

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2011 - 03802

BETWEEN

MONICA SIEW SEEBARAN ALSO CALLED MONICA SEEBARAN

**(as Legal Personal Representative of the Estate of Boodhanie Seebaran
also called Boodnee Seebaran)**

CLAIMANT

AND

DIANNE CLARKE SEEBARAN

DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Ronald Dowlath for the Claimant

Ms. Earla Nyack for the Defendant

JUDGMENT

BACKGROUND

1. The claimant, as the sole surviving Legal Personal Representative of the Estate of Boodhanie Seebaran also called Boodnee Seebaran (“the deceased”) seeks to recover from the defendant possession of premises at 7 Subero Street, Arima (the said premises) by fixed date claim filed on October 5th 2011. The deceased died on 29th October, 1992.

2. The defendant's husband - (Sham) - is one of several children of the deceased. (For convenience the first names of some of the parties are used). Sham and the defendant are estranged. The defendant still lives at the said premises. Sham does not, having been excluded from the said premises since 2004.

3. There are two houses on the said premises, a front house and a back house. The front house has 3 bedrooms. The back house is occupied by the widow of Davinan – another son of the deceased, who passed away in 2010.

4. The defendant claims that since August 1984, when she was 17 and expecting her first child, she lived at the front house (apart from a 3 month period when she occupied the back house). The deceased invited Sham to bring her there.

5. The issue of adverse possession arose as the defendant averred that she and Sham had exclusive possession of the front house since the death of the deceased in 1992, and the title of the claimant and the beneficiaries was therefore extinguished.

6. She also claims to have acquired an equitable interest **in the premises**, and in the front house, because of her reliance **on the licence** and assurance given by the deceased, which **were** never revoked. (The Counterclaim paragraph 10)

7. She further claims that the deceased *always made it known that she was leaving the premises to her last two sons, Davinan and Sham, (paragraph 4b of the Defence), and that some account must be taken of the promise made to these sons and the family arrangement which was consequent on that promise.*" (Paragraph 4c of the Defence). Neither son is a party to these proceedings.

8. She claims that "*the construction works/ renovations which she caused to be done on the front house were done out of necessity as the front house was in desperate need of repair due to its age and damage caused by (Sham)- (paragraph 6b of the defence).*"

ISSUES

AGREED ISSUES

9.

A. Can the defendant having **admitted**:

- i. In paragraph 3 (c) of the defence that **she came to live on the property at the instance of Ma and Pa**; and
- ii. In paragraph 10 of her counterclaim **that she was a licensee**;
now claim that she has acquired title by means of adverse possession?

B. Whether the defendant has acquired any interest in the property situate at 7 Subero Street, and if so what is the extent of any such interest?

FINDINGS OF FACT

10.

- a) At no point in time did the defendant or Sham have exclusive possession of the entire premises, as there exists on the premises a back house occupied by Davinan, a deceased brother of Sham. The occupation of Sham and the defendant never extended to that back house (save for a three month shared occupation thereof).
- b) The front house had three bedrooms. One was occupied by Monica. One was occupied by Kishore, and one was formerly occupied by the deceased. It could only be when Monica moved out of the front house that Sham and the defendant would have been able to occupy her bedroom. I find, accepting the evidence of the claimant, Sham and Kishore that the Claimant vacated in 1996, whereupon Sham and his family moved out of the garage area they were occupying and occupied all three bedrooms of the front house.
- c) I find, accepting the claimant's evidence, that in 1996 Kishore's room was occupied by Sham, about a month before the Claimant's room was occupied by Sham.

- d) Even if Monica's testimony is not accepted, it is only on the death of the deceased in 1992 that Sham and the defendant would have been able to occupy the bedroom of the deceased.
- e) **Prior to 1992** the defendant occupied the garage area as the wife of, and with, Sham. That occupation was by the permission and consent of the deceased. It was based on a family arrangement, an act of generosity on the part of the deceased, and was never intended to create legal relations. [See paragraph 17- **Ramnarace v Lutchman [2001] UKPC 25.**
- f) **In 1992** Sham became a beneficiary, together with his other siblings, under the intestacy of the deceased, in respect of such share of the deceased's property that passed into her estate.
- g) **Before 1996** Sham and the defendant continued their occupation of the garage portion of the premises as licensees.
- h) **Between 1996 and 2004** Sham occupied the front house without the express permission of his siblings though no one actually refused him such permission.
- i) **From 2004** Sham was excluded from the premises by the Defendant's actions in obtaining an exclusion and non-molestation order against him in domestic violence proceedings.
- j) **From 2004** the defendant occupied the front house without the express permission of any of the beneficiaries of the estate of the deceased, although no one actually at the time refused such permission.
- k) At the date of filing of the claim on October 5th 2011 and counterclaim on November 4th 2011, **16 years had not elapsed from 2004**, the date from which the defendant alone was in occupation.

