

**IN THE SEYCHELLES COURT OF APPEAL**

**[Coram:** S. Domah (J.A), A.Fernando (J.A), M. Twomey (J.A)]

**Civil Appeal SCA15/2013**

**(Appeal from Supreme Court Decision 230/2008)**

---

Gilbert Rassool

Appellant

Versus

Leon Mondon

Respondent

---

Heard: 19 August 2015

Counsel: Mr. Divino Sabino for the Appellant

Mr. B Georges with Ms. V. Gill for the Respondent

Delivered: 28 August 2015

**JUDGMENT**

A.Fernando (J.A)

1. The Appellant appeals against the judgment of the Supreme Court wherein he was ordered to pay SR 17, 800.00, to the Respondent in respect of the Respondent’s share of a boat that the Appellant had purchased in August 1992. In arriving at this decision the Learned Trial Judge had stated:

“On the basis of the evidence before the Court I find that the Plaintiff (*Respondent before us*) did not receive his half share of the selling price of the boat when his partner Mr. Jean-Claude Vidot sold the boat to the Plaintiff (sic- should be Defendant). He did not receive that share because the Defendant (*Appellant before us*) did not pay him his share. The Defendant paid Mr. Vidot SR 17,800 for his share and he should have likewise pay (sic) the Plaintiff his share which he did not do. On the other hand there is no evidence that the Plaintiff, over the last 16 years, approached the Defendant to get his half share in the sum of SR 17, 800. Upon the Defendant selling the boat the plaintiff can only claim that sum from the Defendant which I find that the Plaintiff was and is entitled to.”

2. The Appellant has raised the following grounds of appeal:

- I. The Respondent did not pray for damages of SR 17,800 being his ‘share’ in the boat in the Plaint. The making of such an award by the learned Judge is therefore ultra petita.
  - II. And even if the Respondent had claimed SR 17,800, and even if we ignore the evidence of the Appellant that the Respondent was paid in full, such a claim would be prescribed as the matter would have actionable (sic) upon in 1992 and the Plaint was filed in 2008, a full 16 years later. The prescription period is 5 years.
  - III. The learned Judge failed to make any pronouncements in his judgment on the issues of prescription raised with regards to the Appellant’s uninterrupted possession of the boat for a full 16 years, which would have extinguished any claim by the Respondent against the Appellant.
3. The Respondent had filed action against the Appellant claiming in his plaint:
- i. By a sale Agreement dated 12<sup>th</sup> March 1992, the Plaintiff purchased a fishing boat by the name of ‘Tazar’ jointly with one Mr Jean Claude Vidot from Mr Glenn Hyen Chuen for the sum of Seychelles Rupees Thirty Three Thousand (SR 33,000).
  - ii. On the 17<sup>th</sup> of August 1992, Mr Jean Claude Vidot sold his half share in the said fishing boat to the Defendant for a consideration of Seychelles Rupees Forty Seven Thousand and Five Hundred (SR 47,500) with an implied intention that the fishing boat belong to the Plaintiff and the Defendant in equal 50% share each.
  - iii. The said transaction of 17<sup>th</sup> August 1992 was endorsed by the signature of both Mr Jean Claude Vidot as the seller and the Defendant as the buyer.
  - iv. The Plaintiff avers that the said fishing boat has been in operation for the last 16 years under the administration of the Defendant with the responsibility to safeguard his interest and revenue out of the catch earned from the operation of the said fishing boat.
  - v. The Plaintiff further avers that the Defendant without the Plaintiff’s consent and consultation sold the said fishing boat to a third party on the 04<sup>th</sup> April 2008, for the sum of Seychelles Rupees One Hundred Thousand (SR 100,000) and the Defendant failed to account for his half share of the proceeds of the sale either on the dividend for profit raised and accumulated for the past 16 years.  
The Respondent by way of relief had claimed for 50% share in the proceeds of the sale at SR 50,000 and claim for dividend for 16 years at SR 2,000 per month or SR 24,000 per year at SR 384,000. The Learned Trial Judge had dismissed the Respondent’s claim for dividend and the Respondent has not cross-appealed on this matter.
4. The Appellant in his defence before the Supreme Court had denied that on the 17<sup>th</sup> of August 1992, Mr Jean Claude Vidot sold his half share in the said fishing boat to the Defendant for a consideration of Seychelles Rupees Forty Seven Thousand and Five

