

**IN THE HIGH COURT OF JUSTICE**

**Claim No CV 2012-02638**

**BETWEEN**

**MICHAEL BAGOO**

**Claimant**

**AND**

**HARRY NARINE**

**Defendant**

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**Before the Honourable Mme. Justice N. Kangaloo**

**Date of Delivery: June 27, 2014**

**Appearances: Balliram Singh instructed by Brian Camejo for the Claimant  
Anthony Manwah for the Defendant**

**JUDGMENT**

**The Claim**

1. The claim before the court is one for trespass. The Claimant claims to be the co-owner of a parcel of land situate in the Ward of St. Joseph in the Island of Trinidad measuring Eighty Feet from North to South and Seventy Feet from East to West and abutting on the North by a reserve along the Eastern Main Road, on the south by a reserve, on the East and West by other lands (referred hereinafter as "the Disputed Portion"). The Claimant alleges that the Defendant has trespassed on these lands by building a structure upon the lands commenced in 2012.

2. The Central Portion forms part of a larger portion of land described in a Deed of Lease registered as No. 2712 of 1914 ("the 1914 Deed") formerly part of the St. Augustine Estate situate in the Ward of St. Joseph in the Island of Trinidad ("the Larger Portion"). Under the 1914 Deed, one Soorajbally became seised and possessed of all and singular that parcel or lot of land described therein.
3. By Deed of Assignment dated August 2, 1922 ("the 1922 Deed") Soorajbally assigned unto Kabootaree, Florence Bagoo, Charles Bagoo and Joseph Bagoo the Disputed Portion as joint tenants. Kabootaree later passed away in 1931, followed by Florence in 1952, then by Joseph in 1966 and lastly Charles in 1994. Joseph Bagoo was the Claimant's father. Florence Bagoo was the Defendant's grandmother.
4. Before his father's death the Claimant avers that he became a co-owner along with his sister of his father's interest in the Disputed Portion of land by virtue of a Deed of Gift registered as No 12750 of 1954 ("the 1954 Deed"). It is the Claimant's case that his sister along with himself and his cousin Merlin Ramnarace, daughter of the last surviving joint tenant, Charles Bagoo, are the tenants in common of the Disputed Portion of land. It is on the Disputed Portion that the Claimant claims the Defendant has begun to build a house without the Claimant's consent.

### The Defence

5. The Defendant denies that any interest in the parcel of land described in the 1954 Deed was conveyed to the Claimant. Further, he relies on the provisions of the Real Property Limitation Act to submit that the Claimant's right, estate and interest in such parcel of land have been extinguished. Moreover, his justification for this is that his mother Marie Narine (née Bagoo, the daughter of Florence Bagoo) lived on the Disputed Portion until her death in 1990. After her death the Defendant contends that he entered into exclusive possession of Disputed Portion, dealing

with the same as his own and conducting maintenance work on it as he has "always considered it to be mine and I have always dealt with it as such."

6. The Defendant admits to having commenced construction on the Disputed Portion in 2012 for the benefit of his sisters who he says have continued to live there with his permission even after the death of their mother. He further states that his mother by subsequent deed registered as No. 13528 of 1982 settled the Disputed Portion on him and his siblings, thereby giving him the right to deal with the Disputed Portion. Deed No. 13528 of 1982 has not been produced to this Court. Though mentioned in the Defendant's List of Unagreed Documents filed herein on October 18, 2013, the same is not thereto attached.

#### The Reply

7. In reply to the Defendant, the Claimant states that Marie Narine was a mere licensee and did not have a proprietary right or interest in the Disputed Portion. Accordingly, the Claimant contends that the Defendant is a trespasser on the Disputed Portion.
8. The Claimant avers that it was Merlin Ramnarace, the daughter of Charles Badoo, the last surviving tenant of the four joint tenants, who has been in uninterrupted and continuous possession of the Disputed Portion, having inherited her father's interest in the lands. The Claimant contends that such possession would vitiate the Defendant's claim that he has been in exclusive possession of the Disputed Portion since the death of his mother in 1990. Ms. Ramnarace, her children and grandchildren are presently in occupation of the extreme western section of the Larger Portion.

#### The Order Sought

9. The Claimant accordingly seeks from this Court:

- (i) An order that the Defendant and/or his agents and/or servants be restrained from constructing or continuing any building or structure on the property situated at No. 26 Eastern Main Road, St. Augustine.
- (ii) An order that the defendant wither by himself or servants be restrained from exercising any proprietary rights or right of ownership over the said property.
- (iii) Further or other reliefs as the Honourable Court deems fit.
- (iv) Costs.

### Issues

10. The following issues arise for consideration:

- (i) Whether the Claimant attained any interest, right or title in the property described in Deed. No 2512 of 1922.
- (ii) Whether the Defendant has any interest, right, or title in the property described in Deed No 2512 of 1922.
- (iii) Whether the Defendant has exclusive possession of the property described in Deed No. 2512 of 1922.

