

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

CIVIL JURISDICTION

COURT FILE NO.: **2018-HC-DEM-CIV-SOC-11**

BETWEEN:

DIANA SINGH

Claimant

-and-

1. GAINDA RAJ of 280 Nichols Avenue, Brooklyn, New York, United States of America, represented herein by his duly constituted attorney, SOOKDEO DHARAMRAJ, by virtue of a Power of Attorney executed on the 10th day of March, 2017, and registered in the Deeds Registry, Georgetown, Guyana, on the 22nd day of March, 2017, and numbered 1814/ 2017.
2. ION HEMRAJ PERSAUD
3. THE REGISTRAR OF DEEDS

Defendants

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Rajendra Jaigobin for the Claimant

Mr. Sohan Poonai for the First Named Defendant

No appearance by or for the Second Named Defendant

No appearance by or for the Third Named Defendant

Delivered June 25th 2019

DECISION

BACKGROUND

The First Named Defendant [hereinafter referred to as FND] is the titular owner of Lot 547, being a portion of Tract lettered “A”, Plantation Good Hope, East Coast Demerara [hereinafter referred to as the “Property”] by virtue of Transport No. 1882 of 2002 for the County of Demerara.

On December 23rd 2017 a conveyance was advertised whereby the FND advertised conveyance of the “Property” to the Second Named Defendant [hereinafter referred to as the SND].

The Claimant caused a Notice of Opposition to be filed on January 5th 2018 opposing the said conveyance and subsequently, on January 12th 2018, this Claim was instituted pursuant to that Opposition.

The Claimant claims to be the lawful owner of the “Property” and therefore entitled to an Order from the Court conveying Transport of the “Property” into her name.

The Claimant bases her claim on three grounds, firstly, that she purchased the “Property” from the FND, evidenced by an Agreement of Sale and Purchase dated February 10th 2012 [hereinafter referred to as the “Agreement”] [Exhibit “L1 - L2”], secondly, maybe alternatively, that the FND holds title to the “Property” on trust for her and thirdly, in the further alternative, that she is entitled under the Married Persons (Property) Act, CAP 45:04 of the Laws of Guyana.

In a nutshell, the Claimant contends that she and the FND were in a common law relationship, during which time she squatted on the land that constitutes part of the “Property” and since the FND was unemployed she solely developed the land and constructed a building that together with the land is what is herein referred to as the “Property”.

For reasons which will be addressed, the Transport was conveyed into the sole name of the FND.

In recognition of the fact that she is solely responsible for the existing developed property the FND sold her whatever interest he had in the property for \$1,000,000.00.

The FND denies selling or entering into any “Agreement” to sell the “Property” to the Claimant.

He further denies being in a common law or any such relationship with her or that the Claimant contributed in any way to the acquisition of the land or construction of the building that constitute the “Property”.

ISSUE I

Did the FND enter into and Agreement of Sale and Purchase with the Claimant whereby he sold the “Property” to the Claimant?

FACTS

The Claimant’s evidence is that sometime in 2012 the FND contacted her and informed her that he was returning to Guyana. They then spoke on the phone days before February 10th 2012 [the date on which the purported “Agreement” was executed by the Claimant and the FND] and he told her that he will give her the “Property”, let her give him some money and he wouldn’t bother her anymore.

She accepted that he had a right to the place because of the Transport.

February 10th 2012 he went to her workplace and she gave him \$1,000,000.00 and they signed the paper. He didn’t leave the paper with her at the same time. He left and returned an hour later and then gave her.

The Claimant's evidence is that she borrowed \$300,000.00 from her mother, Neeleema Harriprasad, to accumulate the \$1,000,000.00 that she paid to the FND.

Neeleema Harriprasad did not testify that she lent her daughter, the Claimant, any monies towards the purchase of the "Property".

The Claimant further sought to rely on a letter she stated that the FND wrote to her dated June 13th 2005 [Exhibit "G"]. She has asked to Court to find from this letter that the FND acknowledged that she has interest in the "Property" and that he was going to hand over the "Property" to her.

Ameer Mohamed testified on behalf of the Claimant as an expert in the field of Handwriting Examination and Analysis. He testified that he compared the signatures on the witness statement and the "Agreement" but was unable to form a definite opinion as to whether they were signed by the same person.

He further concluded that exhibits "G" and "N" [letters] were written by the same person.

The FND has denied entering in to the "Agreement" and has testified that the letters [Exhibit "G" and "N"] were not written by him.

Carlton Charles testified on behalf of the FND as an expert in the field of Handwriting Examination and Analysis. He testified that he compared the signature on the "Agreement" to signatures of the FND accepted by him to be his signatures on General Power of Attorney dated March 10th 2017, Republic of Guyana Passport No. R0380777 and New York State Driver's License No. 558978260 and

concluded that the person that signed the “Agreement” was not the same person that signed the other documents.

ANALYSIS

The expert witness relied upon by the Claimant did not testified that he could not conclusively find that the Vendor’s signature on the “Agreement” was placed there by the FND.

The expert witness relied upon by the FND testified that he conclusively found that the Vendor’s signature on the “Agreement” was not placed there by the FND.

I have examined the various signatures and though there are some vague similarities in the formation of some letters in the signature on the “Agreement” to the accepted signatures of the FND, there are also numerous variations and most importantly I agree with the witness Carlton Charles where he states “*the level of writing is much slower with tremor ...*” in describing the signature on the “Agreement”.

I have considered the existence of this tremor to be of even more concern since the other signatures on the “Agreement” do not possess this quality to suggest that the surface on which the document was signed could have caused this tremor to occur.

Further, the Claimant did not call any of the witnesses to the “Agreement” to testify.

