

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. NO. Cv.S-1408 of 1991**

**BETWEEN**

**KYLAS SINGH**

**Plaintiff**

**AND**

**MYRTLE HARRICHAND SINGH**

**Defendant**

*Before the Honourable Mr. Justice P. Moosai*

**Appearances:**

*Mr. H. Seunath for the Plaintiff*

*Mr. E. Koylass for the Defendant*

**JUDGMENT**

In this action the Plaintiff is claiming against the Defendant, inter alia:

1. A declaration that the Defendant holds ALL AND SINGULAR that certain piece or parcel of land situate formerly in the Ward of Carapichaima now Monsterrat comprising TWO ACRES (being

portion of a parcel of land comprising Five Acres Two Roods and Twenty-Nine Perches firstly described in the Schedule to the said deed registered as No. 4446 of 1938) and bounded on the North by lands of Sookdeosingh on the South by lands formerly of Charles Yallery now lands of Dripal on the East by lands formerly of Jookoo now Gangar and on the West by lands formerly of Mc Burnie now lands of Jagroop and others which said parcel of land is described in the deed dated 23<sup>rd</sup> day of July, 1952 and registered as No. 6250 of 1952 and also described in the Schedule to the deed registered as No. 915 of 1964 and which said parcel of land is more particularly described in Second Part of the Schedule to Deed of Assent registered and No.19532 of 1988(hereinafter referred to as "the 2-acre parcel of land") for and on behalf of and as trustee of the Plaintiff who is entitled to the sole beneficial interest therein.

2. A declaration that the Plaintiff is entitled to possession of the said 2-acre parcel of land.

One of the main issues to be determined in this case is whether the Plaintiff was in occupation of the 2-Acre parcel of land and if so, what was the nature and character of that occupation. It should also be pointed out at this early stage that the Defendant has conceded, in his written submission, that based upon the principle of proprietary estoppel, the equity only arises in respect of the one lot ("the said 1-lot parcel") for which the Plaintiff's brother, Nicholas Harrichand Singh, gave his consent and upon which the Plaintiff constructed a concrete dwelling-house. The said 1-lot parcel forms part of the 2-acre parcel of land.

The Plaintiff is the son of the late Sooknanansingh ("Sooknanansingh") who died in 1982. Sooknanansingh had, from the evidence, at least five sons and one daughter. The Defendant's husband, the late Nicholas Harrichand Singh ("Nicholas") is the Plaintiff's youngest brother and the last child of Sooknanansingh. Nicholas died in

May 1987. The Plaintiff was born on 17<sup>th</sup> November, 1922. Nicholas and he were born and grew up at Calcutta Settlement No. 2 (“the Calcutta Settlement property”) about one mile away from the said lands. Nicholas lived at the Calcutta Settlement property with his father all his life. Sooknanansingh lived in a wooden house owned by him which was rebuilt by Nicholas around 1964.

On 16<sup>th</sup> June, 1930, a five-acre parcel of land (of which the 2-acre parcel of land forms part) and a parcel of land comprising one quarree more or less situate at Calcutta Settlement were conveyed to the Plaintiff’s grandmother, Baboonee, for life with remainder to the Plaintiff’s father, Sooknanansingh, and the Plaintiff’s two uncles Sukdeosingh and Serenathsingh as tenants-in-common.

In 1942 the Plaintiff’s grandmother, Baboonee, Sooknanansingh, Sukdeosingh and Serenathsingh asked the Plaintiff to go on to the 5-parcel of land. According to the Plaintiff he went on the said 5-acre parcel of land in 1945. Baboonee died a year after the Plaintiff went on the said 5-acre parcel of land.

There is not much dispute that in 1945 the Plaintiff constructed a dirt house covered with grass on the said 1-lot parcel. Some support for that testimony of the Plaintiff comes from the Defendant who testified that when she got married in 1950 the mud hut was there.

It is disputed that the Plaintiff ever surveyed the lands but I am prepared, on a balance of probabilities, to accept that the Plaintiff effected some kind of measurement of the lands which he was occupying, whether or not it amounted to a formal survey. As the Plaintiff testified he just couldn’t remember the year. I accept his explanation having regard to his age. Some support can be gleaned from the Plaintiff’s application to the Local Health Authority in 1971 (“K.S.2”) where the dimension of the lot on which the new dwelling-house was to be erected was described as being 200 feet x 700 feet. That would suggest that there was a clearly defined area of land which the Plaintiff was aware he was occupying and conforms with his earlier testimony that his two uncles and father asked him to survey the area he was occupying. It would seem to me that the proper inference to be drawn is that the owners, Serenathsingh, Sukdeosingh and Sooknanansingh had decided to divide both parcels of land and so it would have been

necessary to determine how much land was to be allocated to the respective owners. Support for this is to be found in the 1952 Deed of Conveyance.

