

RAMPHUL LTD v PUTLARAO J. & ORS

2024 SCJ 93

SCR No. 104735 – 1/609/10

**IN THE SUPREME COURT OF MAURITIUS
(Before the Land Division)**

In the matter of: -

Ramphul Ltd

Plaintiff

v

- 1. Janagee Putlarao**
- 2. Siven Oolaghen**
- 3. Baleeram Putlarao**

Defendants

Judgment

[1] The present case is connected to three other cases bearing SCR 96286 (1/77/07), SCR 101581 (1/592/08) and SCR 104734 (1/608/10) which are to follow this case in which evidence have been adduced.

[2] By virtue of a title deed dated 13 December 1950 drawn up by late René Maigrot, then Notary Public, duly transcribed in Vol. 545 No. 254, the plaintiff is the owner of 'Choisy Estate' comprising of an area of approximately 949 Arpents and 37 square perches representing the remaining portion of land (after the distraction of several portions of land) of the original portion of land of an extent of 1256 Acres. The plaintiff entered an action by way of Plaint with Summons dated 8 November 2010 which was subsequently amended on 12 October 2021 against the defendants.

[3] The plaintiff is praying for a perpetual order in the nature of an injunction restraining and prohibiting the defendants by themselves, their servants, workmen, agents, préposés, or employees from any manner whatsoever from:

1. *Entering and/or occupying Choisy Estate belonging to the Plaintiff; and*
2. *Interfering with the free and quiet enjoyment of the Plaintiff of Choisy Estate.*

[4] The defendants filed their plea dated 13 July 2012 denying the claim and further made a counter claim against the plaintiff praying for a judgment:

1. *Declaring and decreeing that the Defendants are the rightful owners of the land of an extent of:*
 - a) *1 Arpent as stated at Paragraph 5 of the Plaintiff.*
 - b) *10,260 square metres as stated in Paragraph 13 of the Plaintiff.*
 - c) *8,441.74 square metres as stated in Paragraph 17 of the Plaintiff and that the properties in lite never formed part of Choisy Estate.*
2. *Ordering the Plaintiff to pay Rs 500,000/- as damages to the Defendants.*
3. *Any other order(s) that could be deem fit and proper in circumstances.*

(A) The Plaintiff's Claim for the 'Choisy Estate'

[5] In a gist, the case for the plaintiff is that it has occupied the said 'Choisy Estate' in a public, peaceful, continuous and uninterrupted, unequivocal and *animo dominii* and apparent manner ever since the 13 December 1950 by cultivating sugarcane and is duly registered with the Sugar Insurance Fund Board (hereinafter called 'SIFB').

[6] In 2005, the plaintiff earmarked 'Choisy Estate' for an IRS Project which became to public knowledge. Late Samy Pillay Oolaghen manifested with the employees of the plaintiff that he is allegedly the owner of a portion of land of an extent of 1 Arpent that forms part of the 'Choisy Estate' which is hereinafter referred to as "**Plot A**".

[7] Plaintiff being apprised of the intention of late Samy Pillay Oolaghen to conduct a survey on 'Plot A,' a Notice *Mise en Demeure* dated 19 December 2005 was served on him denying the latter access to the 'Choisy Estate' on which was found 'Plot A'.

[8] On 11 January 2006, late Samy Pillay Oolaghen entered on Plot A without any right, title, or capacity and started to remove the fencing placed by the Plaintiff Company around 'Choisy Estate.' A statement was accordingly made by the plaintiff's Company to that effect at the Baie du Cap Police Station and a first case of "*an action possessoire*" was entered by the Plaintiff Company against late Samy Pillay Oolaghen before the District Court of Souillac on or about February 2006.

[9] Whilst the first case was pending before the District Court of Souillac, defendants Nos. 1 and 2 entered upon another portion of land of an extent of 10,260 square meters forming part of Choisy Estate and started to plant banana trees thereon. The said portion of land is hereinafter referred to as "**Plot B**".

[10] After having made two more statements at Baie du Cap Police Station on 25 July 2006 and 16 October 2006 (**Documents P17 and P18**) respectively, defendants Nos. 1 and 2

continued to plant the banana trees which necessitated an application for an injunction before the Honourable Judge in Chambers.

[11] An interim order was issued on 27 December 2006 which was then made interlocutory on 18 January 2007 restraining and prohibiting defendants Nos. 1 and 2 from occupying Plot B. **(Document P8)**

[12] Subsequently, defendants Nos. 1 and 3 entered an adjoining plot of land of an extent of 8,441.74 square metres forming part of '*Choisy Estate*' and have provocatively and aggressively occupied it without right, title and capacity. The said plot of land is hereinafter referred to as "**Plot C**".

