

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

(Sub-Registry, San Fernando)

Claim No. CV2018-02215

BETWEEN

RAJEE MATADEEN

INDRA MATADEEN TOLL

Claimants

AND

KAMANIE BISSOON

PATSY BACHAN

ANIL BISSOONDATH

HEMRAJEE REUBEN

Defendants

Before the Honourable Mr. Justice R. Rahim

Date of delivery: March 26, 2024.

Appearances:

Claimants: P. Persad Maharaj

First Defendant: G. Ramdeen instructed by D. Harripaul

Second Defendant: S. Saunders

Third and Fourth Defendants: N. Heeralal.

JUDGMENT

1. This claim is a for a declaration that the occupation of a certain parcel of land by the claimants amounted to a de facto partition of lands or alternatively a declaration that the claimants have acquired an irrevocable equitable interest in the land. The claim also seeks an order that the claimants own the dwelling house situate on the land and other consequential relief.

2. The first claimant (now deceased) was the mother of the second claimant, who has in addition to being a claimant has been appointed to represent the estate of the first claimant for the purpose of the claim. The first claimant died after having filed her witness statement and the court ruled that the witness statement was to stand and its weight would be a matter for assessment by the court having regard to the fact that she could not be cross examined. For the purpose of this decision, the deceased shall be referred to as Rajee and the second claimant as Indra. Indra's claim in her own right is that she is in occupation through the permission of her mother who was the owner of the land.

3. Rajee and Indra are the occupants of approximately 1 ½ lots of land at number 16 Jaggan Trace Cumoto Road, North Barackpore (the disputed land). The defendants are all siblings themselves and the children of Bissoon Mungalsingh, deceased. Bissoon was one of the siblings of Rajee. Bissoon and Rajee were the children of Mungal Dharamsingh also deceased. The defendants are therefore the nieces and nephews of Rajee and the first cousins of Indra.

4. Mungal was the owner of a larger parcel comprising 5 acres 3 roods and 30 perches (the 5-acre parcel) of which the disputed land is a part. He held title together with others including his sons, Bissoon, Ramnarine, Dhanrajee and Seepersad. The land was registered land under the then Real Property Ordinance (RPO) now Real Property Act (RPA). The history of the title by way of endorsement on the certificate of title shows that Mungal, Bissoon, Ramnarine, Dhanrajee and Seepersad were vested jointly with two parcels (out of the 5-acre parcel) comprising what was demarcated as 1 acre, 1 rood and 36 perches and another parcel comprising 1 acre, 1 rood and 39 perches. Another person Kassiram became the owner of 3 acres out of the 5-acre parcel. Ramnarine died on February 10, 1977, Mungal on January 9, 1979 and Dhanrajee on February 24, 1993 leaving both Bissoon and Seepersad as survivors. It is the case for the claimants that the lands were then split between the survivors so that in addition to their shares in 1A and 1R, Seepersad was allotted the 39 perches which became Lot 2 and Bissoon was allotted the 36 perches known as Lot 1. Bissoon then transferred all his share in the defendants as joint tenants in 2008.

5. The disputed land is situate therefore on the parcel owned by the defendants by way of paper title. To the extent that it may be relevant, it is an accepted fact by all parties that the niece of Rajee, namely the first defendant, Kamanie is in a common law relationship with the son of Rajee named Tweed. The house built by Rajee and her husband is a two storey house, the ground floor (“downstairs” in local terms) of which is occupied by Indra and her family. Her brother Tweed who shares the relationship with the first defendant, Kamanie occupies the upper floor (upstairs).

6. Kamanie, Anil and Hemrajee (the joint defendants) filed a joint defence and counterclaim and Patsy filed a separate defence.

7. In the joint defence, the defendants aver that Rajee left the property in 2009 to relocate to another home at Cumuto Road leaving Indra and her family in occupation. They put the claimants to strict proof of the averment in relation to the conversation between Mungal and Rajee wherein Rajee was permitted to enter upon the disputed land and build a house. They say the disposition in the alleged Will is void as being ambiguous and as a result of the operation of *jus accrescendi* (right of survivorship). That any permission granted would have been their father Bissoon to Rajee to construct a chattel house in 1987. In any event if there was permission by Mungal same would have expired upon his death on January 9, 1979. It is their case that Rajee had been living on her father's Mungal's land elsewhere at Cumuto Road and upon his death, she ended up in conflict with her brother Ramdath and Ramdath told her to vacate the land which she did and sought permission from Bissoon to construct upon the disputed land. His permission was conditioned upon her vacating the lands either when he asked her to or she acquired land elsewhere. They aver that Tweed and Wayne, the other sons of Rajee contributed to the construction of the downstairs where Indra now lives as Rajee never worked and had no money to construct a house. They have also averred that there was no de facto partition and no irrevocable equitable interest was created.

8. By way of counterclaim, the First, Third and Fourth defendants claim that they have mortgaged the disputed land as part of a larger parcel so that they are entitled to the equity of redemption. Further that Rajee promised Tweed and Kamanie that they would get an interest in the property if they

expended money on it which they did in reliance on that promise. As a consequence, they ask for orders of possession and a declaration of an equitable interest in the name of Kamanie.

9. The defence of Patsy is essentially the same as the defence of the joint defendants save that she does not make a counterclaim. In relation to closing submissions, the first defendant has failed to file closing submissions despite the extension of time so to do. The others parties have filed.

ISSUES

10. There are several factual issues that arise from the legal issues to be determined. Those legal issues are;
 - a. Whether Rajee is entitled to an irrevocable equitable interest in the disputed lands by virtue of a gift of the land and her expenditure thereon or whether she was granted permission to build a house on the land on the condition that she would withdraw from possession when she found a place to live or when demanded by Bissoon. (the proprietary estoppel point).
 - b. If Rajee did not obtain an irrevocable equitable interest is she entitled to the land by virtue of the doctrine of adverse possession.

- c. If Rajee is not entitled to either of the above, is she entitled to compensation for her interest in the house.
- d. What if any interest is Indra entitled to.

The court notes that the effect of the grant of judgment on the counterclaim of the defendants will be the same as the effect of the dismissal of the claim in any event.

