

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2014 – 00669

Between

SAVITRI POODAN

Claimant

And

PRAKASH RAMNARINE

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mrs Andrea Goddard for the Claimant

Mr Ronald Dowlath and Ms Mary Ramcharitar for the Defendant

Dated: 14 April 2016

JUDGMENT

1. This claim concerns a property located at LP 65, Calcutta Settlement Road, No. 1, Freeport comprising a house and land. It is not in dispute that the claimant owned the property. It is not in dispute that the property was transferred by the claimant to the defendant by Deed No. DE201000010054D001. This was by a Deed of Gift dated 7 November 2009.

2. The claimant raises the doctrine of non est factum. She also alleges the deed was procured by fraud. She seeks an order setting aside the deed and consequential orders.
3. There was also a will dated 12 June 2009 purportedly made by the claimant in favour of the defendant leaving the same property to the defendant. This pre-dated the deed of gift. It has since been revoked.
4. The relevance of the will concerns whether it supports the claimant's case that there has been an elaborate plan by the defendant to deprive her of her property.
5. The claimant says she did not sign this will. The defendant says she did.
6. The claimant says she signed the deed, but in different circumstances to that advanced by the defendant.
7. In support of her claim, the claimant gave evidence. She also called a document examiner, Mr Glenn Parmassar, who gave a report saying the will was likely not executed by the claimant.
8. The defendant's case was that he and the claimant were involved in an extra-marital relationship, which was sexual in nature over a period of time. He said they would go to a property he has located at Garth Road, Princes Town and there they would conduct their relationship including that of having sexual relations. He said over the years he gave the claimant money, he supported her, he took her out, he took her to the doctor and for medical attention at times, he would be in contact with her over the phone, and he even gave her money to pay for the funeral of her husband who passed away in June 2009. His case is that the claimant, of her own free will, decided to give the property to him because of the relationship they had and because of all he had done for her.
9. The issue with the transfer of the property came about when the claimant's son was arrested and bail had to be taken for him in 2012. It was then that the children of the claimant found out that the property had been transferred to him. This claim results from

the pressure by the children put on the claimant to reverse the transaction. The relationship between him and the claimant has ended since this took place.

10. It is to be noted that the claimant was married; she had 7 children and lived with her husband until his death. The claimant's children are all adults. Three sons live with her in the property while the female children have married and left home.
11. The defendant gave evidence. He also called the Commissioner of Affidavits who had prepared the will; the attorney who prepared the deed of gift; the valuator who he says valued the claimant's property for the purposes of the deed; and two persons who knew of the relationship between him and the claimant.

Non Est Factum and Fraud

12. In **Gallie v Lee and Another [1969] 1 All ER 1062** the legal principles applicable was stated as follows at 1066 to 1067 by Lord Denning:

“The case thus raises the important question: What is the effect in law when a man signs a deed, or a contract, or other legal document without reading it; and afterwards it turns out to be an entirely different transaction from what he thought it was? He says that he was induced to sign the document by the fraud of another, or, at any rate, that he was under a fundamental mistake about it. So he comes to the court and claims that he is not bound by it.

In such a case, the legal effect is one of two: *Either* the deed is not his deed at all (*non est factum*): *Or* it is his deed, but it was induced by fraud or mistake (*fraud or mistake*). There is a great difference between the two. If the deed was not his deed at all, (*non est factum*) he is not bound by his signature any more than he is bound by a forgery. The document is a nullity just as if a rogue had forged his signature. No one can claim title under it, not even an innocent purchaser who bought on the faith of it, nor an innocent lender who lent his money on the faith of it. No matter that this innocent person acted in the utmost good faith, without notice of anything wrong, yet he takes nothing by the document. On the other hand, if the deed was his deed, but his signature was obtained from him by fraud or under the influence of mistake (*fraud or mistake*), the document is not a nullity at all. It is not void ab initio. It is only

voidable; and in order to avoid it, the person who signed the document must avoid it before innocent persons have acquired title under it. If a person pays out money or lends money on the faith of it, not knowing of the fraud or mistake, he can rely on the document and enforce it against the maker. It avails the maker nothing, as against him, to say it was induced by fraud or mistake.”

