

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 77 of 1998

BETWEEN

DAYE MAHADEO SINGH

PLAINTIFF

AND

KENNY RAMSAROOP
INDRA AZIZE MAMED

DEFENDANTS

BEFORE THE HONOURABLE MR. JUSTICE STOLLMAYER

Appearances:

Mr. P. Dass for the plaintiff

Ms. R. Permanand for the defendants

REASONS:

The application before the court for determination was the plaintiff's summons of 14th January, 1998 to continue the ex parte Injunction which she had obtained on 14th January, 1998 until trial or until further order.

The terms of that injunction were, in brief, to restrain defendants from entering or remaining on a one acre parcel of land at Bhaggan Trace, Chandernagore Village Chaguanas ("the 1-Acre Parcel"), the plaintiff having by writ of summons filed 14th January, 1998 claimed a declaration

that she is the owner in possession of that parcel of land. The 1-Acre parcel is a portion of a larger parcel comprising 6 acres 3 roods 39 perches now vested in Champardai Bhaggan (“the 7-Acre Parcel”).

The application for the ex parte injunction was supported by the plaintiff’s affidavit sworn and filed on 14th January 1998. No further affidavit was filed by or on behalf of the plaintiff and in opposition to the summons before me was the affidavit to Champardai Bhaggan sworn and filed 17th March, 1998 on behalf of the second defendant.

The plaintiff’s affidavit of 14th January 1998 sets out that she went into possession of the 1-Acre Parcel in 1975 as a tenant of one Dan Michael at an annual rent of \$24.00 and continued paying this rent up to and including 1995. In 1996 Michael refused to accept the rent and showed her a letter of 3rd February 1994 (exhibit “DMS 2”) written to him on behalf of Champardai Bhaggan by her then attorneys-at-law. This letter, however, is addressed to David Michael but there is a letter of the same date addressed to Dan Michael exhibited to the affidavit of Champardai Bhaggan as exhibit “CB 4” alleging that Dan Michael is not authorised by Champardai Bhaggan to permit anyone to enter or cultivate the 7-Acre Parcel. Champardai Bhaggan, it should be noted from exhibit “CB 3”, acquired the 7-Acre Parcel by memorandum of Transfer dated 26th April 1976 as joint tenant together with her late husband Sookdeo Bhaggan. The latter died on 17th September, 1992 and she in turn transferred the 7-Acre

Parcel to the second defendant and Lorenzo Neil Mohammed by Memorandum of Transfer dated 23rd August, 1996 (exhibit "CB 2").

In 1970 Sookdeo Bhaggan rented the 7-Acre Parcel to Dan Michael at an annual rent of \$60.00. Dan Michael was to use the land for grazing cattle. He sublet to the plaintiff and others, says Champardai Bhaggan, without full consent or the consent of her late husband (see paragraphs 7 and 12 of the affidavits) but there is nothing to indicate that the subletting was contrary to the terms of Dan Michael's tenancy.

I came to the conclusion on the basis of what was before me that the plaintiff could not have been in adverse possession, or in adverse possession for a length of time sufficient to establish possessory title. In my view the plaintiff was clearly a tenant of Dan Michael and therefore a sub-tenant of Champardai Bhaggan. There had been no proper or effective termination of Dan Michael's tenancy, or of the plaintiff's sub-tenancy either by the letter of 3rd February 1994, whether that letter was in fact exhibit "DMS 2" or exhibit "CD 4", or by the letter of 19th September, 1995 written by Salfarlie, Salfarie and Company on behalf of Champardai Bhaggan to Dan Michael and also exhibited as "CB 4". There having been no termination of the plaintiff's tenancy she continues so to be, and the second defendant and Lorenzo Neil Mohammed took the 7-Acre Parcel subject to this tenancy, or sub-tenancy.

The exact terms of the plaintiff's tenancy could not be established from the affidavit evidence before me but it was an annual tenancy at the least and the plaintiff is entitled to remain there until the tenancy is properly and effectively terminated. The 1-Acre Parcel, or a part of it at least, is or was under vice cultivation when the ex parte injunction was obtained -and the plaintiff then needed until the end of January 1998 to harvest that crop. Hearing of the summons to continue the injunction took place in April and that rice crop must therefore have been harvested by that time.

In my view, however, it is clear that any losses suffered by the plaintiff can be quantified and in all the circumstances, I was of the view that damages were an adequate remedy.

I therefore ordered that the injunction be discharged and that the costs of the summons be the defendants costs in the cause. Ms. Permanand indicated that the defendants were willing through her to give an undertaking not to enter on the 1-Acre Parcel until the tenancy had been properly and effectively determined. Accordingly I also entered that undertaking and Mr Dass withdrew his application for a stay of my order discharging the injunction.

Dated this 31st day of July, 1998

C.V.H. Stollmeyer,
Judge.