Whilst there is some dispute as to when the Plaintiff fenced part of the said lands, I accept the Plaintiff's evidence that he fenced approximately one acre of the land with barbed wire in 1950. I do so as the Plaintiff's evidence, while not infallible, generally had a ring of truth to it. The Plaintiff struck me as a simple, feeble old man who was doing his best in the circumstances. Additionally there was a great deal of support for the Plaintiff's testimony from his witnesses, the contemporaneous documents and to a certain extent from the Defendant and Rita. The Plaintiff testified that he fenced approximately one acre so that the animals which he was rearing would not damage the cane. And when it was suggested to the Defendant in cross-examination that when she got married to Nicholas in 1950 the Plaintiff was already "minding" cows on the land she replied.

"One cow and a young one."

That would seem to suggest that the Plaintiff was rearing animals even in 1950. I also accept the Plaintiff's evidence that he continued to rear animals on the 1-acre parcel of land. I also take into account the evidence of the Defendant who in cross-examination said that she visited the 5-acre parcel of land to drop lunch for Nicholas, but yet was unable to say when the 1-acre parcel of land was fenced. I therefore reject that part of her evidence as I was of the view that she was not being forthright with the court. Additionally the photographer, Samaroo Siewah, on 19<sup>th</sup> April, 1998 measured the chain link fence (which replaced the barbed wire fence) surrounding the enclosed part of the land and found it to be 200 feet x 172 feet, that is approximately one acre. The photographs also seemed to suggest that some of the fencing had been there for quite some time having regard to the impressions left in the trees by the barbed wire.

The Plaintiff testified that when he got on the 5-acre parcel of land he occupied two acres ("the 2-acre parcel of land") as his father gave him the two acres to plant cane on. He first began occupying two acres. The 2-acre parcel of land has been described throughout as comprising two acres. According to the Plaintiff the area was a little more than that, the area was about 200 feet wide x 700 feet long. Sooknanansingh told him to plant cane on the 2-acre parcel of land. I am of the view that this aspect of the Plaintiff's evidence cannot be believed. It is difficult to imagine the Plaintiff being permitted to

occupy, from the moment he first went in there, a defined two acre parcel of land particularly when Baboonee, Sooknansingh, Sukdeosingh and Serenathsingh were the owners of the 5-acre parcel of land. To me it is more probable than not that when the Plaintiff first went there his father and 2 uncles and Nicholas and he were cultivating cane on the 5-acre parcel but that, sometime after that, he began occupying the 2-acre parcel of land exclusively. This is borne out by the evidence of the Plaintiff who testified that after he built his mud house, Sooknanansingh, Sookdeosingh and Serenathsingh would come and work the three acres of cane land at the back of the 2-acre parcel of land. Sookdeosingh lived next to Sooknanansingh and Serenathsingh lived in Sangre Grande. It would also seem to me that at the very outset the Plaintiff was permitted by the owners of the 5-acre parcel of land to construct a dirt house on the 5-acre parcel of land.

After that the Plaintiff testified that he started to mind cattle and goat “in half” on the enclosed 1-acre parcel of land and first put up a 10 feet by 10 feet pen which was later extended some nine years later to a pen 20 feet by 20 feet. Sooknanansingh had initially told him to fence a piece of the 2-acre parcel of land so that the animals would not damage the cane. He fenced about one acre. He bought barbed wire and used wooden fence posts. At present the Plaintiff testified that some of the barbed wire was still there and that of late, when the wood began to rot, he changed it into teak posts and also put iron posts. The photographs support this aspect of the Plaintiff's evidence.

