IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. S152 of 2015

CV 2014-02288

Between

H.V. HOLDINGS LIMITED

Appellant

And

CHATTERGOON RAJARAM

Respondent

Panel: A. Mendonça J.A.

G. Smith J.A.

J. Jones J.A.

Date of Delivery: November 25, 2019.

APPEARANCES:

Mr. R. Martineau S.C. and Mr. A. Manwah for the Appellant

Mrs. M. Maharaj-Mohan for the Respondent

REASONS

Delivered by A. Mendonça J.A.

1. On November 19, 2019 we dismissed this appeal and indicated then that we will give our reasons for so doing at a later date. This we now do.

2. The only issue in this appeal was whether the Trial Judge (Kokaram J.) was plainly wrong when he found as a matter of fact that a notice to quit was not served on the Respondent on April 15, 1971 as alleged by the Appellant company, H.V. Holdings Limited, (the Company).

3. The Respondent, Chattergoon Rajaram, was the claimant in these proceedings. He sought (1) a declaration that he is a statutory tenant pursuant to the Land Tenants (Security of Tenure) Act Chapter 59:54 (the Land Tenants Act) of a parcel of land comprising 5,000 square feet at 92 Tarouba Road, Marabella; (2) a declaration that he is entitled to exercise the option to purchase the parcel of land at half its market value pursuant to Section 9 of the Land Tenants Act; and (3) an order that a land surveyor be appointed to conduct and carry out a survey of the parcel of land.

4. It is not disputed that the tenancy of the parcel of land began as early as the 1920's when the Respondent's father rented the parcel of land from the then owners. The parcel of land, being a portion of a larger parcel of land, was subsequently conveyed to Hubert Vincent Gopaul and then by him to the Company.

5. The Respondent's father died by 1968 and on January 7, 1971 the tenancy of the parcel of land was transferred to the Respondent's mother. The Respondent's mother died on September 13, 1985. It was the Respondent's case that at the time of his mother's death there was in existence a contractual tenancy between his mother and the Company in respect of the

parcel of land. He further contended that he inherited the tenancy from his mother – the tenancy having been assented to him by deed of assent dated July 17, 2003. In those circumstances the Respondent contended that he is a tenant within the meaning of the Land Tenants Act holding a statutory lease. Accordingly, he is entitled to an option to purchase the parcel of land at half of its market value (see Section 5(5) of the Land Tenants Act). It is also not disputed that the Respondent has taken steps in the purported exercise of the option to purchase.

6. It was however common ground between the parties that the Land Tenants Act would not have the effect of conferring a statutory lease on the Respondent and consequently the benefit of the option to purchase unless there was in existence at the time the Land Tenants Act came into force on June 1, 1981 a contractual tenancy between the Respondent's mother and the Company. For the Respondent to succeed therefore, he would need to establish the existence of such a contractual tenancy at June 1, 1981. The Company however contended that the contractual tenancy between it and the Respondent's mother was determined by notice to quit served on April 15, 1971 on the Respondent which required her to quit and deliver up the parcel of land on December 31, 1971. The Company's position is that thereafter the tenant held over as a statutory tenant pursuant to the provisions of the Rent restriction Act.

7. In further information filed by the Company pursuant to the order of the Trial Judge the Company stated that the notice to quit was served by H.B. Webster in the presence of other persons including Byron Gopaul and that service was effected at 92 Tarouba Road, Marabella by H.B. Webster handing the notice to quit to the Respondent who resided with his mother and telling him that it is a notice to quit for his mother.

8. It is helpful to observe that notwithstanding it was alleged by the Company that the notice was not served on the tenant (i.e. the Respondent's mother) but on the Respondent, the parties accepted that such service on the Respondent, if established, would be good service. Further, although rents were paid after the notice to quit was alleged to have been served, no issue of waiver was raised.

9. It was in those circumstances that the issue – and the only issue – for the determination of the Trial Judge was whether the notice to quit was served.

