

**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 GYCV2013/006
Formerly CCJ Appeal No 011 of 2013
GY Civil Appeal No 115 of 2004**

BETWEEN

DANIEL RAMLAGAN, substituted herein
by **Ramkumarie Ramlagan** by order of Court
dated 28th day of January 2009

APPELLANT

AND

NARINE SINGH, substituted herein by
Saiojine Singh by order of Court dated
17th day of December, 2013

RESPONDENT

Before The Honourables

**Mr Justice Nelson
Mr Justice Wit
Mr Justice Hayton
Mr Justice Anderson
Mme Justice Rajnauth-Lee**

Appearances

**Mr R Satram, Mr C V Satram and Mr M Satram for the Appellant
Mr Khemraj Ramjattan for the Respondent**

JUDGMENT

of

The Honourable Justices Nelson, Wit, Hayton, Anderson and Rajnauth-Lee

Delivered by

The Honourable Mme Justice Rajnauth-Lee

on the 29th day of June 2015

Introduction

- [1] A key issue for Guyanese land law is the relationship between a person who has acquired full and absolute title by transport under section 22(1) of the Deeds Registry Act¹ passed pursuant to an order of the Land Court, on the one hand and a claimant who claims that his adverse possession prevails over the title holder, on the other. In the current case, we have examined whether the title acquired by the title holder who has persuaded the Land Court that he has been in possession for the relevant period stops the twelve year limitation period running in favour of such a claimant. The answer is in the negative unless the claimant had been joined in the proceedings before the Land Court or separate proceedings had been commenced against him by the title holder within the twelve year period.
- [2] On the 29th September, 1991, the Appellant, Daniel Ramlagan (Ramlagan) entered upon a two acre parcel of land, more particularly described in the Schedule hereto (the disputed parcel), which formed part of a larger parcel of twelve acres. In 1994, the Respondent, Narine Singh, commenced High Court Action No. 1479 of 1994 against Ramlagan, Lochanram, Surujpattie and Hamil. Narine Singh sought a declaration of title to the disputed parcel, damages for trespass, an injunction, an order revoking Transport No. 48 of 1984 and costs. He claimed that in 1975 he purchased certain rice lands from Ramdularie which lands included the disputed parcel. He also claimed to have been in possession of the disputed parcel and to have planted rice and reared cattle on the disputed parcel from 1975 until the 29th September, 1991.
- [3] In his defence, Ramlagan contended that at the material time the twelve-acre parcel was owned by his parents, Lochanram and Surujpattie, the second and third Defendants, now deceased, and that they held same by virtue of Transport No. 48 of 1984 passed pursuant to an Order of the High Court. Ramlagan also contended that he was a tenant of a five-acre parcel which

¹ Cap 5:01.

formed part of the twelve-acre parcel and which included the disputed parcel and that he was therefore entitled to enter upon the disputed parcel.

- [4] Transport No. 48 of 1984 was passed in favour of Lochanram, Surujpattie and Hamil jointly by the Registrar of Deeds of Guyana acting pursuant to an Order of the High Court dated the 10th August, 1983, and made in Petition No. 808 of 1983 (Demerara). Hamil was Ramlagan's sibling who died in 1987 and was represented by Rattie, his widow. Lochanram and Surujpattie died in 1999 and 1998 respectively but they have not been substituted.

Judgment of Cummings J

- [5] Cummings J accepted the evidence of Narine Singh on all material aspects. She accepted that Narine Singh had been in possession of the disputed parcel since 1975. She found that at the time the application for title was made to the Land Court, Narine Singh was on the disputed parcel and the fact of his occupation was suppressed, or not considered. She therefore found that the disputed parcel should have been excluded from the lands transported to Lochanram, Surujpattie and Hamil (the title holders). She held that the title that had been passed and registered in favour of the title holders in respect of the disputed parcel should be set aside on the basis of fraud. We note that whilst the Transport makes reference to the Order of the High Court dated the 10th August, 1983, Cummings J in her decision describes it as an order of the Land Court.
- [6] Cummings J found as a fact that Narine Singh not only occupied the disputed parcel, but that he was in possession of it. She accepted his evidence that the defendants told him that his land was ploughed by mistake and that they promised to rebuild the dam which had sustained damage. The trial judge reasoned that from the evidence, which she had accepted, the Defendants had admitted Singh's possession of the disputed parcel. Cummings J also found that Ramlagan's contention that he was a tenant did not assist him because from his own evidence, his occupation was based on a tenancy which was

