Privy Council Appeal No. 54 of 1987

Harripersad Ramlogan *Appellant*

v.

(1) Chaitlal Ramlogan
(2) Benny Jaikaran
(3) Angela Ramlogan
(4) Patsy Seemungal and
(5) Boodram Seemungal *Respondents*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 9TH NOVEMBER 1989

Present at the hearing:-

LORD BRIDGE OF HARWICH
LORD ACKNER
LORD GOFF OF CHIEVELEY
LORD JAUNCEY OF TULLICHETTLE
LORD LOWRY

*[Delivered by **Lord Lowry**]*

This appeal arises out of an action brought by the appellant as plaintiff to establish his title by adverse possession to land at John Persad Trace, Chase Village, Carapichaima, Trinidad described in the writ of summons as:-

> "Comprising three (3) acres more or less bounded on the North by lands occupied partly by Ramkumarie and Joe Ramnarine Ramlogan, on the South by Friendship Hall Estates Road, now known as John Persad Trace, on the East by Lands occupied by Jagdeo Gurhoo and Jagmohan Gurhoo and on the West partly by lands occupied by Guyadeen Ramlogan other lands of the plaintiff and Kenneth Aleong."

Their Lordships will refer to this land as "the disputed land".

The first respondent counterclaimed a declaration that he was in possession of and entitled to the
[36] disputed land and all the respondents counterclaimed

damages for trespass and an injunction restraining the appellant from interfering with their use and enjoyment of the land.

By a judgment dated 30th March 1984 the High Court (Persaud J.) granted the declaration and injunctions sought by the appellant and awarded damages totalling $4,424.00. That decision was reversed by the Court of Appeal (des Iles, Warner and McMillan JJ.A.) in a judgment dated 19th November 1986, whereby the appellant's claim was dismissed and the respondents were granted a declaration that the first respondent was in possession of and entitled as against the appellant to the disputed land and injunctive relief on their counterclaim and an inquiry before the Master as to their damages, if any, suffered as a result of the ex parte injunction obtained by the appellant. He now appeals against the decision of the Court of Appeal.

The appellant is the first respondent's brother; the third and fourth respondents are the first respondent's daughters and the wives of the second and fifth respondents respectively. The disputed land forms part of a parcel of land measuring 9 quarrees less 2 lots (approximately 28.5 acres: 1 quarree = 3 acres, 0 roods, 32 perches). By deed no. 2099 of 1926 this parcel ("the Nine-Quarree Land") was mortgaged by its owners, of whom Bhagwandayah, mother of the appellant and the first respondent, was one.

By early 1944 Bhagwandayah, now apparently the sole owner, had redeemed the mortgaged land and by April 1944 she had sold parcels totalling 11 5/8 acres out of the 9 quarrees (less 2 lots). On 26th April 1944 by deed no. 2646 of 1944, ("the 1944 deed") Bhagwandayah "... in consideration of the natural love and affection ..." conveyed the remaining 16 acres ("the sixteen-acre land") to one Charles Attale on trust for herself for life, thereafter for the appellant, the first respondent and four other of her sons, Ramnarine, Ramdeo, Thakoor and Guyadeen, as joint tenants, reserving to herself power to revoke wholly or partially the interests thereby created and to create new interests concerning the sixteen-acre land.

Bhagwandayah executed no further instruments concerning this land until 26th May 1961, when by deed no. 6686 of 1961 ("the 1961 deed") she revoked the 1944 deed in its entirety. At the trial no evidence was tendered that there had been any revocation of any of the interests created by the 1944 deed but, since there was evidence of several dispositions by Bhagwandayah of portions of the sixteen-acre land, the trial judge rightly inferred that she had exercised the power of revocation contained in the 1944 deed. In the Court of Appeal, however, the parties did something to repair the gap in the evidence by informing the Court of the 1961 deed. On the day on which she executed

that deed Bhagwandayah executed two conveyances of portions of the sixteen-acre land, one of 2 acres 3 roods 10 perches to Ramnarine Ramlogan for the sum of $230 and the other of 2 acres 2 roods and 36 perches to Chaitlal Ramlogan, the first respondent, also for the sum of $230. On 21st October 1961 she executed two further conveyances, one of 5 acres 2 roods 21 perches to Ramdeo Ramlogan for the sum of $1,000 and the other of 2 acres 3 roods 10 perches to Takoor Ramlogan for the sum of $500. By this time she had sold portions of the sixteen-acre land to each of the donees under the 1944 deed except Harripersad Ramlogan, the appellant. There was a further conveyance, although this is not given in chronological sequence, of 2 acres, 3 roods, 11 perches to Guyadeen Ramlogan on 24th August 1968 for the sum of $500.

