

30/83

No.1 of 1983

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 Defendant/
Respondent

RECORD OF PROCEEDINGS

INGLEDEW, BROWN, BENNISON
& GARRETT,
International House,
26 Creechurch Lane,
LONDON EC3A 5AL.
Solicitors for the Appellant

Messrs. Jaques & Lewis,
2 South Square,
Gray's Inn,
LONDON WC1R 5HR

Solicitors for the Respondent

No.1 of 1983

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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND
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B E T W E E N :

SAVITRI LALLA (Representing the
estate of Poochoon Harracksingh)

Appellant/
Plaintiff

- AND -

BABY DEOSARAN

Defendant/
Respondent

RECORD OF PROCEEDINGS

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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 Harrocksingh)

Appellant
Plaintiff

10

- AND -

BABY DEOSARAN

Defendant
Respondent

RECORD OF PROCEEDINGS

No.1

In the High
Court

Writ of Summons 31st May 1973

TRINIDAD AND TOBAGO

(Writ of Summons)

No.1
Writ of Summons
31st May 1973

20

IN THE HIGH COURT OF JUSTICE

No.1424 of 1973

BETWEEN

ROSE SEEPAUL (Married Woman
and Executrix named in the Will
of Poochoon Harracksingh)
Plaintiff

- AND -

BABY DEOSARAN (Married Woman)
Defendant

30

ELIZABETH THE SECOND, by the grace of God,
Queen of Trinidad and Tobago and of Her other
Realms and Territories, Head of the Commonwealth.

TO

BABY DEOSARAN, Corner of Old & New Golden
Grove Road, Piarco.

In the High
Court

No.1
Writ of
Summons 31st
May 1973
(Contd.)

WE command you, that within eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of ROSE SEEPAUL and take notice that in default of your so doing, the Plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS: The Honourable Sir Isaac Hyatali, Kt. Chief Justice of the said Court at Port of Spain, in the said Island of Trinidad, this 31st day of May 1973. 10

N.B. - This Writ is to be served within Twelve Calendar months from the date hereof or, if renewed, within Six Calendar months from the last renewal, including the day of such date and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by Solicitor at the Registrar's Office at the Court House, in the City of Port of Spain. 20

The Plaintiff's claim as the Executrix of the Estate of Poochoon Harracksingh, deceased, is for:-

(a) A declaration that she is entitled to possession of ALL AND SINGULAR that parcel or lot of leasehold land formerly part of St. Augustine Lands, situate in the Ward of Tacarigua, in the Island of Trinidad and bounded on 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 No.28 which said parcel or lot of land is shown as Lot No.29 on the Plan marked "A" annexed to Deed of Lease dated the 29th day of September, 1920, registered as No.4964 of 1920 and made between His Most Excellent Majesty King George the Sixth of the One Part and Seemirkee of the Other Part, together with the buildings thereon; 30

(b) Possession;

(c) Mesne profits; 40

(d) An account of rents and profits recovered by the Defendant in respect of the said lands;

(e) Costs;

(f) Such further or other relief as the nature of the case may require.

This Writ was issued by MESSRS. D.C. BOUCAUD & CO., whose address for service is No.9-9a Charles Street, Port of Spain, Trinidad, Solicitors for the Plaintiff who resides at Corner of McInroy Street and Southern Main Road, Curepe.

In the High Court

No.1
Writ of
Summons 31st
May 1973
(Contd.)

10

/s/D.C. Boucaud & Co.
Plaintiff's Solicitors

The Writ was served by me at the Corner of Old and New Golden Grove Road, Arouca, on the Defendant Baby Deosaran, personally on Thursday the 11th day of October 1973

Indorsed the 11th day of October 1973

(Signed) Toycee Ali Marshal's Asst.

(Address) Port of Spain

No.2

No.2
Statement of
Claim 31st May
1973

20

Statement of Claim 31st May 1973

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.1424 of
1973

BETWEEN ROSE SEEPAUL (Married Woman and Executrix named in the Will of Poochoon Harracksingh) .
Plaintiff

- AND -

30

BABY DEOSARAN (Married Woman)
Defendant

STATEMENT OF CLAIM

1. The Plaintiff is the sole Executrix of the Estate of Poochoon Harracksingh, late of McInroy Street, Curepe, who died on 23rd May 1968.

40

2. The said Poochoon Harracksingh at the time of his death was entitled to possession of the lands described in the Writ of Summons filed herein under and by virtue of a certain Deed dated the 22nd day of November, 1957, registered as No.14704 of 1957 and made between one Rampaul

Harracksingh of the First Part, the said Rampaul Harracksingh of the Second Part and the said Poochoon Harracksingh of the third part whereby the said Rampaul Harracksingh as Personal Representative of the Estate of one Seemirkee, under and by virtue of the provisions of the Administration of Estates Ordinance, Chapter 8 Number I and every other enabling power assented and assigned the said parcel of land together with the buildings thereon unto the said Rampaul Harracksingh for the term of his natural life with the remainder unto the said Poochoon Harracksingh for all the residue then unexpired of the term of 999 years granted by a certain Deed of Lease dated the 28th September, 1920, registered as No.4964 of 1920 and made between His Majesty King George V of the One part and the said Seemirkee of the Other Part subject to the rents covenants and stipulations therein contained and on the part of the lessee to be observed and performed and subject also to a charge of \$2,000.00 in favour of the Defendant herein created by the Will of the said Seemirkee.

10

20

3. By Deed dated the said 22nd day of November, 1957, registered as No.14706 of 1957 and made between the said Rampaul Harracksingh and the said Poochoon Harracksingh of the One Part and Trinidad Co-operative Bank Limited of the Other Part the said Rampaul Harracksingh assigned the said parcel of land buildings to the said Trinidad Co-operative Bank Limited for securing payment by the said Rampaul Harracksingh and Poochoon Harracksingh to the said Trinidad Co-operative Bank Limited of the sum of \$4,500.00 and interest thereon as therein mentioned.

30

4. The said Poochoon Harracksingh by his last will and testament dated the 16th day of November, 1966, appointed the plaintiff to be the sole executrix thereof and devised and bequeathed all his real and personal property to his daughter, Savitri Harracksingh, for her own use and benefit.

5. The said Rampaul Harracksingh died on or about the 10th day of April 1969.

40

6. From and after the date of the death of the said Rampaul Harracksingh the defendant wrongfully entered into possession of the said land and buildings and has reaped and continues to reap the rents and profits thereof.

AND the plaintiff claims:-

- (a) A declaration that she is entitled to possession of the lands described in the Writ of Summons;

50

- (b) Possession; In the High
Court
- (c) Mesne Profits; No.2
- (d) An account of rents and profits received by the defendant for the said property from the 10th day of April, 1969, to date; Statement of
Claim 31st May
1973 (Contd.)
- (e) Costs;
- 10 (f) Such further or other relief as the nature of the case may require.

Ronald G. Lopez
Of Counsel.

Delivered on the 31st day of May, 1973, with the Writ of Summons herein by Messrs. D.C. Boucaud & Company of Nos. 9-9a Charles Street, Port of Spain, Solicitors for the Plaintiff.

