REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. C.V. 2009 – 01533

IN AN APPLICATION FOR THE CONSTRUCTION OF THE SETTLEMENT DEED REGISTERED UNDER NO. 15585 OF 1958 DATED THE 28TH JUNE, 1958

BETWEEN

SEETA GROVER

CLAIMANT

AND

SUSHEILA MAHARAJ
ANNA MAHARAJ
(Personal Representative of the Estate of Vijai Maharaj, Deceased)
ANNAND MAHARAJ
GYAN MAHARAJ
D.S. MAHARAJ LIMITED

DEFENDANTS

JUDGMENT

Before The Honourable Madam Justice Charmaine Pemberton

Appearances:

For the Claimant: Mrs L. Maharaj S.C. leading Mr D Rambally instructed by M. Khan

For the First Defendant: Ms. S. Persaud

For the Second Defendant: Mr K Harrikissoon

For the Third, Fourth and Fifth Defendants: Mrs D. Peake instructed by Mr R Kawalsingh

[1] The sole issue for determination was succinctly stated by Mrs Maharaj in her opening statement which I adopt. It is:

> ***In whom does the remainder in the subject property vest after the determination of the prior life estates*****?**

There are two opposing conclusions of the subject deed which give rise to the issue:

(1) The Settlement Deed of 1958 is to be interpreted as at the date of its delivery, so that the beneficiaries are Seeta, Susheila and Vijai.

(2) The Settlement Deed of 1958 is to be interpreted as at 28th September 2005, the date of death of the last surviving tenant, Bissoondaye so that:

(a) the children who were born illegitimate, at the very least Seeta, Susheila, Vijai and Annand are the intended beneficiaries, irrespective of the dates of their birth;

(b) since there were no illegitimate children as at Bissoondaye's death, the meaning to be ascribed will be to "all" of her children;

(c) the gift will fail.

[2] **RELEVANT FACTS AND CHRONOLOGY OF EVENTS**

There are no factual disputes between the parties. The chronology of relevant events is as follows:

26/10/53	-	Birth of Seeta Grover née Maharaj
06/02/56	-	Birth of Vijai Maharaj
20/02/58	-	Birth of Susheila Maharaj

26/06/58	-	Deed of Settlement
08/02/60	-	Death of Rookmin
18/05/60	-	Birth of Annand Vickram Maharaj
22/01/61	-	Marriage of Bissoondaye and Deodath Marahaj
15/01/63	-	Birth of Gyan Maharaj
16/03/67	-	Death of Seudath Maharaj
25/07/00	-	Death of Viaji Maharaj
28/09/05	-	Death of Bissoondaye Maharaj

[3] **TERMS OF THE SETTLEMENT DEED**

The Deed comprises a settlement of certain properties between:

> Seudath Maharaj and Rookmin as "The Settlors of the First Part, Bissoondaye the Child of the Second Part and the Trustee of the Third Part.

The Settlors conveyed the fee simple subject to the following successive uses:

(a) to the use of the Settlors as Joint Tenants during their joint lives and the life of the survivor;

(b) from and after the death of the Settlors to the use of the child ("the Life Tenant") during her life; and

(c) from and after the death of the child ("the Life Tenant") to the use of **the illegitimate children of the child** ("Life Tenant").

[4] The validity of the settlement deed is not contentious between the parties. The dispute surrounds which of the Life Tenant, Bissoondaye's children can inherit this settled property. In other

words who are "the illegitimate children of the Child" referred to in the Settlement Deed?

[5] To determine who is meant to benefit, two (2) rules are posited:

(1) That the deed speaks from the date of delivery so that the persons to benefit are circumscribed to those in being at that date; or

(2) The court can look at the deed itself so as to arrive as its true construction. Knowledge of the Settlors is important. The court is not confined by the literal meaning of the words or by the above rule. The relevant date for the date of vesting is the date of death of the last life tenant, Bissoondaye. The court has three (3) alternatives either all of the four surviving children benefit in equal shares as joint tenants; or the gift passes to three (3) children or the gift will fail.

[6] **APPLICATION AND FINDINGS**

After an interesting debate between Counsel, I have formulated the relevant legal principles and have applied them to the facts. The principles and findings are as follows:

(1) The Settlement Deed of 1958 (the 1958 Deed) is effective from the date of its delivery, in this case, 26th June 1958;

(2) Once the terms of the 1958 Deed are clear, the disposition will not fail and there is no reason to introduce other or additional tools of interpretation such as presumed knowledge and intention of the Settlors, especially when there is no evidence to support same;

(3) The 1958 Deed was effective to vest interests in ascertainable persons who could have taken possession forthwith but for the existence of prior life interests;

(4) As at 26th June 1958, there were specific and identifiable persons in existence;

(5) There is no evidence that the Settlors wanted this class extended beyond those lives *in esse* fitting the description of "the illegitimate children" known to them as of 26th June, 1958;

(6) The lives *in esse* in 1958 were Seeta, Susheila and Vijai;

(7) Annand was not a life *in esse* in 1958;

(8) The intended beneficiaries were Seeta, Susheila and Vijai;

(9) Settlement Deeds and other *inter vivos* dispositions do not create gifts in the same way as wills, which are ambulatory. Rules for the interpretation of wills are inapplicable;

(10) The 1958 Deed cannot speak from the date of the death of the last Life Tenant, Bissoondaye, so as to vest future interests in those not "*in esse"* at the time of its delivery;

(11) Legitimation, adoption and the change in legal status of the illegitimate children vis-à-vis inheritance upon death of parents do not and cannot affect interests vested before the legitimation, adoption or change in status by law;

(12) The only change wrought is the death of Vijai, since in the absence of words of purchase in an *inter vivos* document the beneficiaries take as joint tenants;

(13) Upon Vijai's death and upon the operation of *jus accrescendi* the settlement property vests in Seeta and Susheila as survivors. They hold the property as Joint Tenants.

