

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. Cv. S. 1405 of 1994

BETWEEN

ROSALIND RAMROOP also called ROSALIND SAMPSON Plaintiff

AND

JOHN ISHMAEL AND LALL HEERASINGH Defendants

BEFORE THE HONOURABLE MR. JUSTICE P. JAMADAR

APPEARANCES

Mr. W. Seenath for the Plaintiff

Mr. A. Ashraph for the Defendants

JUDGMENT

Rosalind Ramroop (the Plaintiff) claims an interest in a building and a little more than one lot of land (5738 sq ft) located at 22 Union Road, Marabella. As pleaded, Rosalind's claim is based on several alternatives. First, she alleges that her aunt Sookdaya Rahim promised her the building if she took care of her aunt, which she claimed she did until Sookdaya's death on the 9th June, 1963. Next, she alleges that from 1963 she had been in continuous and undisturbed exclusive occupation of both the building and the lands, and that after the expiration of 16 years, from 1964, the title of any legal owner(s) to the premises was extinguished (Real Property Limitation Ordinance Chapter 5 No. 7). That is, by 1980 Rosalind contends that she was the effective owner of the premises. As a further alternative, Rosalind contended that in the event that she was a tenant, then she was entitled to the benefit of the statutory lease prescribed by the Land Tenants (Security of Tenure) Act, 1981. This alternative was, however, specifically abandoned by her counsel in his closing speech; as was the pleaded alternative based on the Rent Restriction Act, Chapter 59:50 (in this instance, in his opening speech). As a final alternative, Rosalind contended that she having expended some \$80,000 in work done on the premises and repairs and renovations to the building between the years 1982 to 1992,

she had enquired an equitable interest in same, which entitled her at least to compensation.

John Ishmael, the First Defendant, joined issue with Rosalind on all of her claims, and alleged that she was at all material times a monthly tenant of an apartment in the building. That he had duly determined that tenancy when he served her with a notice to quit on the 10th September, 1992, and that he was entitled to possession of the premises. Further, that Rosalind was not entitled to any compensation for work done to the building or expended on the premises, as the same was incurred while she was fully aware that she was infringing the rights of the co-owners of the premises, and taking advantage of an existing high court action between the co-owners which commenced in 1978 and only ended in or about 1992.

The resolution of these issues will be dealt with in the order in which they have been stated. In this process, the facts in dispute will also be resolved as they arise.

THE PROMISE OF SOOKDAYA

The Plaintiff's case as pleaded was that Sookdaya promised her, that should she (Rosalind) "take care of her (Sookdaya)," then the "dwelling house would be (her's) after her aunt died." And, that "relying on these assurances" she "looked after and cared for (Sookdaya) until her death."

In the face of this pleading, the evidence led in support was at best marginal. The Plaintiff testified that she began living with her aunt when she was 8 (in 1950). She was born on the 22nd September, 1942. She then said: "since age 8 to now I have been living at Union Road Marabella." What follows is the extract of the Plaintiff's evidence on this issue:

Question: While living with your aunt in Marabella, what did you do.

Answer: I would wash wares and sweep out. She learn me to cook and wash. She told me if I stay good with her she would give me everything she had. She told me this when I was small.

Question: How old were you when she told you this.
Answer: I had about 15 years (1957).
Question: Did you go to school.
Answer: No.
Question: For how long did you cook and wash for your aunt.
Answer: Until she (tantee) died in 1963.
Question: Who lived with tantee.
Answer: Me, she and my grandmother (Elizabeth).
Question: Who took care of tantee.
Answer: She took care of herself. She was working at Point-a-Pierre as a labourer.
Question: Based on what your aunt told you, "everything would be yours," what did you understand.
Answer: She said she would give me the house, and everything she had. I understand that she would give me the house, but she did not sign any paper.
Question: Part with "everything she had," what did she mean.
Answer: Everything she had in the house, her assets inside of it.

This pleading was settled in 1995. Sookdaya died in 1963. As was pointed out in **Stables v Bholai** H.C.A. # 803 of 1976 (at pp. 4,5, and 6), where an allegation is made against the interest of a deceased person, who has had no opportunity to answer it, the evidence must be examined with great care and approached with measured suspicion. What this approach demands is a high standard of proof on a balance of probabilities.

The first thing to note about the evidence is its lack of detail. Apparently the Plaintiff was told of this promise once, some seven years after she had started living with Sookdaya. From her oral evidence Sookdaya's promise was based on the Plaintiff "staying good with her." What did that mean? It is not exactly what was pleaded. Further, in apparent contradiction of the pleaded case, the Plaintiff, in response to a pointed question, stated that Sookdaya took care of herself. The sum of the evidence favourable to this plea, is that the Plaintiff cooked and washed for Sookdaya until her

death. Is that conduct that could satisfy a requirement to look after and take care of someone? Or a requirement of "staying good?" In my opinion, this evidence does not meet the standard of proof required to discharge the burden of proof on the Plaintiff on this issue.

