

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF  
GUYANA  
REGULAR JURISDICTION

**2018-HC-BER-CIV-SOC-113**

BETWEEN:

EZE PARK, individually and in his capacity as Administrator of the Estate of MIRIAM PARK also known as MIRIAM BARRY, deceased, whereby Letter of Administration were granted to him on the 6<sup>th</sup> day of June, 1997 and numbered 149 of 1997.

Claimant

-and-

DEBRA ANN WILLIAMSON

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. C. Ryan Crawford for the Claimant

Ms. Tanya Warren-Clement for the Defendant

**Delivered August 7<sup>th</sup> 2020**

DECISION

On June 25<sup>th</sup> 2019 Justice Morris-Ramlall ordered that Kennard Park be substituted as the Claimant in this High Court Action since Eze Park had passed away on January 26<sup>th</sup> 2019. Based on the wording of the Order, clearly the intention was for Kennard Park to step into the shoes of Eze Park and so for clarity, Kennard Park is made the Administrator Ad Litem of the Estate of MIRIAM PARK also known as MIRIAM BARRY, deceased.

The Claimant claims possession of property situated at Lot 9, Section B, Salton Farm, Corentyne, Berbice and damages for trespass against the Defendant.

The Claimant's case is that the property is titled to Miriam Barry, deceased, by Transport No. 1004 of 1972 [**Exhibit "L1 - L2"**].

Marian Barry died on October 8<sup>th</sup> 1980 and at the time of her death she had six children, namely, Leslie Park, Eze Park, Bernard Park, Paulette Caesar, Nellie Park and Kennard Park.

After the death of Marian Barry, Bernard Park continued to occupy the family house located on Lot 9, Section B, Salton Farm, Corentyne, Berbice.

Bernard Park then formed an association with the Defendant sometime around 1997.

Bernard Park broke down the family house sometime after that and he and the Defendant brought a house and put it on the land in the year 2000 and she moved in and started living with him.

Bernard Park passed away on September 4<sup>th</sup> 2015 and despite demands for the Defendant to remove from the property located at Lot 9, Section B, Salton Farm, Corentyne, Berbice, she has refused to remove.

The Defendant contends that after she met Bernard Park, they bought a three bedroom wooden house and placed it on a portion of land located at Salton Farm, Corentyne, Berbice in the year 2000.

Bernard Park then fenced the land where the house was placed and she and Bernard Park then built a septic tank, two chicken pens and four pig pens and planted numerous fruit trees.

The Defendant claims that she has been in occupation of the said portion of land without let or hindrance for in excess of twelve years and has therefore extinguished all other title to the land.

Alternatively, the Defendant claims that since no one ever objected to the several developmental works she and Bernard Park performed on the land, a proprietary estoppel has arisen in her favour.

Through her pleadings, the Defendant is also claiming that, in any event, Bernard Park would have been entitled to a share in the Estate of Miriam Barry and therefore the Estate of Bernard Park, deceased, is entitled to such share, though in testifying she claimed to be unaware of such a right.

Kennard Park testified that after the death of his mother, her unmarried children continued to occupy the family house which was located where the Defendant's house is presently located.

Based on his testimony he occupied the family house with Bernard Park up to sometime not long before 2000 and then he went into the interior for three years.

Upon his return Bernard from the interior he discovered that Bernard had replaced the family house with small wooden house and was living with the Defendant.

The Defendant is contending that such a house was not on the land.

The Court finds that the Defendant's veracity on this subject is very doubtful since she also testified that she visited Bernard at Lot 9 Salton Park and he had told her he was living with his brother.

Then she subsequently testified that there was no house at Lot 9 and she did not know where Bernard Park was living when their relationship started.

In this regard the Court believes that Bernard was living with Kennard and possibly other unmarried siblings up until the time that he removed that house and placed the small wooden house there, which he and the Defendant lived in.

The Court having accepted that the “family house” did in fact exist coupled with the fact that Kennard Park’s evidence that the unmarried children of Miriam Park occupied that house after the death of Miriam Park, the inescapable conclusion is that any of the children were free to occupy that house with the implied consent and/ or permission of his/ her siblings coupled with a beneficial right to occupy.

All of the children had an equal undivided interest and entitlement in the property, so even though Bernard Park changed the house or brought his own house on to the land that could not logically change the nature of his occupation of the land.

Siblings who were beneficiaries of the Estate of Miriam Barry, deceased occupied the property and apparently one by one leave the property, clearly not abandoning their beneficial interest since Letters of Administration for the Estate of Miriam Barry, deceased, were obtained in 1997, how could that sequence of event lead to the conclusion that Bernard Park’s occupation became adverse to his siblings.

Further, since he had an undivided interest in the land, he cannot occupy adverse to his interest

The Court notes that the Defendant testified that Bernard Park told her that he owned the land.

This evidence is clearly inadmissible hearsay evidence and therefore cannot be relied upon, but in any event, it is immaterial if he did in fact say those words to the Defendant since it would have been a false statement made by him in the year 2000.

In **Earnshaw v Hartley** Buxton LJ stated;

*“I would be surprised to find that, where four persons have equal interests of some sort in a property, one of those four can deprive the others of their interests by being permitted by them to occupy the property for a substantial period of time. Not only would that appear inequitable, but also the occupier would in a general sense be occupying against his own interest: the same interest as was held by his fellow beneficiaries.”* [Referred to in **Mathan v Kujal** 85 WIR 383]

Moreover there is no positive evidence demonstrating that Bernard Park intended to dispossess his siblings of their inheritance.

His occupation of the property commenced as a hybrid beneficial entitlement/ permissive occupation in 1980 and without further the Court cannot speculate that the nature of that occupation changed.

In these circumstances the Court finds that Bernard Park’s occupation of the land was one of a beneficial/ permissive nature prior to the year 2000 and continued as such thereafter until his death in the year 2015.

The Defendant’s occupation of the land cannot be of any superior nature to Bernard Park and in fact, at best her occupation of the land would have been permissive and

the institution of proceedings by the Administrator of the Estate of Miriam Barry, deceased against the Defendant in the Magistrate's Court in January 2017 effectively terminated her permission to occupy the land.

The Claimant accepts that the house on the land is the property of the Defendant.

The fact that the house and the pens are all removable coupled with her permissive occupation bars the Defendant's claim to a proprietary estoppel.

In the circumstances the Court orders that the Defendant do deliver up vacant possession of the land situate at Lot 9 Salton, Corentyne, Berbice on or before September 1<sup>st</sup> 2020.

The Court awards the Claimant the sum of \$100,000.00 as costs.

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Justice N. A. Singh