

2013

No. 88 W/S

BERBICE

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

BETWEEN:

INDERNAUTH SINGH

Plaintiff

-and-

VIJAY PERSAUD

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Rohan Chandan for the Plaintiff

Mr. Kumar Doraisami for the Defendant

**Heard October 3<sup>rd</sup> and 12<sup>th</sup> 2016**

RULING

BACKGROUND

The undisputed precursory facts to this Action are that on January 27<sup>th</sup>, 20109 the Defendant, Vijay Persaud filed an Application for Declaration of Title, Action No.11 L/R of 2009, claiming to have acquired adverse possessory rights and title in and to land situate at Parcel 11, Block I, East Bank Berbice having been in occupation and possession thereof, with his predecessors in title for over 12 years, such occupation and possession having been open and continuous *ned vi, ned clam, ned precario*.

The Application came on for hearing before the Land Court in New Amsterdam and the Commissioner of Title issued an Order declaring that the Applicant, Vijay Persaud, had acquired absolute title to the said parcel of land situate at Parcel 11, Block I, East Bank Berbice on April 23<sup>rd</sup>, 2012.

Pursuant to that Order of the Land Court Vijay Persaud obtained Certificate of Title No. 2012/ 593 to the said land on March 26<sup>th</sup>, 2013.

It is the Plaintiff's contention in this Action, commenced by way of Writ of Summons on May 20<sup>th</sup>, 2013 that he, Indernauth Singh, was in sole and undisturbed

possession and occupation of the said land situate at Parcel 11, Block I, East Bank Berbice, which he knew as Lot 167 Edinburg Scheme, East Bank Berbice since 1986 and that the Defendant in fact perpetuated a fraud on the Land Court thereby fraudulently causing the Commissioner of Title to make the Order in Action No. 11 L/R of 2009 that enabled him to fraudulently obtain Certificate of Title No. 2012/593.

In these circumstances the Plaintiff is asking this Court to recall the Order of the Land Court and the subsequent Certificate of Title relating to the land acquired by the Defendant.

### **ISSUE I**

Can the title of a registered proprietor be recalled?

### **LAW**

By virtue of **section 65 (1) of the Land Registry Act; Cap. 5:02; Laws of Guyana**

*“ ... the title of every registered proprietor shall be absolute and indefeasible and accordingly shall not be impeached or affected in any way ... except -”*

**section 65 (1) a** *“in the case of fraud”*.

### **CONCLUSION**

There clearly is no requirement for a lengthy analysis of the law with respect to this issue. It is clearly stated in the statute that though the nature of the Title registered in accordance with the **Land Registry Act** is absolute and indefeasible, such Title can nevertheless be impeached and therefore set aside if it was acquired through fraudulent means.

### **ISSUE II**

Did the Defendant commit fraud upon the Land Court in Action No. 11 L/R of 2009 to obtain the Declaration of Title Order on April 23<sup>rd</sup>, 2012?

The Plaintiff is alleging that the Defendant knowingly made false statements in his application to the Land Court with the intention of deceiving the Land Court.

### **FACTS/ EVIDENCE**

The Plaintiff testified that he lives at Lot 166 Edinburg Scheme, East Bank Berbice which is now known as Parcel 9 and neighboring to Parcel 11 (which was Lot 167) which I will refer to as “The Land”.

He testified that since 1986 he has been occupying “The Land”. He testified that when the street passing in front of his land and “The Land” was being created dirt was graded and pushed up on the side of the road. He fetched in about 200 bags of this dirt and filled “The Land”. This was in 1989.

He testified that he planted a guava tree on “The Land” in 1990 and a mango tree in 2007. He erected a fence around “The Land” in 1999 using wallaba posts and strips that he bought from the sawmill.

He testified that he fenced “The Land” because at that time he had 6 heads of cow and a horse which he put on the land and so he fenced the land to keep them in. He then built a horse pen in 2005 and a calf pen in 2006 on “The Land”.

He testified that between 2007 and 2010 he travelled back and forth to the United States of America but he maintained possession and control of “The Land”.

He testified that he knows the Defendant for 30 years to date and he also knew the Defendant’s father, now deceased, since they were living at Lot 156 Edinburg Scheme.

He testified that he knew the Defendant to be a hire car driver and he has never seen him on “The Land”.

He testified that even though he lives next to “The Land” the Defendant never served him a Notice of his Application for prescriptive title to “The Land”.