In any event, the totality of the evidence of the Plaintiff undermines the contention of her lawyer that the Plaintiff from 1950 to 1963 lived at 22 Union Road. Marabella, taking care of Sookdaya. Further, the credibility of the Plaintiff has been so undermined in this case that all of her evidence must be viewed with great suspicion.

THE PLAINTIFF'S CREDIBILITY

The Plaintiff's case and her evidence in chief was that from 1950 to 1963 she lived at Marabella, cooking and washing for her aunt (taking care of her). And, that from 1963 to the commencement of this action (1994) she has been in exclusive occupation of the entire premises at Marabella.

So insistent was she that this was so, that in cross-examination, on the 12th July, 2004, she denied that she had any children other than the six she had with her present common law husband (Mitchum Sampson). Further, she insisted that the first of her children was born in 1971, and that she had never lived with another man or had another common law relationship with or had children for one Boyo Poolool. Significantly, she insisted that she had never left Marabella since 1950 to live anywhere else, and certainly not in the circumstances suggested (other children and another relationship). In fact, in answer to the Court, she stated (after being asked if she knew Poolool, and if he had been to prison and subsequently killed): "I know no person called Poolool. I never had any relationship or children with him." Indeed, she denied ever receiving any money from Caroni upon the death of Poolool.

All of this changed quite dramatically when the Plaintiff was recalled by agreement (on the 13th July, 2004) to be further cross-examined after the testimony (in chief and cross-examination) of Mitchum Sampson. The Plaintiff accepted that she had had a

relationship with Poolool, from 1960 to 1968, during which she had four children for him. And, that the first of these children, Ganesh, was born on the 21st June, 1960; the second, Vishnu, was born on the 9th June 61; the third, Kenny, was born on the 13th June, 1966; and the last, Dicky-Boy, was born on the 15th August, 1968.

Significantly, the Plaintiff now accepted, though hesitatingly at first, that she was away from Marabella for two periods during this relationship with Poolool. First, during the period 1960 to 1961 when the first two children were born; then, during the period 1966 to 1968 when the next two children were born. During these periods the Plaintiff was prepared to concede that she was staying at her mother (Kelly Village), but denied that she lived with Poolool. As to the period intervening, the Plaintiff accepted that Poolool was in prison then, but insisted that she had returned to Marabella.

The Plaintiff also accepted during this second cross-examination, that she had received money from Caroni on Poolool's death, and State welfare for the children while he was in prison. She also accepted that, while he was in prison she visited him whenever he requested, which was at least once every two to three months. Indeed, the Plaintiff accepted that her relationship with Poolool only ended when he died (in about 1968), and that she was "like a wife" to him.

In fact the Plaintiff meet Mitchum Sampson when she was at her mother's house (Kelly Village). Her explanation was that she was at her mother spending a vacation, and that this occurred before 1970 when Sampson began to live with her in Marabella.

This Plaintiff was prepared to deliberately mislead this Court about a most material fact, her alleged exclusive residence at Marabella from 1950 to 1963 and from 1963 onwards. Her explanation that she did not want to bring up her past finds little favour with this Court – because, even if she preferred to conceal her relationship with Poolool and her four children with him, she did not have to lie about her continuous living at Marabella from 1950. She could have said that she went back and forth, between Marabella and Kelly Village and stayed at Kelly Village for the two periods as described above.

Instead, she chose to quite intentionally mislead this Court in order to advance her case – knowing that what she was doing was contrary to her oath to tell the truth.

In passing, this Court makes a similar assessment about Mitchum Sampson. He also quite intentionally set about to mislead this Court in his suppression of all knowledge of the Plaintiff's antecedents. On the totality of the evidence, given Sampson's knowledge of the Plaintiff, her family, and the Plaintiff's first four children, and the inconsistencies in his evidence in his attempt to explain away the existence of these children, I have concluded that he was also prepared to deliberately mislead this Court in order to advance the Plaintiff's case.

It is clear therefore, on this issue of Sookdaya's alleged promise, that at least between 1960 and 1961 the Plaintiff was not even residing at Marabella, and so I conclude, was not either "taking care" of Sookdaya or "staying good with her." The alleged promise was made when the Plaintiff was fifteen years. By seventeen the Plaintiff was involved in an intimate relationship with Poolool, during which she was, at best, living with her mother. By the demise of Sookdaya the Plaintiff had already had two children for Poolool, he was in prison, and she was a single mother taking care of her children and visiting him in prison.

