

TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY, SAN FERNANDO**

NO. S. 876 OF 1999

Between

SAMDAYE MATHURA

Plaintiff

And

NIRMAL RAMDHANNY

1st Defendant

And

ZAMEENA RAMDHANNY

2nd Defendant

Before the Honourable Madam Justice Rajnauth-Lee

Appearances:

Mrs. Ria J. Seukeran-May for the plaintiff
Mr. Frank A. Seepersad for the defendants

Dated the 16th December, 2004

JUDGMENT

THE PLEADINGS:

In this action, the plaintiff seeks a declaration that she is the owner of a parcel of land situate in the Ward of Siparia in the Island of Trinidad comprising One Acre Two Roods and Thirty Four Perches be the same more or less delineated and coloured pink in the plan registered in Volume 2586 Folio 107 being the remaining portion of the lands described in the Crown Grant in Volume 94 Folio 33 and also described in the Certificate of Title in Volume 1296 Folio 383 and bounded on the North by Gopee Trace 40 links wide and by lands of Kissoon Ramdharry and Savitree Kissoon on the South by a Road

Reserve 40 links wide on the East by lands of Roopan and on the West by lands of Kissoon Ramdharry and Savitree Kissoon and by lands of Rampersad Kallicharan and others together with the dwelling house standing thereon, which said premises are known and assessed as Number 171 Gopee Trace, Penal (hereinafter referred to as “the said property”). The plaintiff also seeks an order for possession and mesne profits in respect of the said property.

By her Statement of Claim, the plaintiff set out the title to the said property. She alleged that on 10th January 1988, the defendants entered the plaintiff’s property without her licence or consent or the consent of her predecessors in title. She alleged that she had called upon the defendants to quit and deliver up possession of the said property but they had failed and refused to do so.

By paragraph 3 of their Defence and Counterclaim, the defendants say as follows:

- “(i) That the first named Defendant has been living on the said lands for over sixteen years prior to the commencement of the proceedings. The first named Defendant commenced living on the said lands, with his grandmother Baboonie and his aunt Kowsil Ramdhanny, in or about 1962 and has continued living on the said lands to date. On or about 1962, the said Baboonie and Kowsil Ramdhanny were the registered owners of the said land.
- (ii) In or about the year 1975, the first named defendant assisted his grandmother Baboonie with the complete construction of the said house on the said lands.
- (iii) Between the years 1975 – 1979 the first named Defendant worked as a gardener with his grandmother Baboonie and proceeds from the said gardening was used to do further construction and or repair to the said house.

- (iv) In or about the year 1979, the first named Defendant's grandmother Baboonie and his aunt Kowsil Ramdhany represented to the first named Defendant that the said land and the said house would be given to him for his absolute use and benefit.
- (v) On or about the month of June 1979 the first named defendant acted in reliance on the representation referred to in Paragraph 3(iv) above and gave his grandmother Baboonie the sum of \$10,000.00, which was used to effect repair to the said house."

At paragraph 5 of the Defence and Counterclaim, the defendants further alleged that the first defendant's aunt Kowsil Ramdhany in accordance with the representation contained in paragraph 3(ii) above, signed a Memorandum of Transfer and transferred her interest in the said property to the first defendant. According to the Defence, the said Memorandum of Transfer was not registered since the Certificate of Title for same was in the plaintiff's custody, care and control and the said Kowsil Ramdhany on the 1st July, 1987, caused a caveat to be filed at the Registrar General's Department.

At paragraph 6 of the Defence and Counterclaim, the defendants further alleged:

"In or about the year 1987 the Defendants further relied on the representation made by Baboonie and Kowsil Ramdhany referred to above and in the firm belief that the said house and said lands belonged to the first named Defendant, the Defendants completely renovated the said house at a cost of \$60,000.00. The said renovation was done with the full knowledge and approval of the said Kowsil Ramdhany and the Plaintiff."

Particulars of Renovation:-

1. Construction of a concrete kitchen with wooden flooring and wooden cupboards.

2. Replacement of wooden walls and floors.
3. Construction of a toilet and bathroom.”

The defendants therefore claim that they are the sole owners of the said house standing on the said lands. They further claim they are the lawful tenants of the said lands by virtue of the Land Tenants’ (Security of Tenure) Act, 1981. There is also the alternative prayer that the defendants have a licence coupled with an interest and are entitled to

- (a) remain on that portion of the land upon which the dwelling house stands
- (b) assign their right and interest therein to any person.

By the plaintiff’s Reply, the plaintiff denies that the defendants have been living on the said property for over sixteen years and avers that the defendants forcibly ejected the plaintiff’s predecessor in title Kowsil Ramdharry by abuse, threats and assaults from the said property in December, 1988 and have remained in possession of the said property from that time.