13. Further at page 1072 Lord Denning said:

“Whenever a man of full age and understanding, who can read and write, signs a legal document which is put before him for signature--by which I mean a document which, it is apparent on the face of it, is intended to have legal consequences--then, if he does not take the trouble to read it but signs it as it is, relying on the word of another as to its character or contents or effect, he cannot be heard to say that it is not his document. By his conduct in signing it he has represented, to all those into whose hands it may come, that it is his document; and once they act on it as being his document, he cannot go back on it, and say that it was a nullity from the beginning. If his signature was obtained by fraud, or under the influence of mistake, or something of the kind, he may be able to avoid it up to a point--but not when it has come into the hands of one who has in all innocence advanced money on the faith of its being his document, or otherwise has relied on it as being his document.”

14. Further Lord Salmon in the same case said:

“If a person signs a document because he negligently failed to read it, I think that he is precluded from relying on his own negligent act for the purposes of escaping from the ordinary consequences of his signature. In such circumstances he cannot succeed on a plea of non est factum: this is not in my view a true estoppel, but an illustration of the principle that no man may take advantage of his own wrong (see p 1081, letter g, post).”

15. For non est factum to succeed, the claimant must show that he was under a disability; that the document he thought he signed was fundamentally different from the document he thought he was signing; that he was not careless or negligent in signing: per Purchas LJ in **Lloyd’s Bank PLC v Waterhouse [1993] 2FLR 97**.

16. The classic statement on fraud has been stated in **Derry v Peak [1886-90] All ER Rep 1** as follows:

“Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, not hearing whether it be true or false.”

17. The law applicable to this claim is not in issue. The issue is whether the evidence establishes either of these causes in the claimant’s favour. I will turn now to the evidence.

The Claimant’s Evidence

18. The claimant’s evidence can be summarised as follows. She was born in 1941. She got married to Willie Poodan in 1961. He supported her. They built a house on the land in 1964. She became the owner of the land in 1973. Her husband put the property in her name only. This deed was registered in 1980.

19. One of her sons was employed with the defendant as a gardener. Around 2008, she visited the defendant’s home for a Hindu prayer service. She met the defendant’s common law wife Doolin. She only knew the defendant when he would come to pick up her son to go to work at times. She did not know him otherwise. She said one morning in October 2009 it was raining heavily. Her roof was in a state of disrepair which “renders the interior of my home susceptible to flooding”. Water was dripping heavily through the roof. The defendant offered to “advance” her the cost of materials to effect the repairs and to accept repayment by “incremental payments after the repairs were completed”. She “accepted the defendant’s offer of assistance, and the defendant promised to deliver the materials to repair my roof in January 2010, at the commencement of that year’s dry season”. About one week later the defendant came and asked for “security for the expenses for materials he intended to incur on my behalf” in the form of her land deed. She handed over the deed to him.

20. Two weeks later, the defendant returned to her home and “demanded” she visit a lawyer’s office to sign a document “confirming the security”. The defendant used the term “give him a sign” on her property. She understood that the property would stand as

security for the loan until the moneys advanced were repaid. She understood the “proposed arrangement to be in the nature of a mortgage”. She had no experience with such an arrangement.

21. At paragraph 11 of her witness statement, she says she went around November 2009 to a lawyer’s office. She did not know the defendant’s attorney. She said, as far as she was aware, she did not give instructions for the preparation of a deed transferring her property. She had no intention to transfer her property to the defendant. She disavows the written instructions to the attorney, Mr Selwyn Ramlal, to prepare a deed of gift in favour of the defendant. She says she has “no recollection” of signing such a document.
22. The document she says she signed consisted of words printed on one side of the page. “Two lines of text were printed horizontally across the top of the page” and other words were in block form under the horizontal lines. She says she has only up to Standard Two education. She can read and spell only simple words. She can read and write her name. She accepts she signed a document.
23. She said because she is illiterate she was unable to read or understand the words on the printed document above the letters where her name appeared. The document was not read over to her. She did not understand it. She believed it “constituted a security for the moneys to be advanced by the Defendant to repair the roof of my house”. She was not advised to get independent legal advice. Two days after the defendant came again and took her in his car to sign another document. The same attorney gave her a document and told her to go to a Commissioner of Affidavits to sign it. Again she did not know what the document was. She thought it was part of the security transaction. The Commissioner did not ask her whether she read the document or understood it.
24. She later called for the defendant to fulfil his side of the agreement, but he has not done so. He has become “belligerent and abusive” to her. She said in July 2013, one of her sons was arrested for a crime. She applied for a copy of her land tax receipt and was “shocked” to discover the receipt had the defendant’s name. She then applied for a copy of the deed which turned out to be the deed of gift. She said the deed was procured by fraud.

