[2010] UKPC 14
**Privy Council Appeal No 0114 of 2009**

# JUDGMENT

# Rosalind Ramroop (also called Rosalind Sampson) *v* John Ishmael and Lall Heerasingh

## From the Court of Appeal of the Republic of Trinidad and Tobago

**before**

**Lord Rodger**
**Lord Walker**
**Lord Brown**
**Lord Kerr**
**Sir John Dyson SCJ**

## JUDGMENT DELIVERED BY
## Lord Walker
## on

## 21 July 2010

**Heard on 29 June 2010**

| *Appellant* | *Respondent* |
| --- | --- |
| Sir Fenton Ramsahoye SC | Not represented |
| (Instructed by Bankside Law Limited) | |

**LORD WALKER:**

1. The only issue in this appeal is whether the appellant, Rosalind Ramroop (otherwise Rosalind Sampson), has obtained a title by adverse possession to a dwelling-house at 22 Union Road, Marabella (her pleaded case is a claim to the whole house but the Board has also considered whether she has established a claim to part of the house). The appellant was the sole plaintiff in the proceedings, which were commenced as long ago as 1994. Initially the sole defendant was John Ishmael (now the first respondent), one of the persons whose claims to the freehold title the appellant is seeking to displace. The proceedings raised other issues which are no longer live, including a claim based on proprietary estoppel (which failed at trial and has not been pursued on appeal) and a claim for compensation for materials and labour contributed to the improvement of the property by the appellant and her partner Mitchin Sampson (this claim succeeded at trial, to the extent of a little over $62,000, and there is no cross-appeal about that).

2. Although there is now only one live issue it is necessary to refer to some of the evidence in some detail. The appellant was born in 1942 and from the age of 8 years she lived at 22 Union Road with her aunt Sookdaya Rahim and her grandmother. They lived upstairs and her aunt's partner Archaiber (or Achiba) lived downstairs. The house was built in 1940 by Sookdaya Rahim on land rented fom Mr Gopaul. The house has been improved and extended over the years, but the evidence at trial lacked clear detail on these points. The house now has a concrete lower storey and a timber upper storey under a galvanised iron roof. The ground floor was originally divided by a partition between a parlour (which had a club licence) and Archaiber's living quarters. The upper storey contained several rooms.

3. There was also at one time another smaller building (sometimes referred to in the evidence as the back house) within the curtilage of the property. The appellant's evidence was that she demolished it in 1979. There was a conflict of evidence about the size of the building and the purpose for which it was used.

4. The devolution of the title to the property during the lifetime of Sookdaya Rahim, and for some years after her death in 1963, was not in dispute. She died intestate on 19 June 1963 leaving two daughters, Popo Rahim and Sonia Heerasingh, who were entitled to her estate in equal shares. Popo Rakim obtained a grant of letters of administration on 3 February 1964. Archaiber died in 1968 or 1970. Popo and her sister agreed to purchase the freehold of the property, the purchase price being payable by instalments, and the purchase was completed by a conveyance on 26 June 1972 under which the purchasers took as joint tenants.

5. The appellant's evidence at trial was that when she was 15 (that is in 1957) her aunt told her that if she continued to work well at cooking and washing she (Sookdaya Rahim) would give the property to the appellant. Her case at trial was that she had lived continuously with her aunt until her death but her aunt had not kept her promise. In cross-examination on the first day of the trial she said that she had six children, the eldest born in 1972, after she began living at the property with Mitchin Sampson.

6. But on the second day of the trial the appellant was recalled for further cross-examination. She gave dramatically different evidence. She said that in 1960 she had gone to stay with her mother at Kelly Village. She met a man called Boyo Poolool and had four children by him, born in 1960, 1961, 1966 and 1968. Her cousin Popo Rahim looked after the two elder children and her mother looked after the two younger ones. Boyo Poolool served a term of imprisonment between the births of the second and third children. He later met a violent death. The appellant then met Mitchin Sampson in 1970 or 1971 and they started living together at 22 Union Street. The appellant had six children with Mitchin Sampson, the first born in 1972 and the youngest born in 1983.

7. This new evidence effectively put an end to the appellant's claim based on proprietary estoppel, and her case on adverse possession from any date before the 1970s. It also severely damaged her credibility. Her family life was not the only matter on which she tried to deceive the court. She repeatedly asserted that she had never been a tenant of the property, despite convincing evidence to the contrary. There was also what the trial judge, Jamadar J, called "unexplained suspicion" about 23 receipt stubs having been removed from the receipt book which was put in evidence.

