

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**Civil Appeal No. P247 of 2013**

**Claim No. CV2009-04639**

**Between**

**AMALENE ALI**

**MARK MAHABIR**

**SHALIZA MOHAMMED**

**ORNELLA MOHAMMED**

**Appellants**

**And**

**ZALINA MOHAMMED**

**Respondent**

**PANEL:**

**A. Mendonça J.A.**

**G. Lucky J.A.**

**J. Aboud J.A.**

**Date of delivery: October 11, 2023**

**Appearances:**

**Mr. G. Armorer appeared on behalf of the Appellants**

**Mr. S. Ramtahal appeared on behalf of the Respondent**

**I have read the judgment of Mendonça J.A. I agree with it and have nothing to add.**

**/s/ G. Lucky J.A.**

**I have read the judgment of Mendonça J.A. I agree with it and have nothing to add.**

**/s/ J. Aboud J.A.**

## JUDGMENT

### **Delivered by A. Mendonça J.A.**

1. The central issue in this appeal is whether the title of the Respondent to a parcel of land located in the Ward of Diego Martin (“the subject parcel of land”) is extinguished by virtue of the provisions of the Real Property Limitation Act (the “RPLA”).
2. The paper title to the subject parcel of land was at one point vested in Subratee Mohammed (“Subratee”) as to two-thirds undivided share and to Aliaf Sammons as to the remaining one-third undivided share. By deed dated May 12, 1997 Subratee conveyed his title and interest in the subject parcel of land to his son Rasheed Mohammed (“Rasheed”). Therefore, as at that date, the paper title to the subject parcel of land became vested in Rasheed as to two-thirds undivided share and in Aliaf Sammons as to the remaining one-third undivided share.
3. In 2009 Rasheed began these proceedings for the recovery of possession of the subject parcel of land. Initially, three persons were named as defendants namely, Farahan Mohammed (“Farahan”), who is Rasheed’s brother and the son of Subratee, Amalene Ali, and Mark Mahabir (“Mark”). Subsequently, other persons were added as defendants namely, the owner of the one-third share in the subject parcel of land, Aliaf Sammons, Tricia Mohammed, Shaliza Mohammed (“Shaliza”), Ornella Mohammed (“Ornella”) and Troy Hernandez.
4. Rasheed died before the trial of this action and his wife, Zalina Mohammed, was appointed by order of the court of September 25, 2012 to represent the estate of Rasheed for the purpose of carrying on these proceedings. I will refer to Rasheed and Zalina together as the Respondent.
5. Farahan and Amalene Ali (“Amalene”) were in a common law union. The defendants Tricia Mohammed, Shaliza Mohammed, Ornella Mohammed and

Troy Hernandez are all children of that union. Mark is Amalene's child from a different union. They all occupied a concrete house on a portion of the subject parcel of land.

6. I will set out in some detail the material allegations as they appear from the pleadings in these proceedings. I will begin with the Respondent's statement of case. These are the material allegations:
  - (i) The Respondent alleges that Subratee, the father of Farahan, and Rasheed's predecessor in title, granted a bare licence to Farahan to occupy a portion of the subject parcel of land and to live in a small tapia house located on it until he found alternative accommodation. It was a condition of the licence so granted that Farahan would not destroy or demolish the tapia house and that he would vacate the subject parcel of land when requested so to do.
  - (ii) In 1985 Farahan, without Subratee's consent and authority, and in breach of the condition of the licence, broke down the tapia house and then proceeded to build a concrete structure on the subject parcel of land.
  - (iii) On March 25, 1988 or August 10, 1988 Subratee terminated the licence.
  - (iv) In 1988 Subratee began proceedings ("the 1988 action") for possession of the subject parcel of land naming Farahan as the sole defendant. Farahan filed a defence and counterclaim. He claimed he was induced by Subratee to occupy the subject parcel of land and to erect thereon a dwelling house in place of the tapia house. In accordance with that representation and inducement, he proceeded to demolish the tapia house and to build a concrete dwelling house. He denied that he was entitled to possession of the subject parcel of land and counterclaimed

for, inter alia, declarations that he was the owner of the dwelling house and had an equity or interest in the subject parcel of land.

