THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2018-04694

IN THE ESTATE OF NANDLAL RAMROOP

also called NANDLAL also called NANLAL Deceased

BETWEEN

RYAN NANDLAL

KOWSIL NANDLAL

Claimants

AND

LENA NANDLAL

(in her personal capacity and as the Legal Personal Representative

of NANDLAL RAMROOP)

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery October 9, 2020

APPEARANCES

Mr. Brent Ali Attorney at law for the Claimants.

Ms Veena Badrie-Maharaj Attorney at law for the Defendant.

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JUDGMENT

1. Nandlal Ramroop also called Nandlal also called Nanlal, deceased ("Ramroop") was the husband of the Second Claimant, the grandfather of the First Claimant and the father-in-law of the Defendant. The First Claimant is one of the children of the Defendant and Bhola Nandlal ("Bhola") and one of the grandchildren of the Second Claimant and Ramroop. The Second Claimant and Ramroop had five (5) children and their youngest child and only son was Bhola. The instant action is a family dispute centred around the validity of a Will dated 26 October 2009 ("the 2009 Will") made by Ramroop in which he gave his entire estate to the Defendant, his daughter-in-law. Assuming that the Court finds that the 2009 Will is valid, there are other issues arising from the pleadings which are grounded in the principles of proprietary estoppel, trust, and succession which the Court is required to address.

THE CLAIMANTS CASE

2. The Claimants contended that Bhola had a common law relationship with and later married the Defendant and together they had 5 children, of which the First Claimant is the eldest. The family lived in a house ("the front house") at 34 Warren Road, Cunupia ("the 34 Warren Road property") which was owned solely by Ramroop. On or about 1986, Bhola commenced construction of a house at the back of the 34 Warren Road property ("the back house") which was completed around 1988. Bhola's immediate family then moved into the back house.

3. The Claimants also contended that Bhola was self-employed and operated as a real estate agent. He also managed and owned various businesses in his own name and in 1988 he was convicted and sentenced to two (2) years and seven (7) months for fraud.

4. The Claimants case was that Bhola and the Defendant did not share a happy relationship as he did not trust her in financial matters. Instead, Bhola placed his trust and confidence in financial matters in his father, Ramroop. During Bhola's lifetime, he acquired various properties ("the properties") through his businesses which he conveyed into the joint names of himself and Ramroop. These properties included a

parcel of land in Mayaro[1] ("the Mayaro property"), 34B Warren Road, Cunupia[2] ("the 34B Warren Road property") and Lot No 24 Dyette Estate, Cunupia[3] ("the Dyette Estate property").

5. The Claimants contended that the properties were conveyed into the joint names of Bhola and Ramroop, with the express agreement between them that on Bhola's death Ramroop will distribute them to Bhola's children, as he determined so long as all his children received a share. Bhola died on 20 December 2000 intestate and no application for a grant of letters of administration of his estate was ever made.

6. On or about January 2002 Ramroop informed the First Claimant of the said trust as agreed between himself and Bhola. At Ramroop's request, the First Claimant took him

[1] Deed registered as No. 5281 of 1966 as ALL AND SINGULAR that certain piece or parcel of land situate in the Ward of Guayaguayare in the Island of Trinidad comprising FIVE THOUSAND TWO HUNDRED AND THIRTY FIVE SUPERFICIAL FEET more or less being one of the remaining lot of a larger parcel of land described in the first Schedule to deed registered as No. 5641 of 1991 and also firstly described in Deed registered as No 4285 of 1994 and bounded on the North by lands of Joseph Darmaine on the South by a Road Reserved 33 feet wide on the East by Lot 27 and on the West by Lot No 29 which said piece or parcel of land is shown as Lot No 28 on the Plan marked "A" annexed to Deed registered as No 13305 of 1966 and also described in the Fourth Part of the Second Schedule to Deed registered as No 5641 of 1991

[2] Described in Certificate of Title in Volume 1998 Folio 319 as ALL THAT piece of land situate in the Ward of Cunupia in the Island of Trinidad comprising ONE ACRE TWO ROODS AND FOUR POINT FIVE PERCHES be same more or less delineated and coloured pink in the plan registered in Volume 1998 Folio 313 being portion of the lands described in the Crown Grant in Volume 26 Folio 603 and also described in the Certificate of Title in Volume 32 Folio 377 and shown as Lot 1 in the General Plan in Volume 1998 Folio 307 and bounded on the North by lands of Salamath on the South by Lot 2 on the East by Warren Road and on the West by Lands of Ramsaran.

[3] ALL AND SINGULAR that certain piece or parcel of land situate in the Ward of Cunupia in the County of Caroni in the Island of Trinidad known as Lot No 24 Dyette Estate Land Lot comprising FOUR NINE SEVEN POINT TWO METRES SQUARE (497.2m2) and bounded on the North partly by Lot No 25 and partly by a Road Reserve 10,00 metres wide on the South by Lot No 23 on the East by Lot No 25 and Lot No 26 and on the West by a Road Reserve 10.00 metres wide and which said piece or parcel of land is delineated coloured [ink and shown as Lot No 24 on the Plan annexed and marked "A" to deed registered as No 5944 of 1994 together with the building thereto belonging.

to the office of an Attorney-at-law to have a Will prepared. The Will was executed on 21 January 2002 ("the 2002 Will"). In addition to sharing the properties held in trust, in the 2002 Will, Ramroop also bequeathed the 34 Warren Road property to two (2) of Bhola's children. The First Claimant delivered the 2002 Will to the Defendant, his mother, for safe keeping.

7. The Claimants asserted that unknown to them (as the First Claimant was not present and the Second Claimant, is illiterate), Ramroop executed the 2009 Will which revoked the 2002 Will. The Claimant contended that Ramroop did not have testamentary capacity at the time of the execution of the 2009 Will and if he did, its execution constituted a breach of the said trust.

8. The Claimants particulars of Ramroop's lack of testamentary capacity were that Ramroop had exhibited signs of Alzheimer's for some time before 2009 and prior to 2008 he had poor eyesight, as he was unable to recognize people including relatives which were known to him. They also pleaded that Ramroop frequently asked his relatives to identify themselves; whilst at home, Ramroop told the Claimants that he wanted to go home and asked for money for transport to go home; Ramroop frequently asked for his mother, who was long deceased; Ramroop asked to speak to persons who he knew were deceased for a while; and on one occasion, Ramroop left his home, unknown to anyone and stopped a vehicle which was passing outside on the Warren Road property and told the driver he wanted to go home. The driver who did not know him thought he was asking for a ride and allowed him in the vehicle. A neighbour a few houses away saw Ramroop and she retrieved him from the vehicle.

9. The Claimants also contended that the 2009 Will was procured by the undue influence of the Defendant over Ramroop as he was 91 years old at the time of its execution; he was in poor health; he was weak, in a vulnerable state and open to the influences of the Defendant; he was illiterate; his vulnerable condition was known to the Defendant; at certain times he was left at home alone when the Second Claimant attended work as a farmer and market vendor; and he would have attended the office

of an attorney at law with the Defendant and affixed his thumbprint to documents without appreciating the nature and significance of his actions.

10. The First Claimant also asserted an equitable interest in the 34 Warren Road property. He contended that he was taken out of school prematurely to work with Bhola's business and after Bhola's death around 2000, he commenced his own transportation business with the assistance of Ramroop who signed as a surety for him to obtain a loan to purchase a school bus. The First Claimant operated the school bus for a few years until Ramroop again provided security for a much larger loan, which he used to commence a used car importation business from around 2004 to present. This business was conducted at the 34 Warren Road property, initially from the back house. As he expanded his business he made significant improvements to the back house and he then moved into an area between the front house and the back house where a shed had previously been located, and constructed an office, showroom and tyre shop. He claimed that it was the proceeds of this business which supported his family, including the Defendant, after the death of his father, Bhola.

11. The First Claimant further contended that he expended significant personal financial resources on construction at the 34 Warren Road property and that all the construction which he did, took place in plain view of and with the knowledge and encouragement of his family, including Ramroop who actively encouraged him in his business and led him to believe that he would never be excluded from the 34 Warren Road property for as long as he wanted. This continued until May 2017 when he was loading tyres into a stockroom at the back of the 34 Warren Road property and one of his brothers told him to stop putting anything into the back house which resulted in an altercation. He asserted that while all his business ventures and construction were taking place, the Defendant, unknown to him, became a joint holder of the 34 Warren Road property.

12. The Second Claimant asserted that Ramroop purchased and owned in his own right ALL AND SINGULAR that piece of land situate in the Island of Trinidad being part of a larger parcel of land comprising TWO ACRES be the same more or less delineated and

coloured pink in the plan drawn in the margin of Certificate of Title in Volume 1051 Folio 525 being portion of the lands described in the Crown Grant in Volume 28 Folio 201 and bounded on the North and east by lands of J.W. Warren on the South by a road reserved 100 links wide and on the West by lands of Seebarran and Naipallier and now measuring FOUR THOUSAND AND SIXTY-FIVE POINT FOUR (4065.4) SQUARE METRES and shown as Lot 1 in the General Plant attached to the Certificate of Title in Volume 3667 Folio 43 ("the other property"). She contended if the 2009 Will is valid, Ramroop failed to make reasonable provisions for her, as his lawful wife, since the other property was given to the Defendant as the residuary beneficiary under the 2009 Will without any explanation for his actions.

13. Based on the aforesaid facts the Claimants have sought the following orders:

(a) An order that the Court do pronounce in solemn form of law for the force and validity of the 2002 Will.

(b) An order that the Court do pronounce against the validity of the 2009 Will.

(c) An Order that the Court revoke the grant of Probate No. L0824 of 2016 dated 23 December 2016 to the Defendant.

(d) A Declaration that at the time of his death Ramroop held the Mayaro property, the 34B Warren Road property and the Dyette Estate property on trust for Bhola for the benefit of his children:

(e) Further and or in the alternative a declaration that the First Claimant is entitled to a benefit in equity in the 34 Warren Road property.

(f) Further and or in the alternative a declaration that the Defendant holds the 34B Warren Road property on trust for the benefit of the First Claimant.

(g) An order that the Defendant holds the other property on trust for the estate of Ramroop and or an order setting aside any conveyance by the Defendant in respect of the other property.

