

**REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

Claim No. CV2019-02412

Between

**ANGELA EDWARDS
Also called ANGELA EDWARDS-SEEBRATH**

Claimant

AND

YOLA ELIZABETH CONSTANTINE

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: 8 November, 2022.

Appearances:

1. Mr. Anthony Manwah, Attorney-at-law for the Claimant.
2. Ms. Karen Gonzales, Attorney-at-law for the Defendant.

DECISION

1. Before the Court for its determination is the Claimant's Claim Form filed on 12 June 2019 and Amended Statement of Case filed on 8 November 2019 wherein the Claimant has sought the following reliefs:
 - a. Possession of the property situate at No. 6 Second Street East, Montague Avenue, Trincity, Trinidad described in Certificate of Title Volume 2861 Folio 379;
 - b. An injunction restraining the Defendant, her servants and/or agents and/or licensees or whosoever otherwise from entering and/or remaining in upon the said property;
 - c. Such further and/or other directions, orders and reliefs as the Court may think fit;
 - d. Costs.

2. By way of counterclaim the Defendant claims:

- a. A declaration that the joint tenancy has been severed and that the property situate and known as 6 Second Street East, Montague Avenue, Dinsley Gardens, Trincity is now held as tenants in common;
- b. A declaration that the Estate of Mr Seebrath is the owner of and entitled to possession of a 1/6 share in the half share of the Claimant in the said property as a consequence of his adverse possession thereof, further or in the alternative;
- c. A declaration that the Estate of Mr Seebrath is the owner of and entitled to possession of the said property as a consequence of his adverse possession of the entire property; further or in the alternative;
- d. A declaration that the Estate of Mr Seebrath is entitled to an equitable interest in the said property based on the financial and non-financial contributions made to the said property;
- e. Interest;
- f. Costs;
- g. Any further relief that the Court deems just and reasonable in the circumstances.

The Claimant's Facts:

3. By Memorandum of Transfer No. 52 dated 23 February 1984, the Claimant and her husband Anthony Owen Seebrath purchased a parcel of land situate at No. 6 Second Street East, Montague Avenue, Trincity, Trinidad comprising 418 sq. metres ("the said property") from Home Construction Limited as joint tenants.
4. The said property was the matrimonial home of the Claimant and her husband who had two children together and they subsequently divorced on 3 January 1992.
5. After the divorce, Mr Seebrath occupied the matrimonial home with the Claimant's permission and pursuant to an oral agreement between himself and the Claimant.
6. In or about 1992 the Defendant and Mr Seebrath began living together on the said property and the Defendant continued to do so after the death of Mr Seebrath on 21 July 2016 who

died intestate without having severed the joint tenancy and upon his death the Claimant became the sole owner of the said property.

7. In 2017, the Defendant made an application to the Court to be declared the cohabitant of Mr Seebrath and same was granted on 16 June 2017.
8. The Claimant's attorney wrote to the Defendant in February 2018 requesting she vacate the property and in May 2018 the Defendant's attorney replied stating that the joint tenancy was severed by the Claimant and half of the property formed part of Mr Seebrath's estate.

The Defendant's Facts:

9. The Defendant pleaded that on 21 September 1993 the Claimant and Mr Seebrath wrote to the Trinidad and Tobago Mortgage Finance Company Limited ("TTMF") requesting that the said property be solely in the name of Mr Seebrath and the two then minor children of the Claimant and Mr Seebrath. Acknowledgement of this request by the parties to have the joint tenancy severed by substituting the names of the minor children of the parties together with Mr Seebrath was confirmed by TTMF by letter dated 9 May 1995.
10. The Defendant further pleaded that consent of the Claimant was not necessary as the Defendant occupied the said property as a licensee of Mr Seebrath and was entitled to be there without the Claimant's consent. The Defendant asserts that she enjoys occupation of the said property as a beneficiary of Mr Seebrath and has lived there with her son for the past 27 years.
11. Subsequent to the divorce, Mr Seebrath continued making mortgage payments to TTMF from 1995 to the date of his death and from that date the Defendant has continued making mortgage payments in the sum of \$1,634.53 per month totalling \$465,841.05.