### Joint Tenancy and Severance Thereof

11. It is without contention that the Disputed Portion was assigned to Kabooratee, Florence Bagoo, Joseph Bagoo and Charles Bagoo as joint tenants.
12. The law as it relates to joint tenancy is quite clear. These tenants hold the property equally, constituting a single unit of ownership. The author of **Commonwealth Caribbean Property Law** 2<sup>nd</sup> Edition at page 117 states that:

*"A joint tenancy occurs where land is conveyed or devised to two or more persons without 'words of severance' ...*

*For a joint tenancy to exist what is known as the four unities must all be present. They are the unities of possession, interest, title and time. What this simply means is that each joint tenant has equal rights to possess any part of the land, each joint tenant has interests which are identical as it pertains to the whole land, each joint tenant has derived his/her title from the same conveyance and each joint tenant must have acquired his/her possession, interest and title at the same time."*

13. The primary means by which a joint tenancy can be severed is by way of *jus accrescendi* or the right of survivorship, the effect of which is that when one joint tenant dies his interest in the property devolves unto the other surviving tenants.

14. **Halsbury's Law of England** Volume 87 5<sup>th</sup> Edition, paragraph 203 states that:

*"The death of one joint tenant creates no vacancy in the seisin or possession. His interest is extinguished. If there were only two joint tenants, the survivor is now seised and possessed of the whole. If there were more than two, the survivors continue to hold as joint tenants. The incident which is called the 'jus accrescendi', is the most important feature of joint tenancy."*

15. Over the years and owing to the harshness of the rule of right of survivorship, other means of severing joint tenancies have been adopted. The author of **The Land Laws of Trinidad and Tobago** page 202 at paragraph 723 said:

*"Even the common law recognised the harshness of the operation of the right of survivorship inherent in a joint tenancy and so allowed certain acts or events to have the effect of severing the tenancy and converting it into a tenancy in common."*

16. Such a means of severing a joint tenancy is "*where a joint tenant alienates his interest inter vivos, his joint tenancy is severed and the transferee takes as a*

*tenant in common since he has no unity of title with the other joint tenants. Such severance does not affect the other joint tenants who remain joint tenants."* See **G. Kodilinye, Commonwealth Caribbean Property Law** 2<sup>nd</sup> Edition, page 123.

17. In the case of **Williams v Hensman** [1861] 70 ER 862 at 867, Page Wood VC highlighted three circumstances in which a joint tenancy can be severed.

*"A joint tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the jus accrescendi. Each one is at liberty to dispose of his own interest in such a manner as to survivorship. Secondly a joint tenancy may be severed by mutual agreement. And in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common."*

18. In the Jamaican case of **Gamble v Hankle** [1990] 27 JLR 115, a husband and wife were joint proprietors of a portion of land. The husband before his death purported to convey the land by deed of gift to a third party which was challenged by his wife. The Court held that the deed of gift had indeed effected a severance of the joint tenancy between the two. The Court went on to say that the deed of gift was an act which fell within the parameters of the first of the three methods laid down by Page Wood VC in **Williams v Hensman** (*supra*).
19. The first method of severing a joint tenancy laid down in the case of **Williams v Hensman** (*supra*) is most applicable to the facts of the instant case. The Claimant alleges that by the 1954 Deed his father assigned all his rights, title and interest in the property to himself for life and thereafter to the Claimant and his

sister. At that time, there are only two joint tenants alive. Accordingly, a tenancy in common was created between the assignees and the remaining joint tenant, Charles Bagoo.

20. The cases of **Thames Guaranty Ltd v Campbell** [1984] 2 All ER 585 and **Ahmed v Kenrick** [1988] 56 P & CR 120 both make the point that a purported conveyance of the whole property by one joint tenant to a third party will operate to sever the joint tenancy and transfer the severed beneficial interest of the conveying joint tenant.
21. Accordingly, the effect of the 1954 Deed was to create a tenancy in common of the Disputed Portion among the Claimant, his sister and Charles Bagoo, the last surviving joint tenant.
22. The Defendant's case is that he obtained his interest in the Disputed Portion from his mother, Marie Narine, who would have gained the same from her mother, Florence Bagoo, as one of the joint tenants of the lands. His grandmother passed away in 1952.
23. The Defendant alleges that sometime in 1947 Joseph Bagoo sold his interest of the eastern portion of the Larger Portion to his grandmother and thereafter she settled these lands on him and his family in 1952. The eastern portion of the Larger Portion is that now belonging to Kenrick Narine, the Defendant's brother, and not the Disputed Portion that is of concern to this Court.
24. There is before this Court no conveyance of the Disputed Portion of land from Florence Bagoo to the Defendant. As a joint tenant her right was lost upon death and the only way this could have been circumvented is had she chosen to dissipate her interest.