This first issue is therefore resolved against the Plaintiff. I find the evidence unsatisfactory to establish the promise in the first place. Even if it is established, I find the evidence of fulfillment equally unsatisfactory, inconsistent, if not absent. No proprietary right in the house giving rise to any estoppel based on a promise by Sookdaya has been established by the Plaintiff in this case.

ADVERSE POSSESSION

In this case the provisions of the Real Property Limitation Ordinance are invoked in relation to land. The Plaintiff claims to have acquired a possessory title to the lands at Marabella.

The way the Plaintiff's case is presented on this issue (paragraphs 5, 6 and 9 of the Statement of Claim), is that upon the death of Sookdaya (1963) the Plaintiff became a tenant at will of the lands and after one year (1964) that tenancy at will expired, and from then the Plaintiff has been in "adverse possession" of the Marabella lands.

Two propositions are apposite here. There can be no tenancy at will where there was no intention to create legal relations; and there can be no tenancy at will unless the occupier enjoys exclusive possession **Ramnarace v Lutchman** (2001) 1WLR 1651 at 1656; **Ramlogan v Ramlogan** P.C. App. 54 of 1987 at page 5].

In my opinion, neither of these two requirements have been proven in this case. Sookdaya did not intend to create any legal relations with the Plaintiff or to give the Plaintiff any rights of exclusive possession in the Marabella lands. This does not mean however, that the Plaintiff was not in "adverse possession" of Marabella lands. It simply means that no tenancy at will was created. And, the Plaintiff if she occupied any part of the premises during Sookdaya's lifetime did so as a licensee (**Ramnarace v Lutchman**, at page 1654).

The questions that arise are therefore: was the Plaintiff in occupation of land at all? If so, was the Plaintiff in exclusive occupation of the Marabella lands? And, if so, was the Plaintiff in continuous and undisturbed occupation of the Marabella lands for sixteen (16) years or more after the time when the right to bring an action to recover possession of the lands first arose?

The Plaintiff must therefore establish, factual possession (which physical control depends on the nature of the land and the manner in which it is commonly used and enjoyed) and an intention to possess the lands for the requisite period. Assuming the Plaintiff was a licensee of Sookdaya, then on her death that licence would have terminated and time would begin to run (from June 1963); or, assuming the Plaintiff was a tenant at will, then that tenancy would have expired after one year, and thereafter time would begin to run (from June, 1964). It is also necessary, in determining whether an owner's title has been

extinguished, to be aware of what acts can interrupt the occupation of land against the interest of the owners. Clearly, dispossession is sufficient, whether voluntarily by the occupier or by act of the owners. [**Limitation Periods** (2nd ed. 1994 – Sweet and Maxwell) A. Mc Gee, at page 219]. Equally clearly, the service of a notice to quit without more is insufficient (**Ramnarace v Lutchman** at page 1657).

The review of the evidence already undertaken demonstrates that even if the Plaintiff was residing at Marabella from 1950, there were two clear breaks in her occupation (on her admission). One for at least one year (1960 to 1961), though probably for longer – likely starting when her relationship with Poolool began (at least nine months before June, 1960 – i.e. October, 1959). Another for at least two years after Poolool was released from prison until his death (1966 to 1968). Effectively therefore, time cannot be calculated in favour of the Plaintiff or against the owners until after 1968.

What then is the evidence about the Plaintiff's occupation of the Marabella premises? It is accepted that from 1970-1971 the Plaintiff and Sampson were in Marabella. In relation to the pre 1970 – 1971 period, the Plaintiff's evidence (in re-examination on the 13th July, 2004) was that from age eight when she went to Sookdaya, throughout that period (till 1970-1971), she sometimes stayed by her mother for periods ranging from three weeks to one month. One must assume that these periods were in addition to those in 1960 – 1961 and 1960 – 1968. [In her evidence in chief the Plaintiff had stated that in 1971 Sampson began to live with her at Marabella, and that between 1964 and 1971 she lived upstairs alone, with Archaiber downstairs].

These admissions are significant, not only in relation to the Plaintiff's credibility, but also in assessing the evidence of the Plaintiff's witness Ivan Dwarika (who apart from the Plaintiff's common law husband, Sampson, was the only other witness called by the Plaintiff).

Clearly Sampson has an interest in the outcome of this matter. He has been living with the Plaintiff since 1970. They have six (6) children – the first Reynold, born on the 21st

May, 1971, and the last, now twenty-two (22), born in 1982. And, the entire claim for expenditure on the premises (of \$80,000.00) is from money earned by him.

