

IN THE SEYCHELLES COURT OF APPEAL

[Coram: S. Domah (J.A) , A. Fernando (J.A) , J. Msoffe (J.A)]

Civil Appeal SCA 25/2013

(Appeal from Supreme Court Decision 287/2009)

Jacques Francis Rampal

Appellant

Versus

1. The Government of Seychelles

1st Respondent

2. The Registrar General

2nd Respondent

Heard: 21 August 2015

Counsel: Mr. Frank Ally for the Appellant

Ms. Alexandra Madeleine for the Respondents

Delivered: 28 August 2015

JUDGMENT

J. Msoffe (J.A)

[1] The Appellant instituted a suit claiming, *inter alia*, prescriptive right over a piece of land in title C93 by virtue of having been in quiet and peaceful possession of the said property for a period of over one year from 10th June 2008.

[2] Having possessed the title, as aforesaid, the Appellant swore an Affidavit before the Deputy Registrar of the Supreme Court which he eventually took to the Registrar General's office so that it could be registered and transcribed.

[3] In a letter dated 24th August 2009 written to the Appellant by the Deputy Land Registrar the Appellant's request was refused with an advice to him that a

declaration of interest in land has to be made by the court and that as a matter of construction section 41 read together with sections 97 – 101 of the Seychelles Code of Civil Procedure require that an action must be initiated in court in order to obtain such a declaration. Furthermore, on 13th July 2009 the Legal Officer, Department of Environment, Natural Resources and Transport, wrote a letter to the Appellant ordering him, *inter alia*, to immediately cease all projects and activities on the property in issue.

[4] It was against the above background that the Appellant instituted the suit before the Supreme Court where he lost, hence this appeal in which he is advancing the following grounds of appeal:-

1. The learned Judge failed, as did the Deputy Land Registrar, to take account of the clear provisions of the Land Registration Act/Cap 107, namely section 25 (f) and (g) and of the proviso of that section.
2. The learned Judge was in error in his finding of the fact that the possession of the Plaintiff (now Appellant) was interrupted by the investigation of 28th May 2009 by the Department of Environment.
3. When the investigation was made the Appellant produced his burning permits and was allowed to stay in possession of the site. It was only after his quiet possession of 1 year, that he received the letter dated 13th July 2009. This amounted to a trespass in law giving rise to damages.
4. The refusal by the Deputy Registrar General to make an appropriate entry in the Land Register of the Appellant's affidavit amounted to a trespass in law of his right of possession giving rise to damages.

[5] Considering the way the above grounds were framed and the reasons given by the Supreme Court in handing down its decision it will be instructive to dispose of the

appeal by addressing the grounds together and generally in order to avoid repetition.

- [6] The crucial issue in the case is whether the Appellant acquired prescriptive right over the land in issue which it is common ground that Mr. Roy Stephen Lavender of Casements, Ireland, Bermuda, is its proprietor with a qualified title.
- [7] The Appellant is generally of the view that he has acquired prescriptive right over the property mainly for two reasons. **One**, Mr. Roy Stephen Lavender is an absentee owner. **Two**, the provisions of Article 2229 of the Civil Code read together with section 25 (f) and (g) of the Land Registration Act and section 97 of the Seychelles Code of Civil Procedure confer him the said right.
- [8] The trial Judge dealt with the above crucial issue and at pages 90 – 91 of the record he opined as follows:-

*Be that as it may, the evidence reveals that **Plaintiff first entered the property in issue since 10th June, 2008. Complains of unauthorized site clearance by Plaintiff were received by the Department of Environment which were investigated by them on site on 28th May 2009. This action interrupted the alleged peaceful and quiet possession of parcel C93 for over one full year and such any attempt to invoke the absurd provision of Section 97 of the Seychelles Code of Civil Procedure is not maintainable.***

*I qualified the provision of **Section 97 of the Seychelles Code of Civil Procedure** as absurd because I contemplate with fear a situation where a person purchased an immovable property, had it legally transferred and registered onto his/her name, and thereafter left Seychelles to go abroad for further studies or employment and on his/her return after a few years found that another person had*

claimed prescription on that property on the basis of having occupied that property for more than one year and has claimed prescription by registration of a “Declaration under Oath”.

