

IN THE SEYCHELLES COURT OF APPEAL

MARIE MAY TIRANT

Appellant

VERSUS

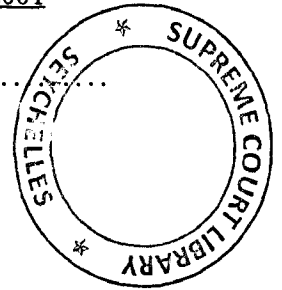
ROMAN CATHOLIC CHURCH

Respondent

Civil Appeal No: 5 of 2001

(Before: Ayoola, P., Pillay & Matadeen JJ.A)

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Mr. J. Renaud for the Appellant
Mr. F. Chang-Sam for the Respondent



JUDGMENT OF THE COURT

(Delivered by Pillay J.A.)

This is an appeal against a decision of the trial Court which dismissed the plaint of the appellant who alleged that part of one of the two plots of land, namely J 1288, agreed to be sold to her by the respondent had been excised after the lands had been resurveyed in 1991, to form an access way and so claimed damages for the alleged wrongful excision.

At the hearing learned Counsel for the appellant submitted that the appeal in essence challenges the findings of fact of the trial learned Judge and is concerned with the narrow issue of whether or not, when the appellant had bought plot of land J 1288 from the respondent, there was thereon an access road which was subsequently wrongfully distracted therefrom by the respondent.

The findings of fact of the learned trial Judge are as follows:-

- (1) the representative of the respondent showed in 1985 the particular plot of land to be sold to the respective purchasers, including the appellant herself - vide the testimony of Mr. Gilbert Fock-Tave and Mrs. Ana Tirant, the appellant's mother.
- (2) The appellant who was living with her mother, Mrs. Ana Tirant, was aware that the access road was outside the boundary of the two plots of land J 1287 and J 1288 when she had agreed to buy from the respondent – vide the testimony of Mrs. Ana Tirant.
- (3) No survey of any of the 8 plots of land sold by the respondent was made until 1991.
- (4) An application for sub-division of the plot of land belonging to the respondent (J1125) into 8 plots was made to the Planning Authority in January 1990 and approved in April 1990 (Exhibit P6). However, there was another application made by the respondent for amendment to its plan. According to this new application which was approved by the Planning Authority in December 1991 (Exhibit P7), the access road was outside plot of land J 1288 and on plot of land J 1289.

- (5) The sub-division of all the plots of land to be sold was legally approved in February 1992. According to this final survey (Exhibit P9) the access road was on plot J 1289 and was outside the boundary of plot J 1287 or plot J 1288.
- (6) The approved plans of plots J 1287 and J 1288 had been entered in the Land Register under folios JD/1205 and 1206 respectively since 1992. Those plans had been handed over to the appellant. She had consequently notice of the two plots of land she was purchasing or was deemed to have had notice of those plots of land, pursuant to section 26 of the Land Registration Act (Cap 107) which states as follows:

“Every proprietor acquiring any land, lease or charge shall be deemed to have notice of every entry in the Register and of the provisions of every filed instrument relating to the land, lease or charge and subsisting at the time of acquisition”.

In the light of his findings of fact, the learned trial Judge had no difficulty in coming to the conclusion that the appellant was aware that, after an amended application for the sub-division of the plots of land was made

and approved in 1991, the access road was on plot of land J 1289. Indeed, as indicated already, according to the appellant's own mother, the appellant was aware of this as early as 1985. Consequently, the appellant had no legal title to the access road which was on plot of land J 1289 and not on her own plot of land J 1288.

Having reviewed the findings of fact of the trial Court, in the light of the evidence on record and of the submissions of Counsel on both sides, we see no reason to interfere with them as they are fully borne out by the evidence. Moreover, the conclusion of the learned Judge cannot be impeached in the circumstances.

The judgment of the trial Court is consequently affirmed and the appeal is dismissed. Since the respondent, through its Counsel, waived its costs on appeal, there shall be no order as to costs.



E. O. AYoola
PRESIDENT



A. G. PILLAY
JUSTICE OF APPEAL



K. P. MATADEEN
JUSTICE OF APPEAL

Dated at Victoria, Mahe, this 6th day of August 2001