Case for the claimants

- 11. It is the case for the claimants that Rajee was permitted by her father Mungal to occupy two lots of land in 1977 but she only went into occupation of 1 ½ lots and constructed a concrete house with a garage at the front, a garage at the side and a wash shed at the back. There are fruit trees and a garden. Rajee then permitted Indra and her husband to stay with her when they married. The couple subsequently had two children who lived and grew up at the property.
- 12. Mungal left a purported last will and testament dated April 16, 1977 in which he purported to bequeath to Rajee and her husband Joe, 2 lots out of the parcel he held jointly with his sons.

Indra Matadeen Toll

- 13. In addition to the witness statement of Rajee, the claimants called two witnesses. Indra and Ramnarine. **Indra** set out the chronology of events set out above in her witness statement. She recalled that the construction

of the house began in 1987, at which time she was 11 years old. She would visit the construction site with Rajee who would cook at the site while the men worked on the house. At that time Tweed lived with her father Joe and her grandmother at Reform Village. Her parents had been separated by then. At age 13 she moved into the downstairs of the newly constructed house with her mother. Only that part of the house had been completed at that time. The garage was constructed two years later. At the time, the defendants lived with their parents 2 lots away. Bissoon visited often and would assist with the construction. She recalls seeing him mix concrete. Others also assisted namely her other uncle and her brother Wayne.

14. The cost of construction was borne by Rajee who held several jobs over the years including that of a cane farmer and a maid for Nutrimix Feeds. Indra also helped Rajee to plant rice and same was sold together with vegetables. Indra recalled going from house to house selling bodi and baigan for her mother. It was a struggle to get by and she recalled going without what she termed luxuries. The home received an electricity connection in 1991 and water some years later. Both bills are in the name of Rajee. Indra and her mother shared a close relationship with Bissoon and his family as they would visit each other's homes regularly and celebrate traditional religious days with each other. Bissoon was a roti maker and so he and his wife would cook for most shared family occasions.

15. Indra married Pascall in 1998 and they lived with Rajee at the property. The relationship between Rajee (and Indra) and Bissoon's family soured when Tweed brought Kamanie to live with him at the upstairs. Rajee took offence to the relationship as Tweed and Kamanie were first cousins by blood and she apparently made her displeasure known to all including Bissoon. In 2009 Bissoon blocked Rajee in the road way and told her to get

out of the home as the property was his daughter's own. There was also abuse from Kamanie at that time and the relationship between the parties took a nose dive as it were. Indra was unaware that by that time Bissoon had effected the 2008 transfer.

16. A notice to quit, dated July 13, 2009 was issued to Rajee by Bissoon¹ on the basis that she was a tenant at will but no date was given in that notice for Rajee to vacate. Subsequently Bissoon brought an ejectment claim in the Magistrates Court but withdrew same. Eventually Rajee left the property and took up residence by Indra's sister, according to Indra due to the stress as a result of the constant abuse meted out to her by Tweed who lived upstairs. Rajee had asked Tweed to leave because of the relationship he had with his cousin and according to Indra, after that request it became hell's home for Rajee and her with abuse and violence like they had never experienced before.

17. Indra set out some of the instances of abuse and also explained that at nights they would place pots and pans by the doors to alarm them in case the doors were opened inferentially by Tweed as he threatened to kill Rajee on several occasions. There were domestic violence proceedings and petty civil court proceedings, attempts by Tweed to disconnect the electricity supply to downstairs and other confrontations. There were several police reports of the incidents. Indra therefore gave notice dated October 21, 2010 to Tweed and Kamanie to quit the premises². There was a subsequent letter to Tweed and Kamanie asking that they leave the premises. There were protection order proceedings, and a settlement agreement arising out of mediation in relation to behavioral issues. The

¹ Page 155 TB 3

² Page 212 TB 3

incidents alleged by Indra are numerous. The court has considered the evidence but it is unnecessary to set it out in full in this decision. Suffice to say that the acrimony and incidents of aggression between the parties continued to exist up to trial. Some of the recent incidents are worthy of mention though.

18. It was alleged that on November 22, 2021 Kamanie dragged a cutlass on the concrete in the presence of Indra, Indra was told to leave her home on October 1, 2021 by both Tweed and Kamanie and assaulted by Kamanie, when Rajee died Kamanie stood in the driveway on Saturday 1 and Sunday 2, January 2022 and shouted obscene language. The incidents are numerous.

19. Finally, there is evidence of a Deed of Gift of the house standing on the disputed land from Rajee to Indra and her sister Pamela. That deed is dated August 13, 2010 but carries no registration endorsement or number. It simply carries a stamp that no stamp duty was adjudged as being payable. There is a filing form attached which equally bears no registration number but there is also a cashier's receipt attached that shows payment for the registration of two deeds in respect of which deed numbers were assigned. The Bill of Sale does not carry any number at all so that there is no direct link between the Bill of Sale and the receipt. There are links between the filing form which is stamped October 15, 2010 and the receipt which is dated October 15, 2010. Besides the dates they both carry the name of the same lawyer and the form sets out that the document it refers to is a deed between Rajee and "Pamala" and another. It shall be referred to as a Bill of Sale. When all is considered the inferential link between the Bill of Sale and the registration numbers on the receipt is but one inference only. The other is that the Attorney at Law clearly registered more than one

document on that day and so the receipts may refer to documents other than the Bill of Sale. As a matter of evidence, there is no evidence from the defendants that suggest that the Bill of Sale was never registered and in those circumstances the court is willing to and does in fact draw the inference that it was and that one of the numbers on the receipt belongs to the Bill of Sale.

Cross examination on behalf of the First Defendant

20. Suspicions were raised in the statement allegedly signed by the deceased Rajee as this witness stated in her witness statement signed on November 23, 2021 that her mother was deceased. The evidence is though that her mother passed away in January 2022. It was also her evidence that her mother signed a witness statement on the same day she signed namely in November 2023. This begs the question as to how she was therefore to say that her mother had passed when it had not yet happened. After sometime it became obvious to the court that the witness was not answering the questions asked of her in that regard and the court intervened in which event she stated that it must have been an error. However later on the said statements she also referred to her mother as being deceased. The filing stamps on the witness statements of both Indra and Rajee show that they were both filed on April 20, 2022. This has been a cause for much concern by this court and the court will return to this later.

