

2010

NO. 91/S – 10

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

Omeshwar Misir

Plaintiff

-and-

Massabally

Defendant

Mr. S. Poonai for the plaintiff

Mr. R. Satram for the defendant

DECISION

The plaintiff filed an exparte application by way of affidavit for an interim injunction claiming the following order:-

- (a) An injunction restraining the defendant whether by himself, his servant and/or agents howsoever from entering, remaining, planting, or otherwise occupying the 7 (seven) acres of rice land situate at the South Section of the said plantation Aurora, Essequibo Cost, comprising a portion of plantation Aurora and more fully described in Transport No. 305/99.

The plaintiff claims that he is the transported owner of property described as:-

“Plantation Aurora, situate on the West Bank of the Essequibo River, in the county of Essequibo and Republic of Guyana, the said plantation now comprising the following sections or plantations namely Aurora South and North Johanna, South and North Makeshift and Warousi and more fully described in transport no. 305/99.

The plaintiff claims that 7 (seven) acres of rice land situate at the South Section of the said plantation Aurora, Essequibo coast comprises part of his transport. He said he purchased Plantation from Monalene Sukhai Ganesh, Bissoondai Cheddi and Mohabir Misir in various representative capacities. That prior to obtaining transport, one of his predecessors in title, Bissoondai Cheddi through her agent Cecil Manbahal let a specific portion of plantation Aurora to wit 7 (seven) acres of rice land situate at the south

section of the said plantation Aurora, Essequibo Coast to one Cecil Manbahal who was a tenant of Bissoondai Cheddi.

That on the 4th February 1981 the said Cecil Manbahal acting as agent for Bissoondai Cheddi sold several portions of the land to the defendant herein. A copy of the Agreement was exhibited. As can be seen from the Agreement, the said Cecil Manbahal also purported to transfer his tenancy of the 7 (seven) acres of rice lands of which he was a tenant to the defendant herein. The said Agreement states:-

“(b) The goodwill of approximately 7 acres of rice land situate on Long Road known as Coco-Walk on the Eastern side of the Public Road and which Goodwill is owned by Cecil Manbahal.”

A further clause of the Agreement reads as follows:-

“In respect of (a) the rates and taxes is to be paid by the purchasers from the 1st day of January 1982. In respect of (b) and (c) the rent is to be paid by the purchasers from April 1981.”

From the aforesaid terms of the Agreement, the defendant was to take over the tenancy from Manbahal and commence paying rental to the said Bissoondai Cheddi. The defendant did in fact commence paying rental up until 1999 when Bissoondai Cheddi together with others sold the land to the plaintiff. After the plaintiff obtained transport, the defendant refused to pay rent to the plaintiff which resulted in the plaintiff commencing proceedings in the Rice Assessment Committee for possession of the said rice lands on the grounds of own use and non-payment of rent.

On the 25th January 2000, one Shamdayal Bridj Mohan Sahoy filed an action against the plaintiff and Monalene Sukhdai Ganesh, Bissoondai Cheddi and Mohabir Misir in respect of the said plantation Aurora. When the application came up for hearing before the Rice Assessment Committee the defendant's Attorney informed the Committee of

the High Court proceedings and the Committee stood down the application until the High Court proceedings were completed.

On 11th December 2009, the Honourable Justice Madam Roxane George dismissed the action filed by Shamdayal Bridj Mohan Sahoy and refused to set aside the plaintiff's transport. The matter before the Rice Assessment Committee then came up for hearing on the 9th April 2010, but the Committee declined jurisdiction to hear the application on the ground of a purported dispute as to ownership of the rice lands. The plaintiff claims that the defendant has not been planting the rice lands for a very long time and has not been occupying the lands. The plaintiff claims that he is entitled to the protection that the transport affords him.

In his Affidavit in Answer, the defendant deposed that on the 4th February 1981 he bought, for himself and wife, Bibi Jaitoon, from Bissoondye Cheddie, through her son-in-law and agent, Manbahal, the land subject matter of this action together with a house and land situate at lot 28, Section B, Aurora, Essequibo Coast and seven (7) acres of rice land situate on Long Road known as Coco Walk, on the Eastern side of Essequibo Coast Public Road. He said when he went to take possession of the 7 acres of rice land he found one Aimraj Tiwari in possession who claimed that he was there a long time without paying rent and that if he, the defendant, wants the place, he will have to pay him.

The defendant said that on the 5th February 1981 he bought again, from Aimraj Tiwari, the same 7 (seven) Acres of rice land subject matter of this action. He said he took possession of the house and land in question. The defendant claims that since he has been in possession he has never paid rent to anyone since 1981 and that there was no Rice Assessment Certificate with respect to rent, issued by the Rice Assessment Committee and given to him by anyone. The defendant claims that since 1999 when the plaintiff obtained transport he, the plaintiff, filed several proceedings against the defendant all of which were either discontinued, withdrawn, dismissed or determined in the defendant's favour.

The defendant claimed that he planted the land continuously and only one crop he did not plant because of the dry season. The defendant admits that the Agreement of sale made provision for payment of rent but he never paid any rent to anyone. He said his lawyer advised him that if the owner does not collect rent , after a time the land will be his. The defendant claims that he has acquired a possessory title to the land on account of his long occupation without paying rent, adverse to the plaintiff and therefore the plaintiff's title has been extinguished.

The law is that the transported owner is protected under the Deeds Registry Act (Section 65) unless it can be shown that he obtained the transport by fraud. The defendant has not filed any action claiming fraud against the plaintiff. The defendant is claiming adverse possession and in this regard he filed a petition in the Land Court and the plaintiff has filed an opposition thereto. The Land Court application will decide whether the plaintiff's title has been extinguished and whether the defendant has acquired title by adverse possession.

The High Court action at the injunction stage cannot determine this issue. The transported owner is entitled to retain his legal ownership until the hearing and determination of the action. In any event this action should be stayed until the outcome of the Land Court Application is pronounced.

In the circumstances, the Court having heard the arguments of both parties, the Court finds that the plaintiff has discharged the burden of satisfying this Court that an injunction ought to be granted in his favour, and that on a balance of convenience the status quo ought to be maintained until the hearing and determination of the Land Court Application. From the facts presented there is a serious issue to be tried .

An injunction is therefore granted in terms of paragraph (a) of the Summons dated 30th April 2010 until the hearing and determination of the action herein.

Mr. Satram requested a stay of 6 weeks. Mr. Poonai objected on the grounds that an appeal would not have any success. Stay refused for the reason that no grounds were advanced by Counsel for the defendant why a stay should be granted.

No order as to costs.

.....
Diana F. Insanally

Date: 15th November 2011.