By Deed No. 6250 of 1952 dated 23<sup>rd</sup> July, 1952, Serenathsingh as Vendor conveyed the latter portion of the 1 quarree parcel of land at Calcutta Settlement comprising 1 acre 2 roods and 10 perches (the Calcutta Settlement property) and a portion of the 5-acre parcel of land (the 2-acre parcel of land) to Sooknanansingh. It would also appear that, by the 1952 deed, the remaining portion of the 1-acre 2 roods and 16 perches parcel of land was to be conveyed to Sukdeosingh and Kowsillia and the remaining portion of the 5-acre parcel of land namely, a 3-acre parcel of land was in Sukdeosingh's name. That what seem to suggest that Serenathsingh divested himself of his interest in both parcels of land. Certainly therefore by 1952 Sooknanansingh was aware that the Calcutta Settlement property and the 2-acre parcel of land were his.

I therefore find that the Plaintiff cultivated cane on that part of the 2-acre parcel of land which was not enclosed. I also find that Sooknanansingh, and at times Nicholas,

cultivated the remainder of the 5-acre parcel of land which amounted to some three acres. No evidence was elicited as to the continuing presence of Sukdeosingh and Serenathsingh on the remaining 3-acre parcel of land and Balkissoo's evidence confirmed that they were not at all material times cultivating cane. It therefore seems that Sooknanansingh, and to a lesser extent Nicholas, were the ones who continued to cultivate the 3-acre parcel of land with cane. I am also of the view that the proper inference to be drawn in the circumstances is that Sooknanansingh, as well as Serenathsingh and Sukdeosingh, must have been aware even before this date (23<sup>rd</sup> July, 1952) of the manner in which both parcels of land were to be divided. That would give some credence to the Plaintiff's testimony that Sooknanansingh had told him to occupy the 2-acre parcel of land exclusively.

That would seem to suggest that from that time Sooknanansingh had formed the intention to put the Plaintiff into exclusive possession of the 2-acre parcel of land. And it must also be remembered that at all material times Nicholas, the youngest son, continued to reside with his father at the Calcutta Settlement property. It would therefore seem to me that the proper inference to be drawn in the circumstances, and as subsequent events would confirm, was that Sooknanansingh intended to give the 2-acre parcel of land to the Plaintiff.

The Plaintiff thereafter testified that Sooknanansingh mortgaged the 2-acre parcel of land and the Calcutta Settlement property to get some money. This was confirmed by the recital in Deed No. 615 of 1964 which revealed that Sooknanansingh mortgaged the 2-acre parcel of land and the Calcutta Settlement property in June 1958 to Jean Gunness to secure a loan of three hundred and seventy-five dollars (\$375.00).

The Plaintiff further testified that in 1964 Sooknanansingh and Nicholas came to his home as Nicholas wanted a mortgage to build his house. He asked Nicholas why he had come to him and Nicholas told him that he could not get enough money for the piece of land he was living on so that he wanted to mortgage both parcels of land which included the one that the Plaintiff was living on. According to the Plaintiff:

“Nicholas told me he want permission with this parcel of land to mortgage, and after he mortgage it he would hand the deed back to me. That is the deed for the

land I living on. As a result of that my father hand Nicholas the deed so that he could mortgage the land to get enough money.”

I accept that evidence of the Plaintiff in its entirety as it seems to me consistent with Sooknanansingh’s intention before that to give the 2-acre parcel of land to the Plaintiff and to give the Calcutta Settlement property to Nicholas. It is clear that the proper inference to be drawn in those circumstances, as subsequent events would confirm, was that Sooknanansingh would have insisted that Nicholas come to the Plaintiff and explain to him what was taking place so that the Plaintiff’s interest would be protected. The Plaintiff went on to testify that as a result of the conversation with Sooknanansingh and Nicholas he paid off the mortgage. It is true that in cross-examination the Plaintiff gave differing figures as to the amount paid. Even so I accept his evidence that he paid the outstanding amount of three hundred and two dollars and ninety-six (\$302.96) cents. Although this was disputed it seems more probable than not that Nicholas, who was rebuilding the house at the Calcutta Settlement property, and who wanted to mortgage the 2-acre parcel of land to secure additional funds, would not have had the required funds. Further it is clear that the intention of Sooknanansingh was to give the Plaintiff the 2-acre parcel of land so that it seems reasonable that the Plaintiff would have been asked to contribute to, if not liquidate, the amount outstanding on the mortgage. That is confirmed in the cross-examination when the Plaintiff testified:

**“My father told me that I had to pay the Mortgage ....”**

It is to be noted here that on the second day of cross-examination, the Plaintiff provided answers which were inconsistent with the findings I have made. It appeared to me that this came about as a result of the confused state of mind of the witness. The witness was being cross-examined by Mr. Koylass on the receipts which Mr. Koylass alleged were fraudulently procured. The witness was then cross-examined on the state of the pleadings and whether he was aware of the applications to amend and indeed on the substantive amendments. This was obviously a layman who did not have a clue as to what was going on.