[13] An attempt to prescribe the portion of land of an extent of 8,805 square metres forming part of Plot C was also made by defendant No. 3 based on a survey report dated 8 December 2008 drawn up by Mr. Ng Tong Ng Wah, Sworn Land Surveyor and on 6 February 2009, a Notice under the Affidavits of Prescription Act was published in the daily newspaper "*L'Express*" in respect of the said portion of land forming part of Plot C. The plaintiff objected to the attempt to prescribe the said portion of land by way of a Notice dated 10 April 2009. **(Document P11)**. The said survey report dated 8 December 2008 was subsequently cancelled by the Surveyor on 15 April 2009.

[14] Another attempt to prescribe the portion of land of an extent of 2,640 square metres forming part of Plot A was made by defendant No. 3 based on a survey report dated 2 March 2009 drawn up by Mr. Ng Tong Ng Wah, Sworn Land Surveyor and on 2 April 2009, a Notice under the Affidavits of Prescription Act was published in the daily newspaper "*L'Express*" in respect of the said portion of land forming part of Plot A. The plaintiff again objected to such attempt and the survey report dated 2 March 2009 was once more cancelled by the Surveyor on 5 May 2009.

(B) The injunctive relief

[15] It is the case for the plaintiff that the defendants have concocted a scheme to occupy various plots of land forming part of the '*Choisy Estate*'.

[16] It is worth noting that prior to the lodging of the plaint, on 24 June 2009, the plaintiff had applied for and obtained an injunctive relief against the defendants. The said interim order was made interlocutory by the Honourable Judge in Chambers, Hon. S. Peeroo on 27 October 2010, restraining and prohibiting the defendants and Late Samy Pillay Oolaghen as per the same prayers at paragraph (2) above **(Document P 14)**.

[17] The plaintiff is now praying for a perpetual order in the nature of an injunction against the defendants as per the prayers above.

(C) The Ownership relating to the plaintiff's claim in relation to Plots A, B & C.

[18] Plaintiff called several witnesses to elicit the fact that it has a clear legal title to plots A, B & C. Plaintiff's Company was represented by Mr. Neermul Saddul who deposed to the effect that the plaintiff is involved in the cultivation of sugarcane and is duly registered with the SIFB. He stated that to his personal knowledge, Plots A, B & C were under sugarcane cultivation since 1993.

[19] Mr. Saddul also deposed that in 2005, he demarcated 206 arpents of land for an IRS Project which was to be conducted in partnership with Oberoi Group and for which an IRS certificate was obtained in 2006. He further stated that for the purpose of the project, Mr. Jeewa, Land Surveyor, conducted the survey and at that time, Plots A, B & C were found in the perimeters of the 206 arpents for the project which were duly owned by the plaintiff.

[20] It is the submission of the plaintiff that Mr. Saddul did not only depone as representative of the company but had personal knowledge of plots A, B & C since 1993. He confirmed that the plots owned by the plaintiff were all under sugarcane plantations up to around 2005 – 2006 and have been subject to registration with the SIFB to which a specific code was attributed by the latter to each plot. After the illegal occupation of Plots, A, B & C, the plaintiff made numerous declarations at the Baie du Cap Police Station and initiated Court actions, by applying for injunctive reliefs, in order to take back the possession of the lands *in lite*.

[21] Mr. Ricardo Ramiah Sworn Land Surveyor depose to the effect that his services were retained by the Plaintiff's Company in 2012 to draw up a report dated 23/03/2012 (**Document P1**) to retrace the history of the ownership of the '*Choisy Estate*' owned by the plaintiff.

[22] The beginning of the report states as follows: -

*"According to a deed drawn up by and before Mr. Notary René Maigrot dated the thirteenth day of December one thousand nine hundred and fifty (13/12/1950) duly registered in Reg. C. 218 No. 866 and transcribed in Volume 545 No. 254, MR. and MRS. SOOKDEO RAMPHUL have sold to the said Company '**RAMPHUL LIMITED**' several plots of land, of which the said plot of **NINE HUNDRED AND FORTY-NINE ARPENTS THIRTY-SEVEN PERCHES (949A37P)** forms part."*

[23] According to him after doing his exercise of overlay, Plot A does not fall within the ownership of the Plaintiff Company but solely Plots B & C which are owned by the Plaintiff

Company. He stated that he drew up a domain book which is a study of acquisitions and sales over time. The domain book was done in 2011 and the particular report which he had brought to Court was done later in 2012. The domain book is not only for 'Choisy Estate' but for all the other properties owned by the plaintiff.