- (v) The trial of the 1988 action however did not take place. On November 24, 2003 Subratee discontinued the action and Farahan discontinued the counterclaim.
- (vi) On October 16, 2007 Rasheed and Farahan entered into an agreement ("the 2007 agreement"). By this agreement, Rasheed agreed to pay to Farahan \$45,000.00 in full and final settlement of his claim to occupy the subject parcel of land. In consideration thereof, Farahan agreed to relinquish all claims in the subject parcel of land, and further agreed that he and his family, including his common law wife, Amalene, would vacate the subject parcel of land.
- (vii) Rasheed alleged that at all times he was willing to pay the sum of \$45,000.00 as mentioned in the 2007 agreement but that Farahan elected not to accept it as he could not give an assurance that Amalene would vacate the subject parcel of land. Farahan agreed to make his best endeavour to have Amalene vacate the subject parcel of land before receiving payment.
- (viii) Aliaf Sammons, the paper title owner as to one-third undivided share of the subject parcel of land has been ordinarily resident in England since the 1950's, has abandoned his interest in the subject parcel of land and has since never exercised any possessory rights in respect thereof.
- (ix) In the circumstances, the Respondent claimed, inter alia, a declaration that the defendants have no right, title or interest to the subject parcel of land, possession of the subject parcel of land and damages for trespass.

7. Amalene and Farahan initially filed a joint defence to the Respondent's claim. In their defence they claimed:
- (i) That Farahan in or around 1982 was asked by Subratee to go on the subject parcel of land and live in the tapia house until he (Farahan) could build a house to replace the tapia house in which house he and Amalene would live permanently.
  - (ii) In compliance with the request in that year, he and Amalene moved to the tapia house.
  - (iii) In 1984 Farahan prepared building plans for a concrete house to be erected on the subject parcel of land and in that same year Subratee and Farahan signed an application for town and country planning approval to build a dwelling house on the subject parcel of land.
  - (iv) Construction of the house started in 1985 and continued thereafter.
  - (v) As a consequence, Farahan and Amalene contended that Farahan acquired an equitable interest in the parcel of land.
  - (vi) In relation to the 2007 agreement, Farahan denied that he ever represented to Rasheed that he could not get Amalene to vacate the subject parcel of land and claimed that he was never offered the sum of \$45,000.00 or any part thereof.
  - (vii) They also claimed that Aliaf Sammons granted them permission to occupy his one-third undivided share of the subject parcel of land.
8. Amalene, however, subsequently obtained leave of the court to obtain independent legal advice and to file a separate defence on her own behalf. In her defence she alleged that the inducement by Subratee to live on the subject parcel of land and to build the dwelling house thereon was made to both her

and Farahan and acting on the inducement both she and Farahan expended monies to build the house.

9. Amalene also claimed that her occupation of the subject parcel of land began in 1981 and continued thereafter. While the dwelling house was being constructed on the subject parcel of land, Farahan and their first child lived in a temporary structure constructed on the subject parcel of land. They moved into the incomplete house in 1986.
10. She alleged that Rasheed's claim to possession of the subject parcel of land was barred by the provisions of the RPLA and his title therein has been extinguished.
11. In the alternative, Amalene claimed an equitable interest in the subject parcel of land arising out of her reliance on Subratee's inducement to build a house on the subject parcel of land. She also claimed that she was entitled to a statutory lease pursuant to the Land Tenants (Security of Tenure) Act.
12. Amalene also alleged, like Farahan, that they had the consent of Aliaf Sammons to occupy the lands and build on his one-third share or interest in the subject parcel of land.
13. Defences were also filed by Mark, Shaliza and Ornella. The common threads of their defences are that they together with other members of the family lived on the subject parcel of land for more than 16 years; that they are entitled to remain in possession through their mother Amalene, who has an equitable or proprietary interest in the subject parcel of land; that the right of Rasheed to bring an action for possession is barred by the provisions of the RPLA and his title to the subject parcel of land has been extinguished.
14. Amalene, Mark, Shaliza and Ornella also counterclaimed for the following relief:

- (i) A declaration that Amalene has an equitable interest in the land and house and, through her, also Mark, Shaliza and Ornella.
- (ii) A declaration that Amalene Ali and, through her Mark, Shaliza and Ornella are entitled to occupy and live on the land for as long as they desire.
- (iii) Further, or in the alternative, a declaration that Rasheed never occupied the subject parcel of land or house thereon and Amalene, Mark, Shaliza and Ornella exclusively and continuously occupied the said premises for more than 16 years and as a result they acquired title by their possession.
- (iv) Costs.
- (v) Such further or other relief and the Court deems just.

15. In Rasheed's replies to the defences and the counterclaim of Amalene, Mark, Shaliza and Ornella, he relied on the allegations made in the statement of case and contended that permission was never given by Subratee to Farahan to build on the subject parcel of land; that the licence to occupy the subject parcel of land was for the limited purpose identified in the statement of case and was given only to Farahan; that the application for town and country planning approval to build on the subject parcel of land was not signed by Subratee or, in the alternative, was signed by him under a misrepresentation; that Amalene did not expend monies to build the dwelling house on the subject parcel of land; that Amalene was never in sole and exclusive possession; that her possession was never adverse or continuous or separate from Farahan; that she did not have the necessary intention to possess; that Mark only began occupation of the subject parcel of land in 1998; that Shaliza did not reside on the subject parcel of land; that their occupation was with Subratee's consent and permission; and that they did not acquire possessory title in the subject parcel of land and are trespassers.

16. Aliaf Sammons did not file or serve a defence although he was served with the proceedings.
17. Witness statements were filed by the parties with the exception of Aliaf Sammons, Troy Hernandez and Farahan. A witness statement was also filed by an attorney-at-law in which the circumstances surrounding the 2007 agreement were explained. Zalina, Amalene and Mark were cross-examined on their witness statements. I will refer to the evidence as and when it is necessary for the purposes of this appeal.
18. Farahan in addition to not filing a witness statement took no active part in the trial of the matter.
19. The Trial Judge rejected the claim as to any equitable interest based on any inducement or representation that Amalene could live and build a house on the subject parcel of land. Essentially, the Trial Judge did not accept Amalene's evidence that any representation or inducement was made to her to build and live on the subject parcel of land. The Trial Judge noted that Farahan's failure to give any evidence undermined that claim made by Amalene. There has been no appeal from this conclusion of the Trial Judge and I will therefore say no more of it.
20. In relation to the plea that Rasheed's claim to possession was barred by the provisions of the RPLA, the Trial Judge rejected that as well. She did not accept a submission by counsel for Amalene that as the 1988 action did not stop time from running for the purposes of the RPLA, by 2004 Rasheed's title would have been extinguished as Farahan and Amalene would have been in possession of the subject parcel of land for more than sixteen years. The Trial Judge stated:

“This argument at first seemed attractive. On further consideration however, I respectfully rejected it because it ignored the fundamental rule that possession had to be a single and conclusive possession, see (Powell v Mac Farlane 1977 38 P&CR 452 Ch. D). In this case possession was exercised jointly by Farahan and the several members of his family,

his wife and children. At all times, Amalene's possession was essentially his. Given my observations about Farahan's conduct in relation to and his refusal to participate in the proceedings, it must follow that this submission fails."