DOCUMENTS:

Various documents were tendered into evidence by agreement. Other documents were also tendered into evidence during the trial. I will make mention of several of these documents during the course of this judgment.

THE EVIDENCE:

HISTORICAL BACKGROUND, FAMILY RELATIONSHIPS AND DOCUMENTARY EVIDENCE:

The Court considers it desirable to set out in some detail the historical background and the family relationships as supported by the documentary evidence and the undisputed facts in the matter.

1. The said property originally formed part of a larger parcel of land which was owned by one Callichurran, the father of Baboonie and which comprised six acres. [Royal Grant for Crown Lands Sold Volume 94 Folio 33 [No. 678]: Agreed Document “X”]
2. By Memorandum of Transfer No. 82 dated 23rd November 1948, Callichurran conveyed to Baboonie and her husband Ramdharry as joint tenants two (2) acres of land being a portion of the larger parcel of land. [Certificate of Title registered in Volume 1296 Folio 383: Agreed Document “Y”]
3. Baboonie and Ramdharry were the parents of Baswatee Ramdial (mother of the plaintiff), Kissoon Ramdharry (father of the first defendant), Sonnylal Ramdharry (hereinafter called “Sonnylal”) and Kowsil Ramdharry also called Kowsil Ramdhanny (hereinafter call “Kowsil”).
4. Baboonie and Ramdharry were also grandparents of the plaintiff and of the first defendant, who are cousins.
5. Baboonie, Ramdharry, Sonnylal and Kowsil lived on the said property along with several other family members who lived there at various times. Disputes of facts have arisen as to whether and if so, for what periods of time, the plaintiff and/or the first defendant have lived on the said property, but the Court will examine this issue at a later stage.
6. On the 26th August, 1974, Sonnylal also called Satnarine Ramdharry died. [Agreed Document “V”].
7. By Memorandum of Transfer No. 113 dated 14th December, 1977, Baboonie and Ramdharry conveyed to their son Kissoon Ramdharry and

his wife Savitree Kissoon as joint tenants 12,510 square feet of land being a portion of the two acre parcel of land [See endorsement on Agreed Document “Y” and Certificate of Title registered in Volume 2379 Folio 531: Exhibit “S.K.1”].

8. On the 4th November 1978, Ramdharry died and Baboonie became the sole owner of the remaining lands, which are the lands in dispute and referred to in this judgment as “the said property”.
9. Prior to the transfer to Kissoon Ramdharry and his wife Savitree, they lived with Baboonie and Ramdharry on the two-acre parcel of land. Five children were born to Kissoon and Savitree as follows:

Dhanie born in 1954;

Rishi born in 1956 (also called “Bredo”);

Beckam born in 1958;

Angela born in 1960; and

Nirmal, the first defendant, born on 5th November, 1962 [Birth Certificate - Agreed Document “O”]

All five children were born while Kissoon and Savitree lived with Baboonie and Ramdharry. It is uncontroverted that Baboonie so loved the child Beckham that she gave him an acre of land.

10. Prior to the transfer to Kissoon and Savitree, and in the year 1975 they built a little shed to the back of the land which was later transferred to them. Kissoon and Savitree moved into that little shed in 1975 and on receipt of the conveyance, they built a “bigger house” where they now live. That house is located some 45 – 50 feet from the house occupied by Baboonie and Ramdharry on the said property.

It is a matter in dispute, whether the first defendant, the last child of his mother, moved with his parents into their home or whether he remained living with his grandparents on the said property. The Court will examine this issue later in this judgment.

11. By Memorandum of Transfer No. 21 dated 5th February, 1980, Baboonie conveyed the said property comprising one acre two roods and thirty four perches) to Kowsil and herself as joint tenants [Certificate of Title registered in Volume 2586 Folio 109: Agreed Document “DD”]
12. Subsequent to the conveyance of the said property, as set out above, Baboonie arranged a marriage of her daughter Kowsil to one Harnarine Babwah and they were married on the 13th May, 1981. Baboonie had become ill and subsequently went to live with her daughter Baswatie Ramdial where she died on the 1st September 1982. [Agreed Document “U”] Subsequent to Baboonie’s leaving the said property, Kowsil and her husband Harnarine Babwah continued to live on the said property.
13. Prior to her death, Baboonie severed the joint tenancy in the said property and by Memorandum of Transfer No. 74 dated the 28th November, 1981 transferred all her interest in the said property to her daughter, Baswatee also called Baswatie Ramdial and also called Sukhbassiya Ramdial.
14. Baswatee Ramdial had given birth to her daughter Samdaye Mathura (the plaintiff) on the 5th February, 1939. The plaintiff originally took her mother’s maiden name, that is, Ramdharry as there was no father’s name stated on her birth certificate. [Agreed Document “T”].