8. The judge, in a full and careful judgment reviewing the conflicting evidence, found that the appellant became a tenant of Popo Rahim (Sookdaya's personal representative) of the downstairs portion of the main house (which he referred to as the "front building") at a monthly rent of $30. It was not suggested that there was any written agreement. The judge also found that, as a matter of administration, rent receipts were made out by Mitchin Sampson, but the rents were collected by Popo Rahim herself. The judge made some important findings about the occupation of the property during the 1970s:

> "I accept that there were tenants of the "front" house during the period under consideration. [The judge gave detailed reasons for this conclusion and continued] Whether there were also "renters" in a "shed" at the back of the "front" house is immaterial. What is clear is that there were tenants in the front house, one of whom was Lystra Parfitt. These tenants remained at least until the death of Popo, who one month before her death collected rent from them. That is, up to June 1977 there were

> tenants in the "front" house paying rent to Popo, a joint owner of the premises and [predecessor] in title to Ishmael."

The text of the judgment reads "successor" but that must be a slip.

9. The freehold of the property had been acquired by Popo and her sister as joint tenants. But on 28 June 1977 Popo (perhaps knowing that she was seriously ill) conveyed her interest to her partner John Ishmael. This had the effect of severing the joint tenancy. In the conveyance the property was described as being subject to the tenancies of the appellant and Lystra Parfitt.

10. Popo died on 21 July 1977. Her sister Sonia challenged the validity of the conveyance of 28 June 1977 in proceedings commenced in 1978. The action was dismissed in 1986 and an appeal was dismissed in 1993. Sonia Heerasingh died on 24 July 1991, while her appeal was pending. There was therefore a period of about 15 years during which the freehold title to the property was in dispute, and that may have been one of the reasons why no rent was collected after Popo's death.

11. The judge did not accept the appellant's evidence that Lystra Parfitt was a tenant in the "back" building until 1979, when the appellant (on her evidence) demolished that building and allowed Lystra Parfitt into the front building as a licensee, because she had nowhere else to go.

12. It was not until the 1980s that the appellant and Mitchin Sampson incurred expenditure on improving the property. The first significant bills for building materials produced in evidence were for $770-odd in 1982 and $5,892 –odd in 1985.

13. On 10 September 1992 (after Sonia's death but while the appeal on behalf of her estate was still pending) John Ishmael served formal notices to quit on the appellant and Lystra Parfitt. In 1994 John Ishmail issued ejectment summonses against both the appellant and Lystra Parfitt, but he failed to proceed with them. At trial in these proceedings counsel joined in telling the judge that 2 March 1994, the date of the ejectment summonses, must have been the end of any period of adverse possession. It is now agreed that that was erroneous, and that the right date is 24 July 1996, the date of Ishmael's counterclaim in these proceedings.

14. These proceedings were commenced by the appellant by a writ issued on 3 October 1994 against John Ishmael alone, claiming a variety of relief as already mentioned. John Ishmael counterclaimed for possession on 24 July 1996. It was not until 4 December 2003 that Lall Heerasingh, Sonia's widower, was joined as a defendant to represent her estate, and an amended defence and counterclaim was filed

and served on 6 April 2004. The Board did not understand Sir Fenton Ramsahoye SC (who appeared for the appellant before the Board, there being no representation on behalf of the respondents) to be arguing that adverse possession might have continued until the time when Sonia's estate became a party to the counterclaim. Such a submission would not have been soundly based, since where there is a legal tenancy in common each tenant in common has a right to possession of the whole property: *Jacobs v Seward* (1872) LR 5 HL 464; *Bull v Bull* [1955] 1 QB 234, 237.

15. An issue of law which did arise before the Board was as to the effect of sections 3 and 9 of the Real Property Limitation Act (Ch. 56.03). Section 3 lays down the general rule as to a 16-year limitation period for actions for recovery of land. Section 9 lays down a special rule for the running of time for periodic tenancies when there is no written lease: if rent is not paid, and remains unpaid, time starts to run at the end of the first rent period in which rent was not paid. The Board accepts Sir Fenton's submission on this point. Hamel-Smith JA correctly applied this rule in para 22 of his judgment in the Court of Appeal. So for limitation purposes the appellant's tenancy of the ground floor was treated as coming to an end one month after the last period for which rent was paid in June 1977. The position would have been the same for any part of the top floor that had been included in the ground-floor tenancy, or let to the appellant under another oral agreement for a monthly tenancy.