10. Before the Trial Judge Byron Gopaul (Gopaul), the managing director of the Company, gave evidence on behalf of the Company. He provided a witness statement which stood as his evidence-chief and he was cross-examined. The material parts of his witness statement appear at paragraphs 7, 8, and 10. These are as follows:

> "7. Later that year my father [Hubert Vincent Gopaul], [the Company's predecessor in title] took a decision to terminate all the remaining tenancies by the end of that year. In April, 1971, notices to quit were prepared for the tenants, which include those at Southern Main Road, Marabella; Torouba Road, Marabella and Guaracara Tabaquite Road. These were then signed by my father on the 15th in my presence and the original and a carbon copy given to Hugh Barclay Webster for service.
>
> 8. On the 15th April, 1971, I together with H.B. Webster and Ali Kajim, acting for H. V. Gopaul, accompanied Mr. Webster when he served the notices to quit on the various tenants. I was present on that day at 92 Torouba Road, Marabella and saw and heard Mr. Webster hand a notice to quit in respect of this Lot 92, dated 15th April, 1971 addressed to Mrs. Rajaram [the Respondent's mother], widow of Rajaram, deceased, Tarouba Road Marabella, terminating her tenancy on 31st December, 1971, to Chattergoon Rajaram, who was living there, and told him that this was a notice to quit for his mother. Immediately afterwards he wrote on the copy of this notice the words "served on Chattagoon Rajaram" and

signed it underneath these words. A true copy of this notice is hereto annexed and marked "B.G.1" which I now tender into evidence. Mr. Webster died on 28th August, 1996 at age 86 years. H.V. Gopaul died on 1st June 1983 and Ali Kajim died on 29th March, 1996.

10. Subsequently, the company on some of its receipts for this rent endorsed on them that [the Respondent's mother] was a statutory tenant and or that the payment is received without prejudice to the notice to quit served on 15th April, 1971. She never questioned this. After her death in September, 1985 the claimant continued paying the rent for lot 92. Most of the receipts for these rents were in [the Respondent's mother's] estate's name or described her as deceased or in the name of the claimant as her son and endorsed her or him as a statutory tenant and that it was without prejudice to the notice to quit served on 15th April, 1971. He never questioned this…"

11. There was also a Hearsay Notice filed by the Company in which the Company gave notice of its intention to rely upon and give in evidence:

    i. The notice to quit signed by Hubert Vincent Gopaul and endorsed thereon with the words "served on Chattergoon Rajaram" and signed by H.B. Webster; and

    ii. The oral statement of H.B. Webster that the notice to quit was for the respondent's mother referred to at paragraph eight of Gopaul's witness statement,

    on the basis that both Hubert Vincent Gopaul and H.B. Webster were deceased.

12. The Respondent gave evidence on his behalf and was cross-examined. In his witness statement in relation to the question of the service of the notice to quit the Respondent stated:

    "14. I say that the Defendant by further information filed on the 20th day of February 2015 contends that a Notice to

quit was served on me on the 15th day of April 1971 by H.B. Webster informing me that same is for my mother now Deceased. I say that I never received any Notice to quit referred to herein in any capacity whatsoever, nor was I told that the purported notice to quit was for my mother as the first time I had any notice of same was by the 1989 rent receipts that was tendered to me after I paid rent I notice that it was written" Payment is received without prejudice to notice to quit served on the 15th day of April 1971" I inquired from the Landlord manager Mr. Byron Gopaul why was he writing that in the rent receipts and was informed "that is nothing is just something I does write in all my rent receipts". I further informed him "but I never received any notice to quit, to which he indicated don't worry about that it is alright I know you are a Statutory tenant just get your papers from the will and come I will sell the land for half the market value to you".

15. I say that that no notice to quit was served on me to with respect to the said tenancy as purported by the Defendant on the 15th day of April 1971 and as such the tenancy was ongoing under the Land Tenants [(Security of Tenure) Act] so that I could buy the land at half the market value."

13. The Trial Judge found that it was more probable that the notice to quit was not served on the Respondent as the Company contends. Accordingly he gave judgment for the Respondent. The Appellant by this appeal appealed from that finding, which is a finding of fact, and sought an order of this court setting aside the Trial Judge's finding.