- l) As the defence and counterclaim was filed on November 4th 2011, **(16) sixteen years had not yet elapsed since 1996** when Monica left, and Sham and the defendant were able to occupy Monica's bedroom in the front house, (finally giving them possession of all (3) three bedrooms there).
- m) If I were to have found that Monica had left before the deceased passed away in 1992, then more than sixteen (16) years would have elapsed since Sham and the defendant were able to occupy all three bedrooms of the front house, including the room of the deceased. I do not so find, but, as set out hereinafter it would make no difference to the defendant's claim based on adverse possession, as **she would not have established possession adverse to that of Sham for 16 years,**(from 2004 when he left).

DETRIMENT

11. The defendant claimed that she acted to her detriment when she spent 27 years **in the front house** and made it her matrimonial home. This is not factually correct and I find her to have been untruthful in her claim that she always stayed in the front house.

12. Her assertion that Davinan, came to live in the front house while, (with the deceased's help), he was replacing his board house in the back with a concrete house, is inconsistent with her assertion that she and Sham and her then 3 children, and the deceased, and Monica (the Claimant) also lived there.

13. In fact, as Sham testified, Kishore maintained a locked bedroom there, even after he moved out. It is only from 1996 that the occupation of the front house took place.

14. There were 3 bedrooms in the front house, and with the deceased, Kishore and Monica occupying one each, with some accommodation being made for Davinan's temporary occupation of the front house while constructing the back house, there would simply have been no room for the defendant, Sham and their then 3 children.

15. I therefore find the evidence of Sham far more credible when he testified they occupied a separate garage space and used the bathroom facilities of the front house.

16. The defendant further claimed that she acted to her detriment when she never looked or caused her husband to look for alternative accommodation to be used as their matrimonial home.

17. It is difficult to understand how this could be a detriment. No one forced her to stay in the cramped conditions that Sham described, and nothing whatsoever precludes any search for alternative accommodation even to this day. Far from being to her detriment, the generous offer of accommodation by the deceased was to her benefit.

18. The defendant also claimed that she acted to her detriment when she **renovated** the front house

19. On her own pleading the renovations were mostly to secure the premises, to maintain their appearance and to make them more comfortable for her occupation. No one encouraged her to make any renovations. The deceased had passed away since 1992. It strains credulity to link any promise made by the deceased to relatively minor expenditure (in the context of rent free occupation since 1996) on necessary repairs, in April 2009 and thereafter.

20. In any event, even on her on her own pleading, if such promise or assurance was made at all, it was made for the benefit of Sham and Davinan, or alternatively – in respect of the front house – was allegedly for the benefit of the defendant, Sham, and her children, or for the benefit of Kari.

21. I do not accept that any such assurance was ever made. There are too many conflicting versions of these alleged assurances to be credible. Further if, (which I do not accept), any assurance was made; I do not accept, on a balance of probabilities, that it would have been made to include the defendant, a non family member.

22. Even if the evidence demonstrated any such promise or assurance, which it does not, the defendant cannot seek to enforce any promise made by the deceased to Sham.

CONCLUSION

23.

- a. The defendant was never in exclusive possession of the entire premises.

- b. The defendant was never the beneficiary of any promise that she would acquire any interest in the said premises, or the front house, or any part of the said premises.

- c. Such expenditures, if any, by the defendant on the premises were never the result of the deceased or anyone leading her to believe that she had an interest in the said premises or would acquire such an interest. In any event any such expenditures were for the purpose of maintaining the premises in a habitable condition, and further, were not sufficient, when considered in the context of rent free occupation over more than 25 years, to create an equitable interest.

- d. It is unnecessary to make any orders regarding the sale or valuation of the premises, or granting liberty to the defendant to bid at any such sale or submit an offer to purchase. It is entirely within the discretion of the claimant, as administrator of the deceased's estate, whether she wishes to treat with any offer for purchase by the defendant, if she wishes to sell the premises. In any event in view of my findings there would be no abatement on price to which the defendant would be legally entitled.

DISPOSITION AND ORDERS

24.

1. The defendant's counterclaim is dismissed.

2. The claimant is entitled as against the defendant, her servants, agents, and her family, to possession of the said premises at Number 7 Subero Street Arima, more particularly described in paragraph 1 of the statement of case, and in particular, the front house thereon.

3. It is ordered that the defendant do quit and deliver up possession of the said premises at Number 7 Subero Street, Arima, more particularly described in paragraph 1 of the statement of case, and in particular, the front house thereon, on or before April 30th 2013.
4. The defendant is to pay the claimant's costs in the sum of \$14,000.00.

MONICA SEEBARAN – THE CLAIMANT

25. The Claimant testified:-

- (a) That the defendant and Sham were both invited to live on the premises by her parents. The defendant had always lived on the premises with the consent of her parents during their lifetime.
- (b) That she took care of her parents when they got sick, and gave her mother her last food.
- (c) That after her mother's death and about a month before she left 7 Subero Street in 1996, Sham proceeded to leave the **house** which he previously occupied together with the defendant and their children and moved into occupation of the **front house** previously occupied by her mother,
- (d) That she left home in 1996.

