

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2013 – 00661

**IN THE MATTER OF AN APPLICATION PURSUANT TO
THE PARTITION ORDINANCE CHAPTER 27 NO.14**

BETWEEN

DANIEL RAMSOONDAR (also called MOTIRAM)

MICHAEL NARINE RAMSOONDAR (also called NARINE)

SIEWNARINE RAMSUNDAR

Claimants

AND

ROGER ROOPNATH RAMSUNDAR (also called ROOPNATH)

MOHAN LALL RAMSUNDAR

ARJOON RAMSUNDAR

Defendants

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. A. Ashraph instructed by Ms. S. Nanan for the Claimants

Mr. G. Raphael instructed by Ms. L. Chunilal for the First and Second Defendants

Judgment

- 1) This is a claim for the partition or sale in lieu of partition of land and by counterclaim involves the issue as to whether the First Defendant is entitled to possessory title to the land in dispute more particularly described in the Deed registered as No. 13451 of 1960 situate in the Ward of Chaguanas, including the building standing thereon.

- 2) In 2008 High Court Proceedings were brought under Claim No. CV 2008-2086 between Daniel Motiram Ramsoondar and Siewnarine Ramsundar (Claimants) and Mohan Lall Ramsundar, Michael Narine Ramsundar, Arjoon Ramsundar and Roger Roopnath Ramsundar (Defendants) on the same issues (hereinafter referred to as “the previous matter”). By Order of the Honourable Mr. Justice Kokaram on April 19, 2010, the parties were granted permission to withdraw their claims. The Defendants raised the issue of abuse of process in their Defence and it was agreed by all that the issue would be canvassed together with closing submissions at the end of trial.

The Undisputed Facts

- 3) By virtue of Deed of Conveyance dated October 3, 1960 and registered as No. 13451 of 1960, Lot No. 138 John Street more particularly described in the said Deed was conveyed to Ramsoondar also called Ramsoondar Pandohie, also called Ramsundar Pandohie (hereinafter referred to as “Ramsoondar”), Dolly Pandohie also called Dolly Ramberran (hereinafter referred to as “Dolly Pandohie”), Kanhai Russel Ramsoondar also known as Konhaie (hereinafter referred to as Kanhai), the Claimants and the Defendants as joint tenants. The Claimants and the Defendants in this matter are now vested in fee simple of the said land, inclusive of the building standing thereon (hereinafter referred to as “the disputed property”).

- 4) The disputed property consisted of three bedrooms, living room, kitchen and a gallery upstairs. The Second Claimant occupies the disputed property. Further, an annex was built and was used as a photo studio by one of the brothers, Kanhai since about the year 1970 until his death on July 31st, 1973.
- 5) The Claimants and Defendants are brothers and are the children of Ramsoondar, their father, who died on April 6, 1972, and Dolly Pandohie, their mother, who died on March 18, 1997. The First Defendant has since taken occupation of the entire premises and the Second Claimant continues to reside in the premises.

The Facts According to the First Claimant

- 6) The disputed property was the family home of the Claimants and Defendants. One year after Kanhai's death, the First Defendant closed down the photo studio and sold all of the equipment. At the time, the First and Second Claimants and the First and Second Defendants lived at L.P. 50 Penco Street, Montrose, Chaguanas in a building (the first building) originally built by their father.
- 7) Due to a breakdown in the relationship between the Second Defendant and the other brothers living at the first building, the First and Second Claimants and the First Defendant returned to the disputed property. The Second Defendant remained at the first building.
- 8) In 1984 the First Defendant having married, moved out of the disputed property.
- 9) The First Claimant claims that he contributed towards the household expenses by buying groceries and paying the water and electricity bills while he lived in the downstairs apartment on the eastern side of the disputed property with his girlfriend, one Debra Purcell. They had one son together, Valdez Ramsoondar. Valdez lived in a room upstairs with the Claimant's mother Dolly Pandohie. The First Claimant and Debra Purcell separated

on or around the years 1982-1983, after which Debra moved out, leaving Valdez and the First Claimant on the disputed property.

10) The First Claimant married Catherine Gomez around 1999 and they lived in the same apartment. When the First Claimant and the said Catherine Gomez left the disputed property on or around the year 1997, the First Claimant kept the apartment in the disputed property and kept a wardrobe, bed, stove, television and clothes there. He kept this apartment locked. Furthermore, Valdez remained at the disputed property, and continued to reside in the upstairs bedroom with his grandmother Dolly Pandohie until her death in 1997, after which he lived in the said the room by himself. After the First Claimant left the disputed property, he continued to visit this home everyday to visit Valdez. He also spent nights occasionally at the downstairs apartment on the disputed property due to the shifts he worked at T&TEC.