## Exclusive Possession

25. The Defendant also alleges that he has taken exclusive possession of the Disputed Portion upon the death of his mother. To succeed on such a contention, the Defendant would have to prove that his mother had either legal or equitable interest in the Disputed Portion. He has failed to do so.
26. It is further the Defendant's position that since 1990 to present he has "been in control and possession of this house and the land on which it stands and have always considered it to be mine and I have always dealt with it as such."
27. The law clearly states that to prove exclusive possession one must have an intention to possess the land and exercise control over it to the exclusion of other persons. Exclusive possession is described by Slade J in ***Powell v McFarlane*** (1977) 38 P&CR 452 as:

*"The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so. Actual possession is a question of fact. It consists of two elements: the intention to possess the land and the exercise of control over it to the exclusion of other persons."*

28. This position was reiterated in the more recent case of ***JA Pye (Oxford) Ltd and another v Graham and another*** [2002] 3 All ER 865 where Lord Browne-Wilkinson adopted the sentiments put forward in ***Powell*** (*supra*).

29. It is of relevance to the instant case and worth repeating here the concise statement of Slade, J. in **Powell** (*supra*) at pages 471-472 in relation to English law of possession:

*"(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.*

*(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ('animus possidendi').*

*(3) Factual possession signifies an appropriate degree of physical control. It must be single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. 'What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants': *West Bank Estates Ltd. v. Arthur* [1967] A.C. 665, 678, 679; [1966] 3 W.L.R. 750, PC, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole.*

*Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession ...*

*... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done* *so.*

*(4) The animus possidendi, which is also necessary to constitute possession, was defined by Lindley, M.R., in Littledale v. Liverpool College [1900] 1 Ch 19, as 'the intention of excluding the owner as well as other people.' This concept is to some extent an artificial one because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."*

30. This Court also finds that the evidence of the Defendant contradicted itself at times and raised issues that are not relevant to the claim before the Court. Indeed, to dispute the Claimant's claim, the Defendant made reference to the eastern portion of the Larger Portion which he says was occupied by the Claimant's father and which after his death in 1966 and subsequent court action was later occupied and owned by Kenrick Narine. The Defendant later stated that in 1982 he, together with his mother and other brothers, sold their interest in the

land which they occupied to his brother Kenrick. Moreover, at the site visit conducted by the Court on February 21, 2014, the Defendant was asked to about the property for which he had a deed and his response was to indicate the property of Kenrick Narine.

31. Indeed, at the site visit, when asked by the Court whether this was in fact the portion of land concerning the claim before the court, the Defendant said that it was not.
32. The Defendant has failed to show precisely how he has obtained interest, title or share in the Disputed Portion of land exclusively. Apart from saying that after his mother died and that he went and took control of and maintained the main house, he is yet to show how the legal or equitable title vested in his mother and consequently in him. Further, unless devised by will from his mother to him (of which there is absolutely no evidence), the Disputed Portion would vest not only in him but his siblings also.
33. The Defendant admitted that his sisters continued to reside on the Disputed Portion and that he did not have sole possession of the lands and particularly the Disputed Portion.
34. Further the Defendant has failed to demonstrate to this court that he has sufficient *animus possedendi* to oust the paper title to the Disputed Portion as proved by the Claimant. In this regard, the Court wholly disregards the evidence of the Defendant's brother, Paul Narine, which it considers fanciful and exaggerated in the extreme in relation to the alleged number of times Paul Narine would find himself in a position to observe his brother allegedly on the Disputed Portion, sometimes as much as six times a day.
35. This Court finds, from the evidence of the Claimant and his witness, that ownership of the Disputed Portion has devolved unto Ms. Merlin Ramnarace, the

daughter of the last surviving joint tenant and to Michael Narine and his sister, as a resulting of the severance of the joint tenancy by Joseph Badoo.

36. The Defendant has accordingly failed to establish his exclusive possession of the Disputed Portion.

### Trespass

37. **Halsbury's Law of England** Volume 97 5<sup>th</sup> Edition, paragraph 562 states:

*"A person's unlawful presence on land in the possession of another is a trespass for which a claim may be brought, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another."*

38. The Defendant has not demonstrated to the satisfaction of this court that he has any legal or equitable interest in the Disputed Portion as such his construction upon said land amounts to an act of trespass.

### Order

39. The Court accordingly orders as follows:
- a) The Defendant is to demolish and remove from the Disputed Portion all structures that stand on the said land including the concrete foundation and partially constructed dwelling house, any and all plumbing connected to the partially constructed dwelling house, any and all electrical wiring connected to the partially constructed dwelling house and all other structures now standing on the Disputed Portion.

- b) The Defendant is to remove all items referred to at a) above within 45 days of the date of this order, i.e. on or before Monday August 11, 2014.
- c) The Defendant shall on or before Monday August 11, 2014 deliver up to the Claimant and his sister, Cynthia Gowrie née Bagoo, vacant possession of the Disputed Portion.
- d) The Defendant is to pay to the Claimant the prescribed costs of this action in the sum of \$14,000.00 pursuant to Part 67 of the Civil Proceedings Rules, 1998.
- e) Liberty to apply.

40. The Court reserves the right to amplify this decision.

**June 27, 2014**  
**Nadia Kangaloo**  
**Judge**