16. The effect of section 9 of the Real Property Limitation Act is however limited. It does no more than meet the objection that time cannot run in favour of a tenant because his possession as a tenant is not adverse to the interest of his landlord. It is still necessary, under the law of Trinidad and Tobago as under the law of England and Wales, for him to be in actual, exclusive possession of the property in question: *Ramnarace v Lutchman* [2001] 1 WLR 1651, para 9.

17. The case was heard by Jamadar J on 12, 13 and 14 July 2004. The appellant's witnesses were the appellant herself, her partner Mitchin Sampson and an elderly neighbour, Ivan Dwarika. The judge was very critical of the evidence of the appellant and her partner, for reasons already mentioned, but found Dwarika a trustworthy witness. The judge commented on the absence of any evidence from Lystra Parfitt, who was still (on the appellant's evidence) living in an upstairs room as the appellant's licensee. The witnesses for the defence were John Ishmael and Krishna Keerasingh (or Heerasingh), Sonia's son. The judge found John Ishmael to be trustworthy, but for some exaggeration and imprecision in his evidence. He was, the judge said, "visibly weak and feeble." The judge did not comment on the evidence of Sonia's son Krishna, but seems to have accepted it.

18. The judge carefully evaluated the conflicting evidence and made findings, the most important of which have already been mentioned. Most of the judge's findings are internally consistent but there is one important passage which seems to contain

some possible inconsistencies. It is at pages 17 to 19 of the transcript and it must be set out in full:

> "In my analysis the Plaintiff and Sampson have most unsatisfactorily presented their case on the work they allegedly did on the premises. However, it is accepted that they did do some work. What is also clear however is that on the evidence, tested by the document produced by the Plaintiff, that no significant works were undertaken until 1985, though some may have been done in 1982. Symbolically, it is in 1980 that the Plaintiff's first bills for materials used on that property appear. This is symbolic because on the Plaintiff's evidence it was only in 1979 that Lystra Parfitt began to enjoy rent free accommodation at the Plaintiff's pleasure.
>
> It seems therefore, on the totality of the evidence, it is likely that only sometime after 1979-1980 that the Plaintiff began enjoying and exercising exclusive occupation of the premises. On the Plaintiff's evidence, at that time the back house had been demolished by her: 'I broke down this house in 1979'.
>
> On the evidence, on a balance of probability, and testing the oral evidence against the documentary evidence, and giving the Plaintiff and Sampson credit in spite of their unquestioned attempt to mislead this Court, this Court finds that the plaintiff has only demonstrated likely exclusive occupation from 1980, more probably from 1982-1985.
>
> Taking the most favourable of these scenarios, 1979, the Plaintiff has not been in continuous, exclusive possession of the Marabella premises for sixteen years or more, as the ejectment summons was issued on the 2nd March, 1994 (upon a notice to quit, allegedly served on the 10th September, 1992).
>
> In my opinion therefore, giving the Plaintiff the benefit of the most favourable evaluation of the evidence, her claim to a possessory title in the Marabella premises or any part thereof fails.
>
> Though what follows is not exclusively determinative of this aspect of the case, in my opinion, I find that the Plaintiff, whether she was back and forth between 1950 and 1970, began occupying the downstairs portion of the "front" building as a tenant of Popo paying a monthly rent of thirty dollars ($30.00). I also accept that Ishmael obtained and served the Plaintiff with a notice to quit on the 10th September, 1992 and

> subsequently with an ejectment summons in 1994. I further accept that there was a shed at the back of the "front" house, and that the evidence of Dwarika on this is the most reliable. Both the Plaintiff and the Defendants had every reason to exaggerate its status – the Plaintiff to make it the locale of all the tenancies, the Defendant of none. I find, that even if this shed did have tenants, there were also tenants in the "front" and main building on the premises, and that Lystra Parfitt was one of these."

19. Several points call for comment. First, although the judge records the appellant's evidence that Lystra Parfitt was on the premises "at the plaintiff's pleasure" (that is, as a licensee) the judge made a clear finding that she was a tenant. This was consistent with other oral evidence and with documentary evidence provided by the conveyance of 28 June 1977. Second, the judge's findings "on the totality of the evidence" about the appellant's exclusive occupation dating "more probably from 1982-1985" cannot therefore have been intended as findings that the appellant had exclusive occupation of the whole of the premises. That fits in with the rejection of her claim to a possessory title in the premises "or any part thereof." Third, as already noted, the judge believed, based on counsel's mistaken agreement that 2 March 1994 was the cut-off date, that he need not make a definite finding about the date of commencement of the appellant's exclusive occupation (or, it seems, about what part or parts of the building it extended to).