/s/D.C. Boucaud & Co.
Plaintiff's Solicitors

20 No.3 No.3
Defence 13th
December 1973

Defence 13th December 1973

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.1424 of 1973

BETWEEN ROSE SEEPAUL (Married Woman and
Executrix named in the Will of
Poochoon Harracksingh)

Plaintiff

- AND -

30 BABY DEOSARAN (Married Woman)

Defendant

D E F E N C E

1. The defendant admits paragraph 1 of the Statement of Claim.
2. The defendant denies that the said Poochoon Harracksingh was entitled to possession of the lands as alleged in paragraph 2 of the Statement

In the High
Court

No.3
Defence 13th
December 1973
(Contd.)

of Claim.

3. The defendant admits paragraph 3, 4 and 5
of the Statement of Claim.

4. The defendant denies wrongful entry into
possession of the said lands and buildings as
alleged in paragraph 6 of the statement of claim.

5. The defendant denies each and every
allegation in the statement of claim save and
except as hereinbefore expressly admitted as if
same were specifically set out and traversed
seriatim and denies that the plaintiff is
entitled to the reliefs claimed. 10

Selwyn Richardson
of Counsel

DEFENCE delivered this 13th day of December
1973 by Messrs T. Malcolm Milne & Co. of No.9a
Charles Street Port of Spain.

T.M. Milne & Co. 20
Defendant's Solicitors.

To: Messrs. D.C. Boucaud & Co.,
Charles Street,
Port of Spain,
Plaintiff's Solicitors.

We hereby accept delivery of the defence
herein although the time for so doing has already
expired.

/s/D.C. Boucaud & Co.

Plaintiff's Solicitors 30

No.4
Judge's Notes
of Evidence

No.4
Judge's Notes of Evidence

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No.1424 of 1973

BETWEEN

ROSE SEEPAL (Married Woman and
Executrix named in the Will of
Poochoon Harracksingh)

Plaintiff

- AND -

BABY DEOSARAN (Married Woman)

Defendant

40

Before the Honourable Mr. Justice E.K.
Roopnarine

No.4
Judge's Notes
of Evidence
(Contd.)

Mr. R. Lopez for Plaintiff

Mr. S. Richardson for Defendant

NOTES OF EVIDENCE

10 Mr. Lopez asks for amendment in Statement
of Claim - typographical error in para. 2, 5th
line - should read No.14704 instead of 14204. No
objection by Richardson. Leave granted to
Plaintiff to amend Statement of Claim in terms
requested.

ORDILL BAPTISTE sworn states:

20 Live 50 Oxford Street - now live 50 Belle
Eau Road. Conveyancing Clerk attached J.D. Sellier
& Company. 1957 attached to J. David Solicitor
where I was the Chief Clerk. 22nd November 1957
I had dealing with one Rampaul Harracksingh. He
came to prepare a deed of assent. Mr. David dealt
with him. He also came in respect of a deed of
mortgage to Trinidad Co-operative Bank. I
witnessed the deed of assent O.B.I - was shown
deed put in and marked O.B.I. I typed the deed.
The parties in my view understood what they were
doing. The deed was registered as No. 14704/75.

Not Cross-examined:

SAVITRI LALLA sworn states:

30 I am now Savitri Lalla formerly Harracksingh.
I live Igneri Road, Valsayn Park, South.
Poochoon Harracksingh was my father. He died on
23rd May 1968. Probate of his will was granted
to Rose Seepaul by the Supreme Court. This is a
copy of grant of Probate put in and marked S.L.I.
Rose Seepaul is my mother. Under the terms of the
will of my father Poochoon Harracksingh I am the
beneficiary. S.L.2 Certified Copy of Will put in
and marked S.L.2 Rampaul Harracksingh was my
40 grandfather. During his lifetime he lived at
Southern Main Road, Curepe. This is the parcel
of land subject of this action. He lived there
with his daughter the defendant and there were
tenants on the lower floor. My father lived on

In the High
Court

No.4
Judge's Notes
of Evidence
(Contd.)

the same premises one time. When my father died he was not living on those premises. My father died before my grandfather.

When my grandfather died on 10th April 1969 the defendant his daughter was living on the premises with other tenants. After my grandfather died the defendant lived for a short while on the premises.

My mother is not well - she can hardly walk. As a result I see about her business. My mother, since my grandfather's death, has not collected any rents from these premises. The defendant is collecting the rent from the premises. 10

Cross-examined:

The defendnat is my aunt i.e. my father's sister. My mother the plaintiff was the common-law wife of Poochoon Harracksingh. The defendant and my father lived on the premises at one time. Seemirkee was the owner of the property first. She was my grandmother. She died before my grandfather Rampaul. Seemirkee left the property to my father Poochoon. Seemirkee's will was probated. This is a certified copy of will of Seemirkee put in and marked S.L.3. She did not give the property to Rampaul but to her son Poochoon. Poochoon my father died on 23rd May 1968. Death certificate put in and marked S.L.4. Rampaul's grandfather died 10th April 1969 after my father. Death Certificate put in and marked S.L.5. 20 30

I do not know if grandfather gave my aunt the defendant the \$2,000.00 referred to in my grandmother's will.

Not re-examined:

CASE FOR THE PLAINTIFF CLOSED

BABY DEOSARAN sworn states:

I am a married woman. I live at Red Hill D'Abadie. I know the property in dispute. I lived there from the time I was 3 years until and after my father's death. I left one to 2 months after my father's death. Rampaul Harracksingh was my father and Seemirkee was my mother. Poochoon was my brother. The entire family of my father, mother, Poochoon, myself and sister Sita Harrilal lived there. My mother died on 6th September 1945. She left a will. After her death the will was 40

probated. Poochoon my brother died before my father.

In the High Court

Before Rampaul my father died he executed a deed. I also signed the deed which was lodged with a solicitor. This is the signature to this certified copy 1820/69. Tendered

No.4
Judge's Notes
of Evidence
(Contd.)

Mr. Lopez objects:

10 Mr. Richardson Proceedence of Pleadings by Bullen and Leake. Under action for Recovery of Land - Statement of Claim and Defences - Court Rules document is admissible put in and marked B.D.I. I have rented out the property about 3 or 4 months after. They paid the rent to me both upstairs and downstairs.

Cross-examined:

20 There are two tenants downstairs. I collect in all \$232.00 per month. This is from January this year. Before I collected \$72.00 and downstairs \$122.00 - total \$194.00. Commissioner's agent to collect part of rent - of 10%. The deed was signed by my father on 9.1.69. The deed was prepared by Mr. Fitzpatrick. My father sent me to call Mr. Fitzpatrick. I went to call Mr. Fitzpatrick. My father told Mr. Fitzpatrick what he wanted him to do with the property. I do not remember what day the deed was executed but it was signed by Mr. Fitzpatrick and myself.

30 The deed was executed in my father's bedroom. Present were Mr. Fitzpatrick, my father and myself. My father signed part and then I signed and Mr. Fitzpatrick signed but I do not know if it was there and then.

40 I cannot remember if Mr. Fitzpatrick's clerk, Charles was there, but I think he was there. But I do not know if he signed the deed. Mr. Fitzpatrick read over the deed to my father before he signed it. I was taking care of my father. None of my children was living there at that time. I was there all the time. My father told me before he called Mr. Fitzpatrick that he wants to leave the property for me. My father had a stroke he could not walk. My sister is alive. She lives at San Juan. My father gave my sister a house in San Juan. He gave Poochoon a stock-up shop. Dr. Feroze Raffick was looking after my father. He had his office in Curepe.

Case for the Defendant Closed.

In the High Court

No.4
Judge's Notes
of Evidence
(Contd.)

Mr. Richardson addresses the Court.

Submits - plaintiff has to prove case on balance of probabilities -

She will have to prove title which she has failed to do.

