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**IN THE SEYCHELLES COURT OF APPEAL**

**PERCY D'OFFAY**

**Appellant**

**VERSUS**

**NELLA HOAREAU  
ROLAND D'OFFAY  
HARLAND D'OFFAY**

**1<sup>st</sup> Respondent  
2<sup>nd</sup> Respondent  
3<sup>rd</sup> Respondent**

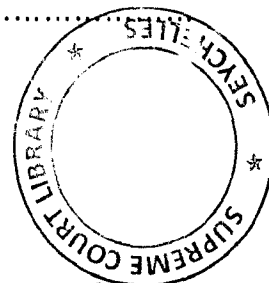
Civil Appeal No: 9 of 2001

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

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Mr. F. Ally for the Appellant  
Mr. P. Boule for the 1<sup>st</sup> & 3<sup>rd</sup> Respondents

**JUDGMENT OF THE COURT**

*(Delivered by Pillay, JA.)*



The appellant and the three respondents are all heirs to the estate of Marie-Therese d'Offay ("the deceased") who appointed the three respondents joint testamentary executors of her will made on 14<sup>th</sup> April 1994.

In a plaint entered before the Supreme Court in November 1998 the appellant, who was then the plaintiff, claimed, in substance, that the defendants, now the respondents, had not drawn up a proper inventory of the succession of the deceased and had refused to seek a valuation of the estate of the deceased. Consequently, they had failed in their duty as executors of the estate of the deceased and had to be removed by the Court.

The learned trial Judge in a well-reasoned judgment ruled, on a submission of no case to answer made on behalf of the first and third respondents, that the appellant had not made out his case and dismissed his plaint.

At the hearing of the appeal, learned Counsel for the appellant reiterated, in essence, the basic two points he had made, inter alia, before the trial court, namely that:-

1. *no proper inventory and valuation of the immovable properties belonging to the deceased had been made by the respondents;*
2. *as a result of such failure on their part, the respondents failed in their duty as executors of the estate of the deceased and had to be removed by the Court.*

With regard to the first point, the learned Judge found that, although there was no inventory in the form used in respect of the movables of the house at Anse Baleine (Exhibit P5(a)) , the letter addressed to the then attorney of the appellant (Exhibit P5) mentioned the Bougainville Guest House where a monthly rent was obtained and the large properties at Anse Soleil, Bougainville and Val d'Andore which were registered in the name of the deceased.

Moreover, although in the course of his examination-in-chief the appellant explained he was not satisfied with the contents of exhibit P5 because *"the inventory was not made properly. Only part of the property was done. Only the hotel and the house at the bottom of Anse Royale where Harland lives. There is another house at Anse Baleine that belongs to the heirs"*, he admitted under cross-examination that the house at Anse Soleil was unoccupied, that at Val d'Andore there were houses for the workers and at Anse Baleine, there was the hotel, the house at the bottom and next to the hotel, there was a worker's house.

Indeed the appellant agreed, so the learned Judge found, that the parcels of land inherited by the appellant and the three respondents were duly surveyed by a land surveyor and the boundaries thereof delineated and explained that his concern was only about how much was worth his one-fifth share of those parcels of land.

It is hardly surprising to us that, in the light of the evidence before him, the learned trial Judge came to the conclusion that a proper inventory of the immovable properties of the deceased had been carried out by the respondents, the more so as the law does not provide for the form or manner in which an inventory is to be carried out.

With regard to the immovable properties bequeathed by the appellant's grandmother, the late Yvonne Deltel, it was never the case of the appellant that no proper inventory had been made in respect of those immovable properties, as correctly submitted by learned Counsel for the first and third respondents.

In any event, the properties which were bequeathed by the appellant's grandmother were those at Anse Baleine and Anse Soleil (Exhibit P4) which were fully accounted for in the inventory drawn up by the respondents, as indicated already.

We may now turn to the second point. On this issue the learned trial Judge first referred to articles 1027 and 1028 of the Civil Code of Seychelles Act (*"the Act"*) which state as follows:-

1027 - *The duties of an executor shall be to make an inventory of the succession to pay the debts thereof, and to distribute the*

*remainder in accordance with the rules of intestacy, or the terms of the will, as the case may be.*

*He shall be bound by any debts of the succession only to the extent of its assets shown in the inventory.*

*The manner of payment of debts and other rights and duties of the executor, insofar as they are not regulated by this Code, whether directly or by analogy to the rights and duties of successors to movable property, shall be settled by the Court.*

1028 - *The executor, in his capacity as fiduciary of the succession, shall also be bound by all the rules laid down in this Code under Chapter VI of Title I of Book III relating to the functions and administration of fiduciaries, insofar as they may be applicable.*

The learned Judge then went on rightly, in our opinion, to observe that there is (a) no express requirement for a valuation of the assets of the deceased in article 1027, (b) no implied requirement for such a valuation under the applicable provisions under Chapter VI, Title 1, Book III of the Act and (c) no impediment for the appellant himself to embark upon a valuation exercise at his own cost, if he so wished.

Indeed we agree with learned Counsel for the first and third respondents that it is only when a co-owner wants to subdivide property held in co-ownership that the procedure laid down in the Immovable Property (Judicial Sales) Act (Cap 94) and referred to in article 821 of the Act applies, namely that an appraiser is appointed by the Court to value the property, pursuant to section 112 or 118 of Cap 94.

Having taken the view, as the learned trial Judge did, that a proper inventory had been made by the respondents and that no valuation of the estate of the

deceased was called for at this stage, the learned Judge came to the conclusion that the appellant had not made out his case.

We can find no fault with the reasoning and conclusion of the learned trial Judge in the circumstances, given that no misconduct, negligence or dereliction of duty had been proven against the respondents in their capacity as fiduciaries of the deceased's succession. The trial Court was consequently right, in our opinion, not to exercise its wide powers under article 829 of the Act to remove or dismiss the respondents.

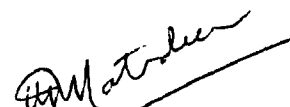
For the reasons given, we accordingly uphold the judgment of the trial Court and dismiss the appeal, with costs.



**E.O. AYoola**  
**PRESIDENT**



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



**K.P. MATADEEN**  
**JUSTICE OF APPEAL**

Dated at Victoria, Mahe, this 8<sup>th</sup>. day of August 2001