[24] Learned Counsel for plaintiff submitted that the findings of Mr. Ramiah devolve solely from the exercise that has been carried out above by considering the titles and survey of Mr. Belcourt, Land Surveyor, without having physically conducted any survey on said plots *in lite*. In view of the exercise which was carried out by Mr. Ramiah wherein there was no physical survey, Counsel for plaintiff invited the Court to consider the evidence of Mr. Jeewa who has physically surveyed the said land as requested by the plaintiff.

[25] Mr. Jeewa, Sworn Land Surveyor, was mandated by the plaintiff to carry out a survey of Plots A, B & C. He produced the following documents:

1. A constat drawn up by him dated 18 December 2006 whereby it was highlighted that the land which was under banana cultivation of an extent of 10260 m² being Plot B, forms part of 'Choisy Estate' and belongs to the plaintiff; (**Document P35**)
2. A Survey Report dated 18 January 2007 (Reg. L.S. 59 No. 5208) pertaining to a survey carried out under section 12 of the Land Surveyors Act 1979 of an extent of land of 869, 499 m² belonging to the plaintiff. (**Document P36**).
3. A constat dated 19 May 2008 (**Document P 37**) whereby Mr. Jeewa made an observation pertaining to Plot B that: -

"Constat des Lieux

*Pendant mes opérations, à la date susmentionnée, j'ai observé qu'une **partie des terrains appartenant à la Compagnie Ramphul Ltée, longeant la route principale reliant Baie du Cap à Chamarel a été nettoyé et d'après mes renseignements relevés sur place, la dite portion de terrain a été nettoyée par Mons. & Mme Baliram Putlarao. Cette partie du terrain de la Compagnie Ramphul Ltée illégalement occupé par les Putlarao, était auparavant, y compris mes visites précédentes, sous culture de canne à sucre et a été ciblé par ladite compagnie pour former partie d'un projet I.R.S**".*

4. A 'Procès Verbal d'Arpentage' dated 27 January 2009 pertaining to the measurement of a portion of land of the extent of 949 Arpent 37 perches for the purposes of an IRS project and also to identify where is to be found the plot of land belonging to the Chinathoos. (**Document P 38**)

5. A constat dated 06 October 2020 (**Document P 39**) whereby Mr. Jeewa made the following observation: -

“Constat

Comme j'avais indiqué dans mes deux dits rapports, Mme. Kavita Saddul (née Ramphul) m'a déclaré qu'il existe une boutique se trouvant sur le terrain de la compagnie Ramphul Ltée sous le nom de 'Choisy Boutique' que les héritiers du feu Samy Oolaghen et Mons. Baleeram Putlarao prétendent d'être les propriétaires de celle-ci contrairement au titre de propriété de la compagnie Ramphul Ltée.

*Mon susdit procès verbal en date du 27 janvier 2009 en dûment enregistré au Reg : L.S 67 No. 860 **indique clairement que cette boutique se trouve sur le terrain de la compagnie Ramphul Ltée, comme indiquer sur le plan figuratif y joint (Plot A)***

*Mons. Janagee Putlarao et Mons. Siven Oolaghen occupent toujours les autres parties **des terrains de la compagnie Ramphul Ltée sur une superficie de 10, 260 m²** comme indiquer sur le plan figuratif y joint (Plot B).*

*Mons. Janagee Putlarao et Mons. Baleeram Putlarao ont aussi augmenté la superficie de leurs plantations de bananes sur **les terrains appartenant à la compagnie Ramphul Ltée sur une étendue totale de 20,000 m² comme indiquer sur le plan figuratif y joint (Plot C).**" (emphasis mine)*

[26] Mr. Jeewa deponed to the effect that he had been working as Land Surveyor for plaintiff since the year 2005 and is familiar with the land found on 'Choisy Estate' belonging to the plaintiff. He recalls having conducted a survey in 2007 as instructed by late Sir Kanta Ramphul for the land belonging to the plaintiff namely the 949 arpents of land and that part included Plot A, B & C, were occupied by Ramphul Ltd. However, after 2004-2005, there were no cultivation on the said land but only some traces of sugarcane.

[27] Plot A on which was an old shop known as 'Choisy Boutique' is also owned by the plaintiff. Mr. Jeewa stated that in light of the numerous reports and constats that were drawn up by him, Plots A, B and C belong to the plaintiff and have been illegally occupied by the defendants.

[28] Mr. Sanassee, Senior Field Officer, from the SIFB also confirmed that the Plots A, B & C were under sugarcane cultivation from 2005 to 2006. He identified the Plots *in lite* on the inspection plan (**Document P33**) and confirmed in cross-examination that there are records (*being the sole records available in possession of the SIFB at the office of the SIFB pertaining*

to the inspections carried out in relation to Plots A, B & C) and the registered planter was the plaintiff.

