

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2018-04823

Between

JOANNE SHAND

(Also called Joanne Chin A Fat Shand)

Claimant

And

DWIGHT GRANT

First Defendant

SHIRLEY ABDOOL HART

Second Defendant

MAXIMILLIAN GRANT

Third Defendant

TIFFANY GRANT

Fourth Defendant

Appearances:

Claimant: Roger Mark Kawalsingh instructed by Melissa Sinanan

Defendants: Dexter Bailey

Before The Honourable Mr. Justice Devindra Rampersad

Date of delivery of Full Written Decision: **June 06, 2023**

RULING

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Factual background

1. The court gave an oral decision reading from the court notes in this matter on 28 October 2022. This matter is now under appeal and a full written decision is now provided.
2. The instant action was filed on 19 December 2018 by fixed date claim form and statement of case and arose out of the defendants' continued occupation of all and singular that piece or parcel of land situate at and known as No. 9 Queen Street, San Fernando ("the property").
3. In the claim form and statement of case filed on 19 December 2018, the claimant sought the following reliefs:

“(a) A declaration that the Claimant as the surviving joint tenant is the owner of all and singular that certain piece of parcel of land situated in the City of San Fernando more particularly described in Certificate of Title Volume 5114 Folio 365 comprising One Hundred and Seventeen Point Two Square Metres be the same more or less delineated and coloured pink in the plan registered in Volume 5114 Folio 363 being portion of the lands described in the Certificate of Title in Volume 7 Folio 351 and bounded on the North by Queen Street and by the lands of Mc Intosh then HW Braithwaite the E. Chamely on the South by a large concrete drain formerly San Fernando Ravine and by the lands of Lloyd Arthur Wharton then Steve Grant, Kurt Chin-a-Fat and others and the East by the lands of Lloyd Arthur Wharton the Steve Grant, Kurt Chin-a-Fat and others and by Queen Street and on the West by lands of Ms Intosh then H.W. Braitwaite then E. Chamely and by a large concrete drain formerly San Fernando Ravine;

(b) A Declaration that the unregistered Memorandum of Transfer dated June 9th 2015 and purportedly made between Steve Grant of the One Part and Dwight Grant, Maximillan Grant and Tiffany Grant of the Other Part, is ineffective in so far as it purports to transfer title from the said Steve Grant to Dwight Grant, Maximillan Grant and Tiffany Grant;

(c) A Declaration that the unregistered Memorandum of Transfer dated June 9th 2015 and purportedly made between Steve Grant of the One Part and Dwight Grant, Maximillan Grant and Tiffany Grant of the Other Part, is ineffective in so far as it purports to transfer title from the said Steve Grant to Dwight Grant, Maximillan Grant and Tiffany Grant and did not sever the joint tenancy between the Claimant and Beryl Chin-a-Fat, Steve Grant and Kirt Chin-a-Fat;

(d) Further and or in the alternative, a declaration that the signature appearing on the Memorandum of Transfer is not that of Steve Grant;

(e) Possession of all and singular that certain piece or parcel of land described in (a) above;

(f) Costs, and

(g) Any further and or other relief which this Honourable Court deems fit.”

4. By virtue of Certificate of Title Volume 5114 Folio 365, the claimant, Beryl Chin-a-Fat, Steve Grant and Kirt Chin-a-Fat became the registered proprietors of the property as joint tenants.
5. The defendants filed a defence on 5 April 2019. The defendants alleged in their defence that:
 - 5.1. Steve Grant, solely began operating a bar called “Sea View Restaurant and Bar” at the said property. He operated his business without any input, interference, objection or visitation from or payments to any of the other joint tenants.
 - 5.2. By the early 1980s, the structure from which Steve Grant operated the bar became old and as a result, Steve Grant conducted substantial repairs which resulted in a complete renovation of the wooden structure into a concrete structure.
 - 5.3. On 20 November 1983, Steve Grant solely applied for and subsequently obtained Town and Country approvals to undertake the renovation.
 - 5.4. In 1984, Steve Grant applied for a loan from Scotia Bank to facilitate the renovation of the property. Accordingly, the mortgage of the property was issued in the names of the joint tenants but the re payment of the mortgage

sum was solely repaid by Steve Grant. Receipts for the instalment payments were always issued in Steve Grant's name, whether solely or together with the other joint tenants.

