

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) ,S. Domah (J.A) ,M. Twomey (J.A)]

Civil Appeal SCA 32/2014

(Appeal from Miscellaneous Application No. 5/2014)

Dericilla Valentin

Appellant

Versus

Phylis Valentin

1st Respondent

Wilhelm Valentin

2nd Respondent

Yvette Omath

3rd Respondent

Marcelin Valentin

4th Respondent

Angella Valentin

5th Respondent

Heard: 12 April 2017

Counsel: Mr. Basil Hoareau for the Appellant

Mr. S. Rajasundaram for the Respondents

Delivered: 21 April 2017

JUDGMENT

S. Domah (J.A)

- (1)** This appeal relates to section 101 of the Immoveable Property (Judicial Sales) Act and its application to the facts. A property, PR846, vested in the five heirs were due for a division in kind. At one stage, four of them agreed to licitation and an order was purportedly made by the learned Judge to that effect. The 5th co-owner, the appellant in this case, applied for the process to be aborted inasmuch as her consent had never been obtained for the sale of the property and the procedure for same has not been followed. Accordingly she has appealed against the purported order.

(2) She has raised the following grounds of Appeal:

Ground No. 1: *The learned Judge erred in law in ordering the sale of parcel PR846 by licitation, as the mandatory provisions regarding the process and procedures, set out in Chanter IV of the Immoveable Property(Judicial Sales) Act for the sale of licitation of an immovable property had not been complied (with) and adhered to.*

Ground No. 2: *The learned Judge erred in law and allowed himself to be misled by the Attorney-at-law of the 1st Respondent, in coming to the decision that the Court of Appeal had given direction and/or ordered that parcel PR846 be sold by licitation.*

Ground No. 3: *The learned Judge erred in law and contrary to Article 19(7) of the Constitution and/or the principles of natural justice, in failing to allow and grant the Appellant the opportunity to file her objection to the Petition and to be heard in respect of her objection.*

(3) We take the view that this appeal may be conveniently disposed of by addressing one single issue. It is this: whether at the time the licitation was ordered, the Memorandum of Charges had been filed on the basis of which the order was made. If it was not, then the order was made on no legal foundation at all. A licitation order can only be made on the basis, and indeed, on the Memorandum of Charges.

(4) We read from the transcript as follows. On 12 September 2014, Phylis Valentin applied for a division in kind/licitation of the co-ownership in a property situate at Praslin referred to as Title PR846 on which there stands today an old residential house bequeathed to one of the heirs, in this case the appellant. On 19 November 2014, the learned Judge commented that “leave was granted for this matter to be proceeding for licitation.” Later, he made an order in these terms: “I grant leave to the petitioner to proceed with the disposition of this property by licitation.” On 2 December 2014, the appellant appealed against the order made by the learned Judge on the ground, inter alia, that the mandatory provisions regarding the process and procedures set out in Chanter IV of the Immoveable Property(Judicial Sales) Act for the sale of licitation of an immovable property had not been complied with and adhered to. It was not until 23rd December 2014 that the Memorandum of Charges were filed. In other words, this was not a question of delay. It was a question of flogging a dead horse. The filing which had to be done within fifteen

days of the application. The order should have been made on the basis of the Memorandum of Charges. It came three months after the purported order was made.

- (5) On 19th February 2015, the appellant filed an application for stay of the licitation proceedings pending the determination of the appeal which had ordered the licitation. On 3rd February 2016, the appellant sought an order from the Supreme Court for the declaration that the Memorandum of Charges had been filed contrary to the Immoveable Property (Judicial Sales) Act and further that the licitation proceedings should be proceeded with. On 26 April 2016, the applicant to the licitation proceedings objected to the application of the appellant.
- (6) We have checked the record for the purposes of determining whether the learned Judge Court was misled into taking the view that the property *in lite* had been ordered to be sold by licitation by the Court of Appeal.
- (7) The record of proceedings does not support the averment under this Ground, as correctly submitted by learned counsel for the Appellant.

Court: Leave was granted for this matter to be proceeding for licitation

Mr Chetty: That is correct.

Court: I grant leave to the petitioner to proceed with the disposition of this property by licitation.

Mr Chetty: One thing I must let the court know that I was involved in the case with Mr Camille that the family was talking about. I believe there is a prohibition from selling this property from a Will that was made and I think it was registered at the Land Registry.

Mr Rajasundaram:

This has been overruled and the Court of Appeal has given directives to all parties and all have agreed to amicably sell the property and share the proceeds and that is why we tried to the maximum level possible. Even a third party who was there was ready to buy the property.

Court: Counsel will do the necessary to have the property sell by
licitation.

(8) The critical question is this: what was the basis of the licitation proceedings in the absence of the Memorandum of Charges on which the licitation should have rested? None. The licitation proceedings, therefore, are null and void for not having followed the procedure under the Act and for having been made in the absence of the Memorandum of Charges.

(9) The appeal is allowed

S. Domah (J.A)

I concur:. F. MacGregor (PCA)

I concur:. M. Twomey (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 21 April 2017