

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. S 1533 OF 1996

BETWEEN

SOOMATIE GOCOO

**(Legal Personal Representative of the estate of the late
Gangapersad Jadoonanan also called Ganga Persad Jadoonanan)
PLAINTIFF**

AND

CHANDRAWTEE RAMBACHAN

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

Appearances:

Mr. Winston Seenath for the Plaintiff

Mr. Devindra Rampersad for the Defendant

JUDGEMENT

The Plaintiff's claim is as Legal Personal Representative of the estate of her brother, the late Gangapersad Jadoonanan also called Ganga Persad Jadoonanan (hereinafter called "the deceased") by virtue of a grant of probate obtained on the 14th day of June 1996.

By her Writ of Summons the Plaintiff seeks a declaration that she is the tenant of the Defendant of a parcel of land situate at Avocat Village Siparia

(hereinafter called “the said land”) and for an order seeking the removal of a fence erected by the Defendant around the said land.

The Plaintiff’s case on her pleadings is that:

- (i) at the time of his death the deceased was entitled to the tenancy of the said land which tenancy he acquired by virtue of a deed of assent from the estate of his deceased father;
- (ii) rent for the said land was last paid on the 30th day of August 1991 for the period 1987 to 1992.
- (iii) in the year 1994 she tendered the rent to the Defendant but the Defendant refused to accept the rent.
- (iv) in the month of November 1996 the Defendant, her servants and/or agents erected a fence around the said land and excluded the Plaintiff from the occupation thereof.

The Defendant admits the erection of the fence in or around the 1st November 1996 but denies that the deceased was the tenant of the said land. She alleges that the said land was abandoned since the year 1991 and that the rent was last paid for the period 1977 to 1982. The Defendant counterclaims for a declaration that the tenancy of the late Jadoonanan was determined by abandonment or alternately an order pursuant to section 5(4) (a) of the Land Tenants (Security of Tenure) Act 1981 on the ground of non- payment of rent for a period in excess of 6 months and for possession of the said land.

The Plaintiff joins issue with the Defendant on her defence, denies that the lands or the tenancy were abandoned and avers that the premises were occupied by the deceased until his death on the 28th December 1993.

The issues to be determined therefore are:

- (i) Was the deceased a tenant of the said land?
- (ii) If so, was he such a tenant at the time of his death or had the tenancy been determined prior to his death by virtue of his abandonment of the said land since the year 1991 or alternatively
- (iii) Is the Defendant entitled to a declaration that the tenancy has been determined for non- payment of rent and an order for the possession of the said land?

Issue (i)

It is not in dispute that the Plaintiff's father, Jadoonanan, (hereinafter called "Jadoonanan") was the tenant of the said land and the original owner of the dwelling house situate on the said land or that the deceased claimed entitlement to the house and the said land by virtue of a deed of assent made between the widow of Jadoonanan and the deceased, as executors, and the deceased as beneficiary of his estate. Neither is it in dispute that at all material times the house on the land was a chattel house within the meaning of **the Rent Restriction Act Ch. 59:50 or the Land Tenants (Security of Tenure) Act Ch.59 54** and used for the purpose of residence.

At the time of Jadoonanan's tenancy the land was building land as defined by and subject to the provisions of **the Rent Restriction Act Ch. 59:50**. **The Rent Restriction Act** defines "tenant" as including "any person deriving title from the original tenant" and provides that a tenant so long as he retains possession shall be entitled to the benefit of all the terms and conditions of the original contract of tenancy so far as they are consistent with the Act and shall be entitled to give up possession only on giving such notice as would have been required under the original contract of tenancy – **section 15(1) of the Rent Restriction Act**. There is no evidence that Jadoonanan's tenancy was determined prior to his death. Consequently at the date of his death Jadoonanan remained the contractual tenant of the said land. After his death in 1977 therefore the house and the tenancy passed to the deceased by reason of the deed of assent.