Immediately after that, and in that confused state of mind, the witness was immediately cross-examined as to the mortgage of the 2-acre parcel of land and the transfer of both the two-acre parcel of land and the Calcutta Settlement property to Nicholas. I therefore disregard these inconsistent answers in his cross-examination.

There was no evidence before me that Nicholas ever mortgaged the 2-acre parcel of land but to me that is quite immaterial. What is important is that in 1964, when the 2-acre parcel of land and the Calcutta Settlement property were conveyed by Sooknanansingh to Nicholas, Nicholas said that he needed to mortgage both the Calcutta Settlement property and the 2-acre parcel of land to secure the funds to construct his dwelling-house and that Nicholas in fact built his dwelling-house at the time both parcels of land were conveyed to him.

Until 1969 the Plaintiff's evidence established that all the cane that the Plaintiff planted used to go on Sooknanansingh's name as Sooknanansingh had a cane contract with Caroni Limited. In 1969 Sooknanansingh shared the cane contract with the Plaintiff and Nicholas with Nicholas and Sooknanansingh cultivating the 3-acre parcel at the back of the said lands with cane. Again that seemed to me consistent with Sooknanansingh's intention to give the 2-acre parcel of land to the Plaintiff.

Then there is the evidence of the Plaintiff's nephew, Rupert Annandsingh, which I find cogent and compelling. According to his testimony, his father was the eldest son of Sooknanansingh. In 1970 his father, his brother and he went to the Plaintiff's house. He referred to the Plaintiff as Uncle Kalsu. Sooknanansingh and Nicholas were also there. This was the testimony:

“My grandfather spoke to my father in the presence of Nicholas. Aja told my father that the boy (referring to Uncle Kalsu) want to build his house so transfer back the land to him i.e. Harrichand was to transfer the land back to the Plaintiff. Harrichand indicated at that time the land was still mortgaged. All Harrichand said was that the land was still mortgaged. My father then said the boy want to build his house now. My grandfather said at the time do what is necessary for the boy to build his house. Uncle Harrichand indicated he would sign any papers that was required for

Uncle Kalsu to build his house. Harrichand did indicate that after the mortgage was finished on the house he would then transfer the land back to Uncle Kalsu.”

Even though there was some attempt in cross-examination to limit the impact of this evidence, I am of the view that it is very significant in assisting me in ascertaining what the intention of Sooknanansingh was. Indeed in cross-examination it was suggested to Annandsingh that this conversation never took place. This witness struck me as forthright and independent. As he said, he loved both Nicholas and the Plaintiff as well. The evidence also supported the Plaintiff’s testimony of what transpired in 1964 with respect to the mortgage of the Calcutta Settlement property and the 2-acre parcel of land. Sooknansingh's actions in 1970 are completely consistent with his actions in 1964 when he ensured that the Plaintiff was kept fully apprised of what was taking place. This must obviously have been with a view to protecting the interest of the Plaintiff in the 2-acre parcel of land. It is also significant that Sooknanansingh would have taken the eldest brother (Rupert Annandsingh’s father) with him. This was at a time when the eldest boy in a family of that cultural background would be the one most respected (and feared). Of equal importance was the fact that the eldest brother would be a witness in the event of the father's demise.

In 1971 the Plaintiff applied to the Sugar Industry Labour Welfare Committee (“the Committee”) for a loan to construct a concrete dwelling-house.

According to the Plaintiff:

“My brother [Nicholas] had to sign as he was the owner of the land. The owner of the land by the deed.”

I accept this evidence of the Plaintiff but given the context in which it was said, I view it as coming from a layman. In those circumstances it can readily be appreciated what the Plaintiff was saying, even though he [the Plaintiff] was the owner of the 2-acre parcel of land, that Nicholas was the owner of same by the deed, by the paper title. The Plaintiff testified that when he went to get the loan, and as a result of Nicholas having the

deed for the 2-acre parcel of land, the Committee wanted four years receipts for same to show that he was the tenant. I accept the Plaintiff's evidence that Nicholas gave him the receipts for the years 1968, 1969, 1970 and 1971 and, even though the Plaintiff testified that Nicholas gave him same in 1968, it is clear that he was mistaken. But I accept that Nicholas gave him all the receipts on one day and that would have had to be in 1971. That would also explain why the stamps on the said receipts were stamps issued in 1971.

