2013 No. 802P DEMERARA

THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

DECLARATION OF TITLE

In the matter of the Title to Land (Prescription and Limitation) Act, Chapter 60:02

-and

In the matter of Lot B being a portion of Plantation Pearl, situate on the East Bank of Demerara, in the County of Demerara and in the Republic of Guyana, the said Lot B containing an area of 5.000 (five decimal nought nought nought) acres and is shown laid down and defined on a plan by M.S. Azam, Sworn Land Surveyor,, dated 25th day of May, 2009 and recorded in the Department of Lands and Surveys on 5th June, 2009 as Plan No. 45489.

-and-

In the matter of the Petition by **DHORPAT NARINE,** personally and in her capacity as the Administratrix Ad Collengenda Bona and Administratrix Ad Litem of the **estate of Harry Persaud, deceased for a Declaration of Title.**

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Before the Honourable **Justice Priscilla Chandra-Hanif**

Appearances:

Mr. Manoj Narayan for the Petitioner

Mr Poonai SC and Mr Satram for the Opposer, Roy Sarjoo

Dated the 11th October, 2019

JUDGEMENT

FACTUAL BACKGROUND

1. The Petitioner brought this action seeking a Declaration of Title for the property described as :

*"**Lot B being a portion of Plantation Pearl**, situate on the East Bank of Demerara, in the County of Demerara and in the Republic of Guyana, the said Lot B containing an area of 5.000 (five decimal nought nought nought) acres and is shown laid down and defined on a plan by M.S. Azam, Sworn Land Surveyor,, dated 25th day of May, 2009 and recorded in the Department of Lands and Surveys on 5th June, 2009 as Plan No. 45489."*

2. By her Petition dated 3rd September, 2013 the Petitioner alleges the following acts of possession on the disputed property:

   (a) That she was the lawful wife of Harry Narine who died on 21st January, 2005 (paragraph 1);

   (b) That she is the administratrix Ad Collengenda Bona and ADministratrix Ad Litem of the Estate of Harry Narine by order of Chief Justice dated 11th October, 2010 (paragraph 2);

   (c) That since 1984, she and her husband have been in sole and overt occupation of the said property and have cleared the property of weeds and bushes and erected a fence around the said property (paragraph 5);

   (d) That she and her husband planted cash and permanent crops such as plantain and banana suckers, cassava, vegetables, coconuts, limes, lemon and breadfruit on the said land and since the death of her husband she continues to plant and cultivate the land (paragraph 6);

   (e) That she and her husband have fenced the said land using wallaba posts, chainlink and barbed wire (paragraph 7);

   (f) That she and her husband have commenced construction of two concrete dwelling houses on the land, one being 22 feet by 40 feet and other being 20 feet by 20 feet (pargraph 8);

   (g) That the said dwelling houses are incomplete and so far the foundation, columns and beams have been erected (paragraph 9);

   (h) That she and her husband paid rates and taxes and she continued to pay after her husband's death (paragraph 11);

(i) That until September 1999 no one questioned her right or the right of Harry Narine to occupy the said property or disturbed their possession which was open and adverse to all other persons (paragraph 12);

(j) That she and her husband have enjoyed quiet and peaceful occupation and possession of the said property without interruption from anyone nec vi, nec clam, nec precario for in excess of 15 years (paragraph 13);

(k) That the rights of every person to recover the land has expired or been barred or extinguished (paragraph 14);

(l) That on 11th September, 1999 Raymond Persaud, the transport holder of the disputed property by Transport No 1419 of 1977 filed High Court Action 700W of 1999 against Harry Narine claiming possession and this action was abandoned and deemed incapable of being revived (paragraphs 15 and 16);

(m) That the Petitioner will contend that rights, title and interests of any other person including Raymond Persaud were long extinguished before 1999 (paragraph 17);

(n) That in June 2000, Harry Narine filed High Court Action 204P of 2000 seeking a Declaration of Title for the disputed property and a notice of Opposition was filed by Raymond Persaud and a trial was conducted by Land Court Judge Mr Rishi Persaud and on 28th June 2004, the Petition was dismissed but that Harry Narine appealed and the appeal was dismissed by the Court of Appeal on 7th February, 2008 for failure to comply with the rules (paragraphs 18-22);

(o) Inspite of the proceedings, the Petitioner and her husband remained in occupation and possession of the land and in November 2010 the Petitioner personally and on behalf of the estate of Harry Persaud filed High Court Action 1167/2010 seeking a Declaration of Title to the disputed land and Notice of Opposition was filed by Mr Raymond Persaud and as a result of a summons, the Petition was wholly withdrawn and discontinued on 24th May, 2013 (paragraphs 24-26); and

(p) That the Petitioner and Harry Narine are regarded by all as the owners of the land and after Harry Narine died in 2005 the Petitioner continued in sole and undisturbed occupation, use and enjoyment of the property (paragraph 29).

3. By affidavit in support of Petition by Nazim Omroo filed 16th March 2017 , Mr Omroo alleges:

(a) That he is 44years old and a carpenter and mason (paragraph 2);

(b) That he moved to Swan, Linden 7 years ago and prior he lived at Sarah Johanna (paragraphs 3 and 4);

(c) That he has known the Petitioner and her husband since he was a child (paragraph 5);

(d) At age of 14 years, sometime in 1986 he worked as a labourer with the Petitioner and her husband at the disputed property (paragraph 6);

(e) That his duties included clearing land of bush and shrubs, digging and maintaining drains, cultivating citrus, suckers and other plants and harvesting the crops and the general maintenance of the property (paragraph 7)

(f) That he worked with the Petitioner and her husband for 16 years until 2002 and during those years planted and cultivated banana suckers, cassava, eddoes, coconut trees, orange trees, tangerine trees, cherry trees, breadfruit trees, blackeye, red beans, corn, and various vegetables such as ochro, bora and calalalu and pumpkin (paragraph 9);

(g) That he assisted the Petitioner to harvest items which he is aware was sold by them and in 1990 she assisted to build a wooden fence around the front boundary of property and fence of wallaba post and barbed wire on side and rear boundaries (paragraphs 10 and 11);

(h) That in 1995 he assisted the Petitioner and her husband to build and construct a wooden building on silts measuring 20 feet by 22 feet (paragraph 12);

(i) That in 2002, he assisted the Petitioner and her husband to build and construct the frames for two concrete dwelling houses on the land one being 22 by 40 feet and other being 20 feet by 20 feet (paragraph 13);

(j) That the time he stopped working with the Petitioner, the dwelling houses were incomplete and only foundations, columns and beams were erected (paragraph 14);

(k) After 2002 he continued to visit the land in the company of the son of the Petitioner to pick fruits and reap vegetables for personal use (paragraph 15);

(l) That last time he visited was early last year to pick breakfruit for personal use (paragraph 16);

(m) That during the entire time he worked with the Petitioner he was aware that no one interfered with their occupation and possession of land or tried to physically remove them (paragraph 18);

(n) That after the death of Harry Narine, he is aware that the Petitioner continued to occupy and continued cultivation with the help of her son, grandsons and hired help (paragraph 19);and

(o) That the Petitioner and her husband are regarded as owners of the property (paragraph 20).