- 5.5. Steve Grant also became aware that there were unpaid house rates and taxes in respect of the property for the period 1994 to 1999 in the sum of \$16,170.80. An agreement with the San Fernando City Corporation was made to liquidate the arrears by instalments. By letter dated 18 October 1999 addressed to Mrs Marlene Coudray, Chief Executive Officer of the San Fernando City Corporation, Steve Grant identified himself as the owner of the property.
- 5.6. Steve Grant also paid all WASA and T&TEC bills associated with the property and after Steve Grant's death, the first named defendant, his son, continued paying the bills.
- 5.7. As Steve Grant exercised management, control and ownership of the property since the 1960s, the claimant requested that he pay her sums of money, to which he did, to the United States of America.
- 5.8. In or around 2012, Steve Grant suffered a heart attack and as a result, the first named defendant took control and management of the property.
- 5.9. By virtue of a will dated 26 June 2013, Steve Grant purported to devise and bequeath the property to the defendants for their sole use and benefit. Upon his death, the executrix of his estate, the second named defendant, applied for his estate and received a grant of probate.
6. The defendants have contended that Steve Grant severed the joint tenancy during his lifetime by virtue of the fact that he duly executed a Memorandum of Transfer on the 9 June 2015 in favour of the first, third and fourth named defendants.
7. By the said Memorandum of Transfer, Steve Grant is alleged to have unequivocally transferred his undivided one third share in the property to the first, third and fourth named defendants thereby severing the joint tenancy and creating a tenancy in common in respect of the one third portion.
8. Although the Memorandum of Transfer was executed, same was never registered. The defendants averred that after the Memorandum of Transfer was executed, Steve Grant became ill and was constantly seeking medical attention. As his health was

declining, the registration of the Memorandum of Transfer became a secondary concern. Steve Grant died six weeks after the execution of the said Memorandum of Transfer.

9. In 2016, the first named defendant caused renovation works to be carried out on the said property which included the building of a wall at the back of the said property. The first named defendant spent approximately \$10,000 on labour and \$3,300 on materials.
10. The defendants also averred that there were never oral requests from them to vacate and maintain that they have acquired an interest in the said property and as a result thereof, they are entitled to possession of same.

Issues for determination

11. At one of the hearings held in this matter, on 14 February 2020, counsel for the defendants indicated that he may have to make an amendment to the defence to include a counterclaim, presumably to plead a relief for a right to possession, and that he would speak to the other side about it and possibly provide an application in that regard. The court then directed that any such application be forwarded to the court by email and copied to the other side for the court's consideration as soon as it was filed. No such application came.
12. On 5 February 2021, almost one year later, the court was told that the parties would try to resolve the matter since it was a family matter. The court was also told that in default of the matter being resolved, there would be a joint list of agreed and un-agreed facts filed and, in respect of any un-agreed facts, they were to indicate the likely length of any trial to resolve those facts.
13. By email dated 3rd of May 2021, the court was informed by instructing attorney for the claimants that, notwithstanding the fact that there were un-agreed facts, the parties had agreed that the matter would be dealt with without a trial on the basis of submissions only and that they had agreed to a schedule for those submissions subject to the court's approval. No order was made on that email and the matter was scheduled to come up on 26 November 2021.

14. At the hearing before this court on 26 November 2021, the parties to this action agreed that this matter be dealt with without a trial on the basis of submissions only. The issue that the parties identified for determination by the court was:

“What is the effect of the unregistered memorandum of transfer especially in light of the fact that there is no counterclaim?”

The claimant’s submissions

15. The claimant submitted that there are essential features of a joint tenancy, a legal creation, is as follows:
- 15.1. The right of survivorship (*jus accrescendi*); and
 - 15.2. The presence of the 4 unities, namely the unity of possession; interest; title and time
 - 15.3. The absence of any one of these features and or any of the 4 unities means that there is no joint tenancy.
16. It was submitted that severance can be best described as any act or event that is incompatible with the essential features of a joint tenancy and in particular, the continued existence of the 3 unities. Severance can only be effected during the lifetime of the joint tenant, meaning that a joint tenancy cannot be severed by will.
17. It was argued that the unregistered Memorandum of Transfer did not pass title to the defendants and therefore the joint tenancy was not severed.
18. Further, Deeds of Gifts are only effectual upon registration. It was submitted that pursuant to sections 18(2) and (3) of the Registration of Deeds Act Chap 19:06, title did not pass to the defendants.
19. The claimant argued that completion of a contract for sale of land is achieved upon execution of the deed of conveyance and the payment of the balance of the purchase price in return for possession. This general rule does not apply when dealing with registered lands.
20. Reliance was placed on *Mollyneaux v Afphan*¹ and Section 44 of the **Real Property Act, Chapter 56:02** which provides:

¹ (1955) 15 Trin. L.R. 71

“No instrument, until registered in the manner herein provided, shall be effected to pass any estate or interest in any land under the provisions of this Ordinance as to render any land liable to any mortgage charge or encumbrance: but upon the registration of any instrument in the manner herein provided, the estate or interest specified in such instrument shall pass or as in the case may be the land shall become liable in the manner and subject to the covenants, conditioning and contingencies set forth and specified in such instrument or by this Ordinance declared to be implied in instruments of a like nature, and should two or more instruments executed by the same proprietor, and purporting to transfer or encumber the same estate or interest in any land be at the same time presented to the Registrar General for registration and endorsement, he may either register and endorse that instrument which is presented by the person producing the grant or certificate or title, or may refuse to register either instrument until an order determining the relative rights of the several claimants shall have been made by the Court or Judge.”

21. It was submitted that Steve Grant did not sever the unity of title as title to the defendants did not pass by virtue of the fact that the Memorandum of Transfer was not registered. Upon the death of the other joint tenants, the claimant became the sole owner of the property.

The defendant’s submissions

Whether the deceased, Steve Grant, Terminated the joint tenancy by a course of dealing?

22. The authorities of ***Vadalis v Piquette (a/c Greenidge)***², ***Commonwealth Caribbean Property Law***³, ***Vio Rampersad v Gunness Ramjattan***⁴ as it relates to a ‘course of dealings’ and ways in which a joint tenancy may be severed.
23. It was submitted that when the claimant indicated her intention to sell her ¼ interest in the property to Steve Grant and they entered into an agreement with respect to the purchase, it gave rise to a consensus between them as joint tenants.

² TT 2011 HC 126

³ Gilbert Kodilinye, Third Edition, page 95

⁴ 2012-00456

24. Moreover, the claimant and Steve Grant embarked on a course of dealings with respect to the property when Steve Grant made payments to the claimant and the claimant received and accepted the payments in furtherance of the agreement. This effectively severed the claimant as a joint tenant with her interest being held by Steve Grant as a tenant in common. Therefore, the claimant has no locus standi to bring the claim herein.
25. Further, if according to the claimant, the payment received from Steve Grant were in relation to another property, it can still be inferred that the joint tenants intended to treat one another as tenants in common through their course of dealings. Steve Grant solely occupied the property and dealt with the property as though he was the sole owner. All outgoing from the bar were paid by Grant, he solely invested in the business and retained all profits while managing the property with assistance from other joint tenants.
26. In relation to the mortgage, the joint tenants were all required to execute the Memorandum of Mortgage as they were recognised as the legal owners on the Register.
27. Steve Grant made all payments until the mortgage was discharged. Further, all necessary approvals required for the renovation of the wooden structure on the property were sought and obtained solely by Steve Grant who also managed the work and extended to the structure to occupy a portion of land which fell outside the boundaries of the property.

Whether the deceased, Steve Grant, terminated the joint tenancy by execution of an unregistered and unendorsed Memorandum of Transfer

28. The authorities of *Lutchmin Heera-Narine and ors v Rajesh Heera*⁵, The Real Property Act chapter 56:02, *Mahabir and Mahabir v Soomaria and Ramnarine Debi*⁶, *Gokool v Barclay Bank of Trinidad and Tobago Ltd*⁷ were quoted.
29. It was stated that when Steve Grant executed the Memorandum of Transfer and gave it to his attorneys at law as agent and directed them to have it stamped and registered, he performed an act which can be deemed final and irrevocable. He made the

⁵ CV2018-02963

⁶ TT 1978 HC 78

⁷ TT 1988 CA 26

defendants aware of the transaction and directed them to collect the final documents from the attorneys at law after the registration was completed.