14. It is well settled that the Court of Appeal should be slow to set aside a Trial Judge's finding of primary fact. This caution is based on matters of policy (See **B (A child) (Care Proceedings: Threshold Criteria) [2013] 1 WLR 1911**) and more practical grounds, namely (1) the recognition that the Trial Judge enjoys the advantage of having seen and heard the witnesses whereas the Court of Appeal has only a transcript of the evidence. In those circumstances,

as Bereaux J.A. noted in **CA 86 of 2011 Attorney General of Trinidad and Tobago v. Anino Garcia,** "Intonation of voice, manner of delivery, reactions to questions, hesitations, eye contact, attitude and other courtroom dynamics are all lost in transcription so to speak"; and (2) the recognition that the Trial Judge's finding of fact are generally an incomplete statement of the impression the evidence has made on the Trial Judge. This consideration was expressed in this way by Lord Hoffman in **Biogen Inc. v. Medeva plc [1997] RPC 1, 45**:

> "The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance … of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."

15. In those circumstances, it has been said that the court should not set aside the Trial Judge's finding of fact simply because it would have arrived at a different finding but should do so only if it is satisfied that the Trial Judge has gone plainly wrong. What that means was explained in **Beacon Insurance Company Limited v. Maharaj Bookstore Limited [2014] UKPC 21**. Lord Hoffmann speaking on behalf of the Privy Council stated:

> "It has often been said that the appeal court must be satisfied that the judge at first instance has gone "plainly wrong". See, for example, Lord Macmillan in Thomas v Thomas at p 491 and Lord Hope of Craighead in Thomson v Kvaerner Govan Ltd 2004 SC (HL) 1, paras 16-19. This phrase does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts: Piggott Brothers & Co Ltd v Jackson [1992] ICR 85, Lord Donaldson at p 92. Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings

> of fact which he did in the face of the evidence as a whole. That is a judgment that the appellate court has to make in the knowledge that it has only the printed record of the evidence. The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions. Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence: Choo Kok Beng v Choo Kok Hoe [1984] 2 MLJ 165, PC, Lord Roskill at pp 168-169."

16. Occasions on which the Court of Appeal may interfere with the Trial Judge's findings of fact also include cases where there is no evidence to support the finding, where the decision is based on a misunderstanding of the evidence, where the Judge failed to take account of some relevant piece of evidence, or to appreciate its proper significance, where the Trial Judge took into account something which he ought not to have taken into account or to attribute to it a significance which it did not rightly have, or where the decision is one which no reasonable judge could have reached (See **CA 116 of 1996 Etienne v. Etienne** and **B (A Child) (Care Proceedings: Threshold Criteria) (supra)**).

17. Mr. Martineau SC appearing on behalf of the Company made several submissions in his endeavour to persuade the court that the appeal should be allowed and the finding of fact by the Trial Judge set aside. We will now discuss these.

18. The first submission relates to receipts that were annexed to the Respondent's amended statement of case. These were receipts that were issued by the Company and its predecessors in title for rents paid in respect of the parcel of land firstly by the Respondent's father and after his death on behalf of his estate, then by the Respondent's mother and after her death on behalf of her estate and then by the Respondent. On a number of the receipts appears the notation "payment is received without prejudice to

notice to quit served on 15/4/71". The receipts are referred to at paragraph 6 of the statement of case. The relevant portion of that paragraph is as follows:

> "The [deceased i.e the Respondent's mother] paid the said rent until her demise and thereafter [the Respondent] commenced payment to the Company in the sum of $82.04 yearly rental and taxes for the said dwelling house in the sum of $42.90. Copies of the rental receipts are attached and marked E".

19. Mr. Martineau argued that since the receipts are pleaded without qualification or comment, it is part of the Respondent's case that payments of rent were made without prejudice to the service of the notice to quit. The receipts therefore on the respondent's own pleading corroborated the fact of service and supported the Company's case. The Trial Judge, however, paid no regard to that.

20. We do not accept that argument as it focuses too narrowly and singularly on that portion of paragraph 6 of the amended statement of case set out above and ignores the other pleading of the Respondent as well as his evidence denying that a notice to quit was served.

