

IN THE SEYCHELLES COURT OF APPEAL

EUGENE AUGUSTE DUBEL

APPELLANT

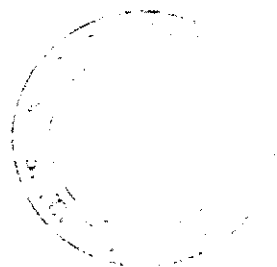
VERSUS

ESAIE DELORIE

RESPONDENT

Civil Appeal No. 11 of 1995

Mr. B. Renaud for the Appellant
Mr. C. Lucas for the Respondent



JUDGMENT

The Respondent, in his amended plaint, averred in effect that in terms of a deed of sale he had sold parcel No. H2094 to the Appellant but that it was by mistake that the deed of sale refers to title No. H2094. He had intended to sell only a subdivision of parcel H2094, namely parcel H2784. He accordingly prayed for the sale of parcel H2094 be declared null and void and for other incidental orders.

The Appellant, in substance, denied that there had been any mistake as regards the parcel which was sold and that the Respondent had clearly intended to sell parcel H2094. He Appellant further averred that the Respondent was "estopped as the transfer document is a notarial document countersigned by 2 witnesses and duly registered and there is no fraud."

The Respondent adduced oral evidence of the mistake without any objection from the Appellant as to the admissibility of oral evidence. In this regard it must be observed that Article 1319 of the Civil Code had been amended in 1975 to provide that the legal presumption arising from an authentic document was rebuttable by evidence to the contrary. It was therefore open to the Respondent to

prove the mistake by oral evidence to which no objection was taken notwithstanding the defence of estoppel raised on behalf of the Appellant ~~Defence~~.


The Respondent gave evidence of the mistake. The Appellant did not give evidence but his daughter gave evidence which supported the Respondent's averment. The circumstantial evidence adduced in the case also supported the Respondent's averment. The trial judge was fully justified to have arrived at his conclusion that there had been a mistake and to order the rescision of the sale of parcel H2094.


This appeal is dismissed. However the orders made by the trial judge require to be varied as the Respondent himself clearly contemplated that the Appellant had an option to accept parcel H2784 or to be refunded the sum of Rs. 8000, being the consideration he had received for the mistaken sale. The trial judge in Order (b) of his judgment clearly upholds the Appellant's right to require the Respondent to transfer parcel H2784. That Order is however amended by adding at the end thereof the following "or alternatively, to refund to the defendant the sum of Rs.8000/-."

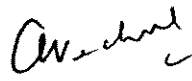
On the other hand Order (d) made by the trial judge should also be amended as the Court cannot speculate on the option which the Appellant has. That Order (d) is amended by deleting the words "by substituting in its place the transfer of parcel H2784 from the plaintiff to the defendant" and substitute therefor the word "accordingly."

It follows that should the Appellant opt to formally purchase parcel H2784 in accordance with Order (b), the transfer of parcel H2784 will automatically have to be registered.

We make no order as to costs.


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A. SILUNGWE JA


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E.O AYoola JA


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L.E. VENCHARD JA

Dated this 29 day of Feb. 1996.