15. On the 7th June, 1958, the plaintiff then Samdaye Ramdharry and aged 19 years married Victor Mathura at Gopee Trace, Penal. Her grandfather Ramdharry is named on the Hindu Marriage Register in the column “Name of father”. [Exhibit “S.K.2”].
16. Baswatee Ramdial died on the 28th March, 1984 [Agreed Document “W”] and by Memorandum of Assent No. 85 dated 26th December, 1986, the plaintiff assented to herself all the interest of the said Baswatee Ramdial, in the said property.
17. On the 15th April, 1985, the first defendant married the second defendant, then Haniffa Mohammed, at the District Revenue Office, Princes Town. The address of the first defendant as stated on the Marriage Certificate is 171 Gopie Trace, Penal [Agreed Document “H”].
18. On the 11th April, 1986, a girl child Jessica was born to the defendants at the General Hospital, San Fernando. The address of the second defendant as stated on the birth certificate is 171 Gopie Trace, Penal [Exhibit “N.R.1.”].
19. Sometime subsequent to the birth of the child Jessica, Kowsil and her husband left the said property in circumstances which are in dispute in this matter. They went to live with the plaintiff. The evidence of Harnarine Babwah is that when Kowsil and her husband left the said property the child Jessica was “walking and talking”. That evidence has not been contradicted by the defendants. It is not in dispute that Kowsil and Harnarine Babwah never returned to live at the said property, but continued living with the plaintiff at her home at Southern Main Road, Cunupia.

20. Kowsil died on the 21st April, 2001 [Agreed Document “E”] and Harnarine Babwah has continued to live at the home of the plaintiff up to the time that he gave evidence before the Court in this matter.
21. By Memorandum of Transfer No. 34 dated 15th January, 1988, Kowsil transferred all her interest in the said property to the plaintiff. [See endorsement on Agreed Document “DD”]. The Agreed Document “DD” also shows that a caveat had been filed by Kowsil prior to the said Memorandum of Transfer No. 34 and had been withdrawn at the request of Mr. Vernon Jamadar, Attorney for Kowsil.
22. A copy of a caveat allegedly registered on July 1, 1987 on behalf of Kowsil and prepared by Mr Subhas Panday had been tendered into evidence by consent and marked “S”.
23. Prior to the action herein, two actions had been commenced on behalf of the plaintiff against the defendants.
24. In High Court Action No. S.1890 of 1989, the plaintiff commenced an application against the defendants under Order 94 of the Rules of the Supreme Court, 1975, seeking summary possession of the said property on the ground that the defendants did not occupy the said property with the licence or consent of the plaintiff. Kowsil was alive at the time of the commencement of this action, and swore an affidavit in support of the application. The Court thinks it is best to set out Kowsil’s affidavit in full:

“(1) I am the Aunt of the Plaintiff herein and I have lived in the Dwelling House situated at 171 Gopie Trace, from birth.

(2) My sister Baswatie Ramdial and I owned this property, by a will dated the 16th day of November 1983, my sister

bequeathed her share of the property, and house to the Plaintiff.

- (3) On
I gave the plaintiff my share and interest.
- (4) The Plaintiff is therefore the owner of the house and land known and assessed as 171 Gopie Trace, Penal.
- (5) I continued living in the house with my husband Harnarine Babwah with the consent of the Plaintiff.
- (6) In 1983 the defendants Nirmal Ramdhanny came to me and asked me to stay there in the house although I told him not to stay there, he insisted that it was his grandmother's place and he would stay there.
- (7) Against my will he moved in with his wife the second defendant. He took one of the bedrooms, and began living there using the kitchen and generally the house.
- (8) He began ill treating us from 1984.
- (9) He began to order us around, he kept on saying to get out of the house.
- (10) He beat my husband on one occasion. He also beat me for no reason whatever.
- (11) He was smoking marijuana. The police came there and arrested him and also arrested me although I knew nothing

about it. I was kept in the cell. I got bail. The police eventually let me go.

- (12) I lost my jewellery and I believe he took it.
- (13) They kept threatening to beat me and would use foul and obscene language and would drive us out.
- (14) Eventually we ran away and went to stay with the Plaintiff at her home in Cunupia on the 20th day of December, 1988.
- (15) I never gave the defendants permission to stay in the house. I never gave him permission to repair the house. I never gave him permission to extend the house. He built an extension of the house of one room, but there are no windows or galvanise installed in it. It is incomplete.”

25. The first defendant swore an affidavit in opposition to the application for summary possession. The Court will examine his affidavit at a later stage.

26. On the 20th June, 1990, Mr. Justice Hosein granted leave to the defendants to defend the action and gave directions for the filing of pleadings.