Evidence of title 14704/57.

Seemirkee made a will - 2nd para. Rampaul - Holds life interest. Poochoon - after death of Rampaul. 10

No evidence that defendant - Baby - received \$2,000.00. Poochoon pre-deceased his father Rampaul - in law he had fee simple - executed giving the full estate to the defendant. Defendant testimony buttressed and fortified the genuineness of the Deed of Gift. Mr.Lopez addresses the Court - leasehold interest - chattel real. What Rampaul intended without the condition of will - Presumption that Rampaul made an 'advancement' to his son when he prepared the deed of assent. Personal representative, also beneficiary and who has a contingent interest. Gives Poochoon - remainder unfettered by the contingent interest by virtue of the deed of assent without condition. Payment of \$2,000.00 to the defendant. 20

The plaintiff's claim is dismissed without costs to be taxed.

No.5
Order of
Roopnarine J.
5th November
1974

No.5

Order of Roopnarine J. 5th November 1974

30

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No.1424 of 1973

between

ROSE SEEPAUL (Married Woman
and Executrix named in the
Will of Poochoon Harracksingh)
Plaintiff

- AND -

40

BABY DEOSARAN (Married Woman)
Defendant

Dated and Entered the 5th day of November
1974

Before the Hon. Mr. Justice E.K. Roopnarine. In the High Court

This action having been tried on the 5th day of November 1974 before the Honourable Mr. Justice E.K. Roopnarine and upon hearing Counsel for the plaintiff and for the defendant and the said Judge having ordered that the plaintiff's claim be dismissed and that Judgment be entered for the defendant with costs to be taxed.

No.5
Order of
Roopnarine J.
5th November
1974 (Contd.)

10 IT IS THIS DAY ADJUDGED that the defendant do recover her costs of the defence to be taxed.

S. Cross
Assistant Registrar.

No.6

Judge's Reasons for Decision 9th April 1975

No.6
Judge's
Reasons for
Decision 9th
April 1975

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.1424 of 1973

20 BETWEEN ROSE SEEPAUL (Married Woman
and Executrix named in the
Will of Poochoon Harracksingh)
Plaintiff

- AND -

BABY DEOSARAN (Married Woman)
Defendant

Before the Honourable Mr. Justice E.K.
Roopnarine

Mr. R. Lopez for the Plaintiff

30 Mr. S. Richardson for the defendant

REASONS FOR DECISION

This is an action brought by the plaintiff as the Executrix of the Estate of Poochoon Harracksingh for -

40 (a) a declaration that she is entitled to possession of All and Singular that parcel or lot of leasehold land formerly part of St. Augustine Lands situate in the Ward of Tacarigua, in the Island of Trinidad and bounded on the North by Lot No.27; on the

In the High Court

No.6
Judge's
Reasons for
Decision 9th
April 1975
(Contd.)

South by Lot No.31; on the East by the Southern Main Road and on the West by Lot No.28 which said parcel or lot of land is shown as Lot No.29 on the plan marked "A" annexed to the Deed of Lease dated the 29th September 1920 registered as No.4964 of 1920 and made between His Most Excellent Majesty King George the Sixth of the One Part and Seemirkee of the Other Part together with buildings thereon;

10

- (b) Possession;
- (c) Mesne Profits;
- (d) An account of rents and profits recovered by the defendant in respect of the said lands;
- (e) Costs;
- (f) Such further or other relief as the nature of the case may require.

The facts in this matter are not in dispute. Seemirkee was the tenant of a parcel of land from the Crown and prior to her death she prepared a will on the 25th July 1945 Ex. S.L.s by which she bequeathed and devised -

20

"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 \$2,000.00 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

30

I nominate, constitute and appoint my husband the aforesaid Rampaul Harracksingh Executor to this my last will and Testament"

On the 14th June 1957 probate of the will was granted to the Executor Rampaul Harracksingh and on the 22nd November 1957 as Executor he prepared a Deed of Assent assigning the leasehold interest in himself for the term of his natural life with remainder to Poochoon Harracksingh for the unexpired term of years by deed Reg. as 14704 of 1957 Ex. O.B.I.

40

Poochoon Harracksingh died on the 23rd May 1968 (ex. S.L.4) before his father Rampaul

Harracksingh who died on the 9th April 1969
(Ex. S.L.5).

In the High
Court

10 Prior to his death Poochoon Harracksingh prepared a will dated the 16th November 1966 whereby he appointed Rose Seepaul, the plaintiff, the sole executrix of his estate devising and bequeathing all his real and personal property' to which I may die seised and possessed of or entitled to at the time of my death or at any time thereafter and wheresoever situate to my daughter.....' (Ex. S.L.2) and the will was proved on the 17th March 1972 (Ex. S.L.1).

No.6
Judge's
Reasons for
Decision 9th
April 1975
(Contd.)

20 Prior to his death on the 9th April 1969 Rampaul Harracksingh by deed registered as 1820/69 assigned the leasehold premises, the subject matter to this dispute to the defendant Baby Deosaran by way of gift with the proviso that should the said Baby Deosaran predecease him then the leasehold property were to go to certain other persons (Ex. B.D.1.). The defendant has been in possession of the premises from the date of Rampaul Harracksingh's death.

30 Both Counsel indicated to the Court that they were unable to cite any authority to assist the Court notwithstanding all their efforts and the matter should be determined on general principles of Law. Counsel for the plaintiff contended that in view of the fact that the Deed of Assent was prepared without the condition attached to the will, it should be implied that it was the intention of Rampaul Harracksingh to make an advancement to his son Poochoon Harracksingh. It appears to me that if this was so then this should have been specifically indicated in the Deed of Assent and the Court could not make any such presumption and in fact Rampaul Harracksingh's subsequent action in giving the property to the defendant belies this fact.

40 It therefore appeared to me that the gift to Poochoon Harracksingh was conditional on his surviving Rampaul Harracksingh and therefore he only had a contingent interest in the property, notwithstanding the terms of the Deed of Assent, which was contrary to the terms of the gift under the will and not a vested interest in the property i.e. the contingency that the property would become vested in him only if he survived his father Rampaul Harracksingh and therefore he could not dispose of the property by will until
50 such time as it became vested in him. I therefore held that on Poochoon Harracksingh's death,

In the High
Court

No.6
Judge's
Reasons for
Decision 9th
April 1975
(Contd.)

Rampaul Harracksingh was free to dispose or assign
the property to the defendant and dismissed the
action.

Dated this 9th day of April 1975

Errol K. Roopnarine

Judge

In the Court
of Appeal

No.7
Notice of
Appeal 16th
December 1974

No.7

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Notice of Appeal 16th December 1974

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL H.C.A. No.1424 of 1973

Civil Appeal No. 76 of 1974

BETWEEN

ROSE SEEPAUL (Married Woman
and Executrix named in the Will
of Poochoon Harracksingh

Plaintiff/
Appellant

20

- AND -

BABY DEOSARAN (Married Woman)

Defendant/
Respondent

TAKE NOTICE that the Plaintiff/Appellant
being dissatisfied with the whole decision more
particularly stated in paragraph 2 hereof of the
High Court of Justice contained in the Judgment of
the Honourable Mr. Justice Errol Roopnarine dated
the 5th day of November 1974 doth hereby appeal
to the Court of Appeal upon the grounds set out
in paragraph 3 and will at the hearing of the
appeal seek the relief set out in paragraph 4.