[29] Mrs. N. Luximon has worked with the plaintiff as an Administrative Officer for about 40 years was called to depone. She stated that she is familiar with the plots of lands belonging to the plaintiff and confirmed that the plaintiff was the landlord/lessor of 'Choisy Boutique' which is located on Plot A.

[30] She recalls that a couple of Chinese origin (*the man was called Maurice*) was occupying 'Choisy Boutique' as tenants of the plaintiff. The 'Choisy Boutique' was occupied afterwards by Mr. and Mrs. Luckhoo. Mrs. Luximon averred that in the year 2003 she collected the rent on behalf of the plaintiff. The said rent was recorded in the rent book and was brought by the tenants themselves.

[31] After the demise of Mr. Luckhoo, Mrs. Luckhoo took over the shop and stopped paying rent following which a *Mise en Demeure* dated 2003 was served on the latter. Mrs. Luximon retired in 2019 and averred that until her retirement, 'Choisy Boutique' was not leased to any other tenant and it remained closed ever since.

(D) Illegal occupation of the Plots A, B & C by the defendants

[32] Mr. Irmal Joysuree, former General Manager of the plaintiff revealed material elements of the illegal occupation of the defendants on Plots A, B & C.

Plot A

[33] In 2006, there was sugarcane plantation on Plot A which was located at the back of 'Choisy Boutique' adjacent to which there is a Kovil. Plots B and C, were also under sugarcane plantation. On 11 January 2006 he was informed that there were unauthorized individuals on Plot A, ploughing the said land. On his arrival on Plot A, he saw late Samy Pillay Oolaghen on the land. Mr. Joysuree averred that he made several declarations to the police pertaining to the illegal occupation of the land of the plaintiff.

Plot B:

[34] Mr. Joysuree deposed that on or about January 2006 he saw around twenty newly grown banana trees on Plot B alongside the roadside of the fields. He was apprised by his employees that the Oolaghens planted banana trees and cleared the lands. He gave a precautionary measure to the police as those plants might have been removed.

[35] On or about October 2006, he observed that banana trees started increasing and the trees came inside the sugarcane fields. Mr. Joysuree made a request to the extension officers of the MSIRI to inspect the lands and to give their advice on the damaged sugarcane plantations as they were burnt by pesticides.

Plot C:

[36] In the year 2009, Mr. Joysuree resigned as an employee of the plaintiff. Plots B & C were no longer under sugarcane cultivation inasmuch as they were all chemically burnt and only banana trees plantations remained on the said plots.

[E] The case for the defendants

[37] The defendants did not file any amended plea further to the amendment made by plaintiff on 12 October 2021 on account of the demise of late Samy Pillay Oolaghen.

[38] In their plea dated 13 July 2012, the defendants aver that the portion of land forming part of '*Choisy Estate*' has been occupied by their grandparents for more than 35 years.

[39] According to the version of Mrs. Janagee Putlarao, she was born on the portion of land *in lite* and is aged over 60 years. She has been residing there with defendant No.2 as well as all her family members since birth. Her grandparents have been in occupation of the said land since decades and the occupation has subsisted by her parents and her family and herself since she was 9 years old. They have also been cultivating bananas and vegetables over the said land. She recalls that there was also a temple on plot A which her family members were occupying. Prior to 2005, they have never been disturbed in their peaceful and quiet enjoyment of their property.

(a) Plots A, B & C

[40] **Plot A** has always been cleaned by the defendants and was under plantation. Mrs. Janagee Putlarao stated that Mr. Irmal Joysuree employee of plaintiff was always annoying them in their peaceful occupation by giving regular statements to the police. It is the case for the defendants that Plot A based on Mr. Ramiah's report was about 5 arpents 36 perches and was occupied by '*les petites propriétaires*' for nearly 41 years, since the year 1964.

[41] **Plot B**, of an extent of 10,260 m² (*2 arpents 11 perches*) according to Mr. Ramiah '*was planted with banana trees which could be seen from the road as it spread over quite a large area*'. Therefore, according to learned Counsel for the defendants, the area of 11 perches was not only under sugar-cane plantation as averred by Mr. Sanassee, Senior Field Officer from the SIFB, but there was also cultivation of banana trees

[42] **Plot C** of an extent of 2 arpents 14 perches was under banana cultivation for an extent of 14 perches according to Mr. Ramiah and this evidence goes against the version of Mr. Saddul who averred that the whole of Plot C was under sugar cane plantation.