determined in 1992. She therefore made a declaration of title in favour of Narine Singh.

- [7] Finally, Cummings J found that Ramlagan did not have a better claim to possession than Narine Singh. She found no evidence that Ramlagan's parents had made a will and devised the disputed parcel to him or that he had acquired letters of administration in respect of their property. Cummings J therefore found that Ramlagan had no better title than Narine Singh who was in possession of the disputed parcel. She concluded therefore that Ramlagan was a trespasser on the disputed parcel.

Judgment of the Court of Appeal

- [8] Ramlagan appealed to the Court of Appeal. The Court of Appeal allowed the appeal to the extent of the argument advanced by Mr R Satram, Counsel for Ramlagan, that there was no evidential basis upon which an order for a declaration of title in favour of Narine Singh could have been made. The declaration of title made by Cummings J was therefore set aside. The Court of Appeal also agreed with Mr Satram's argument that no fraud was established on the part of the transportees/title holders which could have been used as the basis for a declaration of title in their favour before the Land Court.
- [9] The Court of Appeal however upheld the trial judge's findings that on the 29th September, 1991, Narine Singh was the person in possession of the disputed parcel and that he was the person entitled to the occupation of the disputed parcel. The Court observed that the trial judge had made a finding of fact in relation to the status of Narine Singh on the disputed parcel. They reasoned that they ought not to disturb that finding unless the trial judge was clearly wrong. They accepted as correct the trial judge's reasoning that a defendant was not at liberty to set up the title of a third party. Ramlagan was therefore not entitled to rely on his parents' title to the disputed parcel. In their view, the trial judge was also correct to find that in the absence of any lease, licence,

probate or grant of administration, title or transport to Ramlagan, he had no better title to the disputed parcel.

- [10] Special leave was sought and granted by this Court to appeal the decision of the Court of Appeal. Both Ramlagan and Narine Singh have died and have been substituted.

Issues to be determined

- [11] The key issue in this appeal is whether Transport No. 48 of 1984, passed pursuant to the Order of the Land Court made on the 10th August, 1983, in Petition No. 808 of 1983 (Demerara), stopped time running in favour of Narine Singh. This issue was argued by Counsel before us and arose out of the finding of fact by Cummings J that Narine Singh had been in possession of the disputed parcel from 1975 until 1991. Mr Satram, on behalf of Ramlagan, has challenged that finding on the basis that the trial judge failed to assess properly the legal effect of the order of the Land Court and the subsequent passing of transport. It bears repeating that this question is of crucial significance. If after the order of the Land Court and the passing of transport pursuant thereto, time continued to run in favour of Narine Singh, then the title holders' title would have been extinguished twelve years after Narine Singh went into possession of the disputed parcel, that is, from 1975. Thus Narine Singh would have acquired prescriptive title to the disputed parcel and would have made out his claim in trespass.

- [12] The second issue which of course follows is whether the trial judge was entitled to find that Narine Singh was in possession of the disputed parcel from 1975 to 1991.

The First Issue

Whether the passing of Transport No. 48 of 1984, pursuant to the Order of the Land Court, stopped time running in favour of Narine Singh.