11) There were bedrooms in the disputed property which were rented out. After the death of Dolly, the First Defendant began collecting the rent. He did not share the rent received amongst any of the brothers. Valdez remained at the disputed property until around 1999 when he was removed by the First Defendant. The First Defendant then broke down the photo studio, removed all of the belongings of the First Claimant from the downstairs apartment and upstairs bedroom, and began renovating the downstairs to build apartments to rent.

12) A court action was brought to obtain the disputed property from the First Defendant (the previous matter). The parties were given permission to withdraw their respective claims by Order of the Court on April 19, 2010. By virtue of letter dated May 23, 2012, the Claimants requested that the Defendants purchase their one-sixth share and/or interest in the disputed property or that the disputed property be sold with the proceeds divided equally among the Claimants and Defendants. The Defendants have refused the offer. This claim was commenced on the 18th February 2013.

The Facts According to the Third Claimant

- 13) On or about the year 1967, the Third Claimant was injured in a workplace accident causing him to sustain burns from his waist to his left ankle. He was warded at the San Fernando General Hospital for three months after which he stayed at the disputed property for a couple of months. The Third Claimant lived in a downstairs room in the disputed property next to the room of the First Claimant.
- 14) After Kanhai's death, on or about 1973, the First Defendant took over the photo studio and ran it for one year, after which he sold all of Kanhai's equipment without consulting any of the brothers and opened a Pet Shop on the studio premises.
- 15) The Third Claimant began to sell fish out of his father's fish stall at the Chaguanas market, which was eventually transferred to him. He assisted with the household expenses. Money given to Dolly by The First and Third Claimant was used to change the roof on the disputed property.
- 16) The Third Claimant and his wife left the disputed property on December 28, 1975 because of threats received from the First Defendant. The Third Claimant and his wife moved back to the disputed property in 1977 for a couple of years until the threats by the First Defendant began once again and the Third Claimant and his wife left the disputed property again to live at Clarke Road, Charlieville.
- 17) The fish stall was transferred to the Second Defendant after the Third Claimant left the disputed property and the Third Claimant began selling snow cone and operated a fruit

shed at the disputed property. The Third Claimant continued to give money to his mother for the household expenses after he left the disputed property.

18) The First Defendant married in 1984 and moved out of the disputed property. After the death of Dolly, the First Defendant collected the rent for the disputed property, which he did not share with any of the other owners. The First and Second Claimants were still living at the disputed property after the death of Dolly.

19) The Third Claimant maintained his fruit shed, snow-cone machine and snow cone bike on the disputed property, which was then removed by the First Defendant in 1999. The Third Claimant continued to visit the disputed property every day to get crushed ice for the snow-cone machine.

20) The Claimants therefore claimed that the disputed property should be partitioned or sold in lieu of partition, that the proceeds of such sale should be divided among the Claimants and Defendants; and that the Claimants are entitled to a portion of the monthly rental of the disputed house from 2006 to present.

The Facts According to the First and Second Defendants

21) The First Claimant lived at the disputed property but left permanently in 1982. The First Defendant occupied the middle room, and Dolly occupied the front bedroom. The Second Claimant occupied the third bedroom.

22) After the death of Kanhai, the First Defendant operated the photo studio from 1973 to 1975 after which the First Defendant closed the photo studio and operated a Pet Shop from 1975 to 1983. In 1983, the Pet Shop was moved from the photo studio to the eastern side of the downstairs of the disputed property while the sister of the parties, one Prabouti

Ramsundar, operated a roti shop at the photo studio from 1983 to 1987. The photo studio then remained vacant until 1995. The First Defendant married in 1985.

23) On or about the year 1995, the First Defendant, the Second Claimant and Dolly vacated the upstairs of the building as it became uninhabitable due to the rotting floor boards. The Second Claimant and Dolly moved into the photo studio which they converted into a bedroom.

24) The First Defendant began work on the disputed property in the year 2000 which continued up until 2008. He built up the downstairs of the property by casting the floor and building four rooms. He also changed windows and doors, added toilets and bath, changed pillar trees, cast a 30' x 10' foundation and did other repairs to the disputed property. The First Defendant also built fish ponds to the back of the property. On or around the years 2005 to 2006, the First Defendant cast the top floor of the disputed property. He spent in excess of One Hundred and Fifty Thousand Dollars (\$150,000.00) in effecting the repairs.

