

30/83

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

SAVITRI LALLA (Representing the Estate of Poochoon Harracksingh) Appellant

- and -

BABY DEOSARAN Respondent

CASE FOR THE APPELLANT

RECORD

- 10 1. This is an appeal to the Judicial Committee of the Privy Council from the judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali CJ., Phillips and Corbin JJA) dated the 2nd February 1978 dismissing with costs an appeal from the judgment of the High Court (Roopnarine J.) dated the 5th November 1974 dismissing with costs the claim by Rose Seepaul, now deceased, the legal personal representative of Poochoon Harracksingh to an unexpired leasehold term in a parcel of land at St. Augustine in the Ward of Tacarigua in the Island of Trinidad and for orders for possession mesne profits and an account. This appeal is brought by final leave of the Court of Appeal (Sir Isaac Hyatali C.J., Kelsick and Bernard JJA.) granted on 7th June 1982 to Savitri Lalla representing the estate of Poochoon Harracksingh. pp.23 and 24
pp.10 and 11
- 20 2. The question at issue in the appeal is whether a Deed made and executed by Rampaul Harracksingh on the 22nd day of November 1957 was valid and effectual to pass the unexpired leasehold term to himself for life with remainder absolutely to his son Poochoon Harracksingh. pp.26 and 27
- 30 3. The leasehold interest had prior to the dispute been held for its term of nine hundred and ninety-nine years commencing in 1920 by Seemirkee the wife of Rampaul Harracksingh. They had a son Poochoon Harracksingh and a daughter Baby Deosaran who is the Respondent on this appeal. p.8
11.42-44

p.32

4. Seemirkee died on 6th September 1945 leaving the leasehold interest as part of her estate. She left a will dated 25th July 1945 which included the following provisions:-

"I leave bequeath and devise all that I may die possessed of to my husband Rampaul Harracksingh to be enjoyed by him during his life and after his death to my son Poochoon Harracksingh on condition that he pays the sum of Two Thousand Dollars to my daughter Baby Deosaran. Provided that in the event the said Poochoon Harracksingh shall die before my husband the said Rampaul Harracksingh then all my property shall become the property of my husband on the payment of the aforesaid sum of Two Thousand Dollars to my daughter the aforesaid Baby Deosaran and provided further that in the event of the death of the said Baby Deosaran before the death of the said Rampaul Harracksingh or Poochoon Harracksingh then the aforesaid sum of Two Thousand Dollars shall be paid in equal share to the children of the said Baby Deosaran.

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I nominate constitute and appoint my husband the aforesaid Rampaul Harracksingh Executor to this my last Will and Testament".

p.28 1.32

pp.28 and 29

5. On the 14th June 1957 Probate of Seemirkee's will was granted to Rampaul who was named executor. On the 22nd November 1957 following the grant of Probate Rampaul executed a deed whereby he conveyed the unexpired leasehold term to himself for life with remainder to Poochoon. No reference was made in the deed to the provisions which determined the course of succession to the leasehold term in the event that Poochoon predeceased Rampaul. The relevant part of the conveyance read as follows:-

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p.28 1.46 to p.29

"And Whereas the Executor has agreed to execute these presents for the purpose of vesting in the said Rampaul Harracksingh and the said Poochoon Harracksingh the unexpired residue of the term of Nine Hundred and Ninety-Nine Years in the said parcel of land described in the schedule hereto together with the buildings erected and standing thereon NOW THIS DEED WITNESSETH that the Executor as personal representative of the estate of the said Seemirkee under and by virtue of the provisions of the Administration of Estates Ordinance Chapter 8 Number 1 and every other enabling power in this behalf Hereby Assents and Assigns unto the said