12. Furthermore, Mr Seebrath and the Defendant together expended monies to make improvements in excess of \$180,000.00 and around \$30,000 were paid to workers in cash. Renovations included, *inter alia*, tiling, cupboards, complete electrical overhaul, additional storage room and covering the garage to the driveway. The Defendant also stated that she would have made non-financial contributions to the said property.
13. By way of counterclaim the Defendant pleaded that she is the intended administratrix of the Estate of Mr Seebrath. She outlined that subsequent to the agreement between Mr Seebrath and the Claimant, (which had the effect of severing the joint tenancy), Mr Seebrath remained in sole uninterrupted possession of 1/6 share of the property and the Defendant also premised a claim founded on a contention of adverse possession of a 1/6 share of the property.
14. In the alternative, the Defendant pleaded that Mr Seebrath remained in sole uninterrupted possession of the entirety of the said property since 1989/1990 to his death in 2016 and by virtue of Sections 3, 4, 14 and 22 of the Real Property Limitation Act Ch 56:03 the right of the Claimant to bring any action against the Estate of Mr Seebrath is extinguished after 16 years.

Letters in issue:

15. On 14 January 1991 there was correspondence from the firm Wilson & Co Attorneys-at-law on behalf of the Claimant and Mr Seebrath to TTMF in the following terms:

“We are instructed by the above named mortgagors Mr & Mrs Seebrath to seek your company’s formal consent under clause 4(e) of the Memorandum of Mortgage executed by them on 19 March 1984 to a transfer by them to their two children Sommer Seebrath (aged 6 years) and Shanonne Seebrath (aged 4 years) of an interest in the above property in remainder expectant upon the death of the survivor of them (retaining for themselves a joint life interest in the property)...”

16. On 21 September 1993 the Claimant wrote to TTMF in relation to the mortgage on the said property in, *inter alia*, the following words:

“I hereby consent for the mortgage of the property situated at #6 Second Street East, Montague Avenue, Dinsley Gardens, Trincity to be solely in the name of my ex-husband ANTHONY OWEN SEEBRATH and my two daughters, SOMMER TONI SEEBRATH and SHANONNE ANGEL SEEBRATH.

I am requesting a release of any commitment with regard to the said property which carries account # 24418...”

17. In addition, on the same date, 21 September 1993 Mr Seebrath wrote to TTMF in relation to the mortgage on the said property in, *inter alia*, the following words:

“Please note that I would like the mortgage of property situated at #6 Second Street East, Montague Avenue, Dinsley Gardens, Trincity to be solely in the name of ANTHONY OWEN SEEBRATH and my two daughters, SOMMER TONI SEEBRATH and SHANONNE ANGEL SEEBRATH.

I am consenting to take full and sole responsibility for all mortgage payments...”

18. On 26 April 1995 the Claimant wrote to TTMF and stated the following:

“In response to conversation of today’s date with Ms. Wendy Huggins, attached please find said correspondence.

I understand that as the children are minors a TRUSTEE would have to be named. I have no problem with agreeing with Anthony Seebrath on a named person.”

19. On 9 May 1995 TTMF responded to the Claimant in the following terms:

“We acknowledge receipt of your letter dated 1995 April 26 in connection with the captioned subject matter and draw your attention to letter of 1995 April 21 addressed to Mr. Anthony Seebrath (copy enclosed for ease of reference), and to which we have not yet received a reply.

With regards to your request to include your two children’s names on the deed we wish to advise that information on our files indicate that they are all minors. You should therefore liaise with your Attorney-at-law, or our Mr. Tajmool Hosein of Juris Chambers, 39 Richmond Street, Port-of-Spain, for legal advice and guidance in this matter...”

The Evidence:

20. The Court heard evidence from the Claimant, the Defendant and Ms Karen Atwaroo of TTMF.
21. The Claimant gave material evidence and in the course of the proceedings, she accepted that she sent the letters of 14 January 1991, 21 September 1993 and 26 April 1995 to TTMF. The witness also testified that after the divorce there was an arrangement between herself and Mr Seebrath. Pursuant to this agreement, both parties agreed that Mr Seebrath would remain residing at the said property and the Claimant would live with the children in Diego Martin as they attended school in Port-of-Spain.
22. The witness further acknowledged receipt of a TTMF 1995 response whereby TTMF advised that she should retain the services of an attorney-at-law in relation to her intention to have both her minor children’s names included on the property but she took no further steps.
23. The Claimant also testified that it was her belief that Mr Seebrath was a good father, he continued paying the mortgage and at one period one of the children stayed with him at the property. The Claimant without hesitation accepted that subsequent to the divorce and although she was awarded the property, the parties mutually altered the arrangement as she preferred to be close to the children’s schools and she could not afford to pay a rent and the mortgage.

