IN THE SUPREME COURT OF SEYCHELLES

Freddy Louise of
Bel Air, Mahé **Plaintiff**

Vs

1. **Mr. Alf Barbier**
2. **Mrs. Marie-Ange Barbier Hassan**
3. **Mrs. Marie-Lise Palafox nee Barbier**
4. **Mr. Egbert Barbier**
5. **Mrs. Josemee McGirr nee Barbier**

All electing domicile in the office of
Mr. R. Valabhji of State House Avenue,
Victoria. **Defendants**

Civil Side No: 307 of 1998

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Mr. A. Juliette for the Plaintiff

Mr. P. Boullé for the Defendants

D. Karunakaran, J.

JUDGMENT

The plaintiff in this action prays this Court for a Judgment:

(i) Ordering the defendants namely, the legal heirs of the late Alf Barbier, to transfer parcel V17 to the plaintiff in terms of the order of this Court delivered on 21st of May 1991

(ii) In the event of failure to comply with (i) above, order the transfer of parcel V17 to the plaintiff and direct the Land Registrar to give effect to the order accordingly.

The undisputed facts of the case are these:

At all material times, one late Mr. John Barbier, who died on 18th of June 1992 - hereinafter called the "deceased" - was the owner of an immovable property namely, a parcel of land V17 - hereinafter referred to as the "suit-property" - situated at Bel Air, Mahé. The plaintiff Mr. Freddy Louise was at all material times and is still occupant of the said property. The defendants are the children and legal heirs of the deceased. In 1985, the deceased became feeble minded presumably, due to old age. He was unable to manage his own affairs. Hence, the relatives of the deceased petitioned the Supreme Court in Civil Side No. 365 of 1985 for interdiction of the deceased in terms of Article 490 of the Civil Code. The Court on 4th of March 1986 made an order for interdiction of the deceased and appointed Messrs Jeffrey d'Offay and Gerald Maurel as his guardians in order to look after the interests of the deceased. The Court made this appointment in terms of Article 505 of the Civil Code, which reads thus:

> *"The Supreme Court may appoint a guardian to a person who is interdicted"*

On 7th of September 1990, during the lifetime of the deceased, the guardians sought authorisation from the Court for an intended sale of the suit property to the plaintiff for the sum of Rs135, 000/- in terms of Article 509 read with Article 457 of the Civil Code. At this juncture, it is relevant to quote these two Articles, which read as follows:

Article 509

"The interdicted person is assimilated to a minor, both in regard to his person and to his property; the laws relating to guardianship of minors shall apply to the guardianship of interdicted persons"

Article 457

"A guardian, even the father or mother of the child, shall not barrow money on behalf of the minor or sell or mortgage his property without the authorisation of the Court".

On 21st of May 1991, the Court accordingly, granted the authorisation for the proposed sale of the suit property to the plaintiff as requested by the guardians of the interdicted as required in terms of Article 452 (2) of the Civil Code. This Article reads thus:

"No guardian shall, unless previously authorised by the court, alienate any stock, share, interest or other incorporeal or right of whatever nature belonging to a minor or to an interdicted person. Provided that the authorisation of the Court shall not be required if the value of such property does not exceed 5000 Rupees. The Court may, on authorising the alienation, prescribe any measure which it may deem useful"

According to the plaintiff, although he had always been ready and willing to purchase the suit property for the said price of Rs135, 000/- the proposed sale never materialised. The plaintiff claims that he was intentionally misled by a named counsel, who has failed to complete the intended sale within a reasonable period by applying delay tactics. In the mean time, on 18th of June 1992, the deceased died intestate leaving behind his estate including the "suit-property" to be inherited by his legal heirs, namely, the defendants. Consequently, the defendants became co-owners of the suit property - *mortis causa* - jointly on their own account.

Having thus, inherited the suit property the defendants in 1997, nearly five years after the death of the deceased, with a view to partition their undivided shares applied to the Court in Civil side 49 of 1997 for sale by licitation of the suit property. In the sale proceedings, the plaintiff intervened and applied for a stay of proceedings as well as for an order of inhibition being registered against the suit-property. The Court accordingly, granted a stay and an order of inhibition until the plaintiff had adjudicated on his intervention. In the circumstances, the plaintiff has now come before this Court with the instant action by filing a plaint seeking remedies first-above mentioned.

On the other side, the defendants in their statement of defence - on the merits - deny the entire claim of the plaintiff. It is also the contention of the defence on a point of law that the plaint does not disclose a cause of action against the defendants. Accordingly, the defendants seek dismissal of this action.

