

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2018-00730

**IN THE MATTER OF THE
REAL PROPERTY LIMITATION ACT CHAP. 56:02**

BETWEEN

RICARDO DEWER

First Claimant

NIGEL DEWER

Second Claimant

And

KENNY SEEPERSAD

Known also as

GEORGE SEEPERSAD

First Defendant

JESSIE HOSEIN

Second Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: Friday 27 May 2022

Appearances:

Ms Ebony Young for the Claimant

Mr Ravi Mungalsingh instructed by Ms Tara Bhairosingh for the Defendant

JUDGMENT

I. INTRODUCTION

- [1] The case at bar involves a claim for adverse possession by the Claimants for parcels of land allegedly belonging to the Defendants. The Defendants have counterclaimed, seeking an order that they are the owners of the said Parcels of land, including the portion occupied by the Claimants.
- [2] On 2nd March 2018, a Fixed Date Claim Form together with Statement of Case was filed by the Claimants. In resisting this Claim, the Defendants filed a Defence and Counterclaim on 25th May 2018. The Claimants subsequently filed a Reply to the Defence and a Defence to Counterclaim on 9th October 2018.
- [3] Witness statements were filed by both parties in support of their case and the matter proceeded to trial on 11th December 2019. However, on the date of trial the Defendants did not give evidence although they were present before the Court. They also chose not to cross-examine the Claimants' witnesses. Instead, they opted to defend their case based on submissions of law relative to the Claimants' pleadings and evidence.
- [4] Accordingly, closing submissions were filed by the Claimants on 9th October 2020 and by the Defendants on 23rd October 2020. Both sides opted to file submissions in reply to the respective closing submissions and did so on 7th December 2020.
- [5] It is on the basis of the pleadings, these submissions and the evidence of the Claimants contained in the witness statements of Ricardo Dewer, Nigel Dewer, Joseph Chanersingh, Frederick Dewer, Phillip Ramcharan and William Gilbert John that the Court made its determination on the Claim.

II. THE CLAIMANT'S CASE

- [6] The First and Second Claimants are brothers born on 4th January 1983 and 19th April 1978 respectively and they resided on a Property known as No. 71 Lower Piparo Road Williamsville until 21st February 2015. According to the Claimants, this Property comprised two and one half lots more or less.
- [7] The Claimants' father, Ferdinal Dewer, and his family entered into possession of the said Property in or around 1979 and commenced occupation of the same pursuant to an oral

agreement between himself and a man known to the Claimants as Roland Seepersad. Ferdinal Dewer paid monthly rent to Roland Seepersad up until 1988.

[8] The Claimants contended that between 1988 and 21st February 2015, Ferdinal Dewer and his wife, Bernadette Dewer, and their seven (7) children including the Claimants lived on the Property in the three bedroom, wooden dwelling house situate thereon and had been in undisturbed possession of the said Property.

[9] In or around 1997, the Claimants met the First Defendant whilst he was erecting a sign advertising for sale the lands opposite to the said Property. The First Defendant purported himself to be the son of Ganga Seepersad who had resided on the lands opposite and died in or around 1993.

[10] The Claimants averred that in or around 2007, the First Defendant began visiting the said Property purporting to be the legal owner of same.

[11] Then, by letter dated 25th April 2014, addressed to the Second Claimant, the First Defendant again purported to be the legal owner of the Property under Deed of Conveyance dated 4th May 1971 and registered as DE19712429006 (hereinafter referred to as the “subject Deed”). This Deed which was attached to the letter purported to describe the said Property in the First, Second and Third Parts of the Schedule therein.

[12] The Claimants contended that on 21st February 2015, the First Defendant and/or his servants and/or his agents forcibly and unjustifiably intruded upon the said Property and destroyed the Claimants’ dwelling house and other possession. In response, the Claimants, on March 1st 2015, caused their then attorney-at-law, Mervyn Mitchell, to file **Claim No. CV 2015-00755** which was heard before the Honourable Madam Justice Eleanor Donaldson-Honeywell.

[13] On 15th June 2016, Judgment was given in their favour whereby it was declared that the Claimants were the owners and entitled to possession of No. 71 Lower Piparo Road, Williamsville described as **ALL AND SINGULAR that certain piece or parcel of land situate in the Ward of Montserrat, in the Island of Trinidad comprising ONE (1) LOT more or less and bounded on the North by lands of Trinidad Leaseholds Limited, on the South by Piparo Road, on the East by land of Rattanee Meighoo and**

on the West by lands of Rajcoomar and which said parcel of land is assessed as No. R-123 in the Rolls of the Warden's Office, San Fernando.

[14] According to the Claimants, no further contact was made with their then attorney-at-law, Mr Mitchell, as they assumed that the entire portion of land set out in the Deed was returned to them.

[15] On or around 27th July 2017, the First Claimant caused a tractor to enter the Property to cut the bushes that were growing thereon.

[16] On July 29th 2017, the First Claimant returned to the Property and saw erected thereon, two signs, one on a mango tree and the other on a tamarind tree, stating, "PRIVATE PROPERTY, NO TRESPASSING". It was asserted that the signs were erected by a neighbour, Hazrath Hosein (the husband of the Second Defendant). The First Claimant removed the signs.

[17] It was averred that the First Claimant visited Mr Mitchell and informed him of the situation. During the consultation, it was realised that the judgment on the **Claim No CV201-00755** gave the Claimants only "ONE LOT more or less" and not the two and a half lots claimed which encompassed the entire portion of land described in Deed No. DE19712429006 in the First, Second and Third Parts of the Schedule.

[18] The Claimants then sent a Pre-Action letter dated 2nd August 2017 to Hazrath Hosein wherein they asserted ownership of the said Property and an intention to file a fresh claim.