DEMEANOUR

Though demeanour is the least reliable indicator for fact finding, it remains a basis for evaluation to be used by finders of fact. In my opinion, neither the Plaintiff nor Sampson inspired confidence in this Court. However, Ivan Dwarika seemed frank, forthright and prepared to assist this Court to the best of his ability. I found him trustworthy.

Dwarika's evidence was that he knew the Plaintiff since she eight to nine years old, and that was at Marabella. Significantly, in his evidence in chief Dwarika said that from the time he knew the Plaintiff at Marabella she was: "coming there, backwards and forwards" ... "back and forth." This of course corroborates the Plaintiff's confessions under cross-examination on the 13th July, 2004.

But of equal significance (as will become apparent presently) is the testimony of Dwarika on two other aspects of this case. First, in relation to the existence of a second building behind the one which the Plaintiff claims, Dwarika described it as "a shed at the back" – where "some friends staying or renting." In cross-examination he described this shed as "block up wall to wall" ... "like a squatters place, block up – 18 x 20" ... "block up with board all around," and flat on the ground. Second, Dwarika was in no doubt that there were "renters in the place, upstairs by the parlour" - that is, upstairs the front building claimed by the Plaintiff. Dwarika was able to identify by name at least three persons who were tenants of this front building, including one Lystra Parfitt (Lystra Durham). In his words: "since I know her, I know she living upstairs the parlour." He was then asked:

Question: But you know there were tenants upstairs.

Answer: Yes.

Question: Know Lystra renting there.

Answer: Yes, upstairs.

I accept as true Dwarika's evidence on both of these aspects of the case. The implications for the Plaintiff's case are considerable. Noteworthy, counsel for the Plaintiff never sought to re-examine Dwarika or to call any further witnesses – and this when, from the Plaintiff's evidence, Lystra Parfitt was available to testify, as she is occupying a room upstairs as the Plaintiff's licensee.

THE LOCATION OF THE TENANTS

There is no dispute that after the death of Sookdaya there were monthly tenants occupying the premises at Marabella. Prior to Sookdaya's death, one Archaiber occupied the entire downstairs portion of the "front" house living and running a parlour there (paragraph 12 (4) of the Defence and Counterclaim, paragraph 4 of the Reply and Defence to Counterclaim). The Plaintiff alleged that at the time she occupied a part of the upstairs together with her grandmother (and before her death, also together with Sookdaya). It would appear that Archaiber died somewhere between 1968 (the Defendant's case) and 1970 (the Plaintiff's case).

After the death of Sookdaya, Letters of Administration were granted to one of her daughters (Popo Rahim) on the 3rd February, 1964. At the time of her death, Sookdaya was the tenant of the land at Marabella, renting the same from H.V. Gopaul at thirty-nine dollars (\$39.00) per annum. On the 13th July, 1964, Gopaul entered into an agreement to sell the lands to Popo Rahim and Sookdaya's other daughter Sonia Heerasingh (the beneficiaries of Sookdaya's estate). Popo Rahim paid off for those lands over the next eight years (the final payment was made on the 20th March, 1972). Then, on the 26th June, 1972, Gopaul transferred the Marabella lands together with the buildings and appurtenances to both Popo and Sonia as joint tenants. Popo died on the 21st July, 1977, having conveyed her half share in the Marabella premises to John Ishmael, her common law husband, on the 28th June, 1972. Sonia died on the 24th July, 1991. From the death of Sookdaya up until her own death, Sonia paid the WASA rates and the Land and Building Taxes for the premises. The electricity bills were and are still issued in the name of Archaiber. All of the above was known to the Plaintiff, except that she denies knowledge of the conveyance from Popo to Ishmael.

Again this background the Plaintiff testified in chief that there was a “back house” about 20 ft x 30 ft which “had renters.” She said that it belonged to Sookdaya who had rented it to tenants and that after Sookdaya died Popo: “Put tenants in the house, in 1964 – 1965.” And, “as she (Popo) was not living there she asked my husband to collect the rent because he was living there.” Her testimony was that there were only tenants in the “back” building. Indeed, the following were her answers to specific questions:

Question: In the front premises were there ever any tenants.

Answer: No.

With regard to Lystra Parfitt:

Question: Is there one Lystra Parfitt on the premises.

Answer: Yes she lives there now. When I broke down the house in the back, she had no where to go, so I allowed her to stay upstairs, rent free, since 1979. Before that she was in the house in the back with her husband ... When she was in the back she was paying rent while Popo Rahim was living.