21. Indra admitted that she had not known of any conversation between Rajee and Mungal and could not say in what circumstances Rajee came to live at the disputed lands. The witness testified that her mother transferred the house by way of the Bill of Sale as her rights were being questioned, meaning that Bissoon was getting on for the land and wanted to throw

Rajee out. Indra had found out that Bissoon had transferred the land to his children in 2009 during the many incidents between them. She had not yet seen a deed to that effect but she had been told this by Kamanie. Indra said that Rajee asked Bissoon to transfer the disputed property to her on many occasions but he never did. She admitted to have not stated same in her witness statement but said that she was unaware of the importance of that evidence hence her omission. She herself never asked her uncle Bissoon to transfer the land to her mother because she felt it was not her place so to do. She stated that at one time she would have been too young and in the later years the animosity from Kamanie meant that she could not approach them. Rajee left the disputed property because she had no choice having regard to the constant domestic abuse meted out against her. Thereafter she would visit Indra once per week most times on Sunday for lunch. In relation to Pamela, it was her evidence that Pamela left the house also because of the violence and has stated that she wants nothing to do with the disputed property. She at the same time admitted that she did not say this in her witness statement.

22. Indra stated that while she did not know of the conversation between Rajee and Mungal as to the property, she was aware that Bissoon in fact gave permission to Rajee to build the house and live there sometime before 1987. There is evidence in her witness statement that Bissoon and his wife were close to Rajee and her children and would come to the house to cook and lime but nowhere in that evidence did she state that Bissoon gave permission to them to live on the land as her own. She went further to say that Rajee told her that she had shown the Will to Bissoon and had a discussion with him in which he agreed to let her build there. That he gave her the two lots. She was a child when Rajee told her this. She did not witness this but her mother told her this. This is why her mother surveyed

the two lots of land, again this featured nowhere in the evidence in chief of the claimant. In direct answer to attorney she stated that she never said this in her witness statement because to date they have never received the survey document.

23. It is convenient to set out here that the pleaded case of the claimant is that Mungal gave the disputed lands to Rajee and alternatively that while Mungal was alive, Bissoon agreed with him as co-owner that Rajee be given the disputed lands to build her house and that the disputed lands would belong to her and so Bissoon agreed to partition the land in such manner. Although this was pleaded at paragraphs 13 and 14 of the Amended Statement of Case, such evidence was patently absent from the witness statement.

24. There was an admission that Rajee had asked Bissoon to come onto the land and build her house in 1987 according to Indra because she had the Will which gave her an entitlement to the land. She denied that he Bissoon only gave her permission to build and stay until he required the land. She also admitted that if according to her case, Bissoon gave the two lots to Rajee since 1987, it means that when he executed the deed of conveyance in 2008 he left Rajee out of the Deed. The inference appears to be that the defendants are saying that had he given her the land in 1987 he would have also done so by the 2008 deed. Indra admitted though that the problems with Kamanie only began when Kamanie moved into the upstairs in 2009, after the deed was done.

Cross examination on behalf of the Second Defendant

25. Indra testified that she was claiming an individual interest in the subject lands in addition to an interest because of her mother. She admitted that the Bill of Sale purported to transfer tenancy rights to the land to she and her sister and also admitted that Rajee was never a tenant. She denied that the permission given to her was to build a board house. She testified that a board house was never in fact built. Much of her other evidence was a repeat of some of the matters traversed by Attorney for the first defendant.

Cross examination on behalf of the Third and Fourth Defendants

26. Indra admitted that she did not say in her witness statement that she spent the sum of \$50,000.00 on the house. She admitted that her mother died without making a Will and that her mother had seven children. There was no other material evidence elicited in cross examination.

Ramnarine Ramdawar

27. Ramnarine was married to Rajee's sister. He does not say which sister he was married to. His wife died on June 30, 1999 but he kept in close contact with Rajee and Indra over the years notwithstanding the death of his wife. Rajee was close to her sisters and when his wife became ill she and he stayed at Rajee's house where she cared for his wife right up to her passing. His children also stayed there. He along with others including Bissoon assisted with the construction of the house which began in 1987 and took three years to complete. He knew of the Will of Mungal and of the fact that Rajee worked to maintain her children. She worked at

Nutrimix and funded the cost of the house. He gave details about the stages of construction and testified as to Bissoon making regular visits, cooking roti and liming. He was close to Bissoon. They were drinking and liming partners. Bissoon never told him that Rajee's occupation was temporary and Bissoon never had any difficulty to Rajee building her home. Bissoon always promised to fix the business whenever the topic came up but he never did. The issue with Rajee's possession began when she objected to her son being in a relationship with his cousin. He spoke to Bissoon about this who told him that he accepted it. He also spoke of the bad relationship between Kamanie, Tweed and Rajee.

Cross examination on behalf of the first defendant

28. He admitted that Rajee and her husband had marital problems in 1987 and Rajee needed somewhere to live so she asked her brother Bissoon for a place to put up a house. He stated that Mungal and his wife told him that Bissoon was given the land as executor to share between two brothers and two sisters. Bissoon also told him that the two lots he gave to Rajee belonged to her. He asked Bissoon to transfer the land to Rajee before he passed. He asked him on four occasions. Bissoon never mentioned to Ramnarine that he had in fact transferred the land to himself and his children. He admitted that he did not say in his witness statement that he spoke to Bissoon four times about this. He testified that before 2016 (before Bissoon died) he told him that he just could not see eye to eye with him anymore because of what he was doing to his own sister. As far as he was aware, when Rajee approached Bissoon she asked him to show her the two lots that belong to her so she could build a house. He did not say this in his witness statement. It was quite concerning to this court that the witness stated on several occasions not only that he signed the witness

statement at home but that it consisted of one page. His demeanour also left much to be desired as he accused Mr. Ramdeen of beating around the bush and he wondered if he (Ramdeen) was a joker. He then stated that he did not know if it was four pages as he was just out of the hospital.