25. The claimant dealt with the contentions made in the defence. She never discussed her marriage or relationship with the defendant. The defendant was only her son's employer. She was maintained by her husband, not the defendant. The property is her only asset. She intended to pass it to her children. She never had any relationship with the defendant. She did not have a close, personal or sexual relationship with the defendant. She never went to a Justice of the Peace in Rio Claro. She has never in fact been to Rio Claro. She never went to the defendant's house in Princes Town. She disputes the validity of the valuation report done by Mr De Leon since she has never spoken to him or instructed him to value her property. The valuation is a fabrication as it differs from the description of her house.
26. The document examiner, Mr Parmassar, also gave evidence. Three documents were sent in as known specimens. There was the signature on a photocopy of the deed dated 7 November 2009 (K2) and the signature on a photocopy of a statutory declaration made on 9 November 2009 (K1). The third was a sample signature sheet containing twenty specimen signatures (K3). He compared these with the signature on the will. He found it highly probable that the signature was not executed by the specimen writer.
27. I will deal with this report immediately. First the report is put in to show some sort of conspiracy was apparent to take away the claimant's property from her. It extended to having a false will being done. The suggestion is that the defendant probably had this false will prepared to cover his tracks about the deed and to show that the claimant really wanted to pass her property to him. The will itself is otherwise not in issue since the claimant says it has since been revoked. This will is therefore tied to the court's findings on the main facts which are in issue which relate to whether the claimant had a relationship with the defendant and did the deed of gift to him in that context, or whether the defendant has conspired with others to deny the claimant her property.
28. It is pertinent, however, to make a few observations about the document examiner's report and evidence. The claimant does not say in her witness statement that she did the K3 sample signatures for submission to the document examiner. This is a significant omission in her evidence. The document examiner also does not say the K3 sample signatures were done before him. Quite frankly the evidence can be of little worth in the absence of this.

29. Anyone can do sample signatures and say they are those of the specimen writer. Further, a specimen writer can alter their sample signature if they wish to obtain a particular result. Further it is far better to have among the known sample signatures some other known samples such as a bank record or one on an official document such as an identification card, passport or driver's licence where the signature is done in front of an independent person. It may even be acceptable, in appropriate cases, if instructing attorney can certify that the sample signatures were made in front of him/her before they were submitted for analysis.
30. The report says the questioned signature on the will (Q1) was compared with K1, K2 and K3. However, 6 non-matches were identified between Q1 and the known samples. But the report did not go on to say whether the K1, K2 and K3 samples were themselves uniform and whether there were not differences among them. It did not set out if there were such differences, how this would impact on the findings in relation to the questioned signature. The report was general about the differences. It also did not address the similarities.
31. These are cogent reasons in my view to discount the findings of the document examiner in this matter and accordingly for me to attach little weight to the opinion given in this case. The finding was also at the second level of certainty, that it was highly probable that the signature was not that of the specimen writer. I found, in the circumstances of this case, sufficient grounds to reject the document examiner's report. I preferred the evidence of the Justice of the Peace, Ms Poonwassie, that the claimant attended before her and gave her instructions to prepare a will and she did this in accordance with her instructions. I found her to be a forthright witness who had no reason to lie to the court.

The Defendant's Evidence

32. The defendant's case can be summarised as follows. He is 55 years old and a gardener. He has been in a common law relationship with one Amardai Deonarine, also called Doolin, for over 20 years. They have two adult children. He lives at Ramkalia Trace, Freeport.