During the course of the deceased's lifetime **the Land Tenants (Security of Tenure) Act Chap 59:54** (hereinafter called "the Act") was passed. The Act defines "tenant" as "any person entitled in possession to land under a contract of tenancy whether express or implied and whether the interest of such person was acquired by original agreement or by assignment or by operation of law or otherwise; and includes a tenant at will and a tenant at sufferance and tenancy shall be construed accordingly." The effect of the Act was to convert all tenancies of land that subsisted immediately before the 1st June 1981 in

respect of which a chattel house used or intended to be used as a dwelling was erected or in the process of being erected into a statutory lease for 30 years.

Immediately before the 1st June 1981 therefore the deceased was the tenant of the said land on which there was erected a chattel house used as a dwelling.

In the circumstances as of the 1st June 1981 the deceased held a statutory lease of the said land pursuant to the Act.

The fact that on the evidence it is accepted that the rent receipts continued to be made in the name of the estate of Jadoonanan does not, to my mind, change the status of the deceased on the land.

Issue (ii)

With respect to the Defendant's claim that the deceased ceased to occupy the said land in the year 1991, the evidence of the Defendant was that the deceased went to live with the Plaintiff after he fell through the floorboards in the house and hurt his leg. She was unable to give a date as to when this occurred. Also giving evidence on behalf of the Defendant on this issue was Bridgelal Ramlal who stated that he was born in 1996 and lived all his life with the Defendant. He said that he recalled that the incident with the deceased falling through the floorboards occurred when he was about 15 years, thereby putting the date as 1991. He says that after that incident the deceased was taken away and he never saw him again. He says that after the deceased left he never saw anyone on the land. Also giving evidence on

behalf of the Defendant was the carpenter who had been employed by the Defendant to put up the fence around the land and who lived, according to him, across the road from the said land at a 45° angle. According to him the deceased stopped living in the house about two to three years before the fence was erected. He therefore put the date as 1993 to 1994. Under cross-examination he accepted that although the downstairs of the house was in a bad state of repair he could not say what was the position with the upstairs of the house as he did not go upstairs. He says however that the downstairs was dirty and that there were tins and cups on the concrete floor scattered about the place.

The evidence of the Plaintiff on this issue is that the deceased continued in the occupation of the house and land until his death in December 1993. She says that for two periods of time, amounting to approximately 10 months in total, in the year 1993 the deceased was unwell and stayed with her husband and herself. Under cross-examination she accepts that the deceased fell through the flooring in the house and broke his leg in the year 1991, when this happened she said that the deceased spent two weeks at her home before returning to his home. According to her at all material times and at least until November 1996 when the land was fenced by the Defendant the deceased's furniture and belongings remained in the house on the land. The Plaintiff's evidence with respect to the occupation of the land was supported by the evidence of her husband, her only other witness.

Put into evidence by consent was correspondence passing between the Attorneys for the parties and photographs of the house and the said land. Included in the bundle of correspondence was a letter dated the 30th September 1996 written by Attorney for the Defendant and addressed to the siblings of the deceased, including the Plaintiff, in which the Defendant claimed that the subject premises had been abandoned for “the past two years at least”. The photographs of the subject premises showed the house in a state of disrepair with vines growing on the building. According to the Defendant these photographs were taken a few months before the fence was erected.

In support of her case the Defendant subpoenaed the medical records of the deceased from the San Fernando General Hospital. Those records revealed that the deceased was a patient at the hospital at various times over the period 1979 to his death in 1993. According to the records up to and until November 1992 the deceased gave the said land as his address. Thereafter he was admitted to hospital on two further occasions, in October 1993 and December 1993, on both of these occasions he gave his address as Berridge Trace, Harris Village, the address of the Plaintiff. Also put into evidence by consent was the will of the deceased dated February 1993 in which his address is stated to be that of the Plaintiff’s and the records of the Water and Sewage Authority for the house on the said land. Those records show that water rates for the said land were paid in the name of Jadoonan up to the end of 1993.

On the totality of the evidence I do not accept the Defendant's evidence that the deceased ceased occupying the land in the year 1991. Both the evidence of the carpenter, the hospital records and the Water and Sewage receipts suggest that he was on the said land after that time. Both the Plaintiff and her husband gave their evidence in this regard a credible and straightforward manner and I accept their evidence. I find that the deceased was in the occupation of the land up to his death in the year 1993 and that his residence away from the house and the said land was initially a temporary one so that he could be cared for during his periods of illness and only made permanent by the fact of his death. Further the contents of the letter written on the Defendant's behalf to my mind confirms the fact that at all material times the Defendant accepted that the deceased was in the occupation of the land until his death.