In cross-examination, it came out that Sampson only began acting for Popo in 1972: "in 1972 when my husband took over, he used to make out the receipts for her, but she would collect the rents." Indeed, the Plaintiff explained: "she (Popo) would come there (at Marabella) and sit down by me and collect the rent from the tenants, from 1962 to 1972. I saw her give them a receipt, but I don't know who made it up (before 1972)." Though Sampson insisted that he collected the rent for Popo (and issued the receipts) for “the five year period,” I believe the Plaintiff’s admissions in cross-examination are the truth: the receipts were made out by Sampson, but the actual rent was collected by Popo herself. [Which is what Ishmael asserted]. Sampson as I have already shown was determined to stick to the script prepared by the Plaintiff. Sampson also insisted that Lystra Parfitt was living in the "back" house and renting there before she moved to the front where she now occupies.

What is accepted by counsel for the Plaintiff, is that in so far as the Plaintiff (through Sampson) was collecting rent for Popo for tenancies on the premises, the occupation by

the tenants could not amount to acts of dispossession by the Plaintiff. If these tenancies were restricted to the 'back' building (and a tin smith's shop on the eastern side of the property), then, counsel for the Plaintiff contended, the Plaintiff could only have acquired title by adverse possession to the land (and building) which the "front" building occupied. Counsel for the Plaintiff accepted, however, that if the tenancies were found to be in the "front" house, then the Plaintiff would not be able to demonstrate any exclusive occupation and there would be no sufficient factual possession or intention to possess prior to the cessation of the tenancies.

I accept that there were tenants in the "front" house during the period under consideration. I am satisfied about this, on a balance of probabilities, for the following reasons. First, I accept the evidence of Dwarika on this point. Second, when one reads the pleadings, the following are noteworthy:

- a. nowhere in the Plaintiff's case is it pleaded that there was a 'back' building;
- b. throughout the pleadings reference is made to one building only, "the said dwelling house";
- c. the counterclaim [paragraph 12 (4), (5) and (8)] pleads specific occupation contrary to the exclusive occupation pleaded by the Plaintiff in the Statement of Claim (at paragraphs 5 at seq.), which includes the occupation by Lystra Parfitt as tenant of "the upstairs portion of the said house;"
- d. paragraph 5 of the Reply does not deny that Lystra Parfitt was and is a tenant of the said house, but alleges that she "is in occupation of one room of the upstairs portion of the subject house for which she has not paid rent for many years."

In my opinion, the evidence of Dwarika is consistent with the pleaded admission in the Reply. Whether there were also "renters" in a "shed" at the back of the "front" house is immaterial. What is clear is that there were tenants in the front house, one of whom was Lystra Parfitt. These tenants remained at least until the death of Popo, who one month before her death collected rent from them. That is, up to June 1977 there were tenants in the "front" house paying rent to Popo, a joint owner of the premises and successor in title to Ishmael.

The consequence of this is that time cannot run in favour of the Plaintiff before June 1977. Moreover, the evidence as to when the tenants eventually left is vague and uncertain ... except that Lystra Parfitt is still there, and, on the Plaintiff's evidence, staying "rent free, since 1979." It would appear therefore, that on the Plaintiff's case, given the findings above, time can only begin to run in favour of the Plaintiff from 1979.

My conclusion on the location of the tenancies is not only supported by the oral testimony of Ishmael, but also by the unexplained suspicion surrounding the receipt books tendered by the Plaintiff relating to the tenancies on the premises. Sampson testified that he had control over all the receipt books for receipts issued on behalf of Popo for the 1972 to 1977. In one receipt book (stubs) for the year 1974, at least 27 receipts were issued, yet only four stubs were presented. Significantly, there are no torn stubs, as Sampson admitted should have appeared. He accepted that some one took apart this receipt book, removed these twenty-three missing stubs and put back together the receipt book. Also, among the other receipt stubs tendered for 1972, at least four were made out by one "N. Ramroop," who Sampson said he did not know. The Plaintiff's first four sons with Poolool carried the last name "Ramroop" (the Plaintiff's name) and they lived with the Plaintiff and Sampson for different periods of time – yet Sampson was determined to deny any knowledge of them as children of the Plaintiff. Neither the Plaintiff nor Sampson were prepared to offer any explanation as to who was "N. Ramroop" or how such a person could have issued receipts for the tenants of Popo, using receipt books under the control of Sampson and kept in his bedroom at all times. And, there was no re-examination on this point.

In my opinion, this aspect of the Plaintiff's case is further proof of the Plaintiff's and Sampson's preparedness to be less than forthright with the Court. Throughout their testimonies they have been only too willing to tailor the evidence to suit their needs.

PRE 1982 OCCUPATION

Thus, in my opinion, the Plaintiff has not been able to prove on a balance of probabilities that she was in exclusive possession of and the legal owners dispossessed of the

Marabella premises before 1979. In fact, the evidence as to the acts and nature of the Plaintiff's possession prior to 1982 is quite equivocal.