27. Pleadings were never filed in H.C.A. No.S.1890 of 1989, but the plaintiff filed a fresh action against the defendants, that is to say, H.C.A. No. S.1009 of 1990, in which she sought a declaration of ownership in respect of the said property, and possession of the said property.

28. Pleadings were filed in this action. The action was not set down for trial in the requisite period. The plaintiff therefore bought an application dated 17th February, 1994 for the reinstatement of the action to the list of cases. Although the application was granted on the 22nd March, 1994, it does not appear from the court file that the action was ever set down for trial and accordingly, it should stand dismissed. The Court will examine the pleadings in that matter at a later stage.

THE WITNESSES

The plaintiff's witnesses

Harnarine Babwah

This witness married Kowsil on the 13th May, 1981. He testified on behalf of the plaintiff. After his marriage to Kowsil, they lived together as husband and wife on the said property until they left the said property and went to live with the plaintiff at her home. When Harnarine Babwah moved into the said property, Kowsil's mother, Baboonie, was still alive and was still living on the said property.

According to Babwah, when he moved into the said property, the house was a two storey board house with three (3) bedrooms, a piece of hall and a downstairs kitchen to the back. There was nothing built to the front of the downstairs. [Photographs A and B].

Babwah also testified that when he moved into the said property, the first defendant was living by his father, next door to the said property.

According to Babwah, about a year after his marriage, Baboonie became ill and went to the home of her eldest daughter, Baswatee, since Kowsil was not able to care for her. According to his evidence, Baboonie was in a lot of pain and could hardly move. Baboonie needed someone to bathe and clean her and Kowsil could not do that. He testified that Kowsil was a sickly person; she was not clever; she used to have a

“melchady” or giddyness, from which she suffered. His evidence was that Kowsil played like a child and that she was like a child.

Babwah further testified that subsequent to Baboonie’s leaving the said property, he and his wife remained living on the said property until the first defendant moved into the said property, claiming that he was Baboonie’s grandson. According to Babwah, the first defendnt moved into the said property, saying “it is his grandmother’s place and he coming there”.

According to Babwah, the first defendant began what can best be described as a “reign of terror” upon Babwah and Kowsil. Babwah testified that the first defendant moved into the front bedroom with the second defendant and started to give him problems. The Court thinks it best to set out in full that part of Babwah’s evidence:

“Normally he used to swear and tell me to get my self out of here, it is not mine. My wife he used to curse her the same way and say why she don’t get out of here, which is, she own property.

I get to understand that the police arrested my wife. I did not find out anything like that. We did lose some jewellery in the house. I lost my wedding ring and my wife’s jewellery.”

Eventually, I give up all hope. I tell myself is all that I could do is to kill myself. I get to one of the neighbours, Soodwah, and I telephoned Samdaye Mathura and I tell she to come for me and I said I seeing too much trouble.”

It was in those circumstances, according to Babwah, that he and Kowsil left the said property and went to live with the plaintiff. Kowsil’s affidavit sworn in H.C.A. S.1890 of 1989 has already been set out by the Court. In her affidavit, Kowsil deposed to similar facts, describing the ill-treatment meted out to them at the hands of the first defendant. He ordered them around. He kept on telling them to get out. He threatened to

beat them and in fact did beat them, using foul and obscene language to them. According to Kowsil, the first defendant smoked marijuana and in what appears to be a police raid on the said property, she was arrested, and imprisoned until she was granted bail.

According to Kowsil (paragraph 14 of her affidavit), she and Babwah ran away and went to stay with the plaintiff on the 20th December, 1988. She further deposed that she never gave permission to the first defendant to stay on the said property nor to repair the house on the said property nor to extend the said house. Kowsil further deposed that the first defendant built an extension of a room but at the time when she swore the said affidavit that is to say, 30th January, 1990, there were no windows or galvanise installed and the room was incomplete.

Babwah also testified that the room which he described as a kitchen built to the back of the house was incomplete; although covered with galvanise, it was not painted.

In cross-examination, Babwah testified that in his “average”, the defendants moved upstairs one year after Baboonie left. He also stated that when the defendants moved upstairs, the child (Jessica) was already born. Babwah also testified that the wedding of the defendant took place from his father, Kissoon’s house. During the cross-examination, it was surprisingly put to Babwah, that Kissoon did not have a separate house. In response, Babwah was admanted that Kissoon did have his own separate house.

In further cross-examination of Babwah, it was put to him that Kissoon lived about fifty (50) feet from the house where Babwah lived and with this he agreed. It was further put to Babwah that on 3rd June, 1983, he and Kowsil went to the office of Mr. Shastri Persad, Attorney-at-Law, to sign a lease of the parlour (situate at the front of the said property) to the first defendant. This the witness denied. Although a document was shown to the witness, that document was never produced to the Court and Mr. Shastri Persad who allegedly prepared the document never came to the Court as a witness to give

evidence of the preparation of any such document. Babwah also denied any knowledge of Kowsil's allegedly transferring her share of the said property to the first defendant.

