

2005 NO. 211 & 212- S DEMERARA
IN THE HIGH COURT OF THE SUPREME COURT OF
JUDICATURE

CIVIL JURISDICTION

BETWEEN:

CHETRAM SURUJDEO

(Plaintiff)

-and-

TARAMATTIE HARDUTT substituted as defendant in her capacity as the Administratrix and Litem of the estate of **SHIVSANKAR** deceased in accordance with the order of Chief Justice (ag.) **IAN CHANG** dated the 2nd March 2010 and entered on the 4th March 2010.

(Defendant)

BETWEEN:

HANSRAJI

(Plaintiff)

-and-

TARAMATTIE HARDUTT substituted as defendant in her capacity as the Administratrix ad litem of the estate of SHIVSANKAR deceased in accordance with the order of Chief Justice (ag.) **IAN CHANG** dated the 2nd March 2010 and entered on the 4th March 2010.

(Defendant)

BEFORE:

HON. MR. JUSTICE IAN CHANG – CHIEF JUSTICE (ag.)

Mr. Joseph Harmon for the Plaintiff in both actions.

Ms. Pauline Chase for the Defendant in both actions.

DECISION

With the consent of counsel for the parties, these two actions Nos. 211 and 212 of 2005 were heard together. Both actions were filed on the basis of oppositions filed by the plaintiffs to the sale at auction of immovable property described as:

“Sublot numbered 5 (five), Block lettered “D” northern portion lot lettered “C” Plantation Hague, West Coast Demerara, with the buildings and erections thereon.”

as advertised in Official Gazette of the 12th February 2005 and numbered 35 for the County of Demerara for the satisfaction of a monetary judgment rendered by the High Court in the sum of \$2,348,192 with costs fixed in the sum of \$30,000 in favour of the original defendant, Shivsankar (deceased).

Following the said advertisement for the sale at auction of the said property, the plaintiffs, Hansraji (the judgment-debtor) and her son, Chetram Surujdeo, filed separate oppositions to the sale of the said property. The said oppositions were based largely on the same grounds except that Chetram Surujdeo’s opposition was based on the following additional grounds:

- 1. The opponent has occupied the property for more than 13 (thirteen) years prior to the levy on the property carried out by the Marshall in***

consequence whereof he has advertised the property for sale at public auction on the 1st day of March 2005 at 1P.M.

2. Such possession user or enjoyment has not been taken away or kept by fraud or by any consent or agreement expressly made or given for that purpose.

3. The right, title or interest of every other person to recover the property or any interest therein has expired or been barred.

4. I have a fully mature title by prescription by reason of adverse possession of the property for more than 13 (thirteen) years.”

In both actions filed by the plaintiffs by way of specially indorsed writ, they claimed the following reliefs:

“(a) a declaration that the opposition is just, legal and well founded which the Plaintiff filed against the sale at execution of immovable property advertised in the Official Gazette dated the 12th day of February 2005 and numbered 35 therein for the county of Demerara, the property described as:

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.....

(b) An injunction restraining the passing by the Defendants, or any of them, their servants or

agents or any of them from passing any execution sale or other title for the said property.”

If Chetram Surujdeo, the plaintiff in Action No. 211 of 2005, who was not the judgment debtor, had extinguished his mother (Hansraji)'s transport title to the property by his sole, exclusive, continuous and uninterrupted possession of the land for 12 years or over and thereby had acquired title to the said property by prescription, then it follows that Hansraji would have lacked the ***locus standi*** to oppose the sale of the land and to file Action No. 212 of 2005. On the other hand, if Chetram Surujdeo had acquired no such prescriptive title, then he would have lacked the ***locus standi*** to oppose the said sale and to file Action No. 211 of 2005. In such a case, Hansraji as the judgment debtor would have had the ***locus standi*** to oppose the said sale and to file Action No. 212 of 2005.

The question which must therefore be first determined is whether Chetram Surujdeo had extinguished Hansraji (his mother)'s transport title to the property by prescription. The burden of proof lay upon him as plaintiff making the claim of the acquisition of title by prescription to prove that he was in sole, exclusive, continuous and uninterrupted possession for at least 12 years.

In his evidence-in-chief, Chetram testified:

“I live at lot 5 Hague Back, West Coast Demerara. I have been living there since I was born. I am 43 years old. On the 18th August 1999, certain Marshalls came to my residence.

My mother was the owner of the property. I am now the owner of the property. I do not have any transport to show that I am the owner of the property.

In 1992, my parents, who used to live there along with me, left the country. Before leaving the country, they advised me to take case of the property since it will be mine. Since then, I am living there. I repaired the house, fenced the yard and filled it with dirt. I paid the rates and taxes in my mother’s name. I changed the roof and painted it. On the land, I built a garage to store my tractor. I am a rice farmer and the expenses were met by money from my rice farming.

In 1992, my mother came to the country. She stayed at the said house. Sometimes she stayed for 2 months. She never offered me to refund the money spent on the house. I effected the repairs because I felt that I was the owner. I never took any steps to acquire ownership of the property. Since 1992, no one challenged my occupation or possession of the house.

I am saying that the house belongs to me and not to my mother.”

Under cross-examination, he stated:

“The property in which I live is registered in my mother’s name. I know that from when I go and pay rates and taxes. My mother knew that I was staying in the property. My mother never executed any document of ownership to give me ownership of the property.”