The Plaintiff testified that she occupied the upstairs of the "front" house continuously until 1970, when upon the death of Archaiber she "took over downstairs" and "began to run the parlour." In her words: "that's all I did". She testified that in 1971 Sampson moved in with her. Her six children with Sampson, the first four (4) of whom were born in 1971, 1973, 1975, 1976 presumably all lived there with herself and Sampson, on her case, occupying the entire premises (except for Lystra Parfitt, who it would appear, on the Plaintiff's case, only moved in upstairs sometime around 1979 – as her licensee). Yet, but for the "say so" of the Plaintiff, there is no supporting evidence to corroborate the Plaintiff's exclusive occupation of the "front" house during this time.

The Defendants case on this point as put by Ishmael, was that the Plaintiff came to Popo (in his presence) in about 1972 to 1973 "to ask her cousin for somewhere to stay" for herself and Sampson. And, that Popo agreed to let the Plaintiff and Sampson occupy the downstairs portion (where Archaiber had been) at a monthly rental of thirty dollars (\$30.00). Further, that the upstairs of this building was also occupied by other tenants, one of whom was Lystra Parfitt.

It would appear that a couple of months after the death of Popo (1977), Sonia entered the Marabella premises and broke down two doors to the "front" house and the gate to the tin smith's shop (evidence of Sampson). Then, in 1978 Sonia commenced proceedings against Ishmael (H.C.A. No. 1555 of 1978) claiming a declaration that the conveyance by which Popo had transferred her half-share in the property to Ishmael was a nullity and that she (Sonia) was entitled to the entire property by right of survivorship. In effect, in this action Sonia was asserting her right to the entire Marabella premises, consistent with her behaviour shortly after Popo's death.

This Court action was determined on the 22nd May, 1986, effectively in favour of Ishmael as Sonia's case was dismissed. Sonia appealed. However, before that appeal could be

determined Sonia died (on the 24th July, 1991). Subsequently the appeal was dismissed. Ishmael then claimed that he went to his lawyer (D.V. Warner in Port of Spain) and was given notices to quit, which he served the same day (10th September, 1992) on both Parfitt and the Plaintiff. And, that subsequently on the 2nd March, 1994 ejectment proceedings were commenced against both Parfitt and the Plaintiff in the San Fernando Magistrates' Court [a copy of the notice to quit (the service of which is denied by the Plaintiff) and the official receipt for the issue of the ejectment summons were tendered into evidence by Ishmael (the Plaintiff accepted that she was served with the ejectment summons and attended Court in pursuance of same)].

POST 1982 OCCUPATION

Against this backdrop, the Plaintiff and Sampson testified that they did repairs and renovations to the “front” building beginning from 1982 and continuing until 1993 to 1994. Sampson’s evidence was that they employed people to do these repairs, and that he had meticulously kept all of his bills, receipts and documents for all monies expended on those repairs. He said all of the money spent [some eighty thousand dollars (\$80,000.00)] was his money as the Plaintiff was not working and that he expended it because, in his words: “my wife led me to believe that her aunt had given her the front house only, and that the back house was her cousin’s (Popo Rahim). I did not believe that my wife had been given the back house or the land. As far as I am concerned, I believe my wife is entitled to the front house only.”

An analysis of the documentary evidence presented by the Plaintiff in support of the expenditures on the premises follows:

YEAR	MATERIALS	LABOUR
1980	8.00	
1982	770.55	
1985	5,892.02	5,000.00
1986	10,180.60	
1987	17,784.42	17,300.00

1988	12,320.59	
1989	83.69	
1990	2,393.57	
1991	772.34	
1992	22,755.76	3,000.00
1993	3,810.13	
1996	352.71	
1997	19.75	
	<u>77,144.13</u>	<u>25,300.00</u>

Two things are noteworthy. First, though the Plaintiff's care was that they bought materials only and the work on the building was done by persons employed by them, there are only receipts for work done in three years – 1985, 1987 and 1992. Second, the receipts tendered for work done in those years were as follows:

- (i) 3rd March, 1985. electrical materials and labour to wire the house.
- (ii) 5 receipts for 1987 (with no (a) labour for yard and walls.
specific dates, all made out (b) burglar proof for upstairs.
in what appears as the same (c) building of garage and burglar proof.
handwriting). (d) materials and labour for back step.
- (iii) 1 receipt for 1992 (no specific plumbing materials and labour for
date). washroom sets.

This is important, because Ishmael insisted that the only work done by the Plaintiff to the premises was to build a steel back step, a garage and one boundary wall (along the road).

Also, Sampson's testimony on this aspect of the case is revealing:

Question: When did the repairs begin.

Answer: In 1982, finished in either 1993 or 1994.

