

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 1905 of 2002

In the Matter of an Application Pursuant to
Order 94 of The Orders and rules of the
Supreme Court of Judicature 1975

Between

**VICTORIA DARMANIE
JUNE AWONG
KAREN RAMLOGAN
DIANNE PERSAD
CAROL POLLONAIIS and
CURTIS AWONG**

Plaintiffs

And

VINOOD RAMLAL

Defendant

Before the Honourable Mr. Justice J. Tam

Appearances:

Mr. R. Joseph for the plaintiffs

Mr. A. Manwah for the defendant

Decision

Before the Court is an application filed on June 4, 2002, by which the plaintiffs seek an order for possession of 2,980 sq. ft. of land (hereafter referred to as “the disputed land”) pursuant to **Order 94** of the Rules of the Supreme Court 1975. The following 6 affidavits were filed by the parties -

- (a) June 4, 2002 - Victoria Darmanie (in support);
- (b) June 4, 2002 - June Awong (in support);

- (c) September 23, 2002 - Vinood Ramlal (in opposition);
- (d) September 26, 2002 - Victoria Darmanie (in support);
- (e) November 15, 2002 - Kamalodeen Khan (in opposition); and
- (f) November 25, 2002 - June Awong (in support).

Before proceeding with the substantive matter, Mr. Manwah (for the defendant) applied orally to strike out paragraph 4 of the Darmanie affidavit of June 4, 2002, as well as paragraph 7 of the Darmanie affidavit of September 26, 2002. Mr. Joseph (for the plaintiffs) objected to this application on the basis that a formal application was necessary. However, he was not able to cite any authority or rule to support his objection and the Court overruled him on the ground that no such formality was required. The Court therefore proceeded to hear Mr. Manwah's oral application. He contended that the word "illegal" in paragraph 4 of the affidavit was opinion evidence that the deponent was not qualified to give and that it should be left to the Court to determine the legality of the matter. He further contended that the whole of paragraph 4 and paragraph 7 should be struck out because they represented hearsay evidence that is not permissible in applications under Order 94.

Although opposing these contentions regarding paragraph 4, Mr. Joseph conceded that paragraph 7 contained hearsay evidence and indicated that if the latter were to be struck out, he was applying for leave to have an affidavit deposed to and filed by the person who had provided Darmanie with the information contained in the paragraph. After considering the paragraphs and the submissions of Counsel, the Court ordered that the word "illegal" be struck from paragraph 4, but that the rest of paragraph 4 remain. The Court further ordered that paragraph 7 be struck from the affidavit and gave leave to the plaintiffs to file and serve an affidavit as sought by Mr. Joseph. Consequently, an affidavit deposed to by Curtis Awong was filed on November 28, 2002.

Order 94 provides a summary procedure for the recovery of possession of land that is in wrongful occupation by a trespasser. It provides that -

"Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant holding

over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent the proceedings may be brought by Originating Summons in accordance with the provisions of this Order.

Order 94 applies where an occupier of property has entered into occupation without the licence or consent of the person entitled to possession (or of any predecessor in title), as well as where a person who has entered into possession with the licence or consent of the person entitled to possession (or of any predecessor in title) has remained in occupation after such licence or consent has been revoked. The order requires the applicants to file an affidavit stating their interest in the disputed land and the circumstances in which the defendant has come to occupy it without their licence or consent or that of any predecessor in title. The Court is satisfied that the plaintiffs have fulfilled this requirement and that the plaintiffs have established a *prima facie* case that they are entitled to possession unless the defendant can show that he is not a trespasser or that he has had and continues to have the permission of the plaintiffs (or any of their predecessors in title) to occupy the disputed land. There is no evidence that the defendant is a tenant holding over after the termination of a tenancy, so that the Court need not consider that aspect at all.

Counsel for the defendant has submitted that the plaintiffs are not entitled to the order that they seek for 3 reasons:

- (1) The disputed land is not properly described;
- (2) The plaintiffs have not shown that the defendant did not have permission from the plaintiffs' predecessors in title to enter the disputed land, nor that he remains in occupation without permission;
and
- (3) The matter should go to trial because there are issues to be tried.

In the Court's view, none of these reasons are valid.

Disputed land not properly Described

Mr. Manwah has argued that the disputed land has not been properly described by the plaintiffs. The Court disagrees. What is important is not so much the actual description that is used, provided that the land is adequately identified as to leave the defendant in no doubt as to the area that the plaintiffs are claiming possession of. Not only is the disputed land properly described in the Summons, it is also accurately identified in the survey plans exhibited by the plaintiffs. The defendant can be in no doubt as to the area that is in question.

Permission of Previous Owner

Mr. Manwah has also submitted that the plaintiffs have not shown that the defendant had no permission from the plaintiffs' predecessors in title to enter the land or that he remains in possession without permission of the owners. With respect, the Court again cannot accept this contention. The plaintiffs have shown that they are the owners of the land and have stated that since 1997 the defendant has occupied (and built a structure upon the land) without their permission, licence or consent. It is now up to the defendant to show that he had permission or consent. This he can do if he can show that either the plaintiffs or any of their predecessors in title had given him permission to enter the land and that such permission has not been revoked. But he has failed to do this. Instead, he has relied upon a tenancy that he ascribes to his father (Kamalodeen Khan) with respect to 2 lots of land (on one of which his father owns a dwelling house) and he has said that in 1997, with his father's permission, he built a small house at the back of his father's house. It is clear therefore that the permission he is relying on is his father's. The point is that he is relying on permission or consent given to him by someone whom he alleges is a tenant of the disputed land.

