

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. 3521 OF 2004

BETWEEN

RAJKUMAR MAHARAJ also known as RAJKUMAR MARAJ also known
as RAMO MAHARAJ and RAMO MARAJ AND ANNE RAGOONATH

Plaintiffs

AND

ANJANNY PARASRAM AND KAWALEE POONAWATIE
NARINESINGH (EXECUTORS OF THE ESTATE OF ROOKMIN
MAHARAJ also known as ROOKMIN MARAJ)

Defendants

Appearances:

For the Plaintiffs: Mr M. Campbell and Ms. S. Campbell

For the Defendants: Ms L. Lucky-Samaroo and Ms M. Solomon instructed
by Mr G. Hannays

2005: March 11th

2005: March 14th

2005: March 15th

2005: March 17th

2005: March 21st

2005: March 22nd

DECISION

[1] The question for decision is whether to discharge or continue the *ex parte* interim injunction granted by this court on 29th December 2004.

[2] **FACTS**

The short facts are that the Plaintiffs, Mr Maharaj and Ms Ragoonath are in occupation of a parcel of land in Golden Grove, Arouca, Trinidad. The first Plaintiff is the nephew-in-law of the title holder of the land, Mrs Maharaj. Mrs. Maharaj departed this life in 2003. The defendants, Mrs Parasram and Mrs Narinesingh are the executrices to her estate. Mr Maharaj and Ms Ragoonath claimed that Mrs Maharaj (deceased) invited them to live on the said parcel of land some years ago. They claimed that in return for looking after her that she would give them the said parcel of land.

[3] By her will Mrs Maharaj (deceased) directed that the said parcel of land be sold and made bequests to several of her relatives, her daughter, daughter-in-law, grandchildren, great grandchildren, charities and Mr Maharaj.

[4] In order to fulfill her wishes Mrs Parasram and Mrs Narinesingh entered into a contract of sale. Mr Maharaj brought this action to stop

the sale alleging that he and Mrs Ragoonath had acquired possession and ownership of the said parcel of land based on the assurances given to them by Mrs Maharaj (deceased).

[5] **LAW, ANALYSIS AND CONCLUSION.**

Each case must be decided *sui generis*.

[6] In order to convince the court that the ex-parte injunction must be continued the burden of proof is on the Plaintiff to show the court the following:

- (1) That there are serious issues to be tried
- (2) That there is credible evidence to support claim
- (3) That there is a real prospect of success at trial in the claim for a permanent injunction
- (4) The adequacy of damages as a remedy
- (5) That the balance of justice lies with the Plaintiff that the injunction should continue.

[7] **ISSUE TO BE TRIED AND CREDIBLE EVIDENCE TO SUPPORT THIS:**

I do not think that there is any difficulty in agreeing that the issues to be tried are as follows:

- Whether the Testatrix had divested herself of interest and title at the date of her death

There is no evidence of this in writing. Therefore one has to look at the assertions of the Plaintiff on the affidavit. These comprise:

- Evidence that the words were uttered by the deceased.

This must be approached with great caution. There is other evidence contained in two (2) affidavits sworn by other witnesses purporting to give life to words of the deceased. However, there is no other evidence of any tangible arrangement by deceased. The strength of this evidence is not overwhelming.

- Further – promise to “look after the deceased in return for the land”.

That does not satisfy criteria of reliance. Nowhere do the Plaintiffs assert that they put themselves out by coming to the land. They left a rent paying situation to come to a non-rent paying situation. There is no detriment suffered. Nothing prevented them from seeking to purchase another piece of land elsewhere with the monies saved.

[8] I must make reference to site visit and record my observations with respect to the house. To my mind there is no degree of permanence manifested there.

[9] **REAL PROSPECT OF SUCCESS**

The Evidence as presented is thin. I do not harbour the view that there is a real prospect of success at the trial for a permanent injunction. The Plaintiffs have not satisfied me of such.

[10] **DAMAGES BEING AN ADEQUATE REMEDY**

Even if Plaintiffs were to succeed at trial, damages will be a sufficient remedy. There is no evidence of any losses that may be suffered now or at any time in the future that could not be made good by an award of damages.

[11] **BALANCE OF JUSTICE**

There are two (2) competing claims:-

- (1) The Plaintiffs claiming an equitable title at best; as compared to;
- (2) The duty as Executrixes to administer the property of the deceased, such administration to be carried out expeditiously;
- (3) The duty to maintain as far as possible the value of the assets for distribution in accordance with the testator's wishes;
- (4) The fact that the Executrixes of the Testatrix's estate must account to beneficiaries in waiting;
- (5) The fact that contract price may not hold.

