher M.R. stated this:

"The Statute of Limitations itself does not affect the right to payment, but only affects the procedure for enforcing it in the event of dispute or refusal to pay. Similarly, I think s. 37 of the Solicitors Act, 1843, deals, not with the right of the solicitor, but with the procedure to enforce

that right. It does not provide that no solicitor shall have any cause of action in respect of his costs or any right to be paid till the expiration of a month from his delivering a signed bill of costs, but merely that he shall not commence or maintain any action for the recovery of fees, charges, or disbursements until then. It assumes that he has a right to be paid the fees, charges, and disbursements, but provides that he shall not bring an action to enforce that right until certain preliminary requirements have been satisfied. If the solicitor has any other mode of enforcing his right than by action, the section does not seem to interfere with it. For instance, if he has money of the client in his hands not entrusted to him for any specific purpose, there is nothing in the section to prevent his retaining the amount due to him out of that money. If that be the true construction of the section, it does not touch the cause of action, but only the remedy for enforcing it."

(45) See also Lopes LJ at 709:

"Sect. 37 of the Solicitors Act, 1843, appears to me to assume that there is a cause of action, and merely to postpone the bringing of an action upon it until the period of one month from the delivery of the bill. There is nothing in the section, so far as I can see, inconsistent with the view that the cause of action arises when the work is completed; It was urged that, if this construction were adopted, a solicitor would have a shorter time during which he may abstain from bringing his action for work done than the rest of Her Majesty's subjects. That may be so; but on the other hand, if the plaintiff's contention is correct, the solicitor may abstain from delivering his bill

for twenty years, and then at the end of that time he may deliver it and sue after the expiration of a month from its delivery. It seems to me that that would be a very anomalous and inconvenient result."

(46) In **Swansea City Council v. Glass [1992] Q.B. 844** the limitation period was six years. A tenant complained to the plaintiff local authority about the condition of his house. The local authority served two notices requiring the defendant, as the person in control of the property, to effect repairs on his house. The authority was empowered by statute to do the work itself if the person in control of the house did not comply with the notice to execute work. The authority was also empowered to recover the expenses incurred by bringing a civil action against the defendant. The expenses were recoverable as a civil debt *"together with interest from the date when a demand for the expenses is served until payment"*. On the defendant's failure to effect the repairs, the local authority carried out the necessary work and served written demands for the costs incurred. The defendant did not pay, and more than six years after completion of the works, but less than six years from the service of the demands, the local authority issued a summons in the county court seeking payment.

(47) It was held that the requirement to serve a demand before taking action was a mere procedural step which was not part of the cause of action and that except as provided by section 10(4) of the Housing Act 1957 the relevant period of limitation began to run from the completion of the works; and the action was statute-barred. See also **Central Electricity Generating Board v. Halifax Corporation [1963] AC 785** at 801 and **Sevcon Ltd. v. Lucas CAV Ltd. [1986] 1 W.L.R. 462** at 465 - 467.

(48) In my judgment, the appellant's action against Baby was a fundamental and necessary step before he could take action against the respondents.

It was an essential step to establish a cause of action against the respondents. Paper title in the property was in Baby's name. He could do nothing without an order of the court in his favour. He could not plead his title in any proceeding against the respondents. Without it there was no cause of action. Any allegation in a statement of claim that Baby held the property in trust would be struck out because Baby's counter allegation was that the moneys were repatriated for her benefit. The allegation and counter allegation had to be tested in court, pronounced upon and one of them established as fact. It is of course unfortunate that the action took so long to be completed but until judgment was given in his favour the appellant had absolutely no claim to the parcel which could found a cause of action against the respondents. No right of action *"accrued"* to him until the decision of Warner J was given.