[13] As noted earlier, Transport No. 48 of 1984 was passed in favour of the title holders jointly by the Registrar of Deeds of Guyana acting pursuant to an Order of the High Court dated the 10th August, 1983, and made in Petition No. 808 of 1983 (Demerara). The Declaration of Title dated the 10th August, 1983, was entered before Ms N Jackman, Commissioner of Title and Judge of the Land Court. The Petition proceeded before the Land Court on the affidavits of the title holders. The Judge of the Land Court was satisfied that the Rules of the Supreme Court (Declaration of Title) 1923 had been complied with. The Judge was also satisfied that the petitioners had been in sole and undisturbed possession of the lands in question for upwards of twelve years. The Judge therefore declared that the petitioners had acquired absolute title to the lands in question.

[14] Mr Satram has argued before us that the question of the possession of the title holders for at least twelve years prior to the Declaration of Title made by the Land Court was determined by the judgment of the Commissioner of Title sitting as a Judge of the High Court in Petition No. 808 of 1983 filed under the Title to Land (Prescription and Limitation) Act² (the Limitation Act). He also argued that these proceedings did not raise a direct challenge to the judgment of the Commissioner of Title. As such, Counsel submitted that the Order of the Land Court and the subsequent Transport to the title holders gave them full and absolute title and had the effect of stopping the running of time in favour of Narine Singh.

[15] Mr Satram bases his argument on section 22(1) of the Deeds Registry Act, which, under his interpretation, barred any challenge to the Transport and the decision of the Commissioner of Title and Judge of the Land Court. Section 22(1) provides:

22. (1) From and after the 1st January, 1920, every transport of immovable property other than a judicial sale transport shall vest in the transferee the full and absolute title to the immovable

² Cap 60:02.

property or to the rights and interest therein described in that transport, subject to –

- (a) statutory claims;
- (b) registered incumbrances;
- (c) registered interests registered before the date of the last advertisement of the transport in the Gazette;
- (d) registered leases registered before the date of the last advertisement of the transport in the Gazette:

Provided that any transport, whether passed before or after the 1st January, 1920, obtained by fraud shall be liable in the hands of all parties or privies to the fraud to be declared void by the Court in any action brought within twelve months after the discovery of the fraud, or from the 1st October, 1925, whichever is the more recent.

[16] The relevant provisions of the Limitation Act central to Mr Satram's argument are set out hereunder:

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 thirty 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) any application under section 35 or 37 of the Deeds Registry Act; or
- (c) any application by a judgment creditor; or
- (d) any application under the rules of court,

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.

5. No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

10. (1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”) and where under the foregoing provisions of this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.

13. At the expiration of the period prescribed by this Act for any person to bring an action to recover land, the title of that person to the land shall be extinguished.

[17] Both in Guyana and in the colony of British Guiana, the legal effect of a transport and, in particular, its impact on rights acquired under the Limitation Act or earlier Ordinance, have been judicially considered. Mr Ramjattan on behalf of Narine Singh brought to the attention of the Court the case of *Kumar v Sukdeo et al.*,³ a decision of the Guyana Court of Appeal. He argued that passing of transport did not dispossess Narine Singh and that Cummings J was entitled to find that he was in possession since 1975.

[18] *Kumar v Sukdeo* concerned the application by petition under section 3 of the Limitation Act for a declaration of title on the basis of adverse possession. The Court of Appeal found that the matter turned on the evidence which the trial judge was entitled to consider. They were of the view that they were entitled to dismiss the appeal on that basis. They nevertheless went on to treat with the respondents’ submission that even if the petitioner was in adverse possession for over twelve years, such adverse possession was interrupted and cancelled when the property was transported to the respondents.

[19] In *Kumar v Sukdeo*, Chang JA delivering the judgment of the Court of Appeal, considered the case of *Brandis v Craig*.⁴ Chang JA doubted whether Crane C.

³ [2003-2004] GLR 111.