Attorney for the Defendant has referred me to various English cases on the issue of a non-occupying tenant. These cases although helpful must be examined critically as they deal with protected dwelling houses and not, as in the instant case, a situation where there is a chattel house on the land owned by the tenant or where the tenant is the holder of a statutory lease as established by the Act. In all of the English cases as well, unlike the instant case, the tenant's contractual tenancy had been determined and the tenant was occupying the premises as a statutory tenant, a term of art peculiar to Rent Restriction legislation and not to be confused with the concept of statutory

lease as created by the Act. In the instant case the contractual tenancy as conceived by the Rent Restriction legislation was never determined. At the end of the day while accepting that it is a “question of fact and degree” it is our peculiar local conditions and statutory provisions which must inform the “fact and degree”.

In any event, unlike the case of **Brown v Brash and Ambrose [1948] 2K.B.247** cited by the Defendant I find that the absence is not “sufficiently prolonged or unintermittent to compel the inference, prima facie, of a cessor of possession or occupation” to place the onus on the tenant to repel the presumption that his possession had ceased. The onus remains on the Defendant in the instant case and the Defendant has not discharged this onus. At the time of his death therefore the deceased was the holder of a statutory lease of the said land which he could have and did transfer to the Plaintiff by virtue of his will dated the 9th February 1993.

Although not specifically raised in the pleadings there was broached, both on the evidence and in the submissions, the question of whether the tenancy was abandoned subsequent to the death of the deceased. The evidence of the Defendant was that no one from the deceased’s family came to occupy the house on said land after his death. She was forced to clear the land periodically and eventually put up the fence to prevent unauthorized persons from coming onto the land. She says that the most the Plaintiff would do was

to come on to the land to pick “zaboccas”. According to her she would hear people walking around the place at night. She says that before she fenced the said land she sent to call the Plaintiff to ask her what she was doing about the house. The Plaintiff got angry and walked out before she could finish the conversation.

The Plaintiff however claims that she went back onto the land on a few occasions after the death of the deceased until she was prevented from doing so by the fence on the land. She claims that at all material times the deceased’s furniture remained in the house. She says that she could not go and live in the house after the death of the deceased because the house needed repairs but that she left the deceased’s things in the house because she wanted to send her children to live there. She says that sometime after the death the Defendant invited her home and offered her a back lot instead of the said land she refused telling the Defendant that she wanted to inherit her father’s house.

The real question is whether the tenancy could be said to have been abandoned after the death of the deceased. I accept the Plaintiff’s evidence that she went on to the land a few times after the death of the deceased to pick fruits and to clear the land. This to my mind is confirmed by the Defendant’s evidence that the Plaintiff would come on to the land to pick “zaboccas” and the fact that the Defendant chose to send to call the Plaintiff out of all the other siblings of the deceased. I also accept the Plaintiff’s evidence of the

conversation with the Defendant and that the Defendant did offer her another parcel of land in lieu of the said land. To my mind this was indicative of the fact that the Defendant accepted that the Plaintiff was the owner of the house and had maintained a presence on the land after the death of the deceased.

Of concern to me were the photographs and the fact that the Plaintiff although claiming that the deceased had all his belongings in the house including a living room set, three beds, a wardrobe, a dining set and a television set no claim was made for these items in the Statement of Claim.

With respect to the photographs the only evidence of when the photographs were taken was that of the Defendant, the fact that there is shown in the forefront of one of the photographs what seems to be two fence posts and a dilapidated wrought iron gate and the fact that the eight years that have passed since the fencing of the house could also have produced the dilapidation shown in the photographs leads me not to place much reliance on the photographs put onto evidence. Even if I accept the Defendant's evidence that the pictures of the house were taken before the land was fenced the condition of the house as revealed by these pictures does not necessarily assist the Defendant. If her evidence that the deceased had a mental condition and his life style while alive is true, and I have no reason to disbelieve that evidence, the likelihood is that during the lifetime of the deceased the house was already in an unkempt and dilapidated condition.