SAMDAYE MATHURA, THE PLAINTIFF:

The plaintiff testified that her father having died prior to her birth, Baboonie brought her mother Baswatee home to Gopee Trace, where she, the plaintiff, was born. She grew up in the home of her grandparents at Gopee Trace and when she was 18 years of age, she got married and left Gopee Trace.

According to the plaintiff, while she was growing up, her grandparents, her two uncles (Kissoon and Sonnylal), her aunt Kowsil and her mother, Baswatee lived at Gopee Trace. When the plaintiff was 12 years old her mother, Baswatee, went to live at Debe and she, the plaintiff, continued living with her grandparents.

The plaintiff testified that the house in which she originally lived was a two-storey house with two (2) large bedrooms and one small bedroom with a gallery, all located upstairs. In the downstairs area, there was a kitchen to the back located at the bottom of the back-step and an outside toilet and bath.

According to the plaintiff, the house was rebuilt in 1970 by a carpenter named Mr. Brown. At that time, her grandparents were alive. The grandparents as well as Kowsil and Sonnylal were living in the house when it was being rebuilt and as far as the plaintiff knew, "these were the people who rebuilt the house."

The plaintiff testified that during her lifetime Sonnylal lived in the house with his parents, ran the parlour and even slept in the parlour at times.

According to the plaintiff, the new (rebuilt) house was board and concrete pillars with wooden flooring, containing three bedrooms, drawing room and a gallery. In the downstairs portion, were the parlour and the kitchen to the back.

The plaintiff further testified that after her grandfather and Sonnylal died, Baboonie, Kowsil and one of the brothers of the first defendant, one nicknamed "Bredo", were living in the said house.

As to the purported making of the deed by Kowsil, the plaintiff testified that since 1988, Kowsil lived by her until her death. She said that the caveat prepared by Attorney Mr.Subash Panday was never served on her.

The plaintiff was shown - Exhibit "I" being a photograph of the said property. According to her, the concrete structure at the back of the said house was the structure built by the first defendant. Exhibit "M" was also a photograph of the concrete structure. Both photographs - Exhibits "I" and "M" were taken in 1989. Both show an incomplete structure with a roof in place. A few months before the trial, according to the plaintiff, Photographs Exhibits "J", "K" and "L" were taken showing the incomplete structure but at the time that these photographs were taken, the roof had been removed and the outside of the structure looked run-down and unkept.

According to the plaintiff, there was once a time when the defendants moved out of the said property and she sent her son to clean it. She went to the said property, but the first defendant came there, cursed her and smashed her windscreen. Subsequently, the defendants have returned to the said property and will not give up possession, the plaintiff contended.

The plaintiff corrected herself at the end of her evidence in chief. According to her, Kowsil and Babwah came to live with her in 1987 and not 1988.

Although it was put to the plaintiff that she was married from her mother's home in Debe, she denied this. Her evidence is supported by Exhibit "S.K. 2", that is to say, a copy of her marriage certificate, which confirms the place of marriage as Gopee Trace, Penal.

In cross-examination, this witness further testified that although she did not know how long the rebuilding of the house took, she did know that when Sonnylal died in 1974, the house was already completed. This witness also denied in cross-examination that the first defendant was a sickly baby and that his mother sold him to his grandmother, Baboonie.

The following inconsistencies were highlighted by the Attorney for the defendants during the cross-examination of the plaintiff:

- (1) The plaintiff had said in cross-examination that she did not recall when the first defendant moved into the said property. It was pointed out to her, that in H.C.A. S.1890 of 1989, she had sworn an affidavit in which she deposed at paragraph 5, that in December 1987, the defendant moved into the dwelling house and began taking advantage of Kowsil and her husband. The plaintiff explained that she may have made a mistake.
- (2) It was also pointed out to the plaintiff that her evidence (in her affidavit filed on H.C.A. S.1890 of 1989) as to the date on which the defendants moved into the said property was at variance with the affidavit of Kowsil filed in H.C.A. S.1890 of 1989. According to Kowsil, it was in 1983 that the first defendant came to her and asked her to stay in the house. The plaintiff once again explained that she had made a mistake.
- (3) It was further pointed out to the plaintiff that Kowsil had given the date on which she and Babwah had gone to live with the plaintiff as 20th December, 1988; while the plaintiff said that it was in 1987, one week before Divali. The plaintiff was adamant that there was an error in Kowsil's affidavit.

According to the plaintiff her grandparents hired people to work the plantation, planting sugar cane and vegetables.

HAMLYN MATHURA

Hamlyn Mathura the 35-year-old son of the plaintiff testified on her behalf.