[7] **CONCLUSION**

Upon the true construction of the 1958 Deed registered as No. 15585 of 1958 and in the events which have happened since that date the remainder estate which was settled upon "the illegitimate children of the Child;" Bissoondaye (hereafter "the Life Tenant") upon the death of the Life Tenants and upon the death of Vijai devolves upon Seeta Grover and Susheila Maharaj as joint tenants.

ORDER:

IT IS NOW DECLARED AS FOLLOWS:

1. **THAT UPON the true construction of the Settlement Deed registered under No. 15585 of 1958 dated the 28th day of June, 1958 and made between Seudath Maharaj and Rookmin of the First Part Bissoondaye of the Second Part and George Armsby Richards of the Third Part (hereafter "the Settlement Deed") and in the events which have happened since that date, the remainder estate which was settled upon "the illegitimate children" of Bissoondaye (hereafter "the Life Tenant") upon the death of the Life Tenants devolves upon Seeta Grover, Susheila Maharaj and Vijai Maharaj as joint tenants.**
2. **THAT UPON the death of Vijai Maharaj in 2000, the surviving remaindermen Seeta Grover and Susheila Maharaj now hold the settled property described in the 1958 Deed of Settlement in fee simple as surviving joint tenants.**

3. IT IS NOW ORDERED AS FOLLOWS:

a. THAT possession of the Settlement Property be delivered up to Seeta Grover and Susheila Maharaj the Remaindermen;

b. THAT the Registrar do take an account of the income and expenditure including rents and mesne profits for the period from the date of death of the Life Tenant September 28th 2005 to the date of delivery of possession at such date and time to be notified.

4. That the costs to be paid in this action be deferred for further consideration after taking of accounts, to be assessed if not agreed.

5. Stay of Execution at para. 3(a) 6 months.

[8**] BACKGROUND**

The factual position can be clearly understood by reference to the chart in the Annexure to this Judgment.

[9**]** Bissoondaye, was the only daughter of Seudath Maharaj and his wife Rookmin. Sometime in 1958, Seudath and Rookmin (the Settlors) decided to make arrangements for the disposal of three parcels of land. This decision culminated in their executing a Deed of Settlement on 26th June, of that year, ("the 1958 Deed")[1]. The terms of the Deed saw the fee simple estate in the property being settled on Mr George Armsby Richards as Trustee and on themselves for their

[1] See copy of the Deed marked "A" in the Claimant's Bundle of Documents

joint lives and for the life of the survivor, thereafter to their child Bissoondaye for her life and thereafter to "the illegitimate children of the Child".

[10] At the time of the making, execution and delivery of the Deed, 1958, Seeta, Vijai and Sushelia were born[2]. In 1960 the grandmother Rookmin died, and later that year Annand was born. In 1961, Bissoondaye and Deodath, the children's putative father were married. Gyan was born in 1963. The grandfather Seudath died in 1967. The children, with the exception of Gyan, were legitimated in 1965. In 1972, Sushelia was adopted by her uncle. In 2005, Bissoondaye departed this life[3]. By her will she made certain dispositions inclusive of the parcels of land which, by virtue of the 1958 Deed, she held as a life tenant. Bissoondaye purported to devise these properties to her sons, Vijai, Anand and Gyan[4]. The subject properties were not included in the Inventory for probate purposes. The parties to this action, her children and the limited liability company in which she held shares and which had a relationship with the property to be affected, realised that the devises so made could not be honoured without more. The parties met several times, but could not agree on the effect of the Deed and have asked the court to construe the terms.

[2] See copies of documents marked "B" (Seeta's Birth Certificate showing birth date 26th October 1953; Vijai's Certificate of re-registration of his birth showing birth date 6th February, 1956 and Susheila's Certificate of re-registration of her birth showing birth date 20th February, 1958) in the Claimant's Bundle of Documents.

[3] See Death Certificate marked "F" in the Claimant's Bundle.

[4] See Will marked "G" in the Claimant's Bundle of Documents.

[11] The reliefs prayed on the Fixed Date Claim Form filed are:

1. That it may be determined whether upon the true construction of the Settlement Deed registered under No. 15585 of 1958 dated the 28th day of June, 1958 and made between Seudath Maharaj and Rookmin of the First Part Bissoondaye of the Second Part and George Armsby Richards of the Third Part (hereafter "the Settlement Deed") and in the events which have happened since that date, the remainder estate which was settled upon the illegitimate children of Bissoondaye (hereafter "the Life Tenant") upon the death of the Life Tenants devolves upon –

    (i) Seeta Grover absolutely; or

    (ii) Seeta Grover and Susheila Maharaj as joint tenants; or

    (iii) Seeta Grover, Susheila Maharaj and the estate of Vijai Maharaj as joint tenants or otherwise' or

    (iv) any or all of the children of the Life Tenant.

2. Upon the determination of the answer to (1) above that there be an Order that possession of the Settlement Property be delivered up to the Remainderman/Remaindermen with an account of the income and expenditure including rents and mesne profits for the period from the date of death of the Life Tenant to delivery of possession.

3. An order that provision may be made for the costs of and incidental to the application.
4. Such further or other relief as may be just.

[12] I must make mention of the fact that the First Defendant, Susheila Maharaj, through her Counsel, Ms Persaud informed the court that in the main, she adopted the submissions tendered by Senior Counsel for the Claimant. The Second Defendant, Anna Maharaj withdrew from these proceedings. This was confirmed through her Counsel Mr Harrikissoon. Mr Harrikissoon remained in court as an interested party but took no part in these proceedings. The remaining Defendants were Annand Maharaj, Gyan Maharaj and D.S. Maharaj Limited, who I shall refer to as "the Defendants". The issues of fact are agreed. This matter therefore is largely one involving the examination of the principles of law proffered by the parties.