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- 10 Rampaul Harracksingh and Poochoon
Harracksingh All and Singular the parcel
of land described in the schedule hereto
together with the buildings erected and
standing thereon To Hold the same unto
the said Rampaul Harracksingh for the term
of his natural life with remainder unto
the said Poochoon Harracksingh for all the
residue now unexpired of the term of Nine
hundred and ninety-nine years granted by
the said above recited deed of lease
No. 4964 of 1920 subject to the rents and
covenants and stipulations therein contained
and on the part of the Lessee to be
observed and performed and subject also to
the above recited charge of Two Thousand
Dollars in favour of Baby Deosaran created
by the above recited will of the said
Seemirkee".
- 20 Also on the 22nd November 1957 both Rampaul and
Poochoon executed in favour of the Trinidad
Co-operative Bank Limited a mortgage of the
unexpired leasehold term to secure repayment of
the capital sum of four thousand five hundred
dollars.
- 30 6. On the 16th November 1966 Poochoon made a
will the effect of which was to devise his real
estate to his daughter Savitri Harracksingh now
Savitri Lalla who by order of the Court of Appeal
now represents Poochoon's estate in these
proceedings. Poochoon died on the 23rd May 1968
having appointed Rose Seepaul to be his executrix.
Probate of his will No. 182 of 1972 was granted
to her by the High Court on 17th March 1972. She
died during the pendency of these proceedings and
after the grant of conditional leave to appeal to
the Judicial Committee of the Privy Council.
- 40 7. On the 9th January 1969 Rampaul executed
in his bedroom while ill another Deed whereby he
sought to convey the unexpired leasehold
reversion expectant upon his death but subject
to the said mortgage to his daughter the
Respondent with a gift over in the event the
Respondent pre-deceased him. Rampaul died on the
9th April 1969.
- 50 8. In the action in the High Court which was
instituted on 31st May 1973 the unexpired
leasehold term was claimed by Rose Seepaul the
executrix of the estate of Poochoon as belonging
to the estate. The claim was resisted by the
Respondent who at the trial put forward the deed
executed by Rampaul on the 9th January 1969 to
- p.4 11.22-33
p.6 11.2-3
p.7 11.22-27
- p.31
- p.30
- pp.35 to 37
p.9 11.28-42
- p.8 11.29-30
p.34
- pp.1 to 3 1.18
p.4 11.48-50
- p.5 11.34-35
p.9 11.3-6
pp. 35 to 37

support her claim to the unexpired leasehold term and the question which the High Court had to resolve to determine the conflicting claims was whether in the events which occurred Rampaul had any interest in the term which survived the dropping of his own life.

9. No dispute arose upon the evidence. The questions in dispute between the parties at the trial related to the respective interests of Rampaul and Poochoon in the leasehold term and the true meaning and effect of the deed which Rampaul executed in favour of himself and his son Poochoon on the 22nd November 1957. In its reasons for decision the High Court (Roopnarine J.) which heard and determined the action on 5th November 1974 dealt with these matters as follows:

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p.11 1.15 to
p.15 1.34

p.13 1.27

"Counsel for the plaintiff contended that in view of the fact that the Deed of Assent was prepared without the condition attached to the will, it should be implied that it was the intention of Rampaul Harracksingh to make an advancement to his son Poochoon Harracksingh. It appears to me that if this was so then this should have been specifically indicated in the Deed of Assent and the Court could not make any such presumption and in fact Rampaul Harracksingh's subsequent action in giving the property to the defendant belies this fact. It therefore appeared to me that the gift to Poochoon Harracksingh was conditional on his surviving Rampaul Harracksingh and therefore he only had a contingent interest in the property, notwithstanding the terms of the Deed of Assent, which was contrary to the term of the gift under the will and not a vested interest in the property i.e. the contingency that the property would become vested in him only if he survived his father Rampaul Harracksingh and therefore he could not dispose of the property by will until such time as it became vested in him. I therefore held that on Poochoon Harracksingh's death, Rampaul Harracksingh was free to dispose or assign the property to the defendant and dismissed the action".

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pp.14 and 15

10. By Notice of Motion dated the 16th day of December 1974 Rose Seepaul the widow and executrix of Poochoon appealed against the High Court's dismissal of the action with costs. The grounds of appeal were:-

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- (a) The learned trial judge erred in the law in
 - (i) holding that words of limitation applicable to freeholds could effectively create a legal interest in leasehold;
 - (ii) failing to find that the Legal Estate in the premises were vested in the Plaintiff/Appellant.

10 (b) The decision is unreasonable and cannot be supported having regard to the evidence.