(h) An Order that the Defendant provide an account of the estate of Ramroop.

(i) Further and or in the alternative an Order directing that the Defendant do pay to the Claimant monetary compensation in lieu of his equitable interest in the 34 Warren Road property or alternatively such other order as may

justifiably satisfy the Claimant's equity in it having regard to all the circumstances of this matter.

(j) An order setting aside the Deed of Assent dated 21 July 2017 and registered as DE 201701996388 with respect to the Mayaro property and Deed of Assent dated 21 July 2017 and registered as DE 2017 01996409 with respect to the Dyette Estate property.

(k) Interest.

(l) Costs.

(m) Further or other relief as the Court may deem just and expedient.

THE DEFENCE

14. The Defendant asserted that she shared a happy relationship with Bhola as husband and wife; that they held bank accounts in their names and they established and were business partners in a number of businesses. She contended that she assisted Bhola in the running of these businesses, as well as looking after the household and they used the monies earned from said businesses to maintain the entire family. She also had the responsibility of looking after Ramroop. She maintained the house and ran the businesses when Bhola was incarcerated and a close relationship existed between them.

15. According to the Defendant, both the front house and the back house on the 34 Warren Road property were constructed by Bhola prior to his death. The front house is occupied by the Second Claimant and the back house is occupied by her and her children, save and except for the First Claimant. The Defendant, Bhola and their children had initially resided with the Second Defendant and Ramroop in the front house before he constructed the back house.

16. The Defendant contended that any transaction or encouragement by Ramroop and the Second Claimant of the First Claimant's business "has nothing to do with" her[4]. She asserted that when the First Claimant commenced his business she loaned him

[4] Paragraph 30 of the Amended Defence

the sum of eight hundred thousand dollars ($800,000.00) which he never paid back and he did not pay any rent for his use of the back house. She also claimed that the First Claimant retained the further sum of $500,000.00 for himself out of Bhola's business dealings[5]. She put the First Claimant to strict proof of the construction and encouragement[6].

17. In response to the renovations done by the First Claimant to the back house, the Defendant claimed that all such work was financed by her[7]. Regarding the construction that the First Claimant asserted, the Defendant put him to strict proof and contended that the improvements to the back house were done by her. In relation to the office constructed by the First Claimant, the Defendant's position was that there was a huge warehouse on the 34 Warren Road property which stored tools and equipment. She asserted that the First Claimant sold its contents and used this money coupled with the family money to divide the warehouse into a showroom and office, furnish same and replace the shingles of the roof with galvanize[8]. The Defendant denied that the First Claimant spent the sum he asserted on the showroom and put the First Claimant to proof of the cost of any alleged construction[9] and she also put the First Claimant to strict proof in respect of the tyre shop[10].

18. The Defendant denied any knowledge of the 2002 Will and the delivery of any original to her. She asserted that the Second Claimant was present when Ramroop executed the 2009 Will. She also asserted that Ramroop had the necessary testamentary capacity to make the 2009 Will and he knew and approved of it. She contended that Ramroop provided for the Second Claimant by giving her a share in the 34 Warren Road property during his lifetime.

[5] Paragraph 28 of the Amended Defence
[6] Paragraph 31 of the Amended Defence
[7] Paragraph 32 of the Amended Defence
[8] Paragraph 33 of the Amended Defence
[9] Paragraph 34 of the Amended Defence
[10] Paragraph 35 of the Amended Defence

19. The Defendant admitted that the properties bequeathed to her by the 2009 Will were acquired from Bhola's business. She did not deny that the Mayaro property, the 34B Warren Road property and the Dyette Estate property were purchased from the proceeds of Bhola's business. Instead, she asserted that she was a part owner of Bhola's businesses therefore everything he owned was also hers. She also admitted that Bhola died intestate without any application having been made to administer his estate. She denied that there was any express trust. Instead the Defendant contended that although the Dyette Estate property was owned by Ramroop after Bhola's death, all the rental income was collected by her as Ramroop knew and acknowledged that the property was for the Defendant, as both Bhola and the Defendant provided the finance to build same.

THE ISSUES

20. The issues which arose to be determined from the pleadings were:

    (a) Did Ramroop have the requisite testamentary capacity and know and approve of the contents of the 2009 Will?

    (b) Was the execution of the 2009 Will obtained by the undue influence of the Defendant?

    (c) Is the First Claimant entitled to an equitable interest in the 34 Warren Road property?

    (d) Assuming the 2009 Will is valid, did Ramroop hold any of the properties on trust for Bhola's children, and if so did the 2009 Will constitute a breach of trust by Ramroop and was it binding on the Defendant who was not a bona fide purchaser without notice?

    (e) Assuming the 2009 Will is valid, did it fail to make reasonable provision for the Second Claimant as the lawful widow of Ramroop?

THE WITNESSES

21. At the trial, the First Claimant gave evidence in support of the Claimants' case. The Claimants also relied on a statement dated the 22 August 2019 of the Second Claimant ("the Second Claimant's Statement") which was admitted into evidence by a Notice

pursuant to Rule 30.3 and 30.6 Civil Proceedings Rules 1998 as amended[11]. There was no objection to the admissibility of the Second Claimant's Statement by the Defendant.

22. Section 41 of the **Evidence Act**[12] sets out the weight the court can attach to such evidence and the circumstances for the court to consider in assessing same:

> 41. (1) Without prejudice to the generality of section 22, where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of section 37, 39 or 40 it may, subject to any Rules of Court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the Court may approve.
>
> (2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 37, 39 or 40 the Court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including, in the case of a statement contained in a document the form and contents of that document.
>
> (3) <u>In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 37, 38, 39 or 40 regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement</u> and, in particular—
>
> (a) in the case of a statement falling within section 37(1) or 38(1) or (2), to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts;
>
> (b) in the case of a statement falling within section 39(1), to the question whether or not the person who originally supplied the information from which the record containing the statement was compiled did

[11] See also section 37 of the Evidence Act chapter 7:02 which provides for the Court to receive an out of court statement in particular circumstances

[12] Chapter 7:02

so contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not that person, or any person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts; and

(c) in the case of a statement falling within section 40(1) to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

23. The Defendant gave evidence and she also relied on the evidence of Mr Naresh Samaroo ("Mr Samaroo") and Mr Faraaz Mohammed ("Mr Mohammed").

DID RAMROOP HAVE THE REQUISITE TESTAMENTARY CAPACITY AND KNOW AND APPROVE OF THE CONTENTS OF THE 2009 WILL?

24. The Defendant has the burden to prove that the 2009 Will was executed in accordance with the law[13]. The burden is discharged by proof of due execution. Section 42 of the **Wills and Probate Act**[14] provides that the following requirements must be fulfilled for a Will to be valid namely:

(a) The will must be in writing; and

(b) Made by a person of the age of 21 years or more;

(c) The will must be either signed at the foot or end by the testator or by some other person in his presence and by his direction;

[13] Barry v Butlin (1838)2 Moo Pcc 480

[14] Chapter 9:03

(d) Such signature must be made or acknowledged by the testator in the presence of two or more witnesses of either sex competent to attest a will according to the law of England, present at the same time; and

(e) Such witnesses must attest and subscribe the will in presence of the testator and of each other but no form of attestation shall be necessary.

25. **Halsbury's Law of England**[15] at paragraph 895 states that there is a presumption of due execution where the Will is regular on the face of it, with an attestation clause and the signature of the testator and witnesses in the proper places.

26. The 2009 Will was a typed document and it was allegedly made by Ramroop when he was 91 years old. The signature of Ramroop was in the form of a thumbprint at its foot and the signature of the two witnesses were appended after the attestation clause.

27. Therefore, on a balance of probabilities the 2009 Will was signed by Ramroop in the presence of the witnesses and each other in compliance with section 42.

28. Testamentary capacity was described by Cockburn LJ in **Banks v Goodfellow**[16] as:

> "It is essential to the exercise of such power that a testator shall understand the nature of his act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect, and with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right or prevent the natural exercise of his faculties that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it, which if his mind had been sound, would not have been made...As long as a testator knows that he wants to leave the assets in a specific proportion for reasons that are clear, rational and consistent then he might be considered capable."

[15] 4th ed

[16] (1890) LR 5 QB 549 at 565

29. The party who bears the burden of proving testamentary capacity was addressed by Wooding CJ in **Moonan v Moonan**[17] who stated that:

> "the onus of proving testamentary capacity was on the appellants who were propounding the will. If the matter is left in doubt then they fail to prove that the testator was capable of making a will. The resolution of the issue may be in one of three ways: either that the court is affirmatively satisfied that [the testator] was sound in mind, memory and understanding, or that the court is satisfied that he was not sound in any of these respects or that the court is left in doubt, with the result that the issue has to be resolved against the appellants who … were propounding the will."

30. The duty of persons propounding a Will was set out in **Halsbury's Laws of England**[18] as:

> "… however it is the duty of the executors or any other person setting up a will to show that it is an act of a competent testator, his testamentary capacity must be established and proved affirmatively. The issue of capacity is one of fact. The burden of proof of sanity is considerably increased when it appears that the testator had been subject to previous unsoundness of mind. The justice or injustice of the disposition may throw some light upon the question of the testator's capacity."

31. The role of the Court where the validity of a Will is called into question on the basis of lack of knowledge and approval was set out in **Williams on Wills**[19] under the rubric of "Knowledge and approval" as:

> "Before a paper is entitled to probate, the court must be satisfied that the testator knew and approved of the contents at the time he signed it. It has been said that this rule is evidential rather than substantive and that in the ordinary case, proof of testamentary capacity and due execution suffices to

[17] (1963) 7 WIR 420 at 421 I
[18] 5th ed Vol 103 at paragraph 899
[19] 8th ed Volume 1 at paragraph 5.1 page 51

establish knowledge and approval but in certain circumstances the court requires further affirmative evidence."