After a meticulous analysis of the issues joined by the parties, it seems to me, the fundamental question that arises for determination in this matter is this:

> *"Does the authorisation granted by the Court for the sale of the suit property in terms of Article 452 (2) of the Civil Code, confer any legal right on the plaintiff to claim or acquire ownership of the suit property?"*

Generally, in matters of guardianship of minors or interdicted persons, the judicial intervention is required primarily, for the purpose of protecting their interests at every stage, and to ensure that the guardians take proper care of the persons and administer their property with due diligence and reasonable care vide Article 450 of the Civil Code. In matters of this nature, the Supreme

Court of Seychelles obviously, plays a quasi-judicial role as “Ministère Public”, “Conseils Judiciaires” and “Family Council”. This combined role intended for protecting the interests and property of the minors and the interdicted, is more of ministerial, advisory, regulatory and supervisory in legal effect and substance, rather than adjudicative, assertive, declarative or determinative of the legal rights and liabilities of any party/parties in relation to the property in question. Lawyers familiar with French jurisprudence will be aware of a number of institutions in France, the object of which is to protect the wards and administer their property within a close family circle. There was not only guardian (tuteur) but also a *Family Council*, as well as a *subrogé tuteur.* These features are still retained in France. In passing, it should be observed that in recent years there has also been major criticism of the French system, particularly of the existence of Family Councils which, seem, at least to outsiders, a doubtful rubber stamp rather than a means of effective and rational control. See, *International Encyclopaedia of Comparative Law, Vol. IV, Ch. 7 at p. 125 by S. J Stoljar*. Be that as it may, in Seychelles, one should be proud to state that although we have inherited the French jurisprudence in this respect, we have already done away with that criticisable part of the Family Council system, since our Civil Code came into force in 1975, paving the way for the judicial forum namely, the Supreme Court to take over the role of the then Family Council and monitor the proper administration of the property of the wards by their guardians.

Coming back to the present case, it is evident that the very purpose of obtaining the authorisation from the Court was to ensure that the guardians took reasonable care in protecting the interest of the interdicted, in the proposed sale transaction of the suit property. When the Court granted the authorisation, the plaintiff was neither a party to the proceedings nor was he brought before the Court as an interested party for the purpose of adjudicating, asserting, declaring or determining any of his legal rights contractual or otherwise over the suit property. In the said proceedings,

obviously, the Court was not concerned in the adjudication of the rights and liabilities of the intended purchaser under any purchase agreement between the seller and the intended buyer. The Court, while granting the authorisation, did not determine any issue or grant any legal right to the plaintiff or to anyone for that matter, for the purchase of the suit property. In the strict sense, an authorisation is nothing but a permission or clearance given by the monitoring authority namely, the Court to the guardians, in order to proceed with the sale of the suit property to anyone, provided the minimum price of Rs135, 000/- is paid. Therefore, the legal effect of the said authorisation is nothing more or less than that of an approval by the Court, whereby the guardians were legally authorised to sell the suit property on behalf of the interdicted person. Hence, I find that the authorisation in question does not confer any legal right on the plaintiff to claim or acquire ownership of the suit property.

Having said that, I should add that a *judgment* always emanates from a *"cause"* and it grants a legal right or remedy enforceable in law. Legally speaking, a judgment of the Court is conclusive as against all persons of the existence of the state of things, which it actually effects when the existence of that state is in issue or relevant to the issue. On the contrary, an *authorisation* under Article 452 (2) of the Civil Code for the sale of an immovable property always emanates from a *"matter"* and it does not grant any legal right or remedy enforceable in law. It does not relate to any issue as to the existence of the state of things. Therefore, it goes without saying that an *authorisation* given for the sale of the suit property can no way be equated to a *"judgment"* of the Court. It should also be noted that in the eye of law, there is a subtle difference between the terms *"cause"* and *"matter".* The former always culminates in a "judgment", whereas the latter does not. The definition clause under Section 2 of the Seychelles Code of Civil Procedure reads thus:

“cause” shall include any action, suit or other original proceedings between a plaintiff and a defendant;
“matter” shall include every proceeding in the court, not in a cause;

It is also pertinent to observe that this difference between “cause” and “matter” is still being maintained in the English system too, by virtue of Section 151 of the Supreme Court Act, 1981 of the United Kingdom.

In view of all the above, I conclude that the authorisation granted by the Court for the sale of the suit property in terms of Article 452 (2) of the Civil Code, does not confer any legal right on the plaintiff to claim or acquire ownership of the suit property. Besides, on the issue of “cause of action”, I quite agree with the submission of Mr. Boullé, learned counsel for the defendants that the plaint does not disclose any cause of action against the defendants on any ground whatsoever. I too, find so ex facie the pleadings in the plaint. Wherefore, this action must fail. I would therefore, dismiss the plaint accordingly, with costs.

For avoidance of doubt, consequent upon the dismissal of this action, I direct the Land Registrar to cancel the inhibition registered against the suit property namely, parcel of land title V17, situated at Bel Air, Mahé.

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D. Karunakaran

Judge

Dated this 5th day of October 2005