When one examines the evidence in support of Kamalodeen Khan's tenancy, however, it is evident that he is not the tenant of the disputed land at all. Rent receipts exhibited by the defendant show that Khan is the tenant of 2 lots of land - one lot measuring 50 ft. x 100 ft. for residential purposes, and another lot, also measuring 50 ft. x 100 ft., for planting. Mr. Manwah attempted to persuade the Court that these

lots were adjacent to each other, one being in front of the other, and that consequently the defendant was in occupation of one of these lots. There being no dispute that the residential lot is shown to the North as lot No. 2 on the survey plans, nor that the disputed land lies immediately South of lot No. 2, between that lot and a fence bordering a recreation ground about 60 ft. away, by Mr. Manwah's contention therefore, the defendant must be in occupation of the non-residential lot (i.e., the lot for planting). But given the dimensions of the individual lots, the overall dimensions, when taking both together, must necessarily be 50 ft. x 200 ft. It is therefore incredible (to say the least) when Kamalodeen Khan deposed in his affidavit that the 2 lots together measure 50 ft. x 160 ft. and "*span from a road on the North to a recreation field on the South*" with no explanation whatever for the mysterious disappearance of a portion of the back lot. The Court therefore finds that no tenancy of the disputed land has been shown to exist and consequently the defendant cannot rely on his father's permission to legitimize his occupation of the disputed land.

This finding is fortified by the following events. In her September affidavit, Darmanie deposed to the receipt a letter written by Khan and his wife and addressed to the plaintiffs. The letter (exhibited as "V.D.5") is in the following terms –

"Lot No.2.
*Centeno Experimental Road,
Las Lomas No. 2
Opposite Jankie Trace,*

22nd January 2001.

Dear,
Mrs. V. Darmanie,
Mrs. C. Pollonais,
Mrs. D. Awong-Persaud,
Mr. C. Awong,
Miss J. Awong &
Mrs. K. Ramlogan.

Subject: Request from Mr. Kamalodeen Khan and Mrs. Yomati Khan to cancel Summons against our son Vinood Ramlal and request for approval for rental of extension of land to the fence on Lot No. 2 on which we are already tenants.

With reference to Summons: to our son Vinood Ramlal we wish to inform you of the stress we are undergoing which we had discussed with Mr. C. Awong on the telephone.

On account of this we are requesting you all to kindly cancel the pending action to be taken against him.

In addition we are also requesting your approval to rent the extension, the said piece of land which goes right up to the fence on lot No. 2 at the above mentioned address on which we are already tenants.

Thanking you for your approval and early attention.

Yours respectfully.

K. Khan

Y. Khan”

Khan chose to respond to this exhibit by stating on affidavit as follows –

“In January 2001 my wife spoke to June Awong, who lives next door to me on my western side, about settling the then matter against the defendant. June Awong subsequently brought a document for my wife and I to sign. She explained that it was to go to her brother, Curtis Awong, as he was in charge, and that it was to settle the matter and transfer the tenancy of the back lot to Vinood Ramlal. A copy of this document is exhibited as “V.D.5” to the affidavit of Victoria Darmanie filed therein on the 26th day of September, 2002.”

It is quite evident from the letter that Khan and his wife were asking the plaintiffs to rent the disputed land which he describes in the letter as the “*extension of land to the fence*” and as “*the extension, the said piece of land which goes right up to the fence*”. The contention therefore that Khan is a tenant of the disputed land defies logic and is utterly hopeless. The Court notes that he stopped short of alleging expressly that there was fraud or trickery on the part of the plaintiffs regarding the letter. But, nonetheless, this appears to be his implication. This Court does not, and will not, accept what the defendant and his father have attempted to do. Khan has not said that either he or his wife did not understand the contents of the letter and it must be taken that they did understand it, even assuming that the letter had been prepared by the plaintiffs (which this Court does not for one moment accept). The evidence does not suggest that Khan and his wife should be allowed to avoid the full responsibility for its contents. Neither Khan, nor the defendant, is a witness of truth. In the Court’s

view, the attempt by the defendant and his father to deliberately mis-represent the true position is tantamount to perjury and an abuse of the process of the Court.

Issues that should go to trial

Mr. Manwah further submitted that the Court should reject the plaintiffs' application because there are issues that should go to trial. These he identify as –

- (a) Whether Khan is a tenant of the disputed land; and
- (b) Whether Khan is entitled to a tenancy of the disputed land pursuant to the Land Tenants (Security of Tenure) Act 1981.

The Court has already dealt with the contention that Khan is a tenant of the disputed land and consequently rejects Mr. Manwah's submission that there is anything to go to trial. The evidence that the defendant and his father have put before the Court is so utterly hopeless as to stand no chance of success at trial and a trial will serve no purpose but that of delaying the inevitable and increasing the costs.

In the circumstances, it is hereby ordered that the plaintiffs do recover possession of the disputed land described in the Summons and that the defendant do give possession of the disputed land to the plaintiffs by 4:00 p.m. on June 18, 2003. The defendant is to pay the plaintiffs' costs to be taxed in default of agreement certified fit for Counsel. Leave is granted to the defendant to appeal this decision.

Dated this 11th day of June, 2003.

Joseph Tam
Judge.