32. **Halsbury's Laws of England**[20] at paragraph 907 describes the approach when there are suspicious circumstances surrounding the execution of a will as:

> "Whenever the circumstances under which a will is prepared raises a well-grounded suspicion that it does not express the testator's mind, the court ought not to pronounce in favour of it unless the suspicion is removed. Thus where a person propounds a will prepared by himself or on his instructions under which he benefits, the onus is on him to prove the righteousness of the transaction and that the testator knew and approved of it. A similar onus is raised where there is some weaknesses in the testator which, although it does not amount to incapacity, renders him liable to be made the instrument around him; or where the testator is of extreme age; or where knowledge of the contents of the will is not brought home to him; or where the will was prepared on verbal instructions only, or was made by interrogatories; or where there was any concealment or misrepresentations; or where the will is at variance with the testator's known affections or previous declarations or dispositions in former wills or a general sense of propriety." (Emphasis added).

33. Based on the aforesaid legal principles, the burden was on the Defendant to prove that Ramroop had the requisite testamentary capacity in that he was of sound mind, memory and understanding when he executed the 2009 Will.

34. It was submitted on behalf of the Claimants that Ramroop did not have the requisite testamentary capacity when he executed the 2009 Will as: he was 91 years old and in poor health as he suffered with Alzheimer's disease and he had poor vision; he executed it by thumbprint whereas previously he had executed the 2002 Will by signature; he did not understand the extent of his property which he was disposing in

[20] 4th ed Vol 17

the 2009 Will; and he excluded his wife, the Second Claimant and his children without any explanation with the sole beneficiary being the Defendant, his daughter-in-law.

35. Counsel for the Defendant submitted that the Claimants failed to provide cogent medical evidence that Ramroop was suffering from Alzheimer's disease as the medical report dated 28 May 2019 [21] from Dr Doddi ("the Gulf View medical report") which dealt with Ramroop's stay at the Gulf View Medical Centre during the period 31 August 2008 to 8 September 2008, did not substantiate any findings of Alzheimer's disease and the facts pleaded at paragraph 34 of the Statement of Case with respect to Ramroop's conduct were a lay person's observations. It was also submitted that there was no cogent medical evidence to support the Claimants' case that Ramroop had poor vision as the medical report of Dr Bruno Mitchell dated 15 August 2019 ("the Mitchell medical report") only stated that he treated Ramroop for "vision" problems.

36. It was further submitted that there was no evidence that Ramroop did not use his thumbprint to sign his name, as he used it as his signature on his Trinidad and Tobago national identification card and on a document dated 26 October 2009 where he transferred the 34B Warren Road property to the Second Claimant, the Defendant and himself.

37. In order for the Defendant to prove that Ramroop had the requisite testamentary capacity at the time of the execution of the 2009 Will, the onus was on her to prove on a balance of probabilities that Ramroop did not suffer with any illness which influenced the disposition of the properties in the 2009 Will; Ramroop understood the extent of the property he was disposing in the 2009 Will; and Ramroop understood and appreciated the claims which may be made to his property.

38. There were different versions of the state of Ramroop's testamentary capacity at the time of the execution of the 2009 Will. In order for the Court to satisfy itself which version of the events is more probable in light of the evidence, it is obliged to

[21] Page 328 of Bundle A of the Agreed and Unagreed Bundle of Documents

check the impression of the evidence of the witnesses on it, against the: (1) contemporaneous documents; (2) the pleaded case: and (3) the inherent probability or improbability of the rival contentions, (**Horace Reid v Dowling Charles and Percival Bain**[22] cited by Rajnauth–Lee J (as she then was) in **Mc Claren v Daniel Dickey**[23]). The Court must also examine the credibility of the witnesses based on the guidance of the Court of Appeal judgment in **The Attorney General of Trinidad and Tobago v Anino Garcia**[24] where it stated that in determining the credibility of the evidence of a witness any deviation by a party from his pleaded case immediately calls his credibility into question.

Ramroop's health at the time of execution of the 2009 Will

39. In **Gemma Attale v Michelle Pauline Russell Lwiseh**[25], I cited **Re Simpson, Schaaniel v Simpson**[26] which stated that where a testator is elderly and infirmed, his will should be witnessed and approved by a medical practitioner.

40. There were two types of evidence presented to the Court on Ramroop's health at the time of the execution of the 2009 Will, namely medical evidence and the observation of lay persons.

41. The Defendant, who bore the duty to prove that Ramroop was in good health at the time of the execution of the 2009 Will, presented no medical evidence of Ramroop's health. Instead, the First Claimant relied on two (2) medical reports which he annexed to his witness statement and which were admitted into evidence under hearsay notices. Therefore, neither of the medical doctors who prepared the said reports gave evidence at the trial. However, the Defendant did not challenge the contents of the said medical reports and for this reason I attached significant weight to their contents.

[22] Privy Council Appeal No. 36 of 1897
[23] CV 2006-01661
[24] Civ. App. No. 86 of 2011 at paragraph 31
[25] CV 2016-03339 unreported 25 September 2018
[26] (1977) 121 Sol Jo 224

42. The Gulf View medical report did not indicate that Ramroop's illness during the period 31 August 2008 to 8 September 2008 was associated with Alzheimer's disease and the Mitchell medical report only stated that during the period 2005-2011 Ramroop attended Dr Mitchell's office for vision problems.

43. The evidence of the lay persons on the health of Ramroop at the time of the execution of the 2009 Will were from the First Claimant, the Second Claimant's Statement, the Defendant and Mr Mohammed.

44. According to the First Claimant, he took care of Ramroop when he required medical attention. He stated that Ramroop had poor vision in his eyes and attended the office of Dr Mitchell. He took Ramroop to those visits and he was present when he was treated. According to the First Claimant, in his presence Dr Mitchell diagnosed Ramroop with glaucoma and determined that he had no vision in one eye and only about 20 to 30 percent vision in the other eye. He stated that Ramroop attended Dr Mitchell periodically during the period 2005 to 2011 and he annexed to his witness statement a copy of the Mitchell medical report.

45. The First Claimant also stated that on the 31 August 2008, Ramroop was admitted to Gulf View Medical Centre where he was warded until 8 September 2008 and he annexed to his witness statement a copy of the Gulf View medical report.

46. The First Claimant further stated that during the latter years of Ramroop's life and just before around 2008, he observed on occasions that Ramroop asked for his mother who he called "mama". He also observed that on occasions Ramroop asked the Second Claimant, his grandmother to take him home and that Ramroop frequently asked relatives to identify themselves when they spoke to him. He also recalled that on one occasion, a neighbour brought Ramroop back home as he had left without anyone's knowledge.

47. The First Claimant stated in his witness statement that through the many years he lived with Ramroop and the Second Claimant he was aware that they were both illiterate. However, he had seen Ramroop sign his name as "Nandlal" or "Nanlal" as he sometimes did.

48. In cross-examination the First Claimant testified that Ramroop had many health issues. He accepted that the Mitchell medical report did not indicate that Ramroop was diagnosed with glaucoma.

49. Paragraph 13 of the Second Claimant's Statement dealt with Ramroop's health. According to the Second Claimant, Ramroop was not well in the last few years of his life. He could neither read nor write but he could sign his name. He had problems seeing and the First Claimant took him to a doctor concerning his vision problems. She also stated that Ramroop was unable to go places by himself because he was too weak and he used to forget things. Ramroop used to ask for 'mama' who had long died and he only recognised persons when they spoke to him.

50. The Defendant's evidence on Ramroop's health was set out in paragraph 23 of her witness statement which stated:

> "I also say that I was the person who looked after Ramroop and the Second Named Claimant and I know that he began to feel unwell. I also recall about 2-3 (sic) and he had problem only in one eye."

51. The Defendant also stated in her witness statement that she lived on the same property where Ramroop lived since around 1979 and has continued to live there, up until the time of the trial; she shared a close relationship with Ramroop; and she took care of him after Bhola died from 2000 to until he died.

52. The Defendant was not cross-examined on the state of Ramroop's health prior to, and at the time of the execution of the 2009 Will.

53. Mr Mohammed was the attorney at law who took the instructions from Ramroop to prepare the 2009 Will and who also prepared it. He stated in his witness statement that he knew the Nandlal family as they met with his father, Mr Nizam Mohammed, attorney at law, for many years concerning various transactions including land matters. At paragraphs 4 and 5 he set out the details surrounding the actual preparation and execution of the 2009 Will as:

> "4. I recall on the 26th October 2009, Ramroop, his wife, attending our office. Nandlal wanted a will prepared. I spoke to him and Kowsil in the presence of my clerk Naresh Samaroo. He explained to me what he wanted and I advised him accordingly. Nandlal gave instructions to prepare his Will. I wrote down what he wanted in order to prepare the Will. The copy of the document which is hereto annexed and marked "F.M.1." is shown to me and it is the instructions I wrote. I know this because it had my handwriting.
>
> 5. Pursuant to the instructions, I prepared the Will on the same day and after the document was read and explained to Nandlal and after he agreed to its contents he placed his Right Hand Thumb Print in the presence of my staff Naresh Samaroo and Videsh Mahabir both being present at the same time and in his presence. I also recall that after I marked the word "Right Hand Thumb Print of Nandlal also called Nandlal Ramroop, I obtained his Identification Card Number 1918042001."

54. The exhibit "F.M.1." was the only contemporaneous note produced by Mr Mohammed. It stated:

> "I NANDLAL also called NANDLAL RAMROOP instruct Nizam Mohammed & Co, Attorneys at law to prepare my last will and testament revoking previous wills. I appoint my daughter-in-law Lena Nandlal as my sole executrix. I wish to bequeath my properties situate at (1) Mayaro (2) Dyette Estate Cunupia (3) Warren Road Cunupia (next door to where I live) to my daughter-in-law Lena Nandlal. The residue I will leave to my daughter-in-law".

55. Mr Mohammed testified in cross-examination that he was aware that Ramroop was 91 years old at the time he received the instructions to prepare the 2009 Will. He was unable to recall if Ramroop was illiterate and if he could read. However, he was aware that Ramroop could sign his name at times and he was unaware if Ramroop suffered from any illness.

56. Mr Mohammed also stated in cross-examination that on the 26 October 2009 Ramroop visited his office and he wrote down what Ramroop wanted, which he reproduced as exhibit "F.M.1". He confirmed that "F.M.1" was in his handwriting and that it was the only contemporaneous record of what took place on the 26 October 2009. He also stated that he prepared the 2009 Will on the same day; he read it over and explained it to Ramroop and that the latter agreed to its contents and then placed his thumbprint on the 2009 Will. He also indicated that he requested Ramroop's Trinidad and Tobago National identification card.

