

**Bason v Bason & Ors  
(2005) SLR 129**

Antony DERJACQUES for the Plaintiff  
First Defendant (Absent and unrepresented)  
John RENAUD for the Second and Third Defendants

**Judgment delivered on 27 May 2005 by:**

**KARUNAKARAN J:** The Plaintiff, Robert Bason, aged 57, an i was at all material times, a British national. In the mid-1970s, h a tourist. He came, saw and fell in love not only with the flora but also with one of its inhabitants namely, the First Defendan young Seychellois national, who was at the material time, living Aux Pins, Mahe. The Third Defendant is the brother of the First Second Defendant is the wife of the Third Defendant and s Defendant. Be that as it may.

On 31 August 1976, the Plaintiff married the First Defendant at Victoria, Mahe, Seychelles. Soon after the marriage, the Defendant, hereinafter called the "couple" went to live in Er months, they were living with the mother of the Plaintiff sharing soon as both got employment, they moved into a rented accom The First Defendant was in employment but only for a couple o she resigned as she became pregnant and gave birth to her fir has always remained a housewife. The Plaintiff continued his e sole bread-winner of the family.

A few years later, the Plaintiff took a housing loan from a buil He purchased a house in Northampton at the price of £31 property - vide exhibit P8. The ownership of the property wa names of the couple. The couple also had their second child. into the matrimonial home of their own. Having lived in Englai 1987 they decided to return to Seychelles for permanent s gradually started disposing of their assets in England with a v transfer of their assets and residence to Seychelles. In ear matrimonial home for a net price of £19,654.63 vide exhibit P9 received after deducting the loan outstanding on the mortgage. They also disposed of some of their movables in England and shipped others to Seychelles. They also transferred the sale proceeds and other funds they had at their disposal, to a bank account in Seychelles held in the sole name of the Plaintiff with the Standard Chartered Bank PLC vide exhibit P3. In early 1989, after transferring all their assets and funds the family eventually arrived in Seychelles.

Upon their arrival here, the couple decided to own a matrimonial home in Mahe. Hence, on 1 June 1998 they purchased a parcel of land - Title S1640 - at Anse Aux Pins, Mahe

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society in England. on mortgaging the gistered in the joint family soon moved about 10 years, in tent. Hence, they o effect a complete 88, they sold their g the balance they

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with a dwelling house thereon hereinafter called the "suit-property" for the sum of R100,000 vide exhibit P1. This property is situated close to the property where the Second and Third Defendants were then living. The Plaintiff testified that being a non-Seychellois at the time of purchase, he could not own any immovable property in the Republic without the sanction of the Government. Therefore, he purchased the property and had registered it in the sole name of his wife, the First Defendant, who had all along been a Seychellois citizen. According to the Plaintiff, he purchased that property with the intention of making it the matrimonial home for himself, his wife and two children of their marriage. He paid a sum of R100,000 to the seller Mrs Dorothy Gozmao for the purchase price of the property and an additional sum of R18,000 for fixture and fittings as evidenced by exhibits P (2) to P (2) ( c). Further, the Plaintiff testified that on purchasing the property it was mutually agreed upon between the Plaintiff and the First Defendant that the Plaintiff pays the purchase price but the transfer would be done in the name of the First Defendant, who would transfer it back to the Plaintiff upon his becoming a citizen of Seychelles. In any event, the Plaintiff testified that was the intention of the parties as well as the expectation of the Plaintiff.

A few months after the said purchase, the Plaintiff learnt about an extramarital affair the First Defendant had clandestinely developed with another man. This resulted in a stormy relationship between the couple. Their marriage was on the rocks. In mid-1989, the wife applied to the Magistrates' Court seeking an order under Section 3 of the Summary Jurisdiction (Wives and Children) Act so that she could no longer be bound to cohabit with the Plaintiff. The said application was grounded on the allegations of persistent cruelty, neglect and habitual drunkenness against the Plaintiff. The Magistrates' Court on 31 October 1989 dismissed the application as none of those allegations made by the wife against the Plaintiff was found to be true - vide exhibit P6 (d).