The law

(i) The law concerning acquisitive prescription are found in **Articles 2229** and **2261** of the **CCM** which provide as follows: -

"2229. Pour pouvoir prescrire, il faut une possession continue et non interrompue, paisible, publique, non équivoque, et à titre de propriétaire. Pour prescrire en matière immobilière, la possession doit, en outre, présenter un caractère apparent, manifesté par des signes matériels extérieurs, tels qu'une construction, un mur bâti servant de clôture, des plantations.

2261. Le délai de prescription acquisitive est de trente ans, s'il n'en est autrement fixé par la loi."

[43] The precepts of acquisitive prescription were clearly explained in the following cases.

In the case of **Ramjuttun M. J. v St Flour T.T.** [\[2019 SCJ 236\]](#) the Court averred the following: -

"The basis characteristics that still have to be satisfied in relation of 'prescription acquisitive' are "une possession continue, non-interrompue, paisible, publique, non-équivoque et a titre de 'servitude'" (see Lexis 360, Encyclopédies, Vo Servitudes - Fasc 210 (du 1er Novembre 2011) - Servitudes - Modes de constitution ou d'acquisition, note 72 (mise à jour 16 Janvier 2017). In other words, in addition to the physical control over the property, that is the exercise in fact of a real right, the possessor also has to show the animus domini, that is present himself or herself to others as the holder of the real right. (See J. Carbonnier, Droit Civil, 3-Les Biens, p175 et seq.)"

[44] In the case of **Seebun v Domun and others [2019] UKPC 39**, it was held that:-

i) Acquisitive prescription.

a) The legal framework

14. In its discussion of the legal framework the Board refers to articles of the Civil Code.

15. *In the context of this case, there are six important features of the law of acquisitive prescription.*

*First, acquisitive prescription is a means of acquiring ownership (article 712). Acquisitive prescription by possession without the support of a title requires possession for a period of 30 years (articles 2261 and 2262). But between 1883 and 1 January 1984 the period was 20 years (article 3 of Ordinance No 16 of 1883). The period was then increased to the current period of 30 years by Act No 9 of 1983, which in a transitional provision in section 72(12) preserved the rights acquired by the shorter period of prescription before its commencement. See to this effect the judgment of the Court of Civil Appeal in *Rioux v Esplacathose* 2003 SCJ 248.*

*Secondly, acquisitive prescription does not arise by operation of law. A person who has had the necessary possession must assert his or her ownership of the property as a result of acquisitive prescription. This is evident from the rule that it is not within the power of the judge *ex proprio motu* to establish someone's ownership by prescription (article 2223). It is also apparent from the rule that one can renounce the right conferred by prescription after it has been acquired (article 2220).*

Thirdly, the quality of possession that is required to acquire ownership by prescription is set out in article 2229 in these terms: "Pour pouvoir prescrire, il faut une possession continue et non interrompue, paisible, publique, non équivoque, et à titre de propriétaire. Pour prescrire en matière immobilière, la possession doit, en outre, présenter un caractère apparent, manifesté par des signes matériels extérieurs, tels qu'une construction, un mur bâti servant de clôture, des plantations."

Fourthly, there is a presumption that a person possesses for himself and by right of ownership if it is not proved that he commenced his possession on behalf of another (article 2230).

Fifthly, one can aggregate one's own possession with that of one's author towards the achievement of possession for the prescriptive period; article 2235 provides: "Pour compléter la prescription, on peut joindre à sa possession celle de son auteur, de quelque manière qu'on lui ait succédé, soit à titre universel ou particulier, soit à titre lucratif ou onéreux."

Sixthly, prescription can be interrupted naturally through loss of possession or civilly by a legal challenge to the possessor. Article 2244, which addresses the latter, provides: “Une citation en justice, un commandement ou une saisie, signifiés à celui qu’on veut empêcher de prescrire, forment l’interruption civile.”

[45] In the case of **Atlas Printing & Co Ltd v Sawkutally Sooltan** [\[2021 SCJ 205\]](#) the Court had this to say: -

“The party which claims to have acquired a property by acquisitive prescription has the burden of proving, on a balance of probabilities, each and every one of the requisites for acquisitive prescription, namely continuous and uninterrupted, peaceful, public and unequivocal occupation animo domini (à titre de propriétaire) and in an apparent manner, of the property in lite for at least 30 years as well as the precise date as from which the 30-year period starts running.