Bhagwandayah also conveyed (1) on 25th June 1968 to her granddaughter Chanderdai Gangoo and her husband for the sum of $500 half an acre being part of the sixteen-acre land and (2) on 17th February 1969 to her grandson Ramnarine Joe Ramlogan another half acre for the sum of $250. Also (3) on 17th February 1969 she sold one acre to Chaitlal Ramlogan for $500. It will be noted that all the transactions described above were by way of sale for valuable consideration. The area involved in the eight sales adds up to 18 acres 3 roods and 8 perches, which is not easy to understand. Bhagwandayah died on 28th June 1969.

As appears from the conflicting approaches and conclusions of the courts below, it is difficult, in the absence of a map or any reliable evidence concerning the position and boundaries of the parcels conveyed, to reconcile all the conveyances dealing with the south-eastern corner of the sixteen-acre land, where the disputed land lies. But it was soon apparent that the solution of the problem in this appeal was unlikely to depend substantially on resolving these conveyancing difficulties.

The statutory provisions of Trinidad and Tobago which apply to the establishment of a title by adverse possession are the following sections of the Real Property Limitation Ordinance 1940:-

> "3. No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.
>
> ...

8. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined.

...

22. At the determination of the period limited by this Ordinance to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished."

Two points should be noted:-

(1) Section 8 above directly corresponds with Section 7 of the (English) Real Property Limitation Act 1833, but omits the proviso to the latter which reads as follows:-

"Provided always that no mortgagor or cestui que trust shall be deemed to be a tenant at will, within the meaning of this clause, to his mortgagee or trustee."

(2) Section 9 (1) of the Limitation Act 1939, which embodies the effect of Section 7 of the Act of 1833 (without the proviso) was repealed by Section 3 (1) of the Limitation Amendment Act 1980, with the consequence that in England and Wales the deemed determination of a tenancy at will no longer gives rise to adverse possession, although that is still the rule in Trinidad.

Mr. Harper, (who had not appeared in either court below), in a concise argument for the appellant the lucidity of which was matched by its frankness, contended that in 1940, when the appellant first occupied the disputed land (or alternatively in 1944, when he occupied it for the first or the second time) the appellant became a tenant at will of Bhagwandayah who was in 1940 the owner, and from 26th April 1944 (by virtue of the 1944 deed) until 26th May 1961 the tenant for life, of the disputed land. Consequently, he submitted, after one year, that is, in 1941 or alternatively on 26th April 1945, the tenancy at will was deemed to be determined and the period of the

appellant's adverse possession began to run. Accordingly, by some date in 1957, or alternatively by 26th April 1961, the appellant's title by adverse possession was perfected and no subsequent events, including Bhagwandayah's conveyances, could destroy that title, unless indeed there had supervened 16 years' open and unchallenged possession by, for example, the first respondent or someone on his behalf, and this had not been shown. If, on the other hand, the appellant's occupation of the disputed land had been merely that of a licensee, his case collapsed, as counsel graphically but accurately put it, "like a pack of cards". In support of his argument Mr. Harper relied on the proposition, sound in itself, that exclusive possession is the characteristic hallmark of a tenancy at will, as distinct from a licence to occupy; and he submitted that the facts proved in evidence and found by the trial judge, who saw and heard the witnesses, showed exclusive possession by the appellant for the requisite period. Mr. Harper, however, conceded that if, on the other hand, the appellant, while occupying the disputed land, had simply been the licensee of his mother, his occupation as such licensee would not amount to exclusive possession and his claim to have acquired a title by adverse possession must accordingly fail.