57. In my opinion, the weight of the evidence strongly suggested that at the time of the execution of the 2009 Will, Ramroop was in poor health and that this compromised his testamentary capacity. My reasons for arriving at this conclusion are as follows.

58. First, the execution clause of the 2009 Will stated that Ramroop signed it using his thumbprint "due to illness". It stated *"SIGNED by the within named NANLAL also called NANDLAL RAMROOP after the true contents were explained to him and he thoroughly understood the same to our satisfaction he being unable to write his name owing to illness and acknowledged by him to be his last Will and Testament in our presence who at his request in his presence and in the presence of each other we being present at the same time have hereunto subscribed our names as witnesses"*. Therefore on the face of the execution clause of the 2009 Will, Ramroop was suffering from ill health and that was for the reason for him executing the 2009 Will by the thumbprint of his right hand.

59. Although Mr Mohammed's evidence was that at the time of the execution of the 2009 Will he was not aware of any illness on the part of Ramroop, this contradicted the reason stated in the attestation clause of the said Will. Mr Mohammed's failure to provide any explanation why Ramroop used his thumbprint to execute the 2009 Will, supported the assertion that the reason Ramroop executed the 2009 Will by thumbprint was because he was ill.

60. Second, the medical evidence together with the evidence from the lay witnesses strongly suggested that Ramroop had serious health concerns prior to the execution of the 2009 Will. I accept that there was no medical report which stated that Ramroop suffered with Alzeimer's disease prior to the execution of the 2009 Will. However, it was not in dispute that the Claimants shared a close relationship with Ramroop and the First Claimant's evidence on Ramroop's conduct in his latter years where he exhibited signs of significant memory loss and awareness of his environment was unshaken in cross-examination. This evidence was consistent with that contained in the Second Claimant's Statement. Although there was no supporting medical report, I have attached significant weight to both Claimants' evidence on their observation of Ramroop's health in his latter years since they shared a close relationship with him and their observations were more probable.

61. Further, the Mitchell medical report stated that Ramroop was treated for "vision problems" during the period 2005-2011. This was corroborated by the evidence from the First Claimant, the Second Claimant's Statement and even the Defendant. Therefore, it was more probable that at the time of the execution of the 2009 Will, Ramroop was suffering with an illness which adversely affected his vision. While I accept that a person suffering with vision problems cannot be equated with a disease of the mind, in the absence of any evidence from Mr Mohammed on the nature of the illness which caused Ramroop to execute the 2009 Will by thumbprint, it was equally probable that Ramroop's vision problems impacted on his testamentary capacity.

62. In any event, the Defendant's evidence was very limited on Ramroop's health. The only evidence from the Defendant on Ramroop's health was that he had some vision problems before the execution of the 2009 Will. In my opinion, the Defendant was not being truthful with the Court on this aspect of her evidence since based on her evidence, she lived on the same property where Ramroop lived from around 1979 and continued to live there until the time of the trial; she shared a close relationship with Ramroop; and she took care of him after Bhola died from 2000 to until he died. In my opinion, it was more probable that the Defendant knew about the extent of Bhola's vision problems and the extent it adversely affected his ability to understand the nature of his actions at the time of the execution of the 2009 Will.

63. Third, Mr Mohammed, as the attorney at law who took Ramroop's instructions and who prepared the 2009 Will was unable to satisfy the Court, that he conducted sufficient enquiries to satisfy himself that Ramroop's health did not affect his testamentary capacity.

64. The role of an Attorney in the preparation of a will was discussed in the judgment of **Bernadette Sonia Sobers et al v Sharon Fraser Benjamin**[27], where the court recited what has been described by solicitors in the preparation of wills as the "Golden Rule". At paragraph 32, pages 11-12 the Court stated:

> "In *Key and Anor v Key and Ors* [2010] EWHC 408 (Ch) an 89-year old farm owner made a will one week after the death of his wife of 65 years. He left the bulk of his estate to be divided between his two daughters. They did not live or work on the farm and had no connection with it. This was in sharp contrast with a previous will that left his assets in favour of his wife for life and remainder to be divided equally between his two sons. The sons worked on the farm with their father. The will was challenged on the basis of a lack of testamentary capacity and want of knowledge and approval. Briggs J (as he then was) referred to 'the golden rule':

[27] CV 2014-02731 unreported dated 1 April 2019

7. "The substance of the Golden Rule is that when a solicitor is instructed to prepare a will for an aged testator, or for one who has been seriously ill, he should arrange for a medical practitioner first to satisfy himself as to the capacity and understanding of the testator, and to make a contemporaneous record of his examination and findings: see *Kenward v Adams* (1975) Times 29th November 1975; *Re Simpson* (1977) 121 SJ 224, in both cases *per* Templeman J, subsequently approved in *Buckenhan v Dickinson* [2000] WTLR 1083, *Hoff v Atherton* [2005] WTLR 99, *Cattermole v Prisk* [2006] 1 FLR 697, and in *Scammell v Farmer* [2008] EWHC 1100 (Ch.) at paras 117 to 123.

8. Compliance with the Golden Rule does not, of course operate as a touchstone of a will nor does noncompliance demonstrate its invalidity. Its purpose, as has repeatedly been emphasized, is to assist in the avoidance of disputes or at least in the minimization of their scope. As the expert evidence in this present case confirms, persons with failing or impaired mental faculties may for perfectly understandable reasons, seek to conceal what they regard as their embarrassing shortcomings from persons with whom they deal, so that a friend or professional person such as a solicitor may fail to detect a defect in mental capacity which would be or become apparent to a trained and experienced medical examiner, to whom a proper description of the legal test for testamentary capacity had first been provided."

65. The law therefore places a duty on an Attorney who prepares a will, not to just put into legal jargon the wishes of the testator but to take measures to satisfy himself that the testator has the requisite testamentary capacity and that his instructions are that of a free, independent mind. The duty is more important when the testator is old and infirm and where the circumstances raise suspicion.

66. I have attached no weight to exhibit "F.M.1" as it was not signed by Ramroop, whether by signature or thumbprint. Therefore, it was not a verbatim account of the interaction between Ramroop and Mr Mohammed. At best it was Mr Mohammed's interpretation of Ramroop's instructions.

67. In any event, the evidence from Mr Mohammed was that he was aware that Ramroop was 91 years old at the time he received the instructions to prepare the 2009 Will. He was unable to recall if Ramroop was illiterate and if he could read. However, he was aware that Ramroop could sign his name at times and he was unaware if Ramroop suffered from any illness.

68. In my opinion, in light of Mr Mohammed's knowledge of Ramroop at the time the latter gave him instructions to prepare the 2009 Will, he had a duty to make further enquiries from Ramroop to satisfy himself of the latter's testamentary capacity, such as enquire about his overall health and request that Ramroop obtain a medical report certifying his fitness. However there was no evidence that Mr Mohammed took these steps. It seemed to me all Mr Mohammed did was put into legal jargon what he understood were Ramroop's alleged instructions for the 2009 Will.

Ramroop's understanding of the extent of the property he was disposing when he executed the 2009 Will

69. The First Claimant testified in cross-examination that Ramroop owned other properties apart from the Mayaro property, the 34B Warren Road property and the Dyette Estate property. He accepted that one such property was the 34 Warren Road property which Ramroop had transferred jointly to himself, the Second Claimant and the Defendant.

70. According to Mr Mohammed's evidence, Ramroop gave him instructions to give the Mayaro property, the Dyette Estate property and the 34B Warren Road property to the Defendant. Mr Mohammed also stated that he understood Ramroop's instructions were to give the residue of his estate to the Defendant.

71. Mr Mohammed also stated at paragraphs 6 to 8 of his witness statement that he took instructions from Ramroop on the same day to transfer another property to the Second Claimant and the Defendant. He stated:

> "6. I also recall on the same day that Nandlal gave instructions to transfer 1 acre of land where he lived to his wife and his daughter-in-law Lena Nandlal, and himself jointly. Prior to taking those instructions I had explained to Nandlal and Kowsil in the presence of my clerk Naresh Samaroo and then to three of them (including Lena) it was also an option available that was time and cost saving.
>
> 7. I recall I took the relevant instructions, and after I read and explained the instruction to Nandlal he placed his Right Hand Thumb Print. I also had his wife, Kowsil certify that I read over the instructions Nandlal gave and that he confirmed the instructions after receiving legal advice. A copy of the instructions is now shown to me and marked **"F.M.2"** which I recognize as the said instructions taken as it also bears my signature at the bottom.
>
> 8. After the placing of the Right Hand Thumb Print of Nandlal and Kowsil having obtained their Identification Cards I made the following endorsement next to the Right Hand Thumb Print of Nandlal "Right Hand Thumb Print of Nandlal also called Nandlal Ramroop Identification Card Number 1918042001˝ and next to the Right Hand Thumb Print of Kowsil Nandlal "Right Hand Thumb Print of Kowsil Nandlal Identification Card Number 19310518004".
>
> 9. I then prepared the Memorandum of Transfer pertaining to Certificate of Title Volume 1998 Folio 321 to effect the transfer and the document was executed."

72. In cross-examination Mr Mohammed testified that in November 2009, Ramroop returned to his office to transfer a property by way of gift. He could not recall if it was one of the properties stated in the 2009 Will. However he accepted it was 34B Warren Road property.

73. In my opinion, it was more probable that Ramroop did not understand at the time he was executing the 2009 Will, the extent of the property he was disposing in it for two (2) reasons.

74. First, Ramroop's conduct at the time he executed the 2009 Will and one (1) month thereafter, were not consistent with a person who understood the extent of his entire estate. In the 2009 Will, Ramroop gave his entire estate to the Defendant either as specific bequests or in the residuary provision. The specific bequests were with respect to the Mayaro property, the 34B Warren Road property and the Dyette Estate property. However, at paragraph 6 of Mr Mohammed's witness statement, he stated that on the same day Ramroop made the 2009 Will he also gave instructions to transfer the 34 Warren Road property to the Second Claimant, the Defendant and himself jointly. In my opinion, if Ramroop understood the extent of the property he disposed of in the 2009 Will, he would have understood that he had given instruction on the same day for the 34 Warren Road property to pass to the Defendant upon his death.