[13] **ISSUES**

In coming to a decision as to which conclusion is correct, I have culled from Counsel's submissions that these are the issues which fall for determination. They are as follows:

1. Is the Settlement Deed of 1958 a valid deed?
2. What rules are to be used when construing a Settlement Deed?
3. Was the Deed of 1958 ambiguous or so incapable of construction so as to cause the gifts created by the Settlors to fail?
4. If the gifts created did not fail, then who are the Remaindermen?
5. Would the gifts be affected by legitimation, adoption or change in legal status?

6. What is the effect of the Doctrine of *Jus Accrescendi* on the vested interests?

[13] **I) IS THE SETTLEMENT DEED OF 1958 A VALID DEED?**

There is no contest between the parties with respect to the validity of the 1958 Deed. Mrs Maharaj gave an interesting and learned discourse on the history and principles of law in this area. I shall not go into the every detail that was presented but shall give a synopsis of her submissions.

[14] **LAW**

The requirements of a valid settlement deed are as follows:

1. There must be good consideration.
2. The Doctrine of Tenure indicates the terms upon which a person may hold land. This must be stated in the deed. Further, the Doctrine of Estates indicates for how long the land is held. Again this ought to be expressed in a deed.
3. A deed by the creation of uses and by the operation of the **STATUTE OF USES** may create different estates and grant different interests in the same property. In other words, land is capable of being held by different persons each holding a different type of estate or interest and each or some for a different duration.
4. The **Rule Against Perpetuities** mandates that property can be given only to those lives in being at the time of the disposition and for a period of twenty one years after.
5. In order to counteract the effect of this Rule, the law recognised the creation and effectiveness of future interests, which are

interests which confer "a right to the enjoyment of the land at a **future time**, such as a right to land by way of remainder after the death of a living person."[5]

6. A future interest may be either contingent or vested. An interest is vested once the following conditions are satisfied:
    a) The person or persons entitled to it must be ascertained; and
    b) It must be ready to take effect in possession forthwith, and be prevented from doing so only by the existence of some prior interest or interests.[6]

[15] **ANALYSIS AND CONCLUSION**

A. **CONSIDERATION**

The 1958 Deed at page 3 states:

> 1. In order to effectuate their said desire and in consideration of the natural love and affection which the **Settlors** bear to the **Child** and **the illegitimate children of the Child and other good causes and considerations them unto moving ...** (Emphasis mine).

There is no argument that these words especially those emphasised are sufficient for me to conclude that this requirement has been satisfied.

[16] B. **NATURE OF A DEED**

The 1958 Deed recites as follows:

[5] See "The Law of Real Property" by The Hon. Sir Robert Megarry and H.W.R.Wade 4th ed. p. 173
[6] See f.n. 5 *op.cit.* p. 173-174.

a) That the Settlors "are seised of the surface of the properties ... in fee simple in possession."

b) That "the Settlors as Settlors hereby convey unto the Trustee (a) the property described in the First and Second Schedules hereto **TO HOLD the same unto the Trustee in fee simple ...** and (b) the property described in the Third Schedule hereto **TO HOLD the same unto the Trustee in fee simple... to the successive uses hereinafter set out that is to say:**

(1) To the use of the Settlors as joint tenants during their joint lives and the life of the survivor;

(2) From and after the death of the Settlors to the use of the Child during her life; and

(3) From and after the death of the Child to the use of the illegitimate children of the Child."

With respect to the 1958 Deed itself, the interests and estates created were life interests by use of the words "during …life" and remainder estates in fee simple by the use of the words "**TO HOLD THE SAME UNTO THE Trustee in fee simple…** and "**From and after the death … to the use of the illegitimate children of the Child**…", with no further words of limitation. The first life estate was created for the Settlors for their joint lives and then for the life of the survivor. The life of the survivor means either Seudath or Rookmin. Seudath and Rookmin therefore took as life tenants from 26th June 1958 until Rookmin's death on 8th February 1960. Thereafter, Seudath held his life interest until his death on 16th March 1967. Bissoondaye's life interest took effect at that time until

her death on 28th September 2005. The third clause in the 1958 Deed created a fee simple estate in remainder to be effected on the death of the named life tenants. The beneficiaries of that remainder estate are stated to be **"the illegitimate children of the Child"**.

[17] This leads neatly to the other issues so as to answer the main question who are the illegitimate children referred to in the 1958 Deed? Those other issues were identified above but it may be worth repeating them here - How is the 1958 Deed to be construed? Was the Deed of 1958 ambiguous or so incapable of construction so as to cause the gifts created by the Settlors to fail? If the gifts created did not fail, then who are the Remaindermen?

[18] **II) WHAT RULES ARE TO BE USED WHEN CONSTRUING A SETTLEMENT DEED?**

MRS PEAKE'S POSITION

Mrs Peake submitted that in light of the fact and circumstances of this case that the court should construe the terms of the 1958 Deed so as to ascertain the true intention of the Settlors in 1958. In other words, I should look at the words in the deed and interpret them so as to give effect to the intention of the Settlors. The usual rules of construction are not enough. According to Mrs Peake, if I take this approach, then I should agree with her that the usual rules should be set aside in this exercise.

[19] Mrs Peake, in her analysis of the facts, laid store by the fact that the "illegitimate children" were not named in the 1958 Deed. They were known to their grandparents so they could have named them "easily". This indicates that the gift was not to particular persons individually to the exclusion of anyone else. The court must approach the Settlement Deed to discover what is the true construction of the term "illegitimate children"? Mrs Peake advises that it is my "duty to obtain the knowledge which the Settlors had of the state of the family". The use of the word "illegitimate" was descriptive rather than in the technical sense to facilitate a gift which would otherwise be void by operation of law since illegitimate children did not have legal recognition.