30

1. AND the appellant further states that the
names and addresses including their own of the
persons directly affected by the appeal are those
set out in paragraph 5.

2. The Judgment of the Honourable Mr. Justice
Errol Roopnarine in favour of the Defendant/
Respondent dated the 5th day of November 1974.

40

3. Grounds of Appeal

In the Court
of Appeal

(a) The learned trial judge erred in the law in

(i) holding that words of limitation applicable to freeholds could effectively create a legal interest in leasehold.

No.7
Notice of
Appeal 16th
December 1974
(Contd.)

10

(ii) failing to find that the Legal Estate in the premises were vested in the Plaintiff/Appellant.

(b) The decision is unreasonable and cannot be supported having regard to the evidence.

4. The said Judgment of the Honourable Mr. Justice Errol Roopnarine be set aside and judgment be entered for the Plaintiff/Appellant with costs both here and in the court below.

5. Persons directly affected by the Appeal

20

(1) Rose Seepaul (Married Woman and the Executrix named in the Will of Poochoon Harracksingh) of the Corner of McInroy Street and Southern Main Road, Curepe.

(2) Baby Deosaran of the Corner of Old and New Golden Grove Road, Piarco.

Dated this 16th day of December 1974.

/s/D.C. Boucaud & Co.
Solicitors for the
Plaintiff/Appellant

30

To: The Registrar of the Court of Appeal,
Trinidad House, Port of Spain.

And

To: Messrs. T. Malcolm Milne & Co. of No.9a
Charles Street, Port of Spain, Solicitors
for the Defendant/Respondent.

In the Court
of Appeal

No.8

JUDGMENT OF COURT OF APPEAL 2ND FEBRUARY
1978

No.8
Judgment of
Court of Appeal
2nd February
1978

TRINIDAD AND TOBAGO
IN THE COURT OF APPEAL

Civil Appeal
No.76 of 1974

10

BETWEEN ROSE SEEPAUL (Married Woman and
Executrix named in the Will of
Poochoon Harracksingh)
Appellant

- AND -

BABY DEOSARAN (Married Woman)
Respondent

Coram: Sir Isaac Hyatali, C.J.
C.E.G. Phillips, J.A.
M.A. Corbin, J.A.

20

February 2, 1978

F. Ramsahoye, Q.C. and K. Sagar for the appellant
E. Thorne, Q.C. and S. Richardson for the respondent

JUDGMENT

Delivered by Sir Isaac Hyatali, C.J.:

The facts material to this appeal are not in
dispute. By deed dated 29 September 1920 and
registered as No.4964 of 1920, the Crown granted
a lease to one Seemirkee for a term of 999 years,
of a parcel of land in the ward of Tacarigua, shown
as lot No.29 in the Plan marked "A" annexed to
the said deed (the leasehold premises). 30

By her will dated 25th July 1945, Seemirkee
appointed her husband Rampaul Harracksingh
(Rampaul) the Executor of her will and in effect
devised and bequeathed her leasehold premises to
him for life and after his death to her son
Poochoon Harracksingh (Poochoon). The gift to
Poochoon was subject to two conditions: (a) that
her daughter Baby Deosaran (Baby) be paid
£2,000.00 by Poochoon- and (b) that if Poochoon
predeceased Rampaul the remainder devised to him
should go to (sic) Rampaul subject to the payment
by him of a like sum of \$2,000 to Baby. There
was a third condition in the will relating to the

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payment of that sum if Baby predeceased Rampaul, but it is not relevant for present purposes. In the Court of Appeal

10 On 6 September 1945 Seemirkee died. Probate of her will was granted to Rampaul on 14 June 1957 and registered as No. 513 of 1957. By deed dated 22 November 1957 and registered as No. 14704 of 1957 Rampaul, by virtue of the Administration of Estates Ordinance Ch.8 No.1 (the Administration Ordinance) and in his capacity as the personal representative of the estate of Seemirkee "assented and assigned" the leasehold premises to himself for life and after his death to Poochoon, subject to the charge in favour of Baby. The deed of assent however was silent on the condition providing for the vesting of the remainder in Rampaul if Poochoon predeceased him and, consequently, it did not recognise the fact that Poochoon's interest under the will was defeasible if he predeceased Rampaul and that on the occurrence of that event, it was to become vested in Rampaul in accordance with the wishes and intention of Seemirkee. On the same date of the deed of assent, Rampaul and Poochoon by a deed of mortgage registered as No.14706 of 1957, assigned the leasehold premises to the Trinidad Cooperative Bank (the Bank) to secure the repayment of \$4,500 and interest thereon as therein mentioned.

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30 On 16 November 1966, Poochoon by his will appointed Rose Seepaul (Seepaul) his executrix, and devised and bequeathed all his real and personal property to his daughter Savitri, "for her own use and benefit absolutely and forever."

On 23 May 1968, however Poochoon died, and thereby predeceased Rampaul. By the terms of Seemirkee's will, the remainder devised to Poochoon, was on the occurrence of that event, to vest in Rampaul, but as noted, the deed of assent omitted to make such a provision.

40 By deed dated 9 January and registered as No.1820 of 1969, Rampaul, after reciting therein that he was entitled in possession to the leasehold premises for the residue of the unexpired term, assigned the same to himself for life and after his death to Baby, subject to the covenants contained in the lease and the mortgage to the Bank. On 10 April 1969, Rampaul died. Baby thereupon took possession of the leasehold premises and has been in possession ever since.

50 Seepaul's action for possession against Baby was dismissed by Roopnarine, J. He gave these reasons for so doing:

In the Court
of Appeal

No.8
Judgment of
Court of
Appeal 2nd
February 1978
(Contd.)

"Both Counsel indicated to the Court that they were unable to cite any authority to assist the Court notwithstanding all their efforts and the matter should be determined on general principles of Law. Counsel for the plaintiff contended that in view of the fact that the Deed of Assent was prepared without the condition attached to the will, it should be implied that it was the intention of Rampaulto make an advancement to his son Poochoon.....It appears to me that if this was so then this should have been specifically indicated in the Deed of Assent and the Court could not make any such presumption and in fact Rampaul's.....subsequent action in giving the property to the defendant belies this fact.

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It therefore appeared to me that the gift to Poochoon.....was conditional on his surviving Rampaul.....and therefore he only had a contingent interest in the property, notwithstanding the terms of the Deed of Assent, which was contrary to the terms of the gift under the will and not a vested interest in the property i.e. the contingency that the property would become vested in him only if he survived his father Rampaul.....and therefore he could not dispose of the property by will until such time as it became vested in him. I therefore held that on Poochoon's.....death, Rampaul was free to dispose or assign the property to the defendant and dismissed the action."

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30

Seepaul appealed against that decision on the grounds that (a) the learned judge erred in law in (i) holding that the words of limitation applicable to freeholds could effectively create a legal interest in leasehold and (ii) in failing to find that the legal estate in the (leasehold) premises was vested in (Seepaul); and (b) the decision is unreasonable and cannot be supported having regard to the evidence.

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The first ground of appeal was not argued or pursued. It is unnecessary therefore to consider it. In any event, in the view I take of the issues in this appeal, it is not relevant for present purposes.

Under the terms of Seemirkee's will, Rampaul obtained a life interest in the leasehold premises and the contingent interest devised to Poochoon if

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he outlived Rampaul and paid Baby the sum of \$2,000. The critical question raised in this appeal under the second ground and the only one argued, is whether the deed of assent in the terms in which it was made, conveyed the contingent interest of Rampaul to his son Poochoon. Counsel for Seepaul submitted that it did, whereas Counsel for Baby contended that it did not.