Further it is clearly established that –

“... a recital of all the requisites of possession necessary for prescription such as they are enumerated in article 2229 of the Civil Code will clearly not suffice. Each requisite is governed by legal principles which prescribe its factual constituents. It is, consequently, the function of the judge to determine the existence of any such requisite from any set of circumstances and he cannot perform that function until and unless those circumstances are placed on record. To succeed with a defence of prescription ... a respondent ought, accordingly, first to put forward such facts and circumstances as would allow the judge to decide whether his possession would satisfy the requirements of article 2229 C.C. and secondly to set out such other particulars of facts or circumstances, or documents as would lend some colour to his allegation ...” (vide **Ramnauth v. Ramnauth** [\[1969 MR 31\]](#))”

[46] After having considered all the evidence adduced, my findings are as follow: the case for the defendants rested on the sole witness Mrs. Janagee Putlarao, who testified on behalf of all the defendants. No documentary evidence was produced by her whilst she was deponing.

[47] On the other end, the plaintiff’s witnesses namely Mr. Neermul Saddul, Mr. Ricardo Ramiah, Mr. Rashid Jeewa, Mr. Sanassee, Mr. Joysuree and Mrs. Luximon have all clearly elicited material evidence demonstrating that the plaintiff holds a clear legal title of Plot A, B & C (**Document P1**). Additionally, upon the illegal occupation on Plots A, B & C, the plaintiff made numerous declarations at Baie du Cap Police Station and initiated several Court actions in order to take back possession of the Plots A, B & C.

[48] The ownership of the ‘Choisy Estate’ but most importantly of Plots A, B & C can be clearly established to be none other than the plaintiff through the different survey reports referred to as (**Documents P35, P36, P37, P38, P39**) and also from the title deed

(Documents P1). The survey reports as well as the constat produced on behalf of the plaintiff and the unrebutted testimonies of the Sworn Land Surveyor, Mr. Jeewa, who surveyed the land concluded that the plaintiff is the lawful owner of the lands *in lite* namely Plots A, B and C which are being unlawfully occupied by the defendants.

[49] The plaintiff also cleared the confusion that although Mr. Ricardo Ramiah, Land Surveyor, deponed to the effect that Plot A does not fall within the ownership of the Plaintiff Company but only Plots B and C are owned by the Plaintiff Company. Counsel for the plaintiff invited the Court to consider the evidence of Mr. Jeewa who physically surveyed the land as Mr. Ramiah himself admitted that a study of the plan was done whereby, he overlaid the plan through a process of tracing paper on the outcome of the domain book.

[50] The identified Plots A, B & C forming part of the '*Choisy Estate*' is owned by the plaintiff inasmuch as the said plots were indeed under sugarcane cultivation since 2005 (*being the sole records available in possession of the SIFB which have not been archived*) as registered with the SIFB by the plaintiff and further to the inspection of the SIFB.

[51] Mrs. Janagee Putlarao stated that the rent of the '*Choisy Boutique*' was being paid by Mrs. Luckhoo to "*tablissement Ramphul*". It can only demonstrate that the '*Choisy Boutique*' found next to Plot A is owned by the plaintiff.

[52] I believe the version of Mr. Joysuree, agronomist and former Manager of Ramphul Ltd, to the effect that the defendants have forcefully entered the sugarcane fields, namely on Plots A, B & C rightfully belonging to the plaintiff, in an illegal manner and have chemically destroyed the sugarcane with strong herbicides so that they could plant banana trees.

[53] I do not subscribe to the version of Mrs. Janagee Putlarao in relation to the tenancy of the '*Choisy Boutique*' found next to Plot A as Mrs. Putlarao was perfectly aware that rent was being paid to the plaintiff in their capacity of the owner of the shop.

[54] As to the abandonment of the lands for one year, the version of Mrs. Putlarao appears contradictory as she was well versed on one end with the procedure for the plantation of banana trees and she stated that she has stopped the said plantation for about a year so as to be able to clean the lands and plant sugarcanes on them. On the other end, she maintained that new banana trees must have spread during that period. It is therefore unconceivable according to defendant that the plots in issue could contain debris of sugarcanes.

(b) 'Date certaine'

[55] According to the evidence produced in the present case, the defendants did not in a clear and precise manner establish the starting point period during which the parents and grandparents of Mrs. Putlarao had been in possession of the land *in lite*. (emphasis mine).

[56] In the case of **Ramseeran v Pyndiah [2020 SCJ 47]**, the Court reiterated the basic element of certainty (date *certaine*) in acquisitive prescription:

“As rightly pointed out by learned Counsel for the respondents , it was incumbent upon the appellants, for the purpose of establishing their title by acquisitive prescription , to show that they and their author Michel Ramseeran have had for a period of thirty years ‘ une possession continue et non – interrompue , paisible , publique , non- équivoque et a titre de propriétaire of the land in lite’ and that such possession presented ‘ un caractère apparent manifesté par des signes matériels extérieurs (vide S. Rose v C. Golamnabee [2011SCJ 77]

It is also incumbent upon the appellants to establish with certainty, in a clear and precise manner not only the period during which Michel Ramseeran had been in possession of the land in lite but also its starting point.