That being the decisive issue, their Lordships have carefully examined the evidence in order to see whether the conclusions drawn from it by the Court of Appeal (which, of course, differed from those of the trial judge) can be successfully impeached. It may, however, first be helpful to recall the manner in which a tenancy at will is created. This is succinctly described in The Law of Real Property by Megarry and Wade, 5th edition (1984) at page 654:-

> "A tenancy at will arises whenever a tenant, with the consent of the owner, occupies land as tenant (and not merely as a servant or agent) on the terms that either party may determine the tenancy at any time. This kind of tenancy may be created either expressly or by implication. Common examples are where a tenant whose lease has expired holds over with the landlord's permission, without having yet paid rent on a periodic basis; where a tenant takes possession under a void lease, or under a mere agreement for a lease, and has not yet paid rent; where a person is allowed to occupy a house rent free and for an indefinite period; and (usually) where a purchaser has been let into possession pending completion. Unless the parties agree that the tenancy shall be rent free, or the tenant has some other right to rent free occupation, the landlord is entitled to compensation for the 'use and occupation' of the land. But if rent is agreed upon, it may be distrained for as such in the usual way."

It is unnecessary for their Lordships to refer to the cases cited in the footnotes to the text or in the appellant's printed case nor, since the appellant relies on a deemed determination after one year under section 8 of the Ordinance, is it helpful to discuss the different ways in which a tenancy at will can be determined. The only question is whether a tenancy at will arose at all. Nor is it necessary to consider the cases in which a beneficiary in possession of land may be treated as a tenant at will of a trustee, because the person entitled to possession at all times after the creation of the trust on 26th April 1944 was Bhagwandayah and the appellant was her tenant at will, as he claims, or her licensee, as the Court of Appeal held.

Within that legal context their Lordships are content to extract from a mass of evidence (much of which proved in the event to be marginally relevant, if relevant at all) only that which appears to be decisive. In his evidence the plaintiff said:-

> "The various allocations were done by deed. My mother executed the various deeds. She did not make a deed in respect of the disputed land. My mother told me to occupy the land. All my brothers including the plaintiff (sic) Chaitlal agreed for me to occupy this land as I was already in occupation. No one complained during my mother's life time that I had no right to occupy the land. No one complained after my mother died in 1969."

In the course of cross-examination he said:-

> "I continued to occupy after the deed was made in 1944. Six of us were to share the land upon her death. Even if mother did not give me a deed for the land, I have been occupying the land since 1940 with mother's permission. This is an agricultural area. I was the only one who worked the land. I would be entitled to Government subsidy. I have not applied for subsidy in respect of this land. I did not know before; I know now that Patsy has obtained subsidy for that land. I learnt this when they put in their defence. I went to the subsidy department and spoke to Mr. Bidessi. Bidessi told me that Patsy and Angela were collecting subsidy for that land from Government."

And:-

> "No one has a deed in respect of the 3 acres. I had asked my mother for a deed. She did not give me a deed. She told me that she had already given everybody a deed, to leave her name and my name as joint tenants, and whenever she died, the remainder will come to me."

Much of the evidence on both sides was contradictory and difficult to follow. So far as it was relevant, it

focussed almost entirely on the fact of occupation of what may have been the disputed land or part of it and not on the character of that occupation. It is, however, worth mentioning the evidence of Ramnarine Ramlogan for the respondents. He said in cross-examination:-

> "I do not know how much land Chaitlal got; not correct that after my mother gave Chaitlal, the disputed area remained. Not true that in my presence, my mother told the plaintiff that when she died whatever land was left after the distribution would go to him. I am truthful when I say that Harripersad gave up his share to Ramdeo. He did not object to my mother dividing the western parcel between him and me.
>
> After sharing the land, my mother believed that one acre was left. My mother gave Chaitlal land up to Gore's boundary. If Gangoo's deed (H.R.22) says her boundary is Chaitlal, that is wrong. Not correct that Chaitlal's one acre is south of Gangoo and north of Joe. My mother never told the plaintiff to leave matters alone, that when she died, he would get the rest."

At the conclusion of the evidence respondents' counsel submitted that the appellant had not established his possession of the disputed land and that the court should hold that the first respondent had been in possession from 1969. The appellant's counsel submitted that a tenancy at will commenced in 1944 and was terminated by operation of law a year later, so that he had acquired title by 1961, and further contended that in any event the respondents' counterclaim should be dismissed on the ground that they were not in adverse possession.

