

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

RANDOLPH LUIS CAMACHO

Plaintiff

-and-

VIVETTE CORNETTE CAMACHO

Defendant

Ms. A. Wong-Inniss for the plaintiff

Mr. L. Hanoman for the defendant

DECISION

The plaintiff filed a specially endorsed writ claiming that he is the registered owner by Certificate of Title dated 8th February 1974 and numbered 741/134 of the property described as “parcel 2318, Block XXX, Zone E.B.D. being part of plantation Ruimveldt (North), with the building and erections thereon.”

The plaintiff further claims that defendant is the plaintiff's daughter and she was permitted by the plaintiff to occupy the bottom flat of the property. That despite several oral requests by the plaintiff to the defendant to vacate the property, the defendant has failed and or refused to vacate the property, and that by letter dated 16th December 2009 the plaintiff requested of the defendant to remove from the property within 30 days of the receipt of the letter. That

the defendant has failed, refused and /or neglected to quit and deliver up vacant possession of the property.

As a result the plaintiff claimed the following orders:

- a) Vacant possession of the property being land, building and erections situate at lot 2318 Soufriere Street, North Ruimveldt, Georgetown, as more fully described in Certificate of Title dated 8th February 1974 and issued under instrument No, 74/134
- b) Mesne profits at the rate of \$35,000 (thirty five thousand dollars) per month with effect from 1st February 2010.
- c) Costs
- d) Any further or other order as the Court deems just.

In her affidavit of defence the defendant deposed that by an agreement of sale and purchase dated 20th day of December 2002 the plaintiff sold one undivided half share of the said property to Roxanne Morris the sister of the defendant, and that the said Roxanne Morris repeatedly informed the plaintiff that she is ready, willing and able to accept title of the property.

The defendant claims that she went into occupation with the express permission of the said Roxanne Morris and not the plaintiff, and contends at paragraph 7 that having been permitted to occupy the property by Roxanne Morris she is lawfully entitled to remain there.

There was tendered a certificate issued under section 141(1) of the Land Registry Act, Chapter 502 certifying that the property issue of this action is registered to the plaintiff. There was also tendered an Agreement of sale and purchase dated 20th December 2002 between the plaintiff and Roxanne Morris for one undivided half share in and to the said property.

In his evidence the plaintiff stated that he never signed an agreement dated 20th December 2002 . He said he put the defendant in possession at a rental of \$15,000 per month in 1998 and that she has been a tenant since then. In re-examination he said he never received any money for the rent. He said he never signed an agreement for this arrangement, that it was verbal.

The defendant gave evidence and stated that she was never a tenant of the plaintiff and never paid any rent and was never a licensee. She said she lived there since 1979 and enclosed the bottom flat for her own purposes and spent about \$4,000,000.

In cross-examination she stated before going into occupation she spoke to her mother and father (the plaintiff) and that her father gave her permission to erect the structure. She said both her parents gave her permission to occupy the premises. She said there was no arrangement for her to pay rent to the plaintiff. She said that she

refused to remove because she spent her money on the premises and that if she got her money back she will leave.

Roxanne Morris also gave evidence. She said that in December 2002 the said property was going up for sale and she and the plaintiff signed an agreement of sale on 20th December 2002. She said she came to pay off the outstanding balance. She said the defendant lives in the property for over 10-11 years and that her mother and father gave her permission to live there. In re-examination she said she paid money to the bank to save the house.

Mr . Hanoman made the submission that since the matter involved a tenancy then this court cannot hear the matter. However the defendant gave no evidence of any tenancy and denies that she was ever a tenant of the plaintiff. The defendant admitted that she was there with permission . Therefore since there was no tenancy then this court has jurisdiction to hear the matter.

The facts reveal that the plaintiff is the registered owner of the property. Under section 65 of the Land Registry Act he is protected and holds an absolute and indefeasible title except in cases of fraud or misdescription.

The Land Registry Act section 65 (1) states as follows:-

“The title of every registered proprietor shall be absolute and indefeasible and accordingly shall not be impeached or affected in

any way by the existence in any other person of any interest (whether derived by grant from the State or otherwise) which but for this Act might be held to be paramount or to have priority or by reason or on account of any informality or irregularity in the application or proceedings for registration except –

(a) In the case of fraud

(b) As regards any portion of land erroneously included in any parcel by misdescription of boundaries, unless such proprietor is a bona fide purchaser for value or derived title from or through such a purchaser.

(c) As otherwise specified in the Register or provided in this Act.”

The agreement of sale does not confer any interest in the property itself , but merely gives the purchaser a right to sue for specific performance. The defendant is not a tenant and has given evidence that the plaintiff granted her permission to occupy the premises.

Roxanne Morris claims that she purchased a half share and paid the purchase price by way of paying off the mortgage because the bank would have foreclosed. This does not create any interest in the property but Roxanne Morris can pursue a cause of action to recover the money she spent.

In **Ramdeo v Heeralall**, CCJ Appeal No. 3 of 2009 the learned Judges stated at paragraph 35 –

“Due to the strength of the above indefeasibility of title provisions, a person desirous of protecting his or her in personam ad rem right (like a contractual purchaser or a person interested under an express, resulting or constructive trust of an immovable) needs to lodge a caveat under section 125 of the Land Registry Act or, where appropriate, have a restriction or prohibition entered under section 117 or section 126 thereof respectively.”

Her actions cannot be translated into a proprietary interest until and unless title is conveyed in her name for the said half share. The permission therefore that was given to the defendant means that the defendant has no lawful right to the property. What she has is a licence to occupy which can be terminated by the plaintiff and the plaintiff terminated that licence by letter dated 16th December 2009.

The defendant was clearly the gratuitous licensee of the plaintiff and this was clearly acknowledged by the defendant in her evidence. In

Ramdass v Jairam (2008) 72 WIR 270 the CCJ stated –

“equitable interests in immovable property were not recognized and could not be acquired in Guyana.”

The defendant therefore has no interest to protect and cannot rely on the permission nor the acts of Roxanne Morris nor the agreement of sale to give her such an interest.

The plaintiff is therefore entitled to possession. In the circumstances possession is granted to the plaintiff in terms of paragraph (a) of the statement of claim dated 28/10/2010 with vacant possession to be given by the defendant to the plaintiff on or before the 15/01/2012.

Costs in the sum of \$20,000.

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Diana F. Insanally

Date: 29th December 2011.