

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

BETWEEN:

ROHIT

Plaintiff

-and-

SAMANTA RAMLOCHAN

Defendant

Before: Hon. Madam Justice Damone F. J. Younge

Appearances: Mr. S. Poonai for the Plaintiff

Ms. P. Jones-Nicholson for the Defendant

Date: 28th October 2022

DECISION

Background

[1] The Plaintiff is the owner by Transport No. 72 of 1984 of the property situated at Block 16 (sixteen) being a portion of the East Half of East Half of Plantation Hydronie, East Bank Essequibo ("the Property"). According to the Plaintiff, he allowed his son and his common law wife, the Defendant, to reside on the Property since they had no other accommodation. He contends that his son and the Defendant separated and that whilst his son removed from the Property, the Defendant remained. The Plaintiff states that despite several demands to remove, the Defendant remains in occupation of the Property without his permission. The Plaintiff has therefore filed the instant proceedings seeking the following orders,

(a) Possession of property situated at Block 16 (sixteen) being a portion of the East Half of East Half of Plantation Hydronie, East Bank Essequibo, Guyana and more fully described in Transport No. 72 of 1984.

(b) Costs.

[2] In her Defence filed on the 19th February 2014, the Defendant stated that the Plaintiff permitted her and her husband, Gansham Bahadur who is the Plaintiff's son, to utilize the vacant land at the back of the Property to construct a dwelling house for themselves. She said that she and the Plaintiff's son acted on the promise and advice of the Plaintiff and in or about November 1997 "expended large sums of monies to construct a small concrete 20 x 24 one flat house to accommodate their family..." According to the Defendant, the construction of the house took approximately 6 months, but that she and her family moved into the incomplete home in February 1998. The Defendant states that she contributed all her income that she received from her family abroad, as well as the personal savings she had with the Plaintiff's son – approximately \$300,000.00, towards the construction of the house. She stated further that the Plaintiff's son also contributed from his income and that she used the additional income she earned as a food vendor to assist in the renovation and extension of the home in 2007.

[3] The Defendant contends that at no point in time did the Plaintiff withdraw his consent for her and his son to reside on the Property but maintained his position throughout and after construction. In reliance on the promise made by the Plaintiff, she and her husband continued to expend large sums of their income on the home "in the hope and belief that they have acquired a proprietary interest in the said property." She contends that she has acted to her detriment in reliance on the Plaintiff's promise to her and his son and that it would be "unconscionable, inequitable or unjust" should she be found to be a trespasser. No Counterclaim was filed.

- [4] A Reply was filed and in it the Plaintiff denies ever promising the Defendant to give her his property, but instead said that out of the goodness of his heart he allowed her and his son to reside there until they could find other suitable accommodation. He said that the Defendant was given permission to occupy for a period of time which does not give her a proprietary interest in the Property. He refutes the claim that he acquiesced or encouraged the Defendant or his son to construct any building on the land and denies, in almost every material particular, the assertions contained in the Defence.

Issue

- [5] It is not disputed that the Plaintiff owns the Property by Transport No. 72 of 1984, this is not a fact in issue. However, having regard to the pleadings filed in this case, this Court is of the view that the sole issue to be determined is whether the Defendant has established an equity in the subject Property on the basis of proprietary estoppel, thereby estopping the Plaintiff from asserting his strict legal rights thereto.

Law and Analysis

- [6] The doctrine of proprietary estoppel is by no means new but has its genesis in equity's traditional jurisdiction to prevent the fraudulent assertion of legal rights. There are now three well settled essential pillars of this doctrine: assurance, reliance and detriment. Proprietary estoppel will only be established where the Claimant has acted to his detriment in reliance on an assurance by the property owner that he has or will be granted an interest in that property. Once this is established, the Court will take into account all the circumstances of the case to determine whether it will be unconscionable to deny the Claimant a remedy (see: Wilken and Ghaly, The Law of Waiver, Variation and Estoppel, 3rd Edition, 2012). These were the sentiments expressed by Lord Walker in Thorne v. Major [2009] 1 WLR at p.776, who said that in order to raise a defence of estoppel, there must be a representation or assurance made to the defendant/claimant, a reliance on it by the defendant/claimant and a detriment to the defendant/claimant in consequence of his (reasonable) reliance.

- [7] In Henry et anor. V. Henry (2010) 75 WIR 254, the question of detriment was discussed and Sir Jonathon Parker affirmed the dicta in Gillet v. Holt [2001] Ch. 210 when he said,

Both sides agree that the element of detriment is an essential ingredient of proprietary estoppel...The overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable financial detriment, *so long as it is something substantial*. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances...Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded – that is, again the essential test of unconscionability. The detriment must be alleged and proved [emphasis mine]

- [8] In every case the Court would determine, as a question of fact rather than law, whether proprietary estoppel has been established. Where proprietary estoppel has been proved, it would be unconscionable to deny the Claimants a remedy. In the case of Balkaran v. Balkaran TT 2015 HC 393, the Court in determining whether there was an agreement between the claimant's deceased husband and his parents which resulted in him relying and acting on the agreement to his detriment stated that,

It is a question of fact rather than law. The evidence of the witnesses must be examined to ascertain what transpired as it related to the discussions involving the parties in this dispute. If this question of fact is determined in the affirmative, then the law as it relates to proprietary estoppel will be examined. The circumstances under which the agreement was made and the actions taken in order to fulfill the terms of the agreement must be carefully scrutinized.