4. By affidavit in support of Petition by Gyanwattie Narine filed 18th July, 2017 , Ms Narine alleges:

(a) That she is the daughter of the Petitioner and is a farmeress (paragraphs 2 and 3);

(b) That she moved to Sarah Johanna in 1972 and since 1992 she started helping her mother and father to maintain the disputed land (paragraph 5);

(c) That she assisted with clearing land, cultivating citrus, suckers and other plants and tending to crops, harvesting and general maintenance of the land (paragraph 6);

(d) That she is aware in 1986 her father and mother employed Nazim Omro to work as labourer and his duties included clearing the land, digging and maintaining drains, cultivating various citrus, suckers and other plants, tending crops, harvesting and general maintenance (paragraph 8);

(e) That Nazim Omroo worked with them for 16 years until 2002 and she continued to assist her mother to cultivate the land by planting and cultivating banana suckers, plantain suckers, cassava, eddoes, coconut trees, orange trees, tangerine trees, cherry trees, breadfruit trees, black eye, red beans, corn and various vegetables including ochro, bora, callalu and pumpkin (paragraph 11);

(f) That in 1990 Nazim Omroo and one of her brother Mulchan Narine assisted to build wooden fence at the front boundary of the property and the fence consisted of wallaba posts and barbed wire on side and rear (paragraph 13);

(g) That in 1995 Nazim Omroo and her brother assisted the Petitioner to build and construct a wooden building on stilts measuring 10 feet by 22 feet in which he resided until 2004 (paragraph 14);

(h) That in 2002 Nazim Omroo and her brother assisted the Petitioner to build and construct two frames for 2 concrete dwelling houses on land, one being 22 feet by 40 feet and other 20 feet by 20 feet (paragraph 16);

(i) During 1992 until 2017 she is aware that the Petitioner and her father were in sole exclusive possession and occupation of the disputed property and no one interfered with their occupation (paragraphs 18 and 19); and

(j) That she recalls Raymond Persaud attempted to reclaim land but failed (paragraph 20).

5. By affidavit in support of Petition by Peter Davson filed 6th December, 2017 , Mr Davson alleges:

(a) That he is employed as a Quarantine Inspector of NAREI within the Ministry of Agriculture and in 2008 he was employed as Crop Reporter/ Supervisors (paragraphs 2 and 3);

(b) That on 15th February, 2008 the Petitioner lodged with him a complaint of crop destruction caused by cows belonging to Mr Griffith and Mr Mohabir in respect of farm under her control and possession at Pearl Village (paragraph 5);

(c) That the Petitioner reported that the destruction started on 23rd December, 2007 (paragraph 6);

(d) As a result on 27th February, 2008 he visited the land and in the company of the Petitioner and one of her farm labourers inspected the said damage to record his findings (paragraph 7);

(e) That when he reached the land he observed several cows damaging and feeding on plants and crops and with help they chased away the cows and he inspected and took record of the damages and he observed noticeable destruction of hundreds of plantain suckers and banana suckers (paragraphs 8,9,10);

(f) That the farm was about 5 acres and he spent in excess of 3 hours recording damages and counting various plants and suckers destroyed (paragraphs 11,12 and 13);

(g) That he counted the plants and crops as being damaged as follows and prepared and signed report dated 5th March, 2008:

a. 1200 banana suckers

b. 1000 plantain suckers

c. 2000 roots of cassava

d. 60 pumpkin plants

e. 120 pepper plants

f. 20 corilla plants

g. 150 young coconut plants (paragraph 14).

6. By Notice of Opposition dated 8th November, 2017 Roy Krishanun Sarjoo opposes this application. By his Affidavit in Support Mr Sarjoo alleges the following:

   (a) That he is the transported owner of the disputed land by Transport 863 of 2014 and he bought the land from Ramcoomar Persaud who bought it from the owner Raymond Persaud (paragraphs 3 and 4);

   (b) That before he purchased the land he visited it and no one was in occupation of it (paragraph 5);

   (c) That before he purchased it he walked around about half way though the land and found no evidence of agricultural or residential activity going on on it (paragraph 7);

   (d) That since he became the owner he commenced activities and ahs since cleared it twice (paragraphs 9); and

   (e) That before he bought it he took judicial documents to his lawyer who gave him the go ahead to buy it and he has exhibited these documents (paragraphs 10 and 11).

7. By affidavit in reply to affidavit in support of Opposition by Roy Sarjoo dated 20th November, 2017 the Petitioner alleges as follows:

   (a) That she admits that Roy Sarjoo holds Transport 863 of 2014 in respect of the disputed land (paragraph 4);

   (b) That she admits paragraph 4 and 5 and contend that:

      (i) Transport in the name of Raymond Persaud was extinguished by law long before it was sold to Ramcoomar Persaud;

      (ii) That Ramcoomar Persaud never acquired any rights, title or interest in the property;

(iii) At the time when Ramcoomar Persaud purported to purchase the Transport of Raymond Persaud was extinguished and he held not rights, title or interest legfally capable of being sold;

(iv) That Ramcoomar Persaud had no rights title and interest in land capable of being sold to Roy Sarjoo ;

(v) That both transport in names of Ramcoomar Persaud and Roy Sarjoo are nominal in that they are legally incapable of passing any right, title and interest (paragraph 5);

(c) It is denied that no one was in occupation or that there was no evidence of agricultural activity (pargraph 6);

(d) That it is admitted that Roy Sarjoo entered land and cleared in March 2017 (paragraph 7); and

(e) That in March 2017, she caused to be filed proceedings against Roy Sarjoo by Statement of Claim 2017-HC-DEM-CIV-SOC 15 seeking damages for trespass (paragraph 8) .