[19] Subsequently, attorneys for the Second Defendant, Mungalsingh and Company, responded by letter dated 10th August 2017 to the Claimants, implying that the Second Defendant was the owner of a portion of the said Property. The Second Defendant then re-entered upon the said Property and cast a wooden post in concrete and erected "Private Property, No Trespassing" signs.

[20] In response, Counsel for the Claimants responded to the Second Defendant, by letter dated 25th August 2017 stating that the letter disclosed no cause of action. Thereafter, by letter dated 18th December 2017, Counsel for the Second Defendant stated inter alia that the Second Defendant was the owner of the disputed land by virtue of a Deed of Gift in her favour dated 29th September 2017. The Claimants contend that the Deed annexed to

the letter was unsigned by a witness but sworn to by Commissioner of Affidavits, Hosein Sadar.

[21] It is upon this basis that the Claimants sought the following reliefs against the Defendants:

- (i) **A declaration that the Claimants are the owners entitled to possession of No. 71 Lower Piparo Road Williamsville (hereinafter referred to as the said “Property”) described in Deed No: DE1971429006 in the First, Second and Third Schedules thereto;**
- (ii) **Damages for Trespass to the said property against the Second Defendant;**
- (iii) **An injunction restraining the Defendants, and/or their servants, and/or agents, and/or privies from entering or remaining upon or continuing in occupation of or in any way trespassing upon the said Property or dealing with the said Property in any manner adverse to the Claimants’ title as set out in sub-paragraph (a) above;**
- (iv) **An Injunction restraining the Second Defendant and/or her Attorneys at Law from registering and a deed in favour of or pertaining to the said property;**
- (v) **An order that any deed registered purporting to give, sell or dispose of the disputed property be set aside and expunged from the records;**
- (vi) **Exemplary/Aggravated Damages;**
- (vii) **Costs;**
- (viii) **Interest;**
- (ix) **Such further and/or other relief as the nature of this claim may require.**

III. THE DEFENDANT’S CASE

[22] The Defendants averred that they were the paper title owners of the said Property. The Defendants stated that by virtue of the subject Deed dated 4th May 1971 and registered as DE19712429006, Ganga Seepersad conveyed a life interest in the lands described at the First, Second and Third Parts of the Schedule to the Deed to himself and thereafter to his lawful children, Sylvia Seepersad, Harry Seepersad and Kenny Seepersad (the First Defendant) in fee simple as joint tenants. A description of First, Second and Third Parts of the Schedule is set out as follows:

- a) The First Part of the Schedule in the subject Deed describes ALL AND SINGULAR that certain parcel of land situate at Piparo in the Ward of Montserrat, in the Island of Trinidad, comprising or measuring twenty five (25) feet by one hundred (100) feet and abutting on the North by a Road, on the South and West upon lands of Rajkumar and Lalbeharrie and on the East upon lands of Seepersad and Rattanee Meighoo and which said parcel is described in the deed registered as No. 1372 of 1919.
- b) The Second Part of the Schedule in the subject Deed describes ALL AND SINGULAR that certain piece or parcel of land situate at Piparo Road, in the Ward on Savana Grande, in the Island of Trinidad, comprising ONE AND A HALF LOTS more or less, measuring (100) hundred feet each along the Northern, Eastern and Western boundary lines and 50 feet along the Southern boundary line and bounded on the North by Piparo Road, on the South and West by lands of Charles Lalbeharri and on the East by lands of Seepersad and Ratnee and which said parcel of land is described in deed registered as No. 1372 of 1919.
- c) The Third Part of the Schedule to the subject Deed describes ALL AND SINGULAR that certain piece of parcel of land situate in the Ward of Montserrat, in the Island of Trinidad comprising ONE (1) LOT more or less and bounded on the North by lands of Trinidad Leaseholds Limited, on the South by Piparo Road, on the East by land of Rattanee Meighoo and on the West by lands of Rajcoomar and which said parcel of land is assessed as No. R-123 in the Rolls of the Warden's Office, San Fernando.

[23] After the death of Ganga Seepersad in 1993, the First Defendant's siblings, namely Sylvia Seepersad and Harry Seepersad died in 1975 and 2012, both without severing the joint tenancy. As a result, the First Defendant became the sole legal owner of the said Property by the doctrine of survivorship.

[24] Then, by Deed dated 29th September 2017, the First Defendant conveyed the lands described in the First, Second and Third Parts to the Schedule to Deed dated 4th May 1971 and registered as No. 12429 of 1971 to himself and to the Second Defendant as joint tenants.

[25] The Defendants asserted that Roland Seepersad was a relative of the First Defendant's father, Ganga Seepersad, and at all material times acted as the agent of Ganga Seepersad.

[26] The Defendants contended that if the Claimants were tenants of the said Property from 1979 as averred, then their tenancy would be subject to the provisions of the **Land Tenants (Security of Tenure) Act Chapter 59:54**. Under this Act, all residential tenancies were converted to statutory tenancies for a period of thirty (30) years with the option to renew same on 31st May 2011. Given the Claimants' failure to renew on the said date, their statutory tenancy expired.

[27] It was stated that in or around in the 1990s the First Defendant frequently visited the said Property together with his brother, Harry Seepersad, and cultivated and maintained short-term crops thereon inclusive of plantain, fig and ochro. The First Defendant further stated that Harry Seepersad and Harry's sons also planted mango, mahogany, tamarind and coconut trees on the said Property.

[28] After his father died in 1993, the First Defendant assisted Harry in the cultivation and maintenance of the said short crops on the subject Property. He also frequently visited the lands opposite the said Property to ensure that the house that Ganga Seepersad lived in was secure.

