

30/82

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

SAVITRI LALLA (Representing the estate of Poochoon Harracksingh) Appellant (Plaintiff)

- and -

BABY DEOSARAN Respondent (Defendant)

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CASE FOR THE RESPONDENT

Record

1. This is an Appeal from a judgment of the Court of Appeal of Trinidad & Tobago (Sir Isaac Hyatali CJ, CEG Phillips J.A. & M.A. Corbin J.A.) dated 2nd February 1978 dismissing with costs the Appellant's appeal from the judgment of Roopnarine J. in the High Court of Justice of Trinidad & Tobago dated 5th November 1974 whereby it was ordered that the Appellant's claim for possession of leasehold land (being formerly part of St. Augustine Lands, situate in the Ward of Tacarigua in the Island of Trinidad and bounded in the North by Lot No. 27, on the South by Lot No. 31, on the East by the Southern Main Road and on the West by Lot 29 ("the Property")) and ancillary relief be dismissed with costs.

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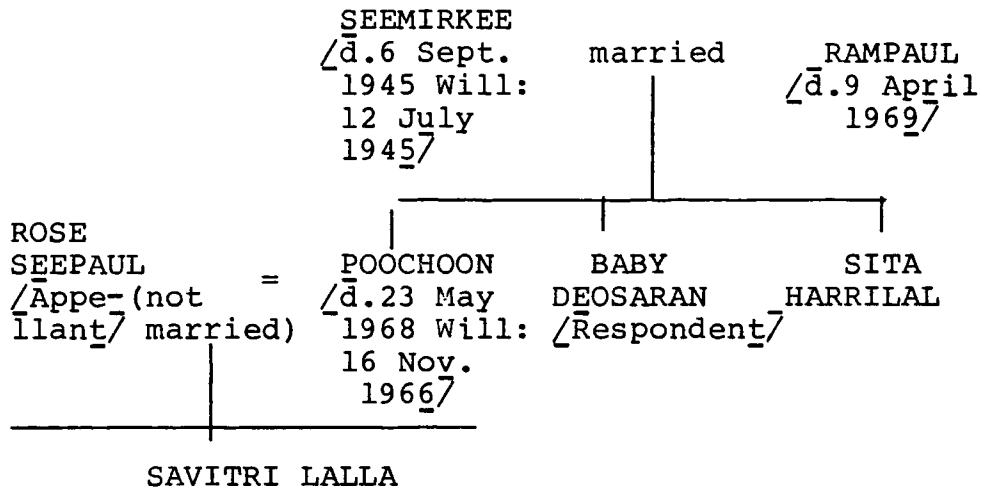
2. The question for decision is whether a deed of assent dated 22nd November 1957 operated to transfer to Poochoon Harracksingh ("Poochoon") the contingent remainder interest of his father Rampaul Harracksingh ("Rampaul") in the property. The Appellant says it did so operate; the Respondent says it did not.

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3. The principal persons referred to in these proceedings and their relationships to each other are as follows:

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4. The material events are these:

(a) By a Lease ("the Lease") dated 29th September 1920 His Majesty King George V demised the property to Seemirkee for 999 years.

(b) Seemirkee died on 6th September 1945.

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(c) Seemirkee's Will, dated 12th July 1945 provided

"I leave bequeath and devise all that I may die possessed of to my husband Rampaul Harracksingh to be enjoyed by him during his life and after his death to my son Poochoon Harracksingh on condition that he pays the sum of 2000 dollars to my daughter Baby Deosaran. Provided that in the event the said Poochoon Harracksingh shall die before my husband the said Rampaul Harracksingh then all my property shall become the property of my husband on the payment of the aforesaid sum of 2000 dollars to my daughter the aforesaid Baby Deosaran....."

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(d) Probate of the Will was granted to Rampaul on 14th June 1957.

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(e) By a deed dated 22nd November 1957 made between Rampaul as the Executor of the First Part, Rampaul of the Second Part and Poochoon of the Third Part it was recited that Seemirkee by her Will had devised all her property to Rampaul for his life with remainder to Poochoon absolutely subject to a charge in favour of Baby Deosaran of 2000 dollars and that Rampaul as executor had agreed to execute the deed for the purpose of vesting the unexpired residue of the Lease in

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10 himself and Poochoon. The Deed then provided that the Executor assented and assigned the property to himself and Poochoon "To hold the same unto the said Rampaul Harracksingh for the term of his natural life with remainder to the said Poochoon Harracksingh for all the residue now unexpired of the term of 999 years granted by /the Lease/ ... subject to the above recited charge of 2000 dollars in favour of Baby Deosaran created by /the Will/ ".