25) The Pet Shop was rented out from 1999 to 2005 by the First Defendant as storage for old tyres to Kawal Ramoutar for Four Hundred Dollars (\$400.00) per month. The Pet Shop thereafter remained vacant from 2005 to 2007 but was renovated and repaired by the First Defendant at his own expense. The Pet Shop was then rented to one David Deonarine for Two Thousand, Five Hundred Dollars (\$2,500.00) per month.

26) The First Defendant informed the First Claimant of the renovations being done and the First Claimant agreed that the repairs should be done. The First Claimant would occasionally pass by the disputed property and look at the repairs but never objected to them.

27) Rent collected was used to maintain the Second Claimant and more recently both to maintain the Second Claimant and to assist the First Defendant. The disputed property was rented for residential purposes until the year 2001 and was never tenanted thereafter.

- 28) The Third Claimant has lived at Clarke Road East, Charlieville, Chaguanas, since 1969. The First Defendant, Second Claimant and Dolly were in continuous and undisturbed possession of the disputed property and the second parcel of land on which it stands to the exclusion of all the other owners including the First Claimant and the Third Claimant who had all vacated the disputed property for over sixteen years prior to the filing of the claim.
- 29) In the previous matter the First and Third Claimants made the same application for the same relief which they are seeking in this action. Directions were given for the filing of witness statements on or before February 26, 2010, and the First and Third Claimants failed to comply with the said directions. An application was made by the First and Third Claimants for relief from sanctions and to extend the time for filing of the witness statements. By Court Order on April 19, 2010 the parties were given permission to withdraw their respective claims. The Defendant deny however that the First and Second Defendants agreed to enter into mediation.
- 30) The Third Claimant left the disputed property in 1976. The First Claimant left the disputed house in 1982.
- 31) The Second Claimant still lives in the disputed property. If the disputed house is sold, he will have nowhere to live and is in no position to make a proper decision, as he does not understand the consequences of a sale due to his alcohol abuse. The court pauses to note that there is no medical evidence before it which proves that the Second Claimant cannot understand the consequences of any result which may arise on the claim.
- 32) The Defendants have counter-claimed that the First Claimant's title to disputed property have been extinguished by the provisions of the Real Property Limitation Ordinance Ch. 5 No. 7. They have not, either by way of original or amended Defence and Counterclaim, sought an order that the shares of the other Claimants have been similarly extinguished.

33) The Defendants have also counter-claimed that the First Defendant is in the alternative, entitled to an equitable interest in the disputed property to the extent of his expenditure in repairing same.

34) The Defence has also argued that the re-filing of this claim was an abuse of process.

Issues:

35) The issues to be determined are as follows:

- (a) Whether the re-filing of a claim on the same issues has amounted to an abuse of process, and therefore whether the claim should be stayed.
- (b) If not, whether the First Defendant was in adverse possession of the disputed house and the second parcel of land on which it stands.
- (c) If the court finds that the First Defendant was not so in possession, does he hold an equitable interest in the said premises.
- (d) Whether there ought to be partition or a sale in lieu of partition.

FIRST ISSUE-ABUSE OF PROCESS

Submissions of the Claimants

36) The Claimants submit that the Order of April 19, 2010 gave the parties permission to withdraw their claims. The right to partition property is a right which accrues with the ownership of land. Even though the partition action was withdrawn, the rights of the owners of the land to partition of the land cannot be lost. That it is therefore the right of the owners to claim partition subsequent to an earlier claim for same which was withdrawn. They submit that to debar the Claimants from exercising their right to action in such

circumstances will be akin to debarring them from exercising their property rights. That such rights are exercisable continuously so long as the parties remain the titleholders.

37) The Claimants further submit that should abuse of process be found resulting in the dismissal of the claim, then the Defendants counter-claim for adverse possession must equally be dismissed on the same basis as they also brought a counterclaim for adverse possession in the previous claim which they withdrew. Furthermore, for the Court to find an abuse of process, it must find that the second action is oppressive to the Defendants, and that this is not the case in these circumstances. In that regard the Claimants have relied on **AG of Trinidad & Tobago v. Trevor Mahabir**, Civil Appeal No. P238 of 2013.

Submissions of the Defendants

38) On the issue of abuse of process, the Defendants also relied on paragraphs 23, 24 and 25 of **AG of Trinidad & Tobago v. Trevor Mahabir**, supra.

39) At paragraph 23 of the **AG v Mahabir** case, Menonca JA, delivering the decision of the full court stated stated, “...one factor which must be taken into account is whether in pursuing the second claim there is a disproportionate use by the claimant of the Court’s resources. This entails an appreciation of the extent to which the combined effect of the earlier proceedings and the present claim places a disproportionate burden on the Court’s resources.”