[29] In or around 1997, when these lands opposite were being advertised for sale by the First Defendant, he entered upon the said Property as the owner. During this time, he had conversations with the Claimants' mother and informed her that he and his brother were the owners of the land and he intended to sell the said Property. The First Defendant contended that the Claimants' mother indicated her desire to purchase the said Property but failed to pursue this intention. Thereafter, in 1997, the First Defendant sold the lands opposite to the said Property.

[30] It was further averred that in 2007 and again in 2017 the Defendants commissioned the services of Mr Harvey Ramrekha to conduct a survey of the entire lands described in the subject Deed and thereafter in 2017, the Property situate at No. 71 Lower Piparo Road, Williamsville.

[31] The survey plan dated 28th April 2017 showed one parcel of land that was separated into two small parcels, marked as “J1” and “J2”. The Defendants asserted that the lands situate at No. 71 Lower Piparo Road, Williamsville were marked as “J2” on the survey plan and comprised one lot of land while the parcel of land marked “J1” comprised the lands described in the First and Second Parts of the Schedule to the Deed dated 4th day of May 1971 and registered as No. 12429 of 1971.

[32] In this regard, the Defendants denied that the said Property in the case at bar described by the Claimants as No. 71 Lower Piparo Road, Williamsville comprised two and a half lots and accordingly denied that they were in continuous and uninterrupted possession of the said Property.

[33] The Defendants stated that judgment was granted in favour of the Claimants in the High Court Action, **Claim No CV2015-00755** with respect to the Claimants’ entitlement to possession of No. 71 Lower Piparo Road, Williamsville **comprising ONE (1) LOT more or less** (as described in the Third Part of the Schedule of Deed dated 4th day of May 1971) and no more, along with nominal damages for trespass and malicious damage, an injunction against the First Defendant and costs. However, they denied that lands shown at “J1” on the 2017 survey plan of Mr Harvey Ramrekha were the subject of that action as at no time did the Claimants occupy the lands shown at “J1”. **In this regard, the Defendants contended that by virtue of this action, the Claimants have chosen to litigate “J1” and re-litigate “J2”.**

[34] The Defendants asserted that the Claimants never occupied the parcel of land marked as “J1” on the survey plan, yet, on the 26th July 2017 they illegally and/or unlawfully entered upon the Property and bulldozed same. In doing so, they destroyed the Defendants’ trees and short-term crops, leaving only a tamarind tree and a mango tree. Thereafter, they illegally and unlawfully destroyed a “Private Property No Trespassing” sign erected by the Second Defendant.

[35] It is against this background that the Defendants asserted that the Claimants were not entitled to their reliefs sought. Instead, the Defendants counterclaimed for the following reliefs:

- (a) A declaration that the First and Second Defendants are entitled to vacant possession of the piece or parcel of land marked as “J1” on the Survey Plan dated 28th April 2017 and which is described in the First and Second Parts to the Schedule to the Deed dated 4th May 1971 and registered as No. 12429 of 1971.**
- (b) Damages for trespass as regards the lands marked “J1” on the Survey Plan dated the 28th April 2017 and which is described in the First and Second Parts to the Schedule to the Deed dated 4th May 1971 and registered as No. 12429 of 1971.**
- (c) An injunction preventing and/or restraining the First and Second Claimants and/or their servants and/or agents from entering and/or occupying the piece or parcel of land marked as “J1” on the said Survey plan dated 28th April 2017 and which comprises of the First and Second Parts to the Schedule to the Deed dated 4th May 1971 and registered as No. 12429 of 1971.**
- (d) A declaration that the First and Second Defendants are entitled to vacant possession of the piece or parcel of land marked as “J2” on the Survey Plan dated 28th April 2017 and which is described in the Third Part to the Schedule to the Deed dated 4th May 1971 and registered as No. 12429 of 1971.**
- (e) Damages for trespass as regards the lands marked “J2” on the Survey Plan dated the 28th April 2017 and which is described in the Third Part to the Schedule to the Deed dated 4th May 1971 and registered as No. 12429 of 1971.**
- (f) An injunction preventing and/or restraining the First and Second Claimants and/or their servants and/or agents from entering and/or occupying the piece or parcel of land marked as “J2” on the said Survey plan dated 28th April 2017 and which comprises of the Third Part to the Schedule to the Deed dated 4th May 1971 and registered as No. 12429 of 1971.**
- (g) Costs.**
- (h) Such further and/or other relief as the Honourable Court deems fit.**

[36] It is worth noting that the 2017 Survey Plan that demarcated the lands in the subject Deed as “J1” and “J2” is not before the Court as it did not form part of the parties Agreed Bundle of Documents and it was not put in by the Defendants as they opted not to give evidence. Accordingly, the Court had no regard to this Plan and referred only to the 2007 Plan and the subject Deed.

IV. ISSUES

[37] Having considered the pleadings, evidence and submissions, the Court views that the following are the live issues for determination:

1. **Whether the principles of *res judicata* and the doctrine of estoppel arise on the facts of the case?**
2. **If the answer to issue 1 is found to be no, whether the Claimants were entitled to possession and occupation of the entire parcel of land set out in the First, Second and Third Parts of the Schedule on the subject Deed by virtue of adverse possession?**
3. **If the answer to issue 2 is yes, whether the Claimants were entitled to damages for trespass against the Second Defendant?**
4. **In the event, however, the answer to issue 1 is in the negative, whether the First Defendant and/or Second Defendant was/were entitled to ownership and possession of the said parcels of land described in the First and Second Parts of the Schedule to the subject Deed?**
5. **In the event that the answer to issue 4 is in the affirmative, whether the First Defendant and/or Second Defendant is/are entitled to damages for trespass?**

V. LAW & ANALYSIS

[38] Although the Court received considerable submissions from both sides on the issue of adverse possession, I found that any determination on the Claim necessarily required that a decision on the question as to whether this claim constituted a re-litigation of **Claim No CV2015-00755 Ricardo Dewer & Nigel Dewer v Kenny Seepersad** (hereinafter referred to as the “**First Action**”) be made first.