[20] Mrs Peake asserts that "it is clear" that by the use of the word "illegitimate children" the Settlors intended to include not only Bissoondaye's three children then in existence, that is in 1958 "but also any other children to be born of the union" between Bissoondaye and Deodath Maharaj. There was no intention to exclude any other children. This thesis is borne out by the fact that "a fourth illegitimate child" Annand was born subsequent to the Settlement Deed and "long before" the gift came to vest. Further Bissoondaye and Deodath Maharaj married and bore a fifth child Gyan. Upon the marriage all of the children were legitimated.

[21] The 1958 Deed was never varied and there is no evidence that all of Bissoondaye's children were not treated equally or that the Settlors had intended to benefit only the three children born at the time of the

1958 Deed. Mrs Peake's contentions may be summarised as follows:

1. Applying the principles of interpretation of deeds, the 1958 Deed ought to be construed to give effect to the intention of the Settlors which was to benefit Bissoondaye's children born of the union between Deodath Maharaj and herself who were alive at her death, inclusive of those born at the time of the 1958 Deed.
2. The gift created in the 1958 Deed was a future gift which was intended to be effective upon Bissoondaye's death and not before.
3. The gift was a class gift and not to named individuals, so that it was not only for Seeta, Vijai and Susheila who were alive at the date of the 1958 Deed.
4. Since the gift was to take effect upon Bissoondaye's death, the date for ascertaining the class is upon her death and not before;
5. More than forty years elapsed before the before the gift was due to devolve upon the intended beneficiaries. In fact, during Bissondaye's life there were no illegitimate children if the term was to be used in its technical sense.
6. At the date when the gift came to vest in possession or absolutely, if the term "illegitimate" was to be used in its technical sense, Bissoondaye had no such children and there were no persons falling within that class.

7. At the time that the gift came to vest in possession, the **STATUS OF CHILDREN ACT**[7] had abolished the distinction between illegitimate and legitimate children and gave equal status to all children.
8. The construction of the term "illegitimate" in its technical sense would defeat the Settlors' intention as the gift would fail.
9. To save the gift, and consistent with the principles of interpretation, the court should hold that "illegitimate" was not used in its technical sense with a view to restricting the gift but that the gift should be for the benefit of those who were then born illegitimate and **any** other of Bissoondaye's children born of the union between Deodath and herself, whether born legitimate or illegitimate.
10. Upon that analysis, on Bissoondaye's death, all of her children then alive, Seeta, Susheila, Annand and Gyan should become entitled.

[22] **THE PRINCIPLES OF INTERPRETATION**

The principles which informed these contentions were expressed succinctly. Mrs Peake stated that the exercise of interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all of the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time. The background is the factual matrix inclusive of the surrounding circumstances such as what the parties had in mind in the context of what was going on around them at the

[7] **STATUS OF CHILDREN ACT, 1981**. Laws of Trinidad and Tobago, 2006. Chap. 46:07

time when they were making the instrument which would have affected the language used in the document and the way it would have been understood.

[23] Mrs Peake therefore urged the "modern" approach to interpretation which require a court to "have regard to the background and context and the circumstances of the parties, and to consider whether, against that background and in that context, to give the words a particular or restricted meaning would lead to an apparently unreasonable and unfair result."[8]

[24] The court was reminded of the concept that "the meaning which a document would convey to a reasonable man is not the same thing as the meaning of its words". To Mrs Peake, the wording of the 1958 Deed presented ambiguity as it could not have been the Settlors' intention to exclude any of Bissoondaye's children. For this reason, Mrs Peake referred me to the rules of construction of documents where the secondary meaning of words was allowable to ascertain the intention of the parties and to give effect to it. Using such tools enables the court to "place itself as nearly as possible in the position of the parties".

[25] **MRS MAHARAJ'S CONTENTION**

Mrs Maharaj did not share Mrs Peake's views on several issues. In Mrs. Maharaj's opinion the terms of the Settlement Deed are clear. The rules of construction to be applied to those terms are time

[8] See Written Submissions for the 3rd, 4th, and 5th Defendants. Para. 18

honoured. Surrounding circumstances are of no import. The rules of construction ought not to be departed from and when applied to the clear terms of the Deed admit of only one result.

[26] Mrs Maharaj's contention is that the 1958 Deed is to be read as taking effect from the date of its delivery so that the group of persons to be affected are those satisfying the criteria at that date. In other words, Seudath and Rookmin became Settlors for their joint life and thereafter for the life of the survivor; after to their daughter Bissoondaye for her life and upon her death for her illegitimate children known to them in 1958 – Seeta, Susheila and Vijai.

[27] This contention is based on the premise that the 1958 Deed can only affect lives in being at the date of its delivery. A deed of this nature is a conveyance for good consideration and the rules of interpretation for wills which do not depend on the existence of consideration for validity, are essentially different and attract a different set of rules of interpretation and by extension application. In the same way, the rules of construction for commercial documents have no place in a matter such as this.

[28] **ANALYSIS**

Following from Mrs Peake's summary, I have decided to deal with the points in that order. Before I do so, I must state that the cardinal rule of interpretation of documents is that words must be given their primary meaning. There are principles of law which have developed from the primary meanings, some based on the interest of public

policy. It is permissible to depart from the two (2) tenents if there is clear indication that the parties had some other intention. That indication is evidence. The best evidence is primary evidence that is from the parties themselves. When this is not possible, as here, there may be inferences of intention drawn from the evidence. These rules will apply so as not to frustrate or render void the intention of the parties – in this case – to settle property on their illegitimate grandchildren born of Bissoondaye.