WHEN DID MONICA LEAVE THE PREMISES?

26. I accept Monica's evidence that she collected and cashed the pension cheque of the deceased, and that she gave her mother her last food.

27. The evidence of the defendant that Monica was asked to leave the premises by the deceased before the deceased passed away in 1992 is therefore not credible. If Monica had been asked by the deceased to leave the premises then it is not likely that the deceased would still retain Monica as her nominee to collect her pension cheque.

KISHORE SEEBARAN

28. The evidence of Kishore was to the effect that:

- (i) Prior to the death of his mother and until the time in 1996 that Monica left 7 Subero Street, Arima to live elsewhere, the Defendant, her husband and her children lived in a garage to the back of his mother's house.
- (ii) There were 2 houses on the premises
- (iii) The back house belonged to Davinan
- (iv) Monica continued to live in the front house until 1996 (end of October/beginning of November, 1996) when she left.
- (v) Sham, the Defendant and his family moved into the front house after the Claimant moved out in 1996.

29. Although Kishore testified that the Defendant came to live on the premises because of her marriage to Sham and that the Claimant moved out because of her marriage, I find that not much turns on this. These events occurred several years ago. He admitted that he didn't really know when Monica got married, and it is clear that by his reference to marriage, in relation to both the claimant and the defendant, he was in fact referring to their going to live with someone regardless of whether they married immediately or at any time thereafter.

30. In cross examination he stated that the Defendant and Sham lived in the garage which was converted, but in his witness statement he stated that the Defendant and her family lived in a **house** to the back of his mother's house.

31. I find that nothing turns on this. Sham's evidence clarified that the converted garage, the apartment, and the occasional reference to the living quarters of Sham before 1996 as a *back house*, were one and the same. **The** back house was always occupied by Davinan and his family, except for a 3 month period when the defendant and Sham shared its occupation. This cannot be the same house "to the back" of the deceased's house that the claimant and her witnesses loosely described as the converted garage.

SHAM SEEBARAN

32. Sham was summoned to court and his evidence was given orally. Sham testified that:-
- i. He moved out of the premises in 2004 because the court ordered him to leave.
 - ii. Between 2004 to now he never went back to the premises.
 - iii. He never did any renovations before he left.
 - iv. He took the defendant to live **at the side of the house in the garage** which he took and made into a room.
 - v. Before Ma died he had about five (5) children.
 - vi. He did not live in the front house then.
 - vii. Monica was taking care of his mother. She moved out **in 1996** after Divali.
 - viii. Saga (Kishore) remained in occupation of a room in the front house. He had a lock on his bedroom door.
 - ix. He broke in Saga's room to get space because he had seven children.
 - x. After Monica left, in 1996, he broke into her room to get space.
 - xi. After he broke in, Monica did not ask him to move. Monica couldn't tell him anything.
 - xii. Davinan and the Defendant had a misunderstanding. She put him in court and he and the defendant went and rented for a couple of years.
 - xiii. Ma asked him to come back and they went back in the garage.
 - xiv. Ma never put out Monica.
 - xv. He never did any renovation at the premises. When asked about any repairs he only knew that *Keston went and put some galvanize because the house was leaking.*

EVIDENCE OF KARI SEEBARAN

33. This testimony was vague and unhelpful. It was a suspicious repetition of her mother's evidence, and it is not accepted when it conflicts with the evidence of her father Sham, or the claimant.

EVIDENCE OF THE DEFENDANT DIANNE CLARKE SEEBARAN

34. The Defendant's evidence was to the effect that:
- i. She lived at #7 Subero Street, Arima since 1984.
 - ii. There were always two (2) houses on the premises and Ma invited her to come and live.

- iii. Davinan was always living in the back house, and when Ma died in 1992 Davinan continued to live there till he died.
- iv. Davinan died in 2010 but his wife continued to live in the back house. She left for a short period but came back and continues to live there.
- v. At paragraph 6b of the defence she stated that renovations were done out of necessity because the front house was in desperate need of repairs. In cross examination the Defendant stated in relation to the repairs “*the house was old. It had to repair. It was deteriorating. Money I spent I had to. House was in dire need.*”
- vi. The Defendant denied that the Claimant lived in the front house until just after Divali 1996.
- vii. The Defendant confirmed that the repairs were done after Sham left.
- viii. The Defendant confirmed that she did not ask anybody before she did the repairs and no one objected when she was doing it.

35. In her witness statement, the defendant claimed that the deceased told her daughter Kari that she was leaving the front house for her. She claims that the deceased often told her children that she was leaving the front house for Sham and the back house for Davinan. She also claims that the deceased told her that the front house was for her, her children and Sham. (See paragraphs 14, 15, and 16 - witness statement). Clearly these alleged statements were not consistent, and even to that extent could not be relied upon.