33. About 1995, the claimant's son, who he knew as Terrence Maraj (Maraj), worked with him. He allowed Maraj to live in the wooden house next to his own home and Maraj would help him with his garden. He treated him well. In 1996 he got a call from the claimant. That was the first time he spoke to her. She then started calling regularly. She told him her husband was in a wheel chair. They slept separately. They do not have sex and she misses that. She told him she takes care of her husband and she would not leave him. She said a Hindu wife stays with her husband. She also told him she knows he had a wife and children and she was not interested in breaking up the relationship. She said her sons were "good for nothings" and the daughters didn't care for her. She told him her husband was stingy and she would have to do without a lot of things. He would get calls often and a relationship started. They would meet and they started going to his father's abandoned house in Garth Road, Princes Town so people would not know them.
34. They would do this in secret for years. He had a piece of land planted up in Watts Trace, Williamsville. His workers stayed at the Garth Road house. When they were out he would go there with her.
35. He started to get produce from the Watts Trace garden. He would sell them and he would give her money from the sale of produce. This would include for medicines and to help with her market bill.
36. Sometime in June 2004 she told him she wanted to give him the property because of the love and support he had given her over the years.
37. She did not bring up the matter again until in 2009. She said her husband was not expected to live much longer and she wanted to give him the property.
38. She said she wanted him to take her to a Justice of the Peace in Rio Claro who she heard about to make a will for her.
39. In the early part of the relationship he would give her sometimes \$500 to \$600.00 per week.

40. On 12 June 2009 the defendant took her to the KFC building in Rio Claro where the Justice of the Peace had her office. He remained in the vehicle. After some time she came back to the car and handed him a document in a brown envelope which turned out to be the will.
41. Her husband died a few days later. She told him she did not have money for the funeral. He gave her \$15,000.00. He took her to Dass Funeral Home in Chaguanas. When she came back to the car, she handed him a receipt for \$9,500.00 which is what she paid for the funeral.
42. About September 2009, she again told him that her children did not show her any affection and her sons were “good for nothing” children. She said she had health problems and she was older and would die first and her sons would give trouble for the property so she wanted to do a deed. She said he was the only person who deserved it. She had heard of a lawyer named Mr Ramlal in Couva who could do the deed for her. He went and found out about his office and made arrangements for an appointment. It was a Saturday in late September 2009 she went with the defendant to Mr Ramlal’s office in Couva. She told him she wanted to make a deed to transfer her property to the defendant. She told him that the defendant was her common law husband. Mr Ramlal asked if she had children and she said with her “married husband but he dead”. Mr Ramlal asked the defendant to step out of the room and he had a private conversation with the claimant.
43. The defendant was then called back to the room. He told her about the costs and the need to do a valuation report. Because of what she told Mr Ramlal about her sons, he recommended she go to another lawyer to make out a paper to show she understood what she is doing. He told her when she was ready to proceed she should get the valuation done. He recommended valuers. The claimant subsequently told the defendant that she had spoken to the valuator and the man did the valuation and that he would have to pay \$1,000.00 for it.
44. In early November 2009 the claimant told him she had to go back to see Mr Ramlal. She said she was not going to talk to another lawyer because she was satisfied with Mr Ramlal doing the deed.

45. They went back to Mr Ramlal. She said she had spoken to Mr Ramlal. They went back and Mr Ramlal read over documents to her. She said it was correct. He also produced another set of papers which was the deed. He read over the papers. He explained as he went along. The claimant said she understood. He handed the papers to her and told her she could read it. She signed it. Mr Ramlal's secretary also signed the deed. So did he.
46. Mr Ramlal repeated the advice about seeking independent legal advice. He told her he could prepare another paper for her to take to a Justice of the Peace to confirm the gift of the property to the defendant by an independent person. This was a statutory declaration. The defendant paid all the fees. On the Monday next he took the claimant to a Justice of the Peace Mr Kadir at Couva and she swore the document in front of him after it was read to her and she said it was true. He took her identification card and she swore on the Gita.
47. In 2010 they became less careful about the relationship as the claimant's husband had died. On one of the Garth Road visits one "Tallman" met them at Garth Road. Even the claimant's son, Maraj, found out about the relationship but he never said anything. The defendant said he had always treated Maraj well. They would go on many occasions to Garth Road. They would go and cook, lime and have sex. Sometimes Tallman and another worker, "Boogie", would be there when they cooked and limed.
48. The relationship continued until July 2013 when the claimant called him on the phone saying one of her sons got arrested and they needed to take his bail. She said she told her daughter she could not find the deed. She asked him for the deed and said to transfer it back to her so she could take the bail and after she would transfer it back. He did not agree but he said he could hire a bailor. He gave her \$3,000.00 to pay a bailor. She said her children were pressuring her because they had gotten a copy of the deed she had done for him. She told him the children were quarrelling. The relationship then broke down completely and they stopped speaking to each other.
49. The defendant called to give evidence one Cedric Lougheed, a builder, who did work for him at Garth Road and also at his Freeport home. Lougheed got to know Maraj. In the middle of 2010 he got the job in Garth Road. It was to build cupboards, plumbing and tile the kitchen. He and one of his workers, "Boogie", did the work. On one occasion he went to collect tools and he met the claimant and the defendant at the house. They were cooking and there were drinks on the table. After that the defendant would bring her to