Issue to be determined:

24. The parties agreed that there was no material dispute on the facts and that the Court ultimately has to determine whether the joint tenancy between the Claimant and Mr Seebrath was severed.

Law in relation to severance of a joint tenancy:

25. The law as it relates to a joint tenancy is quite clear. Joint tenants hold property equally and there exists a single unit of ownership. The author of **Commonwealth Caribbean Property Law 2nd Edition at page 117** states that:

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

For a joint tenancy to exist what is known as the four unities must all be present. These unities are the unities of possession, interest, title and time. Essentially each joint tenant has equal rights to possess any part of the land and each has an interest which is identical as it pertains to the whole land.

26. The law recognizes that the right of survivorship, however, may be destroyed, by a severance of the joint tenancy effected during the lifetime of the joint tenant. To take effect, severance of at least one of the essential unities is required. When this occurs, the joint tenancy is converted into a tenancy in common and each party is thereafter entitled to a distinct share.

27. In **Williams v Hensman (1861) 70 ER 862, 867**, Page Wood VC identified three circumstances which can effect a severance:

“A joint tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint tenant is a right by survivorship only in the

event of no severance having taken place of the share which is claimed under the jus accrescendi. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund- losing, of course, at the same time, the right of survivorship. Secondly, a joint tenancy may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interest of all were mutually treated as constituting a tenancy in common.”

28. In the Canadian case **Hansen Estate v Hansen 2012 ONCA 112 (CanLII)** at paragraph 34 the Ontario Court of Appeal stated, *inter alia*:

“ The three rules may be summarized as follows: Rule 1: unilaterally acting on one's own share, such as selling or encumbering it; Rule 2: a mutual agreement between the co-owners to sever the joint tenancy; and Rule 3: any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common..”

29. The Court of Appeal in **Civ. App. No. 131 of 1999 Rosie Gangoo v Jassodia Gangoo et al** at paragraph 19 cited *Burgess v Rawnsley [1975] 3 All ER 142* and stated:

“19. Sir John Pennycuick in Burgess expressed the view that a course of dealing may include abortive negotiations between the joint tenants for a re-arrangement of their interests, if that course of dealing, even though it does not lead to a concluded agreement, indicates a common intention on the part of the joint tenants that the joint tenancy should be regarded as severed. His observation was plainly obiter as it was not necessary to decide the issue of mutual agreement and he was careful to note that whether or not such a common intention was to be inferred depended on the particular circumstances of each case. He (at 153 f) illustrated that caution in these words:

“One would not ascribe to joint tenants an intention to sever merely because one offers to buy out the other for X pounds and the other makes a counter-offer of Y pounds”.

30. The author of **Commonwealth Caribbean Property Law (3rd edn) at page 95** under the rubric “course of dealing” stated:

“Severance under this head does not require any express act of severance, nor any agreement or declaration of trust. All that is required is ‘a consensus between the joint tenants, arising in the course of dealing with the co-owned property, which effectively excludes the future operation of a right of survivorship’.

Thus, for example, where spouses who are joint tenants of property negotiate with one another for some arrangement of their interests on divorce, it may be possible to infer from the circumstances a common intention to treat each other as tenants in common, even where the negotiations break down.”

Resolution of the Issue:

31. The Court should take a practical approach to the issue as to whether or not severance has been effected as the implications associated with the right of survivorship can often lead to unjust or impractical consequences. The intention of the parties whether expressed, implied or inferred as a result of their course of dealing is imperative. In the discharge of its fact finding mandate to ascertain the parties’ intent, the Court should view the facts from a practical and common sense perspective. Where for example, the operative circumstances establish that individual rights were asserted over a specific and identifiable portion of land though owned jointly, such a circumstance should be viewed as an act of severance as it materially impacts upon the unity of possession.