36. On one version, Kari was promised the front house. On another, Sham was promised the front house. On yet another, the defendant’s whole family were all promised the front house. On a balance of probabilities, I do not accept that any serious promise could have been made by the deceased to the defendant.

37. Those alleged statements are at highest, wishful thinking and a very optimistic spin being placed on loose conversation. More likely, in the context of other similar exaggerations, distortions and untruths by the defendant (for example, in relation to the occupation of the front house **before** the death of the deceased, and the attempted concealment of the fact that Sham had

not been living on the premises since 2004), they are untruthful and self serving statements by the defendant designed to bolster her claim to the property of her in laws.

ANALYSIS OF THE EVIDENCE AND FINDINGS OF FACT

38. The evidence is that there is a back house which is occupied by Davinan's widow. This is a separate house, built by Davinan. The evidence is clear that the defendant was never in occupation of the whole premises to the exclusion of the family of Davinan. At highest she, as the wife of Sham, occupied 3 rooms without permission of the other beneficiaries after the departure of the claimant. In fact Sham, whose evidence I accept as having been candid and delivered without evasion, confirmed that the Claimant in fact left in 1996.

39. This action was commenced on October 5th 2011. It was submitted on behalf of the claimant that as the deceased died on October 29, 1992, as at the date of the issuance of this claim, the Defendant would have occupied the premises for approximately 18 years and 11 months without permission.

40. I do not accept this. I find that, at highest; it was the occupation of the front house that would have been without permission. The occupation of the garage was always with permission – both at inception and when the deceased asked them to return. What is without express permission was Sham's entry into the front house and the rooms of Kishore, and the deceased, and the claimant. However Sham himself was excluded from the premises in 2004. Up to that time the defendant was there as the wife of Sham.

OCCUPATION OF THE FRONT HOUSE

41. The Claimant made it clear that the Defendant never occupied the front house while the deceased was alive, but that she and Sham occupied a house to the back. The Claimant also testified that **the** back house is occupied by the widow of her deceased brother. However, in her evidence, the Claimant clarified that that back house is not the same as that belonging to her deceased brother. She explained that **the** back house (occupied by Sham and the defendant), was a garage space that Sham had fixed up until he could get his own place.

42. This was corroborated by Sham. Sham described this as one bedroom which lacked any amenities. It was submitted that this cannot be the same as a house, or **the** back house referred to. However the undisputed evidence is that there was a back house built by Davinan and occupied by him and his family. No one suggests that there were three detached or separate houses on the premises.

43. The evidence is that there were two houses. If Davinan were occupying the back house, which is undisputed, then the explanation that the area occupied by Sham and the defendant was a former garage area converted into living quarters, which shared bathroom amenities with the front house, but which did not itself properly qualify for the description “house”, is logical and credible. I accept that this is the effect of the evidence.

44. The fact that no reference was ever made to this house as being a garage space before the trial does not affect this conclusion as I am satisfied that it is simply a matter of terminology. It was a space utilized as living quarters by Sham and his family, apparently quite cramped and providing the barest minimum of accommodation, which could not properly be characterised as a house.

45. Sham’s evidence confirms that while the deceased was alive, the claimant lived in the front house, and Kishore maintained a room there which was locked. The deceased was living in another room. There was therefore no other bedrooms in the front house that could be occupied by Sham or his family. Sham’s occupation of the entire front house could not have begun while either the deceased was alive or the claimant remained. Sham’s occupation of the front house could only have begun **at the very earliest**, after the death of the deceased - **October 29, 1992**, and later than that, in 1996 if that is when the claimant finally left her room in the front house.

46. I find that while the deceased was alive, the defendant and Sham were confined to and occupied the garage space – just as he testified. Because the area had no facilities and was cramped and he had 5 children he broke into the main house, put out Kishore’s belongings, and occupied his locked bedroom, and the bedroom of the claimant when she vacated.

DATE OF MONICA'S DEPARTURE

47. I find that the claimant left in 1996 around the date of Divali. I find that Kishore's room was broken into and occupied around one month before Monica left in 1996 – as she testified. The creeping occupation and takeover of the last room in the front house was therefore completed in 1996.

INTENTION TO POSSESS

48. Even so I note that the defendant testified in her witness statement that after Ma died she **never prevented** any of her husband's siblings from entering and enjoying the use of the front house. (Paragraph 32). Further "*neither I nor my husband nor my children put them out from the house because they never lived in the house.*" (Paragraph 47)

49. On her own evidence she did not have the necessary animus possidendi to establish possession adverse to that of the beneficiaries of the estate of the deceased. Certainly she did not have such animus in relation to Sham with whom she was living as husband and wife. For completeness it is proposed to deal with some of the other possible interpretations of the evidence which were canvassed or adverted to in the submissions of the parties.