[29] I agree fully Mrs Peake's submissions represent a correct exposition of the law. I am mindful of her statement that "the law does not require judges to attribute to the parties an intention which they plainly could not have had. The object of interpretation is to discover the real intention of the author, the written document of whose mind it is always considered to be, and consequently, the construction must be as near that the minds and apparent intention of the parties as possible."[9]

[30] The entire body of submissions contained correct principles of law. However, could they have applied to this case to produce the result hoped for by the Defendants? Mrs Peake advises that "The intention of the parties is expressed in the words used as they were with regard to the particular circumstances and facts".[10]

[9] See Submissions on behalf of the Defendant at para. 19 citing Volume 13 Halsbury's laws of England 4th ed. Reissue, at para. 163 and 164; **INVESTORS COMPENSATION SCHEME LTD v WEST BROMWICH BUILDING SOCIETY [1998] 1 WLR 896 per Lord Hoffmann p. 912**

[10] See *op.cit. f.n.* 9 para. 197

[31] There are two points that I wish to make at the risk of being repetitive. We must keep in mind that a settlement deed is an *inter vivos* transaction and is unlike a will which is ambulatory. The significance of this is that a settlement deed takes effect during the lifetime of the Settlors. I do not think that there was any departure from the settled rule of law. This is unlike a will which speaks from the death of the maker, the Testator.

[32] If the settled rule of law is to be applied to the facts of this case then the Settlement Deed would take effect from the date of its delivery, 1958. This is opposite in effect from rules concerning the construction of wills.

[33] **THE MODERN METHOD AND USE OF OTHER RULES**

Once one appreciates the concept of seisen it will become clear why the results of interpretation for deeds vesting title in real property differ considerably from the interpretation of other commercial documents. This is another reason why I am not convinced that the basic rules for interpretation of *inter vivos documents* in the nature of settlement deeds have been displaced.

[34] **III) WAS THE DEED OF 1958 AMBIGUIOUS OR SO INCAPABLE OF CONSTRUCTION SO AS TO CAUSE THE GIFT CREATED BY THE SETTLORS TO FAIL?**

MRS PEAKE'S POSITION

Following on Mrs Peake's argument above, she posited that in order to construe the terms to give effect to the Settlors intentions to benefit

their grandchildren, the gift of the 1958 Deed was a class gift which vests absolutely on Bissoondaye's death. If the term "illegitimate" is construed in the restricted technical sense as posited by the Claimant, then the gift would fail since in 2005, at the date of Bissoondaye's death, none of her children were illegitimate. Mrs Peake states that since it was impossible to find any members of the class using the term in its restricted sense at the time of Bissoondaye's death and in order to give effect to the Settlors' intention, "illegitimate" should be construed as referring to Bissoondaye's children alive at the date of her death including those born as at the date of the 1958 Deed. The beneficiaries would therefore be Seeta, Susheila, Annand and Gyan.

[35] Further, if this analysis did not find favour, the concept of family arrangements was urged upon the court.

[36] **MRS. MAHARAJ'S CONTENTION**

Mrs Maharaj did not agree with this analysis and stuck her ground that the 1958 Deed, if properly construed, did not fail and that there was no need to take any excursions into the field of class gifts. Mrs Maharaj relied on several truths which she distinguished for the case at bar to fortify her position.

[37] As for a Deed of Family Arrangement is concerned, there must be some evidence before the court to satisfy the requirements of such specialized contracts and dispositions therein. There is none. This does not apply.

[38] The clear and unambiguous rules of law concerning the creation and devolution of future interests should be applied to the 1958 Deed. This thesis is supported by extracts from Megarry and Wade, and other recognised writers and commentators.

[39] **ANALYSIS**

WERE THE WORDS USED SUFFICIENT TO CONVEY THE FUTURE ESTATE IN FEE SIMPLE IN REMAINDER TO THEIR GRANDCHILDREN, SO AS TO CONCLUDE THAT THE 1958 DEED DID NOT FAIL?

DEED OF FAMILY ARRANGEMENT AND CLASS GIFTS

If one were to regard the gift in the 1958 Deed as a future contingent interest, it would lend support as well to Mrs Peake's further thesis that the Deed should be construed as a family arrangement or that a class gift was created.

CLASS GIFTS

Where a gift of a remainder after a life interest is created in favour of unnamed persons, but who are described by certain characteristics, whether by way of legal status[11] or some other defining mark, the gifts vests in the class of persons fitting that description in existence at the date when the interest can vest in possession or at the date of the trigger for such a gift. In this case, it is posited as Bissoondaye's death in 2005. Most of the cases cited in support of this issue dealt with dispositions made by will. I have already commented on the

[11] Words such as "all our grandchildren children" or "all members of the club" or to my nieces and nephews" can create class gifts.

different rules which must be employed in dispositions of this nature and shall say no more.

[40] In the case **IN Re DEELEY'S SETTLEMENT**[12] the court had to construe a gift so as to decide the members intended to benefit from a class gift. It is worth setting out the terms of the gift if only to say that it is distinguishable from the case at bar. Those terms were:

> The trustees shall hold the shares... in trust for JD for his life and thereafter **for the issue of the said JD as and when they attain the age of 21 years ... in trust for the said BR for her life and thereafter for the issue of the said BR as and when they attain the age of 21 years ... in trust for the said AMD for her life and thereafter for the issue of the said AMD as and when they attain the age of 21 years ... and the balance for PD if and when he shall attain the age of 35 years...**".

[41] The court recognised that "issue" could not be read as children. There was no argument with that. The important principles in this case surrounded the delimitation of the class of persons to exclude those persons who were born after the death of the life tenants and the estates of those who had pre-deceased the life tenants. The main point of distinction is that this settlement concerned "certain funds on trust" as opposed to property interests. Again, the rules will necessarily be different, real property dispositions being subject to

[12] **IN RE: DEELEY'S SETTLEMENT. BATCHELOR ET AL. RUSSELL ET AL**. [1972 D. No. 1742]

specialised rules of construction. This case and the learning in this area do not assist the Defendants' cause.