40) The Defendants further equated the previous matter with the circumstances which occurred in the **AG v Mahabir** case in that the previous matter was not adjudicated upon but had gone “a far distance” and was withdrawn after pre-trial review, and an application for an extension of time in relation to the filing of witness statements. In **Mahabir** Their Lordships found that the resources expended by the Court in managing the case to that

point was considerable and that the pursuit of the second claim resulted in a disproportionate use of the Court's resources.

41) Additionally, paragraph 25 of the **AG v Mahabir** Judgment referred to the failure to file witness statements in breach of an order of the Court, which similarly occurred in the previous matter relating to this case. The Court of Appeal stated:

“The Appellant had failed to file his witness statements in the earlier proceedings in breach of an order of the Court. The breach of the order attracted a sanction. On the basis of what is contained in the affidavit of the Respondent explaining the failure to comply with the order of the Court for the filing of witness statement in the time allotted, a Court properly directing itself would not have granted relief from the sanction imposed. By withdrawing the earlier proceedings the Respondent did two things both which he should not get the benefit of in this appeal. The first is that he denied the Respondent a procedural advantage. Put another way he used the process of the Court to gain an unfair advantage over the Respondent. Secondly, he had simply side-tracked the Court's order. The Court and indeed the CPR (see rule 29.13) imposed a sanction for the failure to file the witness statements. Relief from this sanction is only excusable in the circumstances outlined in rule 26.7. It is not befitting to permit a claimant to use the process of the court to avoid the consequences of its own order, circumvent the rules of court and slip through the back door as it were.”

42) The Defendants also referred this court to **Johnson v Gore Wood & Co. (a firm)** [2001] All ER 481 and submitted that although the withdrawal of the previous matter was done by consent on both sides, *“the second action is not the less harassing because the defendant has been driven or thought it prudent to settle the first; often, indeed, the outcome would make the second action more harassing.”*

43) The Defendants submit that, should the claim be dismissed on the basis of abuse of process then the counterclaim ought also to be dismissed.

Findings on the issue

44) Part 26 of the Civil Proceedings Rules as amended empowers the Court to strike out, dismiss or stay proceedings which are an abuse of process. To amount to an abuse of process, there must be some prejudice demonstrated. Further, it must be shown that the actions of he who attempts to re-litigate amounts to such an egregious misuse of the process of the court that it would be unfair to permit the litigant to use the court's process in such a manner to the detriment of the other party or parties. The fact that the previous claim was discontinued by consent is no bar to an abuse of process finding. Neither is the finding of abuse of process an automatic one once a claim is discontinued and re-filed. The finding in each case turns on its own facts.

45) The court notes that the issues in this matter were not adjudicated upon in the previous matter. No re-litigation of the issues is therefore being attempted by the First Claimant. (**Henderson v. Henderson** [1843] 3 Hare 100 and **Johnson v Gore** (supra)). Where there is re-litigation on an issue, there is a danger that this will lead to conflicting judicial decisions, unfairness to the parties concerned, and also the bringing of the administration of justice into disrepute (**Rondel v Worsley** [1969] 1 AC 191 at 251, per Lord Morris of Borth-y-Gest).

46) However, the rule in **Henderson v Henderson** gives the court a wider jurisdiction. The rule provides that a claimant is barred from litigating a claim that has already been adjudicated upon or that which could and should have been brought before the court in earlier proceedings arising out of the same facts (**Henderson v Henderson**, **Johnson v Gore**). According to **Halsbury's Laws of England, Vol 11 at 1167**, "The abuse in question need not involve the re-opening of a matter already decided in proceedings between the same parties, but may cover issues or facts which are so clearly part of the subject matter of the

litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow new proceedings to be started in respect of them. It is, however, wrong to hold that because a matter could have been raised in early proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive; the question is whether in all the circumstances a party's conduct is an abuse."

47) Furthermore, **Johnson v Gore** has widened the applicability of this rule to claims where there has been a settlement rather than judgment.

48) This court is also guided by the approach advocated by Their Lordships at paragraph 23 of

Mahabir:

In our judgment the approach recommended in Johnson v Gore Wood in relation to the Henderson type abuse and endorsed in Glauzer in a case that more approximates this matter, is the appropriate one. What is required is a balancing exercise of the competing public and private interests taking into account all the circumstances of the case focusing attention on the question whether in all the circumstances the claimant is misusing or abusing the process of the Court by seeking to pursue the second claim. Of course, as we have mentioned, the Court must seek to give effect to the overriding objective which is to deal with cases justly (see rule 1.1 of the CPR) and one of the factors that must be taken into account is whether in pursuing the second claim there is a disproportionate use by the claimant of the Court's resources. This entails an appreciation of the extent to which the combined effect of the earlier proceedings and the present claim places a disproportionate burden on the Court's resources (see Wahab v Khan and Ors [2011] EWHC 908). After considering all the relevant circumstances the Court must then form a judgment as to what justice requires overall.