20. The Court of Appeal (Hamel-Smith, John and Weekes JJA) dismissed the appeal and upheld the judge's order for possession, but for rather different reasons, set out in the judgment of Hamel-Smith JA. He described (paras 11-21) how the appellant had failed in her original pleaded claim to a possessory title based on occupation since 1963, and how she had (without any amendment of her pleadings) then restructured her claim to one based on occupation from 1972, which had also failed. Hamel-Smith JA then proceeded (from para 22, under the heading 'The Final Attempt for Possessory Title') to describe how the appellant had been allowed to 'fast-forward' her claim (again without any amendment to her pleadings) to the years 1977-1979, when no rent was collected after the death of Popo Rahim, and during the protracted dispute between John Ishmael and Sonia Heerasingh. Hamel-Smith JA rightly attached importance to the findings that Lystra Parfitt was a tenant, and to the judge's rejection of the appellant's evidence that Lystra Parfitt had become her licensee in 1979. The Court of Appeal was not persuaded that these findings of fact were incorrect.

21. Hamel-Smith JA then referred to the difficulty arising from the mistake made at trial about the cut-off date, and two submissions that Sir Fenton (who appeared in the Court of Appeal, but not at trial) had made as to how to resolve that difficulty. The first submission was that it was implicit in the judge's findings that the appellant was in exclusive possession of the premises (by which he meant the whole of the premises)

from 1979. Hamel-Smith JA rejected this submission and the Board consider that he was right to do so, mainly for the reasons set out in para 19 above.

22. The second submission was that the house was in multiple occupation and the appellant had obtained a possessory title of the part of the house which she occupied. Hamel-Smith JA rejected that submission on the broad ground that "possessory title goes to the land". There was, he said, no authority to suggest that a person can acquire a possessory title that includes only the downstairs portion of a building.

23. In the Board's view that is too wide a statement of principle. There is surprisingly little authority on the point. The case of *Rains v Buxton* (1880) 14 Ch D 537 is not particularly helpful since it is not clear whether or not the cellar, which had been in the possession of the plaintiffs for 60 years, was under a building belonging to the defendants (who were proposing to carry out building works interfering with the cellar). But the report does make clear that the surface land belonged to the defendants.

24. As a matter of principle land can be owned in horizontal layers, as every purpose-built block of residential flats illustrates. The important issue, in the context of adverse possession, is whether the claimant is in de facto possession of the property in question to the exclusion of other persons (except so far as those other persons are family, visitors or other licensees of the person in possession). The English Court of Appeal has accepted (*Simpson v Fergus* (2000) 79 P & CR 398, 401) that:

> "Possession of a flat with a front door that can be locked is obviously different from possession of part of an unfenced moor or hillside."

25. The Board cannot therefore agree with the wide proposition accepted by the Court of Appeal. But if a claimant is to establish title by adverse possession to part only of a building, it is necessary that the pleadings should precisely define the part of the building claimed to have been in the possession of the claimant, and that there should be credible evidence that that part of the building was capable of being possessed by the claimant to the exclusion of others (apart from the claimant's licensees), and that the claimant did in fact enjoy such possession throughout the limitation period. A case of that sort might be relatively easy to plead and prove if the property in question was a self-contained residential flat in a purpose-built block. It might be much more difficult in a building which had slipped into informal multiple occupation with shared facilities.

26. The appellant's claim met none of these requirements. Her pleadings never put forward (at all, still less with precision) an alternative case based on possession of part only of 22 Union Street. In her evidence she persisted, in the face of compelling

evidence to the contrary, in asserting that Lystra Parfitt was not another non-paying tenant but was instead her licensee. There was no clear or detailed evidence as to the layout of the building (for instance, how occupants of the top floor went upstairs, and what if any kitchen or bathroom facilities were used in common).

27. The appellant came from a humble background and had no educational advantages, as Sir Fenton pointed out. Courts will always try to show indulgence to litigants from such backgrounds, especially if they are acting as litigants in person. But in this case the appellant had the benefit of legal representation throughout. Moreover she put before the Court a case which was, both in its original pleaded form and in the evidence which she gave at trial, false in several respects. It gradually attained more plausibility as its false elements were exposed and abandoned. If what Hamel-Smith JA aptly called her final attempt had been based on an amended pleading which put her reformulated case precisely, and her evidence had provided detailed and credible support to the amended pleading, her case based on multiple occupation, afterthought though it was, might have succeeded. But in fact a case on multiple occupation was neither pleaded not proved.

28. The appeal must therefore be dismissed. The respondents have not been represented before the Board, but if they have incurred any allowable costs they must be paid by the appellant.