(49) Baby appealed the decision. But that did not prevent the appellant from pursuing the action during the pendency of the appeal. It is trite that an appeal does not operate as an automatic stay of the decision of the lower court. There is no evidence that a stay of Warner J's decision was granted in the Court of Appeal. The appellant was therefore entitled to enforce the judgment and to take immediate action against the respondents if he wished. Nine years had already run when the appellant took action against Baby in 1980.

(50) After the Warner judgment in July 1996, the appellant had a further seven years i.e. up to July 2003 to take action. But the appellant himself was guilty of delay after the Warner judgment was delivered and even after the dismissal of the appeal in 1999. He did not file these proceedings until 9th May, 2005 by which time the respondents had extinguished his title. The appellant's efforts to assert his rights; by visiting the ailing Balroop and informing him of his ownership and of his court action against his sister, by putting up a *"no trespassing"* notice, by

attempting to enter the property to spray excess foliage, by visiting the property and by giving verbal notice of his ownership rights pursuant to the Warner J order, were all ineffectual to stop time running. The respondents continued their occupation and rebuffed his claim of ownership. On these facts, only the filing of the court action would have been effective to stop time running. (**Markfield Investments Ltd. v. Evans [2001] 1 WLR** at paragraph 15.)

Acknowledgment

(51) There is the question of whether the respondents acknowledged the appellant's title. The respondents' then attorney Mr. Subryan by letter of 7th October, 2004 refers to the appellant as the owner of the land. So too does a letter written on behalf of the respondents by the National Land Tenants and Ratepayers Association dated 12th October, 2004. Neither letter was effective to acknowledge the appellant's title because, by that time, the respondents had already extinguished the appellant's title. See **Nicholson v. England [1926] 2 KB 93**, **Sanders v. Sanders (1881) 19 Ch. D 373**.

Acreage of occupation

(52) The respondents' claim in respect of the acreage has never been definitively defined in their counterclaim. The judge however found that the respondents occupied four residential lots but gave one to Dipchan. She also found that they cultivated two and a half acres of adjoining agricultural lands. The respondents' claim distinguished between the nature of their occupation of the residential lots and the agricultural lands. There was no specific claim for adverse possession of the residential lots. But at paragraphs 36 to 42 of her judgment the judge made a finding that the respondents were in adverse possession of the residential lots. There was clear evidence on which she could

found that conclusion. The appellant's grounds of appeal do not reveal any challenge to the finding; that is to say, that the judge exceeded her jurisdiction or that that finding was not supported by the respondents' pleading. Indeed, his written submissions are directed solely at the judge's findings as to the agricultural lands. I have already indicated that I will not disturb the judge's findings of fact. The respondents' occupation is confined to two and a half acres of agricultural land and the three residential lots as found by the trial judge (they gave a fourth lot to Dipchan). The balance of the six acres of agricultural land belongs to the appellant. Those boundaries should be clearly defined. It is certainly in the appellant's interest to do so.

Order

(53) The appeal is dismissed. As to the cross-appeal, it is without merit. The trial judge found that the respondents had extinguished the appellant's title to the residential lots. The result was that the tenancy had come to an end as they were now the owners of the residential lots. Secondly, even if the tenancy had continued to exist, the respondents by their own admission had paid no rent since 1970. Under section 5(4)(a) of the Land Tenants (Security of Tenure) Act Chap 59:54, they would have been liable, upon application by the appellant as landlord, to have had the statutory lease terminated by the High Court. Thirdly, the thirty year statutory lease granted by section 4(1) of the Act expired in 2011 and there is no evidence that the respondents had exercised the right of renewal by serving the appellant with a notice of renewal pursuant to section 4(3) of the Act. The cross-appeal is therefore dismissed. The parties shall bear their own costs.

/s/ Nolan P.G Bereaux
Justice of Appeal

I have read the judgment of Bereaux J.A. I agree with it and have nothing to add.

/s/ C. PEMBERTON J.A.

I agree with the judgment of Bereaux J.A. which I have read in draft. I have nothing to add.

/s/ A. DES VIGNES J.A.