75. Further, one (1) month after in November 2009, Ramroop returned to Mr Mohammed's office and transferred the 34B Warren Road property by deed of gift to other persons and not the Defendant, which was contrary to the provisions of the 2009 Will. Again, in my opinion this conduct by Ramroop was not consistent with someone who understood that he had already made different provisions for the two (2) said properties in the 2009 Will.

76. Second, there was no evidence that Mr Mohammed enquired of Ramroop if the latter's instructions to prepare the 2009 Will contained all of his properties. From the pleadings[28] it was not in dispute that the other property which Ramroop owned was never specifically referred to in the 2009 Will. In my opinion, it is reasonable to infer that Mr Mohammed failed to review Ramroop's inventory of assets with him, or if he did, Ramroop did not fully disclose the other property and the true inventory of his

[28] See paragraphs 26 of the Amended Statement of Case and 25 of the Amended Defence).

estate. In my opinion, if Mr Mohammed had taken adequate steps to ensure that Ramroop understood the extent of his estate, it is more probable that he would have recorded the other property. However, there was no evidence that Mr Mohammed did so. Similarly, there was no evidence that Ramroop was ever asked for the full extent of his inventory which would have satisfied Mr Mohammed that he had testamentary capacity.

Ramroop's understanding or appreciation of the persons who could make claims to his estate

77. The First Claimant stated in his witness statement that the Second Claimant was the lawful wife of Ramroop and they had five (5) children together, inclusive of his father, Bhola who was their only son. He stated that all the other children are alive. This evidence was not disputed by the Defendant. Indeed all the evidence pointed to a very close relationship between the First Claimant and Ramroop and the Second Claimant. The Defendant did not state otherwise. There is no evidence that the relationship between Ramroop and the Second Claimant was not good. In fact, there was no evidence to suggest that Ramroop would disinherit his entire family and the First Claimant and give his entire estate to the Defendant.

78. There was no explanation by Ramroop in the 2009 Will for giving his entire estate to the Defendant and for excluding his wife and children.

79. In my opinion, Mr Mohammed was the only witness who could prove that Ramroop understood or appreciated that he was disinheriting his wife and children. However, his evidence demonstrated that he failed to make the appropriate enquiries to show that Ramroop understood that he was disinheriting his entire family.

80. Based on the evidence of Mr Mohammed, he did not enquire from Ramroop if he had children and the reasons the latter was excluding the Second Claimant, his wife and his children from benefitting from his estate under the 2009 Will. There was also no evidence from Mr Mohammed if he enquired from Ramroop whether any of the properties which formed part of his estate and which were contained in the 2009 Will,

were owned jointly with another person or if any other person was to benefit from those properties. Indeed Mr Mohammed did not give any evidence that he was aware that Ramroop held the Mayaro property, the 34B Warren Road property and the Dyette Estate property on trust for Bhola's children.

81. In my opinion, this failure by Mr Mohammed to enquire about the persons who stood to benefit from Ramroop's estate and the reasons Ramroop was excluding them, demonstrated that Mr Mohammed had failed to take the required steps to ensure that Ramroop knew and understood the nature of the instructions which he gave to Mr Mohammed, to prepare the 2009 Will.

82. Having found that Ramroop lacked the testamentary capacity to execute the 2009 Will this is sufficient reason to set it aside.

WAS THE EXECUTION OF THE 2009 WILL OBTAINED BY THE UNDUE INFLUENCE OF THE DEFENDANT?

83. It was submitted on behalf of the Claimants that the 2009 Will was procured by the undue influence of the Defendant as he was 91 years old at the time of its execution; he was in poor health; he was weak and in a vulnerable state, open to influences of the Defendant; he was illiterate; his condition was known to the Defendant; at certain times he was left at home alone when the Second Claimant attended work as a farmer and market vendor; and he would have attended the office an attorney at law with the Defendant and affixed his thumbprint to documents without appreciating the nature and significance of what his actions meant.

84. On the other hand, Counsel for the Defendant argued that there was no evidence to substantiate the Claimants assertion that Ramroop was left home alone; no cogent or compelling evidence to prove any act of coercion by the Defendant; and the Claimants have failed in their pleaded case and evidence to raise any "well grounded" suspicious circumstances under which the 2009 Will was prepared and executed that affected Ramroop's mind.

85. **Williams on Wills**[29] at page 64 paragraph 5.9 stated the following on undue influence and fraud:

> "Fraud and undue influence are really questions of knowledge and approval rather than of testamentary capacity since what has first to be proved is not the lack of capacity of the testator, but the acts of others whereby the testator has been induced to make dispositions which he did not really intend to make…A gift obtained by undue influence or fraud is liable to be set aside upon proof of the undue influence or fraud. Undue influence means coercion to make a will in particular terms. The principle has been stated by Sir JP Wilde in Hall v Hall[30]:
>
> > 'Persuasion is not unlawful, but pressure of whatever character if exerted as to overpower the volition without convincing the judgment of the testator, will constitute undue influence, though no force is either used or threatened."

86. The authors on **Williams on Wills** continued at page 65 to state:

> "The proof of motive and opportunity for the exercise of such influence is required but the existence of such coupled with the fact that the person who has such motive and opportunity has benefited by the will to the exclusion of others is not sufficient proof of undue influence. There must be positive proof of coercion overpowering the volition of the testator. The mere proof of the relationship of parent and child, husband and wife, doctor and patient, solicitor and client, confessor and penitent, guardian and ward or tutor and pupil does not raise a presumption of undue influence sufficient to vitiate a will and although coupled with, for example, the execution of the will in secrecy, such relationship will help the inference, yet there is never in the case of a will a presumption of undue influence. There is no presumption of undue influence, which must be proved by the person who sets up that allegation. The onus of proof resting upon a the party propounding a will where circumstances of suspicion are disclosed does not extend to the disproof of an allegation of

[29] 9th ed
[30] LR 1P&D 481

undue influence or fraud, the burden of establishing which always rests on upon the parties setting it up. The person who affirms the validity of the will must show that there was no force or coercion depriving the testator of his judgment and free action and that what the testator did was what he desired to do…..much less influence will induce a person of weak mental capacity or in a weak state of health to do any act and in such cases the court will the more readily find undue influence…"

87. The test of undue influence in probate is different from the equitable presumption since there is no presumption of undue influence in testamentary matters[31]. Undue influence, in order to render a will void, must be an influence which can justly be described by a person looking at the matter judicially to have caused the execution of a paper pretending to express a testator's mind, but which really does not express his mind, but something else which he did not really mean[32]. Not all influence is undue influence. Even very strong persuasion and 'heavy family pressures' are not, of themselves, sufficient[33].

88. The onus was on the Claimants to prove that the Defendant coerced Ramroop into making the 2009 Will. The Defendant who sought to affirm the validity of the 2009 Will, must show that there was no force or coercion which deprived Ramroop of his judgment and free action in deciding what he wanted to do with his property in the 2009 Will.

89. In my opinion, there was undue influence by the Defendant in procuring the 2009 Will for the following reasons.

90. First, Ramroop was in a vulnerable state at the time of the execution of the 2009 Will as he was in poor health. The Defendant's evidence on Ramroop's state of health was that he had poor vision. It was not in dispute that Ramroop was 91 years at the time

[31] Per Lord Cranworth in Boyse v Rossborough (1857) 6 HL Cas 2, 48 at 51
[32] Privy Council decision in Craig v Lamoureaux 91920) AC 349 at 357
[33] Munby QC in Governor & Company of the Bank of Scotland v Bennett [1997] 1 FLR 801 at pages 822E-826 F

of the execution of the 2009 Will and that he was illiterate, as he was unable to read and write. The Defendant's evidence was that she shared a close relationship with Ramroop since 1979 and that in his later years she looked after Ramroop's health, provided his meals and looked after him financially. In my opinion, those factors alone placed Ramroop in a vulnerable position with respect to the Defendant.

91. Second, the Defendant was present when Ramroop gave the instructions for and executed the 2009 Will. The evidence of Mr Samaroo was that the Defendant was present with Ramroop in Mr Mohammed's office, when the former gave the instructions to Mr Mohammed to prepare the 2009 Will.

92. At paragraph 10 of the Second Claimant's Statement she stated that she visited the law offices of Nizam Mohammed a few times with Ramroop, as the former was Bhola's attorney at law. She stated that she went with Ramroop to Nizam Mohammed's law office in early 2009 to transfer land to her children. She denied that she visited Nizam Mohammed's law office with Ramroop and the Defendant and stated that she was unaware that Ramroop made the 2009 Will in which he left his entire estate to the Defendant.

93. Both the Defendant and Mr Mohammed's evidence are noticeably silent on whether the Defendant was present and if so, where she was seated when Ramroop gave the instructions to Mr Mohammed to prepare the 2009 Will.

94. Although Mr Samaroo's evidence contradicted the aforesaid information contained in the Second Claimant's Statement, his evidence was not tested in cross-examination and for this reasons I find his version that the Second Claimant was present to be more credible.

95. In any event, the absence of any evidence from the Defendant and Mr Mohammed relating to her presence during the execution of the 2009 Will, it was more plausible to conclude that the Defendant, who is literate, was present when Ramroop gave Mr

Mohammed the instructions to prepare the said Will. The Defendant's presence deprived Ramroop from freely disposing of his property in the 2009 Will.

96. Third, the Defendant had the motive for Ramroop executing the 2009 Will which was favourable to her. The Defendant's evidence was that the Mayaro property, the 34 B Warren Road property and the Dyette Estate property were acquired by Bhola from the businesses which he operated and that she worked in those businesses. She also stated that she knew that Bhola had the properties transferred into both his name and Ramroop's name. The Defendant denied that the First Claimant gave her the 2002 Will for safe-keeping. In the 2002 Will, Ramroop appointed the First Claimant his executor. He gave the Mayaro property, the Dyette Estate property and the residue of his estate to the First Claimant. He also gave the 34B Warren Road property to his grandchildren Ricky Nandlal, Reshma Nandlal and Rishi Nandlal. The First Claimant's evidence was that he gave the Defendant the 2002 Will to keep safe.

