

IN THE SEYCHELLES COURT OF APPEAL

MARGUERITE LIBANOTIS

APPELLANT

versus

MYRIAM SINON

RESPONDENT

Civil Appeal No: 7 of 2002

[Before: Ayoola, P, De Silva & Matadeen JJ.A]

Mr. J. Renaud for the Appellant

Mr. C. Lucas for the Respondent



JUDGMENT OF THE COURT

(Delivered by De Silva, JA)

The plaintiff-respondent ("*the respondent*") in her plaint averred:-

- (i) that the defendant-appellant ("*appellant*") was the owner of title S492 and that this parcel was "*charged*" in favour of the Seychelles Housing Development Corporation (S.H.D.C.);
- (ii) that the respondent agreed to pay the loan taken by the appellant and the appellant agreed to transfer the house and land once the repayment of the loan was completed; it was further agreed between the parties that the respondent and her family would move into the house of the appellant, pay all household expenses and allocate a room for the appellant to occupy until her death;
- (iii) the appellant in breach of the said agreement refused to transfer title S492 to the respondent and further sought an order of ejection from the Rent Board against the respondent and her family on the ground that they were tenants under the appellant. The relief prayed for was for the Court to order the appellant to transfer title S492 to the respondent.

The appellant in her statement of defence denied that there was any agreement between the parties "with reference to the land and house"

and further averred that the respondent moved into her house because her husband had lost his job and was "*short of money.*" Upon a consideration of the evidence, the trial Court held with the respondent that the agreement between the parties, as averred in the plaint in regard to the transfer of the land and house, has been proved.

The principal submission of Mr. Renaud for the appellant was that the trial Court was in error in holding that the appellant had agreed to transfer title S492 to the respondent, for the reason that there was no admissible evidence of such an agreement. To appreciate the case as presented at the trial it is necessary to briefly advert to the circumstances which led to the agreement between the parties. The appellant had divorced her husband and was residing in her house with her brother. She had no children. Her brother was employed and it was he who paid for the household expenses. Her relationship with the respondent was very close and the evidence is that the respondent treated the appellant as her foster mother. The appellant took a housing loan from the S.H.D.C. on 9th November 1989 for a sum of SR29,900. It was her brother who contributed to the payment of the housing loan. Unfortunately her brother died suddenly on 22nd December 1989 and she found it difficult to pay the instalments of the loan. It was at this point of time when she was faced with serious financial difficulties that she arrived at the agreement which is the subject matter of the action.

These crucial facts are borne out by exhibit P3 which is a letter the appellant admittedly addressed to the Director of Housing on 21st March 1990. The material part of exhibit P3 reads thus:-

"I am presently paying a housing loan of SR500 a month and the house is located at Cascade. My brother, Mr. Roch Libanotis who was living in the house also contributed towards the repayment of the loan. Unfortunately, he died in December 1989

and I am left alone to contribute wholly towards repayment of the loan. After this tragic incident my adopted daughter Mrs. Myriam Sinon moved into the house.

Due to my financial constraints, I have therefore decided and agreed to transfer the house and land on Mrs. Sinon's name, and she agrees to continue contributing wholly towards the repayment of the loan.


I would therefore appreciate if you would be kind enough to consider this matter and advise me accordingly on all the relevant administrative and legal procedures regarding the prompt settlement of this matter..."

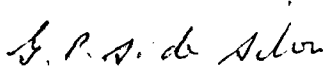
Moreover, there is the evidence of the Legal Officer at SHDC that consequent upon the letter (exhibit P3) the appellant was called for an interview on 31st May 1990 and the appellant "*asked the SHDC to transfer the property to Mrs. Sinon (the respondent)*". This fact was minuted in the file at the SHDC. It has been further recorded by way of a minute in the file that the transfer has been approved by the SHDC and since it is her property the necessary steps to effect the transfer have to be taken by her. The Legal Officer also stated in her evidence that the loan was fully paid by 14th December 1998.

The evidence therefore clearly established that it was an oral agreement reached between two persons who had known each other intimately for a long time. No objection was taken to the oral evidence at the trial. Exhibit P3 was admitted in evidence without objection. What is more, the oral evidence was strongly corroborated by Exhibit P3 which emanated from the appellant and the record of the minutes of the meeting the appellant had on 31st May 1990 with the officers at the SHDC. On the facts therefore the case of *Loizeau v Sedgwick* 1974 SLR 286 relied on by Mr. Renaud has no relevance to the appeal before us. On a consideration of the totality of the evidence the trial Court rightly

concluded that "... the agreement reached between the parties is both precise and unequivocal... The defendant has allowed the plaintiff to perform the agreement reached from 1990 until 1998 and benefited from the performance thereof. She is no longer in a position to repudiate her part of the bargain." Having regard to the clear and cogent documentary evidence led in support of the respondent's case, the learned trial Judge correctly rejected the evidence of the appellant that there was no agreement between the parties in regard to title S492 and the house standing thereon. Her testimony was flatly contradicted by her own letter (Exhibit P3) and the minutes recorded in the file at the SHDC.

For these reasons, the judgment of the Supreme Court (Juddoo J) is affirmed and the appeal is dismissed with costs.


E. O. AYoola
PRESIDENT


G. P. S DE SILVA
JUSTICE OF APPEAL


K. P. MATADEEN
JUSTICE OF APPEAL

Delivered at Victoria, Mahe this 18th day of **December** 2002.