In the Court
of Appeal

No.8
Judgment of
Court of
Appeal 2nd
February 1978
(Contd.)

10 In support of his submission, counsel for
Seepaul relied on Sections 17 and 61 of the
Conveyancing and Law of Property Ordinance Ch.27
No.12 (the Conveyancing Ordinance), and the
effect of the operative terms of the deed of assent
by which, he submitted, Rampaul disposed of as
he was entitled to do, the contingent interest he
obtained under the will. The contention was that
Rampaul with full knowledge as he must be taken
to have, of the meaning and effect in law of an
20 assent, and of his entitlement in law to dispose
of his contingent interest, actually transferred
that interest thereby to his son Poochoon; and
that he had no interest left in the leasehold
premises, save his life interest, when he
purported by deed dated 9 January 1969
registered as No.1820 of 1969 to transfer the
leasehold premises to himself for life with the
remainder therein to Baby.

30 Counsel for Baby on the other hand, submitted
that Rampaul as personal representative of
Seemirkee could not convey by way of assent more
than the will authorised him to convey, and that
whatever he conveyed thereby was only valid if it
conformed with the terms of the will. If Rampaul
wished to dispose of his contingent interest,
counsel contended, he could not do so in his
capacity as personal representative by a deed of
assent. He could only have carried out his wish
by a separate deed in his capacity as beneficiary.
40 In support of his contention, he referred to s.12
of the Administration Ordinance and Williams on
Wills 2nd Edn. 136.

Section 17 of the Conveyancing Ordinance
provides that -

50 "(1) Every conveyance is effectual to pass
all the estate, right, title, interest,
claim, and demand which the conveying parties
respectively have, in, to, or on the property
conveyed, or expressed or intended so to be,
or which they respectively have power to
convey in, to or on the same.

"(2) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained."

'Conveyance' by section 2 includes, inter alia, an assent. Consequently, what is known as the 'all estate' clause is implied both in the terms 'assent' and 'conveyance'.

10

By section 61 of the Conveyancing Ordinance it is provided that all rights and interests in land (which by s.2 includes land of any tenure) may be disposed of including, inter alia, a contingent interest. And by s.12(1) of the Administration Ordinance it is provided that -

"At any time after the death of the owner of any land, his representative may by deed assent to any devise contained in his will, and may convey or transfer the land or any estate or interest therein to any person entitled thereto as next of kin, devisee, or otherwise, and may make the assent, conveyance, or transfer either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent, conveyance, or transfer, subject to a charge for all moneys (if any) which the representative is liable to pay, all liabilities of the representative in respect of the land shall cease, except as to any acts done or contracts entered into by him before such assent, conveyance, or transfer".

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It is clear from these provisions that Rampaul was perfectly entitled to dispose of his contingent interest to Poochoon if he so wished. But it is important to note that the deed of assent (i) was made in his capacity as personal representative only and under the provisions of the Administration Ordinance; (ii) contained no clause in the deed reciting his interest as a beneficiary in the remainder or any desire on his part to convey the same to Poochoon; (iii) contained no provision assenting to the remainder vesting in him in accordance with the terms of the will; and (iv) contained no clause whereby in his capacity as beneficiary he conveyed or disposed of his interest in the remainder to Poochoon.

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In my judgment all these factors point to the conclusion that there was no intention on the part of Rampaul to deal with let alone to convey his

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interest in the remainder when he executed the deed of assent. Bearing in mind therefore that in his capacity as executor and personal representative thereunder, he did no more than assent to the vesting of all the gifts made to the beneficiaries under the will save his own contingent interest if Poochoon predeceased him; that he did not in that capacity assign the leasehold premises to a purchaser for value; that the beneficiaries were all volunteers with knowledge of each other's gifts under the will; and that the deed of assent could not be regarded as an instrument of title except in so far as it carried out and was accordant with the directions contained in the will, I have come to the conclusion that the contention of counsel for the appellant that the deed of assent conveyed to Poochoon the whole of Rampaul's interest in the leasehold premises save his life interest must be rejected.

In the Court
of Appeal

No.8
Judgment of
Court of
Appeal 2nd
February 1978
(Contd.)

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After we had reserved our judgment in this case, solicitors for the appellant, with the knowledge of solicitors for the respondent, brought to the Court's notice three cases which, it was thought, might throw some light on the submissions addressed to us. They were Drew v Norbury (1846) 1 Jo. & Lat. 267, 284. 9 Ir. Eq. R. 524; Taylor v London and County Banking Co. (1901) 2 Ch. 231, 256; and Burrows v Crimp (1887) 8 L.R. (N.S.W.) 198. I have not been able to consider the decision in the first case as the report of it is not available, and have derived no assistance from the second. In the third case I had the advantage of reading a photostat copy of the original report. The facts as stated in head note are as follows:

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"C having an unexpired lease of certain real estate from Q was appointed executor and trustee jointly with one Burke under Q's will with directions to sell all the testator's real and personal estate. Burke disclaimed. After Q's death, C pursuant to such directions, sold to the plaintiffs the real estate of which C was in possession under the lease. The conveyance recited the seisin in fee in possession and his death, C's appointment as trustee jointly with Burke and Burke's disclaimer, the direction to sell and sale by C as trustee, but contained no reservation of C's lease and purported to convey the fee to the plaintiffs by amongst other operative words 'enfeoff'. It was held that C was estopped from setting up that the plaintiffs took subject to the

In the Court
of Appeal

No.8
Judgment of
Court of
Appeal 2nd
February 1978
(Contd.)

lease; and that although the testator had only a reversion, the conveyance passed the fee simple in possession freed from the lease; and that the registration of the lease subsequent to the registration of the conveyance to the plaintiffs gave the latter no priority over the former."

In the course of his judgment Darley, C.J. after referring to the separate estates in C, his sale of the property under the trust and the conveyance to the purchaser by deed said, *inter alia*: 10

"It does not matter whether (C) is in possession in one or in several rights. Everything that was in him passed. An estate for life or any less estate would pass in the same way. I am of opinion that (C) is estopped from saying that he conveyed less than the estate in fee which the deed purports to convey." 20

Faucett and Innes, J.J. concurred with the judgment of Darley C.J.

The facts in the instant case are clearly distinguishable from those in Burrows v Crimp (supra). There, the trustee for sale under the will, had an unregistered leasehold interest in the testator's property. Under the trust for sale the trustee sold the property to a bona fide purchaser for value without notice of the lease. The essence of the decision in that case was not that the trustee had conveyed his interest to the purchaser, but that the purchaser under the conveyance obtained the fee simple freed from the lease; and that the trustee's registration of the lease subsequent to the registration of the conveyance gave it no priority over the latter. In the instant case there was no sale to a bona fide purchaser for value without notice. 30

For these reasons I am of opinion that the learned trial judge came to the right conclusion in holding that on the death of Poochoon in the life time of Rampaul - an eventuality against which Seemirkee had specifically directed her mind when making her will - Poochoon's remainder was defeated and became vested in Rampaul. The plaintiffs therefore acquired no interest in the leasehold premises under Poochoon's will and her claim for possession against the defendant was rightly dismissed. I would accordingly dismiss the appeal with costs. 40 50

Isaac E. Hyatali
Chief Justice

In the Court
of Appeal

I agree

I also agree

Clement E. Phillips
Justice of Appeal

Maurice A. Corbin
Justice of Appeal

No.8
Judgment of
Court of
Appeal 2nd
February 1978
(Contd.)