21. The Trial Judge was also of the view that Amalene had not established the requisite *animus possidendi* given the history of her occupation of the subject parcel of land with Subratee's permission and her claim to an equitable interest therein.
22. The Trial Judge also did not accept the claim that Aliaf Sammons, residing in the United Kingdom, had given permission to Amalene to occupy the subject parcel of land. She found that he had effectively abandoned any interest in the subject parcel of land when he left this jurisdiction in the 1950s as the Respondent claimed.
23. In the circumstances, the Trial Judge gave judgment for the Respondent. She ordered that Amalene, Mark, Shaliza and Ornella deliver up possession of the subject parcel of land. She further ordered that the Respondent pay to Farahan the sum of \$45,000.00 which was the sum that Rasheed agreed to pay to Farahan under the 2007 agreement. The trial judge also granted a declaration that Aliaf Sammons' title as to one-third undivided share in the subject parcel of land was extinguished by reason of the continuous possession of the subject parcel of land by Subratee and his successors in title.
24. Amalene, Mark, Shaliza and Ornella (hereinafter collectively referred to as "the Appellants") have appealed. They contend that the Trial Judge erred in fact and in law when she rejected their plea that the Respondent's claim to possession was barred and the Respondent's title was extinguished by virtue of the provisions of the RPLA.
25. The short argument raised by Mr. Armorer, counsel for the Appellants, was that the licence granted by Subratee, Rasheed's predecessor in title, to

Farahan to occupy the subject parcel of land was terminated in 1988. He argued that at that time Farahan and Amalene were in possession of the subject parcel of land and on the termination of the licence they remained in possession without consent and were therefore in adverse possession of the subject parcel of land. They continued in adverse possession for a period in excess of 16 years. The result, he contended, is that by 2004 the title of Rasheed, the then paper title owner was extinguished. The Trial Judge was therefore wrong to uphold Rasheed's paper title claim to possession. The Respondent's claim should therefore be dismissed and that the Appellants are entitled to an order on their counterclaim that they acquired title in the subject parcel of land by adverse possession.

26. Mr. Ramtahal for the Respondent supported the decision of the Trial Judge. He submitted that Amalene's possession cannot be viewed as a separate possession. Her possession has to be taken together with or as that of Farahan, her common law husband. So, the state of mind of Farahan is the overriding state of mind in determining whether the necessary *animus possidendi* or intention to possess existed. He contended that Farahan did not have the required *animus possidendi* and therefore the Appellants were not in adverse possession. Mr. Ramtahal pointed out that Farahan did not give evidence and the court was not asked to make a declaration of adverse possession on his behalf and was not therefore required to deduce the state of Farahan's mind. He argued that if consideration is to be given to the evidence that was led at the trial, it was clear that Farahan did not have the necessary intention to possess. In that regard, Mr. Ramtahal pointed to the pleadings in the 1988 action, Farahan's defence and conduct in these proceedings and to the 2007 agreement. Mr. Ramtahal also submitted that, alternatively, Farahan and Amalene were not in single possession as the law required. He pointed to a pleading in Amalene's defence that she was in sole and exclusive possession of the subject parcel of land. He submitted that the effect of that was that

Amalene was advancing a concurrent possession and there was not a single and exclusive possession as required. Further, he contended that if Amalene was in possession for the purposes of the RPLA it could not have been before 2009 and would be too late in time to have extinguished Rasheed's paper title. He also submitted that the 2007 agreement should be upheld.

27. It is well settled that a landowner's right to bring an action to recover possession of his land is barred after the expiration of 16 years from the date when the right to do so first accrued. This is the effect of section 3 of the RPLA which provides as follows:

"No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same."

28. For time to run under section 3, however, there must be someone in adverse possession of the lands in whose favour time can run. This requires that the person has factual possession, the necessary intention to possess, or, as it is also called, the *animus possidendi*, and is on the lands without the landowner's consent. If the person is in adverse possession for a period of 16 years prior to an action by the landowner for the recovery of possession, his paper title to the land is extinguished. This is the effect of section 22 of the RPLA, which is as follows:

"At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished."