⁴ (1981) 30 WIR 136.

in *Brandis v Craig* intended to lay down or enunciate as a general principle of law that the passing or execution of transport constituted an effective entry upon the land which interrupted or terminated adverse possession, but rather was limited to its own peculiar facts.⁵ He distinguished *Brandis v Craig* on the basis that the appellant in her transport to the western half had acknowledged that the eastern half of the land had a separate owner and that her western half was burdened with an easement in favour of the eastern owner. Chang JA observed that it was that acknowledgement and not the passing of transport which interrupted the appellant's adverse possession of the eastern half. Chang JA pointed to the language of Luckhoo JA in *Brandis v Craig* which clearly confined the finding of interruption of adverse possession to the acknowledgement as constituted by the execution of the particular transport by the appellant. Chang JA preferred the reasoning of Luckhoo JA to that of Crane JA since he failed to see how the execution of the transported title (paper title) *per se* could have constituted an effective entry upon the land.

[20] In addition, Chang JA went on to make the following observations on the legal effect of the passing of transport:⁶

“In the circumstances of the instant case, I am unable to discern how the mere passing of transport could have constituted an effective entry upon the land by the Respondents in assertion of their title. Nor am I able to discern how the execution of transport, to which the Petitioner was not party, could have constituted an acknowledgement by him of the superior title of the Respondents....

Also, I do not find myself in agreement with the submission made by Counsel for the Respondents that non-opposition to the passing of transport (after public advertisement) can only mean that all persons have admitted the title of both the transferor and transferee. If this submission were to be accorded validity, it would mean that adverse possessors for over 12 years would lose their acquired prescription right and the title of the transport owner (extinguished under section 13 of the Title to Land (Prescription and Limitation) Act) would automatically revive to

⁵ *Supra*, *Kumar* at note 3, p. 115.

⁶ *Supra*, *Kumar* at note 3, p. 116.

vest such title in the transferee (transportee) even without any peaceful recovery of possession of the land as occurred in *Inderjeet Tackonie v Port Mourant Ltd* [1954] LRBG 10 (*sic*)⁷. The submission made by Counsel for the Respondents flies in the face of the decisions in the cases of *Basir v Goolcharran* (1061) LRBG 528 (*sic*),⁸ *Barrow v Benjamin* (1961) 2 WIR 511 (*sic*)⁹ and *Gondchi v Hurrill* (1931-1937) LRBG 509.”

[21] Chang JA made a further crucial observation. If a person acquired transport title to land which had been under adverse possession for less than twelve years, then he took that transport title subject to the duration of the adverse possession, that is, the possessory right of the adverse possessor, and was in no better position than his predecessor in title.¹⁰

[22] Among the cases referred to by the Court of Appeal in *Kumar v Sukdeo* was the case of *Barrow v Benjamin*¹¹ from the Federal Supreme Court. This case arose out of a claim by the appellant that he was the transported owner of a lot of land under the provisions of section 15 of the District Lands Partition and Re-allotment Ordinance.¹² The respondent had contended that he had been in undisturbed possession of the lot of land for over forty years. The respondent was successful before the trial judge who accepted that from 1915 he had been “in complete possession and control of the land in question *nec clam nec vi nec precario*”. The appellant appealed. He contended *inter alia* that the provisions of section 23 of the Deeds Registry Ordinance¹³ vested the full and absolute title to the lot of land in him as transferee.

[23] Rennie J delivering the judgment of the Federal Supreme Court considered the joint effect of the Deeds Registry Ordinance and the Title to Land (Prescription and Limitation) Ordinance¹⁴ (the Limitation Ordinance). Section 3 of the Limitation Ordinance provided that title to land may be acquired by

⁷ *Inderjeet Tackonie v Port Mourant Ltd* [1954] LRBG 108.

⁸ *Basir v Goolcharran* (1961) LRBG 528.

⁹ *Barrow v Benjamin* (1960) 2 WIR 511.

¹⁰ *Supra*, *Kumar* at note 3.

¹¹ *Supra*, *Barrow* at note 9.

¹² Cap 173.

¹³ Cap 32.

¹⁴ Cap. 184.

sole and undisturbed possession for not less than twelve years. Further, section 5 of the Limitation Ordinance provided that no action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right to action accrued to him or, if it first accrued to some person through whom he claimed, to that person.