STATUS OF OCCUPATION OF THE DEFENDANT

50. Sham has been excluded from the said premises **since 2004** based upon a protection order obtained against him by the defendant in the Magistrate's Court. (The defendant's pleading disingenuously glosses over this by stating "... *he was ultimately ordered in the year 2010 to move out from the front house for a period of 3 years*". This is important as the defendant seeks to merge the periods of occupation of herself and Sham, in support of her claim that the title of the claimant is extinguished by adverse possession).

51. In the light of the findings of fact above, the issue of whether the defendant has, by reason of her occupation there, first together with Sham up to 2004, and then by herself with her children, managed to extinguish the rights of the other beneficiaries, falls to be considered. In particular, her status there after the occupation of the last bedroom in the front house **in 1996**, up to 2004, when Sham was excluded, must be considered.

52. Is it an independent occupation, which can be added to that of the Sham in calculating whether 16 years have elapsed for the purpose of the Real Property Limitation Act Ch. 56:03? (Or was she simply a licensee of Sham, assuming Sham occupied as an adverse possessor between 1996 and 2004?) If so, can such an adverse possessor give permission to someone else to occupy together with him, or is the occupation of each person living there in the front house after 1996 adverse to that of the owners, separate and independent occupation?

53. The decision of this court in **Malyn Bernard v Nester Patricia Ralph & Esau Ralph H.C. 120 of 2010** was cited where the effect of **Myra Wills v Elma Wills Privy Council Appeal No. 50 of 2002** is discussed and analysed in this context as follows:-

Adverse possession against co-owner

29. **Myra Wills v Elma Wills Privy Council Appeal No. 50 of 2002** applied section 14 of the Jamaican **Limitation of Actions Act** (identical in material terms to s.14 of the Trinidad and Tobago Real Property Limitation Act, Chapter 56:03 hereinafter referred to as “the Act”).

14. When any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their un- divided share or shares, of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same and or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons or any of them.(all emphasis added)

54. In that case (at paragraph 27(1)) it was clarified that Myra was a **licensee** and **not a tenant at will**, confirming that Myra, who had lived with George for 19 years, even after 17 years, could not herself, in her own right, assert dispossession of the first wife, on the basis of being a tenant at will. Myra lived at (the subject premises) “first as a **licensee** and **then as George’s wife**”.

55. At paragraph 28 the Judicial Committee held that “from 1976 at latest, Myra was living with George at (the subject premises), and joining with him in managing the rented property, **to all appearances as if they were co-owners as man and wife**”.

56. Despite this, the Judicial Committee summarily dismissed the notion that Myra **in her own right** had acquired any rights over the disputed property.

- i. She could not do so as a tenant at will as she was not one.
- ii. She could not do so in her capacity as a licensee.
- iii. She could not do so as the **apparent** co-owner.

Any rights she had were all derived from George, both before and after her subsequent marriage to him.

57. Her rights to the whole of the property derived entirely from George’s dispossession of his ex wife. Myra obtained letters of administration as the legal personal representative of George. If she had been a tenant at will, or if she could have acquired any rights as a licensee, or as apparent co-owner, or any independent rights in addition to being the wife of George, she could have asserted her claim against the first wife **in her own right**, without having to rely on asserting, as legal personal representative of George’s estate, whatever rights George had himself acquired. This is reflected in the decision at page 11 – “*after 1976 at the latest George occupied and used the former matrimonial home and enjoyed the rents from the rented properties as if he were the sole owner, except so far as he chose to share his occupation and enjoyment with Myra*”.

58. The instant defendant’s enjoyment of the said premises was equally therefore not in any capacity as a tenant at will, but rather as a licensee, or as the wife of Sham. Sham was a licensee initially of the deceased and his father, Pa.

59. It was Sham, as the son of the deceased, and the brother of the other beneficiaries under the intestacy of the deceased, who attempted to occupy the front house to the exclusion of the other beneficiaries as if he were the sole owner, **except so far as he chose to share his occupation and enjoyment with the defendant.**

60. The defendant had no independent rights of occupation, other than through Sham, until 2004. When the defendant excluded Sham from the premises in 2004, only then can it be said that she exercised any independent occupation other than through Sham.

61. Putting aside the fact, for the time being, that Sham never occupied the back house, and that no one can therefore claim adverse possession of the entire premises, the claimant's occupation, solely and in her own right, began in 2004, when Sham was excluded from the premises.

62. **Before 1992** Sham was the beneficiary of the permission granted to him by his mother and father, the benefit of which possession he chose to share with the defendant and his family. **After 1996** Sham was occupying and arguably in possession of more than his share in the deceased's main asset, "the said premises". It is section 14 of the Act which permits the prospect of Sham, being in a position to assert adverse possession against the other beneficial co-owners. Without that section no such adverse possession by a co-owner is possible.

63. It was submitted that based on the evidence, the Defendant and her family must be taken to have possessed the premises after the deceased's death without permission. This occupation continued for over 18 years (which is more than the 16 required under the Act) and this operates to extinguish the title of all persons who are beneficiaries under the estate of the deceased.