29. It is not necessary that the period of 16 years should continue right up to the commencement of the action for recovery of possession. Once the person is continuously in adverse possession for 16 years, the title of the landowner is extinguished. If the title of the landowner is extinguished, it cannot be revived. The title is however not destroyed for all purposes but only insofar as is necessary to prevent the landowner from claiming against the person in adverse possession (see *Jourdan on Adverse Possession*, 2<sup>nd</sup> edition at para 20-12).
30. In these proceedings, it was Amalene's evidence that Subratee induced her and Farahan to go and live on the subject parcel of land and to build a structure in place of the tapia house. The Trial Judge however rejected this evidence and preferred the Respondent's evidence which was that Farahan was granted a licence to build only a temporary structure on the subject parcel of land and that he would deliver up possession when required to do so. That licence was granted in or around 1981. There is no dispute that by August 1988 that licence was determined.
31. While the Trial Judge rejected Amalene's evidence of an inducement, she made no finding that a licence to live on the subject parcel of land was also granted to Amalene. There was however evidence to that effect from Zalina. According to her, she understood the arrangement was that Farahan and Amalene can stay on the subject parcel of land on a temporary basis until they found alternative accommodation. This was evidence that a licence was granted to Amalene as well as Farahan to live on the subject parcel of land. Even in the absence of such evidence, it would be appropriate to imply a licence to Amalene to occupy the subject parcel of land. She was allowed to occupy the subject parcel of land without objection from the landowner.
32. It is common ground that on the termination of the licence in 1988 Farahan and Amalene were living on the subject parcel of land and did not vacate the

subject parcel of land after the licence was terminated. It is indeed also common ground that they remained on the subject parcel of land well past 2004.

33. Both Amalene and Farahan pleaded that they had the consent of Aliaf Sammons, the other paper title owner, to remain on the subject parcel of land. Amalene gave evidence to that effect. The Trial Judge however did not accept that evidence as she was entitled to do and from the orders made by her she was clearly of the view that Amalene and Farahan had no permission or consent from Aliaf Sammons to remain on the subject parcel of land after 1988. Indeed, it was the finding of the Trial Judge that Aliaf Sammons had abandoned the lands since the 1950s and his title to the subject parcel of land was extinguished by the possession of Rahseed's predecessors in title. So long before 1988, pursuant to the Trial Judge's findings, Aliaf Sammons would have had no title to the subject parcel of land. Aliaf Sammons has not appealed the Trial Judge's decision.

34. In view of the above, it seems to me that the right of action to recover possession of the subject parcel of land first accrued to the paper title owners by August 1988 when Farahan's and Amalene's licence to live on the subject parcel of land was terminated and they refused to leave. They were no longer licensees of the paper title owner and they remained on the subject parcel of land without the consent or permission of the paper title owner. From that point on, their interest was adverse to that of the paper title owner.

35. The question that now arises is whether Farahan and Amalene were in possession of the subject parcel of land. As I mentioned above, to be treated as being in possession the alleged possessor must establish both factual possession and the intention to possess. I will first consider whether they were in factual possession. In so doing, I am conscious of the fact that Farahan did not give evidence but there was other evidence that was before the court and

it is from that evidence that the material facts must be found on a balance of probability.

36. In **JA Pye (Oxford) Ltd and another v Graham and another** [2002] UKHL 30 at para 41 Lord Browne-Wilkinson approved the statement of Slade J in **Powell v McFarlane** (1977) 38 P&CR 452 where he said (at 470-471):

'(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.'

From that it can be seen that possession is something more than mere occupation. It requires an appropriate degree of physical control. It must also be single and exclusive. This involves the alleged possessor establishing that he has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so. The possession can be single possession exercised by and on behalf of two or several persons jointly.

37. In this case, the evidence is that Amalene and Farahan lived on the subject parcel of land. They lived first in the tapia house. They demolished it in or about 1985 and lived in a temporary structure on the subject parcel of land while the concrete dwelling house was under construction. They moved into the partially complete dwelling house in or about 1986 and continued construction of the concrete dwelling house, which was completed in or around 1993. According to the evidence, Farahan and Amalene continued

building over the protestations of the paper title owners. While living on the subject parcel of land, Amalene and Farahan had three children. The first was born in 1983 and their second and third child in 1990 and 1991 respectively.