Hundred (SR 47,500), with an implied intention that the fishing boat belong to the Plaintiff and the Defendant in equal 50% share each, as averred by the Respondent in his Plaint before the Supreme Court. According to him the Plaintiff sold the entire fishing boat and not some implied half-share of the fishing boat to the Defendant and the fishing boat is therefore entirely owned by him. He had also denied that there was an agreement to safeguard the interest and revenue out of the catch earned from the operation of the said fishing boat of the Respondent. The Appellant had admitted the sale of the boat to a third party and had denied that he required any consent from the Respondent to sell the fishing boat and that he did not have to account to the Respondent for any matter or sum whatsoever. He had prayed for a dismissal of the plaint with costs. The Appellant had also raised by way of a Plea in Limine Litis that “The Plaintiff’s claim over any purported ownership or beneficial rights over the fishing boat is prescribed.....”

5. The Respondent had relied heavily on exhibit **P1** in respect of his claim. P1 is a document in two parts. The top part which is typed makes reference to a transfer of a boat, which reads as follows: “I. GLENN HYUEN CHUEN, in consideration of SR.33,000/- (which sum has been paid in full and I confirm having received it) hereby transfer to Mr. Leon Mondon and Mr. Jean-Claude Vidot, my fishing boat named ‘Tazar’.....”. This part bears the signature of the Respondent and as per the evidence of the Respondent the signatures of Glenn Hyuen Chuen and Jean-Claude Vidot. It is dated 12<sup>th</sup> March 1992. The bottom part which is hand written states: “This is to certify that the share of Jean-Claude Vidot for fishing boat named Tazar has been sold to Gilbert Rassool on 17<sup>th</sup> August 1992 at 12 noon, the sum of RS 17,800 had been received in cash from Gilbert Rassool. That part bears the signatures of the Respondent, Jean-Claude Vidot and Justin Francoise and is dated 17<sup>th</sup> August 1992.
6. The top part of the document does not say who paid G.H. Chuen, nor that the sum of SR 33,000 was paid jointly by the Respondent and Mr. Jean-Claude Vidot, leave aside what percentage of the said sum was paid by the Respondent. **P1** does not reveal that there was a Partnership Agreement between the Respondent and Mr. Jean-Claude Vidot, at the time the boat was purchased. Although the Respondent in his evidence had stated that this was a document prepared by and signed in the chambers of Attorney Mr. Pardiwalla there is no indication of that in the document.
7. The bottom part of the document had been written by Justin Francoise who had been in charge of the Baie-Lazare police station in August 1992. It has not been signed by the Appellant. Jean-Claude Vidot was not called as a witness by the Respondent. Justin Francoise in his evidence before court could not recall whether the bottom part was signed in his presence or for that matter who gave P1 to him for him to make the endorsement contained therein. He does not recall whether SR 17,500 was paid by the Appellant to Jean-Claude Vidot or whether the Appellant was present when he made the writing. All that he had said was that it is in his handwriting and his signature appears at the bottom of P1. He had written out that part, 19 years prior to him giving evidence in Court. Under cross-examination Francoise had said that he cannot even remember the

facts to which he had certified. Therefore as regards P1 and especially the bottom part of it there had only been the evidence of the Respondent on whom lay the burden to prove his case.

8. The Respondent's evidence had been to the effect that he and one Claude Vidot had purchased a boat from a "Chinese chap" for SR. 33,000. This transaction he claimed was evinced in P1 produced before the Court. He had said that he cannot remember how much he contributed both in his examination-in chief and under cross-examination. After three months Vidot had decided to "sell his share" to the Appellant, as the "skipper was giving a little problem." The transaction pertaining to the sale had taken place at the Baie-Lazare police station in the presence of Claude Vidot, the Appellant and the Respondent and a sergeant therein had "drafted some documents" to which he and Vidot had signed. This is a reference to the endorsement by Francoise in P1. The Appellant had paid a sum of SR 17, 500 to Claude Vidot by way of a cheque. This runs contrary to what is stated in P1 that the money had been paid in cash. He had said that the Appellant had not signed the document.
9. According to the Respondent the understanding was that the Appellant would pay him his share later. The Appellant had the custody and the management of the boat. He had thereafter gone to the Appellant to ask for his share and the Appellant had asked him to go away but could not recall when he had gone to meet the Appellant. According to the Respondent, the Appellant had modified the boat by using fiber glass; for when he and Claude Vidot bought it from the Chinese man it was an open boat and made of wood. It transpires from the cross-examination of the Respondent that that it was the Appellant who had spent for the modification of the boat, for the Respondent had stated: "...He has more money than me ....The one with a lot of money fixed it." Thereafter the Respondent had heard that the Appellant had sold the boat to a person known as Banane from Anse-La Mouche for SR 100,000.00. The Respondent had been uncertain in his evidence as to when this transaction had taken place. According to the Respondent he had then gone to see Alan Banane and told him that he had a share in the boat. According to the Respondent Alan Banane had then sold the boat to another person. When questioned as to why he waited till the 22<sup>nd</sup> of August 2008 to file action against the Appellant when the sale of the half share of Jean-Claude Vidot had taken place way back in 1992, that is nearly 16 years ago, the Respondent's answer had been to the effect that he had been waiting for the Appellant to pay him his share.
10. The Learned Trial Judge had told the Respondent at the conclusion of the Respondent's testimony on the 14<sup>th</sup> of June 2010:  
*".....The court is trying to find a way to help you. But the thing is for sixteen years you did not claim anything and the law says the maximum of 5 years you are allowed to claim to money. I said this because if a judge...everybody will find that there is something wrong with the judgment. Because the law is like this. Your lawyer shall inform you.....You cannot make in your own way. It is not like you think. Maybe Mr. Rassool owes you money but the five years is finish"* (verbatim).