64. In fact however the defendant and her family were licensees of Sham until 2004. Even if their occupation were adverse to that of the other beneficiaries after 2004, (and on the defendant's own evidence she does not have the requisite intention to possess), 16 years would not have elapsed between 1996 and a filing of the claim in 2011.

65. In fact I find that the front house and the garage area prior to the death of the deceased were the only areas occupied by the defendant and her family, and, accepting the evidence of Sham, that garage area was no longer occupied after his entry into the front house in 1996.

66. The back house was never occupied by the defendant. The defendant therefore never had exclusive possession of the entire premises. In any event the only time that would run in her favour would be the period from 2004 when Sham was excluded, as before that she was a licensee of Sham.

ADVERSE POSSESSION

67. The Claimant's claim for possession of the premises as pleaded is **not** statute barred under section 3 or section 14 of the Act. **The defendant was a licensee of the deceased, and then of Sham until he was evicted from the front house. Any adverse possession by her began in 2004 when she occupied exclusively.**

68. Even if the defendant can, contrary to the findings of the Honourable Judicial Committee of the Privy Council in **Wills v Wills**, treat her occupation of the front house while together with Sham, as an independent adverse occupation, and add the period of her occupation before Sham left in 2004, to her occupation after 2004 without him, she would have to establish a period of occupation adverse to Sham as one of the co-owners beneficially entitled to the premises. That period would begin to run from 2004, as before that date her occupation was not adverse to Sham. The limitation period she would have to establish would be 16 years after any occupation by her adverse to Sham, which has not yet expired.

69. **Alternative 1-** the defendant entered into possession **of the front house** – as she claims - at the invitation and with the permission of the deceased. Her occupation would be as a licensee, and time would not run under the Act as her occupation was not adverse to the true owner, the deceased. However I do not accept that she occupied the front house, until after the deceased passed away in 1992 and Monica left in 1996.

70. **Alternative 2** – Monica left in 1996. The claim form was filed in October 2011. However, even assuming that the defendant's and Sham's occupation of the front house after Monica left in 1996 is adverse to that of other beneficiaries, (and the relevant animus possidendi exists), the limitation period has not elapsed, **I so find.**

71. **Alternative 3** – (on the assumption, contrary to my express finding of fact that Monica left in 1990). The deceased died in 1992. Claim form was filed in 2011. Even assuming that the defendant’s and Sham’s occupation of the front house after the death of the deceased in 1992 is adverse to that of other beneficiaries, (and not the subject of a continuation of the licence under which they entered), the defendant’s occupation up to 2004 while living with Sham is not independent of Sham. She has **no independent right of occupation until 2004**. (See **Wills v Wills** supra)

72. **Alternative 4** - Assuming however that her occupation up to 2004 while together with Sham in the front house can be treated as independent occupation (inconsistent with **Wills v. Wills**) – to be added to her occupation alone after Sham left in 2004, and further assuming that Monica did leave in 1990, (which I do not accept), **even in that event** the relevant limitation period – 1992 to 2011- would have expired against all beneficiaries **except Sham**.

73. **In respect of any independent occupation by the defendant**, the limitation period for any **adverse** possession by her against Sham, (as a beneficiary of the estate, and beneficial co owner of the premises), would begin to run anew from 2004, as her occupation was not adverse to Sham’s until 2004. [See **Megarry and Wade 8th ed. Page 1470 paragraph 35.022 - Squatter dispossessed by Squatter**]

74. However, I do not accept that Monica left in 1990, and prefer her evidence to that of the defendant, in view of the several findings that I have made of the defendant’s untruthfulness.

75. There is therefore no legal theory which supports the defendant’s contention that she has, by adverse possession, extinguished the title of the true owner. On no theory of law is Sham’s title extinguished, and as a matter of law it appears that her own independent possession, (even assuming it to be adverse), only began in 2004. Any right the defendant has to possession of the premises therefore can only be the result of the operation of estoppel.

**WHETHER EQUITABLE INTEREST
PROMISSORY/PROPRIETARY ESTOPPEL**

76. The Defendant avers that she had permission to occupy the front house during the deceased's life, and that the deceased gave her an assurance that the front house belonged to the Defendant's family. The Defendant claims promissory estoppel and an equitable interest.

77. I find as a fact that that is a fabrication. She had permission to live in the garage area only. Sham testified that he took over the front house out of need when the rooms there became vacant. In the case of Kishore's room, he himself emptied and occupied it, as Kishore, in his view, was not living there.

78. Sham is the only witness who was clear on what happened and what he did. His evidence was forthright and not self serving. He testified with candour even with respect to matters that did not portray him in a favourable light. The defendant invites the court to find that he was inebriated when he testified. I find no such thing. This witness had a healthy respect for the court, apparently based on his experiences with respect to enforcement of protection orders against him, and I am completely satisfied that he strove to tell the truth as he perceived it. I therefore accord weight to his testimony and prefer it to that of the defendant and indeed to that of the other witnesses.