38. They continued to live together on the subject parcel of land until around 2007 when it appears that Farahan and Amalene's relationship began to encounter problems and Farahan left for about a year and a half. Prior to 2007, a reasonable inference is that Farahan and Amalene lived on the subject parcel of land first in the temporary structure and then in the concrete dwelling house as their family home. They had children together while living on the subject parcel of land and lived there as a family raising and looking after their children. In all the circumstances, it cannot be said that Amalene and Farahan did not deal with the land in question as an occupying owner would. They clearly did.

39. No submission was made that anyone other than Farahan and Amalene was in possession of the subject parcel of land between 1988 and 2004 by which time 16 years would have expired. It is accepted that the children of Farahan and Amalene as well as Mark, the child of Amalene from another union, who lived with Farahan and Amalene were licensees of Farahan and Amalene and would have no separate claim to possession of or to remain on the subject parcel of land except through Farahan and Amalene. In the cross-examination of Mark, the only one of the children to be cross-examined, he stated that whatever right he had to remain on the subject parcel of land was through Amalene and Farahan. That is undoubtedly true of all the children.

40. In view of the above, the result is that between the years 1988 and 2004 and at least up to 2007 the only persons in possession for the purposes of the RPLA were Farahan and Amalene.

41. There was evidence that Farahan left the family home in 2007 for about a year and a half. But prior to that there was no evidence that Farahan and Amalene

did not remain on the subject parcel of land such that can be said that their possession was not continuous during that period. I therefore find that Amalene and Farhan were in continuous possession for a period in excess of 16 years from 1988 to 2004. Their possession of the subject parcel of land was a single possession exercised by Amalene and Farahan jointly without any consent or permission of the paper title owners.

42. The Trial Judge's finding as to whether or not there was a single possession during the period 1988 to 2004 is somewhat confusing. She found that Amalene and the children were in occupation through Farahan and that possession was exercised by Farahan and them jointly. It seems to me that what should have followed from that finding is that Farahan was in possession and the others were his licensees so Farahan would have been in single and exclusive possession during that period. In those circumstances the Trial Judge ought to have declared that the Respondent's title was extinguished unless there was an issue regarding the intention to possess in relation to Farahan, but there was no discussion of that in the judgment of the Trial Judge. She however went on to conclude that their possession was not single and exclusive. I do not agree that Farahan and Amalene were not in single and exclusive possession from 1988 to 2004.

43. As I mentioned, it is appropriate to treat both Farahan and Amalene as having a licence to occupy the subject parcel of land prior to 1988. That licence was determined in that year. They nonetheless remained on the subject parcel of land. Neither then had a right to possession or right to remain on the lands that was superior to the other. In any event, the licence having been determined in 1988, they were both squatters or trespassers vis- a-vis the true paper title owner. From that point on to 2004 and at least to 2007 they together enjoyed the use of the subject parcel of land. They treated with the subject parcel of land as one would expect a man and woman in a common law union would do. They built their house and raised their family. There is

nothing on the evidence to suggest that their possession during that period was not single and exclusive and exercised jointly.

44. The next consideration is whether they had the intention to possess. In **Powell v McFarlane** (supra) the intention to possess or *animus possidendi* was defined as follows:

“What is really meant, in my judgment, is that the *animus possidendi* involves the intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the process of the law will allow.”

This definition was approved by the House of Lords in **Pye** at para 43.

45. The definition was understood by Lord Browne-Wilkinson as meaning an intention by the squatter to exercise a sufficient degree of physical custody and control of lands for his own benefit (see para 40). In practical terms, what a squatter has to establish to show that he possessed the necessary *animus possidendi* is that having entered the lands he has made full use of them as his own or in the way in which an owner would (see Lord Hutton at para 75-76 and Lord Hope at para 71).
46. In this case, it can hardly be suggested that having broken down the tapia house on the land without the landowner’s permission, built first a temporary structure and then a dwelling house for their own benefit on the subject parcel of land and lived in them as their family homes that Amalene and Farahan did not make full use of the subject parcel of land as their own or in the way in which an owner would. Further, they constructed their house despite the paper title owner’s protests and Farhan also resisted the 1988 action brought against him by Subratee for possession of the subject parcel of land. All of that clearly evidences that they possessed the necessary *animus possidendi* or intention to possess.