We may for that purpose usefully refer to the following passage from Encyclopédie Dalloz, Vo Prescription civile note 126 cited in La Nouvelle Industrie Ltée , v Edoe [1956 MR 319] which reads ;-

***“ Quel soit le délai par lequel s’accomplit la prescription acquisitive, celui qui l’invoque doit prouver d’une manière précise quelle a été la durée de la possession et quel a été son point de départ ; s’il y a incertitude cet égard, le moyen de prescription doit être rejeté’. (vide Ramseeran v Pyndiah [2020 SCJ 47]”** see also the case of (Cheekoory J v Ramsamy D L [2009 SCJ 250]) (emphasis mine)*

[57] I am of the view that the plaintiff has proved on a balance of probabilities that it has been occupying the land *in lite* with all the requisites of acquisitive prescriptions i.e. for more than 30 years in a public, peaceful, continuous and uninterrupted, unequivocal and *animo dominii* and ‘apparent manner’ ever since the 13 December 1950 by virtue of a title deed transcribed in Vol. 545 No. 254 (**Document P1**). Mr Neermul Saddul and Mr Sanassee both averred that Plots A, B & C were under cultivation since 2005-2006. Mr. Jeewa, Land Surveyor also carried out various constats and surveys in 2006, 2007, 2009, 2018 and 2020 on behalf of plaintiff to confirm the ownership of plaintiff on plots A, B & C whereas the defendants have

not produced any evidence as regards to the precise date that their grandparents, parents and themselves have started to occupy the lands in question and what was the duration of their possession.

[58] Mrs. Janagee Putlarao (*who was 60 years of age when she deponed*), herself, her parents and her grandparents averred that they occupied the said land since her birth. We do not subscribe to the submission of learned Counsel for the defendants who jumped on the evidence of Mr. Ramiah who gave a specific date of occupation to the '*petites propriétaires*' as being 19 January 1964 to establish the connection between the parents and grandparents of Mrs. Janagee Putlarao and the '*petites propriétaires*'.

[F] Counter claim by the defendants:

[59] The defendants' counter claim is in relation to ownership of the property on the basis of acquisitive prescription. There were no documents which were adduced by the defendants except the testimony of the sole defendants' witness, Mrs. Putlarao.

[60] It incumbent upon the defendants to adduce evidence on each of the requisite elements for acquisitive prescription set out in **Article 2229** of the **CCM** and to establish on a balance of probabilities, that the occupation of the property *in lite* was continuous and uninterrupted, peaceful, public, unequivocal, *animo dominii* (*à titre de propriétaire*) and in an apparent manner, for at least 30 years, stating with precision the starting point of the 30 years' period.

[61] In the case of **Jugessur S. v Deonanan D. Mrs & Anor** [\[2013 SCJ 359\]](#) the Court averred the following: -

"The [party] must establish by virtue of Article 2229 of the Civil Code that his possession was a possession continue et non interrompue, paisible, publique, non-équivoque et à titre de propriétaire. He must also establish that his possession had un caractère apparent, manifesté par des signes matériels extérieurs, tels qu'une construction, un mur bâti servant de clôture, des plantations. "

[62] In the present case, the defendants have not adduced any evidence to sustain their claim that they have allegedly occupied Plots A, B & C for more than 35 years, as averred in their Counter Claim. As per the testimony of Mrs. Putlarao on behalf of the defendants, it cannot be ascertained as from when exactly the grandparents and the parents of the defendants had started to occupy the land in dispute.

[63] On the other hand, the plaintiff has shown that the defendants' illegal occupation started on 11 January 2006 when Mr. Joysuree reached on site at 07:30 a.m., for his daily duties. This averment is supported by the fact that the property *in lite* was surveyed by Mr. Belcourt by virtue of a report dated 31 January 1964 which was made after the acquisition of the land in 1950. It is important to highlight that at the time of the said survey, the property *in lite* was unoccupied as can be gathered from said report of Mr. Belcourt, marked as **(Document P1)** of Mr. Ramiah's Report.

[64] In the present case, the plaintiff has continued his sugarcane plantation on the plots of land. The lands *in lite* were registered with the SIFB which is enough to demonstrate that the lands were at all times under sugar cultivation and were therefore being used by the plaintiff. The date of the aforesaid registration with the SIFB being 1975 equally predates the defendants' attempts of prescription.