[24] Rennie J emphasised:

“The submission for the appellant amounts to saying a transport is indefeasible. I cannot accept such a view. If such a claim is right it means that on the passing of a transport all claims (including prescriptive ones) are destroyed. But this is not so. Nowhere in the Deeds Registry Ordinance can I find any provision that deals with the rights of a person in possession who has prescribed title. Section 23 of that Ordinance does no more in my view than give a title to land. A title gives one the right to possession but whether that right can be enforced in a court of law must depend on whether or not someone is in possession of the land and has been there sufficiently long to bar the claims of a person with title....”¹⁵

[25] In *Kumar v Sukdeo*, Chang JA had also referred to the case of *Gondchi v Hurrill*.¹⁶ In that case, Verity J held that a transport did not confer on the holder the right to enforce possession by way of an action which was barred under section 4(2) of the Civil Law of British Guiana Ordinance.¹⁷ Section 4(2) provided that no person shall bring an action to recover any immovable property but within twelve years next after the time at which the right to bring the case had accrued to him or to some person through whom he claimed. Verity J referred to the case of *Abdool Rohoman Khan v Boodhan Maraj*¹⁸ and the judgment of Savary J.

[26] In *Khan v Maraj*, Savary J considered the effect of sections 4(1) and (2) of the Civil Law Ordinance of British Guiana 1916. The argument before Savary J was that because of the provisions of section 3 of the Deeds Registry Ordinance, 1919, Amendment Ordinance 1925, which was substituted for

¹⁵ *Supra*, *Barrow* at note 9, p. 514.

¹⁶ (1931-1937) LRBG 509.

¹⁷ Cap. 7.

¹⁸ (1930) LRBG 9.

section 20 of the Deeds Registry Ordinance, 1919, whereby a transferee of immovable property acquired a full and absolute title, a person in possession even for thirty years, who did not oppose the passing of a transport of the same property, had lost all his rights including that of possession, and the transferee had a right to dispossess or eject him. The judge rejected that argument. The Deeds Registry Ordinance had been passed three years after the Civil Law Ordinance. Savary J observed that by virtue of section 4(1) of the Civil Law Ordinance, the Supreme Court could issue a declaration of title based on thirty years' sole and undisturbed possession whilst section 4(2) gave a negative right, as it was termed, to a person in possession for twelve years or more. According to Savary J, section 4(2) prevented a person from disturbing the possession after twelve years had elapsed from the time when the right to make an entry first accrued to that person.

[27] Savary J went on to examine the interplay between the Civil Law Ordinance and the Deeds Registry Ordinance. At page 14 of the judgment, he said:

“These clear rights are given by the Civil Law Ordinance, 1916, and in the Deeds Registry Ordinance of 1919 no reference is made to the above sections and no express provision is made limiting or restricting the rights so given. Surely if it was intended to give by the use of the words “full and absolute title” the far-reaching consequences suggested one would expect provision in the latter Ordinance to that effect. I say far-reaching consequences because it seems to me that if this argument were sound, the limitation provisions of the Civil Law Ordinance would be rendered largely nugatory by the later Ordinance, as it is difficult to conceive under what circumstances a person in possession could invoke the aid of the limitation sections since the conflict is almost invariably between a person in possession and the legal owner by transport. The Deeds Registry Ordinance does not deal with the question of title or rights by possession and, to my mind, does not override such title or right.”

[28] Savary J concluded that the expression “full and absolute title” meant a title free from defects of any nature, in other words, indefeasible, save in cases of fraud. He did not agree that the Deeds Registry Ordinance had the effect of overriding the limitation sections referred to in the Civil Law Ordinance.