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No.9

Order of Court of Appeal 2nd February
1978

No.9
Order of Court
of Appeal 2nd
February 1978

TRINIDAD AND TOBAGO

IN THE COURT OF JUSTICE

Civil Appeal
No: 76 of 1974.

BETWEEN

ROSE SEEPAUL (Married Woman
and Executrix named in the
Will of Poochoon Harracksingh)
Appellant

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- AND -

BABY DEOSARAN (Married Woman)
Respondent

CORAM: Sir Isaac Hyatali, C.J.
C.E.G. Phillips, J.A.
M.A. Corbin, J.A.

Made the 2nd day of February, 1978

Entered the day of

30

UPON READING the Notice of Appeal filed on
behalf of the above-named Appellant dated the
16th day of December, 1974 and the judgment of
the Honourable Mr. Justice Roopnarine dated the
5th day of November, 1974.

AND UPON READING the Record filed herein

AND UPON HEARING Counsel for the Appellant
and Counsel for the Respondent

AND MATURE DELIBERATION thereupon had

IT IS ORDERED that this appeal be dismissed

In the Court
of Appeal

with costs.

By the Court

No.9
Order of Court
of Appeal 2nd
February 1978
(Contd.)

B.L. Paray
Asst. REGISTRAR.

No.10
Order granting
conditional
Leave to Appeal
to the Judicial
Committee
20th (sic)
March 1978

No.10

Order granting conditional Leave to Appeal
to the Judicial Committee 20th (sic) March 1978

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TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No.: 76 of 1974

BETWEEN ROSE SEEPAUL Appellant/Plaintiff

AND

BABY DEOSARAN Respondent/Defendant 20

Before: The Hon. Chief Justice, Sir Isaac
Hyatali,
The Hon. Mr. Justice Phillips and
the Hon. Mr. Justice Kelsick

On the 20th (sic) day of March, 1978

Entered the

UPON the Motion of the above named Appellant
Rose Seepaul for leave to Appeal to the Judicial
Committee of the Privy Council against the
Judgment of this Court comprising the Honourable 30
Sir Isaac Hyatali, Chief Justice, the
Honourable Mr. Justice Phillips and the
Honourable Mr. Justice Corbin, Justices of
Appeal, delivered herein on the 2nd day of
February, 1978.

AND UPON READING the affidavit of ELDRED
BASIL JACK sworn to on the 16th day of February,
1978 and filed herein.

AND UPON HEARING Counsel for the Appellant.

THE COURT DOTH ORDER that subject to the 40

performance by the said Appellant of the conditions hereinafter mentioned and subject also to the final order of this Honourable Court upon due compliance with such conditions leave to appeal to the Judicial Committee of the Privy Council against the said judgment of this Court be and the same is hereby granted to the Appellant.

In the Court
of Appeal

No.10
Order granting
conditional
Leave to Appeal
(to the
Judicial
Committee)
20th (sic)
March 1978
(Contd.)

10 AND THIS COURT DOTH FURTHER ORDER that the Appellant do within six (6) weeks from the date of this Order enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of £500.00 (five hundred pounds sterling) with one or more sureties or deposit into Court the said sum of £500.00 (five hundred pounds sterling) for the due prosecution of the said appeal and for the payment of all such costs as may become payable by the Appellant to the Respondent in the event of the Appellant not obtaining an order granting him final leave to appeal or of the Appeal being dismissed for want of prosecution or of the Judicial Committee of the Privy Council ordering the Appellant to pay the cost of the said Appeal.

20 AND THIS COURT DOTH FURTHER ORDER that the Appellant do within ninety (90) days from the date of this Order in due course take out all appointments that may be necessary for settling the record in such appeal to enable the Registrar of this Court to certify that the said record has been settled and that the provisions of this Court to certify that the said record has been settled and that the provisions of this order on the part of the Appellant have been complied with;

30 AND THIS COURT DOTH FURTHER ORDER that the Appellant be at liberty to apply at any time within four (4) months from the date of this order for final leave to Appeal as aforesaid on the production of a Certificate under the hand of the Registrar of this Court of due compliance on her part with the conditions of this Order;

40 AND THIS COURT DOTH FURTHER ORDER that there be a stay of execution of the order made by the Court on the 22nd day of February, 1978 pending hearing and final determination of the said appeal to the Judicial Committee of the Privy Council and that the costs of and incidental to this application be costs in the cause.

In the Court
of Appeal

LIBERTY TO APPLY

No.10
Order granting
conditional
Leave to Appeal
to the Judicial
Committee
29th March 1978
(Contd.)

BY THE COURT
/s/ B. Paray
Asst. REGISTRAR:

No.11
Order granting
final leave to
appeal to the
Judicial
Committee
7th June 1982

No.11

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Order granting final leave to Appeal to the
Judicial Committee 7th June 1982

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL No.76 of 1974

BETWEEN

SAVITRI LALLA (representing the
estate of Poochoon Harracksingh
by order of the Court of Appeal
made 19th February 1982)
Appellant/Plaintiff

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- AND -

BABY DEOSARAN

Defendant/Respondent

Made the 7th day of June 1982

Entered the 11th day of June 1982

Before: The Honourable Sir Isaac Hyatali,
Chief Justice
The Honourable Mr. Justice Kelsick
The Honourable Mr. Justice Bernard.

30

Upon reading the Notice of Motion dated 23rd
April 1982 and filed herein on the said day and
the affidavit of Savitri Lalla sworn on the 23rd (sic)
April 1982 filed in support thereof AND UPON
HEARING Counsel for the Appellant/Plaintiff and
for the Respondent/Defendant and upon Counsel for
the Respondent/Defendant declaring to the Court
that the Respondent had no objection to the
making of an order granting to the Appellant final
leave to appeal to the Judicial Committee of the

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Privy Council

In the Court
of Appeal

THIS COURT DOTH ORDER that the time allowed for making application for final leave to appeal be deemed extended to the date of the filing to the notice of motion herein

No.11
Order granting
final leave to
appeal to the
Judicial
Committee
7th June 1982
(Contd.)

10 AND THIS COURT DOTH FURTHER ORDER that final leave to appeal be and the same is hereby granted to the Appellant to appeal to the Judicial Committee of the Privy Council against the judgment of the Court of Appeal herein dated 2nd February 1978;

20 AND THIS COURT DOTH FURTHER ORDER AND DIRECT that the record to be transmitted to England for use upon the hearing of the appeal shall comprise the documents and exhibits comprising the Record used in the Court of Appeal, the judgment of the Court of Appeal the order granting conditional leave to appeal to the Judicial Committee of the Privy Council and this order.

AND THIS COURT DOTH FURTHER ORDER that the costs of and incidental to this application be costs in the cause.

BY THE COURT

B. Paray

Asst. REGISTRAR

Exhibits

"O.B.1"

O.B.1
Certified copy
of deed
No.14704/57
22nd November
1975

This is the deed marked "A"
referred to in the annexed
affidavit of Ordill Raphael
Baptiste sworn to before me
this 22nd day of November
1975.

