

1995-HC-DEM-CIV-2881

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

BETWEEN:

JENNIFER SINGH nee ST. CLAIR of Lot 178
Campbell Street, Albouystown, Georgetown.

Plaintiff

-and-

ALMA LOUISA LORETTA RICHMOND of
Lot 65 Dennis Street, Campbellville,
Georgetown.

Defendant

-and-

RAMCHARRAN RAMOTAR, Administrator
of the Estate of James Jagnarain, deceased,
vide Letters of Administration with Will
annexed, No. 690/2010.

Added Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Jermaine Jervis representing the Plaintiff

The Defendant is deceased

Mr. Timothy Jonas S.C. representing the Added Defendant

Delivered February 15th 2021

RULING

BACKGROUND

On July 14th 1995 the Plaintiff instituted this action against the Defendant claiming specific performance of a written agreement of sale and purchase dated

December 12th 1991 whereby the Plaintiff claimed to have purchased property situate at Lot 65 Dennis Street, Section E, Campbellville, Georgetown, Guyana with the building and erections thereon [hereinafter referred to as the Property].

[**Exhibit “B1 - B2”**]

On August 31st 2000 Justice D. Bissessar granted an application to join James Jagnarain as an Added Defendant since the Defendant had sold the property to the said James Jagnarain on January 31st 1996.

In fact Transport No. 606 of 1996 (Demerara) was registered in the name of James Jagnarain on June 22nd 1996. [**Exhibit “D1 - D2”**]

On February 14th 2020 Justice N. A. Singh granted an application to substitute Ramcharran Ramotar as the Added Defendant since he is the Administrator of the Estate of James Jagnarain who died on October 27th 2008. [The Letters of Administration, No. 690 of 2010, is marked **Exhibit “G”**]

It is necessary to note that the file was assigned to Justice N. A. Singh on January 27th 2020 and no one has been able to explain to the Court how or why the matter saw no forward movement for over 19 years.

In an interesting turn of events the Plaintiff filed a Summons on August 11th 2020 asking the Court to deem the matter abandoned. This Summons was refused on November 13th 2020 and the matter proceeded to trial.

It is necessary to further note that at the trial it was discovered that the Defendant was also deceased, however, the Court made the following ruling, making it unnecessary to have any substitution done;

- I. *The absence of the Defendant does not prejudice the Plaintiff's case.*
- II. *The Defendant's cause of action now firmly resides in the Added Defendant and therefore the Defendant and/ or her Estate can suffer no prejudice.*

Based on the foregoing, substitution of the Defendant's Estate will be merely a matter of formality and achieve nothing in this trial other than to further delay the matter while the appropriate representative is located.

The interests of justice are better served if the matter proceeds to a conclusion, having been filed more than 25 years ago.

In yet another interesting turn of events, the Plaintiff filed a Reply and Defence to Counterclaim on August 13th 2020 and therein pleaded at paragraph 15;

“The Plaintiff initially purchased the property pursuant to Agreement of Sale and Purchase executed on the 12th day of December, 1991 but same was rescinded by the Honourable Mr. Justice Patterson in Court Action No. 292 of 1993 ALMA RICHMOND -v- JENNIFER SINGH on the 5th April, 1995.” [The Order of Court is marked **Exhibit “C”**].

By this pleading, the Plaintiff admits that the contract upon which this action for specific performance is based was rescinded by Order of Court three months before this action was instituted, therefore that cause of action never existed.

The Plaintiff now asks this Court to find that since there was no contract in existence, that she would have been in adverse possession of the Property for in excess of 12 years and has therefore extinguished the Added Defendant's title and is entitled to a Declaration of Title in accordance with the provisions of the **Title to Land (Prescription and Limitation) Act; CAP 60:02.**

The Plaintiff in fact filed a Petition to the Land Court on September 2nd 2019 seeking such Declaration of Title. [**Exhibit "E1 - E17"**]

The Plaintiff also pleads that the doctrines of proprietary estoppel and laches ought to defeat the Added Defendant's counterclaim for possession.

The Plaintiff has never amended her Statement of Claim to claim for a Declaration of Title and in any event the Declaration of Title rules have not been complied with in furtherance of such a claim before this Court.

In addition the Plaintiff has not pleaded the nature of her possession upon which this Court can determine that her possession was adverse to the Added Defendant or the world at large.

Of utmost importance, however, is the fact that the Plaintiff sought and obtained an interlocutory injunction in this very Action on May 21st 2002 restraining James Jagnarain, his servants and/ or agents from "*alienating, selling, transferring or in any manner disposing of the Property.*"

The fact that this Action was pending and, importantly, the fact that James Jagnarain, his servants and/ or agents were enjoined from dealing with the Property, it is disingenuous for the Plaintiff to assert that she has been in adverse possession.

The Plaintiff dishonestly instituted an Action for specific performance which kept her in possession of a property for which she had no legal right to possess and now attempts to use the inexplicable disappearance of the file from the Registry, which caused the matter to be inordinately delayed for over 19 years to her benefit.

The Plaintiff's deceitful nature is clearly revealed in her admission on the eve of trial that the contract upon which she filed suit was rescinded prior to the institution of the action and in her application to have the Court deem this Action abandoned.

It is disturbing that these propositions are being advanced by an Attorney-at-Law.

Based on the evidence before this Court, the Court positively finds that the Plaintiff could not have acquired adverse possessory title against James Jagnarain or his Estate.

Clearly, the Added Defendant cannot be guilty of laches when he is awaiting a trial date from the Court and certainly proprietary estoppel cannot arise in the circumstances of this case.

In the circumstances, the Court makes the following Orders;

- I. The injunction granted on May 21st 2002 is discharged.
- II. The Plaintiff's claim is dismissed.
- III. The Counterclaim is granted in terms of paragraph 6 (i) and 6 (ii).
- IV. The Court awards the Added Defendant the sum of \$2,000,000.00 as damages for trespass against the Plaintiff.
- V. The Court awards the Added Defendant the sum of \$1,000,000.00 as costs against the Plaintiff.

Justice N. A. Singh