Question: Who did the repairs.

Answer: We employed people.

Question: Paid them.

Answer: Yes.

Question: Who.

Answer: Campbell – he did all the electrical. Jumadar – he did all the burglar proof, back step and garage. Nickram Ramroop – he did the concrete work.

Question: When paid them got receipts for their services.

Answer: Yes.

Question: Vol. 2 pp. 77 to 82 (look at)

Answer: These are the receipts for the works done on the premises.

Yet, these receipts are only for three years, and in several other years significant sums were allegedly spent on materials on this building – for which there are no related labour/work done receipts.

These observations are made against the evidence of the care with which Sampson would have this Court believe he conducted these works. For example, in 1980 he kept a single bill for \$8.00 for the purchase of 4 pounds of nails; and for the 17th December, 1987 he kept 5 separate bills for plumbing purchases of \$6.31; \$4.00; \$12.46; \$4.95; and \$3.80.

If it is true that people were employed to do all the works done on the premises, and that receipts were obtained for their services, where are those receipts for 1988, 1990, 1992 (non-plumbing works) and 1993. The 1992 work done receipt was for \$3,000.00 for plumbing materials and labour for washroom sets. Yet the 1992 materials bills amount to some \$23,000.00, which includes BRC, binding wire, cement, a kitchen sink, plumbing fittings, a face basin, welding rods, flat iron, red oxide and other items. What were these materials used for? Who was employed to use these materials?

In my analysis the Plaintiff and Sampson have most unsatisfactorily presented their case on the work they allegedly did on the premises. However, it is accepted that they did do

some work. What is also clear however, is that on the evidence, tested by the document produced by the Plaintiff, that no significant works were undertaken until 1985, though some may have been done in 1982. Symbolically, it is in 1980 that the Plaintiff's first bills for materials used on that property appear. This is symbolic because on the Plaintiff's evidence it was only in 1979 that Lystra Parfitt began to enjoy rent free accommodation at the Plaintiff's pleasure.

It seems therefore, on the totality of the evidence, it is likely that only sometime after 1979 – 1980 that the Plaintiff began enjoying and exercising exclusive occupation of the premises. On the Plaintiff's evidence, at that time the back house had been demolished by her: "I broke down this house in 1979."

On the evidence, on a balance of probability, and testing the oral evidence against the documentary evidence, and giving the Plaintiff and Sampson credit inspite of their unquestioned attempt to mislead this Court, this Court finds that the Plaintiff has only demonstrated likely exclusive occupation from 1980, more probably from 1982-1985.

Taking the most favourable of these scenarios, 1979, the Plaintiff has not been in continuous, exclusive possession of the Marabella premises for sixteen years or more, as the ejectment summons was issued on the 2nd March, 1994 (upon a notice to quit, allegedly served on the 10th September, 1992).

In my opinion therefore, giving the Plaintiff the benefit of the most favourable evaluation of the evidence, her claim to a possessory title in the Marabella premises or any part thereof fails.

Though what follows is not exclusively determinative of this aspect of the case, in my opinion, I find that the Plaintiff, whether she was back and forth between 1950 and 1970, began occupying the downstairs portion of the "front" building as a tenant of Popo paying a monthly rent of thirty dollars (\$30.00). I also accept that Ishmael obtained and served the Plaintiff with a notice to quit on the 10th September, 1992 and subsequently

with an ejectment summons in 1994. I further accept that there was a shed at the back of the “front” house, and that the evidence of Dwarika on this is the most reliable. Both the Plaintiff and the Defendants had every reason to exaggerate its status – the Plaintiff to make it the locale of all the tenancies, the Defendant of none. I find, that even if this shed did have tenants, there were also tenants in the “front” and main building on the premises, and that Lystra Parfitt was one of these.

Generally, I found the Defendant Ishmael to have been trustworthy, making allowances for the exaggerations I have noted and his imprecision with respect to dates. He was visibly weak and feeble during his testimony. However, I also think that Ishmael downplayed the work done on the premises by the Plaintiff after 1985. I also accept the Defendants' case that the Plaintiff and Sampson knew of the court action between Sonia and Ishmael, and I reject the Plaintiff's and Sampson's contention that they had no knowledge of it.

Two final issues therefore remain to be resolved. First, whether the Plaintiff is entitled to be compensated for the monies expended on the premises between 1980 and 1998 (from the bills tendered). Second, whether the Defendants are entitled to possession of the premises.