Commissioner of Affidavits

14704

This deed was prepared by me

10

/s/John A. DAVIS

Conveyancer

THIS DEED made this Twenty-second day of
November in the Year of Our Lord One thousand
nine hundred and fifty-seven BETWEEN RAMPAUL
HARRACKSINGH of the Ward of Tacarigua in the
Island of Trinidad Proprietor (hereinafter called
"the Executor") of the First Part the said
RAMPAUL HARRACKSINGH of the Second Part and
POOCHOON HARRACKSINGH of the said Ward of
Tacarigua Shop-Keeper of the Third Part

20

WHEREAS Seemirkee late of the said Ward of
Tacarigua departed this life on the 6th day of
September 1945 after having duly made and
published her last will and Testament dated the
25th day of July 1945 whereby she appointed the
Executor sole executor thereof and devised All her
real and personal property to the said Rampaul
Harracksingh for the term of his natural life with
remainder to the said Poochoon Harracksingh
absolutely subject to a charge of Two Thousand
dollars in favour of Baby Deosaran And Whereas
probate of the said will was on the 14th day of
June 1957 granted to the Executor by the Supreme
Court of Trinidad and Tobago and the same is
registered in the Registrar General's office of
this Colony as Number 513 of 1957 And Whereas
the said Seemirkee was at the date of her death
possessed of the parcel of land described in the
schedule hereto together with the buildings
erected and standing thereon for all the unexpired
residue of the term of nine hundred and ninety
nine years granted by deed of lease dated the 28th
day of September 1920 registered as No.4964 of
1920 and made by His Majesty King George V in
favour of the said Seemirkee And Whereas the
Executor has agreed to execute these presents for

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the purpose of vesting in the said Rampaul
Harracksingh and the said Poochoon Harracksingh
the unexpired residue of the term of Nine
hundred and ninety nine years in the said parcel
of land described in the schedule hereto together
with the buildings erected and standing thereon
NOW THIS DEED WITNESSETH that the Executor as
personal representative of the estate of the said
Seemirkee under and by virtue of the provisions
of the Administration of Estates Ordinance
Chapter 8 Number 1 and every other enabling power
in this behalf Hereby Assents and Assigns unto
the said Rampaul Harracksingh and Poochoon
Harracksingh All and Singular the parcel of land
described in the schedule hereto together with the
buildings erected and standing thereon TO HOLD
the same unto the said Rampaul Harracksingh for
the term of his natural life with remainder unto
the said Poochoon Harracksingh for all the residue
now unexpired of the term of Nine hundred and
ninety nine years granted by the said above
recited deed of lease No.4964 of 1920 subject to
the rents and covenants and stipulations therein
contained and on the part of the Lessee to be
observed and performed and subject also to the
above recited charge of Two thousand dollars in
favour of Baby Deosaran created by the above
recited will of the said Seemirkee

Exhibits
O.B.1
Certified copy
of deed
No.14704/57
22nd November
1975 (Contd.)

IN WITNESS WHEREOF the said parties hereto
have hereunto set their hands the day and year
first hereinabove written

THE SCHEDULE HERETO

ALL AND SINGULAR that parcel or lot of land
formerly part of St. Augustine lands situate in
the Ward of Tacarigua and bounded on the North
by Lot No.27 on the South by Lot No.31 on the
East by Southern Main Road and on the West by
Lot No.28 which said piece or parcel of land is
shown as Lot No.29 on the plan annexed to these
presents and marked "A" together with the
buildings erected and standing thereon

SIGNED AND DELIVERED by the within
named RAMPAL HARRACKSINGH as and Ramphal
for his act and deed in the Harracksingh
presence of:

Ordil R. Baptiste of,
No.30A St. Vincent Street,
Port of Spain,
Law Clerk.

And of me,
John Adolphus Davis
Conveyancer

Exhibits

"S.L.1"

S.L.1
Office Copy of
Grant of
Letters of
Administration
17th March
1972

Office Copy of Grant of Letters of
Administration 17th March 1972

Trinidad and Tobago

(Wills and Probate Ordinance Ch.8 No.2)

L.182 of 1972 The annexed will of POOCHOON
HARRACKSINGH of the corner of Mc Inroy Street and 10
Southern Main Road Curepe Tacarigua Trinidad
shopkeeper who died on the 23rd day of May 1968
at Mc Inroy Street Curepe was proved in the High
Court of Justice on the date hereunder written
by ROSE SEEPAUL of Eastern Main Road Sangre Grande
Trinidad married woman the sole executrix named
in the will. The required certificate has been
filed showing that the Estate Duty and Succession
Duty have been allowed to be postponed and that
the value of the property on which Estate Duty 20
is payable is \$6,000.00

Dated the 17th day of March 1972

George R. Benny

Registrar of the Supreme Court of Judicature

Extracted by: D.C. Boucaud & Co.

32 St. Vincent Street, Port of
Spain.

"S.L.2"

Exhibits

Certified Copy of Will of Poochoon
Harracksingh 16th November 1966

S.L.2
Certified
copy of Will
of Poochoon
Harracksingh
16th November
1966

L: 182 of 1972

TRINIDAD AND TOBAGO

THIS IS THE LAST WILL AND TESTAMENT of me
POOCHOON HARRACKSINGH of the Corner of Mc Inroy
Street and Southern Main Road, Curepe, in the
Island of Trinidad, Proprietor.

10

1. I hereby revoke all former Wills and other
documents of a testamentary character heretofore
made by me and declare this to be my last Will
and Testament.

2. I hereby nominate and appoint Rose Seepaul
of Eastern Main Road, Sangre Grande, to be the
sole Executrix of this my Will.

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3. I hereby declare that I have been separated
from my lawful wife Isabel Harracksingh for the
past eight years she having left my home without
cause and not having maintained her for this
period I do not want her to share in my estate.

30

4. Subject to the payment of all just debts
funeral and testamentary expenses I give devise
and bequeath all real and personal property to
which I may die siesed and possessed of or
entitled to at the time of my death or at any
time thereafter and wheresoever situate to my
daughter Savitri Harracksingh for her own use and
benefit absolutely and forever.

IN WITNESS WHEREOF I the said POOCHOON
HARRACKSINGH have hereunto subscribed my name to
this my last Will and Testament this 16th day of
November in the year of Our Lord One Thousand
Nine Hundred and Sixty Six.

40

SIGNED by the above named)
POOCHOON HARRACKSINGH as)
and for his last Will in)
the presence of us both) /s/Poochoon Harracksingh
being present at the same)
time who at his request in)
his presence and in the)
presence of each other have)
hereunto subscribed our)
names as witnesses:)

/s/ L.F. Ramoo
9 St. Vincent Street
Port of Spain
Solicitor's Clerk

/s/ J. Anthony Le Blanc.
9 St. Vincent Street.
Port of Spain
Solicitor

S.L.3
Certified
Copy of
Will of
Seemirkee
July 1945

Certified Copy of Will of Seemirkee
12th July 1945

I Seemirkee Female East Indian of Southern Main Road, Curepe, St. Joseph, in the Ward of Tacarigua in the Island of Trinidad do solemnly declare this to be my last Will and Testament.

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 Two thousand 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 Two thousand dollars to my daughter the aforesaid Baby Deosaran and provided further that in the event of the death of the said Baby Deosaran before the death of the said Rampaul Harracksingh or Poochoon Harracksingh then the aforesaid sum of Two thousand dollars shall be paid in equal share to the children of the said Baby Deosaran.

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I nominate constitute and appoint my husband the aforesaid Rampaul Harracksingh Executor to this my last Will and Testament.