And it would be for the person relying on the doctrine of proprietary estoppel to establish its elements – in the instant case, the Defendant.

- [9] In support of her case, the Defendant gave evidence under oath. She testified that after she got married to the Plaintiff's son in 1996, the couple lived with the Plaintiff for two years. Without specifying a particular date, the Defendant testified that "one afternoon" her husband told her that the Plaintiff gave them a piece of land to build a home. At this time, she said she was living at her grandmother. The house was constructed in 2000 and was still incomplete when she moved into it at the end of that year. She testified further that after she moved into the house, she had direct conversations with the Plaintiff about ownership of the home and he told her that he would give them papers for the Property but that they would have to pay for it. She could not remember what year these conversations took place and no supporting documentary or other evidence was adduced to substantiate the Defendant's claim of this promise made by the Plaintiff.
- [10] Evidence relative to any purported promise made by the Plaintiff that he would give the Defendant the Property is severely limited. The only evidence of any such promise is the Defendant's say so, and even she was unable to recall when this purported promise was made. Based on the available evidence, this Court is unable to find that the Plaintiff promised or assured the Defendant or his son that he would give them the Property or some interest in it. There is simply no corroborative evidence to support such a finding.
- [11] The Defendant also gave evidence that, acting on the promise made, she and her husband took their savings - which amounted to about \$300,000.00, and constructed a 20 x 24 ft house. The Defendant also testified that around the time of the birth of their 3rd child in 2004, they extended the building at the back, front for a verandah and side for a kitchen, concrete in front and built a Shiv Mandir in front of the Property. The witness testified that she did not have any idea how much the extensions cost. In this regard, she gave evidence that her "cha cha" (her father's brother) sent money to build the verandah and tendered a Western Union receipt evidencing a remittance to her husband for the sum of US\$150.00 (**Exhibit E**). However, it is not clear from this exhibit when the money was remitted, as there is a discrepancy in the date, or for what purpose.
- [12] She testified that the Plaintiff never stopped them from doing the extensions. And that it was only after she and her husband separated in 2013 that the Plaintiff told her he wanted her to remove from the Property. She testified further that they would ask the Plaintiff's permission before they did any work which he always gave. This bit of evidence seems to run contrary to any claim by the Defendant that she and her husband were promised an interest in the Property. It stands to reason that if it was really and truly assured that the Property would be given to her, then there would be no need to seek the Plaintiff's permission to carry out works on the building that she claims was built by her and her husband.
- [13] On one occasion that the Defendant gave evidence, she tendered some receipts for the purchase of materials despite having testified previously that she had no receipts to prove the expenses associated with the construction of the home. These receipts were marked **Exhibits F1-45**. The Defendant under cross examination gave evidence that she never had the receipts for the construction, that her husband had them. At this juncture paragraph 10 of the Defence was put to the witness, which suggested that the Defendant had receipts for the sums expended but did not keep them as "it was never envisaged that there would have been a need to do so." Her response was that she "never had the receipts so I can't keep them. Mr. Gansham had the receipts." She then testified that she had some of the receipts and could not recall if she produced receipts for the initial construction. The testimony of the Defendant regarding these receipts called into question her credibility as a witness of truth. She could not seem to keep her story straight, and this Court formed the view that she was not being forthcoming about the receipts in question.