In his judgment Persaud J. noted the claim based on a tenancy at will which, he said, "was extinguished with Bhagwandayah's death (in 1945), after which the limitation period began to run in the plaintiff's favour". It may fairly be conceded that, if the facts justified the judge's conclusion that a tenancy at will arose in 1944, it would have terminated in 1945 by reason of the Ordinance. Later in the judgment the following observation was recorded without any adverse comment on the appellant's case:-

> "On the other hand, the plaintiff points out that although he was named in the 'joint tenancy' deed as one of the beneficiaries his mother had conveyed portions of land to the other beneficiaries and not to him. He contends that after the various distributions were made, there remained a little more than 3 acres which he had been occupying since 1940 with his mother's permission, and that she subsequently sanctioned his occupation telling him that the other dispositions having been made,

> she and he would remain as joint tenants of the land not disposed of, and upon her demise, that land would go to him as the surviving joint tenant."

The judge stated that both parties maintained that some of the boundaries described in the title deeds were inaccurate, but that was the extent of the agreement as to boundaries. He found that the one acre conveyed to the first respondent was not part of the disputed land but might have been contiguous to it. He later found "that the plaintiff was in occupation of the disputed land as he has claimed and that the defendants are trespassers". The judge continued:-

> "He is therefore entitled to a declaration that he is the owner of the area of land which has been described as the disputed area."

Neither at this point nor elsewhere in the judgment is any distinction made between the characteristics of a tenancy at will and occupation as a licensee.

In his judgment, with which the other members of the Court of Appeal agreed, McMillan J.A. described the case as "a family dispute as to which of two brothers ... is entitled to (the disputed land)". Their Lordships refer to the judgment:-

> "By the joint tenancy deed, however, Bhagwandayah reserved unto herself power to revoke, by deed or other instrument, any of the interests so created and to create new interests. At the trial no evidence of any express revocation of any of these interests by deed or other instrument was tendered, but there was adduced evidence of a series of other dispositions by Bhagwandayah of portions of the 16-acre parcel. The learned trial Judge made, not injustifiably, a presumptive finding that she had in fact exercised the power of revocation and the parties have agreed before us that the joint tenancy deed was in fact revoked on May 26, 1961 by deed registered as no. 6686 of that year."

The judge then reviewed Bhagwandayah's conveyancing transactions between 1961 and 1969 and concluded:-

> "The reference in Gangoo's deed to the 2-acre parcel (from which these last three dispositions appear to have been made) as the remaining portion of the 9-quarree parcel tends to confirm also that Bhagwandayah and/or her legal and other advisers had been fully aware that, on paper at any rate, there was nothing left over from the 16-acre parcel to dispose of, and adopted the reference to the 9-quarree parcel.
>
> It is in that south-eastern sector of the 9-quarree parcel, which is also part of the 16-acre parcel, that the disputed parcel lies."

McMillan J.A. adverted to the appellant's case:-

> "The submission on his behalf was that from 1944 onwards he occupied the disputed land as a tenant at will, that one year later and not, as the learned trial judge stated, from the death of his mother which he erroneously fixed as occurring in 1945, time began to run under the Limitation Ordinance in his favour so that by 1961 Bhagwandayah's title to the land would have been extinguished."

and also to the respondents' argument:-

> "The case for the appellants was that the first named appellant, Chaitlal, owned the disputed parcel by virtue of deed no. 2695 of 1969 but the boundaries were wrongly described therein since Bhagwandayah intended to convey to him all the land that was left over, that he built a house thereon in 1972 when he began living there and cultivating the land, that in 1975 he went to live elsewhere but gave his daughter Angela (the third named appellant) permission to occupy it with her husband, and in 1977 he gave his daughter Patsy (the fourth-named appellant) permission to erect a house on a portion of the disputed land for herself and her husband to live in. Accordingly, Chaitlal counter-claimed, inter alia, for a declaration that he is in possession and entitled to the disputed parcel."

