

**THE REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

CV 2009-04436

**BETWEEN
RAJKUMAR SANKAR**

Claimant

**AND
ERICA ST. LOUIS**

Defendant

Before the Honourable Mr. Justice Ronnie Boodoosingh

Appearances:

Ms Marsha King for the Claimant

Mr Jerome Herrera instructed by Mr Brian Camejo for the Defendant

Dated: 8 April 2013

REASONS

1. An oral decision was given in this matter on 24 July 2012.
2. The claimant is the owner of a seven (7) acre parcel of land off the Guaico Tamana Road, Cunaripo. He has developed part of this land which has been subdivided into residential lots. He also paved a roadway along the residential lots. The road is now called Rajkumar Lane.
3. The defendant is constructing a house on a nearby parcel of land. She says she obtained permission to do so from her grandfather's family. The defendant says she has a right of way across the claimant's land to get to and from her house. She says her grandfather used this path. She and other family members have also used this path/route.
4. The claimant says since 2009, the defendant has been trespassing on his lands. She has graded a part of the land to use as an access road for herself.
5. The claimant says he spoke to the defendant about her trespass. He placed a 'no trespassing' sign. He put up a fence. The defendant on 13 November 2009 brought a backhoe and cleared part of his land. The next day the defendant and others came unto the lands and tore down part of his fence. His case is he has all required approvals to develop his land and the defendant is a trespasser. He is seeking a declaration that the 7 acre parcel of land belongs to him only. He is asking for damages for trespass and special damages.

6. The defendant's counterclaim disputes this. She says her grandfather Hubert Carty owned 14 acres of land. She says her family has used a right of way leading up to what is now known as Rajkumar Lane. She is seeking a declaration that she is entitled to a right of way to pass along Rajkumar Lane through an access route leading from her property to Rajkumar Lane. This includes the part that has been graded.

7. It is not in dispute that the claimant has developed lots. It is also not in dispute that he has paved a roadway. Further it is not in dispute that the defendant broke down part of the claimant's fence.

8. The issues for decision were:
 - Whether the defendant has acquired a right of way over the claimant's land – either by way of necessity or by prescription – over 16 years.

 - Consequently, whether the defendant trespassed on the claimant's lands and any damages arising from this.

Evidence

9. The evidence for the claimant was from the claimant; the claimant's son-in-law, Amardeo Thanoo; Dass Ramroop; and Arnold Ramon-Fortune, a surveyor, who surveyed the land for the claimant.

10. On behalf of the defendant, the defendant herself gave evidence and two uncles namely Noel Ainsworth Benjamin and Philbert Benjamin. I will now review the evidence.

11. The claimant says he bought the land. He caused a general survey plan to be drawn. The land was sub-divided. In 2006 he got Town and Country Planning approval to develop lots. He also obtained other approvals from the Regional Authority.

12. He also gave evidence of the alleged trespass by the defendant. He did not give direct evidence regarding the use of a right of way. He says he knows nothing about that.

13. Amardeo Thanoo is the claimant's son-in-law. His evidence was important. The land bought by the claimant had belonged to his mother. This was bought in 1987. The claimant cleared the land bit by bit. Mr Thanoo said at paragraph 6 of his witness statement that his mother had tenants. Only these tenants used a track from the Guaico Tamana Road up to a point on the land. No neighbours used the land otherwise to get to the Guaico Tamana Road – until 2009. He lived in a house all his life along where the track was.

14. He says the claimant paved the area up to where the track was and beyond – which was bush before – and that is now Rajkumar Lane.

15. Dass Ramroop gave evidence of assisting the defendant’s grandfather, Hubert Carty, to move some logs in the 1970s. The path they used to transport the logs was a path south of the Carty’s house – not north of the house where Rajkumar Lane now is.

16. The surveyor gave evidence that he did a survey. There is a road reserve that leads to the defendant’s land which is now undeveloped. The effect of his evidence is that the road reserve is the proper access to her land.

17. The defendant gave evidence that Carty bought the land in 1970. From 1981/1982 she would visit the land frequently. She lived in Woodbrook then. She says there was a wooden two storey house on the family’s land. Her uncles and others would take care of the land with short crops.

18. She said they used a defined route “along an access dirt road situate on State land.....” She said she and her family always used that land. The access route went up to where is now Rajkumar Lane.

19. She said about 2009 they cleared a path to build her house and to gain access to the land.

20. In her witness statement, of significance, she made no mention that the house her grandfather lived in had been burnt down.

21. Both uncles in their witness statements gave evidence of visiting the land and using the access along the Guaico/Tamana Road – along the now Rajkumar Lane. They say Rajkumar Lane was paved from about the late 1990s. The claimant denied this. Their evidence is that their family's land is otherwise landlocked.

22. In evaluating the evidence, I preferred the evidence of the claimant and his witnesses. In particular I accepted the evidence of Mr Thanoo, notwithstanding his close connection with the claimant, and I also accepted that of Mr. Ramon-Fortune. Mr Thanoo impressed me as a person who knew the lands well, having lived at the entrance to the lands in question. Despite his familial relationship with the claimant, I found his evidence to be believable.