8. By affidavit in support of Opposition by Ramcoomar Persaud filed on 12th October, 2015, Mr Persaud alleges as follows:

(a) That he is a real estate agent and investor for 35 years and has been friends with Raymond Persaud for over 30 years and Ramyond Persaud was the transported owner of the disputed property by Transport 1419 of 1977 (paragraphs 2 and 3);

(b) That in 2013, he visited and inspected the land for purpose of purchasing same and was accompanied by Raymond Persaud and his wife and these visits were in the day time and he did not see the Petitioner or anyone on the land and there were no signs of agricultural or residential activities on the land (paragraph 4);

(c) That he was shown certain judicial documents from Mr Poonai including judgment of Land Court dated 28th June, 2004 and Court of Appeal Order dated 7th February, 2008 (exhibited) (paragraph 5);

(d) That he did a search at High Court and found the transport to be free of encumbrances and on 10th September, 2013 he entered into agreement of sale and purchase of the disputed land (paragraph 7);

(e) That said conveyance was advertised on 22nd February, 2014 and no opposition was filed (paragraph 8);

(f) That in the months of October, 2013, he visited the land with potential clients who went onto the land in daytime and in public and during those visits neither the Petitioner nor anyone was seen on the land (paragraph 9);

(g) That he eventually sold land to Roy Sarjoo on 10th December 2013 which was advertised and no opposition was entered (paragraph 10);

(h) That 28th May 2014 transported were passed simultaneously (paragraph 11);

(i) The Petitioner should not be allowed to proceed with her applications as the matter is res judicata (paragraph 12);

(j) That the Petitioner and her husband continuously approach this court without clean hands as they never enjoyed quiet and peaceful occupation and should not be entitled to prescriptive title (paragraph 13); and

(k) That the Petitioner and her husband tried deceive this court and it should be dismissed with costs (paragraphs 14 and 15).

9. By affidavit in reply to affidavit in support of Opposition by Ramcoomar Persaud dated 30th November, 2017 the Petitioner alleges as follows:

(a) That it is not true that no one occupied the land and she contends that at all material times the land was cultivated with various cash crops, banana suckers, fruit trees and other crops (paragraph 5);

(b) That her use of the land for agricultural purposes constitutes reasonable and acceptable usage of having regard to the nature and location of the land (paragraph 6);

(c) That she only discovered the sales of the property after Roy Sarjoo unlawfully and illegally entered her property and destroyed her crops using an excavator (paragraph 8);

(d) That Ramcoomar said he visited land in 2013 and as such cannot give evidence of occupation for period 1984 to 2013 and she believes that:

(i) The evidence of Ramcoomar Persaud is no relevance and not material;

(ii) That evidence of Ramcoomar Persaud is little or no probative value;

(iii) That acquisition of Transport by Ramcoomar Persaud does not stop time from running;

(iv) That acquisition of transport by Ramcoomar does not make him a relvant or material witness as his obtaining transport does not affect rights, title, interest of the Petitioner, and

(v) That evidence of Ramcoomar Persaud be disallowed (paragraph 10).

10. By affidavit in support of Opposition by Father Thurston Riehl filed on 8th November, 2017, Father Riehl alleges as follows:

(a) That he is a Christian priest and resides at 170 Waterloo Street and that he and his wife are the owners of Lot B Section B North Half Upper Pearl, by Transport No. 1181 of 1986 (paragraphs 2 and 3);

(b) That subsequent to his purchase of Lot B he also purchased Lot A part of Section B North Upper Pearl and own 10 acres of land in the same location next to each other (paragraphs 4 and 5);

(c) That his land is 30 feet away from the disputed land (paragraph 6);

(d) That he has an exotic fruit farm on his ten acres and since 1986 he would visit his land regularly as it is his passion and pride (paragraph 8 and 8);

(e) That he knows Raymond Persaud the previous owner and that since 1986 he had not seen the Petitioner or her husnand on the disputed land nor were they ever in effective control or occupation of the disputed land (paragraph 10);

(f) That occasionally the Petitioner's relatives would camp on land for few days and plant few plants here and there (paragraph 11);

(g) That he knows the Petitioner called "Fat Lady" does not live in Peal but runs a rum shop at Sarah Johanna (paragraph 12);

(h) That once her relatives tried to harm Raymond Persaud and his wife and he rescued them (paragraph 13);

(i) That he has several buildings on his land (paragraph 14);

(j) That the Petitioner nor her husband or relatives occupied or planted the land and that the longest they have ever stayed on land in one week (paragraphs 15 and 16); and

(k) That the Petitioner and her family have a reputation for dishonesty, stealing and terrorizing and he can speak based on his own experience with them (paragraph 17).

11. By affidavit in reply to affidavit in support of Opposition by Father Riehl dated 30th November, 2017 the Petitioner alleges as follows:

(a) That she is aware that Father Riehl is regarded as owner of 10 acres of farm land located opposite the disputed land (paragraph 4);

(b) That Father Riehl only visits his farm once a week on Saturdays and only from noon till dusk (paragraph 5);

(c) That Father Riehl can only give evidence of what he observes on Saturdays and he cannot say whether she and her husband were present at farm for remaining 6 days (paragraph 6);

(d) That her husband had problems belonging to Father Riehl where goats would come across to their farm and destroy crops (paragraph 7); and

(e) Having regard to past conflicts with Father Riehl his evidence cannot be deemed credible (paragraph 11).

12. The Registrar's Report dated 5th June, 2015 states that Lot B part of Section B part of North half of Plantation Upper Pearl is registered in the name of Thurston Riehl etanor and held under Transport No. 1181 of 1986.

13. Counsel for the Petitioner filed closing written submissions on 7th July, 2019 while Counsel for the Opposer filed closing written submissions on 19th March, 2019 and also filed Reply to the Petitioner's submission on 6th August, 2019 and these submissions were taken into consideration in rendering this decision.

THE LAW

14. This action before this court is **a claim to land by adverse possession**. In accordance with s. 3 of the **Title to Land (Prescription and Limitation) Act, Cap. 60:02**

"*Where the court is satisfied that the right of every other person to recover land or any undivided or other interest in land has expired or been barred and the title of*

every person to the land has been extinguished, title to the land may, subject to subsection (2) be acquired:

(a) By sole and undisturbed possession, user or enjoyment for not less than twelve years;

(b) If possession, user or enjoyment is established to the satisfaction of the court; and

(c) If possession, user or enjoyment was not taken or enjoyed by fraud or by some consent or agreement expressly made for given for that purpose."