21. In the defence and counterclaim of the Company, service of the notice to quit is pleaded. This was met by a defence to counterclaim in which the Respondent denied that the notice to quit was served. The Respondent's witness statement also contained a clear denial that he was served with a notice to quit. That witness statement stood as his evidence-in-chief and the Respondent was cross-examined on it. There was no suggestion in the cross-examination that by annexing the receipts to his statement of case the Respondent was accepting that there was service of the notice to quit. Indeed the Respondent's evidence was that when he first noticed the endorsement he raised it with Gopaul saying that he was never served with a notice to quit and that he was assured by Gopaul that the endorsement was

"nothing" and was "just something" he writes on receipts. It is clear that the Respondent was not accepting that he was served with the notice to quit and it is not possible to suggest that the receipts provide any corroboration of the fact of service. It seems to us that the receipts were annexed simply with a view to establishing the Respondent's tenancy and that any suggestion that annexing the receipts to the statement of case amounts to corroboration that the notice to quit was served is misconceived.

22. Mr. Martineau also submitted that the Respondent's defence to counterclaim in which he denied service of the notice to quit is a bare denial. He referred to **CA 244 of 2008 MI5 Investigations Limited v. Centurion Protective Agency Limited** where this court held that were a defendant does not comply with Rule 10.5(4) of the Civil Proceedings Rules and state in his defence the reasons for denying an allegation in the statement of case (which includes a counterclaim) or where he intends to prove a different version of events does not put forward his own version, the court is entitled to treat the allegation as undisputed or the defence as containing no reasonable defence to the allegation. It was submitted that the Respondent failed to comply with Rule 10.5(4) and the court should treat the allegation that the notice to quit was served as undisputed.

23. The fact of the matter, however, is that that point was not at any point in time taken in the court below. Instead the parties put before the court as a live issue whether there was service of the notice to quit. The Respondent filed evidence in which he gave his reason for denying that there was service of the notice to quit and that was received without objection. The court was duty-bound to decide the issue and could not ignore the evidence. It is now too late to raise any issue of the adequacy of the Respondent's pleading denying that there was service of the notice to quit.

24. Another submission made by Mr. Martineau was in relation to a letter dated October 13, 2010 written by the Respondent's attorney-at-law before the proceedings were commenced. The letter stated that the Appellant is entitled to purchase the parcel of land at half the market value pursuant to the provision of the Land Tenants Act and called upon the Company to honour what the Respondent saw as the Company's obligation to sell him the parcel of land at half its market value. The letter threatened legal proceedings if the Respondent did not receive (presumably a favourable) response within fourteen days. In that letter, the Respondent's attorney-at-law states that her instructions were that the Respondent had been a tenant of the parcel of land since April 15, 1971. This, said Mr. Martineau, is inconsistent with the Respondent's case. Further, April 15, 1971 is the date the Company alleges the notice to quit was served. It is odd, he said, that although the Respondent was disputing service of the notice to quit, he claimed to have been a tenant of the parcel of land from the same day the Company said the notice was served. The Trial Judge, however, did not take the letter into account.

25. We agree that the letter is inconsistent with the Respondent's pleaded case. It was not however the only letter written on behalf of the Respondent before the commencement of the proceedings. There was a prior letter dated November 26, 2008 written by the Legal Aid and Advisory Authority written on behalf of the Respondent. That letter complained of the Company's refusal to accept rent from the Respondent since 2006 but also explained how and when the Respondent became a tenant of the parcel of land in a manner consistent with the Respondent's pleaded case and his evidence.

26. Further, if the notice to quit was not served on the Respondent, the Company does not dispute the circumstances as set out in the Respondent's

pleaded case when and by which he claimed he became a tenant of the parcel of land and his evidence to that effect.

27. In those circumstances, it is not surprising that the letter of October 13, 2010 assumed no significance at the trial. There was no cross-examination on it. It was not put to the Respondent to allow him an opportunity to explain the reference to April 15, 1971, nor was the letter referred to by counsel then appearing for the Company in his closing submissions to the Trial Judge.

28. It seems to us that the date of April 15, 1971 was simply an error and was treated as such by the parties. In our view, the Trial Judge cannot be criticised for not referring to it and his failure to do so does not in any way advance or assist the Company's case.