According to him, the Deeds Registry Ordinance gave statutory force to what seemed the established rule of law administered by the courts before the passing of the Ordinance and under Roman-Dutch law. As to the argument that a person who had acquired or began to acquire rights under the limitation sections of the Civil Law Ordinance would be deprived of them by the later Deeds Registry Ordinance, the judge found no clear words in the Deeds Registry Ordinance to lead to the conclusion that pre-existing rights were swept away. In addition, the judge observed that Dalton's work on *The Civil Law of British Guiana*, published in 1921, did not call attention to any such effect when discussing section 4 of the Civil Law Ordinance.

[29] These cases demonstrate that for many years the courts in Guyana have been of the view that the passing of transport, though vesting full and absolute title in the title holder, did not have the effect of overriding any title or rights acquired under the Limitation Act. This Court entirely agrees. We have noted however that the cases referred to above dealt with the passing of transport *per se*. The question that remains for the consideration of the Court is therefore whether the passing of transport pursuant to an order of the High Court or the Land Court made under the provisions of the Limitation Act had the effect that time did not continue to run in favour of Narine Singh.

[30] This Court in *Toolsie Persaud v Andrew James Investments Limited and Others*¹⁹ clarified the effect of the provisions of the Limitation Act set out above.²⁰ The Court said:²¹

“[37] Section 3 of the Limitation Act shows that title to land (other than State or Government land) may positively be acquired by exclusive undisturbed possession for not less than twelve years, if established to the satisfaction of the Court and not taken or enjoyed by fraud or the landowner's permission. Sections 5 to 13 show that once a person has failed for twelve years to exercise his right to recover his land from any adverse possessor his title is extinguished. Under section 4, the possessor entitled under

¹⁹ (2008) 72 WIR 292.

²⁰ *Ibid* at [17].

²¹ *Ibid* at [37].

section 3 or sections 5 to 13 may positively obtain a declaration of title in his favour and an order that the land be registered in his name, so long as all the parties interested therein are before the Court: the third “or” in section 4(1)(a) must be construed as a conjunction, so that a person interested in the land cannot lose his interest without a fair hearing.”

[31] In addition, the Court in *Toolsie Persaud* considered the nature of the legal claim that was necessary in order to stop time running against a person in adverse possession. In that case, the appellant had by petition sought a declaration under the Limitation Act that he had acquired title by undisturbed adverse possession for over twelve years. The petition was opposed by the first and second respondents and by the Attorney General on behalf of the State, the third respondent.

[32] The Court in *Toolsie Persaud* was of the view²² that section 4(1)(a) of the Limitation Act (at [16] above) provided for the court to make a declaration of title in any case brought by or against the owner, provided that all parties interested in the land were before the court. In that case, therefore, there was nothing preventing the first and second respondents from claiming declarations as to title (with concomitant possessory rights) as part of the relief obtainable in the constitutional motions they brought against the State, the registered owner, if only they had joined the appellant as a party.

[33] The Court concluded that the dispossessed landowner must re-enter to stop time running. The Court explained:²³

“[43] In our view, if a dispossessed landowner is to stop time running in favour of the person in undisturbed possession of the land he must bring proceedings against that person. Alternatively, of course, the landowner could physically enter the land and take possession thereof, but the danger of breaches of the peace and resultant criminal proceedings are better avoided, especially if the person in possession is likely to resist the landowner.

[44] It follows that the proceedings brought by the First Respondent against the State in March 1989 and by the Second

²² Ibid at [42].

²³ Ibid at [43] and [44].

Respondent against the State in November 1989, not being actions against the Appellant for the recovery of possession from it, did not stop the twelve year limitation period running against those Respondents”

- [34] In our view, the order of the Land Court made in 1983 did not stop time running in favour of Narine Singh. The title holders did not join him as a party to the proceedings before the Land Court. Further the title holders did not commence proceedings against him before the twelve year period had expired. Accordingly, the title of the title holders would have been extinguished after Narine Singh had been in adverse possession of the disputed parcel for twelve years. As mentioned earlier, the trial judge had found as a fact that Narine Singh had entered into possession of the disputed land since 1975 and that he remained in sole and undisturbed possession until 1991. Once the trial judge was entitled to make that finding, it follows that any disturbance with Narine Singh’s possession, some sixteen years after his entry onto the disputed parcel, would have been illegal.