Cross examination by on behalf of the second defendant

29. He admitted that he was not pleased that Bissoon did not give the two lots to Rajee and the relationship between he and Bissoon broke down at that point although they mended the relationship before Bissoon died. He gave more details about the building of the house, that Rajee completed downstairs and the concrete decking of the upstairs and moved in. There was no roof on the house and the concrete floor of the upstairs essentially became the roof until the upstairs was fully complete. He denied that Tweed built the upstairs. He stated that it was Rajee and her eldest son Wayne who built upstairs as Tweed was thirteen years old, going to school and working nowhere.

Cross examination on behalf of the third and fourth defendants

30. Except for putting to the witness that Bissoon did in fact “fix up the business” by transferring to himself and his children which was denied, there was no other material or helpful evidence.

Rajee Matadeen

31. Finally, there is the witness statement of Rajee who passed away after her statement was filed. The evidence in her statement set out that when

Mungal was alive he permitted her “to occupy two lots of land during his lifetime while he was part owner”. These are her exact words at paragraph 6 of the statement. She proceeded to set out that she began construction of a concrete house and that her father bequeathed the two lots to her by a Will. That Will was prepared in 1977 the same year Mungal told her she could occupy. She refuted what was contained in the filed defence namely that her occupation was conditioned on the request of Bissoon or when she found a home. Her occupation was permanent and she was the owner of the land. She related that after she expressed dissatisfaction with the fact that Tweed had moved in with Kamanie things took a turn for the worse. Although she had given permission for Tweed to live upstairs she withdrew same. Most of what she stated is corroborated by Indra. Nowhere in her witness statement did she speak of having a conversation with Bissoon and having obtained any permission from him.

32. The court was very cautious in its approach to this evidence as it remained untested in cross examination. To that end therefore the court afforded no weight to the evidence. This approach has also been taken for the reason that the evidence of whether Rajee is in fact the maker of the statement has given the court some unease. The witness statement of Indra says that Rajee passed away and referenced that event twice. However, it is the evidence of Indra, that she is the one who took Rajee to sign the statement at the lawyer’s office. Of course, Rajee was unable to explain if that was indeed the case, how she Indra was able to refer to her mother’s death before it had happened. Something about this smelt rotten to the court. When both witness statements are examined, it appears that co-incidentally, the signatures appear on stand-alone pages. There are no substantive contents of the witness statements contained on the signature pages. This of course may be mere co-incidence but the court must be

vigilant. In being vigilant a court is entitled to rely on its decades of experience in the legal profession in general terms. The court must be astute and ask itself, is it that Rajee only signed the signature page without anything more. There is no direct evidence of this and so the court cannot speculate. The only logical explanation in relation to Indra mentioning her mother's death in her witness statement when in fact her mother had allegedly gone with her to sign the said statement is that she too signed the signature page without the substantive statement being attached. While the court makes no such finding, common sense and logic had made the court very suspicious of Rajee's knowledge and approval of her witness statement. When added to the fact that she cannot be cross examined on it, as a matter of fairness the court must attach no weight to the evidence. The position in relation to Indra is somewhat different as even if she signed only the signature page without the statement attached at the time she would have had the opportunity to read and approve of the contents of the statement and has adopted them as her words and she has been crossed examined.

Case for the Defence

First Defendant

33. **Kamanie Bissoon** began her relationship with Tweed in 1995 but only moved in with him in 2003. Tweed and his mother Rajee shared a very cordial relationship until 2009 when Indra started claiming that she had an interest in the land. Bissoon gave Rajee permission to build a "chattel" house on the land on the condition that she will vacate the lands upon his request or when she got her own piece of land. Rajee was not working at the time but planted sugar cane. Her sons helped her cut and sell it. Tweed was born in 1970 and was thus 17 years old in 1987 when this occurred.

Tweed also worked in construction hence he was able to use the money he earned to help build the house. He also assisted with labour. In 2000, Rajee, she and Tweed agreed that she and Tweed would finish construct upstairs and live there and that the entire house would be belong to them both once Rajee and her children got their own property.

34. When Indra began laying claim to the property in 2009, Bissoon repeatedly told Rajee that she had to vacate the property. Tweed and Kamanie helped Rajee move to her home in Cumuto Road in 2008. Bissoon served a notice to quit on Rajee on July 31, 2009. It was her evidence that Rajee left because of constant fighting between Indra and her husband.

Cross examination on behalf of the claimants

35. She admitted that she and Tweed still live together and she could give no reason as to why she did not call him to give evidence in support of her case. She denied that the steps were only built in 2006 and stated that the steps were built first and she moved in upstairs in 2003. She admitted that her father Bissoon would come to the property while the house was being built but denied that he assisted by mixing cement. She accepted that she was about age 12 years when Bissoon told Rajee she could build on the land. She says she remembered the conversation and heard Bissoon use the phrase "chattel house". When asked the meaning of the phrase her answer was "to move". She then admitted that Bissoon never said the phrase but said that she could build until he was ready for the land. She was asked from where she got the phrase to put in her witness statement and she did not answer. She then admitted that she did not know what chattel meant. She knew that Rajee cut cane but denied that she had any other source of income. She knew of the notice to quit because Bissoon

spoke about it. She had also known that Bissoon had effected the deed sometime before in 2008 and so she was a co-owner. She admitted to having produced no bills of the money she said she spent to erect the upstairs. There was no cross examination by the other defendants.

Second Defendant

36. **Patsy Bachan** is the sister of Kamanie and a daughter of Bissoon. Her evidence was similar to that of Kamanie so that same will not be repeated. She testified additionally that Rajee began living in a board house with the permission of Bissoon before the concrete house was built. The claimant lived in the concrete house for about 11 years after which she left. The court observed that when the evidence of the other witnesses are considered it means that Rajee lived in the concrete house from 1990 to around 2001 according to this witness. At paragraph 11 of her witness statement she testified "I am aware however that my father gave the First Claimant permission to build a house on one lot of land located on the eastern side of Lot No.1. because she and her children had nowhere to live." She admitted that there is a lot of "bad blood" between Rajee, Tweed and Kamanie but she has not lived there since 1993 so she is not too familiar with what is going on between them.

