

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

REGULAR JURISDICTION

2018-HC-DEM-CIV-SOC-125

BETWEEN:-

AVINASH PERSAUD

Claimant

-and-

PARASRAM PERSAUD, individually and in his capacity as
Chairman of the Hydronie/Good Hope Neighbourhood
Democratic Council

Defendant



BEFORE: S. Morris-Ramfoll, J.

6th September & 11th October, 2019

Mr. K. Doraisami for the Claimant

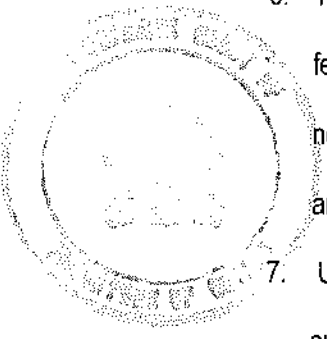
Mr. H. Edmondson for the Defendant

JUDGMENT

1. The Claimant instituted these proceedings in which he seeks a declaration that he is in possession and is entitled to remain in possession of the subject matter. He also seeks injunctive relief to restrain the Defendant from entering or remaining on the property and an injunction to compel him to replace a fence. Damages for trespass, interest and costs are also sought.
2. The Defendant filed a Defence and Counterclaim but did not give any evidence at the trial.
3. In support of his claim, the Claimant gave evidence that after making enquiries about ownership of the subject matter, which adjoins property owned by him, he went into possession

in March, 2018. He stated that he fenced the subject-matter, maintained drainage and planted crops on the land.

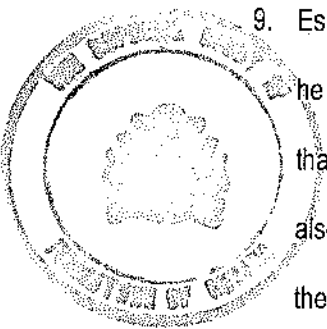
4. The Claimant's evidence is that on April 25th 2018 he received a notice from the Defendant demanding that he dismantle the fence and remove from the subject matter, which was referred to as council reserve. He did not acquiesce to the demand as he was convinced that the subject matter was private property and was owned by one Ramdai, deceased.
5. The Claimant testified that on the 19th October, 2018 the Defendant and agents and/or servants entered upon the subject matter claiming that it was council reserve and broke down the fence and took the material away. This was done despite the protestations of his agent.
6. The Claimant states that he suffered loss and damage since the property was left without a fence. He contends that the Defendant has no legal or equitable rights to the property as it is not the property of the Hydronic-Good Hope Neighborhood Democratic Council ("the NDC") and was neither owned by the Defendant nor occupied by him for any period of time.
7. Under cross examination the Claimant stated that there was a fence separating his lot from the subject matter. However, he stated that a fence was there when he purchased his land and that it had been constructed by the previous owner. His evidence is that he had dismantled that fence and replaced it. He denied that it was the NDC that had fenced the subject matter. The Claimant also denied that there was a playfield on the subject matter or that it was maintained by the NDC. According to him, there was a playfield in that area but it adjoins the subject matter.
8. In support of his claim, the Claimant called Oudaimal Singh, a Sworn Land Surveyor, who testified that in February, 2018 at the request of the Claimant, he drew a sketch plan of the subject matter. According to him, at that time the land was unfenced with tall grass and bushes. He saw no sign of occupation by anyone. This witness's evidence as to whether the subject matter was fenced at the time he conducted the survey is inconsistent, in that, under cross



examination he said that there was no fence between the subject matter and the plot of land referred to as 11B which is owned by the Claimant. He was shown the plan (Exhibit "C1-2") and accepted that there was no fence depicted between 11B and the subject matter. That plan also shows that there was a fence on the outer border of the subject matter.

I am therefore unable to place any reliance on this witness's evidence on this particular issue.

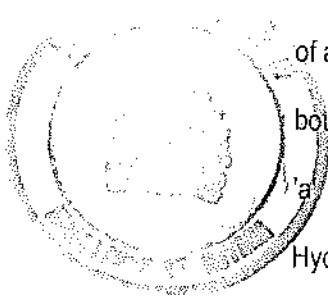
However, Singh maintained his evidence that the subject matter is not council reserve and stated that he did research concerning the subject matter and found that it was not stated in any earlier plan as a reserve. He said that he is aware of the surveys in that area as he did quite a few. This evidence was not disputed.

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9. Eshwar Parasram also gave evidence on behalf of the Claimant and stated that in March, 2018 he was contracted by the Claimant to fence the subject matter and he did so. He stated that at that time there appeared to be no sign of anyone occupying the land and it was unfenced. He also testified that one Muntaz Ali was contracted by the Claimant to weed and clear the land on the said date.

This witness's evidence regarding the presence of a fence on the subject matter is also inconsistent as, under cross examination, he insisted that there was a fence there. He did say that there was a fence and that another one was erected. He also stated that the Claimant removed a fence and replaced it. However, this evidence is confusing and unclear and, as with the evidence of Singh, I am unable to rely on it in relation to this particular issue.

10. Nonetheless, I accept the Claimant's evidence that he has been in possession of the subject matter since March, 2018 and that at the time of commencement of his occupation no one else was in possession or occupation. I accept that the land was filled with bushes and that he cleared, maintained and fenced it. Further, the Claimant's evidence that the Defendant went onto the subject matter, destroyed and removed a fence was not challenged by the Defendant.

11. I am therefore satisfied, in all the circumstances, that the Claimant has proven his case on a balance of probabilities and that he is entitled to the orders sought.
12. I have placed no reliance on the information which the Claimant states that he received from the Lands and Surveys Commission as it constitutes hearsay.
13. There is also no evidence before the court that the Defendant has authority to represent the NDC in the stated capacity.
14. The Counterclaim is dismissed for lack of evidence.
15. I have assessed costs on a discretionary basis taking into consideration the relevant factors set out in Part 64.02 of CPR, 2016.
16. In all the circumstances, I make the following orders-



a) A declaration that the Claimant is in possession and is entitled to remain in possession of a piece or portion of land measuring 79 feet on the North by 74 feet on the East; and bounded on the North by lot 11 b; on the south by lot 12; on the East by cultivation lot 'a' and on the West by a 12 feet reserve, situate on the West half of Plantation Hydronie, East Bank Essequibo;

- b) An injunction restraining the Defendant his servants and/or agents from entering, remaining or trespassing on the said land;
- c) A mandatory injunction compelling the Defendant to replace the fence he destroyed on the said land on or before the expiration of fourteen (14) days from the date of this judgment, that is to say on or before the 15th day of ;
- d) The Defendant shall pay to the Claimant damages in the sum of \$100,000 (one hundred thousand dollars) for trespass together with interest at the rate of 6% per annum from the 22nd October, 2018 to the 1st day of April, 2020 and 4% per annum from 1st day of April, 2020 until the judgment sum is fully paid.

e) The Defendant shall pay to the Claimant costs in the sum of \$150,000 (one hundred and fifty thousand dollars).

Simone Morris-Ramlall

Simone Morris-Ramlall

Puisne Judge

Dated this 1st day of April, 2020