97. In my opinion the Defendant's denial of having possession of the 2002 Will was not credible as her evidence contradicted this aspect of her pleaded case. In the Defence, the Defendant denied both knowledge of the 2002 Will and receiving it. In her witness statement, however, she denied receiving any Will from the First Claimant but she did not deny any knowledge of it. Under cross-examination the Defendant gave conflicting answers about whether she knew about the 2002 Will when she made her witness statement. Initially she stated that she read about it but later she maintained that she did not know about it when she prepared her witness statement. Moreover, she accepted that in her witness statement, unlike her Defence, she did not indicate that she had no knowledge of the 2002 Will. The effect of her evidence was that it was a material departure from the Defence, where she denied both knowledge and delivery of the original 2002 Will to her, while in her witness statement she only denied delivery and failed to deny knowledge. In my opinion, this material inconsistency undermined the credibility of her assertion that she did not know about the contents of the 2002 Will, where she was not a beneficiary of any of the properties which she stated she worked with Bhola to acquire.

98. In any event, the Defendant failed to provide any explanation for informing the First Claimant of the 2009 Will immediately after the death of Ramroop. In my opinion, it is more probable that the reason the Defendant informed the First Claimant about the 2009 Will after Ramroop's death was because she was aware of the 2002 Will and its contents.

99. Fourth, the Defendant's conduct of marinating an environment of secrecy surrounding the preparation and execution of the 2009 Will until after Ramroop's death, demonstrated that she used her influence over Ramroop to coerce him to execute the 2009 Will. The Defendant was clear that she did not inform the First Claimant about the 2009 Will until after the death of Ramroop. She also stated that she never informed him of the land transactions that occurred in 2009 regarding the 34 Warren Road property in October 2009 and the 34B Warren Road property in November 2009. The latter transaction was bequeathed in the 2002 Will and the 2009 Will and a mere month after the 2009 Will, it was transferred to the Defendant and her children, save for the First Claimant. The Defendant gave no reason about why she saw the need to inform the First Claimant about the 2009 Will immediately after Ramroop's death. However, it was clear from her evidence that she knew that the First Claimant did not know about the 2009 Will until she informed him. At paragraph 24 of her witness statement she stated:

> "Immediately after the death of Ramroop I told the First Named Claimant of Ramroop's 2009 Will, and thereafter he began to verbally and emotionally abuse me…"

100. There was also no evidence regarding who had possession of the original 2009 Will, as the Defendant failed to give any evidence explaining who kept the 2009 Will from its execution to admission to probate. In my opinion, it was more probable that the Defendant kept it in her custody as she gave no evidence of having to obtain the 2009 Will from anyone in order to admit it to probate.

IS THE FIRST CLAIMANT ENTITLED TO AN EQUITY IN THE 34 WARREN ROAD PROPERTY?

101. Assuming that the 2009 Will is valid, the First Claimant also asserted that he had acquired an equitable interest in the 34 Warren Road property. In the Defence, the Defendant did not dispute the facts pleaded by the First Claimant that support his claim for an equity in the 34 Warren Road property. Instead, the Defendant has put the First Claimant to proof of same and only disputed the improvements done on the back house, which she claimed she did. With respect to the acts of encouragement, the Defendant's position was that any encouragement by Ramroop did not bind her.

102. It was submitted on behalf of the Claimants that the First Claimant has established an equity in the 34 Warren Road property and the Defendant is estopped from denying it, as she admitted in cross examination that he did improvements to the back house; and she acknowledged that it was always agreed and understood by the family that the First Claimant could continue to operate from the 34 Warren Road property for as long as he wished and she was not seeking to remove him from it. It was also submitted that contrary to her defence, the Defendant admitted that she signed the letter in December 2015 to the Ministry of Trade which indicated that the First Claimant had her permission to operate his business on the 34 Warren Road property permanently. She also stated that when her husband, Bhola, died the First Claimant used the proceeds of his business to look after the family and this was what she meant when she referred to it as a family business.

103. Counsel for the Defendant argued that the First Claimant's claim for an equitable interest in the 34 Warren Road property must fail, as RBN Auto Dealers Limited was a family business which the First Claimant was allowed to establish rent-free. He also argued that the First Claimant should not be allowed to deduct the financial and physical assistance that the Defendant and his siblings rendered in the business towards the equity he claimed in the 34 Warren Road property.

104. It was also submitted on behalf of the Defendant that the First Claimant failed to prove that he used his own finances to conduct the repairs to the back house, built a tyre

shop, built garages, built office, showroom and store room and generally maintained the 34 Warren Road property.

105. The First Claimant's case with respect to his claim for an interest in the 34 Warren Road property was grounded in the legal doctrine of proprietary estoppel. There was common ground by the parties on the law of proprietary estoppel which is well settled. It states that:

> "If A under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a court of Equity will compel B to give effect to such expectation" – Taylor Fashions Ltd v Liverpool Victoria Trustee Co. Ltd (cited in **Snell's Principles of Equity** 31st Edition, para10-16 to 10-17)

106. In **Esther Mills v Lloyd Roberts**[34] the Court of Appeal noted the modern approach in cases of proprietary estoppel, namely that there is no requirement for a specific promise or intention to effect legal relations:

> "19. In respect of the law of proprietary estoppel we are more troubled about the correctness of the application of the law. Whereas in promissory estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect, in the law of proprietary estoppel there is no absolute requirement for any findings of a promise or of any intentionality."

107. Jamadar JA (as he then was) noted at page 8 of the said judgment that:

> The seventh edition (2008) of The Law of Real Property adequately summarises "the essential elements of proprietary estoppel", as follows:
>
> (i) An equity arises where:

[34] Civ Appeal No 131 of 2011

(a) the owner of land (O) induces, encourages or allows the claimant (C) to believe that he has or will enjoy some right or benefit over O's property;

(b) in reliance upon this belief, C acts to his detriment to the knowledge of O; and

(c) O then seeks to take unconscionable advantage of C by denying him the right or benefit which he expected to receive.

(ii) This equity gives C the right to go to court to seek relief. C's claim is an equitable one and subject to the normal principles governing equitable remedies.

(iii) The court has a wide discretion as to the manner in which it will satisfy the equity in order to avoid an unconscionable result, having regard to all the circumstances of the case and in particular to both the expectations and conduct of the parties."

108. In explaining the modern approach, Jamadar JA (as he then was) noted that the Court's function is to avoid objectively unconscionable outcomes. At paragraphs 21 and 22 he stated:

> The eight edition of A Manual of the Law of Real Property explains the ' modern approach ' as follows:
>
> "Since 1976, the majority of the judges have rejected the traditional approach and have regarded these three situations as being governed by a single principle. They have adopted a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable

behaviour. This broader approach has been developed into the principle that a proprietary estoppel requires:

(i) an assurance or a representation by O;

(ii) reliance on that assurance or representation by C; and

(iii) some unconscionable disadvantage or detriment suffered by C."

22. In proprietary estoppel therefore, the focus shifts somewhat from the search for a clear and unequivocal promise and for intentionality, to whether the party claiming the benefit of the estoppel had a reasonable expectation induced, created or encouraged by another, and in those circumstances acted detrimentally to the knowledge of the other. <u>For proprietary estoppel to operate the inducement, encouragement and detriment must be both real and substantial and ultimately the court must act to avoid objectively unconscionable outcomes.</u> (Emphasis added)

109. In the instant action the Court must consider whether it would be unconscionable for the Defendant to deny the First Claimant's interest in the 34 Warren Road property having regard to his conduct and the circumstances.

110. In my opinion, the First Claimant has discharged the burden of proving on a balance of probabilities that he has an equitable interest in the 34 Warren Road property for the following reasons.

111. Firstly, the acts of encouragement by Ramroop which were pleaded by the First Claimant were not denied or disputed by the Defendant. Indeed the Defendant's evidence in cross-examination was that the First Claimant shared a close relationship with Ramroop and the latter supported his business ventures. Therefore, it was more probable that Ramroop made such acts of encouragement to the First Claimant.

112. Secondly, the Defendant admitted in cross-examination that it was always understood that the First Claimant would be allowed to conduct his business on the 34 Warren Road property as long as he wished. This was consistent with the Defendant's

admission in cross-examination that in December 2015, she signed a letter to the Ministry of Trade which stated that the First Claimant had permission to use the 34 Warren Road property for his business permanently. It also contradicted the Defendant's defence where she denied that she had signed the said letter. Therefore, the First Claimant's belief that he could operate his business on the 34 Warren Road property was credible.

113. Thirdly, the Defendant's evidence in cross-examination supported the First Claimant's case of the extensive works which he undertook on the 34 Warren Road property. The Defendant admitted in cross-examination that the First Claimant started his business RBN around 2004 or 2005 at the back house on the 34 Warren Road property and that around 2008 to 2009 he converted what she called a warehouse into an office. The Defendant also admitted that in 2014 to 2015, the First Claimant constructed a showroom and in 2016 to 2017 he constructed a tyre shop on the 34 Warren Road property.

114. The Defendant further admitted in cross-examination that the First Claimant did some renovations to the back house on the 34 Warren Road property after Bhola died and that although she caused an Attorney at law to write a letter to him requesting him to remove his things from the back house, she did not inform him to cease any construction as he did not own the 34 Warren Road property. She also admitted that before May 2017, the First Claimant stored vehicles for his business at the back house. This was inconsistent with paragraph 36 of her Defence which stated "that in or about May, 2017 the First Claimant in an attempt to occupy the garage located in the Defendant's area, off loaded stock and was stopped by the Defendant's son Rishi."

115. Although, it was submitted by Counsel for the Defendant that RBN was a family business and the money from RBN was used by the First Claimant for the construction and renovation on the 34 Warren Road property, the Defendant's evidence in cross-examination did not support this contention. In cross-examination the Defendant admitted that when she stated that RBN was a family business, she meant that the money the First Claimant earned from it, he used to support the family.

116. Fourthly, the Defendant failed to produce any contemporaneous documents to support her assertion that she financed the works which were done on the 34 Warren Road property using monies obtained from Bhola's business. According to the Defendant, together with Bhola, she owned and operated a number of businesses namely:

i. Royal Five Construction Limited which never came into operation;
ii. Bhola Nandlal Company Limited;
iii. Central Trade Mark Company Limited (cease operation in 1997 or thereabout), and
iv. Premier Consultant's Limited v. Central Trademark Limited (sic).