With respect to the furniture in the house I have no assistance from the Defendant as to whether the deceased's possessions were left in the house as neither she nor her witnesses ventured upstairs. The only evidence before is that of the Plaintiff and her husband and whereas given my finding that the deceased continued in the occupation of the house up to his death presupposes the presence of his possessions in the house the question is whether those are as described by the Plaintiff and her husband. In the absence of any claim for same by the Plaintiff I make no specific finding as to the furniture.

In dealing with the issue of abandonment since the death of the deceased I bear in mind the conversation between the Plaintiff and the Defendant after the death of the deceased, the fact that the Plaintiff's claim to the tenancy is by virtue of the will of the deceased and that the grant of probate of the deceased's estate was only obtained in the month of June 1996 some four or five months before the land was fenced by the Defendant. In all the circumstances I find that the tenancy of the said land has not been abandoned.

Issue (iii)

Despite the Defendant's pleading that the rent paid in the year 1991 was for the period 1977 to 1982 no evidence was lead in support of this plea and in the face of the receipt for rent it is difficult to see how the Defendant, short of claiming fraud, could have challenged the Plaintiff's claim that rent was paid

up to the year 1992. In the circumstances I find as a fact that the rent for the said land was paid up to and until the year 1992.

Section 5(4) of the Act provides that if the rent payable or any part thereof is in arrear for six months the landlord may apply to the Land Commission for redress which redress includes the power to terminate the statutory lease. Both parties have accepted that this Court has the jurisdiction to make such orders for redress in the absence of a Land Commission.

Section 7(3) of the Act provides that any order made under **section 5(4)** shall be conditional on the failure of the tenant within a period of 30 days of the order to pay all arrears of rent. The Act provides that until an application for a review of the rent is made the rent under a statutory lease shall be the rent payable immediately before the 1st June 1981. There is no evidence of any application for a review of the rent payable in respect of the said land in the circumstances the rent payable remains that as stated on the rent receipt put into evidence, that is \$80.00 a year.

In all the circumstances of the case therefore I find that:

- (i) Prior to his death the deceased had a statutory lease of the said land pursuant to **the Land Tenant (Security of Tenure) Act Chap 59:54;**

- (ii) At the time of his death the deceased had not abandoned the said land nor had the said tenancy been determined for non payment of rent;
- (iii) The Plaintiff in her capacity of executor and sole beneficiary of the will of the deceased is entitled to the statutory lease of the said land; and
- (iv) There is outstanding to the Defendant arrears of rent for the said land for the period 1992 to 2005 at a rate of \$80.00 a year.

In the circumstances I declare that the Plaintiff in her capacity as Legal Personal Representative of the estate of Gangapersad Jadoonanan also called Ganga Persad Jadoonanan is a tenant of the Defendant of a parcel of land located at Avocat Village in the ward of Siparia in the Island of Trinidad formerly owned by Rambachan Pundit now owned by Chanrawtee Rambachan and others and bounded on the east by Toby Trace on the west and south by lands of Chanrawtee Rambachan and on the north by the Fyzabad Main Road and the holder of a statutory lease of the said parcel of land pursuant to **the Land Tenant(Security of Tenure) Act Ch 59:54** and order that:

1. The Defendant forthwith take down and remove so much of the chain link fence that encloses the said land in default the Plaintiff is authorized to demolish and remove same;

2. The Plaintiff to pay to the Defendant the sum of \$960.00 representing arrears of rent due up to the 30th June 2005 within 30 days in default such payment the statutory lease is terminated and the Defendant is entitled to the possession of the said land forthwith with compensation to the Plaintiff pursuant to **section 5(4) of the Land Tenants (Security of Tenure) Act Chap 59:54** to be assessed by a master of the High Court;
3. The Defendant is to pay half the Plaintiff's costs to be taxed in default of agreement;
4. Liberty to apply.

Dated this 19th day of July, 2005.

JUDITH A. D. JONES

JUDGE