15. Accordingly, a claimant to land by adverse possession had to show that for the requisite period he (and any necessary predecessor) had (i) a sufficient degree of physical custody and control of the claimed land in the light of the land's circumstances (factual possession) and (ii) an intention to exercise such custody and control on his own behalf and for his own benefit, independently of anyone else except someone engaged with him in a joint enterprise on the land ('intention to possess") – **Bisnauth v Shewprashad** [2009] CCJ 8.

16. As comprehensively noted by **Kissoon JA** in the **Matter of a Petition by Boston Dey and Yvonne Gilgous**(CA 91/2000) at p. 5 for a Petitioner to be successful in an application for a Declaration of Title by adverse possession he must satisfy the court of the following:

(i) Sole and undisturbed possession and occupation;

(ii) That the area so occupied is defined on a plan;

(iii) That the occupation was adversely and exclusively exercised;

(iv) That the occupation was for a period of at least 12 years;

(v) That the possession was not obtained by some fraud;

(vi) That the possession and occupation was not the result of some consent or agreement made or given for that purpose; and

(vii) That the Petitioner had the necessary animus possidendi i.e. intention to possess the land and not own.

17. In **Powell v Mc Farlane** (1977) 38 P & CR 452 **Slade J** stated that *"factual possession signifies an appropriate degree of physical control...The question of what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed...everything must depend on the particular circumstances, but broadly I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and no one else has done so."*

18. On the issue of anumispossidendi, it was stated in **Toolsie Persaud Limited v. Andrew James, Shivlochanie Singh and the Attorney General** [2008] CCJ 5 at paragraph 24 that

"The Court of Appeal was clearly correct in holding that the ***requisite intention to possess is present when the claimant is in factual possession of the land and intending to make full use of it in the way an owner would.*** *Indeed it was once thought that the animus possidendi necessarily involved an intention to own or acquire ownership of the land or to exercise acts of ownership over it. Slade LJ however in Buckingham CC v Moran [1990] Ch 633 at 643 made it clear that although 'there are some dicta in authorities which might be read as suggesting that an intention to own the land is required..I agree with the judge that what is required for this purpose is not an intention to own or even an intention to acquire ownership, but an intention to possess-* ***that is to say, an intention for the time being to possess the land to the exclusion of all other persons, including the owner with paper title."***

19. It was established in **JA Pye Oxford Ltd v Graham** [2002] UKHL 30 thatwhat was required of a person in the position of the Applicant was that he could show, for the requisite period of 12 years, that (1) he was in possession of the land, that is that he had a sufficient degree of single and exclusive physical custody and control of the land and (2) that he had an intention to exercise such custody and control on his own behalf and for his own benefit.What acts constitute a sufficient degree of exclusive physical control must depend on the circumstances of the case, in particular the nature of the land and the

manner in which land of that kind is commonly used or enjoyed. Broadly, *"what must be shown is that the alleged possessor has been dealing with the land in question as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so"* (per Slade J in **Powell v. McFarlane**, (1977) 38 P & CR 452, at p.471, cited with approval by Lord Browne-Wilkinson at [2003] 1 AC at p.436).

20. **Lord O'Hagan** in **The Lord Advocate v Lord Lovat** (1880) 5 App Cas 273 which has been quotes with approval is many subsequent cases stated that

"As to possession, it must be considered in every case with reference to the peculiar circumstances. The acts, implying possession in one case, may be wholly inadequate to prove it in another. The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow with a due regard to his own interests- all these things, greatly vary as they must, under various conditions, are to be taken into account in determining the sufficiency of a possession."

21. The intention that must be shown is *"an intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor so far as is reasonably practicable and so far as the processes of the law will allow"* (see per Lord Browne-Wilkinson in **JA Pye Oxford Ltd v Graham** at p.437). As Lord Hope put it at p.446, *"The important point for present purposes is that it is not necessary to show that there was a deliberate intention to exclude the paper owner... The only intention which has to be demonstrated is an intention to occupy and use the land as one's own... So I would hold that, if the evidence shows that the person was using the land in the way one would expect him to use it if he were the true owner, that is enough"*. Lord Hutton, at p.447, also considered that no further evidence of intention was normally required where the person had occupied the land and was using it in the way in which an owner would. Equivocal acts in relation to the land would be insufficient, at least by themselves, to establish intention.

22. **In GoomtiRamnarace v HarrypersadLutchman** (2001) 59 WIR 511 **Lord Millet** stated at paragraph 10 that

"Generally speaking, adverse possession is possession which is inconsistent with and in denial of the true owner. ***Possession is not normally adverse if it is enjoyed by a lawful title or with consent of the true owner.'***

23. In **Bisnauth v Shewprashad** it was stated at paragraph 20 that *"in effecting entry to the land it was not important whether the intended possessor was aware of his wrongful act or entered theland under the mistaken belief that he had a legitimate right to enter, provided that* ***such entry was not referable to an agreement or permission of the true owner."***

24. In **Romany v Romany** (1972) 21 WIR 491 at 494 ,**Georges JA** stated that

"Recent authority makes it clear that in family situations..where one member helps another in a period of difficulty over accommodation there is usually no intention to create legal relationships, so that there can be no tenancy [at will] but merely a licence.'

25. In **Mathan v Kujal** (2014) 85 WIR 383 **Roy JA** stated at paragraph 14 that

'From all appearances what was intended here was for the petitioner to have a personal privilege of residing with her father-in-law in his house as member of his extended family kinship. For all these years she was the 'object of his charity and in my mind, it was clearly intended that her occupation was permissive and ***permissive occupation of course can never be converted into adverse possession.*** *It is inconceivable in the circumstances outlined above that the petitioner could have been entertaining the thought that she was acquiring some right in and over the deceased's house much less of formulating an intention to own and possess and to claim a statutory title of the entire property when ownership of the disputed land never resided in him. The fact of the matter is that she lived in the deceased's house because he permitted her to do so, and not because of any claim of hers."*

26. In **JA Pye Oxford Ltd v Graham** [2002] UKHL 30 at paragraph 37 **Lord Browne Wilkinson***said " it is clearly established that the taking or continuation of possession by*

squatters with the actual consent of the paper title owner does not constitute dispossession or possession by the squatter for the purpose of this Act."