According to him, he went to the said property on the 24th July, 1991, in order to clean it. He stated that the said property was vacant and dirty. At that time, according to this witness, there was no toilet inside the house, and as to the extension to the back of the house, it was “only wall”. There was no roof; there was no toilet or bath inside the house and there was no kitchen in that extension.

THE DEFENDANTS’ WITNESSES

Nirmal Ramdhanny also called Nirmal Ramdharry, the first defendant

Nirmal Ramdhanny, the first defendant, gave evidence that he had lived at the home of Baboonie, his grandmother, for the whole of his life, that is to say, for forty (40) years at the time of giving evidence before the Court.

According to the first defendant, his mother told him that she had sold him to his grandmother. His evidence was that he grew up in the old board house. He went to school as a child and stopped his schooling at the age of about 13 years. According to this witness, when he stopped school, he was working in his grandparents’ garden, planting ochro, bodi and rice. In addition, he sold in the market with his grandparents.

The first defendant testified that somewhere around 1972, work began on a new structure. According to him, they started building a new house just in front of the old building. The witness testified that the new structure was completed somewhere around 1979. According to him, during the period 1972 – 1979, he was living in the new house with his uncle, Sonnylal. He testified that “Baboonie was living in the same place”.

According to the first defendant, in 1979, they broke down the old house. According to him, his grandmother, his uncle (supposedly Sonnylal), Kowsil and he (the first defendant) lived in the new house until 1979. Kowsil married Harnarine Babwah and they lived in the new house following their marriage.

The first defendant testified that somewhere around 1980, Baboonie went to live with her eldest daughter and never came back to live at the said property. He further testified that after Baboonie's death, he continued living on the said property with Kowsil and her husband, Harnarine. At that time he was working at Trinidad ISCOTT with a firm called Fujiko. Kowsil and Harnarine did not work after Baboonie's death, but Kowsil used to cook for him.

According to the first defendant, Baboonie was like his mother. She took care of him from the time he was small and they had a good relationship. He testified that his marriage to the second defendant took place at the said property.

The first defendant then testified that he did not move out of the said property. The first defendant's evidence as to the reason for this is important in the view of the Court and the Court therefore sets it out in full:

“I did not move out of 171 Gopie Trace because I know I was living there. I had interest in that property. I was living in that property at that time because my grandmother had told me in fact that we could live there until we die – myself, Kowsil Ramdharry and Harnarine Babwah.”

The first defendant testified that further work was done to the new structure from 1979 and afterwards. According to him, further work was done in 1987. He testified that in 1987, he spoke to Kowsil and Harnarine concerning a kitchen and a toilet. According to him “we decided to put down an extension”. He testified that when he spoke to Kowsil and Harnarine about the issue, they said “it is for all of us” and they said to go ahead. The first defendant gave evidence that he contracted one Shaheed Hosein to do

the work, which took almost three months and more, and cost (materials and labour) approximately \$60,000.00. According to him, he and his wife bore the cost of the construction.

The first defendant further testified that at the time he was building the extension, he knew that Kowsil and Baboonie were the legal owners of the said property, but Kowsil had told him to go ahead and that she would give him “a sign on the land”. According to him, he could live in that property and could do any amount of work on that property.

According to the first defendant, Kowsil gave him a sign on the land. They went to a lawyer by the name of Bissoon in TICFA. The lawyer spoke to Kowsil and she made out a Will by the lawyer. He testified that after making the Will, Kowsil could not find the original deed to register his name, so the lawyer advised her to make out a caveat, which she did at Mr. Bissoon’s office.

The Court wishes at this stage to express its concern about the first defendant’s evidence relating to the purported “sign on the land”. No will has been produced. A copy of a memorandum of transfer bearing date 11th June, 1987, not being a photocopy of a signed document, but purporting to be a typewritten copy, and purportedly prepared by Attorney-at-Law Kemrajh Harrikissoon was produced as part of Agreed Document “Q”, the proceedings in H.C.A. S.1890 of 1989. The original memorandum of transfer was never produced and no explanation for its non-production was proffered. The memorandum of transfer does not purport to be by way of gift, but a consideration of \$4,000. is stated on the document, allegedly paid by the first defendant to Kowsil. By the said memorandum, Kowsil allegedly transferred all her interest in the said property to the first defendant and retained a life interest for herself.

The first defendant’s evidence in chief was notably silent on the memorandum of transfer. It was just as if the document was never before the Court. He did not seek to explain the preparation of the document or the absence in Court of “Mr. Bissoon” or Attorney Harrikissoon who purportedly prepared the document. Neither did he seek to

explain how Kowsil was persuaded to convey to him her half-share in the said property and retain only a life interest for herself when she had a husband who was living with her and for whom she might have wished to make provision. Further, he did not seek to explain how Kowsil's share in the said property was to be conveyed to him for the sum of \$4,000. or whether that sum was in fact paid to Kowsil.