[39] In the Claimants’ closing submissions, they contended that the Court was already satisfied that the Claimants proved their claim of adverse possession in the First Action as in that case, the Learned Madam Justice Donaldson-Honeywell found for the Claimants declaring inter alia:-

ALL AND SINGULAR that certain piece of parcel of land situate in the Ward of Montserrat, in the Island of Trinidad comprising ONE (1) LOT more or less and bounded on the North by lands of Trinidad Leaseholds Limited, on the South by

Piparo Road, on the East by land of Rattanee Meighoo and on the West by lands of Rajcoomar and which said parcel of land is assessed as No. R-123 in the Rolls of the Warden's Office, San Fernando.

[40] However, the Claimants made no submissions as to whether this prior determination rendered the present proceedings a **re-litigation of the First Action**.

[41] On the other hand, the Defendants asserted that the Claimants in their Statement of Case in the First Action claimed a declaration that they were the owners entitled to possession of No. 71 Lower Piparo Williamsville; Damages for trespass; damages for malicious damage; and injunctive relief. It was noted that paragraph 2 of the Statement of Case in the First Action averred that "The First Claimant has lived on the property known as #71 Lower Piparo Williamsville (hereinafter referred to as the property") comprising two and a half lots more or less...". However, Madam Justice Donaldson-Honeywell did not give the Claimants the entirety of the relief sought, that is, the two and a half lots. Rather, she granted a declaration which was made at the Trial that the Claimants were entitled to possession of "**No. 71 Piparo Road" one lot more or less"**.

[42] The Defendants noted that this determination was made even though the First Defendant who was the sole Defendant in the First Action was unrepresented at the trial. This decision was not appealed either by the Claimants or the Defendants.

[43] In this regard, the Defendants submitted that the instant proceedings were an attempt by the Claimants to re-litigate a matter that was already decided by the Court. It was asserted that the Claimants were attempting to claim the additional one and a half lots previously claimed in the First Action but were not given.

[44] Relying on the doctrine of *res judicata*, the Defendants contended that the issue and subject matter of these proceedings were identical to the First Action and these proceedings could not be used to re-litigate or challenge the judgment given in the First Action. It was asserted that if the Claimants were dissatisfied with the outcome of the previous matter, the same should have been the subject of an appeal and not further High Court proceedings. Moreover, it was against the public interest and the interest of judicial efficiency to adjudicate on a matter which was already determined.

[45] Further, it was submitted that the instant claim was an attempt by the Claimants to have a “*second bite of the cherry*” to establish what ought to have been established previously. The Defendants argued that this was an unacceptable state of affairs and amounts to an abuse of the Court’s process. In this regard, the Defendants asserted that the present claim must be deemed a nullity.

Res Judicata

[46] **Halsbury’s Laws of England Volume 12A (2020), paragraph 1568** sets out the underlying premise of the doctrine of *res judicata* as follows:

“... The purpose of the principle of res judicata is to support the good administration of justice in the interests of the public and the parties by preventing abusive and duplicative litigation, and its twin principles are often expressed as being the public interest that the courts should not be clogged by re-determinations of the same disputes; and the private interest that it is unjust for a man to be vexed twice with litigation on the same subject matter...”

[47] Further, in **Halsbury’s Laws of England (Civil Procedure) Vol. 12A (2015) at paragraph 1603** it is outlined that:

“The doctrine of res judicata provides that, where a decision is pronounced by a judicial or other tribunal with jurisdiction over a particular matter, that same matter cannot be reopened by parties bound by the decision, save on appeal. It is most closely associated with the legal principle of ‘cause of action estoppel’, which operates to prevent a cause of action being raised or challenged by either party in subsequent proceedings where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties (or their privies), and having involved the same subject matter. However, res judicata also embraces ‘issue estoppel’, a term that is used to describe a defence which may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided, but, in subsequent

proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue. For this reason, res judicata has been described as a portmanteau term which is used to describe a number of different legal principles with different juridical origins upon which the courts have endeavoured to impose some coherent scheme only in relatively recent times.”

[48] In **Henderson v Henderson [1843-60] All ER Rep 378**, Wigram V.C. emphasized that a Claimant should be prevented from reopening a new case which should have been brought in earlier proceedings. He stated at page 381:

“...where a given matter becomes the subject of litigation in, and of adjudication by a Court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward only because they have, from negligence, inadvertence or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Cause of Action

[49] It is evident from the pleadings that this case shared the same cause of action as the First Action, that is, adverse possession and trespass to land.

Parties

[50] Both claims had similar parties; the Claimants were the same and they brought the present action against the same Kenny Seepersad who is now the First Defendant in these proceedings. Although the Second Defendant was not a party to the First Action, she can be deemed a privy to the action.

[51] A privity refers to any person who possesses a legal or beneficial interest in the previous litigation or its subject matter. According to Sir Robert Megarry in **Gleeson v J Wippell & Co** in order for privity of interest to be established “*there must be a sufficient degree of identification between the two to make it just to hold that the decision to which one was party should be binding in proceedings to which the other is party.*”

[52] The Second Defendant in these proceedings has contended that she is a joint title owner of the said Property by virtue of the purported Deed of Gift which conveyed the said Property to her and the First Defendant as joint tenants. In this regard, the Court’s judgment in the First Action which granted possession to the Claimants of a lot of land which formed part of the Schedule to the subject Deed would accordingly be binding on her.