In testimony whereof I have subscribed this Will this Twenty fifth day of July in the year of Our Lord One thousand nine hundred and forty five in the presence of the subscribing witnesses who were both present together in my presence and witness my mark and who attested and subscribed this Will in my presence and in the presence of each other.

30

Her

Seemirkee

X

Witness to mark

mark

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1. A.G. Seeram
Henry Pierre Terrace
St. Augustine
2. Jainarayan Harracksingh
No.7 Eastern Main Road
San Juan

TRINIDAD AND TOBAGO

I, Francilla Nurse, Superintendent Registrar of Births and Death for the Ward of St. Joseph do hereby certify that the subjoined Extract is a true copy of the Entry, No. 17 in the Register Book of Deaths for the Year 1968. In Testimony whereof I have hereunto set my hand at St. Joseph this 9th day of November in the Year of Our Lord One Thousand Nine Hundred and Seventy-three.

/s/ F. Nurse
Registrar

"S.L.4"

Death in the Ward of St. Joseph

No.	When Died	Name and Surname	Sex	Age	Rank and Profession and Country of Birth	Cause of Death	Signature, Description and Residence of Informant	When Registered	Signature of Registrar	Locality Where Died
17	Twenty-third May 1968	Poochoon Harracksingh	Male	53 Years	Proprietor Trinidad	(a) Gangreen of left foot (b) Diabetes Mellitus Ischaemic Heart Disease Cert. by Dr. H. Seenath UB. BS.	S. Harracksingh Occupier Mc Inroy St. Curepe	Twenty third May 1968	Francilla Nurse Registrar	Mc Inroy Street Curepe

S.L.4
Death Certificate
9th November
1973

TRINIDAD AND TOBAGO

I, Francilla Nurse, Registrar of Births and Deaths for the Ward of St. Joseph do hereby certify that the subjoined Extract is a true copy of the Entry, No. 96 in the Register Book of Deaths for the year 1969.

In Testimony whereof I have hereunto set my hand at St. Joseph this 30th day of April in the Year of Our Lord One Thousand Nine Hundred and Sixty-nine.

/s/ F. Nurse
Registrar

Death in the Ward of St. Joseph

No.	When Died	Name and Surname	Sex	Age	Rank and Profession and Country of Birth	Cause of Death	Signature, Description and Residence of Informant	When Registered	Signature of Registrar	Locality Where Died
96	Ninth April 1969	Rampaul Harracksingh	Male	78 Years	O A P Trinidad	(a) Ischaemic Heart Disease (b) Artherosclerosis (c) Anaemia chronic Rumatoid Arthritis Cert. by Dr. Feroze R Raffek	E. Battoo F.D. Present at death Tragarete Rd. Port of Spain	Tenth April 1969	Francilla Nurse Registrar	2 Babboo Grove Sett. Curepe

S.L.5
Death Certificate
30th April
1969

"B.D.1"

Exhibits

Certified copy of Deed No.1820/69
9th January 1969

B.D.1
Certified copy
of Deed
No.1820/69
9th January
1969

TRINIDAD AND TOBAGO

Prepared by me,

Alvin K. Fitzpatrick

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Conveyancer

THIS DEED is made the Ninth day of January in the year of Our Lord One thousand nine hundred and sixty nine between RAMPAUL HARRACKSINGH also called Ramphal Harracksingh of Southern Main Road, Curepe, in the Ward of Tacarigua, in the Island of Trinidad, Proprietor, (hereinafter called "the Donor") of the One Part and BABY DEOSARAN of the same place, Married Woman, (hereinafter called "the Donee") of the other part

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WHEREAS:

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1. The Donor is entitled in possession to the leasehold premises described in the Schedule hereto (hereinafter referred to as "the said leasehold premises") for all the residue now unexpired of the term of 999 years from the 29th day of April 1920 created by a certain Deed of Lease (hereinafter referred to as "the said Lease") dated the 29th day of September 1920 registered as No.4964 of 1920 and made between His Most Excellent Majesty George the Sixth of the One part and Seemirkee of the other part at the rent in the said Lease reserved and contained and subject to the observance and performance of the covenants and conditions binding on the Lessee therein contained subject however to a certain Deed of Mortgage (hereinafter referred to as "the Mortgage") dated the 22nd day of November 1957 registered as No.14706 of 1957 and made between the Donor and Poochoon Harracksingh of the one part and Trinidad Co-operative Bank Limited of the other part for securing the repayment of the principal sum of Four Thousand and Five Hundred Dollars and interest thereon as therein mentioned.

2. AND WHEREAS for the consideration hereinafter expressed the Donor hereby agrees to assign unto himself and the Donee the said leasehold premises in the manner hereinafter appearing subject to the Mortgage.

Exhibits

NOW THIS DEED WITNESSETH as follows:-

B.D.1
Certified copy
of Deed
No.1820/69
9th January
1969 (Contd.)

1. In pursuance of the said agreement and in consideration of the premises and of the Natural Love and affection which the Donor hath and bears towards the Donee his daughter, the Donor as beneficial owner Hereby Assigns unto himself the Donor and the Donee the said leasehold premises (together with the buildings thereon and appurtenances thereto belonging) TO HOLD the same unto the Donor for and during the term of his natural life of all the residue now unexpired of the term of 999 years granted by the said lease with remainder thereof from and after his death unto the Donee subject to the payment of the rent and performance and observance of the covenants, conditions and stipulations in the said Lease respectively reserved and contained and on the part of the Lessee to be paid performed and observed SUBJECT HOWEVER to the Mortgage. 10

2. PROVIDED HOWEVER that in the event the Donee should predecease the Donor then in such event the Donor hereby assigns the said leasehold premises unto DEVIKA RAMCHARAN, Married Woman, SAVITRI KHAN, Married Woman, SWASATTI DEOSARAN and TARAMATTI DEOSARAN his grandchildren borne of the Donee, as tenants-in-common. 20

3. The Donee hereby for herself, her executors, administrators and assigns covenants that after the death of the Donor to pay the rent reserved by and to perform and observe the Lessee's covenants, conditions and stipulations contained in the said Lease and to keep the executors and administrators of the Donor and his estate and effects effectually indemnified against all actions, claims and demands whatsoever in respect of the rent, covenants and stipulations or anything relating thereto. 30

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first hereinabove written 40

THE SCHEDULE REFERRED TO

ALL AND SINGULAR that parcel or lot of land formerly part of St. Augustine Lands situate in the Ward of Tacarigua in the Island of Trinidad and bounded on 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 No.28 which said parcel or lot of land is shown as Lot No.29 on the plan marked "A" annexed to the said Lease; and which said parcel or lot of land is described 50

in the Schedule to Deed of Assent registered as
No.6288 of 1968.

Exhibits

SIGNED AND DELIVERED by the)
withinnamed Rampaul)
Harracksingh also called)
Ramphal Harracksingh as and) /s/ Rampaul
for his act and deed in the) Harracksingh
presence of:)

B.D.1
Certified copy
of Deed
No.1820/69
9th January
1969 (Contd.)

10 /s/ C.B. Samuel, And of me,
25 St. Vincent Street. /s/ Alvin Kenneth
Port of Spain, Fitzpatrick
Writing Clerk. Conveyancer

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 Appellant/
estate of Poochoon Harracksingh) Plaintiff

- AND -

BABY DEOSARAN Defendant/
 Respondent

RECORD OF PROCEEDINGS

INGLEDEW, BROWN, BENNISON
& GARRETT,
International House,
26 Creechurch Lane,
LONDON EC3A 5AL.
Solicitors for the Appellant