29. Other criticisms were levelled at the Trial Judge's analysis and treatment of the evidence, namely:

    i. The Trial Judge did not deal with the hearsay evidence;

    ii. He was wrong when he said of the Company's evidence of service of the notice to quit that it was short on details;

    iii. The Trial Judge stated that at the time of service no enquiries were made of the whereabouts of the Respondent's mother when there is no requirement to do so;

    iv. The Trial Judge observed that the date of service of the notice to quit was not endorsed on the notice by the process-server, H.B.Webster, but there is no necessity to do so;

    v. The court accepted as a fact that the Respondent complained of the endorsement on the 1989 receipt that the payment of rent was received without prejudice to the service of the notice to quit but the

Respondent did not complain of the 1988 receipt that had a similar endorsement;

vi. The Trial Judge observed that the Company did not explain to the Respondent's mother the endorsement on a receipt issued in 1984 that referred to her as being a "stat. tenant" but there was no obligation to do so;

vii. The Trial Judge was wrong to say that there was nothing to corroborate the fact of service save for the endorsement on the notice to quit which did not specify the date of service; and

viii. The Trial Judge wrongly concluded that Gopaul had accepted telling the Respondent that the endorsement on the receipts that rent was received without prejudice to the service of the notice to quit was a mere formality.

30. With respect to (i), as we noted earlier, the Company filed a Hearsay Notice giving notice of its intention to rely on (1) the endorsement on the notice to quit signed by Hubert Vincent Gopaul and endorsed thereon with the words "served on Chattegoon Rajaram" and signed by H.B. Webster and (2) the oral statement of H.B. Webster to the Respondent that "this is a notice to quit for your mother". It is however not true to say that the Trial Judge did not deal with that evidence. He admitted the evidence and referred to it. He noted that the endorsement on the notice to quit did not bear the date it was served. That is correct. He also noted, correctly in our view, that the hearsay evidence set out the circumstances of the service of the notice to quit in identical fashion as Gopaul's evidence. In those circumstances it seems to us that what the Trial Judge was inferring is that if he could not accept the evidence of Gopaul, who was before him and whose evidence was being tested by cross-examination, then he could not rely on the hearsay evidence, the veracity and reliability of which depended on the veracity and reliability

of Gopaul's evidence. That seems to us to be entirely logical and reasonable. The Trial Judge considered Gopaul's evidence and we will come to the Company's criticism of the Trial Judge's treatment of that evidence later in this judgment. But so far as this criticism is concerned we do not see any merit in it.

31. In relation to (ii), the Trial Judge commented at paragraph 8 of his judgment that the evidence of both parties in relation to the service of the notice to quit was short on details. In relation to the Company's evidence the Trial Judge stated that Gopaul does not explain where the Respondent was when the notice to quit was served or whether enquiries were made of the Respondent's mother (by which we understand the Judge to mean enquiries of the whereabouts of the Respondent's mother). In so far as the Trial Judge said that Gopaul did not explain where the Respondent was, Mr. Martineau says that that is wrong as Gopaul clearly states that he was present at 92 Tarouba Road and saw H.B. Webster serve the notice to quit on the Respondent.

32. While Gopaul's evidence clearly identifies where he was at the time the Respondent was served, it is possible to read Gopaul's evidence as not clearly identifying where the Respondent was at the time of the service of the notice to quit. Even if it can be said that that is not an entirely fair observation by the Trial Judge of Gopaul's evidence, the Trial Judge does not appear to place any weight on that when he outlined his reasons for rejecting Gopaul's evidence. It should however be noted that the Trial Judge was correct when he said that there is no evidence that Gopaul or the process-server made any enquiries of the whereabouts of the Respondent's mother.

33. As regards (iii), this observation by the Trial Judge is accurate. It is also in our view reasonable to expect that someone attending at premises to serve a tenant with a notice to quit would enquire whether the tenant was there in

order to be served with the notice to quit. In the circumstances, the observation by the Trial Judge that no enquiries were made as to the Respondent's mother seems to us to be entirely reasonable and not the subject of any proper criticism.

34. With respect to (iv), the Trial Judge observed that the date of service of the notice to quit was not endorsed. It was objected by Mr. Martineau that there is no necessity for the process-server to have done so.

35. The Trial Judge's observation that the date of service was not endorsed on the notice to quit is accurate. It seems to us to be entirely reasonable to expect that in relation to a notice to quit, where the date of service is often of significance, that the process-server would endorse the date of service on the copy of the notice to quit, which is in effect the return of service, and not only the person on whom it was served. This too we see as a reasonable observation made by the Trial Judge and not open to any proper criticism.