Subject Matter

[53] It is notable that paragraph 2 of the Claimants’ Statement of Case in **Claim No. CV2015-00755** is almost identical to the Statement of Case in the present matter and similarly identified the said Property as “#71 Lower Piparo Road, Williamsville (hereinafter referred to as “the said Property”) comprising two and one half lots more or less”. Thus, it is evident that the Claimants claimed possession of the same parcels in both proceedings.

Issue

[54] Based on the pleadings of the Claimants in the First Action, the main issue for the Court’s determination was whether the Claimants had established their claim for possession of the said Property by virtue of adverse possession. Notably, the Statement of Case pleaded that the said Property comprised two and one half lots more or less.

[55] It should be pointed out that no description of the property was averred in the Statement of Case of the Claimants in the First Action. Accordingly, at the trial of First Action, Madam Justice Donaldson-Honeywell sought clarification from both Claimants as to their description of the said Property in relation to the subject Deed No: DE1971429006. I found the discourse of the Court at the Trial and evidence of the Claimants under oath to be particularly relevant. The relevant excerpt of the Court proceedings before my Sister Madam Justice Donaldson-Honeywell is detailed as follows:

The Court: Just in terms of the description of the property. In the statement it is described as property known as #71 Lower Piparo Road. Reference is made to a Deed in the Defence and there is actually a copy of that Deed there. So what I wanted to find out from Mr Dewer is if that description he gave of the property is that the same as the property referred to in the Deed that is attached to the Defence at "A". Perhaps you can show that to him Mr Mungal"

Mr Mungalsingh: I have it in the Statement of Case

The Court: You attached the Deed as well?

Mr Mungalsingh: Yes please Mi'lady, at "RD2". Deed of Conveyance dated 4th of May 1971 and registered as DE19712429006

The Court: If it's the same property described in the witness statement.

Mr Mungalsingh: Mi'lady, just for clarification there are three properties described in the Deed and it is the one in the Third Part of the Schedule that is the subject of this action.

The Court: Well I need to get that from Mr Dewer. In his witness statement he described the property as No. 1 Lower Piparo Road. Mr Dewer can you just look at the Deed and point out what part of that, what description of the property that you reside.

Mr Ricardo Dewer: Well Ma'am I am seeing the address as Williamsville Piparo Road and as I know it, it is 71 Main Road, Lower Piparo.

The Court: I am going to allow you to re-examine on that Mr Mungalsingh as I want it to be clear what exactly is the property.

Re-examination of Nigel Dewer

Mr Mungalsingh: Mr Dewer you said that Mr Seepersad presented a deed to you when it is he approached your mother in 2007 and if you look at "RD2" in the Statement of Case, is this the deed that was presented to you?

Ricardo Dewer: Yes

Mr Mungalsingh: This was the deed.

Ricardo Dewer: Yes. This was the deed.

Mr Mungalsingh: And in the Deed, if you turn to the Schedule in the Deed which is on the second page. There are three parts to the Schedule.

Ricardo Dewer: Yes there is

Mr Mungalsingh: *And in those three Parts they describe the different piece of land.*

Ricardo Dewer: *Yes*

Mr Mungalsingh: *And in the piece of land that you describe in your witness statement as No. 71 Lower Piparo Road that would be which one of the Parts of that Schedule?*

Ricardo Dewer: *The Third*

Mr Mungalsingh: *It will be the Third Part?*

Ricardo Dewer: *Yes I believe so.*

Examination-in-Chief of Nigel Dewer

Mr Mungalsingh: *Mr Dewer on the 21st February 2015 you were at home*

Nigel Dewer: *Yes*

Mr Mungalsingh: *And your home is situated at the property known as No. 71 Lower Piparo Road, Williamsville.*

Nigel Dewer: *That's correct*

Mr Mungalsingh: *Have you seen the Deed with respect to that property before?*

Nigel Dewer: *Yes*

Mr Mungalsingh: *And is this the Deed to the property? It is exhibited as "RD2" in the Statement of Case.*

Nigel Dewer: *Yes, correct*

Mr Mungalsingh: *That is the Deed*

Nigel Dewer: *Yes.*

Mr Mungalsingh: *And if you turn the page, you will see three Schedules, three Parts to the Schedule. Do you see three Parts to the Schedule?*

Nigel Dewer: *Yes.*

Mr Mungalsingh: *Do you see the three Parts? Now which Part deals with the property that is the subject of this case?*

Nigel Dewer: *Third*

Mr Mungalsingh: *Third Part?*

Nigel Dewer: *Yes.*

[56] The above excerpts from the trial of the First Action show that both Claimants confirmed that the property described as No. 71 Lower Piparo Road Williamsville i.e. the

said Property in these proceedings referred to the parcel of land contained in the Third Part of the Schedule to the subject Deed. (This evidence clearly contradicts the case of the Claimants in the present proceedings which asserts that the said Property was contained in the First, Second and Third Parts of the Schedule to the subject Deed.)

[57] Notably, Third Part of the Schedule of the subject Deed described a parcel of land comprising **ONE LOT MORE OR LESS**. Despite the pleaded case of the Claimants for two and one half lots more or less, no attempt was made by Counsel for the Claimants to clarify that evidence and ensure that their pleaded case was advanced. In fact, it appears that Counsel also believed that the said Property was described at the Third Part to the Schedule.

