

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF
THE CO-OPERATIVE REPUBLIC OF GUYANA**

**CCJ Appeal No CV 005 of 2012
GY Civil Appeal No 31 of 2010**

BETWEEN

JAFARALLY ASRAF ALI

APPELLANT

AND

**JOHN CHOONG SUBSTITUTED FOR
ANDREW P CHOONG
RAZEEKA SANKAT
THE REGISTRAR OF DEEDS OF GUYANA**

RESPONDENTS

Before The Honourables

**Mr Justice R Nelson
Mr Justice A Saunders
Mme Justice D Bernard
Mr Justice D Hayton
Mr Justice W Anderson**

Appearances

Mr Rajendra Poonai and Mr Parmanand Mohanlall for the Appellant

Mr Roopnarine Satram and Mr C V Satram for the First and Second Respondents

JUDGMENT

of

Justices Nelson, Saunders, Bernard, Hayton and Anderson

Delivered by

The Honourable Mr Justice Nelson

on the 15th day of May 2013

- [1] This is an appeal as of right since it relates to property above the prescribed value. The appeal was filed on October 24, 2012 against an order of the Court of Appeal made on March 23, 2012 dismissing an appeal from an order of Mr Justice Ramlal dated March 18, 2010. Ramlal J had dismissed an action of Mr Jafarally Ali (“the Appellant”) claiming a declaration of title to sub-lot 13 of the North Half of Lot D, No 78 Village, Spring Lands, Berbice, which I shall refer to as “the disputed land”.
- [2] The disputed land was transported to John Gilbert Choong by transport No. 694 of 1950 and after his death in 1980, his widow, Norma Choong, vested the disputed land by transport in favour of Andrew Peter Choong in 2003. Andrew Peter Choong was alive when these proceedings began but he died in 2009 after he had filed an affidavit in these proceedings. (Mr John Choong has been duly substituted for Andrew Peter Choong.) It is to be noted that the disputed land was sold to the Second Respondent, Razeeka Sankat, but there is as yet no transport in respect of that sale. The Third Respondent did not appear.
- [3] The Appellant commenced these proceedings by specially endorsed writ on May 16, 2005 and claims that he has possessory title of the disputed land. He claims that Mr Basil Lochan Ramnarine (“Ramnarine”) became the yearly tenant of John Gilbert Choong in 1965 but he ceased paying rent in 1974 as alleged in his affidavit sworn to on May 17, 2005 or in 1981 as he stated by way of contradiction in his statement of claim and his evidence under cross-examination. Ramnarine had erected a building on the land in 1965 and at Ramnarine’s invitation the Appellant in 1981 went to live in the building on the disputed land rent free. The Appellant claims that, as a licensee of Ramnarine he continued the adverse possession of Ramnarine until John Gilbert Choong’s title was extinguished. He relied on sections 3 and 4 of the Title to Land (Prescription and Limitation) Act Chapter 60:02 (“the Act”):

“3. Title to land (including State land or Government land) or to any undivided or other interest therein may be acquired by sole and undisturbed possession, user or enjoyment for 30 years, if such possession, user or enjoyment is established to the satisfaction of the Court and was not taken or enjoyed by fraud or by some consent or agreement expressly made or given for that purpose:

Provided that except in the case of State land or Government land, such title may be acquired by sole and undisturbed possession, user or enjoyment for not less than twelve years, if the Court is satisfied that the right of every other person to recover the land or interest has expired or been barred and the title of every such person thereto has been extinguished.

4. (1) The Court may make a declaration of title in regard to the land or interest in-

- (a) any action brought by or against the owner thereof or any person claiming through him or in which all the parties interested therein are before the Court; or
- (b) ...
- (c) ...
- (d) ...

and may order that the land or interest be passed to and registered in the name of the person who has so acquired such land or interest.”

Alternatively, he claims to have purchased the building on the disputed land for US\$12,000 on September 5, 2000, thus acquiring, he believed, both Ramnarine’s possessory title and the building.

[4] The Appellant clearly has the burden of proving his adverse possession and the amended grounds of appeal are based almost entirely on fact and therefore this is an appeal on a question of fact, i.e., whether there was occupation by the Appellant or a chain of occupation by the Appellant and his predecessors in title amounting to 12 years adverse possession or whether the Appellant purchased a valid possessory title. As we emphasised in *Lachana v Arjune*¹, the Court must necessarily be very slow to reverse concurrent findings of fact by the courts below unless of course those findings were totally unsupported by the evidence. In this case, there are three factors that militate against the adverse possession relied on.