As a consequence of the Plaintiff having to apply for a loan from the Committee several documents were tendered into evidence. I am of the view that too much significance ought not to be attached to those documents insofar as they purport to establish the existence of a tenancy between the Plaintiff and Nicholas and insofar as they purport to acknowledge that Nicholas was the owner of the 2-acre parcel of land. Both the Plaintiff and Nicholas were clearly, in my view, of the impression that the documents were meant to be a sham, solely for the purpose of assisting the Plaintiff in obtaining the loan from the Committee and both knew of the 1970 incident in which Nicholas was to give the Plaintiff back the land.

The Plaintiff also testified that in order to qualify for a loan as a cane farmer, you had to be producing 50 tons of cane per year. At the time he was only producing 30 tons, so that he had to produce the receipts to get the loan. That evidence, which I accepted, clearly established that the Plaintiff was a cane farmer. The contemporaneous documents confirms this. ("K.S.3" Deed No. 10512 of 1972 sets out as his occupation "Sugar Worker"; "K.J.5", Application for a housing loan lists him as "Cane Farmer and Employee Exchange Site"). This would impact on my assessment of the credibility of both the Defendant and Rita, who both denied that the Plaintiff was a cane farmer. They were only prepared to go as far as to say he used to haul cane with the mule cart.

Again in assessing the credibility of the Defendant, the Defendant testified:

"My husband worked with his father in the cane and rice land **and then** he get a messenger job. **Before he got the messenger job** he was working with his father cutting cane at Razack Trace, Calcutta Settlement No. 2."

By the said 1964 deed, Nicholas is described as bank messenger, and in the 1988 Deed of Assent, Republic Bank described him as a "Retired Bank Messenger". Mr. Seunath has also elicited from the Defendant that at the material time bank employees worked from Monday to Saturday. That would seem to suggest that Nicholas could not have been involved to any significant extent in the cultivation of cane on the 3-acre parcel of land. Certainly the Defendant's evidence is to the effect that from 1964 onwards Nicholas was no longer cultivating cane. However I accept the Plaintiff's evidence that Sooknanansingh shared the cane contract with Nicholas and himself in 1969.

The Plaintiff testified that the construction of his new dwelling-house was completed in 1972. The Plaintiff further testified that during the time he planted cane on the 1-acre parcel of land, he employed people to work with him, including one Hollis Balkissoon.

Balkissoon's evidence was both cogent and compelling. He supported the Plaintiff by testifying that the Plaintiff had fenced approximately one acre of the said lands and planted the other acre in cane. Indeed Balkissoon, his mother and father were employed to assist the Plaintiff with the planting and cultivation of the cane. This witness also confirmed that no one but the Plaintiff planted that 1-acre parcel of land and that Nicholas and Sooknanansingh planted cane in the 3-acre parcel to the back of the 2-acre parcel of land. Balkissoon also confirmed that it was not Nicholas so much, but Sooknanansingh who was more involved in the cultivation of the cane.

I am also of the view that the fact that Nicholas took no steps whatsoever from 1964 up to the time of his death in 1987 to evict the Plaintiff was consistent with Nicholas's appreciation of Plaintiff's true position with respect to the 2-acre parcel of land. Indeed the evidence is that Nicholas did not make a specific bequest of the 2-acre parcel of land to anyone, with the same forming part of his residuary estate.

That leads me to the single most important issue that I have to determine, namely Sooknansingh's intention. I accept the Plaintiff's evidence that Baboonee, Sooknanansingh, Sukdeosingh and Serenathsingh permitted him to erect a dwelling-house on the 5-acre parcel of land. I also find that after the death of Baboonee, Sooknanansingh, obviously with the knowledge that the 2-acre parcel of land and the

Calcutta Settlement property were going to be conveyed to him, permitted the Plaintiff to occupy exclusively 2-acre parcel of land with the intention that the same would be his. The evidence does not indicate the time at which this was done, but, I find that it was inherently more probable that it would have been done after Sooknanansingh had acquired or became aware that he was going to acquire the fee simple in the 2-acre parcel of land and the Calcutta Settlement property.

Certainly the evidence established that the Plaintiff had his share. Nicholas had his share and Rita had her share. And Rupert Annandsingh's evidence established that his father was living elsewhere, in Laventille. That seems to accord with Sooknanansingh's intention which was to provide for his children who were living on his lands. Annandsingh's evidence as to what transpired in 1970 also assisted me in ascertaining the intention of Sooknanansingh.