Cross examination on behalf of the claimants

37. She testified that since 1993 she would visit perhaps every three or four months. She did not know Rajee to be employed. She accepted that her father gave Rajee permission to build and he came around during the construction over the three years it took to build. She believed that Bissoon

helped to mix cement from time to time and that friends and neighbours also assisted. She stated that at first it was a board house, that she has no pictures of it and did not know for how long the board house remained. Bissoon and Rajee shared a good relationship for about 19 years before he sent the notice to quit. Although her parents and Rajee were not happy about the relationship between Tweed and Kamanie in the beginning, they finally came around to accepting it. She was aware that there were several court cases between Rajee and Tweed and Kamanie. She was aware that the lands were surveyed and she is supposed to get two lots. When it was put to her that Rajee was given the land to build without restriction she replied that it was given to her to build and she would have to move when Bissoon was ready for the land. She accepted that she did not say this in her statement.

Cross examination on behalf of the first defendant

38. It was put to her that her father gave permission to Rajee to build a house until she found somewhere to go and she accepted that that was correct. She was of no other assistance because of her lack of recent involvement. There was no cross examination by the third and fourth defendants.

The third and fourth defendants

39. **Anil Bissoon** (wrongfully referred to as Bissondath in his witness statement), is the brother of Kamanie and Patsy and Hemrajee. He stated that Rajee built her house on Kamanie's share of the land. The land was mortgaged to one Krishna Singh on September 19, 2017. He stated that he was about 6 or 7 years old when Rajee started to build the house. She built

a concrete decking and blocked up the lower part and started to live there with her children. Tweed and Kamanie blocked up the upstairs in 2003 and moved in. In 2009 Rajee built a house elsewhere and left to live there. Before moving on, there is no real evidence before this court that Rajee owns a house elsewhere or built a house elsewhere. There is evidence that her family took her in to live and there was some construction by them eventually on a part of one of the properties for her to live. There is no evidence that she owns any other house.

40. At paragraph 16 of his witness statement he testified that before Rajee moved out she met with Bissoon in the presence of Anil and agreed that when Rajee moved out she would give Tweed the house and Bissoon would give Kamanie the land.

Cross examination on behalf of the claimant

41. He admitted that if the house was started in 1987, it means he was 4 years old so that he would not have been old enough to know of the conversation between Bissoon and Rajee. He accepted that there was no wooden structure. He admitted that he has no personal knowledge of which party or parties spent money to build the house. At the time Bissoon transferred the land to him and his sisters, there were only two houses on the land, that of Rajee and that of Bissoon and they were 200 feet away from each other. In an almost unbelievable answer, he told the Attorney that he had never seen the notice to quit before the day he was giving evidence in court. But the said notice is attached to his witness statement as the first exhibit. He admitted that when Rajee left the house she went to reside with her sister Pamela. His sisters decided to survey the land after Bissoon died. He denied that Rajee would visit the house from time to time

after she moved out and stated that that averment in his filed defence was untrue. He knew that there was constant argument between Kamanie, Tweed and Rajee since 2009, several court matters and police involvement.

Cross examination on behalf of the first defendant

42. He testified that he knows as a fact that the house where Rajee lived at Cumuto Trace belonged to Pamela. He repeated that he had no personal knowledge of the arrangement between Rajee and Bissoon and that whatever he knew Bissoon told him.

Cross examination on behalf of the second defendant

43. He stated that no deed was done in their names as far as partition or sub division is concerned, that they have only agreed as to how many lots each would get and where the lots are located. He is to get four and his sisters two each.

44. The fourth defendant **Hemrajee Reuben** is one of the siblings and child of Bissoon. Her evidence in her witness statement is that she knows that in 1987 her father gave tany Rajee permission to build a house on a piece of land on the eastern end. She built a part board and part concrete house and eventually turned it into a concrete house. This of course makes sense as when she first moved onto the premises she would have had to live in a structure as a concrete structure would take some time to build. The court therefore accepts that Rajee built a partially wooden structure which was then eventually built out into the concrete structure. She also stated that

it is within her knowledge that Bissoon told Rajee that when he wanted back the land she would to leave or if she got her own land she would have to leave. The balance of her evidence in chief was consistent with the evidence in chief of the third defendant.

Cross examination on behalf of the claimant

45. Hemrajee is the oldest sibling having been born in 1973. She left the area when she was around 15 or 16 years old but would return from time to time. She was the one who borrowed money in the sum of \$200,000.00 resulting in the mortgage. She was unaware whether Rajee remained upset by the relationship between Kamanie and Tweed. She admitted that she could not say (despite her counterclaim) what was said between Tweed and Rajee when Rajee permitted Tweed to move into the upstairs. She accepted that her filed defence referred to "chattel" house but that she was of the view that "chattel" meant a small normal house. Her father was around the house when it was being built and so was she from time to time. She also admitted that she was not present when the discussion was had between Bissoon and Rajee. She saw that Rajee moved in across the road by Pamela in a house to the side but she did not know who owned the house. She knew nothing about the notice to quit. This witness appears not to know much because of her absence from a young age.

Cross examination on behalf of the first defendant

46. Despite not being present when the discussion took place between Rajee and Bissoon she readily accepted the suggestion of the first defendant that Bissoon gave permission to Rajee to live on the land until she found a place to go. There was no cross examination on behalf of the second defendant.

ISSUE A

Whether Rajee is entitled to an irrevocable equitable interest in the disputed lands by virtue of a gift of the land and her expenditure thereon or whether she was granted permission to build a house on the land on the condition that she would withdraw from possession when she found a place to live or when demanded by Bissoon. (the proprietary estoppel point)

The Law

47. Proprietary estoppel is a shield and not a sword. However, in this case the counterclaim of the Defendants acts as a claim against the entitlement of Rajee so that Rajee can rely on the equitable doctrine as a shield. The claimant has the burden to prove the equity upon which she relies. In ***Horace Reid v Dowling Charles and Percival Bain***³, at page 6, Lord Ackner delivering the judgment of the Board stated that where there is an acute conflict of evidence, the trial judge must check the impression that the evidence of the witnesses makes upon him against contemporaneous documents, the pleaded case and the inherent probability or improbability of the rival contentions.