32. The Court endorses and adopts the rationale of the Ontario Court of Appeal in *Hansen Estate* (supra) which has similar facts to the instant matter. In that case the respondent and the deceased held title to their matrimonial home as joint tenants. They were in the process

of separating and dividing their matrimonial assets when the deceased died. The respondent then claimed exclusive ownership of the home through the right of survivorship. The deceased had recently executed a new will that distributed his entire estate amongst his four daughters. Two of his daughters, who were the trustees for his estate, brought an application for a declaration that the estate was entitled to an undivided, one-half interest in the matrimonial home. They submitted that the joint tenancy had been severed by a "course of dealing". The application judge found that no such course of dealing was established and dismissed the application. The daughters appealed.

33. In allowing the appeal the court considered what it called the "course of dealing test" and stated at the headnote to the judgment:

"... A proper application of the course of dealing test for severing a joint tenancy requires the court to discern, based on the totality of the evidence, whether the parties intended to mutually treat their interests in the property as constituting a tenancy in common. The "course of conduct" test operates so as to prevent a party from asserting a right of survivorship where doing so would not do justice between the parties. It does not require proof of an explicit intention, communicated by each owner to the other(s), to sever the joint tenancy. Rather, it requires that the co-owners knew of the other's position and that they all treated their respective interests in the property as no longer being held jointly. Such knowledge can be inferred from communications or conduct. The test does not require proof that a party relied to his/her detriment on a representation that a co-owner no longer wanted to hold the property jointly.

By adopting a category-based approach to the course of dealing test, the application judge failed to appreciate the significance of the following: the respondent moved out of the matrimonial home; the spouses were negotiating the equal division of their family assets, the most significant of which was the matrimonial home; the respondent took steps towards valuing her half-interest in the home; the deceased rewrote his will in a way that was inconsistent with the operation of a right of survivorship; and the spouses opened separate bank accounts. Their conduct

demonstrated that they were mutually treating their co-ownership as a tenancy in common and not as a joint tenancy.”

34. In the instant matter, the undisputed facts before the Court establish that subsequent to the Claimant and Mr Seebrath’s divorce in 1992 there was an arrangement between them in relation to the occupation of the said property, the payment of the mortgage with TTMF and a discussion that their then minor children would acquire an interest in the said property.
35. The Court paid particular attention to the January 1991 letter to TTMF which was sent on behalf of the Claimant. The wording of this 1991 letter communicated that there was effected a mutual agreement between Mr Seebrath and the Claimant to change the nature of the ownership in relation to the said property.
36. The Court also considered that approximately two years later in September 1993 both Mr Seebrath and the Claimant individually wrote to TTMF requesting that the mortgage be in Mr Seebrath’s name and that of their two minor children.
37. While the language used by both parties in their communication to TTMF referred to “the mortgage”, the Court noted that a mortgage could not have been placed in the names of minors. This position was advanced by TTMF as the communication dated 30 July 1991 pointed to the vesting of Claimant’s interest in the said property to Mr Seebrath and the minor children as opposed to “the mortgage”.
38. In addition TTMF’s correspondence of 9 May 1995 recommended that the Claimant should liaise with an attorney-at-law for advice. In essence, TTMF proffered advice in relation to the vesting of the “*interest*” in the said property and not the *mortgage* to the minor children. The Court also took note of the fact that the Claimant neither corrected TTMF nor did she advance any position that she had no intent to treat with her interest in the said property and that she was just concerned with the names on the mortgage.

39. There was a clear and common trend among the letters which the Claimant wrote in 1991, 1993 and 1995 to TTMF. Her intent was that their children should be vested with an interest in the said property and this position fundamentally impacted upon the issue of survivorship. In the absence of any deed which evidenced the said intention, the children could only be guaranteed to benefit from her interest if the then existing joint tenancy was severed.
40. On the Claimant's evidence she gave up her possession of the said property after her divorce and she allowed Mr Seebrath to unilaterally live in same and to treat with the said property as he so desired. In effect she removed herself from exercising any responsibility over the said property and also distanced herself from her obligation under the mortgage.
41. The letters and the Claimant's course of dealing were sufficient to establish her unequivocal intent to distance herself from the interest she held in the said property prior to her divorce.
42. The evidence clearly established that post the divorce and consistent with the representations made to TTMF, Mr Seebrath treated the said property as his own. He paid significant sums under the mortgage and effected substantial repairs to the said property during the tenure of his relationship with the Defendant. It is therefore evident that Mr Seebrath and the Claimant ceased, post their divorce, having an identical interest in relation to the whole of the said property. The parties effectively negotiated an arrangement involving their interests post the divorce and it is plausible to infer and an objective application of the course of dealing test leads the Court to conclude that their common intention was that the said property was no longer subject to a joint tenancy and they effectively excluded the operation of the "right of survivorship".
43. The evidence further established that post the divorce, the "unites of possession and interest" no longer existed in relation to the said property as the Claimant effectively expressed an intent to divest herself of her interest and Mr Seebrath thereafter unilaterally exercised exclusive possession and control over the entirety of the said property.