It is to be noted that the Plaintiff testified in cross-examination that he was at all times up to Sooknanansingh's death (1982) occupying the 2-acre parcel of land with his permission but I do not find that that was indicative of a mere licence. In the context of this case it was simply an acknowledgement by the Plaintiff that his father was the one who put him there, whatever his true legal status. I am further of the view that even if the Plaintiff had had a deed in his possession for the 2-acre parcel of land, this particular Plaintiff, given the cultural background, would still have answered that he was there with his father's permission. An analogy can be drawn by referring to Rita's evidence. Rita testified in cross-examination:

“Where I live now I live on my father's property. He is dead. It was his property and still is. I don't have a deed.”

It is difficult to imagine anyone attempting to evict Rita from her property without her insisting that the property was hers.

There is one other minor issue that I must determine. I reject the Defendant's and Rita's evidence that the Plaintiff made any approaches to them for the purchase by him of any portion of the 2-acre parcel of land as it is totally inconsistent with the Plaintiff's contention and Sooknanansingh's intention.

For the sake of completeness I should say that I also reject the evidence of the Plaintiff in re-examination where he testified that his brothers, his sister and he were the owners by deed of property at Calcutta Settlement and that Sooknanansingh asked the Plaintiff to give up his share to his brothers and sisters in exchange for the 2-acre parcel of land. It certainly was not pleaded and was not even dealt with in the written submissions. It was too fundamental an issue not to have been raised save in the re-examination. I therefore reject that evidence.

What then is the position in law? It seems to me that this is a case based on proprietary estoppel. The equity is based on estoppel in that one (A) is encouraged to act to his detriment by the representations or encouragement of another (O), so that it would be unconscionable for O to insist on his strict legal rights: **Snell's Equity** 29th Edition pp. 573 & 574.

In **Dillwyn v. Llewelyn** 4 De G. F. & J. 517, a father placed one of his sons in possession of land belonging to the father, and at the same time signed a memorandum that he had presented the land to the son for the purpose of furnishing him with a dwelling-house. The son, with the assent and approbation of the father, built at his own expense a house, upon the land and resided there. It was held that this was not a mere incomplete gift, but that the son was entitled to call for a legal conveyance and not merely of a life estate, but of the whole fee simple. Lord Westbury L.C. said, at pp. 1286 and 1287:

“About the rules of the Court there can be no controversy. A voluntary agreement will not be completed or assisted by a Court of Equity, in cases of mere gift. **If anything be wanting to complete the title of the donee, a Court of Equity will not assisting in obtaining it; for a mere donee can have no right to claim more than he has received. But the subsequent acts of the donor may give the donee that right or ground of claim which he did not acquire from the original gift.** Thus, if A. gives a house to B., but makes no formal conveyance, and the house is afterwards, on the marriage of B., included, with the knowledge of A., in the marriage settlement of B., A. would be bound to complete the title of the parties claiming under that settlement. So if A. puts B. in possession of a

piece of land, and tells him, "I give it to you that you may build a house on it," and B. on the strength of that promise, with the knowledge of A., expends a large sum of money in building a house accordingly, I cannot doubt that the donee acquires a right from the subsequent transaction to call on the donor to perform that contract and complete the imperfect donation which was made. The case is somewhat analogous to that of verbal agreement not binding originally for the want of the memorandum in writing signed by the party to be charged, but which becomes binding by virtue of the subsequent part performance. The early case of **Foxcroft v. Lester** (2 Vern. 456) decided by the House of Lords, is an example nearly approaching to the terms of the present case.

..... The equity of the donee and the estate to be claimed by virtue of it depend on the transaction, that is, on the acts done, and not on the language of the memorandum, except as that shews the purpose and intent of the gift. The estate was given as the site of a dwelling-house to be erected by the son. The ownership of the dwelling-house and ownership of the estate must be considered as intended to be co-extensive and co-equal. No one builds a house for his own life only, and it is absurd to suppose that it was intended by either party that the house, at the death of the son, should become the property of the father. If, therefore, I am right in the conclusion of law that the subsequent expenditure by the son, with the approbation of the father, supplied a valuable consideration originally wanting, the memorandum signed by the father and son must be thenceforth regarded as an agreement for the soil extending to the fee-simple of the land. In a contract for sale of an estate no words of limitation are necessary to include the fee-simple; but, further, upon the construction of the memorandum itself, taken apart from the subsequent acts, I should be of opinion that it was the plain intention of the testator to vest in the son the absolute ownership of the estate. The only inquiry therefore is, whether the son's expenditure on the faith of the memorandum supplied a valuable consideration and created a binding obligation. On this I have no doubt; and it therefore follows that the intention to give the fee-simple must be performed, and that the decree ought to declare the son the absolute owner of the estate comprised in the memorandum." [Emphasis Added].