It is not in dispute that a caveat was registered on the 1st July, 1987 on behalf of Kowsil and prepared by another Attorney, Mr. Subhas Panday. [Agreed Document "S"].

Cross Examination of Nirmal Ramdhanny and inconsistencies disclosed in the evidence, on the pleadings and in the previous actions.

The Court wishes to set out in detail the inconsistencies disclosed in the first defendant's case:

(1) H.C.A. S.1890 of 1989

By his affidavit filed in H.C.A. No. S.1890 of 1989 and sworn by him on 14th March, 1990, the first defendant deposed at paragraphs 6 and 7 as follows:

“6. In 1970 I was encouraged and advised by the then owner of the land Baboonie my grandmother and Kowsil Ramdharry my aunt to break down the then existing old house and to construct the present dwelling house. I spent about \$60,000.00 to build the present house.

7. At that time the then owners had promise to convey a life interest in the said lands, to me.”

It is not in dispute that in 1970, this defendant was just eight (8) years of age and still in school. His grandparents were alive and obviously in proper control of their home and affairs. His uncle, Sonnylal, was still alive. Kowsil was not yet a part owner of the said property. According to the first defendant, he spent \$60,000. to build the new house.

When cross-examined on the number of inaccuracies/inconsistencies contained in the said affidavit, the witness heaped whole-hearted blame on Attorney, Mr. Subhas Panday. According to him, the lawyer was very busy at that time and saw him for only five (5) minutes and then prepared the affidavit. It is surprisingly revealed later by this witness that Mr. Panday did “research” the title to the lands and had discovered that Baboonie had given her share to Baswatee who then gave her share to the plaintiff.

When however cross-examined about paragraph 7 of his affidavit, where he deposed that the owners had promised to convey a life interest to him, the first defendant was adamant that Baboonie and Kowsil did promise him in 1970 that he would have a life interest in the said property.

At paragraph 14 of the said affidavit, the first defendant deposed that in the said month – supposedly June 1987 – Kowsil arranged with him with the full knowledge and concurrence of the plaintiff to extend the house and install a toilet and bath for her convenience. According to his affidavit, the extension and installation of the toilet and bath cost approximately \$25,000.00. The Court views this evidence with considerable caution. In his cross-examination, the first defendant had given evidence that he did not know at the time the first action was taken against him, that is to say, in 1989, that the plaintiff owned the property by deed. He first found out, according to him, when he went to Mr. Panday who did some research. It is clear to the Court that the first defendant’s

assertion that the plaintiff concurred with full knowledge in Kowsil's representation/encouragement to him cannot be sustained.

At paragraph 26 of the said affidavit, the first defendant also deposed that he was living in the said house with the express consent of his aunt Kowsil and the plaintiff. In cross-examination he admitted that the plaintiff had not given him consent but claimed that it was the plaintiff's mother, Baswatee Ramdial who had given him consent to live in the said house. The Court notes that this is a new twist to the first defendant's case. It is the first occasion whether on the pleadings or in evidence, that the first defendant has made the allegation that Baswatee Ramdial had given him consent to live in the said house. Baswatee Ramdial was a part owner of the property only from 1981 to 1984 when she died and there is no evidence that she exercised such rights of ownership over the property while Kowsil and her husband were still living there.

(2) H.C A S.1009 OF 1990

A second action was filed against the defendants whereby the plaintiff sought inter alia possession of the said property. At paragraph 2 (ii) of their Defence and Counterclaim, the defendants pleaded as follows:

“2(ii) In or about the year 1990, or thereabouts the 1st named Defendant's said grandmother and Aunt, requested, encouraged and induced him to demolish the existing wooden house and erect a new building on “the said lands” on the clear understanding that he will be allowed to remain and reside therein and use the said building as his dwelling house at all times, and in expectation of being allowed to erect his dwelling house and reside there, the first named Defendant expended large sums of money and erected a

new dwelling house made of concrete and wood and situate at No. 17 Gopie Trace, Penal, in the Ward of Siparia, in the Island of Trinidad, measuring 32 feet by 36 feet and further in June of 1987 on the encouragement of the said Aunt and with the full knowledge of the plaintiff, both defendants expended large sums of money to construct by way of extension to the dwelling house, a toilet and bath and kitchen made of concrete and measuring 24 feet by 36 feet.”

In cross-examination, the first defendant was confronted with the fact that Baboonie had died since 1981. Again, he blamed his Attorney, Mr. Panday. When asked in cross-examination whether there was ever a time when his grandmother Baboonie and his aunt Kowsil encouraged him to break down the old house and erect a new house, the first defendant replied that it was not his grandmother, but his aunt Kowsil who requested him to break down the old house, but according to him, two houses, old and new, were existing at the same time. According to him, Kowsil asked him to break down the old house.