48. Halsbury's Laws of England provides the following in relation to promissory estoppel.

"The principle of promissory estoppel is that, when one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once

³ PC appeal No.36 of 1987

the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but must accept their legal relations subject to the qualification which he himself has so introduced⁴. ”

49. In CV2010-03575 **Fulchan v Fulchan**, Rajkumar J, as he then was, defined promissory estoppel as follows:

“11. Promissory Estoppel where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect , and, before it is withdrawn, the other party acts upon it , altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it.⁵ ”

50. In the Court of Appeal decision of **Mills v Roberts**⁶, a distinction in the nature of the promise between the law of promissory estoppel and proprietary estoppel was considered. Jamadar JA stated:

“19. Whereas in promissory estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to

⁴ Halsbury's Laws of England, Estoppel (Volume 47 (2014)), Nature, Classification and Principles of Estoppel, para. 308

⁵ See also CV2011-04300 Esther Mills v Lloyd Roberts, per Rajkumar J, (as he then was) para. 119

⁶ CA T243 of 2012

have that effect, in the law of proprietary estoppel there is no absolute requirement for any findings of a promise or of any intentionality.”

51. In **Juramanie Gayapersad v Danraj Gayapersad** (By Original Claim)⁷, Rajkumar J, as he then was opined:

“75. It is not necessary for the claimant to prove that the defendant agreed that the promise or assurance would be irrevocable since it is the claimant’s detriment which makes the assurance binding and irrevocable provided that it was clearly intended to be acted upon.

76. 2. Expectation or Belief

She must have acted in the belief either that she already owned sufficient interest in the property to justify the expenditure or that she would obtain such interest. See Snell’s Principles of Equity 31st Ed. Para. 10-18.”

52. In assessing the detriment allegedly suffered by the claimant, the court would consider any benefit and/or advantages enjoyed by the claimant from the subject property. In **Fulchan**, supra, at p. 7 the learned Judge set out:

“The law as set out in Snell’s Equity (ibid) is clear. It will recognize such an interest in circumstances where a party asserting such interest was led to act to his detriment, and it would be inequitable not to recognize such an interest.”

⁷ CV2012-00164

53. Further at paragraph 17, the Honourable Judge noted that not every contribution made to a property would give rise to an equitable interest.

“Routine maintenance activities on property that is occupied by such a claimant, such as cleaning or painting, would not usually fall into the category of detrimental actions that require compensation by the award and recognition of an equitable interest in property. This is activity to be expected of anyone who occupies and has the benefit of occupying property.”

54. The courts have since moved to a wider view of the issue and considers the matter in terms of the weather in all of the circumstances it would be unconscionable to permit the deny the person claiming the equitable right of the entitlement in all of the circumstances. The above considerations of course remain relevant to deciding the issue under the wider umbrella of unconscionability.

Findings of fact

55. The court finds the following;

- a. Rajee was permitted by Mungal to live on the land but there is no credible evidence that Mungal told her the land belonged to her. No one was in a position to give clear evidence of having witnessed this conversation and the court has given no weight to Rajee’s witness statement. At the highest, the Will of Mungal may have reflected an intention that Rajee be given the two lots of land when he

Mungal passed away. It does not mean that his intention was to give the land to her in 1977.

- b. There was a conversation between Bissoon and Rajee after Mungal died in which Bissoon continued as it were the permission granted to Rajee by Mungal but there was no qualification or condition that Rajee was to surrender possession when she found another place or when Bissoon asked for same. The court finds this to be the case because it was abundantly clear that Bissoon played an active role in assisting with the construction of the concrete house. He knew that Rajee was erecting a concrete structure and his participation and encouragement amounted to acquiescence. The court accepts the plausible evidence of Indra that Bissoon was a roti maker and the families would lime together at the house and he would cook.

- c. The court finds that it is not at all plausible that Bissoon would use legal terms such as “chattel house” and would specifically impose a condition on his sister in light of the fact that his father Mungal was the one who first gave the permission. The eldest of his daughters has accepted that what she said in her witness statement was essentially untrue. We must of course be cognizant that Mungal and Bissoon were old men most likely of East Indian indentureship descent coming from a society of cane farming. Theirs was a generation of old and it is more likely than not that they would not have used or even known of technical legal terms. Further, had Bissoon in fact told

Rajee that she would have to leave the land when he asked for it or when she found somewhere else, it would have been clear to him that she had no intention of leaving as she was building a two storey concrete house. A house that was affixed to the land which she would either have to break or which he would take from her. It is reasonable to infer that he was not trying to outsmart his sister as it were and this is not the case of the defence. Additionally, there is no evidence that he complained about this to Rajee, informing her that she ought not to build a concrete house that was affixed to the land. The evidence is that to the contrary he helped build it. This demonstrated to the court clearly that he never imposed a condition on the possession of Rajee.

- d. By way of example, Patsy stated in cross examination that she (although 12 years at the time) knew that there was a condition attached to the permission given by Bissoon. However, there is no such statement in her witness statement. This in the view of the court demonstrated that she was not telling the truth. In any event the court finds that at that age Patsy would have not been privy to any such conversation as a matter of plausibility.
- e. Much heavy weather was made by the third and fourth defendants about Rajee having built and moved into a board house firstly. This the court finds to be purposely misleading for the reasons set out above but which shall be repeated. It is clear that Rajee needed a place to go, that is not in dispute. It could therefore not be the case that she

would have had to live elsewhere while the concrete house took 3 years to build. The evidence is that she moved into what is now the downstairs while it was being built. It follows that there must have been certainly a structure enclosed by board as a temporary measure while the house was being built. This may well be what the eldest Hemrajee remembers when she told the court that she remembered some type of board structure. This is a matter of logic.

- f. The court accepts and finds that Rajee in fact expended money on building the house as she was essentially the single mother bread winner at the time. This is not an implausible factual scenario in this country. Many single parents have raised their children without the assistance of the other parent and managed to put food on the table. The inference is that she must have had an income so to do. The evidence is that she cut and sold cane, quite a plausible scenario. The fact that there is no documentary proof to support this does not derogate from such a finding as a matter of common sense. The court also accepts the evidence that the house took three years to build (which is also accepted by the defence) as a consequence of it being built in stages when money was available. This supports the contention of Indra that her mother worked and saved to build so that when there was money, she would spend some on the construction. This is also the evidence of Ramnarine, a perfectly acceptable and credible factual matrix.