79. The defendant submitted that if the evidence of the converted garage space is found to be true, it will totally extinguish the Defendant's claim as to occupation of the front house during the deceased's life and the associated promise. I find that the evidence of the converted garage space is credible and I accept it.

81. I find that, despite my finding that only the garage was occupied by Sham and the defendant during the lifetime of the deceased, and despite the significant impact on the Defendant's credibility from my finding that she never occupied the front house while the deceased was alive, it still remains necessary to determine whether any promise was in fact made by the deceased.

ESTOPPEL - THE LAW

82. For the Defendant to succeed in her claim she must establish an equitable interest that entitles her to maintain that claim against the claimant or the estate of the deceased. It is therefore necessary to examine the basis of the defendant's claim to ascertain whether any interest was created by virtue of:

- (a) Proprietary estoppel
- (b) Promissory estoppel.

83.

(a) PROMISSORY ESTOPPEL

“Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it. (Emphasis mine)

Snell's Equity 31st ed. 2005 Para 10-08

84. I find that there is no evidence which I can accept that any such promise or assurance was made. I do not accept the evidence of the claimant on this aspect of the matter. Her evidence on this aspect is not independent evidence. It is entirely self serving and inconsistent with the fact that there was simply no space in the front house for her to have occupied before the death of the deceased. It also lacks inherent credibility for the reasons set out previously.

85.

(b) PROPRIETARY ESTOPPEL

*“If A under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a court of Equity will compel B to give effect to such expectation.” **Taylor Fashions Ltd. v Liverpool Victoria***

Trustee Co. Ltd. per Oliver J. cited in Snell's Principles of Equity 31st Ed. Para 10-16 to 10-17.

86.

1. Promise

The defendant must establish that the claimant or her predecessor in title, had represented that she will obtain an interest in property "either by making an express promise...as...where...a mother assures her daughter that she will have the family home for life ... or by encouraging the claimant to believe that she will obtain such interest by words or conduct or by encouraging the claimant's belief passively by remaining silent. It is not necessary for the defendant to prove that the claimant or the deceased agreed that the promise or assurance would be irrevocable since it is the defendant's detriment which makes the assurance binding and irrevocable provided that it was **clearly intended** to be acted upon. See" **Snell's Principles of Equity 31st Ed.**

2. Her belief must have been encouraged by the titleholder or his agent or predecessor in title. This may be done actively or by passively looking on while the person spends money on one's land. See" Snell's Principles of Equity 31st Ed. ibid

3. Expectation or Belief

She must have acted in the belief either that she already owned sufficient interest in the property to justify the expenditure or that she would obtain such interest. Snell's (ibid) Para. 10-18 See Snell's Principles of Equity 31st Ed. ibid

4. She must have incurred expenditure or otherwise acted to her detriment. See Snell's Principles of Equity 31st Ed. Ibid.

87. There is the evidence of the Defendant and Kari who say that the deceased orally made this promise to the Defendant and Sham – I find that this is self serving, and contradicted by evidence that deceased wanted all her children to benefit. There is the evidence of the Defendant and Sham that after they moved out and were renting, the deceased begged them to come back to live at the premises. I decline to read too much into that assertion that the deceased "begged".

88. The evidence of Sham and Kishore is that the deceased cared for all her children and grandchildren. That is not the same thing as saying that she wanted to **give** Sham and the deceased the front house. If she had such an overwhelming desire to do so she could have executed a will.

89. In fact she had several children, including one living in the back house with his family in the very premises. There is no credible reason suggested as to why the deceased would want to favour the defendant with the front house to the exclusion of any of her own children.

90. The defendant herself in her submissions recognizes that any such promise would have to have been directed at Sham, the deceased's own son, but she attempts to suggest that such a promise was made to include Sham, the defendant, and their children.

91. The defendant also attempted to suggest that the deceased did not execute a deed because of Sham's drinking or other problems. This is a clear recognition that if the deceased had been minded to put into writing her alleged wish to convey the front house, it would have been to Sham that she would have made such a gift, whether by will or deed of conveyance. If it were otherwise, and the deceased intended to benefit the defendant, there would have been nothing preventing her from so doing, as Sham's alleged drinking problems would not have stood in the way of a deed to the defendant and her children.

92. In fact I find that the alleged promise is, at highest, merely wishful thinking. I find that the attempt to characterise and elevate a) the kindness of the deceased to her children and grandchildren, and b) her indulgence to them in permitting her son, and the defendant and her family to live rent free at the premises initially, as indicating an intention that they, above all the other children of the deceased should solely benefit by ownership of the front house, is completely misconceived.

93. She claims an equitable interest in the premises and the front house and avers that "because of her reliance on the licence and assurance given by Ma, which were never revoked, the defendant:

i. Spent 27 years in the front house and made it her matrimonial home.

Any argument, or suggestion that by living rent free on premises with her in-laws the defendant was induced to act to her detriment by either not seeking alternative accommodation or by looking after the deceased Ma, is untenable.