30. The attorneys at law did not take the necessary steps to ensure the Memorandum was stamped and registered but that does not invalidate the fact the Steve Grant did all that was required to be done by him legally in order to effect the transfer. When the defendants became aware of the transaction, they elected to utilise the services of Steve Grant's attorneys at law. The completion of the process to vest title in the defendants at that stage relied solely on the defendants and not Steve Grant.
31. It was submitted that Steve Grant's actions gave rise to a full alienation of his share in the property and this gave rise to an equitable interest in the property for the defendants as the gift of the property to the defendants was complete and did not lack effectualness.

The claimant's submissions in reply

32. The claimants argued that the allegations by the defendants relating to a course of dealings were not agreed and there is no counterclaim by the defendants. Therefore, it is unfair to submit on an issue that was not agreed as an issue for determination as per the agreement made at the PTR on 26 November 2021 between the parties.
33. It was also stated that in relation to the unregistered Memorandum of Transfer, the agreed facts on the pleadings are:
 - 33.1. On 9 June 2015 Steve Grant executed a Memorandum of Transfer purportedly transferring his share and interest in the property to the defendants;
 - 33.2. The consideration for the Memorandum of Transfer being natural love and affection;
 - 33.3. At the time of Steve Grant's death, the Memorandum of Transfer was not registered.
34. In response to the defendant's reliance on ***Gokool v Barclays Bank of Trinidad and Tobago Ltd*** to state that the deceased "*executed the Memorandum of Transfer and gave it to his Attorneys at Law as agent and directed them to have it stamped and registered*" as a result of which the defendants are entitled to title to the property, the claimant stated that there is no evidence to support this submission and reliance.

35. In the absence of any pleading that the deceased did everything necessary to be done having regard to the nature of the property to give effect to the transfer not only means that in any event no evidence could be led on this point by the defendants but entitles the court to draw adverse inferences against the defendants.
36. It was submitted that:
 - 36.1. The submission that Steve Grant did everything that was required to be done by him at the time of his death in order to give rise to a full alienation of his share in the property cannot be accepted. However, if Steve Grant did in fact do everything that was required to be done by him, this ought to have been reflected in the pleadings and in the agreed facts.
37. The claimant is the owner of the property in dispute – there is no evidence by the defendants to show that the claimant’s paper title ownership has been extinguished.

Discussion

38. The claim sets out that the claimant is the sole owner of the lands described in Certificate of Title Volume 5114 Folio 365 by reason of the right of survivorship in relation to the 3 other original co-owners as joint tenants of the same. Those others – Beryl Chin-a-Fat, Steve Grant and Kurt Chin-a-Fat – died on 23 April 1998, 22nd of July 2015 and 6th of March 2018 without there being any pleading that the joint tenancy was severed.
39. The defendants rely upon, amongst other things, a purported Memorandum of Transfer purportedly executed by Steve Grant on 9 June 2015 which has never been registered. That, along with the suggestion that the signature on the said purported Memorandum of Transfer did not belong to the said Steve Grant, is the basis used for the claimant to refute any defence in this matter. The defence filed in this matter did not contain a counterclaim for any declaration of an equitable interest in the property or otherwise.
40. As a result, the sole question agreed upon was the effect of the unregistered memorandum of transfer.
41. Counsel for the defendants sought to introduce, via submissions, a further issue that was not agreed between the parties i.e. whether the deceased, Steve Grant,

terminated the joint tenancy by a course of dealing. Regrettably, that was not the agreed position indicated on 26 November especially since the resolution of that issue would have to include a resolution of the un-agreed facts by means of a trial. Since the parties had twice intimated to the court as mentioned above that the issue related to the unregistered memorandum of transfer alone, it would now be contrary to that agreed position to allow any consideration of that. Accordingly, the court will proceed to rule only on the agreed issue for determination as stated above.

42. As a result, since course of dealing does not arise, especially since any purported execution of the alleged memorandum of transfer was not done with the knowledge of the other joint tenants at the time that it was done, the only avenue open to the defendants would be to assert that the joint tenancy was severed by alienation. A course of dealing, which was not the agreed issue, would have in any event to be a course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common⁸.
43. Coming back to the issue of alienation, therefore, the court must look at the issue as pleaded by the defendants. At paragraphs 3 (j) and (k), the defendants said:
 - j. The Defendants will also contend that Mr. Steve Grant severed the joint tenancy during his lifetime by virtue of the fact that he duly executed a Memorandum of Transfer on the 9th day of June 2015 in favour of the First, Third and Fourth Named Defendants. By the said Memorandum of Transfer, Mr. Steve Grant unequivocally transferred his undivided one third share in the said property to the First, Third and Fourth Named Defendants thereby severing the joint tenancy and creating a tenancy in common in respect of the one third portion. A true copy of the said Memorandum of Transfer is hereto annexed and marked "G".
 - k. However, although Steve Grant executed the said Memorandum of Transfer, same was not registered. The Defendants aver that after the Memorandum of Transfer was executed, Mr. Steve Grant became ill and was constantly seeking medical attention. As his health was declining, the registration of the Memorandum of Transfer became a secondary concern. Mr. Steve Grant eventually departed this life six weeks after the execution of the said Memorandum of Transfer.

