

2012

NO. 386/W

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

1) JASMATTIE RACHPAUL a/k as

JASMATIE RACHPAUL

2) DENNIS PERSAUD

Plaintiffs

-and-

SANDRA ELIZABETH KUMAR  
PERSONALLY AND in her capacity as  
the Executrix of the estate of HAROLD  
RACHPAUL Deceased, Probate  
whereof was granted to her by the  
High Court of the Supreme Court of  
Judicature on the 23<sup>rd</sup> day of January,  
2012 # 35/2012.

Ms. G. Sandford-Johnson for the applicants

Ms. P. Chase for the respondent

RULING

The properties in issue were put in the name of the defendant by the deceased. The deceased left a will whereby he bequeathed some of the properties held by the defendant to his other children. The defendant refuses to convey the said properties to the plaintiffs.

The plaintiffs claim that there was an implied trust that the defendant held the properties on trust for the deceased and therefore the defendant was obligated under the law of trusts to transfer the properties according to the will of the deceased.

The Civil Law of Guyana Act states that only express trusts are recognizable in Guyana, and that there are no equitable interests in Guyana. The law of transports under the Deeds Registry Act is that transport confers an indefeasible title to the owner unless obtained by fraud.

In this case there is no fraud committed by the defendant since the plaintiffs claim that the deceased voluntarily conveyed the properties into the defendant's name.

Therefore, are the plaintiffs entitled to an interlocutory injunction until the hearing and determination of the matter herein?

First of all the issue was raised by the defendant that paragraphs 7,9, 10 and 15 of the ex parte application amount to hearsay and neither is the source of the information provided.

The law on Affidavits is that the source of the information must be provided. In **Re JL Young Manufacturing Company Ltd** Justice Rigby stated "the rule is perfectly clear that when a deponent makes a statement on his information and belief, he must state the ground of that information and belief. ...Now every affidavit of that kind is utterly irregular. I never pay the slightest attention myself to affidavits of that kind, whether they be used on interlocutory applications or on final ones."

Therefore based on the authority above, I find that paragraphs 7, 9, 10 and 15 are based on hearsay and that no source of information was given and the said paragraphs are hereby struck out.

Secondly the point was made that the ability to pay damages was not stated. In fact the said paragraph is not readily understood and makes no sense. In **Ramkissoon v Ramkissoon** the honourable Chief Justice held that a party applying for an injunction must state his ability to pay damages or if he is unable to state such ability then he must at least ask the court to exercise its discretion in granting the injunction despite his impecunious disposition, providing that he has established that he has a serious issue to be tried.

In **Belfonte (Domain) v AG** (2006) 68 WIR 413 C.A. T&T Sharma CJ stated :

“A trial judge in my view should make every effort to save the proceedings where it is just and reasonable to do so: matters of procedure are to be kept flexible in order to do justice between the parties.”

In my opinion therefore the undertaking or lack of it in the applicant's application for an interim injunction is not fatal to the proceedings herein.

It seems to me that while the legal position is that there are only express trusts in Guyana, it is not for the court to decide at this stage whether or not such a trust exists on the facts stated in this case.

Although the defendant is the transported owner of the property in issue, I find that there are serious issues to be tried, based on the will of the deceased, which the trial judge will have to determine the effect of.

In the circumstances, damages would not be an adequate remedy if the properties were disposed of to the detriment of the plaintiffs, should they succeed at the trial.

On the other hand, the defendant will not be prejudiced by an order not to sell or dispose of the properties until the hearing and determination of the matter.

The balance of convenience supports the contention that the status quo should be preserved, because there are serious legal issues to be determined which at the end of the trial would determine whether the applicants are entitled to a conveyance under the will of the deceased.

One such serious issue to be tried is whether the will of the deceased creates a trust in favour of the deceased, thereby rendering the defendant a trustee of the properties held by her by transport.

In the circumstances the court hereby makes the interim injunction granted on the 4<sup>th</sup> October 2012 interlocutory until the hearing and determination of the action herein. The injunction prayed for at paragraph 24 (b) is hereby refused. By consent no order as to costs. Leave to appeal granted.

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Diana F. Insanally

Dated this 11<sup>th</sup> April 2013.