

2013

No. 177 W/S

BERBICE

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE  
(CIVIL JURISDICTION)

BETWEEN:

DREADNAUGHT PRASHAD

Plaintiff

-and-

CHRISHNA PERSAUD JAGDEO

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Murseline Bacchus for the Plaintiff

Mr. Ryan Crawford for the Defendant

**Heard December 20<sup>th</sup> and 22<sup>nd</sup> 2016 and February 6<sup>th</sup> 2017**

RULING

BACKGROUND

The First and Second Named Defendants are brothers and the Plaintiff is their uncle.

The Plaintiff was the owner, by County of Berbice Transport numbered 721 of 1979, of lot numbered 41, Section B, No. 65 Village, Corentyne. It is the Plaintiff's claim that the Second Named Defendant used a fraudulent Deed of Power of Attorney (registered as 928 of 2004 - Exhibit "E"), a Deed that purportedly authorised the Second Named Defendant to deal with *inter alia* the Plaintiff's immovable property, to convey title by way of Transport to the said lot numbered 41, Section B, No. 65 Village, Corentyne to the First Named Defendant.

The said property is presently titled to the First Named Defendant under County of Berbice Transport numbered 637 of 2004.

In these circumstances the Plaintiff is asking this Court, *inter alia*, to recall Transport numbered 637 of 2004 as having been obtained fraudulently.

The only real issue that the Court has to determine is whether the Deed of Power of Attorney (928 of 2004) making the Second Named Defendant, Bodo Singh, the duly constituted Attorney of the Plaintiff, Amar Daulat, is a fraudulent document.

## **FACTS/ EVIDENCE**

The Plaintiff's brother, Devindranauth Kissoon, testified that in May 2012 he came to Guyana and commenced construction of a house on the property situate at lot numbered 41, Section B, No. 65 Village, Corentyne with monetary contributions from both himself and the Plaintiff.

As the construction came to a close in September 2012 he went to the Guyana Power and Light Company and the Guyana Water Inc with the Plaintiff's Transport and applied to have the utilities hooked up to the house and was requested by the utility companies to have the Transport certified by the Deeds Registry. When he went to the Deeds Registry in New Amsterdam to have this done he was then and there informed that the property had been conveyed to Ulditeen Singh, the First Named Defendant.

He testified that upon learning of this, he notified his brother, the Plaintiff, obtained copies of all the documents from the Deeds Registry and took them to New York and he and the Plaintiff went to the First Named Defendant's home and confronted him about this transfer. The First Named Defendant said he didn't know anything about the transfer and said that he will transfer the property back to the Plaintiff. Whilst there the Second Named Defendant's wife came up to the First Named Defendant's apartment and started screaming at them and put them out of the apartment.

The Plaintiff testified that after his brother, Devindranauth Kissoon, informed him of his discovery at the Deeds Registry, he and his brother went to the First Named Defendant's apartment since they both lived in Astoria, New York City and confronted him about the conveyance. He testified that the First Named Defendant told him that he was unaware of the conveyance and agreed to have the property re-conveyed to him, the Plaintiff.

He testified that whilst speaking to the First Named Defendant, the Second Named Defendant's wife, who lived on the floor below, entered the apartment and became very abusive to him and his brother and put them out. Several weeks passed and the property was not re-conveyed. He enquired from the First Named Defendant the

reason for not so doing and the First Named Defendant told him that the Second Named Defendant threatened to hurt himself if he re-conveyed the property and so this Action was instituted.

He testified with what can only be described as absolute certainty that he never executed a Deed of Power of Attorney making Bodo Singh his duly constituted attorney nor did he ever authorise Bodo Singh to sell his property or received any money for the sale of the property.

The witness Carlton Charles was called by the Plaintiff. Mr. Charles was deemed to be an expert in the field of handwriting analysis in accordance with section 43 of the Evidence Act; CAP 5:03.

Mr. Charles testified that based on his examination of various signature specimen of the Plaintiff, it was his opinion that the signature on the Deed of Power Attorney (928 of 2004) purportedly executed by the Plaintiff making Bodo Singh his duly constituted attorney was not in fact signed/ executed by the Plaintiff, Amar Daulat.

The Second Named Defendant testified that he was present in New York when the Plaintiff and the First Named Defendant discussed the sale of the property to the First Named Defendant.