This in our view is an admission and a clear statement to the effect by the Learned Trial Judge that the claim, even if there was one, is prescribed and with which we agree.

11. The Appellant's testimony in Court had been to the effect that he had bought the boat 'Tazar', which was damaged from the Respondent and Jean Claude Vidot by paying them SR 47,000.00. He had given the cheque to the Respondent and taken possession of the boat. He had said that he did not buy a share in the boat but the whole boat. He had carried out major repairs on the boat at his own expense. It had cost him about SR 150,000.00. He had sold the boat in 2008 for SR 150,000.00 to Andre Julienne. The Appellant had denied that the Respondent came to him asking for his share of the money. The Appellant had denied ever seeing P1.
12. The Learned Trial Judge does not state in his judgment why he had decided to act on the testimony of the Respondent instead of the Appellant. As stated at paragraph 6 above the top part of the document does not say who paid G.H. Chuen, nor that the sum of SR 33,000 was paid jointly by the Respondent and Mr. Jean-Claude Vidot, leave aside what percentage of the said sum was paid by the Respondent. **P1** does not reveal that there was a Partnership Agreement between the Respondent and Mr. Jean-Claude Vidot, at the time the boat was purchased. The Appellant had denied ever seeing P1. The bottom part of the P1 has not been signed by the Appellant. Jean-Claude Vidot was not called as a witness by the Respondent. Justin Francoise in his evidence before court could not recall whether the bottom part was signed in his presence or for that matter who gave P1 to him for him to make the endorsement contained therein. He does not recall whether SR 17,500 was paid by the Appellant to Jean-Claude Vidot or for that matter whether the Appellant was present when he made the writing. All that he had said was that it is in his handwriting and his signature appears at the bottom of P1. He had written out that part, 19 years prior to him giving evidence in Court. Under cross-examination Francoise had said that he cannot even remember the facts to which he had certified. Therefore as regards P1 and especially the contents at the bottom part of it there had only been the evidence of the Respondent on whom lay the burden to prove his case.
13. The Respondent had not testified as to how much he contributed both in his examination-in chief and under cross-examination when the boat was purchased in March 1992. The Appellant has had the custody and the management of the boat since it was purchased from the Respondent and Jean Claude Vidot. Although the Respondent had stated that he had gone to the Appellant to ask for his share after the sale of Jean-Claude Vidot's share to the Appellant he had not been able to give a time period when he had gone to meet the Appellant. When questioned as to why he waited till the 22<sup>nd</sup> of August 2008 to file action against the Appellant; when the sale of the half share of Jean-Claude Vidot had taken place way back in 1992, that is nearly 16 years ago, the Respondent's answer had been to the effect that he had been waiting for the Appellant to pay him his share. The Learned Trial Judge after having clearly told the Respondent at the conclusion of his

testimony “Maybe Mr. Rassool owes you money but the five years is finish” and also “But the thing is for sixteen years you did not claim anything” has strangely decided against the issue of prescription raised by the Appellant in his defence by way of a plea in limine litis.

14. In view of what has been stated above we allow the appeal, set aside the judgment whereby the Appellant had been ordered to pay SR 17,800.00 “with interest at the legal rate from the date of judgment” to the Respondent. We order costs against the Respondent.

A.Fernando (J.A)

**I concur:.** .....

S. Domah (J.A)

**I concur:.** .....

M. Twomey (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 28 August 2015