27. ***In*** **Buckingam County Council v Moran** ***[1990] Ch 623 Slade LJ*** noted that

"Possession is never adverse within the meaning of the 1980 Act if it is enjoyed under a lawful title. If therefore, a person occupies or uses land by licence of the owner with the paper title and his license has not been duly determined, he cannot be treated as having been in 'adverse' possession against the owner with the paper title."

28. It was established in **Pye v. Graham** that what was required of a person in the position of the Applicant was that he could show, for the requisite period of 12 years, that (1) he was in possession of the land, that is that he had a sufficient degree of single and exclusive physical custody and control of the land and (2) that he had an intention to exercise such custody and control on his own behalf and for his own benefit.What acts constitute a sufficient degree of exclusive physical control must depend on the circumstances of the case, in particular the nature of the land and the manner in which land of that kind is commonly used or enjoyed. Broadly, "what must be shown is that the alleged possessor has been dealing with the land in question as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so" (per Slade J in **Powell v. McFarlane**, (1977) 38 P & CR 452, at p.471, cited with approval by Lord Browne-Wilkinson at [2003] 1 AC at p.436).

THE PETITIONER'S CASE:

EVIDENCE OF DHORPAT NARINE

29. Ms Narine testified that she had filed a previous Petition which was withdrawn and adopted all her affidavits as her evidence in chief. She also stated that she is not presently in occupation of the land and that she last occupied it on 7th February, 2017 since Mr Sarjoo threw out her workers on the land and allegedly pulled out a gun on her grandson. She also indicated that she filed action against him HC 15/2017 in which exhibits were

attached showing photographs of the state of land before and after the destruction (Exhibit E).

30. In cross examination, she admitted that her husband had filed a Petition for the same land in 2000 but that she did not give evidence but that that a Petition was supported by 2 persons Bhojnauth Harry and Frederick Nelson and this Petition was tendered and marked "H". She also admitted that this action was dismissed after trial was conducted and that there was no appeal but when shown Court of Appeal Order 13th March 2008 (Exhibit J) she explained that she did have money to proceed then. Tendered and marked "K" was the written judgment of the court dated 28th June, 2004.

31. She admitted that her husband owned a shop at Lot 4 Sarah Johanna that is about 200/300 rods from disputed property. She however disputed that her husband ran the shop and claimed that she did from 1978 until 2005 after which she took over the farm. She claimed that the farm was her main business since the shop made less than the farm. She stated that she didn't know why her husband would say in the previous trial that he ran the shop.

32. She denied knowing Raymond Persaud although in her 2013 Petitioner she stated that in September 1999 Raymond Persaud claimed an injunction and denied that he was owner in 1999 (HCW 700/1999 tendered and marked L). She alleged that Chandra Persaud was the owner and denied that he had given her permission to go on land which she alleged she was on since 1984. She also denied knowing that 2010 Petition was opposed by Raymond Persaud or that he filed a summons although at paragraph 25 of her present Petition she said that he had filed an opposition. She also claimed not know that 2010 Petition was withdrawn but admitted that there were all in relation to same disputed land.

33. She admitted that dwelling house was incomplete in 2010 and in 2013 when she filed again. She claimed that concrete structures were farm houses and stated that she was waiting to get title before she complete it. She denied that Mr Sarjoo showed her his transport in 2014 and alleged that it was till 2017 she knew he was the owner. She also

stated that no criminal charges were filed against either her grandson or the Opposer. She denied knowing Father Riehl but said she knew of his farm and denied that she lived in Pearl and also denied that she was never in control of the disputed property or that they only occasionally camped there and farmed. She also denied allegations made by Ramdai Persaud that she was not in effective occupation of the land.

34. In re-examination she admitted that there are 2 incomplete dwelling houses that she started in 2002.

EVIDENCE OF PETER DAVSON

35. Mr Davson adopted his affidavit evidence as his evidence in chief.

36. In cross examination, he stated that he doesn't know the Petitioner or her family personally and that he only visited on that one occasion and that he has no knowledge of what happened on land for the last 12 years since he only visited once in 2008. He indicated that he had not given an affidavit in support in 2010 Petition that he was unaware of. Tendered and marked Exhibit M was his official report at the time of incident. When questioned about the accuracy of the details of his affidavit today and his report at the time where he did not mention that the Petitioner had accompanied him to location he stated that he forgot to include it then but that it was true. He also admitted that it was Petitioner who told him that she was in control and possession of the disputed property and that he did not know for fact if she was or not. He also stated that at the time when he drove cows out of the disputed property there was no gate to the front and that the rest of land was not fenced completely.

EVIDENCE OF GYANWATTIE NARINE

37. Ms Narine adopted her affidavit evidence as her evidence in chief.

38. In cross examination, she stated that she knows that her mother wants the land and she wants her to have it and as such the contents of her affidavit are in support of that but

stated that it is a true story she tells. She stated that she did not know her father had filed for the land in 2000 and that she did not file an affidavit in support in that Petition. She further stated that nothing was told to her and it was within her personal knowledge. She indicated that although she did not visit farm everyday in 1992 she visited it most of time and was unable to state what lot number the disputed land was.

39. She admitted that presently her mother was not in occupation but stated that her father was there since 1984 until he passed in 2005. She further stated that there are two incomplete buildings on the land. She indicated that her mother always lived at Sarah Johanna and that she carried on business there. She stated that she was paid $1000 a day and it increased over time and that she worked for them and helped them. She alleged that until last year there was a fence on the land. She further stated that before 1992 she did not go on the land and that anything before that was told to her.

OPPOSER'S CASE:

EVIDENCE OF ROY SARJOO

40. Mr Sarjoo deposed that he was the Transported owner of the disputed property by Transport No. 863 of 2014 and that he visited the location before he bought it and that presently he is in occupation of the land and he has employed two persons to plant the land.

41. In cross examination, he stated that he first visited the disputed property in the first week of December, 2013 and that prior to that date he does not know anything in relation to the land. He admitted that the Petitioner had filed an action against him in 2017. He further stated that when he cleaned the land he used an excavator and denied that the part of the land was fenced at the back. He denied that there were any plantain or banana suckers on the land or coconut trees. He also explained that paragraph 9 of his affidavit meant that maybe the Petitioner was planting the land based on court documents. He further stated that although he doesn't know Father Riehl, he spoke to him as he was a neighbor and he told him that the Petitioner wasn't in occupation of the land and further stated that although Father Riehl said that the longest the Petitioner ever stayed on land was one

week that that wasn't a long time. He further stated that he did not give either Dial Mohabir or Ramlake Persaud money to give evidence on his behalf and said that they told him that the Petitioner was never on the land for any long time.