The Second Issue

Whether the Trial Judge was entitled to find that Narine Singh was in possession of the disputed parcel from 1975 to 1991.

- [35] Mr Satram has pointed out that the Court of Appeal found that there was no evidential basis on which the trial judge could have granted a declaration of title in favour of Narine Singh.²⁴ The Court of Appeal also reversed the trial judge’s finding of fraud on the basis that no fraud had been laid at the door of the title holders.²⁵
- [36] Mr Satram however, submits that the Court of Appeal ought to have addressed the issue of Narine Singh’s occupation and status on the disputed parcel from 1975 to 1991. He contends that instead of resolving the issue by determining the status of Narine Singh on the disputed parcel, the Court of Appeal chose

²⁴ See [6] of the judgment of the Court of Appeal.

²⁵ See [8] of the judgment of the Court of Appeal.

to affirm the trial judge's finding that Narine Singh not only occupied the disputed parcel, but was in possession of it.

[37] We do not agree with Mr Satram that the Court of Appeal affirmed the trial judge's finding of fact that Narine Singh had been in possession of the disputed parcel from 1975 to 1991. A close examination of their judgment discloses that they did not expressly deal with that finding of the trial judge. They seemed to concentrate on the fact that Transport No. 48 of 1984 remained unimpeached and in those circumstances, Narine Singh could not have proven undisturbed possession from 1975. There was also no examination of the issue whether the passing of Transport No. 48 of 1984 pursuant to the order of the Land Court stopped the running of time in favour of Narine Singh.

[38] At [15] of the judgment of the Court of Appeal, the Court upheld the finding of the trial judge that on the 29th September, 1991, Narine Singh was the person in possession of the disputed parcel and that he was the person entitled to the occupation of the disputed parcel. The Court of Appeal reasoned that the trial judge had found that Ramlagan had not produced before her any lease, licence, probate or grant of letters of administration of the estate of the title holders, title or transport and that he had no better title than Narine Singh whom she found to have been in possession of the land.²⁶

[39] In these circumstances, the question that remains for this Court is whether the trial judge was entitled to find that Narine Singh had been in possession of the disputed parcel from 1975 to 1991.

[40] Before the trial judge, Narine Singh had contended that he had purchased the disputed parcel from one Ramdularie. He tendered into evidence a receipt dated the 12th December, 1975. Narine Singh testified that since acquiring the disputed parcel, he had planted rice and reared cattle on same until the 29th September, 1991, when Ramlagan and Lochanram entered upon the disputed

²⁶ See [14] of the judgment of the Court of Appeal and the trial judge's reliance on *Asher v Whitlock* (1865) LR 1 QB 1.

parcel, ploughed same causing damage thereto. Narine Singh testified that he spoke to Ramlagan and Lochanram and they told him that his rice field was ploughed by mistake. He said that they promised to rebuild the dam. When this was not done, Narine Singh caused his lawyer to send a letter to Ramlagan complaining of the alleged trespass and damage.

[41] On the other hand, Ramlagan had contended that the disputed parcel was a part of the twelve-acre parcel owned by his parents. He further contended that he was a tenant of a five-acre parcel which included the disputed parcel. He claimed to have grown up on the twelve-acre parcel working with his parents in the cultivation of rice. Ramlagan gave evidence before the trial judge and so did his wife and one Basil Madray, whose evidence was described by the judge as smacking of contrivance.

[42] The trial judge believed and accepted the evidence of Narine Singh on all material aspects in preference to that of Ramlagan and his witnesses. She found as a fact that Narine Singh was in possession of the disputed parcel from 1975 until 1991. She accepted the evidence of Narine Singh that Ramlagan and Lochanram told him that the disputed parcel was ploughed by mistake and that they would rebuild the dam. In her view, it was therefore evident, that Ramlagan and Lochanram had admitted Narine Singh's possession of the disputed parcel.