(f) By a deed also dated 22 November 1957 ("the mortgage") Rampaul and Poochoon mortgaged the property to the Trinidad Co-operative Bank to secure repayment of 4500 dollars and interest.

(g) Poochoon died on 23rd May 1968.

(h) Probate of Poochoon's Will was granted to Rose Seepaul, the Appellant, on 17th March 1972 p.30

20 (i) By his Will dated 16th November 1966 Poochoon left all his real and personal property to his daughter Savitri. p.31

(j) By a deed dated 9th January 1969 made between Rampaul as the Donor of the one part and Baby Deosaran as the Donee of the other part it was recited that Rampaul was entitled to the property subject to the mortgage. The deed then provided that in consideration of his natural love and affection Rampaul assigned the Lease to himself and Baby Deosaran to hold for himself for life with remainder for Baby Deosaran. p.35

30 (k) Rampaul died on 9th April 1969.

(l) Baby Deosaran went into occupation of the property shortly after Rampaul's death.

5. By a Writ of Summons dated 31st May 1973 Rose Seepaul as executrix of Poochoon claimed against Baby Deosaran p.1

(a) A Declaration that she was entitled to the property

(b) Possession

(c) Mesne Profits

40 (d) An account of rents received by the Defendant

(e) Costs

(f) Further or other relief

Record

- p.3 6. The Plaintiff's Statement of Claim was also delivered on 31st May 1973. By para. 2 it was alleged that Poochoon was entitled to the property at the date of his death by virtue of the Deed of 22nd November 1957.
- p.5 7. The Defence was delivered on 13th December 1973. Para. 2 of the Statement of Claim was denied.
8. The case was heard by Roopnarine J, and was dismissed, the learned judge holding: 10
- p.13 (a) that the gift to Poochoon was
line 40 conditional on him surviving Rampaul and he had only a contingent interest notwithstanding the terms of the Deed of Assent
- p.13 (b) it could not be implied that it was
line 33 the intention of Rampaul to make an advancement to Poochoon
- p.14 9. The Appellant appealed.
10. The Court of Appeal dismissed the Appeal, it being held 20
- p.20 (a) Rampaul was entitled to dispose of his
line 35 contingent interest to Poochoon if he wished but,
- p.20 (b) The Deed of Assent
line 38
- (i) was made in Rampaul's capacity as personal representative only
- (ii) contained no clause reciting his interest as a beneficiary in the remainder or any desire to convey that remainder to Poochoon 30
- (iii) contained no provision assenting to the remainder vesting in him
- (iv) contained no clause whereby as beneficiary he conveyed or disposed of his interest in the remainder to Poochoon
- p.20 (c) There was no intention by Rampaul to deal
line 51 with or convey his interest in remainder when he executed the deed of assent
- p.21 (d) By the deed, Rampaul did no more than
line 4 assent to the vesting of all gifts made under the Will save his own contingent interest if Poochoon predeceased him 40

11. Leave to appeal to the Judicial Committee of the Privy Council was granted on 7th June 1982.

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12. The Respondent submits that this appeal should be dismissed with costs for the following amongst other reasons:

10 (i) Because the deed of 22nd November 1957 was entered into by Rampaul in his capacity as Executor of Seemirkee, and not in his capacity as contingent beneficiary under the estate

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(ii) Because the deed of 22nd November 1957 was made pursuant to the Administration of Estates Ordinance for the purpose of vesting interests in accordance with the terms of the Will of Seemirkee and not for the purpose of the transfer by beneficiaries of their beneficial interests in the estate.

20 (iii) Because no intention by Rampaul to benefit Poochoon by transferring to the latter the contingent interest of Rampaul in the estate can be implied into the deed of 22nd November 1957

(iv) Because the deed of 22nd November 1957 was effective only to vest interests in accordance with the terms of the Will

30 (v) Because the judgment of both the learned trial judge and of the Court of Appeal were right.

J. G. BOGGIS

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(Plaintiff)

- and -

BABY DEOSARAN Respondent
(Defendant)

CASE FOR THE RESPONDENT

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