In the instant case it is clear that Sooknanansingh's intention was to give the Plaintiff the 2-acre parcel of land. The Plaintiff and his family have been in occupation of the same for well over 45 years. Further the Plaintiff has incurred substantial expenditure in constructing the new dwelling-house on the 2-acre parcel of land.

Additionally the Plaintiff has cultivated the 2-acre parcel of land over an extensive period which would include the cost of planting and re-planting over at least a 40-year period. The Plaintiff has also enclosed the 1-acre parcel of land with barbed wire and replaced same with chain link and reared animals and planted fruit and other types of trees therein. In short the Plaintiff has treated the 2-acre parcel of land as his. It is clear that the intention of Sooknanansingh was to convey the fee simple in the 2-acre parcel of land to the Plaintiff.

What then is the extent of the equity in the instant case? The extent of the equity is to have made good, so far as may fairly be done between the parties, the expectations of A which O has encouraged. A's expectation or belief is the maximum of the equity: **Snell's Equity** *ibid.* at p576. The evidence established that Nicholas knew at all material times that the 2-acre parcel of land was the Plaintiff's. The Defendant is therefore a trustee, holding the 2-acre parcel of land on trust for the Plaintiff. **Snell's** *ibid.* p. 192 refers to a constructive trust as a trust imposed by equity in order to satisfy the demands of justice and good conscience. Or as Cardozo J. once put it: 'A constructive trust is the formula through which the conscience of equity finds expression': see **Beatty v. Guggenheim Exploration Co.** (1919) 225 NY 380 at 385. I am therefore of the view that in the circumstances of the instant case the trustee must convey the fee simple in the 2-acre parcel of land to the Plaintiff.

Having regard to my conclusion, I do not propose to deal with the question of the Plaintiff as licensee. It would however seem to me that even on that basis, the Defendant would have difficulties as any licence which the Plaintiff had would have come to an end when Sooknanansingh conveyed the fee simple in the 2-acre parcel of land to Nicholas in 1964.

In **Terrunanse v. Terrunanse** (1968) A. C. 1086 at 1095 Lord Devlin said:

"A revocable licence is automatically determined by the death of the licensor *or by the assignment of the land over which the licence is exercised.*" [Emphasis added].

Unless the Defendant could establish some sort of implied licence, it would therefore follow that time would have begun to run in favour of the Plaintiff for the purposes of the Real Property Limitation Ordinance from 1964 when Sooknansingh conveyed the 2-acre parcel of land to Nicholas. But the evidence seemed to establish that the Plaintiff was occupying the 2-acre parcel of land as his own to the exclusion of all others. Certainly by 1970 when Sooknanansingh insisted that Nicholas give back the Plaintiff the land, Nicholas would have been put on notice that an interest adverse to his was being raised.

In the circumstances there will be judgment for the Plaintiff. The Defendant's counterclaim is dismissed.

I therefore make the following orders:

1. A declaration is hereby granted that the Defendant holds the 2-acre parcel of land on trust for the Plaintiff.
2. A declaration that the Plaintiff is entitled to possession of the 2-acre parcel of land.
3. An order that the Defendant do transfer and convey the 2-acre parcel of land to the Plaintiff and IN DEFAULT of the Defendant completing the Deed of Conveyance to effect such transfer within 14 days from the date of presentation of same to the Defendant that the Registrar of the Supreme Court be authorised to complete the same on behalf of the Defendant.

With respect to the question of costs, it is **BY CONSENT** ordered that the Defendant do pay to the Plaintiff fifty per cent (50%) of the taxed costs of the Claim and fifty per cent (50%) of the taxed costs of the Counterclaim with the parties expressly reserving their rights to their respective claims for costs in the event of an appeal.

Dated this 14<sup>th</sup> day of June, 2000.

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**PRAKASH MOOSAI**  
**JUDGE**