[42] **FAMILY ARRANGEMENTS**

> **A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family, either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or be saving its honour.[13]**

It is clear that there is need for **evidence** to prove that an instrument in writing made between and among parties fits this description. There are considerations which a court may look at in favouring a family arrangement, such as the continuation of family property within the family. A court must have **evidence** that this was the intention of the members of the family before such a finding is made. In this case, there were two parents who desired that their grandchildren known to them as at 26 June 1958 should not be left without property because the law did not recognise them as lawful heirs of their father. That to me was uppermost in their minds. Suffice it to say that there is no evidence that the Settlors intended the 1958 Deed to take on the attributes of a family arrangement. Having analysed the facts and found that the Settlors intended to

[13] See Halsbury's Laws of England 4th Ed Re-issue Vol. 42 para. 1002. Para. 1003 gives examples of situations that this may cover such as "a resettlement of the family property making provision for an illegitimate son.

benefit Seeta, Vijai and Susheila, the question still remains, was the 1958 Deed effective to give life to their intentions?

[43] **FUTURE INTERESTS**

FUTURE CONTINGENT INTERESTS

The law recognises two types of interests which confer a right to enjoyment of land at a time in the future, by way of a remainder estate or interest. This interest may be vested or contingent. I shall examine whether the interest created by the 1958 Deed was contingent or vested. A contingent interest will be created in the following ways:

1. If the intended beneficiary cannot be ascertained or is uncertain at the time of the making of the gift; or
2. it will not take effect unless or until some future event happens.

If one were to read the 1958 Deed as vesting the future remainder interest as one that is contingent, then Mrs Peake's thesis that the Deed should be construed so as to give effect to the Settlors' wishes, to benefit their grandchildren borne of their sole offspring Bissoondaye will be acceptable. In that case, the construction may have admitted one of three conclusions which may be as follows:

1. That Seeta, Vijai and Susheila were the intended beneficiaries, being *in esse* at the time of the delivery of the Deed;
2. That Annand would have been included as one of the remaindermen since he fell into the class, "illegitimate children of the Child". The rule that

the Deed would be effective from the date of delivery would have been displaced in favour of the rule that the Deed spoke from Bissoondaye's death, since that is the event to trigger the formation of the estate;

3. That since the event triggering the crystallisation of the gift took place in 2005, and that there were no persons fitting the description of "illegitimate" children at that time, to avoid the failure of the gift, Gyan should be included as one of the intended beneficiaries of the 1958 Deed.

[44] **FUTURE VESTED INTERESTS**

The learned authors, Megarry and Wade state that a vested interest may be one that is "vested in interest" or "vested in possession". What is of importance to the case at bar is the estate that is "vested in interest". I am of the view that the law is best explained by the learned authors and I wish to associate myself (if I may) with them:

> If an interest is vested "in interest" but not "in possession" (for which situation the term "vested" is ordinarily used by itself) it is a **"future interest"**, since the right of enjoyment is postponed, yet **it is also an already subsisting right in property vested in its owner: it is a present right to future enjoyment.**

Thus for a future interest to be recognised as a vested interest the remaindermen must be ascertained and be ready to take possession forthwith but for the existence of some prior interest.

[45] It is clear from the terms of the 1958 Deed that the Settlors satisfied the principles of law stated above. They wished to have the effect ascribed to future "vested" interest, so as to secure the property for the grandchildren not only known to them, that is, ascertained at the time, but also known to them to labour under the burden of illegitimacy. The intended remaindermen could have taken possession but for the existence of the prior life interests. The 1958 Deed was effective to vest future "vested" interests in the form of remainder estates to Seeta, Susheila and Vijai.

[46] To my mind, to give the 1958 Deed a meaning other than the one which results from the clear principles of law operational in 1958 would be going counter to what the law expects as espoused by the opening statement of this judgment.

[47] **IV) IF THE GIFTS CREATED DID NOT FAIL, THEN WHO ARE THE REMAINDERMEN?**

MRS PEAKE'S CONTENTION

After the analysis, Mrs Peake's conclusion is that the gift failed, but in order to save it the court must hold that "illegitimate" was not used in its technical sense with a view to restricting the gift to the 3 illegitimate children in 1958. The court should interpret the term in a non-technical sense thus extending the gift to any other children born to Bissoondaye and Deodath Maharaj, whether legitimate or illegitimate. Thus on Bissoondaye's death the living children, Seeta,

Susheila, Annand and Gyan are to be vested with the settlement property.

[48] **MRS MAHARAJ'S CONTENTION**

Not so says Mrs Maharaj. The rules of interpretation are clear. The deed speaks from the date of delivery and the remaindermen are those *in esse,* who were illegitimate at the date of delivery. The remaindermen are therefore Seeta, Vijai and Susheila.

[49] **ANALYSIS**

The principle applicable in this case, that a settlement deed is to be effective from the date of delivery, means that in 1958 the persons who stood to be entitled to the future interest, (which is vested at the time of the 1958 Deed) must have been clearly identified. At that time – Seeta, Susheila and Vijai were *in esse*. Is there evidence to suggest that this situation should be departed from? A reading of the facts the documentary evidence produced do not suggest to me that the Settlors intended to benefit all of the children born to their daughter. Mrs Peake concentrated her efforts on the single word "illegitimate" and did not to my mind take into account the words used in conjunction with it. With respect, that is where Counsel fell into error. To my mind, there was no ambiguity in the words used in the 1958 Deed. There was a clear intention to benefit "the illegitimate children" born to "the Child", Bissoondaye and whom the Settlors knew of. If they did not so intend, they would not have said so. There is no evidence to show that when they gave instructions for the

preparation of the Deed that they intended to settle property not only on the grandchildren that they knew in 1958, but also those to be born.

[50] Further, there is no evidence to lead me to infer that Seudath and Rookmin intended to settle property on "any" illegitimate child of Bissoondaye or even on "her" illegitimate children. They stated, to my mind quite clearly "the illegitimate children". The fact that they were not named does not persuade me that the Settlors intended otherwise. In addition, at the date of Rookmin's death, Bissoondaye was pregnant with Annand. Had there been a desire to benefit him the 1958 Deed could have been rectified to ensure that **any other** children who would have been born illegitimate, beside the three *in esse* at the time of delivery of the 1958 Deed were to benefit. This seems to me to be a clear indication that Seudath and Rookmin intended that the three children *in esse* in 1958 were the ones to benefit under the 1958 Deed.