(3) THE PRESENT ACTION - H.C.A. S.876 of 1999:

Paragraph 3 of the Defence in the present action has already been set out. The defendants alleged at paragraph 3(i) that in or about 1962, Baboonie and Kowsil were the registered owners of the land. They also alleged that in 1975, when the first defendant, was thirteen (13) years of age, he assisted his grandmother with the complete construction of the house. The defendant further alleged that in 1979, Baboonie and his aunt Kowsil represented to the first defendant that the said property would be given to him for his absolute use and benefit.

Further, in paragraph 3(v) of the Defence, the defendants alleged that acting in reliance on the representation, he gave Baboonie the sum of \$10,000, which was used to effect repairs to the house. This allegation is yet again another twist in the first defendant's story that he had expended money on the repair of the house pursuant to the representation of grandmother Baboonie and aunt Kowsil. In 1979 Kowsil was not yet a joint owner of the said property. Her mother Baboonie was still alive and in control of her affairs. On a balance of probabilities, it appears to the Court quite unlikely that Kowsil would have made any such representation in 1979.

This is a convenient stage for the Court to make the observation that until Baboonie became so very ill just before her death, she (and while he was alive, her husband Ramdharry) had provided for their children whether through marriage or by gifts of lands. They also made what appeared to be a good livelihood planting garden and selling in the market. It is hardly likely in the view of the Court that they would need to accept money from a teenage grandson.

In cross-examination, the first defendant claimed to have earned the \$10,000 from selling in the market with his grandfather. His grandfather having died in 1978, it appears an unlikely story that the first defendant would have earned such money while merely assisting his grandfather.

In further cross-examination, the first defendant contended that what he had stated in H.C.A. S.1890 of 1989 that he could live in the house for life, and what he was claiming in the present action, that he and his wife were the sole owners of the house, were both true.

CONCLUSTIONS:

The Court wishes to state emphatically that I do not regard this witness as a witness of truth. His evidence is riddled with serious inconsistencies, discrepancies and improbabilities. The Court does not accept his assertions that he lived with his grandmother while she lived on he said property; that either his grandmother or his aunt Kowsil or his other aunt Baswatee Ramdial or this plaintiff or any combination of them promised him either a life interest in the said property or that he would become the sole owner of the said property. Neither does the Court accept that this defendant expended the monies he claimed to have expended. I accepted Babwah's evidence (confirmed by Kowsil's affidavit) that the first defendant forced himself into the said property without the permission or consent of Kowsil. The Court also accepts that the first defendant abused and terrified the two (2) old people, Kowsil and Babwah, and forced them out of their home. I also find that whatever works were done by the defendants around 1987 or at any time subsequent to their entering the said property were done without the permission or consent of either Kowsil or the plaintiff.

In the circumstances, the Court considers it unnecessary to examine in detail the evidence of the other witnesses who gave evidence on behalf of the defendants. Except for Rajo Arjoon, they were all witnesses who had a serious interest in the outcome of the action, being Savitri Kissoon, the mother of the first defendant and Haniffa Ramdhanny, the second defendant.

Further, although the Court appreciates the assistance on the several authorities cited by Attorneys in this matter, the Court does not consider it necessary to examine the law. The Court rejects the contentions advanced on behalf of the defendants.

The Court therefore finds in favour of the plaintiff. There will be judgment for the plaintiff against the defendants as follows:

1. IT IS HEREBY DECLARED that the plaintiff is the owner of a parcel of land situate in the Ward of Siparia in the Island of Trinidad comprising **One Acre Two Roods and Thirty Four Perches** be the same more or less delineated and coloured pink in the plan registered in Volume 2586 Folio 107 being the remaining portion of the lands described in the Crown Grant in Volume 94 Folio 33 and also described in the Certificate of Title in Volume 1296 Folio 383 and bounded on the North by Gopee Trace 40 links wide and by lands of Kissoon Ramdharry and Savitree Kissoon on the South by a Road Reserve 40 links wide on the East by lands of Roopan and on the West by lands of Kissoon Ramdharry and Savitree Kissoon and by lands of Rampersad Kallicharan and others together with the dwelling house standing thereon, which said premises are known and assessed as Number 171 Gopee Trace, Penal (hereinafter referred to as “the said property”)
2. IT IS ORDERED that the defendants do forthwith deliver to the plaintiff possession of the said property.
3. IT IS FURTHER ORDERED that the defendants do pay the plaintiff’s costs of the action to be taxed on the claim and counterclaim.
4. There will be a stay of execution of 28 days.

.....
MAUREEN RAJNAUTH-LEE
JUDGE