EVIDENCE OF FATHER RIEHL

42. Father Riehl adopted his affidavit evidence as his evidence in chief.

43. In cross examination , he stated that he often overnites at his farm at Pearl. He further stated that although he was director of school as well a priest at a church that he fits them all into his weekly schedule including farming. He further stated that from 1986 to 2005 although he was the Director of a school he used to go up to his farm at 4 am and again at 3pm in the afternoon and that he was there all Saturday and till Sunday afternoon.

44. He further testified that he doesn't know the Petitioner personally and that he was never told that she occupied the disputed property. He also denied knowing the Petitioner's husband and indicated he never had any dealings with him. He said it although possible that when he was not at the farm the Petitioner worked the land but that was a stretch of possibility. He further stated that he had met Raymond Persaud a long time ago and possibly before 2000 and he think it was about 8 years after he bought his land in 1986. He stated that he had enquired about the disputed property as he would have liked to purchase it. He further affirmed that around 2014/2015 relatives of the Petitioner did threaten Raymond Persaud and his wife as they sought refuge at his farm. He further stated that other than banana suckers he has seen some limited planting of ground provision and further stated that he saw persons employed by Raymond Persaud clearing the bush in 2014 and before. He stated that he did see the Petitioner's grandson on the land but he did not see what he was doing. He further stated that he was aware that the Petitioner's husband had petitioned for the disputed land earlier.

45. In re-examination he stated that any farming he saw on the disputed land was a very small fraction of total 5 acres.

THE COURT'S FINDINGS:-

46. The pronouncement of **Justice Wit** in **Rajkumar Thakur v Deodat Ori** [2018] CCJ 16 is instructive in any claim for adverse possession. He posited at paragraph 48 that

" The protection of property rights has always been of utmost importance and will remain to so but that protection has always been subject to exceptions and principles. That law of adverse possession is one such exception. It was developed to protect the rights of those who have been in undisturbed possession of land for a certain period of time subject to proof, on balance of probabilities of physical occupation and an intention to hold it as their own. The paper owner if not automatically excluded as there is the right to bring proceedings and reclaim his property within that said period. What is most important is there must be clear and convincing evidence to support any claim for prescriptive title."

47. This court must first address the issue of the implication of the previous dismissed Petition instituted by the Petitioner's husband (Petition No. 204 of 2000) for the same disputed property on the present 2013 Petition before this court for the same disputed property. The Petitioner in her present 2013 Petitioner stated that she claims the disputed property both personally and on behalf the estate of her husband. The 2000 Petition which was Opposed by Raymond Persaud was dismissed on the merits after Justice Rishi Persaud (Land Court Judge at the time) conducted a trial in this regard. In that Petition, the subject matter was exactly what is claimed today and the Petitioner then alleged to have been in disputed property since 1984 and alleged that he cultivated the land with various fruit trees. The learned judge after reviewing all the evidence and the legal principles stated that he does not believe that during the period alleged by the Petitioner that he did anything "more than sporadic farming since he also found the Petitioner to be hesitant and evasive" (page 5 of written judgment). He also stated there were too many inconsistencies in the Petitioner's case and that the Petition had failed on its own inherent evidential weakness (page 6 of written judgment) and further held that that the Petitioner never had necessary intention to occupy adversely and dismissed the Petition on 28th June, 2004. Further Civil Appeal No. 58 of 2004 was dismissed on 13th March, 2008 for failure to comply with Court of Appeal Rules.

48. Counsel for the Opposer in his written submissions at page 3 has urged this court not revisit any alleged activities before filing of the 2000 Petition since a court of parallel jurisdiction has already ruled on the issue of adverse possession during the period before 2000 (**Elsie Persaud v Ogle** (1979) 27 WIR 160, **Doerani Singh v AG** [2018] CCJ 3 AJ. Counsel for the Petitioner in response to this argues that "*since the Petitioner and witnesses are different than previous Petition and basis of dismissal of previous petition was perceived unreliability of evidence that the court's ruling based solely on the evidence presented at that time and does not bar this court from assessing the evidence presently presented in relation to adverse possession prior to 2000.*" However, Counsel for the Petitioner provided no authority to support this submission.

49. The general rule is that the outcome of litigation should be final. The words res judicata (Latin for a matter that already has been decided) are the basis for the principle that when a matter has been finally adjudicated upon by a Court of competent jurisdiction it may not be reopened or challenged by the original parties or their successors in interest. **Black's Law Dictionary** 7th Edition defines this principle as-

"as an affirmation defence; barring the same parties from litigating a second law suit on the same claim or any ***other claims arising from the same transaction or series of transactions raised in the first suit."***

50. The principle of res judicata prevents a party to litigation from raising a second time a cause of action or issue which has already been litigated and adjudicated upon. Drake J in **NW Water Limited v Binnnie and Partners** highlights the wide import of the terminology of res judicata: *"In many of the older cases the terms "res judicata" "issue estoppel" and "cause of action estoppel," "estoppel by record" or "collateral estoppel" were sometimes used loosely and the distinction between them was not always clear. The modern tendency has been to use "res judicata" comprehensively to cover all those terms of estoppel."*

51. The authority most cited on this topic is **Henderson -v- Henderson** [1843-1860] All E.R. Rep. 378 wherein **Wigram V.- C.** stated at page 381:-

"... where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, ***the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest,*** *but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time".*

52. **Halsburys Laws of England** Fourth Edition Reissue Volume 16(2) at paragraph 977 describes res judicata as:

"A fundamental doctrine of all courts that there must be an end to all litigation...it amounts to an allegation that the whole legal rights and obligations of the parties are concluded in an earlier judgment."