44. By way of extension and mindful that the law must evolve, the Court considered the approach to be taken where, for example, a co-owner devolves his interest in a property via a will as the letters in the instant case bear some degree of similarity with expressions of intent as contained in bequests. The court's approach in *Hansen Estate* (supra) is instructive and at paragraph 63 the court said:

“63. I recognize that a testamentary disposition cannot, in itself, sever a joint tenancy: “[t]he right of survivorship takes precedence over any disposition made by a joint tenant's will”: *Sorensen's Estate*, at p. 35 D.L.R., citing Megarry and Wade, *The Law of Real Property* (London: Stevens & Sons Ltd., 1957), at p. 369. A declared intention not communicated to a co-owner is, on its own, insufficient, on its own, to establish a mutual intention to sever a joint tenancy. [See Note 9 below] And I accept that no greater weight should be given to such a unilateral expression simply because it is found in a testamentary document. That said, the intention shown by Mr. Hansen's decision to leave his estate to his daughters is relevant in determining the existence of a course of dealing under rule 3. Specifically, his decision to do so supports the case for severance insofar as the decision is consistent with other evidence that the spouses mutually treated their interests in the property as no longer being held jointly.”

45. This Court also considered and adopts the rationale employed in the Ontario Superior Court of Justice decision of **Marley v Salga 2019 ONSC 3527 (CanLII)** where the court stated at paragraph 31 and 32:

“31. As noted in *Hansen Estate* at para. 63, a testamentary disposition cannot sever a joint tenancy. However, the provision in a will is a piece of evidence that can be used to help discern whether there was a common intention to treat the joint tenancy as severed, particularly if the provision in the will was known to the other party.

32. In this case, the will is not only written evidence of the testator's intent but is a document which, having been prepared by a lawyer, can be presumed to have been

prepared on the instructions of the testator and reviewed prior to execution. Standing alone, it does not indicate a shared intention. However, when coupled with the recorded conversation as set out below, Ms. Marley's knowledge of the will's terms may be inferred."

46. In that case, the Court considered recorded conversations between the parties, the will which on its face presented the assumption by the testator that he owned a half interest in the disputed property and affidavit evidence. Based on that evidence, the court was satisfied that there was a course of dealing on the part of Mr. Salga in which Ms. Marley shared sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common.

47. The law has to remain relevant and relatable and this Court holds the view that in its determination as to the intent of the parties the approach which ought to be adopted in this jurisdiction should have regard to the course of dealing test. The court should consider the evidence in its entirety which should include, *inter alia*, the terms of any executed will and whether the respective co-tenants were aware of the provisions in the will. Ultimately, the conduct of the parties is paramount, it must be viewed holistically and the litmus test must involve an assessment as to whether, in the round, the cumulative conduct is sufficient to satisfy the court that the respective interests in the joint property were mutually treated as constituting a tenancy in common.

48. The instant claim by the Claimant for possession is premised upon her assertion that the right of survivorship applies and that she is now vested with absolute control and ownership over the said property. For the reasons outlined this contention is devoid of merit as the joint tenancy was severed. Consequently, the Claimant's claim must be and is hereby dismissed.

49. On the Defendant's counterclaim, the Court declares that the post-divorce arrangement between the Claimant and Mr Seebrath was such that the joint tenancy which existed in relation to the said property was severed.

50. The parties shall be heard on the issue of costs.

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FRANK SEEPERSAD

JUDGE

Assisted by Mr Liam Labban JRC