36. In relation to (v), it is true that the receipt issued by the Company for the payment of rent for the year 1988 contained an endorsement that it was issued without prejudice to the notice to quit. The Respondent made no complaint of this. But his evidence is that he first noticed the endorsement on the 1989 receipt and he then enquired of Gopaul why that was written on the receipt as the notice to quit had not been served. It was open to the Trial Judge to accept that evidence of the Respondent as he eventually did.

37. The criticism at (vi), in our view, misses the mark. The Trial Judge did not say that there was an obligation on the Company to explain to the Respondent's mother what the endorsement "stat. tenant" meant. It is the evidence that on one of the receipts the words "a stat tenant" was written. The receipt was made out to the Respondent' mother and the words "a stat tenant" appeared immediately after her name. The receipt was issued in 1984. Gopaul in his evidence was in effect saying that as service of the notice to

quit terminated the contractual tenancy and made the Respondent's mother a statutory tenant, the receipt which identified the Respondent's mother as a "stat. tenant" – meaning in effect a statutory tenant – supported the Company's allegation that there was service of the notice to quit. But he says the Respondent's mother never questioned that. The Court was in effect being asked to say that as the Respondent's mother did not complain that the receipt stated she was "a stat. tenant" that would support the Respondent's case. The Trial Judge's observation that the term was not explained to the Respondent's mother was directed at this.

38. There was evidence that the Respondent's mother signed by using her thumbprint and the inference could be drawn that she was likely not literate. Further, the Trial Judge found that the words "stat. tenant" were too vague and uncertain to convey to the occupier that a notice to quit was served thereby terminating the contractual tenancy. In short, the Judge was of the view that the term needed to be explained to the Respondent's mother before any significance could be attached to the fact that she never questioned the reference to "stat. tenant" on the receipt. It was in those circumstances that the Trial Judge found that during her lifetime she did not have the opportunity to challenge any allegation that a notice to quit was served on her in 1971. The Trial Judge cannot be faulted for coming to that conclusion nor for observing in the context as described above that the term "stat. tenant" was not explained to the Respondent's mother.

39. In relation to (vii), the Trial Judge did make that statement but the context in which it was made must be understood. The evidence capable of corroborating the evidence of Gopaul that there was service of the notice to quit was (a) the endorsed notice to quit, that it was served on the Respondent and signed by H.B. Webster; (b) the oral statement said by Gopaul to have been made by H.B. Webster to the Respondent that the notice to quit was for his mother ((a) and (b) are essentially the hearsay

evidence); and (c) the receipts that referred to the tenant as "stat. tenant" and contained the endorsement that "payment is received without prejudice to notice to quit served on 15/4/71".

40. The Trial Judge considered that evidence. He noted that (1) the endorsement on the notice to quit did not bear the date of service which was a critical aspect of the case. The endorsement therefore did not support the Company's case that the notice to quit was served on April 15,1971; (2) the other persons who could corroborate the fact of service namely H.B. Webster and Ali Kajim were both deceased; (3) the hearsay evidence which in effect set out the circumstances of service of the notice to quit in in the identical fashion as Gopaul and depended on the veracity and reliability of Gopaul's evidence; and (4) in relation to the receipts, the Company's case was that they supported the fact of service as there are words written on them that link the receipts to service to notice to quit well before the proceedings were commenced. The first such receipt was issued in 1984. On that receipt the words "stat. tenant" are written. Then there is the receipt issued in 1988 which is endorsed with the words "payment received without prejudice to the notice to quit served on 23/4/71 dated 15/4/71" and on receipts issued thereafter the words "payment is received without prejudice to notice to quit served on 15/4/71" are endorsed. The Trial Judge said that the explanation that the words "stat. tenant" – an abbreviation for statutory tenant – in the 1984 receipt were linked to the service of the notice to quit on April 15, 1971 did not "ring true" as the words "statutory tenant" appeared on receipts issued before 1971. According to Gopaul, the endorsements were made as a matter of policy or legal advice but the Trial Judge also did not accept that explanation. He noted that policy or legal advice would not serve to explain why an endorsement first appeared in the 1984 receipt, when it was claimed that the notice to quit was served in 1971, and not again until 1988. He also observed that there was no mention of any

policy or legal advice in Gopaul's witness statement. Mr. Martineau took issue with that criticism saying that the pleading did not invite or provide any basis for the Company to have said anything about that in Gopaul's witness statement. We do not agree. By the time the witness statement of Gopaul was filed, it was very clear that the Respondent was denying there was service of the notice to quit. In so far as the Company's position was that the receipts supported the fact of service, we think it reasonable to expect something to have been said of the reason that some receipts bore the endorsed words and others did not. In so far as the witness statement did not, the Trial Judge was entitled to make that observation and take it into account in determining the reliability of the evidence. It was in this context where the Trial Judge found that he could not rely on the matters capable of providing corroboration of the fact of service that he said there was no corroboration and the determination of whether the notice to quit was in fact served depended on the viva voce evidence. We cannot disagree with the Trial Judge.