11. The appeal was heard by the Court of Appeal (Sir Isaac Hyatali C.J., Phillips and Corbin JJA.) and a reserved judgment was delivered on the 2nd February 1978 dismissing the appeal with costs. In his judgment with which the other members of the Court agreed the learned Chief Justice held:-

pp.16 to 23
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20 (a) Rampaul had a contingent interest in the leasehold reversion which he was entitled to dispose of in favour of Poochoon if he wished but did not intend to do so;

p.20 11.35-37

(b) Rampaul could not effectually do so in his capacity as personal representative only by a deed of assent which did not in terms mention that he was disposing of his contingent interest in favour of Poochoon;

p.20 11.47-49

30 (c) the deed of assent could not be regarded as an instrument of title except in so far as it carried out and was accordant with the directions contained in the will of Seemirkee;

p.21 11.12-15

(d) the deed of assent did not dispose of Rampaul's contingent interest in favour of Poochoon who was not a purchaser for value.

p.21 11.15-20

40 12. It is submitted on the assumption that Rampaul had a contingent interest in the reversion that the claim made on behalf of Poochoon's estate is sound and ought to be allowed because the deed executed on 22nd November 1957 was in accord with the proper construction of the will and was in terms effectual in any event to re-settle the respective interests devised by Seemirkee to Rampaul and Poochoon in accordance with its terms and that the reasons given by the High Court and Court of

pp.28 and 29

Appeal for rejecting that result were in conflict with the provisions of section 17 of the Conveyancing and Law of Property Ordinance and were unsound. The deed of assent was a conveyance within the meaning of section 17 of the Conveyancing and Law of Property Ordinance as the learned Chief Justice rightly held. Section 17 reads:-

"(1) Every conveyance is effectual to pass all the estate, rights, title, interest, claim, and demand which the conveying parties respectively have, in, to or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same." 10

"(2) This section applies only if and as far as a contrary intention is not expressed in the conveyance and has effect subject to the terms of the conveyance and to the provisions therein contained". 20

p.21 11.26-
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13. It is further submitted that the cases to which the Court of Appeal were referred viz - Drew v. Earl of Norbury (1846) 3 Jo and Lat 267, 284 (Sugden L.C.) Taylor v. London and County Banking Co. (1901) 2Ch 231, 255 (Stirling LJ) and Burrows and Crimp (1887) S.L.R. (NSW) 198 (Darley C.J.) provided ample authority for the claim that the deed of 22nd November 1957 was effectual to pass the unexpired leasehold reversion to Poochoon upon Rampaul's death and that further authority for the claim that the deed of 22nd November 1957 was effectual to dispose of Rampaul's contingent interest in the leasehold reversion in favour of Poochoon is to be found in the reasoning of the High Court (Wilberforce J.) in Re Stirrup's Contract (1961) 1WLR449; (1961) 1AER805, 808-9. 30

14. It is further submitted that the testamentary provisions which were to take effect if Poochoon predeceased Rampaul and if the Respondent predeceased Rampaul and Poochoon created substitutional and/or alternative gifts in the event that death took place in the lifetime of the testatrix and in the events which occurred the assumption that Poochoon's leasehold remainder was by reason of those provisions determinable after it had vested could not be correct. For the same reason it is also submitted that it is incorrect to assume that Rampaul had a contingent interest in the remainder of the leasehold term in addition to his life interest. 40 50

15. The Respondent has been in possession of the land and buildings subject to the unexpired leasehold term since the death of Rampaul on 9th April 1969 and in the action the legal personal representative of Poochoon claimed orders for possession, mesne profits and an account.

10 16. It is submitted that the Appellant is entitled to such relief and that this appeal should be allowed that the judgments in the Courts below should be reversed with costs to the appellant in those Courts and on appeal to the Judicial Committee of the Privy Council that an order for possession shall be made and that the matter should be remitted to the High Court for an assessment of the mesne profits and for an account for the following (amongst other)

R E A S O N S

- 20 (a) BECAUSE the deed of 22nd November 1957 was valid and effectual in law to dispose of Rampaul's contingent interest in the leasehold reversion if he held such an interest;
- (b) BECAUSE on a proper construction of Seemirkee's will Rampaul had no interest in the unexpired leasehold reversion after his death which he could have disposed of by the deed executed on 9th January 1969;
- 30 (c) BECAUSE the unexpired leasehold reversion passed in law after Rampaul's death to the estate of Poochoon;
- (d) BECAUSE the judgments of the High Court and Court of Appeal were wrong.

FENTON RAMSAHOYE S.C.

INDIRA RAMSAHOYE

IN THE PRIVY COUNCIL

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