47. It has however been argued by Mr. Ramtahal for the Respondent that Farahan did not have the necessary intention to possess. He made references to (1) the 1988 action where Farahan claimed to be on the lands with the consent of Subratee and had been permitted by him to build on the subject parcel of land; (2) Farahan's defence in these proceedings where a similar defence was raised as that in the 1988 action; and (3) the 2007 agreement. I do not agree that these matters taken individually or cumulatively show that Farahan did not have the necessary intention to possess.

48. It should first be noted that the court did not find that Farahan had anyone's permission to build on the lands. He had no such licence. The Trial Judge could not consistently with the orders she made with respect to the subject parcel of land and the rejection of the claim in promissory estoppel be of the mind that Farahan had a licence, permission or inducement to build on the subject parcel of land. It was always the Respondent's case that Farahan had no such permission and no inducement was made and whatever licence he had to occupy the lands ended in 1988.

49. In so far as Farahan and for that matter Amalene may have thought they were on the lands pursuant to a licence, that, in my judgment, does not lend to the conclusion that they did not have the necessary *animus possidendi*. I agree with the following view expressed in *Jourdan on Adverse Possession*, 2<sup>nd</sup> edition at para 9-51:

“A person who intends to exercise exclusive control over property, for his own benefit, for the time being, does have the intention to possess and is in possession. The fact that he believes that he has the owner's permission, when in reality he does not have such permission, does not prevent him from being in possession.”

50. It was submitted that by the defence and counterclaim in the 1988 action Farahan recognised the title of the paper title owner. While that may be so, that does not assist the Respondent's case that Farahan did not have the

necessary intention to possess. First, in relation to the 1988 action, the defence and counterclaim of Farahan does not amount to an acknowledgement of title within section 15 of the RPLA. That section requires the acknowledgement to be signed by the person in possession and not his agent (see Civil Appeal No. S009 of 2016 **Mootoo v Mootoo; Richardson v Lawrence** (1966) 10 WIR 234; Civil Appeal No. 223 of 2010 **Pooran v Roop**; and Civil Appeal No. 224 of 2011 **Felix Monsegue v First Citizens Bank Limited**). Without going any further for that reason alone, the defence and counterclaim could not amount to an acknowledgement of title as it was signed by Farahan's attorney and not by Farahan.

51. It is correct to say that the defence and counterclaim in the 1988 action contained an admission of the title of Subratee, the then paper title owner of the subject parcel of land. But that, too, does not mean that Farahan cannot have the necessary intention to possess. In **Pye** one issue was if a squatter willing to pay for his occupation or to take a lease from the paper title owner of the lands meant that there was not the intention to possess on the part of the squatter. Lord Browne-Wilkinson stated, with which I am in respectful agreement, as follows:

“In a number of cases (such as the present case) squatters have given evidence that if they had been asked by the paper owner to pay for their occupation of the disputed land or to take a lease they would have been prepared to do so. In *Ocean Estates Ltd v Pinder* [1969] 2 AC 19 at 24, [1969] 2 WLR 1359 at 1363 Lord Diplock, giving the advice of the Privy Council, said that an admission by the squatter to that effect 'which any candid squatter hoping in due course to acquire a possessory title would be almost bound to make' did not indicate an absence of an intention to possess. In my judgment in the present case the Court of Appeal did not give full weight to that decision. In my judgment the decision of the Court of Appeal in *R v Secretary of State for the Environment, ex p Davies* (1990) 61 P&CR 487 (the decision in *Pinder's* case not having been cited) was wrong. The decision in *Pinder's* case is to be preferred because it is consistent with principle. Once it is accepted that the necessary intent is an intent to possess not to own, and an intention to exclude the paper owner only

so far as is reasonably possible, there is no inconsistency between a squatter being willing to pay the paper owner if asked and his being in the meantime in possession. An admission of title by the squatter is not inconsistent with the squatter being in possession in the meantime.”

