

IN THE SEYCHELLES COURT OF APPEAL

**PANORAMA (PROP) LTD**

APPELLANT

versus

**LAURETTE MANCIENNE**

RESPONDENT

Civil Appeal No: 60 of 1998

*[Before: Ayoola, P., Pillay & De Silva, J.J.A]*

.....  
Mr. P. Boulle for the Appellant  
Mr. K. Shah for the Respondent

**JUDGMENT OF THE COURT**

*(Delivered by Pillay, J.A)*



The plaintiff, now the appellant, claimed, in essence, before the Supreme Court that, having exercised its option under Article 555 (3) and (4) of the Seychelles Civil Code and being prepared to pay compensation to the respondent, then the defendant, in respect of a structure built in good faith by the latter which had encroached on the appellant's land, it was entitled to a declaration that the right of retention of the respondent had expired and that no compensation is in effect due to the respondent since the value of its land has not been enhanced but has in fact depreciated by the construction of the structure.

The respondent not only denied that her right of retention had been extinguished and that compensation was not due to her in respect of the structure but counter-claimed that the most equitable solution in the circumstances was for the trial Court under Section 6 of the Courts Act to order the appellant to transfer to the respondent, upon payment by the latter of adequate compensation, that portion of the appellant's land on which the structure had been erected in good faith by the respondent.

The trial Court, after repairing to the locus found that the structure consisted of “putting a roof on an area that was already an open platform constructed by the defendant or her predecessor in title” and that the structure encroached on the appellant’s land. He came to the following decisions on the evidence on record:-

- (1) the construction works carried out by the respondent had enhanced the value of the appellant’s property;
- (2) compensation was therefore owed by the appellant to the respondent and could not amount to nil, as deponed to by the representative of the appellant;
- (3) an order was made in equity under Section 6 of the Courts Act for the area of land which belongs to the appellant and over which the structure had been erected by the respondent, to be transferred to the respondent after the value of the land had been determined by a valuer to be commissioned by both parties. The costs involved in the valuation and transfer of that area of land to the respondent are to be borne by the latter.

The appellant has appealed against all three decisions of the trial Court whereas the respondent has cross-appealed on the ground that having reached the decisions that it did, the trial Court should have dismissed the appellant’s plaint, with costs.

It is clear that the decisions of the trial Judge listed at (1) and (2) above are correct and cannot be disturbed as it was incumbent on the appellant to have adduced more cogent evidence to show why compensation payable to the respondent amounted to nothing, instead of relying on the ipse dixit of its representative which was, in any event, rejected by the learned Judge who had the advantage of visiting the locus and inspecting the structure.

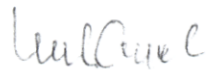
Consequently, we agree with learned Counsel for the respondent that the plaint of the appellant should be dismissed in its entirety, with costs. We order so accordingly.


With regard to the learned Judge's decision or order specified at (3) above, it should never have been made, as it is abundantly clear from the very wording of section 6 of the Courts Act that the Supreme Court can only exercise its equitable jurisdiction "in all cases where no sufficient legal remedy is provided by the laws of Seychelles" (the emphasis is ours).

In the instant case, the respondent has a sufficient legal remedy under Article 555 (3) and (4) of the Seychelles Civil Code i.e. a right of retention over the structure erected by her until she is compensated by the appellant.

In any event, as rightly pointed out by learned Counsel for the appellant, invoking the provisions of Article 545 of the Seychelles Civil Code, no one may be forced to part with his property except for a public purpose and in return for fair compensation (the underlining is ours). The learned Judge unfortunately shut his eyes to the obvious in making the order that he did as the appellant was made to part with its property for a private purpose.

For the reasons given, we quash the order made by the trial Court indicated at (3) above and dismiss the counter-claim of the respondent, with costs.

  
E.O. AYOOLA  
**PRESIDENT**

  
A. G. PILLAY  
**JUSTICE OF APPEAL**

  
G. P. S. DE SILVA  
**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 13 day of August 1999.