COMPENSATION

It is agreed that the principles that ought to guide this Court on the first of these issues are stated in decisions of **Willmott v Barber** (1880) 15 Ch. D. 96 at 105 (Fry J) and in **Taylor Fashions Ltd v. Liverpool, Victoria Trustees Co Ltd.** (1982) 1QB D 133 at 151, 152 per Oliver J. Halburys Laws, 4th ed., VI. 16 paragraph 1072 summarizes the position as follows:

When A. stands by while his right is being infringed by B. it has been said that the following circumstances must be present in order that an estopped may be raised against A.

- (1) B must be mistaken as to his own legal rights; if he is aware that he is infringing the rights of another, he takes the risk of those rights being asserted;
- (2) B must expend money, or do some act, on the faith of his mistaken belief: otherwise, he does not suffer by A's subsequent assertion of his rights;
- (3) Acquiescence is founded on conduct with a knowledge of one's legal rights and hence A must know of his own rights;
- (4) A must know of B's mistaken belief, with that knowledge it is inequitable from him to keep silence and allow B to proceed on his mistake;
- (5) A must encourage B in his expenditure of money or other act, either directly or by abstaining from asserting his legal right.

The more recent cases raise the question whether it is essential to find all the five tests literally applicable and satisfied in any particular case. The real test such that it would be dishonest or unconscionable for the plaintiff, or the person having the right sought to be enforced, to continue to seek to enforce it.

In my opinion, the entire case for the Plaintiff rested on her assertion of a proprietary right arising out of an alleged promise made by Sookdaya. I have found that there is no merit in this contention. Furthermore, I have found that the Plaintiff was a tenant of Popo.

In light of these findings it cannot reasonably be argued that the Plaintiff was mistaken as to her rights and/or that the Defendant Ishmael knew of the Plaintiff's mistaken belief. If the Plaintiff had a genuine mistaken belief that the front building had become hers upon the death of Sookdaya in 1963, why was nothing done to assert that belief with respect to, say, the electricity bills or the house rates or water rates; all of which were for the benefit of the house? Or, why was that belief not asserted with respect to the tenants of Popo occupying the front building?

The question remains however, as to whether it would now be unconscionable for the Defendants to recover possession of the premises and not compensate the Plaintiff for her expenditures on it, given Ishmael's knowledge of at least some of the works undertaken by the Plaintiff? In my opinion it would be.

Both Ishmael and Sonia were involved in litigation over the ownership of the premises. The Defendant Ishmael asserts that the Plaintiff and Sampson were supporting him and even went to Court on occasions with him. The trial ended in May, 1986. If Ishmael is truthful, then he must have known of the works being undertaken up to then. Indeed, the appeal was only dismissed after the death of Sonia in July, 1991. And the notice to quit only served on the 10th September, 1992.

On a balance of probabilities, if Ishmael is truthful, then it is more likely than not that up until some time before September, 1992, certainly up to the death of Sonia, he would have continued to solicit the support of the Plaintiff. Nothing in the evidence points to the contrary. He would therefore have likely been aware of what the Plaintiff was doing on the premises, at least up to September, 1992.

I therefore hold the view, that it would be unconscionable, in these particular circumstances, to deny the Plaintiff compensation from the Defendants for expenditures on the premises up to September, 1992. However, I am only prepared to allow compensation, on the basis of the Plaintiff's evidence, for work done which can be substantiated by receipts which corroborate that such work was done. In my opinion, that can only be for the years 1985, 1987 and 1992. Though the Plaintiff's evidence on the expenditures on materials and labour presented in a vague and unhelpful way, this Court doing the best that it can (short of referring this issue to a Master for assessment) estimates the Plaintiff's entitlement for monies expended in the sum of \$71,732.20.

However, this sum of \$71,732.20 does not take into account the fact that the Plaintiff has for about twenty-seven years (from the death of Popo) enjoyed the use of these premises rent free. As Warner J. noted in **Parris v Cooper** H.C.A. 6639 of 1987 (at page 11) that

value could be considered. Thus, assuming a rent of \$30.00 per month for twenty-seven years, I quantify that value at \$9,720.00. The Plaintiff is therefore only entitled to compensation in the sum of \$62,012.20 (\$71,732.20 less \$9,720.00).

POSSESSION

In my opinion the Defendants have duly pleaded and proven their title and have in this case demonstrated that the Plaintiff has no legal or equitable interest in the lands or buildings thereon, apart from an entitlement to be compensated in the sum of \$62,012.20 for work done on the premises, less a deduction for rent free accommodation.

ORDER

It is therefore ordered that the Plaintiff (including Mitchum Sampson and her children that occupy through her) deliver up possession of the entire Marabella premises to the Defendants forthwith upon the payment by the Defendants to the Plaintiff of the sum of \$62,012.20.

The Plaintiff will pay the Defendants costs of this action certified fit for counsel, to be taxed in default of agreement.

Dated this 30th day of July, 2004.

P. Jamadar
Judge