52. The position in my judgment is no different if Farahan thought, *albeit* erroneously, that he had acquired an equitable interest in the subject parcel of land. As was pointed out in *Jourdan on Adverse Possession*, 2<sup>nd</sup> edition at para 9-38:

“If, however, the squatter does believe, erroneously, that he owns the property, that clearly constitutes the necessary *animus*. In a number of adverse possession cases, the true owner and squatter have both acted under the erroneous belief that the squatter owned the property. In such cases the effect of the expiry of the limitation period is to make good the mistaken belief of the parties. There is no requirement that the squatter intends to exercise exclusive physical control over the land wrongfully.”

As there is no requirement that the squatter intends to exercise possession wrongfully, if he thinks he owns the property or an interest therein but does not, that cannot, by itself, negate the intention to possess. Indeed, the belief that he owned the property constitutes the necessary *animus possidendi*. It would seem to me that if Farahan and, for that matter, Amalene, believed they had acquired an equitable interest in the subject parcel of land then that could not defeat the intention to possess but would support it. It is clear from the pleadings in these proceedings and in the 1988 action that Farahan was of the view that he held an equitable interest in the subject parcel of land.

53. In my judgment, factual possession and the intention to possess are satisfied on the facts of this case. It follows therefore that on the determination of the licence in 1988 Farahan and Amalene were in adverse possession of the subject parcel of land. The possession was single and exclusive and exercised

by Farahan and Amalene jointly. They remained in possession of the subject parcel of land for in excess of 16 years from 1988. It follows that by 2004 the right of Rasheed, the then paper title owner, to bring an action for the recovery of possession of the subject parcel of land was barred by section 3 of the RPLA and his title was extinguished by virtue of section 22.

54. As Rasheed's title was extinguished by 2004, it could not be revived by an acknowledgement of title that may be found in these proceedings, which were commenced in 2009, or by anything done by him in these proceedings. It was however submitted by Mr. Ramtahal that the court should uphold the 2007 agreement as a valid compromise agreement entered into by Farahan on behalf of himself and his common law wife, Amalene. By doing so it was contended that the court would be giving effect to a valid compromise agreement to bring an end to the dispute between the parties and not seeking to revive the extinguishment of the landowner's title. Reference was made by Mr. Ramtahal to the case of **Colchester Borough Council v Smith & others** [1992] 2 WLR 728 and this Court was asked to uphold the reasoning in that case.

55. The **Colchester** case is clearly distinguishable on its facts. In that case there was a compromise agreement in relation to a dispute relating to possession of a parcel of land. There was a provision in that agreement whereby party A acknowledged party B's title and agreed that he (Party A) had not gained any right, title or interest in the parcel of land by his possession. However, notwithstanding that, party A sought to pursue a claim in adverse possession. It was held that he was estopped from relying on his title by adverse possession. There is, however, no such provision in the 2007 agreement. The reasoning in the **Colchester** case is therefore not applicable to this case. Here, the court is free to determine the interest of the parties in the subject parcel of land.

56. Further, in the 2007 agreement, the parties i.e. Farahan and Rasheed agreed that Farahan would relinquish all claims to occupy the subject parcel of land on payment by Rasheed of \$45,000.00. That sum was however never paid. Further, by the 2007 agreement it was provided that Farahan and his family would vacate the subject parcel of land. That too did not occur. Indeed, it is factually wrong as contended by Mr. Ramtahal that the 2007 agreement was made by Farahan on his behalf and that of his wife. That simply is not so. The agreement was only made between Farahan and Rasheed. Amalene therefore, who is a necessary party to any compromise to the dispute concerning the title and possession of the subject parcel of land, was not a party to the 2007 agreement. The 2007 agreement therefore could not achieve a settlement of the dispute in these proceedings and did not do so. It is misconceived to ask the court to uphold the 2007 agreement.

57. In view of the above, I would allow the appeal, dismiss the Respondent's claim and set aside the order of the Trial Judge. I would also grant a declaration on the Appellants' counterclaim that the Respondent's title in the subject parcel of land is extinguished.

58. I would also hear the parties on the costs here and below.

**A. Mendonça J.A.**