

2015

No. 132-W

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:-

HEMRAJ MAHADEO

Plaintiff

-and-

SONALALL MAHADEO

Defendant

BEFORE: S. Morris-Ramlall, J.

29th November & 20th December, 2019

Mr. R. Rooplall for the Plaintiff

Mr. B. De Santos for the Defendant

JUDGMENT

Introduction

1. The Plaintiff filed this action against the Defendant, who is his father, seeking a declaration that a resulting trust was created in his favour in the subject matter of these proceedings. He additionally seeks injunctive relief and an order directing the Defendant to pay to him the sum of \$3,000,000 (three million dollars) representing money expended by the Plaintiff on repairs and improvements to the subject matter.
2. The Plaintiff's case is that the property was jointly owned by the Defendant and his deceased wife and that, in the year 1996, prior to her death, there was an agreement to dismantle the previous structure and erect a new building. He



contends that it was agreed that the construction would be financed by him and the Defendant and that the Defendant and his deceased wife would reside in it for the remainder of their natural lives and devise it to him by will.

3. The Plaintiff pleaded that he contributed about \$3,000,000 (three million dollars) towards renovation of the property and that by virtue of this expenditure and the promise made by the Defendant to him he is entitled to an interest in the property to the extent of the expenditure which he incurred.
4. The Defendant for his part contends that the Plaintiff made no contribution to, neither was he involved in, any of the arrangements for rebuilding of the Defendant's home. He states that the Plaintiff utilised his savings to construct his own house elsewhere. The Defendant also contends that his deceased wife had no interest to transfer upon her death and that any oral statement made by her prior to her death was incapable of conferring an interest in the property to the Plaintiff.

ANALYSIS

5. I have considered the evidence before me and I am unable to accept the Plaintiff's evidence that there was a joint agreement between him and his parents regarding the reconstruction of the property or that there was any promise to devise the property to the Plaintiff. I do not find him to be a truthful or credible witness on these issues.
6. Further, even supposing that any such promise was made it was ineffective to pass any interests to the Plaintiff or bind the Defendant given the nature of a joint tenancy and given that the Defendant's evidence is that the promise was made to him by his mother only. By virtue of the right to survivorship the Defendant became the sole owner of the property when his wife passed away.

merchants specific building materials were purchased from and the receipts which he tendered were for the relevant period and supported his evidence.

11. I find to be truthful and credible, the Defendant's evidence that the Plaintiff was not involved in the arrangements surrounding the construction of the new house, that he made no promise to confer an interest in the property to the Plaintiff and that the Plaintiff made no financial contribution towards the construction. I believe the Defendant's evidence that around the year 1995 the extent of Plaintiff's gainful employment was the itinerant vending of oranges.

12. In all the circumstances, I find that the Plaintiff has failed to prove his case on a balance of probabilities.

13. This action is therefore dismissed with costs to the Defendant. I have assessed costs on a discretionary basis taking into consideration the relevant factors set out in Part 64.02 of CPR, 2016.

THE COUNTERCLAIM

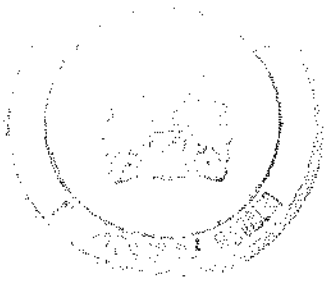
14. There is a Counterclaim for an order that the Plaintiff remove his shop which was on the property and for an injunction restraining him from interfering with the Defendant's use and enjoyment of the property.

15. During the trial it was accepted that the shop is no longer on the property so this is not an issue that requires determination by the court. Additionally, no evidence was given in support of the injunction sought in the counterclaim. I am therefore unable to grant it.

THE ORDERS

16. I therefore make the following orders-

- a) The action is dismissed;



b) The Plaintiff shall pay costs to the Defendant in the sum of \$200,000

(two hundred thousand dollars).



Simone Morris Raulatt

Puisne Judge

Dated this 18th day of May, 2020

