IN THE SEYCHELLES COURT OF APPEAL

Roger Hoareau — Appellant

v.

Elias Hoareau — Respondent

Civil Appeal No. 1 of 1987

Judgment of Goburdhun J.A

This appeal arises out of a judgment of the Supreme Court ordering specific performance of an alleged oral agreement entered into between the respondent (plaintiff in the court below) and the appellant (defendant in the court below).

The respondent's case was that the appellant, the respondent and a third brother became co-owners of a portion of land by inheritance. The respondent with the consent of the appellant laid the foundation to build a house for his son Rock on the common property. When the property was partitioned between the three brothers the land on which the foundation stood fell into the lot alloted to the appellant. Following the partition the appellant verbally agreed to sell to the respondent the area of land where the house foundation was. The appellant went back on his word and refused to sell the land to the respondent. Hence he brought the action before the Supreme Court seeking for an order to enforce the alleged agreement.

The appellant denied the existence of any agreement between him and the respondent to sell any land,

Evidence was adduced and led in by both sides and the learned trial judge found that there was an oral agreement between the parties and he made an order as prayed for by the respondent.

The judgment of the learned trial judge is being challenged on several grounds,(which I need not reproduce), the main one being that the learned judge was wrong to have found that there was an oral agreement between the parties as alleged by the respondent.

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The relevant part of the judgment of the learned judge reads as follows:

> "The humble plaintiff impressed me as a truthful witness than the sophisticated sailor brother, the defendant. The plaintiff's son's Roc.'s evidence that the defendant kept off the transfer saying that the title deeds are still not ready appeared to me to be a typical ruse of the defendant to put off the undertaking. In all the circumstances of this case I accept the version of the plaintiff about this agreement and hold that there was an oral agreement between the plaintiff and the defendant in relation to the portion of land covered by the structures and I reject the version of the defendant."

I have carefully scrutinized the record and find that there are serious discrepancies in the evidence adduced on behalf of the respondent Whilst the respondent speaks of an alleged oral contract between the respondent and the appellant the son Roch Hoareau speaks of an agreement between himself and the appellant.

In his evidence the respondent said the following:

> "When I discovered that the foundation has fallen on my brother's land, my brother and I talked about it and he said he would sell me that small portion of land. This was said in the presence of the mason and my son, Rock. He said he would sell me that small portion for R1,000.00."

It is strange that neither the mason Jean Beaudorin nor the son Rock Hoareau both of whom/on behalf of the respondent mentioned this /deponed conversation when they gave evidence. Respondent also said that it was on the day of the partition that the appellant agreed to sell the land to him. There is no mention of it in the partition deed. The respondent could have called the land surveyor to support his version. He did nothing of the sort.

ON the other hand I find no flaw in the version of the appellant. The learned judge has preferred the version of the "humble witness" that was the plaintiff to that of the "sophisticated defendent" but he has given no good reason for his choice

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An appellate Court should attach great weight to the opinion of the trial judge on questions of fact and it will only revise a decision based on facts if it is unreasonable. In the present case I find no difficulty in holding that it was unreasonable on the part of the learned judge to have accepted the version of the respondent.

I accordingly allow the appeal and set aside the judgment of the trial judge. The trial judge has not adjudicated on the question of damages and I leave it open.

The respondent to pay the costs of this appeal.

Justice of Appeal

Supreme Court
Victoria

June 1988

Read in open Court
19th July 1988