At that time, he, the Second Named Defendant, travelled frequently to Guyana because his wife lived here so the Plaintiff and the First Named Defendant asked him to do the transfer for them. The property was sold for \$300,000.00.

He testified that the Plaintiff gave him a document (exhibit "P") to use to transfer the property to the First Named Defendant, however, he told the Plaintiff that that document would not work, that he would need a Power of Attorney.

He, the Second Named Defendant, nevertheless, kept the document and in fact made a copy of the document. He subsequently misplaced the original and so was therefore only able to produce **the copy** to the Court to be tendered into evidence.

He testified that the Plaintiff's brother, Devindranauth Kissoon, visited him in hospital in New York in 2012 and **told him** that he was building a house on the

land and he told him that the land was already transferred to the First Named Defendant.

He further testified that the Plaintiff approached him in 2012 and told him that Devindranauth Kissoon went to Guyana to build a house and so asked him if he could transfer the land back to him and he will stand the expenses of the transfer but he refused because he was not authorised to do that.

**The First Named Defendant did not testify.**

**ANALYSIS**

The Court found that the Plaintiff and the witness Devindranauth Kissoon were frank and forthright in giving their evidence. They were found to be truthful witnesses.

The fact that the Plaintiff continued to pay the rates and taxes on the property (Exhibits “J1 - J12) after 2004 defies any logical explanation if it is he had sold the property to the First Named Defendant and in fact none was offered by the Defendants.

The Second Named Defendant testified that he was paying the rates and taxes but failed to produce any receipts and indeed it would have been quite an indictment on the Neighbourhood Democratic Council if they were in fact accepting monies from both parties and for the same time period/s AND issuing receipts to both parties.

The Court wholly accepted the testimony and opinion of the witness Carlton Charles and further, the Court having examined all of the exhibits that the Plaintiff testified that he signed also finds that upon examination with the naked eye the “A” in the “Amar” in the signature on the Deed of Power Attorney (928 of 2004) is markedly different from the other documents/ exhibits. In fact, it also appears that all of the upward strokes in the signature on the Deed of Power Attorney (928 of 2004) are “shaky” not fluid and straight as in the other documents/ exhibits.

In addition, upon examination of the Deed of Power of Attorney (928 of 2004 - Exhibit “E”), it is seen that though the date stamp on the pages of the Power of

Attorney is June 23<sup>rd</sup> 2004, the date stamp on the certificate of the Consul General, attached to the Power of Attorney is June 17<sup>th</sup> 2004. There can be no plausible explanation and none was provided as to how the Power of Attorney could have been certified before it was executed.

The Court found exhibit "P" to be very suspicious, in fact the existence of exhibit "P" as explained by the Second Named Defendant further served to erode the Court's trust in the Second Named Defendant.

The Court found it bewildering, also, that despite the fact that the Second Named Defendant, according to his testimony knew of the construction of this building in 2012 while it was being constructed did nothing about it, not even inform the First Named Defendant, his brother, although they lived in the same apartment building. He was evidently not even moved when the Plaintiff essentially asked him to defraud his brother, to inform his brother of what was going on.

The Court did not find the Second Named Defendant to be a truthful witness.

The fact that the First Named Defendant did not testify and no reason was given for his failure to testify, especially when the Plaintiff's evidence was taken via audio - visual link from New York City, a few blocks from where the First Named Defendant lives, when he stands to loose so much, spoke volumes.

Conclusions can be drawn from not only what the evidence tells us but what it, or in this case, what the First Named Defendant, didn't tell us.

### **CONCLUSION**

Based on the foregoing, the Court finds, beyond a balance of probabilities, that the First Named Defendant obtained County of Berbice Transport numbered 637 of 2004 by fraud, through the Second Named Defendant's use of a fraudulent Deed of Power of Attorney (numbered 928 of 2004).

In the circumstances County of Berbice Transport No. 637 of 2004 is hereby recalled and set aside. It is further ordered that County of Berbice Transport No. 721 of 1979 is hereby reinstated and declared valid.

It is further ordered that a permanent injunction restraining the Defendants by themselves, their servants and/ or agents from entering upon house lot No. 41, Section B, Lot No. 65, Corentyne, Berbice is hereby granted.

The Court further awards the sum of \$1,500,000.00 to the Plaintiff against the Defendants as damages for Fraud.

Costs to the Plaintiff in the sum of \$200,000.00

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Justice N. A. Singh