[51] I do accept that the use of the words "any" or "her" could lead one to conclude that this may have been intended to be a class gift. However, this is not the case here. The use of "the" the definite article speaks to the definition of clear intention, those illegitimate children that were alive and in being and known to the Settlors at the date of the execution of the 1958 Deed. They had been clearly ascertained and were the intended remaindermen.

[52] I am fortified in my view since the Settlors went at great lengths to ensure that a trust was created, life interests followed and that the fee

simple in remainder was created in favour of their living grandchildren as at 1958. In their minds they did as they wanted to do in 1958 which was to take care of the three (3) grandchildren, illegitimate in status at the time and not able to benefit from their father.

[53] Put concisely, at the date of the 1958 Deed there were **three (3) illegitimate** children of Bissoondaye, Seeta, Susheila and Vijai. Annand was born in May 1960, after the date of delivery of the deed. There could be no intention to benefit him. He was not *in esse*. Seeta, Susheila and Vijai were the children to benefit under the 1958 Deed and at the date of the settlement the remainder was vested in them in interest but not in possession since their right of enjoyment was postponed.

[54] **V) WOULD THE GIFTS BE AFFECTED BY LEGITIMATION, ADOPTION OR CHANGE IN LEGAL STATUS?**

MRS PEAKE'S POSITION

Mrs Peake, having determined that the 1958 Deed spoke from Bissoondaye's death, the operation of the **LEGITIMATION ORDINANCE**[14] and **THE STATUTE OF CHILDREN ACT**[15] meant that the gift would fail with the consequences alluded to above. I shall not repeat them.

[14] **LEGITIMATION ORDINANCE 1927,** Laws of Trinidad and Tobago Chap. 5 No. 13
[15] Supra at pg. 22.

[55] **MRS MAHARAJ'S POSITION**

Mrs Maharaj examined whether following events, changes in the law or lapse of time since the death of the Settlors could have frustrated/affected the settlement in any way. With respect to all of the beneficiaries, their legitimation by the parents' later marriage, Susheila's adoption or the passage of the **STATUS OF CHILDREN ACT**[16] did not affect their entitlement. Since the 1958 Deed contained no words of severance, it meant that Seeta, Vijai and Susheila were entitled to take as Joint Tenants. Upon Vijai's death, his not having severed the Joint Tenant, the doctrine of survivorship preserved the estate for Seeta and Susheila.

[56] **ANALYSIS**

It is clear, from the terms of the various statutes, that interests that have been vested prior to the operation of the law are not troubled unless specifically stated. The **LEGITIMATION ORDINANCE, 1927 SECTION 3(1)**[17]**,** the **ADOPTION ACT, 1946 SECTION**

[16] Supra pg. 22

[17] **LEGITIMATION ORDINANCE 1927,** Laws of Trinidad and Tobago Chap. 5 No. 13 Sec. 3(1) states: "Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Ordinance, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in the Colony, render that person, if living, legitimate from the commencement of this Ordinance, or **from the date of the marriage**, whichever last happens."

15(1)[18] and the **STATUS OF CHILDREN ACT, 1983 SECTION 4(1)**[19] all clearly state that position. There is no need to go further.

[57] **VI) WHAT IS THE EFFECT OF THE DOCTRINE OF *JUS ACCRESCENDI* ON THE VESTED INTERESTS?**

Since there were no words of severance used in this *inter vivos* Deed, then Seeta, Vijai and Susheila all held the remainder fee simple estate as joint tenants. Sadly, Vijai departed this life in 2000 and by the doctrine of Survivorship or *Jus Accrescendi* the surviving joint tenants, Seeta and Susheila would hold the fee simple estate as joint tenants.

[58] **CONCLUSION**

The relevant legal principles and application of them may therefore be stated as follows:

1. A Settlement date is effective from the date of its delivery;
2. Once the terms of the 1958 Deed are clear and the gift will not fail, there is no reason to introduce other or additional tools of interpretation;
3. In any event the aids to interpretation must be consonant with the basic rule;

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[18] **ADOPTION ACT 1946**, Laws of Trinidad and Tobago Chap. 46:03 Sec. 15(1) states: "For all purposes, as from the date of the making of an adoption order-

(a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and

(b) the adopted child ceases to be the child of the person who was his parent before the adoption order was made and that person ceases to the parent of the adopted child, as if the adopted child had been born in lawful wedlock to the adopting parent.

[19] **STATUS OF CHILDREN ACT 1983**, Laws of Trinidad and Tobago Chap. 46:07 Sec. 4(1) states: "This Act does not affect rights which became vested before its commencement."

4. Rules for the interpretation of wills are inapplicable so that the 1958 Deed cannot speak from the date of the death of the last life tenant, Bissoondaye, so as to vest future interests in those not *in esse* at the time of the delivery of the deed.
5. At the time of delivery of the 1958 Deed, there were specific and identifiable members of the class;
6. There is no evidence that the Settlors wanted this class extended beyond the lives *in esse* fitting the description of "the illegitimate children of the Child";
7. The lives *in esse* in 1958, the date of delivery were Seeta, Susheila and Vijai. Those were the intended beneficiaries;
8. Legitimation, adoption and the change in legal status of illegitimate children vis-à-vis inheritance upon death of parents' does not and cannot affect interests vested before the legitimation, adoption or change in status by law;
9. The lives *in esse* in 1958 remain the beneficiaries;
10. The only change wrought is the death of Vijai, since in the absence of words of purchase in an *inter vivos* document the beneficiaries take as joint tenants;
11. Upon the death of Vijai, and the operation of *jus accrescendi* the settlement property vests in Seeta and Susheila as survivors. They hold the property as Joint Tenants.