He testified that he became aware of the Defendant obtaining Title to “The Land” when he received a letter dated April 25<sup>th</sup>, 2013 from Mr. Kumar Doraisami, Attorney-at-Law informing him of that and directing him to remove his dilapidated fence and other useless materials from “The Land”. Thereafter, the Defendant went on to the land and broke down his pens and fence. As a result this action was filed on May 20<sup>th</sup>, 2013.

Shameer Rajab testified that he also neighboring “The Land” at 168 Edinburg Scheme, East Bank Berbice for the last 10 years.

He testified that he is a shopkeeper and an Imam and that for all of the time that he knew “The Land” the Plaintiff was always looking after “The Land” and he had horse pen and cow pen on “The Land”.

He testified that he did not see the Defendant on “The Land” at any time.

He also testified that even though he lives next to “The Land” the Defendant never served him a Notice of his Application for prescriptive title to “The Land”.

The Defendant testified that his father had 2 pens on “The Land” and some lats fencing it. That he removed those lats in 2013 and built his own fence.

He testified that Mr. Doraisami is his Attorney since July 2009.

He nevertheless testified that he knows nothing about the letter that the Plaintiff received from Mr. Doraisami and that he never instructed Mr. Doraisami to send such a letter.

The Defendant did not at any time testify as to the nature of his occupation of “The Land”.

All of the witnesses testified that the local authority responsible for that area where “The Land” is located is the Enfield New Dopark NDC and not the Edinburg NDC.

The court's record of Action No. 11 L/R of 2009 was tendered into the evidence and Exhibit A-21 shows that the Application was purportedly served on the Overseer of the Edinburg NDC.

The Court noted that the postal registration receipts with respect to service of the Application did not bear signatures verifying receipt at Exhibit A-3.

Interestingly, the rubric for the Action **changed** with respect to the plan relied on to demarcate and delineate "The Land" from the Application to the Court Order without any record that the Court had granted leave for such a change to be made.

### **ANALYSIS**

It is noted upon a perusal of the exhibits that there were numerous procedural errors and non compliance with the **Rules of the High Court (Declaration of Title)** in the presentation of the Application to the Land Court, however, procedural errors do not amount to fraud.

Procedural errors, however, can be a precursor to fraud, in that a seemingly harmless procedural error or non compliance with the Rules of Court could in fact veil the fraud being perpetuated.

The Court finds that the non service of the Application, at least with respect to the Plaintiff and the witness Rajab was purposely so done so as to facilitate the subsequent lies presented to the Land Court to obtain the Declaration of Title Order.

The Court found the Plaintiff and the the witness Rajab to be frank and forthright in their testimony. The Court found these witnesses to be witnesses of truth. On the other hand the Defendant's indifferent and seemingly unconcerned manner in the witness box coupled with his inability to provide any material details with respect to his or his predecessors' possession and/ or the Application that he filed with the Land Court caused the Court to find that he was not a trustworthy or reliable witness.

The Court finds that the letter that the Plaintiff testified that he received from Attorney Doraisami (Exhibit B) essentially corroborates the Plaintiff's story.

It is indeed disingenuous of the Defendant to ask this Court to believe that Mr. Doraisami sent that letter to the Plaintiff without any instructions bearing in mind that Mr. Doraisami was his Attorney in the Land Court and in this case.

### **CONCLUSION**

Based on the foregoing, the Court finds, way beyond a preponderance of probability, that the Defendant perpetuated fraud on to the Land Court to obtain Court Order dated April 23<sup>rd</sup>, 2012 in Action No. 11 L/R of 2009 (Berbice). The Court finds that it is pursuant to that Court Order Certificate of Title No. 2012/ 593 was issued to the Defendant.

In the circumstances Certificate of Title No. 2012/ 593 is hereby recalled and set aside. Further Order of Court dated April 23<sup>rd</sup>, 2012 in Action No. 11 L/R of 2009 (Berbice) is hereby recalled and set aside.

The Court finds that it is not competent for this Court to make a declaration that the Plaintiff has acquired Prescriptive Title to "The Land" since the procedure to be followed in such an Application would not have been implemented in prosecuting this Action and also, because **Act No. 6 of 2011, Title to Land (Prescription and Limitation) (Amendment) Act 2011** specifically excludes "The Land" (the subject matter of this Action) from being acquired by prescription through adverse possession.

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

Costs to the Plaintiff in the sum of \$100,000.00

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Justice N. A. Singh