IN THE SEYCHELLES COURT OF APPEAL

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

Civil Appeal SCA04/2014

(Appeal from Supreme Court Decision75/2002)

Roy Nolin Appellant

Versus

Thomas Nolin Respondent

Heard: 14 April 2016

Counsel: Mr. Basil Hoareau for Appellant

Ms. Natasha S Burian for Respondent

Delivered: 22 April 2016

JUDGMENT

S. Domah (J.A)

(1) The appellant had sued the respondent before the Supreme Court for the latter to declare that appellant has rights of co-ownership over a landed property, parcel no H2200, which comprises parcels H4119 and H 4122. In his plea, the respondent had pleaded *in limine:* that the plaint disclosed no action known to the law; if action there was, it was barred by prescription; and the authentic title of the respondent over the parcel in question could not be challenged by oral averments and evidence. On the merits, respondent denied the averments of the appellant, admitted that the family lived on a plot of land which the father had bought on a concessionary basis. This was later sub-divided into two: H2200 and H2244. He, for one, had bought for value before a Notary

H2200 while H2244 was transferred in the name of the family members: namely, himself, the appellant, Ivan Nolin, Roland Nolin and Stella Nolin.

(2) The learned judge decided that the *plea in limine* of prescription of 10 years would apply as a bar to the action. The action was lodged 10 years and one day after it arose. He did not, accordingly, find it necessary to delve into the merits of the case and dismissed the action. This is an appeal by the then plaintiff, now appellant, against that order of dismissal.

(3) There is only one ground of appeal: namely, the Learned Trial Judge erred in law in accepting the Respondent's Plea in Limine-Litis: namely, that the Plaint was prescribed on the basis of Article 2265 as the said Article was not applicable to the facts of the case.

(4) The Respondent resists the appeal and supports the decision of the learned Judge. In his submission, his stand is that the action was a personal action and was barred by 5 years. He referred to the decision of **Jumeau v Anacoura (1978) SLR 180**, according to which a claim for one's share in a co-ownership is a personal action as opposed to a real action.

(5) As against that stand, the appellant submits that the facts of the case do not attract the application of prescriptive time bars such as Article 2265 simply because the action is one *"en revendication"* which is not subject to any prescription whatsoever.

(6) We have considered the submissions in law of both the parties. Our decision is as hereunder.

(7) With regard to the issue of the prescription, what the appellant is claiming is the rights of co-ownership in Parcels H4119 and H4122. Clearly, these rights are personal rights on the authority of **Jumeau v Anacoura [supra]** where Sauzier J held that the right of a co-owner is not a real right over the property on which it is claimed.We endorse that

view. As such, that right being a personal right, it is barred by a prescriptive period of five years as per Article 2271 of the Seychelles Civil Code which reads:

> *"1. All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262 and 2265 of this Code.*
>
> *2. Provided that in the case of a judgment debt, the period of prescription shall be 10 years."*

(8) The first exception, article 2262, reads:

> *"All real actions in respect of rights of ownership of land or other interests in land therein shall be barred by prescription after twenty years whether the party claiming the benefit of such prescription can produce a title or not and whether such party is in good faith or not."*

(9) The second exception, article 2265, reads:

> *"If the party claiming the benefit of such prescription produces a title which has been acquired for value and in good faith, the prescription of article 2262 shall be reduced to ten years."*

(10) This suit could only have been ventured under article 2265, on the assumption that it was a real action, and the defendant was invoking a title. However, it was brought after 10 years and one day too many. This leads us to the question whether or not the case brought by the appellant was touched by any prescriptive time bar. Learned counsel cited Code Civil Dalloz, 102e edition which reads:

> *"Le droit de propriété ne s'éteignant pas par le non-usage, l'action en revendication n'est pas susceptible de prescription. Civ. 1ère, 2 juin 1993: D 1994.593, note Fauvarque-Cosson; D 1993 Somm, 306 obs. A Robert; Defrénois 1994, obs. Souleau-Defrénois."*

(11) The question is: Is this suit one *"en revendication?"* An action *"en revendication"* is an action where two aspirant owners are competing in title to the same property. As **Note 21 of Encyclopedie Dalloz, 2eme ed. Vol. VII, Recueil, Revendication** explains:

> *"En principe, l'action en revendication se déroule entre deux prétendants à la propriété: le revendiquant qui n'est pas en possession de l'immeuble et le défendeur qui le possède (V. Mazeaud, t. 2, 2ême vol., par Juglart, no. 1468.)*

(12) The present action is not a realty claim of proprietorship by one competing aspirant owner against the aspirant owner. It is a personal claim of co-ownership by one occupier against another title-holder and occupier. It is not an action *"en revendication."*

(13) In practical terms, a classical case of *"action en revendication"* would start off with each proprietor coming to court with a competing document of title where the court is called upon to determine which title overrides the other. There are variations of this standard scenario admittedly. As the Doctrine lays down: *"la question posée est uniquement celle de la preuve du droit de propriété."* **Note 47, Encyclopédie Dalloz, ibid.** In an a*ction en revendication*, the sole issue is the right of ownership between competing title-holders. A vindication of the right of co-ownership is a different cause of action and a personal one at that.

(14) There is another reason for which we would say that this action was misconceived from the very start. Since the case of the appellant has always been that the parcel was to be in the name of all the members of the family in being: the mother, the father and their eight children including the plaintiff, the other surviving members of the family should have been brought into cause. They were not. Even procedurally this action was flawed.

(15) There is no merit in this appeal and it is dismissed with costs.

S. Domah (J.A)

I concur:. **…….** M. Twomey (J.A)

I concur:. **…….** J. Msoffe (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on22 April 2016