

IN THE SEYCHELLES COURT OF APPEAL

JACQUELINE LABONTE)	
)	APPELLANTS
JEAN-BAPTISTE LABONTE)	
V		
ROBERT BASON)	RESPONDENT



Civil Appeal No. 13 of 1996

(Before: Goburdhun, P; Ayoola; Adam, J.J.A)

Mr. J. Renaud for the Appellants
Mr. B. Renaud for the Respondent

JUDGMENT OF THE COURT DELIVERED BY AYOOLA, J.A.

This is an appeal from the judgment of the Supreme Court delivered on 8 April 1996, ordering the transfer of a parcel of land described as Parcel S1640 by the defendants to the plaintiff, setting aside the transfer of the said land by the 1st defendant to the 2nd defendant and ordering a rectification of the Land Register pursuant to Section 89(1) and (2) of the Land Registration Act, Cap. 107. The appeal is by the 2nd and 3rd defendants in the action, while the respondent was the plaintiff in the action. The 1st defendant in the action did not participate in the action and has not appealed from the decision. The appellants and respondent in this appeal are referred to in this judgment respectively as "the defendants" and "the plaintiff".

The plaintiff in the action was the husband of the 1st defendant who is the sister of the 3rd defendant. The 2nd defendant is the husband of the 3rd defendant. The property which was the subject of the action is a parcel of land situate at Anse Aux Pins, Mahe, with a building on it. It is now described in the judgment as "the land".

The plaintiff's case in the Supreme Court is that on 1st June 1988, he purchased the land for the sum of R.100,000 and furniture for R.18,000 but in the name of the 1st defendant as he was a non-Seychellois. He averred by his plaint that it was agreed between

himself and the 1st defendant that the land would be transferred back to him upon his becoming a citizen of Seychelles. The plaintiff and the 1st defendant lived together on the property as their matrimonial home until February, 1990 when they separated and the plaintiff continued to occupy it while the 1st defendant went to live in the United Kingdom. Prior to this, in January 1990, the 1st defendant transferred the land to the 2nd and 3rd defendants for the sum of R. 100,000. The plaintiff alleged that the transfer was without his knowledge and that the three defendants collaborated on the transfer in order to deprive and prevent him from obtaining his rights in the said land. He contended that the transfer was void and to no effect in that, "(a) it was made contrary to the original mutual understanding between the plaintiff and the 1st defendant; and (b) it is a sham". It was on these facts as alleged by him that the plaintiff sought an order that the transfer of the land by the 1st defendant to the 2nd and 3rd defendants be set aside and the land transferred back to him.

The 1st defendant did not file a defence to the plaint but the other two defendants did. In it, they contended that the plaintiff has no cause of action against them. They averred that the land was bought and owned by the 1st defendant and save that the 1st defendant transferred the land to them, they denied the main averments in the plaint.

Before evidence was heard, judgment was entered against the 1st defendant under Section 65 of the Civil Procedure by Bwana J. Later, he gave judgment as earlier stated in favour of the plaintiff after hearing the evidence of the plaintiff and the 2nd defendant.

In this appeal from that judgment by the defendants, the only issue that really arises from the four grounds raised by their memorandum is whether the Judge was right in finding fraud against the two defendants. That issue arose because of several passages in the judgment from which it is evident that the Judge submitted the issue of fraud prominently for his consideration and he determined the case on the footing that the transaction between the 1st defendant and the other two defendants was fraudulent. For instance, he said:-

"The remaining issue for consideration.....is whether or not the transaction between the 1st defendant and the other two was a sham and fraudulent aimed at depriving the plaintiff of his matrimonial home."

In his consideration of that issue, he discussed the meaning of "sham" and "fraud" and the distinction between the two and spoke of sham being similar to fraud, and of fraud being more than sham. Having done this, he held that the deed of transfer by which the land

was transferred to the other defendants by the 1st defendant was a sham, and that it was aimed at defrauding the plaintiff “of his rights in Parcel S.1640.”

On this appeal, it is contended by counsel on behalf of the 2nd and 3rd defendants that fraud was neither pleaded nor proved and that consequently the learned Judge was in error in considering the issue of fraud. Counsel for the respondent agreed that fraud was not pleaded but nevertheless contended that the finding by the Judge that the transaction was a sham sufficed.


It is trite that fraud must be specifically alleged and proved. The standard of proof in a civil case of an allegation of fraud though not as high as that in criminal proceedings is of a higher standard than that of other allegations of fact. It is evident from the averments in the plaint that there was no specific allegation of fraudulent intent. It must be acknowledged that this is a borderline case in which on a reading of paragraphs 9, 10 and 11 of the plaint it may be surmised that the plaint contained an allegation that the defendants conspired (collaborated) to deprive the plaintiff of his rights in the property by means of a false (sham) transfer. However, as far as allegation of fraud is concerned this is insufficient pleading. Fraud cannot be presumed and the requirement that fraud must be pleaded with particularity means that the acts of the alleged fraudsters relied on must be pleaded. In this case it cannot be said that sufficient facts have been pleaded to justify the conclusion that fraud has been alleged.

Even if it had been alleged, it is evident that the Judge had not adverted to the higher standard of proof that is required. It appears that judgment in default was entered against the 1st defendant before the facts were considered in respect of the other defendants. The fact that judgment in default of pleadings was entered against the 1st defendant was used by the Judge as providing “a logical conclusion that there existed an agreement between the two persons (the plaintiff and the 1st defendant) to transfer back to the plaintiff the ownership of the property once the latter obtained Seychellois citizenship”. It is manifest that judgment obtained against the 1st defendant could not have operated as issue estoppel against the other defendants or proof of such facts as were by the pleadings in issue between the plaintiff and the other defendants. Furthermore, it is not sufficient merely to establish that there was an agreement between the plaintiff and the 1st defendant to justify a finding of fraud against the other defendants without proof that those other defendants knew of the agreement.

On a review of the entire proceedings it is clear that the Supreme Court had misdirected itself on the question whether the issue of fraud has arisen in the case, and if so, that it has failed to advert to the question of standard of proof. Besides, consideration of the case of the 2nd and 3rd defendants has been unduly tainted by the use made by the Supreme Court of the default judgment against the 1st defendant.

For these reasons the judgment appealed from should not stand. The appeal is allowed. The judgment of the Supreme Court entered on 8th April, 1996 is set aside. The case is remitted to the Supreme Court for a new trial before another Judge. The appellants are entitled to costs of the appeal.


Dated this day of 1997.


E. O. AYoola
JUSTICE OF APPEAL


H. GOBURDHUN
PRESIDENT

M. A. ADAM
JUSTICE OF APPEAL

Judgment read and delivered in open court
by me this 21st day of May 1997


Judge.