23. Mr Thanoo grew up in a house at the entrance to the claimant's land. I was persuaded by his evidence that no one apart from tenants used the path in question and even so only to a point. I found his evidence to be consistent and reliable. It was clear to me that he knew the lands well. He was not shaken in cross-examination.

24. I also found Mr Ramon-Fortune to be a reliable witness. His survey plan and report was clear. Of significance, he identified an access road which is only partly developed along a government road reserve leading to the defendant's land. He identified that road reserve as the defendant's access. This evidence was consistent with a road reserve shown on a plan attached to Hubert Carty's Deed.

25. I found the defendant exaggerated the extent of her visits to the land. I found that the Carty house had burnt down since the early 1980s.

26. The defendant's witnesses were all of the view that the access was via State land. This is consistent with the existence of a road reserve on State land. The defendant accepted in cross-examination that the road reserve was close to Rajkumar Lane and was cut off. The road reserve is halfway down the track of which she spoke.

27. From her evidence, also, no one occupied the Carty house spot until she came to build on the land. Her evidence was also contradictory to the evidence of Philbert Benjamin who gave evidence that they would visit the lands for two to three hours. The defendant gave evidence of spending whole days on the land.

28. I formed the view that Philbert Benjamin certainly did not visit the lands as often as he said. He was unable to say much about the land such as when the road was paved.

29. Noel Benjamin spoke of having to pass on State lands to get to their land. Rajkumar Lane is not on State Lands. He noted the Carty house was burnt down in 1980 and not rebuilt. He said the defendant would not stay over on the lands, which was inconsistent with her version.

30. The defendant's witnesses gave evidence that Rajkumar Lane was used to go to a burial ground north of the lands. However, it does not follow that access by the defendant and her family to the Guaico Tamana Road was through Rajkumar Lane. I found Noel Benjamin to be particularly argumentative as a witness. I was not impressed by his demeanour.

31. I concluded from the evidence that the defendant and her witnesses were asserting the use of Rajkumar Lane as a matter of convenience. It is because it has now been developed that they find it convenient to say this is a right of way.

32. I found on a balance of probabilities that Rajkumar Lane was not used as a right of way to gain access to the defendant's lands before 2009.

33. I found the defendant's evidence exaggerated and vague at the same time.

34. There was also no compelling evidence that Rajkumar Lane was used as a right of way, continuously and uninterruptedly for 16 years.

35. I also do not conclude that it is a way of necessity. I accepted the evidence of Mr Ramon- Fortune that an alternative way exists along the road reserve as the access to the defendant's property.

36. The fact that the road reserve is undeveloped now is of no moment. As the claimant suggested, the defendant could have developed it just as she sought to develop the present access claimed. It may have been a less convenient option. The defendant is simply trying to capitalise on the claimant's work in developing the road and lots along Rajkumar Lane.

37. I am also guided by the law set out in **Boisson v Letrean HCA 4435/1985** per Hamel-Smith J (as he then was) where he said:

“The law is clear – the right only arises by way of necessity, not convenience. [I fully appreciate that this is mountainous terrain and access from that parcel to the dominant land is going to be difficult]. But there is access and a way of necessity can only exist where the alleged implied grantee of the easement has no other means of reaching his land. If other means of access exist, no matter how inconvenient, a way of necessity cannot arise, for the mere inconvenience of an alternative way will not of

itself give rise to a way of necessity (vide Titchmarsh Royston Water Co. 1899 81 LT 673).”

38. I also find that even if the way was used some time ago – which I do not accept – it must have been abandoned since 1980 when the Carty house was burnt. There was little reason to visit the lands after that.

39. The defendant also damaged the claimant’s fence and cut down trees and damaged a part of the paved area. In this exercise she was assisted by other persons. I also accepted the claimant’s evidence that he suffered damage. A valuation report was annexed to his witness statement which has not been challenged.

40. The report, however, does not set out how the figure of \$25,730.00 advanced was arrived at. Considering that there would have been damage I will award nominal damages which must be seen in context. For damages for trespass, the defendant must pay the claimant the sum of \$15,000.00. There was damage to a chain link fence, a paved portion of the roadway and trees. The photos put in tell a story.

Order:

41. There is judgment for the Claimant against the Defendant.

42. The Claimant is entitled to a declaration in terms of paragraph one of his Claim Form.

43. I declare that the Defendant has no right of way either of necessity or by prescription over
Rajkumar Lane.

44. The Defendant has trespassed on the Claimant's land.

45. The Defendant is to pay the Claimant's damages for trespass in the sum of \$15,000.00.

46. The Defendant is to pay the Claimant's costs of the Claim in the sum of \$14,000.00.

47. The Defendant's Counterclaim is dismissed.

48. The Defendant is to pay the Claimant's costs of the Counterclaim in the sum of
\$7,000.00.

49. There is a stay of execution of 28 days.

Ronnie Boodoosingh
Judge