[58] Accordingly, upon the basis of the Claimants' testimony and a finding upon consideration of the law on adverse possession, Madam Justice Donaldson-Honeywell granted the Claimants a declaration for possession of **only ONE LOT MORE OR LESS and not the two and a half lots claimed by the Claimants**. It is, therefore, this Court's view that the question of the Claimants' entitlement to possession to the two and a half lots more or less described in the subject Deed was effectively resolved on the express evidence of the Claimants at the trial of the First Action.

[59] Whether this resolution was appropriately understood by the Claimants is, however, another case. My attention was drawn to paragraphs 19, 20, 25 and 27 of Ricardo Dewer's witness statement which related to the Claimants' perspective on the First Action. The relevant paragraphs are as follows:

“19. Then in March, I contacted our previous attorney, Mervyn Mitchell and he filed the Claim no, CV2015-755 that was heard by Madam Justice Donaldson-Honeywell.

20. We were successful in the matters as I was in court when the decision was handed down.

25. I then went to the office of Mr Mitchell, my then attorney, and it was then that we realized that we were given one lot of land although we

occupied all, 2 ½ lots of land. This was pleaded in our statement of case in the first matter at paragraph 2.

27. My brother and I then decided to pursue the claim again as we have been occupying all the land.”

This evidence was essentially repeated at paragraphs 21, 26 and 28 of Nigel Dewer’s witness statement and therefore was not worth repeating.

[60] This evidence clearly suggests that the Claimants believed that their claim for the two and a half lots more or less was resolved in their favour in the First Action and when they realized that it was not they sought to bring the action again.

[61] It must be emphasized that the jurisdiction of the Court does not operate like a revolving door to permit parties to re-initiate claims simply because they are not satisfied with the relief obtained. Decisions of the Court are made on the evidence, and accordingly, based on the evidence of the Claimants, the Honourable Madam Justice Donaldson-Honeywell made a decision that she was entitled to make on the evidence. This Court, which is of the same jurisdiction, is not permitted to interfere with that judgment.

[62] If the Claimants felt aggrieved by the relief granted, the appropriate place to address this grievance would have been before the Court of Appeal. Even still, the potential for success was limited given that the substance of their grievance resulted from their discrepancies on the evidence and not the law. As the Court in **Henderson v Henderson** underscored, parties to a previous claim cannot be permitted to open litigation regarding the same issues and subject matter previously dealt with because they were negligent or in this case omitted part of their case.

[63] Furthermore, even if the Claimants were to contend that the First Action concerned primarily the one lot of land upon which the dwelling house was located which was described in the Third Part of the Schedule, a pleading concerning the entire two and one half lots necessarily required that evidence be lead in respect of not just the one lot but also the remaining one and a half lot. Accordingly, the Claimants’ claim to the additional parcels that they now assert were used by them and their father for cultivation of short

crops, is a point that properly belonged before the Court in the First Action and should have been brought forward at that time.

[64] In this regard, it would be an abuse of process and contrary to the fundamental principles of *res judicata* and *issue estoppel* for the Claimants to bring this action and raise issues that properly belonged before the Court in the First Action. It was also manifestly unfair that the Defendant and his privy were required to expend monies to rehash this issue, judgment having already been given in favour of the Claimants with respect to the parcel of land described at the Third Part of the Schedule to the subject Deed. The Claimants will not be permitted to take “*a second bite of the cherry*” simply because they discovered thereafter that their first bite was not the sweetest.

[65] Accordingly, I find that the principle of *res judicata* is properly made out and the Claimants are estopped from pursuing a further claim for adverse possession with respect to the remaining parcels of land described in the First and Second Parts of the Schedule to subject Deed. Given my conclusion with respect to the first issue, a discussion and finding of the Court on the **second and third issues** (that is, whether the Claimants’ are entitled to possession and damages for trespass, respectively) is rendered unnecessary. On this basis, I conclude that the entirety of the Claimants’ Claim must be dismissed.

[66] However, this does not bring an end to the matter. Although the Claimants’ Claim to the remaining parcels described in the First and Second Parts to the Schedule of the subject Deed has failed, the question still stands, who is entitled to these remaining parcels of land.

Issue 4: Whether the First Defendant and/or Second Defendant was/were entitled to ownership and possession of the said parcels of land described in the First and Second Parts of the Schedule to the subject Deed?

[67] It is the Defendants’ case that they are paper title owners to the remaining parcels of land. Although the Claimants’ claim has been dismissed, it does not necessarily follow that the Defendants are both automatically entitled to reliefs sought in their Counterclaim.

[68] The Defendants submitted that they claimed title to the lands and this title was not disputed or challenged by the Claimants, therefore there was no issue regarding title before the Court for its determination.

[69] In support of this assertion, the Defendants relied on the judgment of **Ocean Estates v Pinder [1969] 2 A.C. 19** where Lord Diplock stated at paragraph 25 as follows:

“In the present case, where the defendant made no attempt to prove any documentary title in himself or in any third party by whose authority he was in occupation of the land it would have been sufficient for the plaintiffs to rely upon the conveyance of the land to themselves of March 30, 1950; for where a person has dealt in land by conveying an interest in it to another person there is a presumption, until the contrary is proved, that he was entitled to the estate in the land which he purported to convey....”

Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon the land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser”

[70] While I can accept the Defendants’ submission with respect to the First Defendant, I cannot conclude that the Claimant accepted that the Second Defendant had title to the relevant lands.

[71] In support of the Claimants’ claim for possession, they have relied on the subject Deed which granted the First Defendant a legal interest in the said Property. According to the Deed, Ganga Seepersad conveyed a life interest to himself and thereafter to his children, Harry Seepersad, Sylvia Seepersad and the First Defendant, Kenny Seepersad. It is an

admitted fact that Ganga Seepersad died in or around 1993. It follows therefore that the First Defendant acquired legal title to the land as a joint tenant with his siblings, Harry and Sylvia upon Ganga's death. While it is for the First Defendant to prove that he was entitled to sole ownership of the property by virtue of the doctrine of survivorship, the fact of his legal interest cannot be denied. As such, since the Claimants relied on the conveyance that granted the First Defendant legal title to the said lands, it can be presumed that the First Defendant is entitled to vacant possession of the remaining parcels of the land on the Schedule of the subject Deed.