94. It is undisputed that the defendant was not hampered in seeking employment or otherwise conducting her life independently, and the arrangement seems to have been in favour of, and to the benefit of the defendant and her family, rather than to their detriment. The evidence in support of this assurance is self serving and not credible. It was never manifested in a will or a deed. It is not even as strong as the evidence in relation to the back house, where everyone agrees that deceased brother Davinan built it for occupation by him and his family with the encouragement, assistance or acquiescence of the deceased and her husband.

95. ii. Never looked or caused he husband to look for alternative accommodation to be used as their matrimonial home.

I find there is no detriment. She can still do so, moreso now that she is working and some of her children are grown.

96. iii. Renovated the front house

RENOVATIONS

99. The Defendant renovated the premises because they were in want of repair due to the age of the house and the damage caused by Sham and she did so when she had money. She spent approximately \$20,000 (paragraph 6 (e) of the defence) on works which she described as

- i. changing 5 doors in the house
- ii. changing the front door
- iii. installing burglar proofing **to the sides** of the door
- iv. replacing the gallery gate with blocks
- v. replacing wooden flooring in 3 bedrooms with concrete

- vi. replacing the toilet set
- vii. painting the house

100. This interpretation of the evidence is not credible. No one led her to believe that the premises belonged to her. She made no such renovations until she had to, and then did so for her own comfort and convenience.

101. She said no one stopped her. In the scenario of ill will and confusion surrounding the living arrangements among the occupants of these premises that is not surprising. Kishore avoided the premises. Sham was evicted in 2004 on the application by the defendant for a protection order. The defendant had had an argument with the claimant one Divali in 1996 which appears to have precipitated the claimant's departure from the premises. There are occupants of a back house – who are not parties to these proceedings -who are the family of a deceased brother, and it appears that there is tension between the claimant and those occupants also.

102. The Defendant pleaded and gave evidence that these renovation works amounted to approximately \$20,000. Even if this amount was spent it is a minimal sum in relation to the several years of rent free occupation enjoyed at those premises.

103. Further on her own evidence such expenditure was for repairs - the house was very old. The attempt to blame Sham for causing any significant part of any damage that was repaired is not credible. Sham himself testified that such repairs, as were conducted while he was living there, were confined to replacing a few sheets of galvanise to prevent leaks. I accept his evidence.

FINDINGS

105.

- i. Based on all the evidence, it is clear that the defendant has acquired no equitable interest in the front house.
- ii. It is also clear that she had nothing whatsoever to do with the back house on the said premises.

- iii. It is clear therefore that the defendant cannot possibly claim rights by adverse possession or otherwise in respect of the entire premises.
- iv. It is clear that the rights of the claimant were not extinguished by any occupation of the defendant for the requisite 16 year period adverse to that of
 - a. the claimant, or alternatively
 - b. the beneficiaries of the estate of the deceased, or alternatively
 - c. Sham.

106. The defendant also recognized that Davinan's estate would be entitled to claim an interest in the back house and all parties recognized that Davinan was encouraged and assisted to construct the back house on land of the deceased, and encouraged to live there. This appears on the evidence common to both parties, to be non controversial. However the issue of any entitlement to an equitable interest by Davinan, and subsequently by the legal personal representative of his estate is not before the court.

CONCLUSION

107.

- a. The defendant was never in exclusive possession of the entire premises.
- b. The defendant was never the beneficiary of any promise that she would acquire any interest in the said premises, or the front house, or any part of the said premises.
- c. Such expenditures if any by the defendant on the premises were never the result of the deceased or anyone leading her to believe that she had an interest in the said premises or would acquire such an interest. In any event any such expenditures were for the purpose of maintaining the premises in a habitable condition, and further, were not sufficient, when considered in the context of rent free occupation over more than 25 years, to create an equitable interest.
- d. It is unnecessary to make any orders regarding the sale or valuation of the premises, or granting liberty to the defendant to bid at any such sale or submit an offer to purchase. It is entirely within the discretion of the claimant, as administrator of the deceased's estate, whether

she wishes to treat with any offer for purchase by the defendant, if she wishes to sell the premises. In any event in view of my findings there would be no abatement on price to which the defendant would be legally entitled.

DISPOSITION AND ORDERS

108.

1. The defendant's counterclaim is dismissed.

2. The claimant is entitled as against the defendant, her servants, agents, and family, to possession of the said premises at Number 7 Subero Street, Arima, more particularly described in paragraph 1 of the statement of case, and in particular, the front house thereon.

3. It is ordered that the defendant do quit and deliver up possession of the said premises at Number 7 Subero Street, Arima, more particularly described in paragraph 1 of the statement of case, and in particular, the front house thereon on or before April 30th 2013.

4. The defendant is to pay the claimant's costs in the sum of \$14,000.00.

Dated this 27th day of February, 2013.

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Judge
Peter A. Rajkumar