- g. In that regard the court does not accept the evidence of the defence that Tweed paid towards the construction of the early stages of the house. These defendants were essentially young children who would have had no personal knowledge of the arrangements made by their elders and no income. The defendants have purported to say a lot of things which have proven to be false on material issues. This is because they would not have been in a position to know the facts.
- h. The court accepts that Tweed could have contributed to the construction of the upstairs of the house where he lives. Again, it makes much sense that he would. There are photographs in evidence that show the state of the house after the downstairs was completed. At least one of them shows clearly that upstairs had not been walled off although by then a roof had been built.
- i. The court accepts and finds that Mungal would not have been able to lawfully bequeath any particular part of that which he held as joint tenants with others so that the gift to Rajee by way of Will would more likely than not be void.
- j. However, the case for the claimants is also predicated on the actions of Bissoon independent of the actions of Mungal as Bissoon would have been the sole owner of the entire property at the material time. The court therefore finds that Bissoon imposed no condition on the possession by Rajee and by his actions encouraged her to believe that the

property belonged to her. This he actively did by assisting her to build.

k. The problems began with the relationship between Tweed and Kamanie of which Rajee did not approve. This much is clear on the whole of the evidence when the timelines are examined. Tweed had been granted permission by Rajee to occupy the upstairs but then he brought Kamanie to live with him. The court found what happened next to be a feature of family relations where children eventually convince parents to act contrary to how they may have acted before. It is not unknown in these courts that findings are made that older parents may have given property to one child by way of deed but when the others find out hell is literally brought to bear on that elderly parent so much so that he or she makes it seem that he was coerced into doing what he did or as in this case denying what he did. There is no evidence in this case that Bissoon was put under any kind of pressure but there must as a matter of logic be a reason as to what he changed his mind and this may be one such reason.

l. This court is convinced that the circumstances of the bad blood between Rajee and Tweed and Kamanie was ultimately responsible for Bissoon's subsequent contention with Rajee. He knew that his father had done a Will with Rajee, his sister as beneficiary of the two lots that his father had put her in possession of. The court finds that in those circumstances, although his father may not have had the

jurisdiction so to do he honoured his father's wishes. Bissoon's children were young at that time and property was not an issue for them. Of course, when the troubles started he would have had to pick a side and that he did. These matters of family relationships are well-known in our society and all bear similar features. It therefore would have been in the interest of Kamanie and her siblings to come to court and testify that their father granted permission to their aunt, Rajee subject to the condition that she would remove herself either when she found a place or when he asked her to. The court does not believe them.

m. The court also noted the apparently affectionate reference in their witness statements to "Aunty" or "Tanty" Rajee as if to give the impression that they so loved their aunt that they would not make up a case against her. There is an old saying in Trinidad and Tobago that all skin teeth is not grin. When interpreted it means that one must be wary of persons who pretend to like you. In that regard the court is not swayed by those references when considering the demeanour of the witnesses. It is abundantly clear that there has been grave animosity between the Matadeens and the Bissoons as a consequence of the relationship between Tweed and Kamanie. The evidence is replete with incidents, police reports and court cases on both sides. The court does not accept that it all started when Rajee started to lay claim to the property. This makes no sense. There is no evidence as to how she allegedly started to lay claim to the property. Further, she did not have to lay claim to the

property because as far as she was concerned the property belonged to her.

- n. Neither does the court accept the contention of the defence that the fact that Bissoon transferred the land to his children is evidence that he never intended that Rajee be given the land. This ignores the reality of what the court has found above. It is reasonable to infer that by 2008, whether through persuasion by his children or by his own choice, Bissoon changed his mind and his story. He would have been a much older man than when the conversation between he and Rajee and his father Mungal and Rajee first occurred in the 70's. In those circumstances it could hardly be the case that his transfer reflected an intention some thirty years earlier and the court so finds.

- o. In relation to the assertion by the Defence that Rajee agreed with Tweed and Kamanie that in return for him spending money to finish the upstairs he would live in it, the court accepts this to be plausible. It is not however plausible that Rajee would promise Tweed that the entire house would belong to him. Rajee was aware that Indra was living downstairs with her permission. Further, although Kamanie says this in her witness statement it is not pleaded. What is in fact pleaded at paragraph 13 of the Defence is that Rajee agreed with Kamanie and Tweed that they would finish the upstairs and would reside therein. Paragraph 13 continues "Additionally, the first named claimant has always acknowledged to the first named defendant that her father

owned the said lands and that the first named defendant will eventually hold a legal interest in it.” This is an entirely different pleaded fact. It certainly is not a pleading of an agreement that the house will be owned by Kamanie and Tweed. It is reasonable to infer that Rajee would have made provision for Indra to occupy downstairs and Tweed to occupy upstairs. The court finds that Kamanie is not telling the truth and has made up that agreement in an attempt to grab the entire house contrary to the arrangement made by Rajee. The court pauses to note at this stage that the evidence is that the land presently occupied by the house is the spot to be given to Kamanie under the survey done by the defendants. The court therefore found that Tweed occupies the upstairs with the permission of Rajee. At the highest Tweed and Kamanie are entitled to an equity in the upstairs of the property in so far as they expended money by the agreement of Rajee. There was therefore no actionable promise that was clear and unequivocal made by Rajee to Kamanie in the terms she would have this court believe.

- p. The court found also found that by virtue of the Bill of Sale which it found was in fact registered that Indra is the owner of the house.
- q. Finally, that Rajee owns no other house. That there has been no proof of same and the evidence of the defence in that regard has been mere speculation. The court finds that

Rajee took refuge as it were by her sister Pamela who provided accommodation for her within her compound.