[72] The position with respect to the Second Defendant is, however, somewhat different. Her claim to title is based on a purported Deed of Gift made between her and the First Defendant in 2017 that granted joint ownership to her of the said Property.

[73] In the Claimants' Statement of Case, they clearly raised doubts as to the validity of the Deed of Gift in favour of the Second Defendant. This doubt was reiterated in the Claimants' Closing submissions where it was submitted that the purported Deed of Gift is null and void.

[74] The Defendants, however, submitted that the Claimants have not established that they have been in possession of the subject lands and that their legal/paper title is good against anyone who has not established adverse possession as against the Defendants for a period in excess of sixteen years.

[75] It should be noted that although the Deed of Gift formed part of the Agreed Bundle of documents between the parties, it did not automatically become evidence for consideration of the Court. It is trite law that documents only become evidence when it is put in by a witness at the trial. Notably the only evidence before the Court is contained in the Claimants' witness statements which were tendered into evidence at the trial. None of these statements referred to the Deed of Gift. Accordingly, this Deed of Gift could not be considered by Court to support the Second Defendant's claim to legal title to the said Property. As such, I find that judgment can only be given to the First Defendant with respect to his Counterclaim for vacant possession of the lands described at the First and Second Parts of the Schedule to the subject Deed.

Issue 5: Whether the First Defendant is entitled to damages for trespass?

[76] The authors of **Clerk & Lindsell on Torts 22 Ed (2017) at paragraph 19.01** described a trespass to land as an unjustifiable intrusion by one person upon land in the possession of another. Trespass is a direct entry on the land of another and is actionable per se and the slightest cross of the boundary is sufficient.

[77] In the case of **CV2013-02916 Debra Nelson v Clive Sirju & anor**, I referred to the case of **CV2012-01479 Gabriella Belfon v Anil Chotalal** where Rahim J at paragraph 10 of the judgment stated as follows:

“Where a party shows that he has a greater possessory title to the land than the person alleged to have interfered with this right to possession, he may recover possession of the land. This is because possession of land, entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession: JA Pye (Oxford) Ltd v Graham (2002) UKHL 30.”

[78] **Halsbury’s Laws of England on Remedies for Trespass Tort Vol 97 (2015) 591** states:

“In a claim of trespass, if the Claimant proves the trespass, he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the Claimant actual damage, he is entitled to receive such amount as will compensate him for his loss.”

[79] In **CV2005-00454 Jacob & Polar v Samlal**, Pemberton J (as she then was) accepted that nominal damages will be awarded in two circumstances:

- (a) In recognition of an infraction of a legal right giving the successful party judgment. There is no need to prove actual loss; and
- (b) Where damage is shown but its amount is not sufficiently proved.

[80] Given my findings that the Claimants cannot pursue a claim for adverse possession and that the First Defendant is entitled to possession of the property, it follows that when the

Claimants caused a tractor to enter upon the Property to cut the bushes that were growing thereon, they did so as trespassers.

[81] The First Defendant has not provided any evidence as to the loss or damage to the Property described at the First and Second Parts of the Schedule to the subject Deed. However, for the purposes of trespass, no actual damage needs to be proven. In this regard, the **Claimant is entitled to nominal damages.**

[82] In **CV2017-01944 Singh v Sinaswee-Manwaring** Mohammed J awarded **\$10,000.00** as nominal damages on 21 October 2019 for trespass. In this case, the Defendant unlawfully entered upon the lands, damaged several of the Claimant's crops and hired a backhoe to destroy his perimeter surrounding the lands. However, there was no evidence presented with respect to the value of the lands and the diminution in value as a result of the acts of trespass by the Defendant.

[83] In **CV2018-02713 Jessie Rampersad v Fred Ramdahin** Donaldson-Honeywell J awarded **\$7,500.00** as nominal damages on 9 August 2021 for trespass. In this case there was admitted evidence that the Defendant unjustifiably interfered with the Claimants' possession by entering onto their portion of the property and unlawfully interfering with their use and enjoyment by destroying dasheen crops. However, there was no evidence as to the quantity and the value of the loss of these crops.

[84] In the case at bar, where no evidence was led to assist in quantifying any damages as a result of the Claimants trespass and user of the disputed property, I conclude that an award in line with **Jessie Rampersad v Fred Ramdahin** for the sum of **\$7,500.00** as nominal damages for the trespass is sufficient.

[85] Finally, I consider the reliefs sought at (d), (e) and (f) of the Defendants' Counterclaim in relation to the parcel of land described in the Third Part of the Schedule to the subject Deed. I conclude that since judgment has already been given to the Claimant for the parcel of land represented at the Third Part of the Schedule in the First Action, the Defendants cannot be granted vacant possession for this parcel and their claim for damages for trespass and an injunction in respect of same also cannot be maintained. In this regard I find that these reliefs sought in the Counterclaim are dismissed.

VI. ENTITLEMENT TO COSTS

[86] The general rule is that the Court must order the unsuccessful party to pay the costs of the successful party: **CPR Part 66.6(1)**. However, under the CPR, this general rule that costs follow the event is just a starting point since **CPR Part 66.6(2)** gives the Court the discretion to order the successful party to pay all or part of the costs of the unsuccessful party: [see **A.E.I. Rediffusion Music Ltd v Phonographic Performance Ltd**¹ per Lord Woolf and **Multiplex Constructions (UK) Ltd v Cleveland Bridge UK Ltd**² per Jackson J.]

