(8)

IN THE SEYCHELLES COURT OF APPEAL

ERLINE BRISTOL APPELLANT

VERSUS

GUYTO LIONNET RESPONDENT

Civil Appeal No. 24 of 1996

(Before: *GOBURDHUN., P. AYOOLA, VENCHARD JJ.A.)*

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Mrs. A. Tirant for the Appellant
Mr. F. Bonte for the Respondent

JUDGMENT OF THE COURT
Delivered by Venchard J.A

The Appellant entered a plaint against the Respondent alleging that the latter has been trespassing her land. The Respondent traversed this allegation and pleaded that he was exercising his right of way over the Appellant's land.

The issue raised in this appeal is governed by Articles 682-696 of the Civil Code. Those Articles which have borrowed from the French Civil Code are reproduced in the English language in the revised Civil Code of 1975. Except for a very minor amendment which has no relevance to the present case there has been no change in the law.

A right can exist either by title or by operation of law. Article 682 provides that where to a plot of land has no access to the road (enclave) the owner of the land may require the owner of the adjacent land to grant him right of way. On the other hand under Article 694 a right of way may be acquired by "destination de pere de famille" provided the right of way was visible (apparent) at the time the two adjacent portions are disposed.

Counsel for the Appellant submitted in substance that in the particular circumstances of this case the respondent can only claim the right of way by a title which has been duly registered but that no such registered exists.

It is not in dispute that the two adjacent plots of land H78 and H1354 were parcelled and disposed of by the common owner (Boris Adam). The deed of sale in respect of parcel H78 clearly stated that there was in favour of H78 a right of way of 15 ft. This right of way was duly transcribed in Volume 50/358. However there is no indication in the deed of transfer of parcel H1354 to the effect that it is burdened with a right of way in favour of the adjacent plot H78.

Counsel for the Appellant rightly argued that in the absence of a provision burdening plot H1354 with a right of way in favour of the owner of plot H78 the latter is not entitled to such a right.

Paragraph 3 of the Defence which asserts the existence of a registered right of way must fail as the deed of the alleged servient tenement makes no provision for the exercise of such a right of way in favour of plot H78.

However, the matter does not end there. I have to examine whether such a right by operation of law. Mrs Gherardi made two observations on this issue -

(a) there is no indication as to the "assiette de passage";
(b) the alleged right of way was not visible (apparent) at the time parcels H78 and H1354 were disposed of by the common owner,

She accordingly submitted that Article 694 cannot therefore find its application and no right of way can be said to arise by operation of law.

It is a fact that there is in the documentation which has been produced no indication of the "assiette de passage" of the alleged right of way. However, it is a clear that the Respondent has a right of way and it is elementary common sense that it can only be exercised on the adjacent land. In this contest, the maxim "Id centum est quoad reddi potest" should find its application.

On the other hand, we are satisfied from Mrs Lionnet that the right of way existed in 1968 at the time of the partition of the two plots. No doubt improvements were thereafter made thereto but this cannot deprive the Respondent of his existing right. We are confirmed in our view by the ready admission by Mrs Gherardi that there existed a footpath in 1968 (which in Respondent's title is said to be 15 ft!) and by the fact as was pointed out by Mr Bonte that the present complaint is first being made in 1994.

We find there is no merit in this appeal which is dismissed with costs.

H. GOBURDHUN	L. E. VENCHARD	E. O AYOOLA
President	**Justice of Appeal**	**Justice of Appeal**

Dated this ...2nd... day of ...April... 1997.