49) In the court's view, having considered all the arguments, there is at least one major distinguishing feature between the present case and **Mahabir**. Firstly, the nature of the claim in this case is one which is available to he who holds title on a continuing basis under the Partition Act. The right to seek Partition continues so long as the litigant is vested with

property. In ***Mahabir***, the claim was that of one for damages for false imprisonment and assault and battery arising out of a single incident. The distinction is of importance in that the former treats with right accrued by the property owner which are exercisable on a continuing basis depending on circumstances which may change from time to time whereas the latter treats with a single right to file suit accrued during one set of circumstances. The distinction is in the court's view a fundamental one as the importance of the continuing nature of the property right should not be overlooked. The fact that the claim is a property right claim is however, in this court's view a consideration which carries substantial weight when examining all of the factors.

50) This court has also considered that the First Claimant was in breach of the order of the court for the filing of witness statements, that a full opportunity had been afforded to the First Claimant to pursue their entire claim and that the first case had in fact gone a far distance by the time it was discontinued.

51) Further, in conducting the balancing exercise of the competing public and private interests taking into account all the circumstances of the case while focusing attention on the question whether in all the circumstances the claimant is misusing or abusing the process of the Court by seeking to pursue the second claim the court is satisfied on a balance of probabilities that the First Claimant is attempting to misuse the process of the court by this new claim to gain an unfair advantage, he having not filed his witness statement in the previous claim. In so saying, the court notes that this court must operate on the basis of the evidence before it. In that regard there is no evidence from the First Claimant as to why he failed to file the witness statement when the time was extended for him to so do. Further, there is no evidence before the court as to a change of circumstances since the withdrawal of the first claim which would necessitate the commencement of a fresh action based on different circumstances. There is no evidence of whether the withdrawal of the first claim was based on a promise made by the First Defendant or otherwise and to so find would be to speculate. The evidence on this issue is at its highest, extremely poor. In the absence of

such explanations, the court is left with the fact that the First Claimant and indeed all the Claimants have instituted fresh litigation on the very basis of the first claim and in respect of the same circumstances. The inference to be drawn from this coupled with the non compliance with the order to file witness statements is that the Claimants, including the First Claimant, is attempting to misuse the process of the court to have a second bite at the cherry as it were. In the court's view, the combination of these factors outweigh the fact of the continuing nature of the property right and the entitlement to bring an action in Partition. In so ruling, the court wishes to make it clear that its decision in this case has been guided by the particular circumstances of this case and is not intended to create a precedent in respect of Partition claims generally.

52) The court is therefore satisfied that the overall justice of this case lies with a dismissal of the claim on the basis of abuse of process.

SECOND ISSUE-ADVERSE POSSESSION

53) The court accepts the argument of the Claimants that should the claim be dismissed for abuse of process, the counterclaim should equally be dismissed, the issue of adverse possession having been relied on by the Defendants in the first claim and they having withdrawn the counterclaim in that case. It is a position that Attorney for the Defendants also agree with. Copies of the previous proceedings were annexed to the witness statement of the First Defendant as RRR3. The documents clearly demonstrate that the First Defendant counterclaimed for adverse possession but withdrew such counterclaim subsequently.

54) The counter claim for adverse possession will therefore be dismissed.

THIRD ISSUE - EQUITABLE INTEREST

55) The claim in respect of an equitable interest while at first appearing to be a new one is in fact on the evidence a claim that was available to the First Defendant when the first claim was filed but he failed to raise or treat with the issue at that stage. A perusal of his Defence and Counterclaim as well as his evidence demonstrates that his expenses on the property go as far back as 1985 and that these were substantial expenses. It would have been quite clear to the First Defendant when the first claim was filed that he had in fact spent these sums with either the acquiescence or consent of the First Claimant (according to him) and that he then had the opportunity to make a counterclaim for same. The attempt now to so do is in the court's view equally an attempt to abuse the process of the court. The counterclaim for an equitable interest will also be dismissed.

56) For these reasons the judgment of the court is as follows:

- i. The Claim and Counterclaim are dismissed.

57) The parties shall be heard on the issue of costs.

Ricky Rahim

Judge

1st October 2015.