⁸ See *Williams vs. Hensman* [1861] EWHC Ch J5170 ER 862, [1861] 1 J & H 546per Page Wood V-C

44. The provisions of section 44 of the Real Property Act and section 18 of the Registration of Deeds Act quite clearly state that unless registered within one year, any deed of gift, which in this case includes the Memorandum of Transfer in these proceedings as defined under section 18 (3), is ineffectual to pass any estate or interest in the land. Section 18 (1) provides a remedy in respect of any such unregistered instrument but there is no pleading in that regard to show that the steps that were necessary under that section have been complied with. Further, upon looking at the instrument itself, it is clear that it has not been submitted to the Valuation Division of the Board of Inland Revenue or to the said Board for the assessment and/or payment of stamp duty. Even further, there is no pleading that the donor did all that was necessary to try to perfect a gift which was otherwise imperfect⁹ such as paying the fees to the attorney-at-law, paying for and or obtaining a valuation of the property for stamp duty purposes, paying the fees for stamp duty, paying the fees for registration, etc.. As a result, the authorities have established that the court cannot seek to perfect an imperfect gift in equity¹⁰ and there is no material fact pleading on the defence to suggest that the donor did all that was necessary for the registration of the instrument.
45. Further, having regard to the effect of section 44 of the RPA, and the learning in authorities such as *Stroud vs. Macedo*¹¹, *Rosie Gangoo v Jassodra Gangoo & Ors*¹², and the other authorities relied upon by the parties, this court is not persuaded that the purported execution of a memorandum of transfer which was not registered in the factual matrix setup in the defence in fact alienated the interest of Steve Grant. It may have been a signicator of such an intention but the intention never reached completion. As Lord Hardwick LC said in *Partriche v Powlet* (1740) 26 ER 430:

⁹ *Jaffa v Taylor Gallery Ltd, Jaffa v Harris (1990) Times, 21 March, para 238* A registrable disposition of a registered estate only has effect if it complies with such requirements as to form and content as rules may provide, and if a disposition of a registered estate if required to be completed by registration, it does not operate at law until the relevant registration requirements are met: see the *Land Registration Act 2002 ss 25(1), 27(1) and real property and registration Vol 87 (2017) para 424*. A transfer of a registered estate is required to be completed by registration.

¹⁰ Halsbury's Laws of England>Gifts(Volume52(2020))>1.Gifts Made between Living Persons>(9)Incomplete Gifts>267. Court will not complete incomplete gift.

¹¹ [1922] 2 A.C. 330

¹² Civ App No. 131 of 1999

“... there must be an actual alienation to make it amount to a severance...”

46. In this case, there is no actual alienation and therefore the joint tenancy has not been severed.
47. Therefore, on the issue for determination as stated by the parties, the court is of the respectful view that the unregistered memorandum of transfer in this matter was not sufficient to have severed the joint tenancy on the pleaded facts before this court.
48. As a result, this means that the claimant would be entitled to the property under the principle of survivorship.

The Order

49. In the circumstances the court grants the declarations at paragraphs a, b and c of the statement of case filed on 19 December 2018¹³.
50. The court further orders that the defendants deliver up possession of the subject property forthwith.
51. With the consent of the claimant, the order for possession is stayed on until 27 January 2023.
52. The defendants shall pay the claimant’s prescribed costs of the claim quantified by the court in the sum of \$14,000.
53. The court directs the defendants to permit the claimant whether by herself or servants and or agents to inspect the subject property on a date to be agreed between attorneys at law for the claimant and the defendants, such date to be on or before 25 November 2022, to determine the current state of the same and to take pictures and notes in respect of the same upon such inspection.

/s/ D. Rampersad J.

¹³ See paragraph 3 above