[9] Be that as it may, at this juncture it is instructive to quote in full the above cited provisions in order to be able to answer the crucial question raised in this appeal.

Article 2229 reads:-

*In order to acquire by prescription, possession must be **continuous** and **uninterrupted, peaceful**, public, unequivocal and by a person acting in the capacity of an owner.*

[Emphasis added.]

Section 97 provides:-

97. Possessory actions (actions possessoires) in which the plaintiff claims to be maintained in, or restored to the quiet enjoyment and possession of land, premises, water-rights, or other immovable property or any other right arising out of immovable property, shall only be maintainable when —

- (a) the possessory action has been entered within one year from the date of the alleged trespass, and*
- (b) the plaintiff has been in quiet and peaceful possession for one full year at least either by himself or by those through whom he claims in virtue of a non-precarious (non-précaire) title.*

And section 25 reads:-

25. Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same without their being noted on the register:-

- (a)
- (b)
- (c)
- (d)
- (e)
- (f) *the rights acquired or in the process of being acquired by virtue of any written law relating to prescription;*
- (g) *the rights of a person in possession or actual occupation of land;*
- (h)
- (i)
- (j)
- (k)

[10] In their plain meaning two points could be discerned from the interpretation of Article 2229 and section 97. **Firstly**, in order to acquire a prescriptive right the possession must be continuous and uninterrupted, peaceful, etc.

Secondly, looking at the manner in which the provisions were framed it is clear that the requirements therein are cumulative. In other words, all the conditions have to be met before one could claim the right.

- [11] Moreover, during the Department's investigation it was revealed that he was not the owner of the land. The letter advising the Appellant that the activity he caused to be carried out is an offence and instructing him as to the Law of Seychelles does not infringe any right of the Appellant. As a matter of fact, the letter made it clear that if he ever held a power of attorney he should submit an Application for an Environment Impact Assessment Study for any project or activity he intended to carry out on the land. The Appellant has never responded to the said letter of 13 July 2009 nor submitted an appropriate application.
- [12] At the time the Appellant applied for permits from the Department of Environment he disclosed himself as the owner and therefore acted in bad faith. He had no permission to clear site but to burn rubbish and that site clearance required another procedure which was denied. This is contrary to his statement in the Affidavit.
- [13] The complaints made to the Department interrupted his alleged peaceful and quiet possession of the land over one full year. The possession was not continuous as it was interrupted by the complaints made to the Department and the site visit conducted on 28 May 2009, hence it was also not peaceful. Therefore, his possession would not satisfy the conditions set out in the relevant provisions mentioned above.
- [14] In the Mauritius cases of **Yaypaul versus Layeaux [1954] MR 181** and **Ramcharitar versus Masilia Ltd [1954] MR 249**, when dealing with a more or less similar situation it was held that the possession must satisfy all the conditions and that failure to do so means that the dictates of the Article were not complied with to the letter.

[15] In this case, as was clearly stated by the trial Judge (*supra*), the Appellant's possession was interrupted. In fact, this point is borne out by the record at pages 38 – 40 when Ms. Madeleine cross-examined the Appellant. As already stated, it is also on record that the Appellant did not enjoy peaceful possession because there were complaints by neighbours that he was polluting the land.

[16] In conclusion, it will be fair to say that the Appellant did not acquire any section 97 right over the property to warrant registration and transcription. He was a trespasser. The right to section 97 is reserved for persons who are in quiet possession of a property but a trespasser is interfering with that peaceful possession. He has within a year to bring an action against that trespasser. Thus, there is nothing to fault the Supreme Court in its findings and conclusions in the suit before it.

[17] The appeal is devoid of merit. It is accordingly dismissed with costs.

J. Msoffe (J.A)

I concur:.

S. Domah (J.A)

I concur:.

A.Fernando (J.A)

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