It is her evidence that witnesses were not present when she and the FND executed the “Agreement” and therefore the logical inference is that none signed in her presence.

It is noted that the “Agreement” was signed at her work place.

Incredibly, it is her evidence that she *now knows* that the “Agreement” has two witnesses.

Further, the Claimant has failed to provide any credible explanation as to why this “Agreement” was not mentioned in the previous action that she instituted in the Court [2015-HC-DEM-CIV-SA-144] [Exhibit “V1 - V13”] despite the fact that she had provided her then Attorney-at-Law with the “Agreement”.

She further failed to call that Attorney-at-Law as a witness or provide any evidence to support this contention.

It was further revealed through cross examination that there were several **material** inconsistencies between her sworn statements in that Action and her evidence in this Court.

The Court does not find that the Claimant is a truthful witness with respect to the “Agreement”.

CONCLUSION

The Court does not believe, on a balance of probabilities, that the “Agreement” was entered into or signed by the FND and therefore the Claimant’s claim in this regard must fail.

ISSUE II

Can the Claimant be awarded a share in and to the “Property” pursuant to the provisions of the Married Persons (Property) Act, CAP 45:04?

LAW

Sections 4, 15 and 15A of the Married Persons (Property) Act, CAP 45:04.

FACTS

The Claimant's evidence is that the FND left for Trinidad in 2008 and since then they have not been together and further since the February 2012 [the date of the "Agreement"] they have not been in touch.

In fact it is her evidence that she could not locate him to serve him with the previous proceedings [2015-HC-DEM-CIV-SA-144] [Exhibit "V1 - V13"] which were commenced in August 2015.

The FND denies being in a common law relationship with the Claimant. His explanation of what they had, up to 2003, was a "boyfriend - girlfriend" relationship.

ANALYSIS

Firstly, the Married Persons (Property) Act has not been invoked by any stretch of the imagination in this Claim.

It appears that Counsel for the Claimant now seeks, through his closing submissions to invoke the Act. This is generally not permissible.

Notwithstanding the foregoing, by virtue of Section 15A of the Married Persons (Property) Act an application for relief under section 4 or section 15 of the Married Persons (Property) Act must be brought within three years of the "*end of the union*".

It is clear from the Claimant's evidence that even if a common law union existed between her and the FND it was some 9 years 9 months, or at the very least, 5 years 11 months, before the commencement of this Claim.

CONCLUSION

Even if a Claim pursuant to the Married Persons (Property) Act could be entertained by the Court, it would fail since it would be statute barred.

ISSUE III

Is the FND holding the “Property” on Trust for the use and benefit of the Claimant?

Though this is a specific claim made by the Claimant, she has advanced it in a very vague non-specific manner. In fact even in Claimant’s Counsel closing submissions it seems that the Claim to a Trust is intertwined in the non-pleaded Claim for relief under the Married Persons (Property) Act.

The Court considered that the Claimant may also be claiming the creation of a **Presumed Resulting Trust**.

LAW

A **Presumed Resulting Trust** occurs when one person purchases property in the name of another or in the joint names of the purchaser and another.

Ramdass v Jairam [2008] CCJ 6 (AJ)

Section 3 (d) (iv) of the Civil Law of Guyana Act; CAP 6:01

“No action shall be brought whereby to charge anyone upon any declaration, creation or assignment of any trust relating to immovable property, unless the

agreement or some memorandum or note thereof is in writing and signed by the party to be charged or some other person thereunto by him lawfully authorised.”

FACTS

The Claimant’s evidence is that she began squatting on the land which constitutes the “Property” and in fact the FND did not live there with her because of the poor living conditions, to wit, there was no running water.

The Claimant did not testify as to when, if at all, the FND lived at the “Property”.

The FND and the Government of Guyana/ Central Housing and Planning Authority [CHPA] entered into an Agreement of Sale and Purchase for the land in March 2000 and he acquired Transport to the land in July 2002.

The Claimant’s evidence is that she was told by the CHPA that the land could only be titled to the FND and not to both her and the FND since they were not married.

The Claimant accepted under cross examination that she never applied to CHPA for title to the land.

The Claimant claims to have commenced construction of a building on the land by using her savings, salary, credit from suppliers and loans from relatives.

It is the Claimant’s evidence that to date she has spent approximately \$8,000,000.00 building and developing the “Property”.

The Claimant tendered receipts totalling \$128,974.00

The FND has denied that the Claimant was in any way involved with the acquisition of the land or the construction of the building thereon.

ANALYSIS

It is undisputed that there has been no evidence produced to the Court to suggest that the Claimant possesses any document that would satisfy the requirements of **Section 3 (d) (iv) of the Civil Law of Guyana Act; CAP 6:01.**

The evidence does not establish that the Claimant has in any way contributed to the acquisition of the land or the construction of the building, referred to herein as the “Property”.

The Claimant has failed to produce any documents from the purported creditors.

The Claimant has failed to produce any of her relatives as a witness who loaned her money to help her build.

The Claimant did not join the CHPA as a party to demonstrate that she was wrongly and unlawfully denied titular ownership to **her** “Property”.

How or when was this Trust created?

In any event, a Trust created thus would create an equitable interest in the “Property”.

As stated in **Ramdass v Jairam**, *“As stated earlier and now re-emphasised, dicta from a formidable array of cases of older as well as more recent vintage lead to the inevitable conclusion that equitable interests in immovable property are not recognised and cannot be acquired in Guyana.”*

CONCLUSION

The Court does not find that the FND is holding the “Property” on Trust for the benefit of the Claimant.

In the circumstances this Action is dismissed against all of the Defendants.

The Court awards costs in the sum of \$500,000.00 to the FND against the Claimant.

Justice N. A. Singh