53. In **Halsbury's Laws of England** 5th edition Volume 12, paragraphs 1166 and 1167 the learned authors opined that :

"the law discourages re-litigation of the same issues except by means of an appeal. It is not in the interests of justice that there should be re-trial of a case which has already been decided by another court.....the rule in Henderson v Henderson has been described as being essentially part of the court's wider jurisdiction for striking claims out as an abuse of process..... ***the rule provides that a claimant is barred from litigating a claim that has already been adjudicated upon or which could and should have been brought before the court in earlier proceedings arising out of the same facts*** *.....the scope of the rule has been extended to claims where there has been a settlement rather than a judgment or a consent order".*

54. From the authorities the two relevant issues when determining res judicata is firstly whether the same parties were involved in both actions and whether the matters were dealing with the same substantive issue. Lord Morris **in Yat Tung Investment Co. Ltd v Dao Heng Bank Ltd** [1975] AC 581 stated at paragraph 590:

"The shutting out of a "subject of litigation" - a power which no court should exercise but after a scrupulous examination of all the circumstances - is limited to cases where ***reasonable diligence would have caused a matter to be earlier raised****; moreover, although negligence, inadvertence or even accident will not suffice to excuse, nevertheless "special circumstances" are reserved in case justice should be found to require the non-application of the rule."*

55. It is clear from Lord Morris' decision that the court has a discretion to prevent a case from being retried where an issue was omitted by a party to a proceedings, unless there are special circumstances. Negligence, inadvertence or even accident, though, will not suffice to excuse the parties from not bringing forward that issue in those earlier proceedings.

56. The rule was further explained by the Court of Appeal in **Barrow v Bankside Agency Ltd** [1996] 1 All ER 981by Sir Thomas Bingham, Master of the Rolls at page 983 letter g as follows:

"The rule in Henderson v Henderson..... is very well known. It requires the parties, when a matter becomes the subject of litigation between them in a court of competent jurisdiction, to bring their whole case before the court so that all aspects of it may be finally decided (subject, of course, to any appeal) once and for all. In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise. The rule is not based on the doctrine of res judicata in a narrow sense, nor even on any strict doctrine of issue or cause of action estoppel. ***It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on forever and that a defendant should not***

be oppressed by successive suits when one would do. That is the abuse at which the rule is directed."

57. In **Garraway v Williams** , Cummings Edwards JA asked "Did Garraway have an opportunity to recover that which he seeks to recover in this section action?" The court further when on to state at paragraph 36 that the authorities show that only in special circumstances, would a court allow a claim which was not the subject of res judicata in strict sense, but which could have been brought forward in some earlier proceeding, to be brought where it would in effect be an abuse of process."

Further the court held that the ***"public interest required finality to litigation and that the principle did not only apply where the subject matter was the same but to matters of fact and law related to the subject matter which could but were not raised in the first action."***

58. In **Thomas v AG** (No 2)(1988) 39 WIR 372, Sharma JA noted in respect of the principle of res judicata that:

"where a given matter becomes the subject of litigation in and of adjudication by a court of competent jurisdiction a court will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of mattes which might have been brought forward, only because they have from negligence or inadvertence or even accident, omitted part of their case. The plea of res judicata applies except in special cases, not only points upon that which the court was actually required by the parties to form an opinion and pronounce judgment, ***but to every point which properly belonged to the subject of litigations and which the parties, exercising reasonable diligence might have brought forward at the time."***

59. The case law and learning is clear. A court must consider whether the substantive issue in a claim brought by the same parties has already been determined by a court. The court must now consider whether what was determined in the prior case was substantially the same issue considered in this case. The court has already noted and the Petitioner has stated in her Petition that she brings this Petition both personally and on behalf of estate

of Harry Narine and Harry Narine was the original Petitioner in the 2000 Petition and it was in relation to the same disputed property. Although the witnesses are different in the present case, the Petitioner is not allowed to re-ligitate the same issues with better stronger evidence (better witnesses) and more competent Counsel. This is not one of the noted exceptions to the res judicata doctrine.

60. Further under the broader concept of abuse of process in the **Caribbean Civil Court Practice** note 23.27 it is provided that

" The concept of 'abuse of the court's process" in the form of re-litigation is wider than res judicata or issue estoppels. It covers relitigation where the party failed to bring his whole case forward in one go and wishes to supplement it or being in other parties in a second set of proceedings. Observation by Sir James Wigram in Henerderson v Henerson to the effect that a person should bring his whole case against all possible parties in "one go" do not mean that re-litigation is barred but rather it may be demonstrated to be an abuse of process."

61. Lord Bingham in **Johnson v Gore Wood & Co** [2002] 2 AC 1 underscored the underlying public interest in **the Henderson v Henderson** abuse of process in simple terms at page 40 :-

*"But Henderson -v- Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. **The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the Court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all.** I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a Page 7 of 14 previous decision or some dishonesty, but where those elements are present the later proceedings will be much more*

obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the Court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits – based judgment which takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the Court by seeking to raise before it the issue which could have been raised before. ... it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances."

62. Recently the Caribbean Court of Justice in **Garraway v Williams and Rambarran** examined the doctrine and in reference to the classical exposition of the governing principles set out in Henderson v Henderson observed:

"[17] The fundamental rule in Henderson v Henderson (supra) has stood the test of time, albeit it has been restated in more flexible terms in more recent times. There remains a ***basic obligation on a litigant to present the entirety of his case all at once rather than in a piecemeal fashion. Failure by one party to present the whole case at once is detrimental to the interests of the other parties and the efficiency of the judicial system.*** *In assessing whether a defence of res judicata will succeed in barring new proceedings, the courts adopt a broad merits-based approach which takes into account all the relevant facts in order to decide whether in all the circumstances of the case a party is misusing abusing the processes of the court by bringing proceedings in respect of issues that should reasonably have been brought in earlier proceedings (see Lord Bingham of Cornhill in Johnson v Gore Wood & Co [2002] AC 1 at p. 24)."*

The court further stated that the concept of abuse of process *"**covered re litigation where the party failed to bring his whole case forward in one go and wished to supplement it or bring in other parties in a second set of proceedings**...such an approach was an unmitigated abuse of the court's process and no doubt had placed an unjustified and*

unwarranted strain on an over burdened court system and consequently a financial burden on all concerned."

Accordingly the court held that the land court should have, using its inherent powers, dismissed the petition on the ground of abuse of process alone.

63. In **David Walcott v. Scotiabank Trinidad and Tobago Limited** (TT CV 2012-04235) Justice Kokoram endorsing the principle above from Garraway noted that:

"Such a broad merits based approach is the modern approach and it is salutary as it recognizes that one of the purposes of an estopppel is to work justice between the parties and it is quite open to recognizing that in special circumstances an inflexible application of the rule of res judicata or issue estoppel may have the opposite effect."