In response to questions posed by the court, Chetram Surujdeo further stated:

“My father’s full name is Surujdeo Surujpaul. I grew up with my mother on the property. When she left in 1992, she left me in charge and no one else. I never tried to put my mother off the property. I never told her that she cannot come on the property.”

It is the view of this court that Chetram Surujdeo was always on the property with the blessing and approval of his mother, Hansraji. He grew up in her house and, when she left the country in 1992, she left him solely in charge of the house encouraging him to take care of it with a promise that he would be her successor in title. She never took any step to transfer the property to him and he never took any step to acquire transport title to the said property. When Hansraji returned to Guyana, he did not do anything to indicate that she as the paper title holder was being allowed to re-enter the property only with his consent.

She re-entered the property not as guest or licensee but as owner. It is clear to this court that Chetram Surujdeo continued in occupation of the property with the blessing and with the consent of his mother, Hansraji, when she left the jurisdiction in 1992. He continued in occupation under the authority of her superior title as owner and his occupation and possession was her occupation and possession since it derived directly from her superior title in the property.

This court is unable to find on the evidence of Chetram Surujdeo that he was ever in occupation or possession of the property adverse to the title and interests of his mother, Hansraji, who had left him in occupation and possession with the promise that he would be her successor in title and therefore he should take care of it. He did nothing to indicate at any time that he was in occupation or possession on his own and adverse to her title and interest. As such, it is the finding of this court that Hansraji remained and still is the owner of the property. This court can find no circumstance of her son's possession adverse to her transport title.

According to the evidence-in-chief of Hansraji, when she left in 1992 for Canada, she gave everything to her son, Chetram. Hansraji herself testified:

“In 1992, I migrated to Canada permanently. I then gave everything to my son. I gave him the house and land and everything that I owned. Since 1992, I was coming and going to Guyana

and staying at my son's home. He accommodated me. I asked his permission to come and stay in the house and he would do so. The house and land is owned by my son. He renovated the house and made a bond. He was paying rates and taxes. He never asked my permission to do any of these things. I came here to give evidence in support of my son.

Under cross-examination, she stated:

“I am the transported owner of property situated at lot 5 Railway Line, Hague, West Coast Demerara. This is the transport No. 1190/1955 (Exhibit A). I gave my son when I went away in 1992. I did not sign any document giving him the property. I gave him my word of mouth I never effected any change of ownership by way of transport.”

Clearly, her evidence was inconsistent any claim by her son Chetram Surujdeo that he had acquired title to the property by prescription since she was saying that he was her successor in title by way of gift. Therefore, he was never in possession as an adverse possessor. In other words, his possession of the property derived directly from her superior title as transported owner and not independently of her superior title as transported owner. She was saying that his ownership and possession derived directly from her generosity expressed by way of gift and was therefore with her consent and authority. On her evidence, no question of acquisition of title by adverse possession arises.

But while Hansraji could have consented to her son Chetram occupying and possessing the property as its **de facto** owner, she could not transfer any title to the property except by doing all she could do to pass transport of the property to Chetram. By her own admission, she took no step to do so. As such, she remained the owner of the property and Chetram was no more than occupier or possessor holding under her superior title as the transported owner.

This court holds that the property described as subplot 5 of lot C, Block D, Plantation Hague, West Coast Demerara, is and remains the property of the judgment-debtor, Hansraji, and is subject to the Rules relating to execution in satisfaction of the judgment debt in favour of Shivsankar against her.

It follows from the finding that Hansraji remains the owner of the said property that the plaintiff Chetram Surujdeo had no **locus standi** to institute his action No. 211 of 2005. It must therefore be dismissed.

In the opposition filed by the plaintiff Hansraji in Action No. 212 of 2005, she advanced in her reasons for opposition breaches of Rules of the High Court relating to the levy. However, it appears that, at the hearing, those allegations of breaches of the Rules were largely abandoned since little or no evidence was adduced in proof of such breaches. At this juncture, it is significant to note

that Hansraji herself testified that she came to court to testify in support of her son's claim (not her own claim).

But Hansraji did testify that she was never requested by the Marshall to point out her movable property before the immovable property at Sublot 5, Block D, of lot C, Plantation Hague, West Coast Demerara, was levied upon. In the court's view, such an omission on the part of the Marshall could not invalidate the levy since it is the evidence of Hansraji that she had gifted all her movable and immovable property to her son, Chetram and all that remained in her ownership were her clothes. If such was the state of her mind, then there was no **movable** property which she would have identified as her property. The omission by the Marshall to request her to do so was therefore a mere irregularity which did not vitiate the levy on her immovable property.

Before closing, this court wishes to state that Actions No 211 and 212 constituted a collusively brazen but clearly fraudulent effort on the part of plaintiff Hansraji and her son Chetram Surujdeo, to deny the deceased Shivsankar the fruits of his judgment against Hansraji. Perhaps because of the tardiness of the judicial system, their efforts met with some success since Shivsankar died before he could have benefited from the fruits of his judgment. However, despite the fact that the law must take its course and even the fraudulent are accorded their day in court, in the end justice must be sure. Perhaps, the inanity of Action No. 212 of 2005 by Hansraji lies in her own testimony that her

presence at the hearing was to testify in assistance of her son in his hollow claim to ownership of the property by prescription.

Action No. 212 of 2005 is accordingly also dismissed. There will be costs in the sum of \$100,000.00 to the defendant against each of the two plaintiffs in these Actions 211 and 212 of 2005.

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Ian N. Chang, S.C
Chief Justice (ag.)

Dated this 22nd day of November, 2010