

## IN THE SEYCHELLES COURT OF APPEAL

CIVIL APPEAL NO. 28 of 1994



ANTONIO THAILAPATHY

APPELLANT

v

BARRY TIRANT

FIRST RESPONDENT

LORENCE THAILAPATHY

SECOND RESPONDENT

Before: Ayoola, Venchard &amp; Adam, J.J.A

Mr. F. Bonte for the Appellant  
 Mr. A. Derjacques for the Respondents

## JUDGMENT OF ADAM, J.A.

We dismissed this appeal after the hearing. These are the reasons.

The Appellant sought the issue of a Writ of Habere Facies Possessionem to eject the Respondents from parcel of land V 3200. Amerasinghe J. found that the Appellant and Mrs. Diana Thailapathy were co-owners of the parcel land and that she had given permission to the Respondents to occupy the said land. In accordance with Article 823 of the Seychelles Civil Code the Appellant and Mrs. Diana Thailapathy were appointed fiduciaries by Notary R.S. Dhanjee. The issue that had to be determined on the objection on behalf of the Respondents was whether the Appellant had any right to institute proceedings against the Respondents. Amerasinghe J. upheld the objection that the application launched at the instance of one of the fiduciaries was in violation of Article 823. he also held that there existed a real and substantial dispute due to the claim for improvement and occupation by the Respondents which had to be

at that time the second defendant was a third party and not co-owner. The appointment of the first defendant as fiduciary was incomplete since the two plaintiffs did not consent to this as co-owners of S 188 who were not bound by the said appointment. That property S 188 remained in indivision and so the two plaintiffs had an interest in it. In 1984, 1986 and 1987 the second defendant purchased other shares of S 188 at which time he was a third party. This meant that a right of retrocession was exercisable against him within 10 years by the two plaintiffs. The second defendant raised an objection that the two plaintiffs could not bring an action of retrocession on their own without acting through a fiduciary. Alleeear J. (as he then was) applying *Vidot v Vidot*, supra, held that the two plaintiffs had a right to apply to the Court for the exercise of retrocession without going through a fiduciary. Mr. Bonte also argued that the Respondents were trespassers.

Mr. Derjacques for the Respondents submitted that Article 834 of the Seychelles Civil Code dealt with the case of a sale of a co-owner's share to a third party and the other co-owners right to buy back that share held by the third party within 10 years and so the cases cited by Mr. Bonte concerned that Article. But in the present case under Article 818, where immovable property was subject to co-ownership, the rights of co-owners must be held on their behalf by a fiduciary through whom only they may act. The Appellant and Mrs. Diana Thailapathy were duly appointed fiduciaries. He argued that fiduciaries could bring actions against each other but could not under Article 818 individually proceed against a third party as they must act