

IN THE SEYCHELLES COURT OF APPEAL

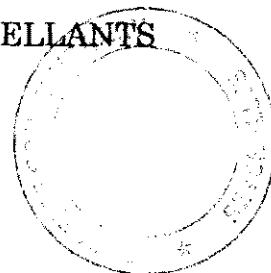
- 1. JULIEN PARCOU
- 2. JULIEN (PROP) LTD
- 3. MR. & MRS OCTAVE TIRANT

APPELLANTS

VERSUS

- 1. KAVEN PARCOU
- 2. MRS THELMA PARCOU
- 3. MRS MARINA PARCOU
- 4. HEDRIC PARCOU

RESPONDENTS



Civil Appeal No. 32 of 1994

(Before: A. SILUNGWE, E. O AYOOLA, L. VENCHARD JJJA.)

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Mr. B. Georges for the Appellants  
 Mr. R. Valabhji for the Respondent

JUDGMENT OF THE COURT

This is an appeal against a ruling of the Supreme Court of Seychelles [Amerasinghe J] granting to the Respondents their application for licitation of the parcel of land V5553. He held that the Respondents were entitled to an undivided one-fourth share in the said parcel of land.

The Appellants, in paragraph 7 of their original memorandum of appeal dated 18<sup>th</sup> January 1995, averred that "the sale of parcel V5553 is prescribed in terms of the ten-year prescription."

This ground of appeal is also raised in paragraph 7 of the amended memorandum of appeal dated 10<sup>th</sup> June, 1996.

The Respondents have objected to this plea of prescription. Mr. Valabhji for the Respondents in his oral submission, argued that this plea is being raised for the first time on appeal and is time barred as being outside the delay for lodging an objection to the application for the licitation and the amended memorandum of appeal cannot be of any avail to the Appellants as this matter is not governed by the Seychelles Court of Appeal Rules.

We need not pause to consider this submission of Mr. Valabhji in as much as this issue was raised in the original memorandum of appeal and presumably it is being reproduced in the amended memorandum ex abutendi cautela. The plea of prescription was initially raised in the initial objection formulated by the Appellants to the grant of the Respondents' application for licitation. It should however be observed that the Appellants did not specify the nature of the prescription invoked by them.

On the other hand, it was open to Mr. Valabhji to seek particulars of the nature and the period of prescription which was pleaded. It was abundantly clear at the end of the proceedings that the nature of the prescription invoked was the ten-year prescription. The five-year prescription could not be of any avail as the matter under consideration was in respect of real property. Nor could the twenty-year prescription apply, even at this day, since twenty-years have not yet elapsed.

Nevertheless, the parties proceeded on the basis that the prescription which was pleaded related to the five-year period under Article 2271 of the Civil Code. In that sense, they misled the trial Judge who proceeded on the assumption that it was the twenty-year period of prescription under Article 2262 of the Code which was in issue and did not consider the ten-year period of prescription provided for under Article 2265 of the Code. The fact, however, remains that, in view of the plea of prescription of a general nature

which was raised and not particularised, it was for the trial Judge to examine all issues relevant to that plea notwithstanding the fact that he was misled by counsel. Indeed, the only period of prescription which was of relevance could only be the ten-year period.

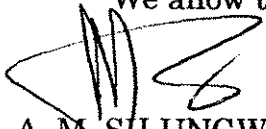
Mr. Georges submitted that there was sufficient evidence on record to establish that the Appellants had acted in good faith which in any case was to be presumed under Article 2268. Accordingly, it was open to this Court to make a pronouncement on the issue of the ten-year prescription. He, however, stated that he would have no objection if the Court were to refer the matter to the trial judge for consideration of the issue.


Mr. Valabhji, on the other hand, argued that there was evidence on record of bad faith and that the Court could on such evidence determine the issue in favour of the Respondents. He, however, conceded in paragraph 9 of his written submissions that should the Court were to rule against him on the issue of bad faith, he would move "for Mr. Julien Parcou to be recalled and cross-examined fully now that a new plea is being raised. Had my friend indicated that he was relying on the 10 year prescription, I would have continued the cross examination to show that even the value was under declared."

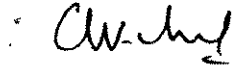
It would be extremely hazardous for this Court to determine the issue of good or bad faith. Both Counsel had submitted to the court that it was the five year period of prescription which was in issue. They thus misled the trial Judge who did not determine the plea of prescription of a general nature which had been raised by the Appellants. On the other hand, it is not apparent from the record that the good or bad faith of the third Appellants was ever canvassed.

We accordingly feel that, to meet the ends of justice, this matter should be remitted to the trial judge for consideration of the plea of prescription which had been raised.

We allow this appeal but we made no order as to costs.

  
**A. M. S. LUNGWE**  
**PRESIDENT**

  
**E O. AYoola**  
**JUSTICE OF APPEAL**

  
**L.E. VENCHARD**  
**JUSTICE OF APPEAL**

Dated this .....<sup>3<sup>rd</sup></sup> day of April, 1997.