64. In **Hoystead v Comr of Taxation** [1926]AC 155, Lord Shaw expressed his views on the need for finality of litigation in these terms (at 165-166):

" ***Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the Court of the legal result***...*Of this were permitted, litigation would have no end except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted."*

65. As such this courts finds that it cannot consider any evidence of adverse possession by the Petitioner during period 1984 to 2000 based on principles of red judicata and abuse of process enunciated above since a court of competent jurisdiction heard that claim and dismissed the Petitioner's case. In **Elsie Persaud v Ogle** (Court of Appeal of Guyana September 1979) **Crane CJ** stated that

"Any judgment or order whether deliberately given or given in ignorance or forgetfulness of the existence of a prior judgment or order on the same subject matters by a court of coordinate jurisdiction will be void, it will be no-order at all-it will be a nullity."

66. The next issue which arises for consideration is when, if at all, did time start to run afresh in favour of the Petitioner? The Opposer in his written submissions stated that since Harry Narine could not have assumed against his own interest that the Court of Appeal would dismiss his appeal and as such any occupation between 2000 and 2004 would not have been a continuation and not a case of time running afresh. As such Counsel for the Opposersubmits that if time runs afresh it was after 2004-2005 and that by this computation the Petitioner would not have had 12 years when she filed this 2013 petition and therefore not satisfied the statutory period for a declaration of title.

67. In order for a dispossessed landowner to stop time running in favour of the person in undisturbed possession, he must bring proceedings against that person in possession or he must physically re-enter the land and take possession thereof (**Toolsie Persaud Ltd v Andrew James Investment (2008) CCJ 5** at paragraph 43). Further as was stated in **Kowsal Narine v Deonarine Natram** [2018] CCJ 11 at paragraph 48 *"proceedings for the recovery of land that were not pursued but were dismissed for want of prosecution or were discontinued were no more relevant than a mere demand for possession which was not pursued."*

68. In **Markfield Investments v Evans** [2001]WLR 1321 **Lord Justice Brown** stated that ***mere issuance of a write in proceedings is no more relevant than a demand for possession and would not stop time from running since if it were true all the true owner had to do to avoid adverse possession claims is issue and perhaps serve a writ every 12 years without more.***

69. As such when Raymond Persaud filed an Opposition to Harry Narine's 2000 Petition asserting his entitlement to the property as the transported owner, it would have effectively stopped time from continuing to run in favour of Harry Narine until a determination of the court matter. The final determination of this 2000 Petition was by Order of Court of Appeal dated 7th February 2008 since although the Land Court dismissed the Petitioner's petition on 28th June, 2004 the pending appeal would have prevented the transported owner from repossessing the property until a final

determination. As such as at this date in February, 2008 time would have rush afresh in favour of the Petitioner and as such when she filed this 2013 Petition she would not have been in sole, continuous, and undisturbed possession for at least 12 years (6 years at maximum) and therefore not entitled to a Declaration of Title.

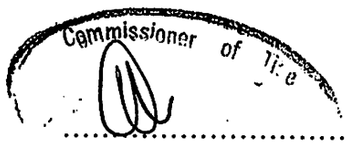
70. Counsel for the Petitioner at paragraph 20 of his submissions stated that *"assuming June 2004 to be effective date of commencement of adverse possession it now settled law that unless there is appending action for possession against a Petitioner, time does not stop running in favour of a Petitioner when the Petition is pending even if the action is opposed-* **Kowal Narine v Deonarine Natram** [2018] CCJ 11." Counsel for the Opposer in his reply stated that *"this CCJ case spoke of a writ action not a Petition and in a writ action the statement of case stops time from running since the logic is that after the Statement of Claim is filed then a defence is filed and at that stage the Claimant may claim that he extinguished the title..the case cite are misunderstand."*

71. The submission by Counsel for the Petitioner is an untenable and incredulous argument and interpretation of the **Nateram** judgment by CCJ. In that case Kowal had instituted proceedings in the High Court and claiming a Declaration that the title of the owner had been extinguished and a Declaration that the deceased's estate was entitled to a Declaration of Title having acquired prescriptive title under section 3. At paragraph 49 the CCJ stated that ***"when Kowal commenced these proceedings on 27th August, 2002 he had not yet in possession for 12 years but when he filed his Statement of Claim on October 2003 he had acquired the statutory 12 year period and the title had been extinguished so that when Deonarine filed his counterclaim on 13th November 2003 it was ineffective to stop time from running in Kowal's favour"*** As such this is restricted to the fact that the normal procedure for a Declaration of Title by the filing of a Petition in the Land court was not followed in that case and that at the time of filing the Statement of Claim (the substantive pleading) the Petitioner had accrued the 12 years. By analogy, in the procedure before the Land Court, the substantive pleading, the Petition was filed at a time when the Petitioner was allegedly in adverse possession for 6 years and as such had not accrued at least 12 years of continuous and undisturbed possession without

permission or consent for a in respect of the disputed property being claimed. The computation of time for the purposes of accruing 12 years for petitioning for a Declaration of Title based on adverse possession cannot include years from the date of filing of the substantive action (i.e. the Petition) to the date of hearing of the Petition. The Petition is to be judged based on fact that at the time of filing of the Petition in September 2013 she alleges to have been in adverse possession for at least 12 years and extinguished the title of the paper owner. The title of the Opposers had not yet been extinguished by operation of law when the Petitioner filed his Petition on 3rd September, 2013 and as such the Petitioner could not invoke section 3(1) of the Title to Land (Prescription and Limitation) Act which states that ***"where the court is satisfied that the right of every other person to recover land or any undivided or other interest in the land has expired or been barred and the title to the land has been extinguished, title to land may be acquired by sole and undisturbed possession, user or enjoyment of not less than twelve years if such possession, user or enjoyment was not taken or enjoyed by fraud or some consent or agreement expressly made or given for that purpose."*** Accordingly, based on the circumstances of this case the Petitioner did not accrue 12 years at the date of filing of the Petition entitling her to make a claim for a Declaration of title based on adverse possession and as enunciated by CCJ in **Ori** above, property rights are very strongly guarded by the courts subject to certain exceptions. This court stands by its previous judgment in this regard in **Petition by Deonarine Dukhi** (Unreported dated 31st July, 2019).

72. Accordingly, after hearing the Petitioner's evidence, the Opposer's evidence, the evidence of the witnesses in support of this Petition and Opposition, observing their demeanour and cross-checking the plausibility of their evidence with the documentation and the pleadings, the court finds that the Petitioner has failed in making out his claim of sole, continuous and undisturbed possession without consent or permission for a period of at least twelve years, in respect of the property being claimed.

73. As such, for the reasons provided above, THE PETITION IS ACCORDINGLY DISMISSED.



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Justice Priscilla Chandra-Hanif