Following her unsuccessful attempt to obtain a non-cohabitation order from the Magistrates' Court, the wife deserted the Plaintiff taking the law in her own hands. In fact, she left the matrimonial home on her own and went to live with her mother at English River, Mahe. In January 1990, the wife while she was living in de fact separation from her husband filed a petition in the Supreme Court for a writ habere facias possessionem to evict the husband namely, the Plaintiff from the matrimonial house. In the said writ proceedings, the Plaintiff informed the Court that he did not stop his wife from returning to the matrimonial home and this invited the wife to reconcile and join him in the matrimony. The Court on 10 January 1990 vide exhibit P6(a) having considered all the circumstances of the case, refused to writ for eviction. However, the First Defendant did not return to the matrimonial home despite an attempt by the Court to reconcile the parties. In the meantime, the Plaintiff on 11 January 1990 obtained his Seychellois citizenship and become eligible in law to have the property registered or transferred in his name.

Two weeks after the Plaintiff obtained citizenship, on 29 January 1990, First Defendant (the wife) without the Plaintiff's knowledge or authority, went before an Attorney - Mr John Renaud - and effected the transfer of the property i. e the land - Title S1640 - with

matrimonial house thereon to her brother (the *Third Defendant*) and his wife (*the Second Defendant*) jointly for an alleged price of R100,000 as shown in the transfer deed, exhibit D 1. Immediately, that is to say, about a week after making the impugned transfer, the First Defendant, on 6 February 1990, received a sum of R50,000 from the Attorney Mr J. Renaud and on the same day left Seychelles for good without Plaintiff's knowledge. According to the Plaintiff, she went to England with another Englishman by name Mr Phil Mountsand, who had also been visiting Seychelles as a tourist at the material time.

In passing, it is pertinent to note that the statements, which the estranged wife (the First Defendant) has made in her letter dated 25 January 1990 (exhibit D8) addressed to her Attorney Mr J. Renaud, immediately before making the transfer in question. This letter reads:

Dear Sir,

I may become entitled to some money following the sale of a parcel of land title S1640.

The parcel of land belongs to me and my husband, Robert Bason who presently live at Anse Aux Pins.

The parcel of land, if sold will fetch R100,000.00, R19,000.00 out of which sum I have already received directly from the purchasers. Out of the remaining R81,000.00 you are authorized to deduct R35,000.00 and pay the same to Robert Bason.

Yours faithfully,

(Sd) Rose Bason (Mrs)"

The First Defendant, having gone to England with the man named above, applied to the Canterbury County Court therein, for dissolution of her marriage with the Plaintiff. On 5 December 1992 the English Court accordingly, dissolved the marriage of the couple and granted a decree of divorce.

In the meantime, the Plaintiff to his shock came to know about the secret transfer of his property by his wife behind his back and her sudden departure from the jurisdiction. He immediately, approached Mr Bernardin Renaud, who was then a legal practitioner (now a Judge of the Supreme Court), for legal assistance in order to recover his property, which had been transferred by the First Defendant to the third parties namely, the Second and Third Defendants.

According to the Plaintiff, when the matter was still in the hands of the said legal practitioner for the purpose of filing the instant suit in Court, the Third Defendant namely, the wife of the Second Defendant, without the Plaintiffs knowledge filed a petition before the Rent Board seeking an order for eviction of the Plaintiff from his