[87] The new approach which is the issue-based approach, requires the Court to consider issue by issue to ascertain where costs should fall, particularly in cases which are not “money claims” which more accurately reflect the level of success achieved: [see the cases of: (1) **Summit Property Ltd v Pitmans**³; (2) **Secretary of State v Frontline**⁴; (3) **Fulham Leisure Holdings v Nicholson Graham**⁵ per Mann J.; and **A.E.I. Rediffusion (supra)**].

[88] In exercising its discretion as to who should pay costs, the Court is mandated to consider all the circumstances of the case including, but not limited to: (a) the conduct of the parties (both before and during proceedings); (b) whether the party has succeeded on particular issues even if not wholly successful; (c) the manner and reasonableness in which a party pursued the proceedings, a particular allegation or issue; and all other factors provided for in **CPR Part 66.6 (5) and (6)**: [see **Firle v Data Point International Ltd**⁶ and **Islam v Ali**⁷]

[89] The question as to who is the successful party was considered in the case of **BCCI v Ali (No. 4)**⁸ which was approved in **Day v Day**⁹ in which it was stated that the Court must treat “success” not as a technical term but “a result in real life” to be determined with the “exercise of common sense”. Pursuant to **CPR Part 66.6(3)**, the Court is given the power

¹ [1999] 1 W.L.R. 1507, CA

² [2008] EWHC 2280 (TCC)

³ [2001] EWCA Civ. 2020

⁴ [2004] EWHC 1563

⁵ [2006] EWHC 2428, Ch

⁶ [2001] EWCA Civ. 1106, CA

⁷ [2003] EWCA Civ. 612]

⁸ The Times March 2, 2000

⁹ [2006] EWCA Civ. 415

in particular to order a person to pay (a) only a specified proportion of another person's costs; (b) costs from or up to a certain date only; or (c) costs relating only to a certain distinct part of the proceedings.

[90] It has long been settled that a Claim and a Counterclaim must be treated as distinct and separate actions and so for the purposes of entitlement and quantification of costs separate orders must be made. Having regard to the above findings on the Claim and Counterclaim, I find that the general rule that costs follow the event cannot be strictly applied in the instant proceedings. While the Defendants were successful in defending and ultimately dismissing the Claimants' claim, they fell woefully short in proving their Counterclaim since they failed to put evidence before the Court. The Second Defendant in particular was wholly unsuccessful on the Counterclaim.

[91] In addition to their failure to call evidence, the Court also takes into consideration the fact that the Defendants failed to test the Claimant's case through cross-examination.

[92] In this regard, since this Fixed Date Claim is substantially a non-monetary claim (that is, the dominant claim being for adverse possession of land) and one which must be calculated on the prescribed scale of costs, the said Fixed Date Claim is to be treated as one for **\$50,000.00** pursuant to **CPR 1998 Part 67.5(2)(c)**.

[93] Consequently, in accordance with the scale of costs in **CPR Part 67 Appendix B**, the Defendant should be entitled to prescribed costs in the sum of **\$14,000.00** on the Fixed Date Claim. However, considering the First Defendant's success on the Claim, partial success on the Counterclaim and failure to call or cross-examine witnesses, I find that he is entitled to 100% costs on the Fixed Date Claim and 50% of his costs on the Counterclaim.

[94] With respect to the Second Defendant, I take into account her success on the Fixed Date Claim, lack of success on the Counterclaim and the failure to call witnesses or cross-examine the Claimants' witnesses in support of her case. Accordingly, I find that the Second Defendant is entitled to full costs on the Fixed Date Claim (\$14,000.00) but is required to pay 50% of the Claimants' costs on the Counterclaim (\$7,000.00). If a set-off is applied then the Second Defendant will be entitled to receive \$7,000.00 costs overall to be paid by the Claimants.

VII. DISPOSITION

[95] Having regard to the foregoing reasoning, analyses and findings, the Order of the Court is as follows:

ORDER:

- 1. That the Claimants' Fixed Date Claim together with Statement of Case filed on 2nd March 2018 be and is hereby dismissed.**
- 2. Judgment be and is hereby awarded to the First Defendant on the Counterclaim filed 25th May 2018 in the following terms:**
 - a) A declaration that the First Defendant is entitled to vacant possession of the piece or parcel of land described in the First and Second Parts to the Schedule to the Deed dated 4th May 1971 and registered as No. 12429 of 1971.**
 - b) The First Defendant is awarded nominal damages for trespass to the said Property in the sum of \$7,500.00 to be paid by the Claimants.**
 - c) An injunction be and is hereby granted in favour of the First Defendant preventing and/or restraining the First and Second Claimants and/or their servants and/or agents or whomsoever otherwise from entering and/or occupying the piece or parcel of land described in the First and Second Parts to the Schedule to the Deed dated 4th May 1971 and registered as No. 12429 of 1971.**
- 3. The Claimants shall pay to the First Defendant 100% costs on the Claim and 50% costs on the Counterclaim quantified on the prescribed scale of costs in the total sum of \$21,000.00.**
- 4. The Claimants shall pay to the Second Defendant costs on the Claim quantified on the prescribed scale of costs in the sum of \$14,000.00.**
- 5. The Counterclaim as it relates to the Second Defendant be and is hereby dismissed against the Claimants. The Second Defendant shall pay to the Claimants 50% of the Claimants' prescribed costs quantified in the sum of \$7,000.00 to be set-off against the costs to be paid by the Claimants to the Second Defendant.**

Robin N. Mohammed
Judge