



CARIBBEAN COURT OF JUSTICE

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CCJ DISMISSES APPEAL IN GUYANA ADVERSE POSSESSION CASE

Port of Spain, Trinidad and Tobago. In a judgment released on Friday, 18 February 2022, the Caribbean Court of Justice (CCJ) dismissed the appeal in the Guyanese case of *Shakeela Kanhai, Evie Anne Kanhai and Miguel Gurcharan v Basantie Persaud [2022] CCJ 6 (AJ) GY*. The Court also ordered the Appellants to pay costs to the Respondent.

Ms Persaud obtained a declaration of title from the Commissioner of Title to a portion of land known as Sublot X, which is the northern part of the property located at the West ½ of Lot 80 Duncan Street, Newtown, Kitty. Sublot X was subsequently passed to the late common-law husband of Ms Persaud, Mr Fletchman, when his mother Iris died in 1990. Iris had entered into an agreement in 1965 with her brother to lease Sublot X for ninety-nine (99) years, but this agreement was never executed as required by the Landlord and Tenant Act.

The declaration of title was appealed by the Appellants, who obtained, “transport,” a title document showing ownership, to the property when it was purchased by the late husband of Shakeela Kanhai. Although Mr Kanhai bought the property in 1992, it was only in 2007 that he first attempted to get possession of Sublot X.

The Court of Appeal dismissed the appeal, holding that Mr Kanhai’s title to Sublot X expired in 2002, twelve years after Iris’ death, and that Mr Fletchman then had a right to obtain a declaration of title to that part of the property. The Appellants disagreed with that decision and appealed to the CCJ.

In a judgment written by the Honourable Mr. Justice Jacob Wit, the Court found that Iris had been given possession of Sublot X by her brother, and that this possession was maintained by Iris and continued by Mr Fletchman and Ms Persaud from 1965 onward. While the Court acknowledged that, based on the agreement, Iris’ possession of Sublot X was always with the consent of her brother, the agreement ended when she died in 1990. From that time, the possession of Sublot X as continued by Mr Fletchman and Ms Persaud became adverse to the owner of the property. Therefore, the title held under the transport to the property, which Mr Kanhai later obtained, expired in relation to Sublot X in 2002 and Mr Fletchman became entitled to a declaration of title to Sublot X.

Though Mr Kanhai attempted to obtain possession of Sublot X in 2007, this was too late as his title to that part of the property had already expired. The Court thus dismissed the appeal and awarded costs to Ms Persaud.

Mr Rajendra Poonai SC, Mr Sohan Poonai and Mr Naresh Poonai appeared for the Appellants. Mr John Lindner appeared for Ms Persaud.

The full judgment of the Court and a judgment summary are available on the Court's website at www.ccj.org.

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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