¹ [2007] CCJ 8 (AJ)

[5] First, there is the document (exhibit “L”) which is on page 156 of the Record of Appeal, an undated letter which was written to the predecessor in title of John Choong, Andrew Peter Choong and dated by him as received on November 13, 1999. It is written by Ramnarine to Andrew Peter Choong. It acknowledges in 1999 the title of the estate of John Gilbert Choong represented by Andrew Peter Choong since it reads in part: “We had promised a niece of ours the first option, and they are willing even to purchase the plot of land if you are desirous to sell”. The letter continued “I am sending the land rent via Western Union Office”. Indeed, secondly there is the affidavit of Andrew Peter Choong sworn a few months before his death, on which the Appellant’s counsel relied for some matters, and which states that Ramnarine had paid rent of \$22,199 due up to the year 2000. Rent was paid by the tenant and received by the landlord. Exhibit “L” makes no claim of adverse possession by Ramnarine as against the estate of Choong. Thus there is no adverse possession up to the year 2000 of Ramnarine, upon which the Appellant can rely.

[6] We note in passing that if under section 9(2) of the Act, Ramnarine’s yearly tenancy had lapsed in 1982 for non-payment of rent, adverse possession by him for any period less than twelve years (the Appellant also claiming adverse possession in his own right from 1983) would have been erased by this payment of rent, and prescription, if any, would have had to start running afresh: see proviso to section 9(2) of the Act. However, the payment of rent in 1999 and the tenor of Exhibit “L” suggested that the relationship of landlord and tenant had continued over the years. The fact that in the September 5, 2000 Agreement for Sale of the building, Ramnarine did not purport to assign any interest in the land on which the building stood is also consistent with a continuous relationship of landlord and tenant up to 2000. Thereafter any adverse possession would run after 2001.

[7] There was an objection to the letter (Exhibit “L”) in terms of the identity of the writer, but the evidence suggests that John Choong knew Ramnarine. He knew the relationship between the writer and Andrew Peter Choong and that they were in a relationship of landlord and tenant. There is no equivocation at all in the context that it was Basil, the tenant, who wrote the letter, as also appears from paragraph 6 of the affidavit of Andrew Peter Choong referred to in paragraph 5 hereof.

[8] The third document which is fatal to the adverse possession claim is the agreement for sale dated September 5, 2000 (referred to in paragraph 7 hereof), by which the Appellant purchased for US\$12,000 the building which Ramnarine had erected on the property. The Appellant thought that when he bought the building he was also acquiring the land. His evidence ran thus: “Before year 2000 I did not really believe I was the owner of the house on Lot 13. Before year 2000 I did not really believe I was the owner of the land”. So there is no question of prescription against Ramnarine by the Appellant, or indeed any question of prescription as against the true owner of the land, the estate of Choong, based on his statement that he did not really believe that he was the owner of the land. The courts below rightly rejected the Appellant’s explanation of the purchase. The Appellant stated: “I purchased the land in 2000 even though I believed I was the owner of the land before 2000 because I did not want anyone to say I robbed him since Ramnarine’s wife related to my mother-in-law”. The trial judge Ramlal J saw and heard the witnesses and he evaluated the evidence of the Appellant thus:

“...Mr. Ali during the course of giving his evidence was very evasive and shifty in answering questions under cross-examination. He took cover several times under the overused excuse of not being able to remember, not having his spectacles to read exhibited (his own ones) and when he got his spectacle he then resorted to not being able to read so well since he did not go to school far. His general demeanor has given me the [distinct impression] that he was being far less than truthful in his evidence.”

It seems to us that in the light of those findings of fact as to the Appellant’s adverse possession and his assessment of the Appellant’s credibility, the learned

judge rightly rejected the evidence of the Appellant. We affirm his findings, as did the Court of Appeal.

[9] As to the alleged revocation of the Appellant's licence and his later alleged adverse possession against Ramnarine, the Court of Appeal referred to the evidence of the Appellant in chief at page 45 of the Record of Appeal: "Basil Lochan Ramnarine gave me permission to live in this said dwelling house". The Court of Appeal concluded: "We entertain no doubt that in relation to Ramnarine's house on sub-lot 13 the appellant enjoyed no more than a bare licence to occupy. His contention though was that his licence was revoked in 1983". The evidence of that revocation was as follows: "In April 1983 I saw Ramnarine at Springlands and he spoke to me. He spoke to me about the house and as a result of this conversation I refused to remove from the house". Like the Court of Appeal, we find this sentence inconclusive since it appears from the evidence that the intention of the licence was that the Appellant should stay at sub-lot 13 until he built his own house elsewhere, which he had not done up to 1983. The totality of the evidence therefore suggests that with Ramnarine recognizing the title of the estate of John Peter Choong up to the year 2000, the Appellant's inability to prove revocation of his licence and his admission that up to 2000 he did not believe he was owner of the house on the disputed land, he failed to prove he had title, possession or otherwise to the disputed land. For these reasons, we dismiss this appeal with costs to be paid by the Appellant to the Respondents.

The Hon Mr Justice Nelson

The Hon Mr Justice Saunders

The Hon Mme Justice Bernard

The Hon Mr Justice Hayton

The Hon Mr Justice Anderson