[65] The case of **Société Civile Kamlaville v Harel Marie Joseph Paul** [\[2003 SCJ 209\]](#) is of relevance here:-

“An owner is under no obligation in law to improve his land. His only duty is to show that he is still interested in his property and not abandoned it, that is ‘qu’il continue à porter intérêt a son bien même s’il ne l’utilise pas momentanément.” The Court also stated « *la prescription acquisitive, parce qu’elle peut éventuellement entraîner le transfert d’un droit réel, du véritable propriétaire au simple possesseur, requiert des conditions strictes. Les délais de possession exigés sont important mais, de plus, certains évènements peuvent les suspendre ou les interrompre ce qui empêchera la prescription de produire normalement ses effets’ see para.11, Rep. Civ. Dalloz Vo ‘ Prescription Acquisitive”*

[66] The date of the occupation of the land *in lite* amounts to an “*incertitude*” since the defendants have not adduced any evidence regarding the precise duration of their possession as no evidence was adduced pertaining to the identity of the defendants who occupied the Plots A, B & C.

[67] In this context, I would like to highlight the report of the Law Reform Commission on **Views & Recommendations of the Report of the Commission of Inquiry on ‘Acquisitive Prescription’ [March 2018]**. The Commission of Inquiry also referred to the retroactivity of acquisitive prescription, the property thus acquired begins on the day the prescription starts. The recommendations were inserted in

Section 3 of The Acquisitive Prescription Act 2018 [\[Act No. 13 of 2018\]](#) which repealed **The Affidavits of Prescription Act 1958**.

Section 3 provides as follows:

“Request to notary to draw up deed of prescription

The occupier of an immovable property who wishes to claim ownership of the immovable property by way of acquisitive prescription shall request a notary to draw up a deed of prescription on the submission of the following information and documents –

(a) an affidavit, sworn by the occupier –

(i) specifying the number of years during which he has occupied the immovable property; and

(ii) that he agrees with the contents of the affidavits of the 2 witnesses referred to in paragraph (e);

(b) a memorandum of survey drawn up, in accordance with the Cadastral Survey Act, by a land surveyor, setting out the location, description and exact boundaries of the immovable property;

(c) an affidavit of the land surveyor referred to in paragraph (b) regarding the contents of the memorandum of survey;

(d) the PIN in respect of the immovable property;

(e) 2 affidavits of 2 witnesses who are not less than 48 years of age and reside or occupy, or who have resided or occupied, a plot of land in the vicinity of the immovable property, confirming that the occupier has occupied the immovable property for at least 30 years;

(f) the occupier’s recent passport size photograph and National Identity Card;

(g) the recent passport size photograph and National Identity Card of each of the witnesses referred to in paragraph (e); and

(h) a utility bill, in the name of each of the witnesses referred to in paragraph (e), issued not more than 2 months before the date on which the request is made to the notary under this section, as proof of address.”

[68] This above provision of the law has considerably curtailed fraudulent acquisitive prescription by protecting the rights of owners who do not possess documentary evidence (e.g., written contract) to prove their title and also acts as wake up call for careless owners, who has remained passive for too long, and does not even notice a third party behaving like the real owner.

[69] The defendants have averred in their plaint that due to the wrongful acts and doings of the plaintiff the defendants have suffered prejudice and damages estimated Rs. 500,000. In view of the averments made in the Counter Claim which have not been substantiated by failing to satisfy the conditions for prescription, no award for damages can be made. I accordingly set aside the Counter Claim.

[70] For the reasons given above, I find the case for the Plaintiff Company proved on a balance of probabilities.

- (1) I accordingly declare the Plaintiff Company to be the owner of '*Choisy Estate*' comprising of an area of approximately 949 Arpents and 37 square perches representing the remaining portion of land (*after the distraction of several portions of land of the original portion of land of an extent of 1256 Acres*) in virtue of a title deed dated 13 December 1950 duly transcribed in Vol. 545 No. 254.
- (2) I further grant a perpetual injunction restraining and prohibiting the defendants by themselves, their servants, workmen, agents, préposés, or employees from any manner whatsoever from:
 - (a) *Entering and/or occupying 'Choisy Estate' belonging to the Plaintiff; and*
 - (b) *Interfering with the free and quiet enjoyment of the Plaintiff of 'Choisy Estate'.*

With Costs.

M.E.S.J. Moutou-Leckning
Judge

29 February 2024

For Plaintiff : Mr J. J. Robert, Attorney-at-Law

: Mrs U. Boolell, SC together with

Mr F. Soreefan, of Counsel

For Defendants : Mr K. Bokhoree, Attorney-at-Law

: Mr R. Rutnah, of Counsel