Garth Road to lime and he found out she was Maraj's mother. They sometimes all went in the same car. Sometimes the defendant and claimant would spend time in the bedroom. They would also cook and lime.

50. Ramnarine Rampersad also gave evidence. He is the man called "Boogie". He too met the defendant and Maraj when he went to "hustle" some work at the defendant's Freeport home. At times he saw Maraj's mother at the defendant's home. He supports Lougheed about the Garth Road encounters.

51. The Justice of the Peace, Ms Poonwasie, also gave evidence that she had prepared a will for the claimant. She said the claimant had come to her at her office. She had experience in preparing wills. She said the claimant told her she wanted to make a will to leave her property to the defendant. She also prepared deeds. She interviewed the claimant. She asked her why she had left Freeport to come all the way to Rio Claro to do her will and the claimant told her someone in her hometown spoke to her about her and that is how she came to her. She drafted the will. Her secretary, who is now deceased, typed the will. The JP read the will to her. She asked if it was correct. The claimant said yes. She then signed it in her presence and that of her secretary and they both signed the will in each other's presence before the claimant. She gave the claimant the will in an envelope and she left.

52. Laurence De Leon, the valuator, gave evidence that he had a conversation with a female person on the phone in 2009 named Savitri Poodan. They spoke about a valuation. He arranged to meet her at her home on 13 October 2009. She told him she was going to give her common law husband the gift of the property and she was advised to get a valuation done. He requested her deed. He inspected the house, took measurements, and later prepared a valuation report, which he dropped off at Mr Ramlal's office.

53. Mr Ramlal also gave evidence. His was a detailed witness statement setting out the events of 22 September 2009 when he met the claimant and defendant. It was his first meeting with either of them. The claimant did most of the talking. She showed him the deed. She showed him a 2004 valuation report prepared by one Joseph Gokool. She told him she wanted to transfer the property to the defendant. He held a private discussion with her. He told her what she wanted to do would remove her rights to the property for no value. She told him that is what she wanted to do. He asked her why she did not want

her children to be included in the deed. She explained the circumstances of a strained relationship over the years.

54. She said the claimant had been kind and loving to her over the years. She did not want her children to know about it. She said her daughters were all married and her sons would give away the house for drugs.

55. Mr Ramlal told her about the option of a joint tenancy between the claimant and the defendant. He told her about giving herself a life interest in the property. He told her about doing a will making him the sole beneficiary. She told him she had already made a will and wanted to make a deed now. He told her about seeking independent legal advice.

56. Before they left Mr Ramlal had a conversation in the defendant's presence telling her about the valuation. He told her the cost of the deed and the registration costs. He provided a list of suggested valuers, including Mr De Leon.

57. Sometime in late October 2009 he received a valuation report from Mr De Leon. The claimant told him on the phone that she wanted to go ahead with the deed. She said she did not want to seek independent legal advice. He told her of the legal formalities.