41. As regards (viii), the submission is essentially that the Trial Judge misconstrued the evidence of Gopaul when he said that Gopaul accepted that he told the Respondent that the endorsement on the receipts that payment was received without prejudice to the service of the notice to quit was a formality.

42. It was the evidence of the Respondent that when he saw the endorsement on the 1989 receipt he went to Gopaul and asked why that was stated on the receipts. According to the Respondent, Gopaul told him that "is nothing, is just something I does write in all my receipts". The Respondent further stated (as appears at paragraph 14 in his witness statement as we have set out above) that Gopaul told him not to worry, he knew that he was a statutory tenant and he would sell him the parcel of land at half the market value.

43. In cross-examination Gopaul accepted that the Respondent came to him about buying the land and that he spoke to him. But Gopaul denied that he told the Respondent he could buy the land at half its market value. Gopaul was then cross-examined on whether he told the Respondent that "it was a formality". It seems to us that "formality" was shorthand for what the Respondent said Gopaul told him about the endorsement on the receipts being nothing and just something he puts on the receipts. What follows is not entirely clear with Gopaul seemingly accepting at one point that it was a formality. Perhaps the use of his shorthand contributed to that lack of clarity. But we think on a fair reading of the evidence, Mr. Gopaul was not accepting that he told the Respondent there was nothing to the endorsement. To the extent that the Trial Judge was of the view that Gopaul accepted that he said that to the Respondent and that was an inconsistency in Gopaul's evidence, we do not agree. But in our view, that is not sufficiently material to undermine the Trial Judge's findings.

44. The Trial Judge had before him two competing claims. The Company's case that the notice to quit was served on April 15, 1971 on the Respondent and the Respondent's case that the notice to quit was not served. As we have stated above, in our view the Judge correctly held that there was no corroborating evidence on which he could rely and it came down to the viva voce evidence of Gopaul and the Respondent. The Trial Judge had the benefit of seeing and hearing them and preferred the evidence of the Respondent.

45. The Trial Judge indicated that the Respondent's evidence was unshaken. There is clearly nothing in the transcript of the cross-examination of the Respondent that would suggest otherwise. With respect to Gopaul, the Judge found that he offered untruthful evidence for his explanation of the endorsement on the 1984 receipt. According to the Judge, his explanation did not "ring true". The Judge also found that Gopaul was not credible when he denied telling the Respondent that he would sell him the land at half its

market value and that there is nothing to the endorsement, just something he writes on his receipts. According to the Respondent, having been told that by Gopaul, he incurred the expense of conducting a valuation of the parcel of land. The Judge found that the Respondent's subsequent action in incurring the expense of a valuation was consistent with the Respondent's evidence of what he was told by Gopaul. He therefore accepted the Respondent's evidence. We agree that the Judge was entitled to accept that evidence of the Respondent in preference to that of Gopaul and to do so for the reason he has given.

46. The Judge also was correct to point out inconsistencies in Gopaul's evidence. According to Gopaul, he said that some of the receipts issued to the Respondent's mother indicated that she is a statutory tenant. However, there is only one such receipt. Gopaul also said that there were some receipts issued to the Respondent's mother containing the words that the payment was received without prejudice to the service of the notice of quit on 15/4/71. There were however no such receipts.

47. In our judgment it was open to the Trial Judge to prefer the evidence of the Respondent. In our judgment therefore we cannot say that the Trial Judge was plainly wrong. For these reasons the appeal was accordingly dismissed. Counsel for the Respondent indicated that she was not seeking any order as to costs on the appeal. Accordingly we made no order as to costs.

A. Mendonça J.A.

G. Smith J.A.

J. Jones J.A.