- [14] Further, when other more probing questions were put to the witness about the receipts she tendered, the Defendant became evasive in her responses. There were several instances where the Defendant did not give a direct answer to the questions posed, leading this Court to conclude that she was hiding from the truth. Even after admitting that some of the receipts were dated after the Court matter commenced, the Defendant still maintained that the receipts that she produced were to show that she and her husband constructed and repaired the house whilst they were together. This bit of evidence further eroded this Court's confidence that the Defendant was telling the truth.
- [15] Still on the issue of the Defendant's credibility, it was revealed under cross examination that parts of her *viva voce* evidence conflicts with her pleaded case in several material aspects. In particular, there were discrepancies as to when the house was constructed and when she moved in. In her Defence, which was put to her, the Defendant pleaded that the house was constructed in November 1997 when she would have expended the large sums of money and that she moved in in February 1998. However, in her evidence given under oath she refuted the veracity of these statements and testified in chief that the house was built in the year 2000 and she moved in in that very year. At one point the Defendant even testified that the house was built "around 1999." These inconsistencies were not cleared up in re-examination, which was declined by counsel for the Defendant. This testimony gave this Court the impression that either the Defendant was not entirely sure of her own case or she was not being entirely truthful.
- [16] The Defendant testified that between the years 2000 and when this Action was filed, she and her husband spent about \$7,150,000.00 on the construction of the building. However, **Exhibits F1-45** do not add up to this sum, in fact they total approximately \$416,877.00, not even a fraction of the total put forward by the Defendant. In addition, there are only about four receipts which are dated in 2000, the year that the Defendant testified that the house was built. Some are dated after 2013 when the instant proceedings were filed and some are dated in 2019, during the trial of this matter.
- [17] During cross examination the Defendant accepted that the materials purchased from the sawmills would be wooden materials – there were about 14 receipts evidencing purchases from a sawmill. She testified that all the wooden materials purchased from 2000 to 2011 were used in the construction of the house. Though not impossible, this Court finds it difficult to believe that all the wooden materials purchased from the numerous sawmills would have been used for the construction of the home. The house is not a wooden house. In this regard, the Defendant tendered into evidence some photographs of the building which she said were taken in 2013. The photographs, marked **Exhibits D1-21**, show a one-story mostly concrete structure.
- [18] The Defendant's claim that she relied on a promise made by the Plaintiff and acted to her detriment was not supported by the receipts she tendered. Taken at its highest possible evidential value, the sum represented by **Exhibits F1-45** cannot, in this Court's view, reasonably be considered as substantial for the purposes of establishing detriment. This expenditure could not, by any stretch of the imagination be considered "large sums of monies" as the Defendant would want this Court to believe. By her own admission, the Defendant accepted that \$300,000.00 was insufficient to construct a house, she said that such a sum would only take it to a point. And the receipts certainly do not add up to \$7,150,000.00. There is no other credible evidence available which supports the contention that the Defendant and her husband built the house on the Property having relied on a promise made by the Plaintiff that he would give them the Property. As such this Court finds that the remaining two elements of proprietary estoppel, to wit, reliance and detriment have not been established.
- [19] The Plaintiff's evidence that he allowed his son and the Defendant to stay in the house that he built on the Property until they got their own place was not challenged. He gave evidence that the Defendant and his son did not build the house in reliance on any promise

made by him. He said he was the one to apply to the NDC for approval to build and that the Defendant was living with her grandmother at the time construction was going on. This evidence aligns with the evidence of the Defendant in this regard. Under cross examination, the Plaintiff gave evidence that after he built the house, he did nothing more to it and that any extensions done to it were done without his permission or that of the NDC. He said that he only became aware of the extensions after they were completed. He stuck to his story that he was the one that built the original house, he did not waver from his position.

[20] The Plaintiff's version of events was supported by the evidence of his son, Gansham Bahadur, who testified that the Plaintiff built the house that is on the Property. He confirmed that the arrangement was that he and the Defendant would reside there until got their own home. He gave evidence that he and the Defendant did some extensions unknown to the Plaintiff. He said too that the Plaintiff never promised them the house or land. Under cross examination the witness' story did not change. He said whilst the extension works were ongoing the Plaintiff was not in Guyana. The witness testified that on the Plaintiff's return he told him to discontinue the work and that waited until the Plaintiff returned to Canada then continued. Regarding the materials used for the extension to the house, the witness said he was the one to purchase the materials, that he was unsure if the Defendant purchased any since "she didn't work so I don't know where she got money from." He testified further that he buys materials for other persons and so some of the receipts, though in his name, are materials purchased for customers and not for the home. He says drives a tractor and transports materials for a living. The Defendant's husband's evidence is in violent conflict with that of the Defendant's who is contending that both of them built the house on a promise made by the Plaintiff, yet he is denying this was ever the case.

[21] The evidence of witnesses for the parties was at times believable and at times unbelievable. However, it is for the Defendant to prove that an estoppel arose in her favor as a result of a promise made to her by the Plaintiff that he would give her the Property and having acted on this promise, suffered detriment.

Conclusion

[22] Having analyzed all the evidence, this Court finds that the Defendant has failed to establish on a balance of probabilities that the Plaintiff made any promise to her that she would be given the subject property or an interest in it. There is no evidence before this Court that points to a clear and unequivocal assurance or promise by the Plaintiff to the Defendant on which she relied to her detriment. Similarly, this Court finds that there is no evidence of any detriment suffered by the Defendant in reliance on any promise made. The claim of detriment was not borne out by the receipts tendered into evidence. This Court therefore holds that the Defendant has failed to establish the key elements of the doctrine of proprietary estoppel, and so does not operate to bar the Plaintiff from asserting his strict legal rights to the property in dispute. In the circumstances, it is Ordered that,

- a. the Order be granted as prayed for in paragraph (a) of the Statement of Claim filed on the 12th August, 2013;
- b. the Defendant do give up possession of the property situate at Block 16 (sixteen) being a portion of the East Half of East Half of Plantation Hydronie, East Bank Essequibo, Guyana and more fully described in Transport No. 72 of 1984 on or before the **31st January, 2023**;
- c. there be costs to the Applicant in the sum of \$100,000.00 to be paid on or before the 12th December 2022.

.....*Younge*.....

Damone Younge
Hon. Madam Justice
Damone F. J. Younge
Puisne Judge