ORDER:

IT IS NOW DECLARED AS FOLLOWS:

1. **THAT UPON the true construction of the Settlement Deed registered under No. 15585 of 1958 dated the 28th day of**

June, 1958 and made between Seudath Maharaj and Rookmin of the First Part Bissoondaye of the Second Part and George Armsby Richards of the Third Part (hereafter "the Settlement Deed") and in the events which have happened since that date, the remainder estate which was settled upon "the illegitimate children" of Bissoondaye (hereafter "the Life Tenant") upon the death of the Life Tenants devolves upon Seeta Grover, Susheila Maharaj and Vijai Maharaj as joint tenants.

2. **THAT UPON the death of Vijai Maharaj in 2000, the surviving remaindermen Seeta Grover and Susheila Maharaj now hold the settled property described in the 1958 Deed of Settlement in fee simple as surviving joint tenants.**

3. **IT IS NOW ORDERED AS FOLLOWS:**

   a. **THAT possession of the Settlement Property be delivered up to Seeta Grover and Susheila Maharaj the Remaindermen;**

   b. **THAT the Registrar do take an account of the income and expenditure including rents and mesne profits for the period from the date of death of the Life Tenant September 28th 2005 to the date of delivery of possession at such date and time to be notified.**

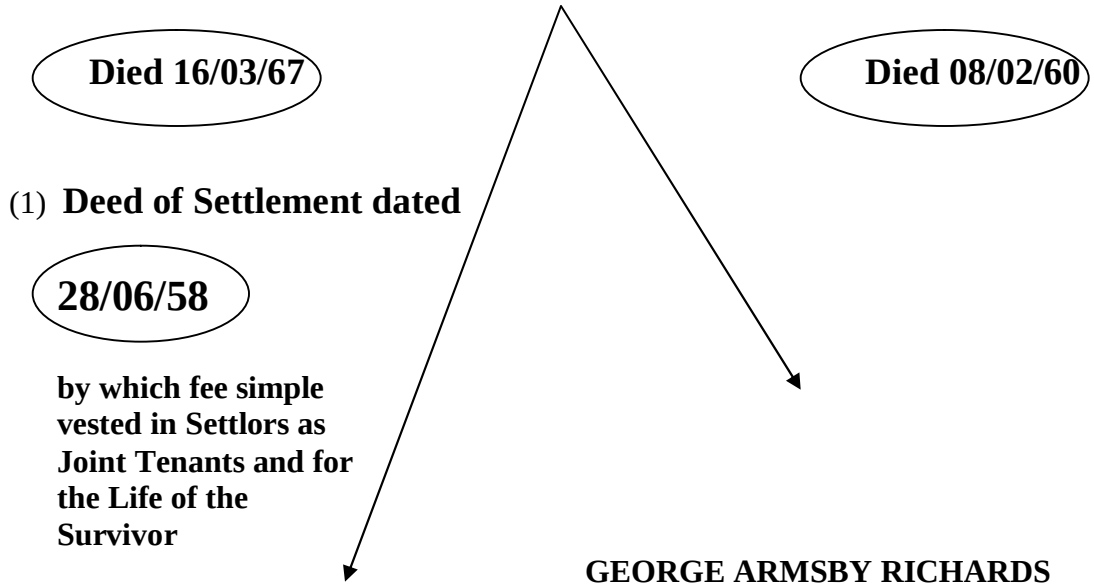
4. **That the costs to be paid in this action be deferred for further consideration after taking of accounts, to be assessed if not agreed.**

Dated this 16th day of July 2010.

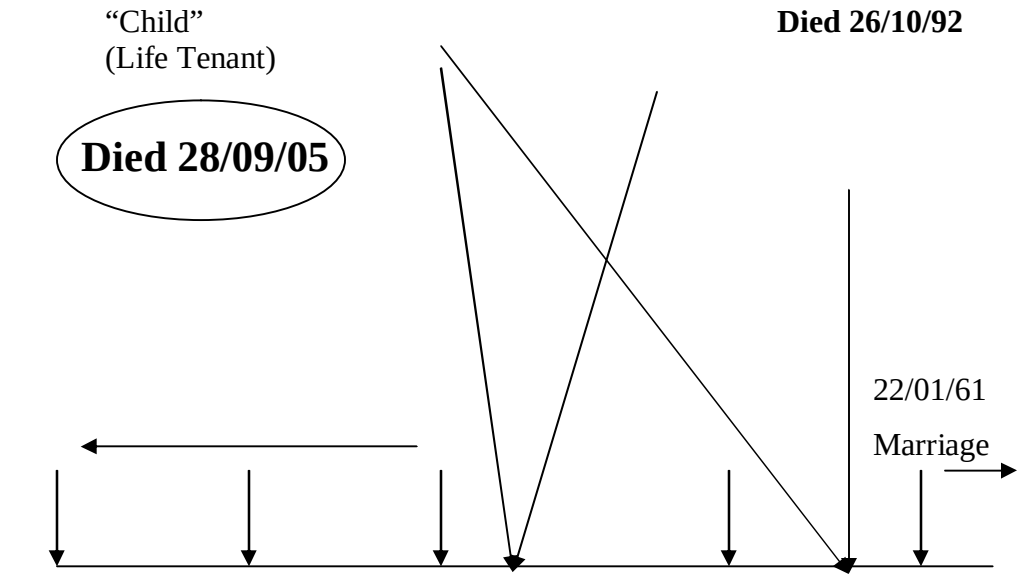
/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE

SEUDATH MAHARAJ & ROOKMIN MAHARAJ

(Settlors)



BISSONDAYE MAHARAJ **&** **DEODATH SEEPERSAD MAHARAJ**



SEETA GROVER	**VIJAI MAHARAJ**	**SUSHEILA MAHARAJ**	***ANAND MAHARAJ***	***GYAN MAHARAJ***
b. 26/10/08	b. 06/02/56 d. 25/07/00	b. 20/02/58	b. 18/05/60	b. 15/11/63