117. The Defendant also stated in her witness statement that she and Bhola had several businesses including a successful import/ export company and land development company which earned millions of dollars. From the earnings of the various businesses they built the back house and the front house. At the time of Bhola's death they lived in the back house which comprised on the upper level 7 bedrooms, kitchen, living room, dining room, 4 toilets, 3 bathrooms and a library with 4 porches. The lower level comprised of 3 bedrooms, 2 kitchens, living room, dining room, toilet and bath, laundry room, library with 4 porches and 2 stock rooms. There was also a warehouse on the 34 Warren Road property built by the Defendant and Bhola. The Defendant said that she and Bhola held bank accounts jointly in their names and they travelled together to Miami to conduct business, as they had a very close relationship as husband and wife and business partners.

118. However, in cross-examination the Defendant admitted that she did not provide any documents to support her assertion of the joint accounts and her role in the companies. She accepted that she failed to provide any explanation for her failure to provide such documents.

119. In my opinion in the absence of such documents and any explanation to account for her not providing such documents, made these assertions in the Defendant's evidence to be lacking in credibility. It was more probable that if the Defendant was as actively

involved in Bhola's businesses as she asserted, she would have had records which showed her involvement and records from financial institutions which showed the joint accounts. Indeed, the documents which the Defendant produced contradicted her claim as her name was notably absent[35] . On the other hand, all the documents in respect of the businesses were produced by the Claimants[36].

DID RAMROOP HOLD ANY OF THE PROPERTIES ON TRUST FOR BHOLA'S CHILDREN AND IF SO DID THE 2009 WILL CONSTITUTE A BREACH OF TRUST BY RAMROOP AND WAS IT BINDING ON THE DEFENDANT WHO WAS NOT A BONA FIDE PURCHASER WITHOUT NOTICE?

120. If the 2009 Will was valid this issue is relevant.

121. It was submitted on behalf of the First Claimant that there was a presumption of a resulting trust of the properties, as on the pleadings it was not in dispute that Ramroop did not advance any of the purchase price for the properties as Bhola purchased them using the monies from his businesses; the properties were in both Bhola and Ramroop's name; Ramroop did not treat the properties as his as he did not give them to his wife or children in the 2002 Will and the Defendant failed to adduce any evidence to rebut the presumption of a resulting trust.

122. Counsel for the Defendant submitted that there was no trust, as asserted by the First Claimant. The alleged trust that the First Claimant sought to rely on was based on what was purportedly said by Bhola to Ramroop, both of whom are now deceased and what was purportedly said to the First Claimant. It was also argued that the alleged trust did not identify what properties were to be distributed, how the properties were to be distributed and who were the beneficiaries and in any event Ramroop dealt with the properties as the absolute owner as evidenced by his transfer of the 34 B Warren Road property contrary to what was stated in the 2002 Will.

[35] See the company documents attached to the physical Agreed Bundle of documents B at page 53 which sets out the articles of incorporation for Premier Consultants Ltd.

[36] Item 2 of B in Volume B-D of the Agreed and Unagreed Bundle of documents

123. In **Isaac Donovan v Hilton Dovovan et al**[37] at paragraphs 16 to 22, I had cause to set out the relevant law on trust which is applicable to the instant issue and which bears repeating here:

> "16. The law on the presumption of a resulting trust and the rebuttal of such a presumption was summarised by Rahim J at paragraphs 23 and 25 in **Wayde Melville v Kathryn Duke** where he stated:
>
> > "23. The circumstances outlined above give rise to the principles of resulting trust. Where, upon a purchase of land, one person provides the purchase money and the conveyance is taken in the name of another; there is then a presumption of a resulting trust in favour of the person providing the money, unless from the relation between the two, or from other circumstances, it appears that a gift was intended: Halsbury's Laws of England. Volume 16(2) (Reissue), para. 853; Dyer v Dyer [1775-1802] All ER Rep 205; see also Re Vandervell's Trust (No. 2) [1974] Ch 269 at 294."
>
> > "25 The Defendant may rebut this presumption by, inter alia, leading evidence that the property was intended as a gift: see Underhill and Hayton Law of Trusts and Trustees 16th Edition, Article 31 page 349. It is therefore the Defendant's burden to prove that the Claimant intended a benefit to her: Seldon v Davidson [1968] 2 All ER 755."
>
> 17. The presumption of advancement can rebut the presumptions set out above. In the presumption of advancement, in certain types of special relationships there is a presumption that where **X** gratuitously transfers property to **Y** and there is no clear evidence of **X**'s intention, equity will presume that it was a gift and an advancement. One such special relationship is father to child. **Underhill & Hayton, Law of Trust and Trustees** described this as:

[37] CV 2017-03450 unreported 24 May 2019

> "Here, a presumption of advancement has been made: it has been presumed that X intends Y to take the property beneficially for himself because fathers generally wish to advance their children in life by helping them financially."

18. However, this presumption of advancement does not apply in favour of a father when the child has purchased the property.

19. A constructive trust will be imposed by equity, in situations where **Y** attempts to obtain or retain for himself an interest in a property of **X** by unconscionably taking advantage of strict legal (or equitable) principles.

20. A constructive trust arises in connection with the legal title to a property whenever **Y** has so conducted himself that it would be inequitable to allow **Y** to deny **X** his beneficial interest in the property. The constructive trust is imposed to give effect to the parties' expressed or inferred common intention, whether at the time of purchase or subsequently, that **X** has a certain beneficial interest in the subject property and the **Y** has led **X** to act to its detriment in reliance on the said intention (express or inferred) and so making it unconscionable to allow **Y** to deny the interest due to a lack of a formal declaration.

21. The "common intention" of the ownership of the property is established by agreement between the parties; or by the parties' conduct in their dealings towards the property. The agreement can be based on evidence which establishes an express agreement; or evidence of conduct from which the court can infer the existence of such an agreement. To evidence the express agreement, the parties can rely on evidence of discussions "*however imperfectly remembered and however imprecise their terms may have been*".

22. If there is no evidence of express discussions of an agreement, the Court must examine the conduct of the parties to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust."

124. It was not in dispute from the pleadings and the evidence that Bhola provided the funds from his businesses to purchase the properties which were held by both Bhola and Ramroop.

125. The First Claimant stated in his witness statement that around January 2002, just after the one year anniversary of Bhola's death, his grandfather, Ramroop, came to him one day and spoke to him about Bhola's properties. Ramroop indicated to him that although the properties were in his name jointly with Bhola, that it was never Bhola's intention for Ramroop to have the properties but for the latter to share it among Bhola's children. According to the First Claimant, Ramroop told him that Bhola died so young and that he, Ramroop, was an old man and he wanted to go by an attorney at law concerning Bhola's properties. The First Claimant stated that he eventually took Ramroop to the office of Bhola's attorney at law, Mr Nizam Mohammed. The First Claimant stated that when Ramroop left the attorney at law's office, he showed him the 2002 Will which the First Claimant said he gave to the Defendant, for safe keeping.

126. The First Claimant testified in cross-examination that that the Mayaro property, the 34B Warren property and the Dyette Estate property were being held by Ramroop in trust for him, his brothers and sisters. He did not know that the 34B Warren Road property was transferred to his siblings Rishi, Ricky and Reshma until he filed the instant action. He then testified that he never pursued the 34B Warren Road property and he admitted that apart from what Bhola told Ramroop, there was no other evidence of a trust for the properties as Ramroop did not provide any details.

127. Paragraph 9 of the Second Claimant's Statement stated:

"I remember Bhola never trusted Lena with land or money. He used to do business with his father and his son. He had land which he put in his name with

Nandlal. I know this because Nandlal told me. Nandlal also said that Bhola told him that his property is to go to his children."

128. The Defendant's evidence was that the properties were purchased by Bhola, using monies from the companies he operated and that they were held jointly between Bhola and Ramroop. However she denied that there was any trust as asserted by the First Claimant.

129. With respect to the Dyette Estate property, the Defendant testified that Ramroop knew and acknowledged that it was for her, as they (ie the Defendant and Bhola) had provided the finance to build it. She stated that even though Ramroop was the owner of the Dyette Estate property, after Bhola died, she collected all rents. She also stated that in 2013 she began to renovate the apartments on the Dyette Estate property. In 2013, she was only able to rent 4 of the apartments and the rents collected for the 4 apartments were in the vicinity of $800.00 to $900.00 for each apartment. By 2014 all the apartments were rented at a monthly rent of $2500.00 per apartment. In or about 2017, the Defendant's daughter Reshma and son Ricky began to occupy 2 of the apartments.

130. In my opinion, the First Claimant has proven on a balance of probabilities that there was a presumption of a resulting trust for the properties and the Defendant failed to adduce evidence to rebut this presumption for the following reasons.

131. First, there was no evidence that Ramroop advanced any monies for the purchase of the properties. It was not in dispute that the properties were purchased by Bhola with his own funds from his various businesses and that they were transferred jointly in the name of Bhola and Ramroop.

132. Second, this was not a relationship where the presumption of advancement applied i.e when a gift is given by a father to a child. In the instant case the nature of the transaction was son to father. Further, the Defendant did not give any evidence that the properties were a gift from Bhola to Ramroop.

133. Third, Ramroop's action by giving the properties to the children of Bhola in the 2002 Will, demonstrated that he did not treat the properties as if he was beneficially entitled to them. In my opinion, if Ramroop considered that he was beneficially entitled to the properties, he would have given them to his wife and children in the 2002 Will.

134. Fourth, the Defendant failed to provide any explanation to account for Bhola transferring the properties jointly to himself and Ramroop. The Defendant's evidence was that she worked with Bhola in his businesses. She was aware that the properties were purchased by Bhola and they were held jointly with Ramroop. She confirmed in cross-examination that she held no property at the time of Bhola's death. Bhola died intestate and she never made any application to administer his estate. Based on the Defendant's evidence, Bhola did not make any disposition to her upon his death and he did not transfer any property to her during his lifetime, save for the brief, unexplained period in which the Dyette Estate property was held in her maiden name. In my opinion, the Defendant's evidence clearly demonstrated that Bhola did not intend for her to benefit or own the properties, if he did he would have transferred them to her during his lifetime or made a disposition to her in a Will. In this regard, the absence of any explanation from the Defendant for Bhola's action in not giving her any of the properties, made the First Claimant's assertion that Bhola intended Ramroop to give the properties to Bhola's children as Ramroop saw fit, more probable.