Findings on the issue on application of the facts as found by the court

56. The court finds that there was a clear and unequivocal promise by Mungal which may have not had the force of law. However, when Bissoon became the sole owner, he accepted that Rajee was entitled to the two lots and told her she could build on it. He never imposed a condition or qualification on his consent as the paper title owner. Bissoon actively encouraged Rajee to build a concrete house affixed to the land because the land had been given to her. His actions demonstrated a clear and unequivocal assurance upon which she acted to her detriment by building the house in which she lived for many years. It is clear that as a consequence she treated the land as her own. She would therefore have acted in the belief that she owned sufficient interest in the property to justify the expenditure. This was not a case of routine maintenance by Rajee, this was a case of building her home on land given to her without qualification. It reasonable to infer in all of the circumstances that it would have been unfathomable to her that she would be compelled to move and that the concrete two storey house would have to be broken down or left to Bissoon. It is clear therefore that Rajee is entitled to an irrevocable equitable interest in the land.

57. In the circumstances it is unnecessary for the court to consider issues b and c.

ISSUE D

What if any interest is Indra entitled to

58. Indra is the owner of the entire house by virtue of the Bill of Sale. The finding of the court is that Rajee would have agreed with her son Tweed that he could live upstairs if he expended money on completion. That promise would have applied to Kamanie as she lives with Tweed. The court was not told of the particulars of such an agreement but it must be by way of logic that the place was unfinished when Tweed moved in and Rajee had already completed the downstairs. It means that Tweed and Kamanie would have done work on the upstairs. The evidence is also that Kamanie did not move in with Tweed immediately but eventually moved in sometime after. There is no evidence before this court as to the sum spent by Tweed nor is he a party to the case. Contained amongst the documents of the claimant is a valuation report of the first floor of the structure. This appears to be a valuation of the downstairs and not the upper floor so that the court will not apply that value to the upstairs.

Clean break

59. In determining the appropriate orders to be made the court also considers that in the interest of these parties to live separate and apart from each other in peace. Sometimes families simply have to learn to live apart. There has been too much animosity, threats and violence between them. The court therefore strives to do its best to make an order that permits a clean break between them.

60. Additionally, the claimants have submitted that the best way to ensure that there is a clean break is to order the transfer of the two lots partitioned on the survey plan of Curtis Gokool which itself is undated and unregistered. The claimants allege that in any event the Registrar General would not permit a registration of a parcel comprising one and one half lots under the RPA. The difficulty with this contention is of course that the evidence shows as set out by the claimants in their claim and evidence that while Rajee was given 2 lots by Mungal she only occupied 1 ½ lots. This has been the evidence of Indra throughout the case. However, the unchallenged evidence of the valuation by G.M and Associates dated September 25, 2019 states that the house is situated on 928.9m² or when converted 9998.5 sq. ft. This is almost two lots. It was also the evidence of Indra that she always assumed that it was 1 ½ lots but she never measured same. The court is prepared to hold that the occupation of the land was to the extent of two lots in the circumstances.

61. Finally, the court wishes to add that it has discerned a trend whereby witness signatures on witness statements appear to be set out in stand-alone pages at the end of such statements. This practice raises grave suspicion that witnesses are being asked to sign only signature pages without knowing the contents of their witness statements. Those lawyer who indulge in this practice should stop it as it is both contrary to the provisions of the CPR and is unethical as a matter of legal practice.

Disposition

62. The order of the court is as follows;

- I. **IT IS DECLARED** that the First Claimant Rajee Matadeen (deceased) was at the date of her death entitled to possession of and had acquired an irrevocable equitable interest in ALL AND SINGULAR that piece or parcel of land comprising 928.9 m² more or less and (and measuring approximately 105 feet in length by 60 feet in width) bounded on the North by Jaggan Trace on the South by a parcel of land comprising 3 Acres on the East by other portion of lands in the ownership by the Defendants comprising 1 Acre 1 rood and 36 Perches and on the West by other lands in the ownership of the Defendants and comprising 1 Acre 1 Rood and 36 Perches contained in Certificate of Title issued in Volume 4330 Folio 505 and also described in Volume 6007 Folio 342 (hereinafter called “the said lands”) which said piece of parcel of land forms part of the larger parcel of land comprising the said 1 Acre 1 Rood and 36 Perches.

- II. **IT IS DECLARED THAT** the Second Claimant Indra Matadeen Toll is the owner and entitled to possession of the two storey concrete house situate on the said lands.

- III. The First Defendant shall within thirty (30) days of the date of this order cause a valuation to be conducted of the upper floor of the concrete house situate on the said lands by an RICS valuator and shall provide a copy of the valuation report issued by the said valuator to Attorney at Law for the Claimants within seven (7) days of receipt of such report.

- IV. Upon payment to the Second Defendant of the value so set by the valuation report (the purchase price) the First Defendant shall deliver up vacant possession of the upper floor to the Second Claimant.
- V. The cost of the said valuation shall be paid by the First Defendant and said cost is to be added to the purchase price and paid by the Second Claimant to the First Defendant.
- VI. The Defendants shall execute a Memorandum of Transfer effecting a transfer of the said lands to the Legal Personal Representative (LPR) of the Estate of the First Claimant upon production of a Grant of Representation from the said LPR.
- VII. The Memorandum of Transfer shall be prepared by Attorney acting on behalf of the Estate of the First Claimant and the costs of the preparation, execution, registration and all other incidental expenses in relation to the transfer shall be deducted from the estate of the First Claimant.
- VIII. Should the Defendants fail to execute the said Memorandum of Transfer when called upon so to do in writing by Attorney at Law acting on behalf of the estate of the First Claimant the Registrar of the Supreme Court is empowered to execute same on behalf of the Defendants.

- IX. For the purpose of registration of the said Memorandum of Transfer the Defendants shall surrender to Attorney at Law for the estate of the First Claimant or the Registrar of the Supreme Court (whichever is applicable) the Duplicate Original Certificate of Title in relation to the said lands.

- X. The First Defendant is restrained by herself or through her servants and/or agents whoseever from interfering with the peaceful occupation and enjoyment by the Second Claimant of the house on the said lands and of the said lands and from threatening, harassing, or assaulting the Second Claimant or her invitees.

- XI. The Counterclaim of the First, Third and Fourth Defendants are dismissed.

- XII. The Defendants shall pay to the Claimants the prescribed costs of the claim in the sum of \$14,000.00.

- XIII. The Defendants shall pay to the Claimants the prescribed costs of the counterclaim in the sum of \$14,000.00.

Ricky Rahim

Judge