

IN THE SEYCHELLES COURT OF APPEAL

RITA CHANG-TAVE

APPELLANT

VERSUS

JOLIFF AGATHINE

RESPONDENT

JUDGMENT OF L.E. VENCHARD

This is an appeal against a judgment of the Supreme Court (Abban C.J.) decreeing that the contract of sale of a plot of land between the parties had been "frustrated and repudiated" (sic) and that the Plaintiff now Respondent was entitled to be refunded the purchase price of Rs 35,000 together with interest at the legal rate and costs.

The Appellant (the Defendant in the Court below) now appeals against the judgment of the learned Chief Justice on the following grounds:-

- (1) That the Learned Chief Justice erred in his appreciation of the law.
- (2) That there is no basis upon which the Learned Chief Justice found that the contract of sale had been "frustrated or repudiated".
- (3) That the judgment is contrary to the evidence.

In normal circumstances, I would have declined to entertain grounds (1) and (3) of this appeal as they are too vague. Legal advisers are reminded that an Appellate Court cannot do justice to litigants if the grounds invoked in the appeal are couched in terms which are vague and perfunctory. It is not enough to say that the trial judge has erred in his appreciation of the law. It is necessary to indicate the particulars relating to the erroneous appreciation of the law. Likewise, it is not enough to say that the judgment is contrary to the evidence. Care should be taken to identify the erroneous conclusions arrived at.

This observation is not intended to be a criticism of Counsel but an indication of what is expected if Counsel wishes that the grounds of appeal invoked receive the consideration which they deserve.

The facts which have given rise to this appeal may be briefly summarised as follows:-

The Respondent had agreed to purchase a plot of land and the Appellant had promised to sell the said land to the Respondent. Subsequently the Respondent caused his proxy to pay the agreed purchase price of Rs 35000 to the Appellant.

The Respondent averred in his plaint that at the time the land was shown to him it had not been surveyed and that there was no right of way on the land. The Appellant denied that averment and averred that the Respondent was fully aware of the existence of the right of way.

The Respondent gave evidence in support of his averment. He stated that at the time the land was shown to him, boundaries were indicated

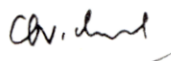
without there being a right of way. This evidence was not contradicted, the Appellant having elected not to adduce any evidence. The findings of fact of the trial judge were therefore fully justified.

The land which the Respondent had agreed to purchase was not encumbered with a right of way. Such an encumbrance constitutes a breach of an essential condition of the contract of sale which in law entitles the Respondent to claim damages or to rescind the contract. The Respondent did not claim any damages but only sought the return of the purchase price. In other words he sought a rescission of the contract. It is unfortunate that expressions such as "frustration" or "repudiation" have been used since those expressions could easily lead to confusion as they are not appropriate to the matter with which we are concerned.

Incidentally, it should be noted that under the law applicable in this country, it was open to the Respondent to claim damages or, alternatively, to seek the rescission of the contract. Unlike English Law, the remedy for the rescission of the contract is not dependent on the Court's discretion. (Vide Chloros p 117).

I agree that on the facts proved, it was proper for the trial judge to rescind the contract and to order the Appellant to refund ~~of~~ the purchase price together with interest.

This appeal is accordingly dismissed with costs.


L.E. VENCHARD

Read in open court on 2nd August 1994