[43] Having regard to the evidence which was before the trial judge, this Court cannot conclude that the judgment of the trial judge was affected by material inconsistencies or inaccuracies, or that she failed to appreciate the weight of the evidence or was otherwise plainly wrong.²⁷ In the circumstances, we are of the view that there was sufficient evidence before the trial judge which entitled her to find as a fact that Narine Singh was in possession of the disputed parcel from 1975 to 1991.

²⁷ See *Meenavalli v Matute* [2014] CCJ 8 (AJ) at [4]. See also *Watt v Thomas* [1947] A.C. 484.

Disposition of the appeal

[44] In the light of the foregoing, we are satisfied that Mr Satram's argument grounded as it was on section 22(1) of the Deeds Registry Act must fail. We note further that we have been relieved of the issue of fraud by the judgment of the Court of Appeal. In any case, this was not an action commenced pursuant to the proviso to section 22(1) of the Deeds Registry Act where the applicant was seeking to set aside the passing of transport on the ground of fraud. If that were the case, the applicant would have had to commence proceedings within one year of the discovery of the fraud. We reiterate that this was not such a case.

[45] In conclusion, we are of the view that the order of the Land Court made in 1983 and the subsequent passing of Transport No. 48 of 1984 did not stop time running in favour of Narine Singh. Narine Singh was not joined as a party to the proceedings commenced before the Land Court in 1983 nor were separate proceedings brought against him by the title holders before the twelve year period had expired. In the circumstances, the title of the title holders was extinguished after Narine Singh had been in adverse possession of the disputed parcel for twelve years. Accordingly, Ramlagan's entry onto the disputed parcel in 1991, some sixteen years after Narine Singh had entered into possession, was illegal. Narine Singh has therefore made out his case in trespass.

[46] It follows that Narine Singh has acquired prescriptive title. We consider it important that, having regard to the length of time it has taken for this matter to be dealt with in the courts below, an end should be brought to these proceedings. By virtue of section 4 of the Limitation Act, this Court is empowered to make a declaration of title in favour of Narine Singh in respect of the disputed parcel and we propose to do so.

[47] It is ordered and declared that:

- (i) The Respondent, Narine Singh, has been in adverse possession of the disputed parcel from 1975 to 1991.

- (ii) The Respondent, Narine Singh, has acquired prescriptive title to the disputed parcel and is entitled to possession of the disputed parcel.
- (iii) The Registrar of Deeds is hereby directed to cancel Transport No. 48 of 1984 and to take all necessary steps to pass transport to the successor(s) in title of the Respondent, Narine Singh, in relation to the disputed parcel.
- (iv) The Registrar of Deeds is hereby directed to take all necessary steps to have transport passed in relation to the remaining ten acres of land.
- (v) The Appellant's, Daniel Ramlagan's, entry upon the disputed parcel on the 29th September, 1991, constituted a trespass upon the disputed parcel.
- (vi) The appeal is dismissed with costs to be paid by the Appellant to be taxed if not agreed. The order of the Court of Appeal is affirmed save and except the order rescinding the declaration of title made by Cummings J.

_____/s/ R. Nelson_____
The Hon Mr Justice R Nelson

_____/s/ J. Wit_____
The Hon Mr Justice J Wit

_____/s/ D. Hayton_____
The Hon Mr Justice D Hayton

_____/s/ W. Anderson_____
The Hon Mr Justice W Anderson

_____/s/ M. Rajnauth-Lee_____
The Hon. Mme Justice M Rajnauth-Lee

Schedule Referred to in Paragraph [2]

Lot 'S' being a portion of Block 'A', part of Plantation Riverstown, situate on the Essequibo Coast, in the County of Essequibo, Republic of Guyana, the said Lot 'S' containing an area of 2.0838 acres as shown on a plan by L.W. Cox, Sworn Land Surveyor dated the 25th day of February, 1992 and recorded in the Department of Lands and Surveys on the 30th day of April, 1992, as Plan No. 23994.