Noting the trial judge's slip in placing Bhagwandayah's death in 1945, he added:-

> "It is clear that it was not necessary for him to determine the nature of that occupation after 1945 since, if Bhagwandayah had in fact died that year, the respondent's continued occupation thereafter if he did continue, would have been without permission and, therefore, 'adverse' to the persons entitled to the disputed parcel on her death who, on the respondent's case, would have been the remaindermen under the joint-tenancy deed. Bhagwandayah however died in 1969."

The judgment continued:-

> "It is quite clear that in totalling the number of acres disposed of from the 9-quarree parcel, the learned Judge not only made some miscalculations, but he omitted altogether the 2-acre parcel originally conveyed to the respondent and Guyadeen Ramlogan by deed no. 6311 of 1940. He would also have failed, as would Counsel who appeared before him, to appreciate that prior to the Persad mortgage two lots had already been sold from the 9-quarree parcel. It is also clear that he attributed to Chaitlal one acre of land as indicated by his title deed, thus upholding the validity of that deed and Chaitlal's entitlement to the one acre.

> I entertain no doubt that Chaitlal's one acre parcel is not where the respondent alleges it to be, and that the description of its northern and western boundaries fixes it immediately south of the parcel formerly owned by Ramcooarie and that occupied by Joe Ramlogan, and east of the parcel formerly owned by Sankarsingh (now Aleong) in the southwestern sector. It thus falls within the disputed parcel as defined in the writ and statement of claim and not elsewhere."

Next McMillan J.A. disposed of the appellant's untenable claim that Bhagwandayah told him that the undisposed of part of the sixteen-acre land would go to him on her death because their names were on the "joint tenancy" deed, saying:-

> "That of course, could hardly be in the light of the disclosure to this Court that the joint-tenancy deed was revoked before any disposition was made from the 16-acre parcel to which it related."

He went on:-

> "In the first place Bhagwandayah was never a joint tenant with the other beneficiaries under the joint tenancy deed and, had the learned Judge been aware of its revocation prior to any dispositions from the 16-acre parcel, he would have seen the falsity of the respondent's contention ..."

Finally he pointed out that the appellant's claim was inconsistent with a tenancy at will, and with this conclusion their Lordships entirely agree. They also endorse what the learned judge said:-

> "In all the circumstances I think it is open to this Court to review completely the findings of the learned trial Judge and, even though it does not appear that Chaitlal's title deed to the one-acre parcel entitles him to the whole of the disputed parcel nevertheless, it is clear that he claims to have been in physical occupation of the entirety through his daughters who occupied it with his permission, and the respondent can only succeed against him if he can show a better title to it. In this regard I have already indicated that at best he could only have been considered to be in occupation in his mother's life time as her licensee. That licence would have come to an end on her death on June 28, 1969, and, even if the respondent had thereafter been cultivating the disputed parcel desultorily, he would not have been in exclusive occupation for a period of 16 years after Bhagwandayah's death and prior to the issue of the writ herein on August 14, 1981."

Their Lordships would only add that de facto enjoyment of exclusive occupation is not the same thing as adverse possession and that the whole tenor of the

evidence is that the appellant at all times occupied whatever land he did occupy with his mother's permission; he was not at any stage a trespasser against his mother. The inference drawn by the Court of Appeal from the primary facts seems to their Lordships to be not only the reasonable but the inevitable conclusion.

Their Lordships share the trial judge's regret that the entire parcel of land (of which the disputed land forms part) was not surveyed but, whatever be the exact location, area and boundaries of the disputed land, there is no evidence that the appellant possessed it or any portion of it adversely to Bhagwandayah. In their Lordships' clear opinion, the evidence, including in particular his own evidence, shows at most that the appellant occupied a part of the lands of which his mother was tenant for life from 26th April 1944 until 26th May 1961 and absolute owner thereafter, subject to having conveyed for value certain parts of it, merely as her licensee, and not as a tenant at will and subsequent trespasser in adverse possession. The argument of proprietary estoppel, as advanced in paragraphs 42 and 43 of the appellant's printed case, simply does not arise because it requires to be derived from an erroneous impression on the part of the appellant as to his title.

It has been accepted that, if he fails to carry the day upon his claim to title by adverse possession, the appeal must fail completely and the order of the Court of Appeal must be affirmed in all respects. No alternative case was made by the appellant. Accordingly, their Lordships affirm that order and dismiss the appeal with costs.