58. On 7 November 2009 the claimant and defendant came to his office. He repeated the instructions she had given on the phone. He then read over and explained a document containing her oral instructions. She signed it. He then read over and explained each paragraph of the deed of gift. She appeared to understand. She said she was satisfied with it. He took execution of it with his secretary also signing. The defendant also signed. He told her of independent advice again and she declined. He then told her he could prepare a statutory declaration having regard to what she had said about her sons seeking to challenge the deed. He then and there prepared a statutory declaration. He explained what it was about and he gave it to her to sign it before a Justice of the Peace. The sworn statutory declaration was dropped off at his office later. The deed was later registered.

59. Mr Ramlal heard from the claimant he says in July 2013. I should note that both sides made mistakes stating these events occurred in 2013. It is clear that this occurred in 2012 at the time the claimant's son was arrested. She telephoned him after business hours. She told him one of her sons was arrested and the children were asking for the deed. She told them she had misplaced it. She sounded nervous and frightened and used terms such as "Oh God ah doh know what to do" and "dem children would kill me for sure".
60. She told him she had to hand over the land and building taxes receipts to them. She was extremely worried. She asked for advice. He told her she should start with the truth.
61. She called a second and third time. She told him the children were coming with her the next morning. She told him he should lie and tell them about a mortgage arrangement. He refused.
62. The claimant and four adult persons came the next morning. They had a discussion. The claimant agreed to waive privilege. He explained certain things to them about how the transaction came about. They asked about recovering the property. He told them about a re-conveyance with the defendant's consent. He advised them to seek independent legal advice.

Findings

63. The claimant's case is inherently implausible. She gives no evidence of how much the defendant proposed to spend on renovations. She did not know him well at the time when she agreed to do the transaction. The way she says the transaction came about does not make sense.
64. She also did not tell anyone about this transaction. If there was a loan arrangement as the claimant suggests, there would have been no reason to not tell the children about it. In fact, it would seem likely to me that this is exactly the kind of arrangement she would involve her son, Maraj, who worked for the defendant and the others who lived in the property, in. Surely, when materials and workmen came to fix the roof, the arrangement would have been obvious.

65. I also had the opportunity of seeing and assessing the claimant's reaction to questions. She is not as helpless as she makes herself out to be. She fully well understood the questions being posed to her. I discerned no inability to understand the nature of transactions. She had had a deed done before in her favour.
66. The effect of her case is that several people, some of whom were unknown to the defendant before, were somehow involved in a grand conspiracy to assist the defendant to rob her of her land. These persons included an attorney-at-law, a justice of the peace, a valuator, a builder and a workman. It would also involve allegations that another Justice of the Peace, Mr Kadir, who witnessed the swearing of the statutory declaration.
67. The claimant claims not to understand the deed and other documents. She also says she is illiterate. However, her witness statement is not certified as having been read over to her on account of her not being able to read or understand it. Her witness statement uses legal terms and complex concepts. It contains big words and wordy phrases, some of which are highlighted above for illustrative purposes. Yet she certifies having understood her witness statement. If the claimant had been able to give the detailed evidence she did in her witness statement, it is likely she would have been able to understand the terms of the deed even if she did not understand legal expressions.
68. The claimant brings no support for her contentions from any of her children who would likely have been able to support some aspects of her evidence. In particular, her son, who is known as Maraj would have been able to refute certain aspects of the defendant's case contained in the amended defence to the effect that he knew of the relationship between the claimant and defendant and about their visit to Garth Road. Furthermore, the defendant in his Amended Defence set out in great detail the various interactions the claimant had with Mr Ramlal. In fact the amended defence reads like a witness statement in the level of detail. At paragraph 14 vii to xi the defendant pleaded an occasion when the claimant and four of her children attended upon Mr Ramlal at his office to find out about the transaction that had taken place concerning the deed. The children could have disputed what was set out there. Their absence leads to an inference that they would not have supported the claimant's position on this aspect of the case. It is noted that in the Reply, paragraph 14 of the Amended Defence was denied as being a total fabrication. This related to the interaction among Mr Ramlal, the claimant, and 4 of her children.