[12] **PLAINTIFF'S POSITION**

Mr Campbell stated that the Plaintiff has nowhere to go. This is also borne out of the evidence by the Plaintiff on affidavit. Counsel further cited to me the case of **GILLETTE V HOLT [2000] 3WLR 815** to me to fortify his claim. Ms Lucky-Samaroo disagreed.

[13] The case of **GILLETTE v HOLT** can be distinguished on so many bases. The most telling of all is the uncontroverted fact that the plaintiff in that case had so clearly acted to his detriment on the assurances given by the defendant. The court came to that conclusion on a number of factors such as the Plaintiff giving up his chances at further education and other prospects at a young age in furtherance of the promises and assurances made by the older defendant so as warrant the court to pronounce unfavourably against the latter's behavior. Secondly, the facts revealed that the defendant had only one brother and one sister and "did not have any nephews or nieces who might have been expected to benefit from his estate". Further there were overtures made by the Defendant to adopt the Plaintiff so as to secure his entitlement to the farm and businesses. These factual circumstances urged the court to hold that:

The fundamental principle that equity was concerned to prevent unconscionable conduct permeated all the elements of the doctrine of proprietary estoppel; **that although the element of detriment was an essential ingredient of proprietary estoppel, the requirement was to be approached as part of a broad inquiry as to whether repudiation of an assurance was unconscionable in all the circumstances; that, where assurances given were intended to be relied on, and were in fact relied on, it was not necessary to look for an irrevocable promise since it was the other party's detrimental**

reliance on the promise which made it irrevocable; that when ascertaining whether promises and assurances repeated over a period of many years as to future rights over property were sufficient to found a successful claim for equitable relief, **it was necessary to stand back and look at the claim in the round;** and that, on the facts, the defendant's conduct had given rise to an estoppel, and the minimum equity to do justice to the plaintiff was for the first defendant to convey to him the freehold of the farmhouse together with a sufficient sum of money to compensate for his exclusion from the rest of the farming business.

(Emphasis mine).

[14] The facts relied on by that court clearly do **not** form or approximate any of the facts forming part of the matrix in the case at bar. In fact the affidavits in our case do not reveal facts or evidence that even come close so as to warrant the application of those principles in that decision to this case.

[15] Further even if proprietary estoppel is established the court has to consider what is best to satisfy the balance of justice. The court in the **HOLT** case looked at the concept of "minimum equity". If that is applied in this case and Mr Maharaj and Ms Ragoonath were to succeed, I do not think that their claims are sufficient to defeat the other claims to the Testator's estate. I must consider as well whether

the balance of justice lies with the Plaintiffs in respect to the entire portion of land or to a share of the land measured by the value of the house or trees planted by the Plaintiffs. Further, if viewed in that way, can't the Plaintiffs be compensated in damages should they be successful in the final determination of this action? The answer is obvious.

[16] For the reasons above I must discharge the injunction and order an early trial of this action.

[17] The matter to my mind is best handled in this way:

- That the Injunction be discharged;
- That the matter set for early trial; and
- That the Defendants give an undertaking not to deal with the land until determination of matter, this of course is subject to the defendants' state of mind.

[18] I had posed the questions

- Whether an interim injunction with respect to land must contain the full description of the land to be affected?
- If the Order as served on the parties does not contain this description, can it be set aside?

I received submissions from both Counsel. I am of the view that whilst the present form of the injunction served on the parties is not detrimental to its enforcement, I am of the view that the practice, in which the injunction served on parties does not spell out the exact description of the land to be affected thereby ought not to be followed. This is so even though the writ of summons containing such a description is served with the injunction. The injunction as an order of the court in an action *in rem* ought to be able to stand on its own terms. By that I mean that any party in possession and or control of the land to be affected would know at a glance the terms of the order of the court.

[19] Therefore my Order and Directions are:

- (1) The ex-parte Interim Injunction granted by this court on December 29th 2004 be and is hereby discharged.**
- (2) Costs to be paid by the Plaintiffs to the Defendants fit for Counsel in any event.**
- (3) That this matter be deemed urgent and fit for early hearing.**
- (4) Leave be and is hereby granted to the Plaintiff to amend the Writ if necessary.**
- (5) Amended Writ and Statement of Claim to be filed and served on the defendants on or before the 20th April 2005.**
- (6) Defendants to file and serve Defence on or before 12th May 2005.**

- (7) Discovery and inspection of documents to take place on or before May 27th 2005.**
- (8) Number of witnesses Plaintiffs allowed to call at trial
(6)**
- (9) Number of witnesses Defendant allowed to call at trial
(6)**
- (10) Opening address by Plaintiffs to be in writing**
- (11) Estimated length of hearing 1½ days**
- (12) Closing addresses to be in writing and be delivered within 7 days of date of close of trial**
- (13) Date for trial June 2005 on a date to be fixed.**

**CHARMAINE PEMBERTON
HIGH COURT JUDGE**