135. Although the Defendant denied the assertion of the trust and put the Claimants to strict proof, in the closing submissions the Defendant submitted that as the trust property was jointly owned, the right of survivorship would defeat any trust.

136. In my opinion, there was no merit in this submission as a trustee who receives trust property is bound by the trust and only a third party purchaser for valuable consideration without notice of the trust, would defeat it. At paragraphs 34 and 35 in **Kirk Ryan et al v Kerron Alexis**[38] the Court stated:

[38] CV2014-04725, 21 September 2015

"[34] Halsbury's Laws of England Equitable Jurisdiction (Vol. 47 (2014) para. 124 states:

> "equitable owner where there is an existing equitable interest in property and an interest is subsequently created in favour of a purchaser for value without notice of the earlier interest and that purchaser gets in the legal estate at the time of his purchase or in certain circumstances after his purchase, his possession of the legal estate gives him priority over the earlier."

[35] There are three main requirements for a purchaser to be considered a bona fide purchaser for value without notice. Firstly, the purchaser must have gained the legal interest in the property. Secondly, the purchaser must have given value for the property. Thirdly, the purchaser must not have had notice of any equitable interest at the time when he or she gave consideration for the conveyance."

137. Therefore, Bhola's death did not defeat the trust. Further, Ramroop and by extension the Defendant were not third party purchasers for value without notice of the trust since they were both aware of Bhola's equitable interest in the properties. As such, the trust was binding on the Defendant who was not a bona fide purchaser without notice.

ASSUMING THE 2009 WILL IS VALID, DID IT FAIL TO MAKE REASONABLE PROVISION FOR THE SECOND CLAIMANT AS THE LAWFUL WIDOW OF RAMROOP?

138. It was submitted on behalf of the Claimants, that if the Court found that the 2009 Will is valid then it ought to declare that it failed to make any provision for the Second Claimant as the lawful widow of Ramroop and it should transfer the other property to her. Counsel for the Claimants also argued that the other property was not specifically mentioned in the 2009 Will; it was not owned or acquired by Bhola and as such it was reasonable to conclude that Ramroop was the beneficial owner and it ought to be transferred to the Second Claimant to make reasonable provision for her.

139. Counsel for the Defendant argued that the Second Claimant had failed to prove her case as she had not given any evidence as to the general matters as set out in section 97(1)(a)-(g), (4),(5) and (6) of the Succession Act[39], for the Court to exercise its discretion in determining whether the 2009 Will failed to make reasonable financial provision for her.

140. The law affords a remedy for certain named dependants who have been completely excluded from any disposition made by a Will or upon intestacy, in circumstances where the court finds that the Will or implication of intestacy fails to make reasonable financial provision for them.

141. The Succession Act provides a remedy for certain categories of persons excluded from any benefit under a will or on intestacy:

> 95. (1) Where after the commencement of this Act a person dies domiciled in the State or dies outside the State leaving any estate in the State and is survived by any of the following persons:
>
> (a) the spouse of the deceased;
>
> …,
>
> that person may apply to the Court for an order under section 96 on the ground that the disposition of the deceased's estate effected by his Will or the law relating to intestacy, or the combination of his Will and that law, is not such as to make reasonable financial provision for the applicant.

142. The Succession Act also empowers the Court with respect to the disposition of the estate of a deceased person as:

> 96. (1) Subject to the provisions of this Part, where an application is made for an order under this section, the Court may, if it is satisfied that the disposition of the deceased's estate effected by his Will or the law relating to intestacy, or the combination of his Will and that law, is not such as to make reasonable

[39] Chapter 9:02

financial provision for the applicant, make any one or more of the following orders:

(a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;

(b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;

(c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;

(d) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;

(e) an order for the acquisition out of property comprised in that estate of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit;

(f) an order varying any ante-nuptial or post-nuptial settlement (including such a settlement made by Will) made on the parties to a marriage to which the deceased was one of the parties, the variation being for the benefit of the surviving party to that marriage, or any child of that marriage, or any person who was treated by the deceased as a child of the family in relation to that marriage.

(2) An order under subsection (1)(a) providing for the making out of the net estate of the deceased of periodical payments may provide for payments—

(a) of such amount as may be specified in the order;

(b) equal to the whole of the income of the net estate or of such portion thereof as may be so specified;

(c) equal to the whole of the income of such part of the net estate as the Court may direct to be set aside or appropriated for the making out of the income thereof of payments under this section,

or may provide for the amount of the payments or any of them to be determined in any other way the Court thinks fit.

(3) Where an order under subsection (1)(a) provides for the making of payments of an amount specified in the order, the order may direct that such part of the net estate as may be so specified shall be set aside or appropriated for the making out of the income thereof of those payments; but no larger part of the net estate shall be so set aside or apportioned than is sufficient, at the date of the order, to produce by the income thereof the amount required for the making of those payments.

(4) An order under this section may contain such consequential and supplemental provisions as the Court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another and may, in particular, but without prejudice to the generality of this subsection—

(a) order any person who holds any property which forms part of the net estate of the deceased to make such payment or transfer such property as may be specified in the order;

(b) vary the disposition of the deceased's estate effected by the Will or the law relating to intestacy, or by both the Will and the law relating to intestacy, in such manner as the Court thinks fair and reasonable having regard to the provisions of the order and all the circumstances of the case;

(c) confer on the trustees of any property which is the subject of an order under this section such powers as appear to the Court to be necessary or expedient.

143. At section 97, the Succession Act provides the matters the Court must consider in deciding whether or not reasonable provision should be made from the estate to the applicant:

97. (1) Where an application is made for an order under section 96, the Court shall, in determining whether the disposition of the deceased's estate effected by

his Will or the law relating to intestacy, or the combination of his Will and the law, is such as to make reasonable financial provision for the applicant and, if the Court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters, that is to say:

(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;

(b) the financial resources and financial needs which any other applicant for an order under section 96 has or is likely to have in the foreseeable future;

(c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;

(d) any obligations and responsibilities which the deceased had towards any applicant for an order under section 96 or towards any beneficiary of the estate of the deceased;

(e) the size and nature of the net estate of the deceased;

(f) any physical or mental disability of any applicant for an order under section 96 or any beneficiary of the estate of the deceased;

(g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the Court may consider relevant.

(2) Without prejudice to the generality of paragraph (g) of subsection (1), where an application for an order under section 96 is made by virtue of section 95(1)(a) or (b), the Court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to—

(a) the age of the applicant and the duration of the marriage or the cohabitational relationship;

(b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution by looking after the home or caring for the family,

and in the case of an application by the spouse of the deceased, the Court shall also, unless at the date of death a decree of judicial separation was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by a decree or divorce.

144. The Second Claimant's Statement stated that she is 88 years old and she was married to Ramroop from the 1 July 1987 until the time of his death on 9 December 2015. She also stated that she had five (5) children with Ramroop, all of whom are still alive save and except Bhola. According to the Second Claimant, she lives on the 34 Warren Road property which was purchased and owned by Ramroop. At paragraph 11 of the Second Claimant's Statement she stated that when Ramroop died he owned the other property which he had purchased and it was never owned by Bhola. She stated that the Defendant had the documents for the other property and that as Ramroop's lawful wife, it was not transferred to her as the Defendant had applied for probate of the 2009 Will.

145. Assuming the 2009 Will was valid (which I have not so found), in my opinion it did not make adequate provision for the Second Claimant and she would be entitled to a transfer of the other property for the following reasons. I accept that there was no evidence of the financial resources and financial needs which the Second Claimant has or is likely to have in the foreseeable future. However, it was not in dispute that the Second Claimant was 88 years old, the lawful widow of Ramroop as she was married to him from July 1987 to December 2015 and she did not receive the benefit of any disposition under the 2009 Will. Further, the Defendant has failed to provide any explanation to account for Ramroop excluding his lawful wife, the Second Claimant from benefitting from the other property. From the pleadings, it was not in dispute that the other property was purchased and owned by Ramroop and that the Defendant inherited it as the residuary beneficiary of the 2009 Will. Lastly, the size of Ramroop's estate from the 2009 Will was substantial. According to the value of the

inventory in the Grant of Probate which was issued on the 9 December 2015, Ramroop's estate was valued at $3,050,000[40].

ORDER

146. It is declared that the Will dated 26 October 2009 of Nandlal Ramroop also called Nandlal also called Nanlal, deceased is invalid.

147. The grant of Probate No. L0824 of 2016 dated 23 December 2016 is revoked.

148. The Deed of Assent dated 21 July 2017 and registered as DE 201701996388 with respect to the Mayaro property and Deed of Assent dated 21 July 2017 and registered as DE 2017 01996409 with respect to the Dyette Estate property are set aside.

149. The Defendant do provide an account of the estate of Nandlal Ramroop also called Nandlal also called Nanlal.

150. It is declared that at the time of his death Nandlal Ramroop also called Nandlal also called Nanlal held the Mayaro property, the 34B Warren Road property and the Dyette Estate property on trust for Bhola for the benefit of his children.

151. It is declared that the First Claimant is entitled to a benefit in equity in the 34 Warren Road property.

152. It is declared that the Defendant holds ALL AND SINGULAR that piece of land situate in the Island of Trinidad being part of a larger parcel of land comprising TWO ACRES be the same more or less delineated and coloured pink in the plan drawn in the margin of Certificate of Title in Volume 1051 Folio 525 being portion of the lands described in the Crown Grant in Volume 28 Folio 201 and bounded on the North and east by lands of J.W. Warren on the South by a road reserved 100 links wide and on the West by lands of Seebarran and Naipallier and now measuring FOUR THOUSAND AND SIXTY-FIVE POINT FOUR (4065.4) SQUARE METRES and shown as Lot 1 in the General Plant

[40] Page 346 of Agreed Bundle of Documents A

attached to the Certificate of Title in Volume 3667 Folio 43 on trust for the estate of Nandlal Ramroop also called Nandlal also called Nanlal.

153. Any conveyance by the Defendant in respect of the property referred to in paragraph 152 is set aside.

154. The Defendant do pay the Claimants costs of the action.

/S/ Margaret Y. Mohammed

Judge