69. I have considered the evidence of Mr Ramlal, the attorney at law. His was a detailed and comprehensive account of having taken all reasonable steps to ensure the claimant understood what she was doing and seeking to give effect to her wishes. Hardly is there usually such a detailed witness statement from an attorney at law about what was done in relation to a transaction. I find it hard to accept that Mr Ramlal's evidence was the fabrication that it must be if the claimant is to be believed.
70. I also find that both Lougheed and Rampersad give support to the contentions of the defendant that the claimant and the defendant were in a relationship. While they both did work for the defendant, there is no suggestion of them having any special interest in the outcome of these proceedings. The court has to look at all of the evidence. In this case there is a preponderance of evidence in support of the defendant's case as compared to the claimant. The effect of accepting the claimant's case is that a number of persons previously unknown to her have come to fabricate evidence to deny her the property she owned. I reject the claimant's evidence as being untruthful.
71. While I accept there were certain inconsistencies as pointed out by the claimant's counsel in submissions, none of these really go to the heart of the evidence given by Lougheed and Rampersad about the Garth Road visits. I found them to be honest witnesses who may be mistaken about certain events. In particular, I found Mr Lougheed was a solid witness who supported the defendant's contentions in material respects.
72. I can also discern no proper reason why Mr De Leon would have made up a valuation of the property. He was undertaking a routine function to ascribe a value to the property to assist in the registration process. Again, there is no evidence to suggest any improper connection between him and the defendant. I did find he had a tendency to be mistaken about names such as calling Mr Ramlal, Mr Lalla and Ms Poodan, Ms Boodan. Neither of those matters undermined his evidence. Further, as stated before, I saw no reason to disbelieve Ms Poonwassie. I therefore reject the contention that the will was a fabrication to make the validity of the deed seem more likely.
73. The defendant's case was of a relationship between a somewhat younger man and older woman. While this may be less usual in our society, it is neither implausible nor unthinkable. Further, extra-marital relationships take place in different kinds of circumstances.

74. The defendant gives a detailed account of how the relationship started and progressed. The unravelling of the relationship took place in the context of the need for a form of security to take bail for the claimant's son. Up until then the claimant had made no complaint in terms of seeking a lawyer's advice or intervention. This would have been almost three years after the transaction. Work was to have been started in January 2010. By July 2012 no work had been done. Yet the first complaint came shortly after the deed was needed for the claimant's son's bail. If the arrangement was to give the defendant a "sign" on the property as security, the claimant ought to have gotten concerned about this shortly after January 2010 when the works were supposed to begin. The nature of the 'mortgage' arrangement was not such that the claimant ought to have found difficulty with raising with her children with whom she said she had good relations.
75. It is also significant that the will and the deed took place just before and shortly after the death of the claimant's husband. It ties in with the defendant's case that the claimant found it opportune to make the arrangements when her husband was in his final days in respect of the will, and after his death in respect of the deed.
76. What occurred in my view is that the claimant fully well knew what she was doing. She intended to pass the property to the defendant by will at first. After her husband's death she felt more comfortable and made arrangements to see Mr Ramlal to effect the transaction. She went on to follow up on it. Mr Ramlal, in my view, took more than sufficient precautions and acted responsibly as an attorney-at-law to effect the clear intentions of the claimant.
77. I accept the defendant's case that but for the need for the deed, there would not have been an issue. I find that it was when the claimant's children made an issue that the claimant was forced to seek to repudiate the transfer she had previously freely effected.
78. A bit of evidence that I considered significant is that the defendant knew of and had possession of the receipt for the claimant's husband's funeral. If they did not know each other well or have any real contact, how would he have gotten this? I find that the relationship was to such an extent that the claimant felt comfortable in relying on the defendant to pay for the funeral arrangements.

79. The claimant admits to signing the deed and the accompanying statutory declaration. This passed the property to the defendant. To her it was a “sign” on the deed. It was in the nature of security; a mortgage to secure the money he would spend on fixing the property. But it did transfer the property to the defendant. This was the same effect as the will. Even on the claimant’s case she would have been negligent or careless in not seeking to understand the true meaning of the document she was signing. She had more than one opportunity to find out on her own case before Mr Ramlal and Mr Kadir.

80. Accordingly, neither non est factum nor fraud are proved. I find that the claimant understood what she did. This was to transfer the property to the defendant. At the time she did it, she willingly did so. She was told of other options to deal with her property but she chose not to pursue them. The claim is therefore dismissed. The claimant must pay the defendant his costs in the sum of \$14,000.00.

Ronnie Boodoosingh

Judge