matrimonial home on the ground that being a co-owner in title, she needed the suit-property for her personal occupation. The Plaintiff, in his evidence before the Board claimed inter alia, that the sale of the suit-property to the Second and Third Defendant herein, was a fraudulent transaction and intended to deprive him of his ownership. The Board after listening to the parties and observing their demeanor when giving evidence, was satisfied that the Plaintiff was telling the truth, when he told that the suit-property was his matrimonial home and that his wife had sold it without his knowledge. Hence, the Board found that there was no landlord/tenant relationship between the Plaintiff and the Third Defendant and in its judgment dated 22 January 1991, the Board dismissed the petition for eviction vide exhibit P6 (b). Being dissatisfied with the said judgment of the Board, the Third Defendant filed an appeal against it to the Supreme Court. Having heard the appeal, the Supreme Court in its judgment dated 29 November 1991 vide exhibit P (6) (a) confirmed the findings of the Rent Board against the Third Defendant and dismissed the appeal with costs. In the said judgment, the Supreme Court inter alia, held as follows:

The findings of the Rent Board in the instant case that the house was a matrimonial home and that the wife had sold it without his knowledge. These are fundamental matters to be decided by this Court in a suit filed by the Respondent (the Plaintiff herein) against his wife applying for a recession of the deed.

With these background facts, the Plaintiff by a plaint dated 27 January 1992, instituted the instant action in Civil Side No: 17 of 1992 against the three Defendants seeking justice against their alleged misdeed that resulted in the deprivation his ownership of the property. In fact, the Plaintiff had pleaded in the original plaint, that the said transfer of the suit-property was a "sham" and consequently sought the Court for a judgment to set aside the transfer in question and order the First Defendant (the wife) to retransfer the suit-property to the Plaintiff. The original suit summons was duly served on all three Defendants including the First Defendant, who had been then and is still residing in England. The First Defendant despite service of summons, defaulted appearance in Court whereas the Second and Third Defendant put up appearance and contested the suit. The Court presided by Bwana, J (as he then was) proceeded to hear the case ex parte against the First Defendant and inter parte against the other two Defendants. Having heard the case, the trial Judge on 8 April 1996, gave judgment for the Plaintiff finding inter alia, that the term "sham was similar to fraud" and so the purported transfer of the suit-property by the wife to the Second and Third Defendants was a fraudulent one.

Having been aggrieved by the said judgment, the Second and Third Defendants appealed against it to the Seychelles Court of Appeal in Civil Appeal No: 13 of 1996. In its judgment dated 21 May 1997, the Court of Appeal allowed the said appeal stating reasons thus:

On review of the entire proceedings it is clear that the Supreme Court had misdirected itself on the question whether the issue of fraud has arisen in

the case. And if so, that it has failed to advert to the quality of proof. Besides, consideration of the case of the First Defendants has been unduly tainted by the use made by the Court of the default judgment against the First Defendant

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Hence, the Court of Appeal set aside the judgment of Bwana, J before another Judge. Accordingly, this Court reheard the case in the process of delivering the judgment in this matter.

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In passing, I should mention here, on 22 March 2000, at the request of the Plaintiff with the leave of the Court, amended the original allegation of "fraud" to form part of the pleadings under paragraph 10 of the plaint. However, on 21 November 2000, counsel for the First Defendant informed the Court that he was not making any amendment to the statement of defence to the said amendment. The Court therefore, proceeded to deliver judgment against the First Defendant for her default and inter parte against the Second and Third Defendants.

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In essence, the Plaintiff gave evidence in support of all the facts hereinbefore. He also produced a number of documents and proceedings involved in the previous litigations between the Plaintiff and the Defendants. All those documents were admitted as exhibits. In the circumstances, the Court found that the transfer of the "suit-property" made by the First Defendant in favour of the Second and Third Defendants is fraudulent and set aside in order to set it aside and retransfer the suit-property to the Plaintiff.

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On the other side, the Third Defendant testified for the defence as a witness for the Defendants. He stated that he has been working at the Post Office for the past 25 years and his wife, the Second Defendant, is a working woman. Since both were earning members of the family, they had savings in their account with Barclays Bank, Victoria and purchased the suit-property for R100,000 out of their savings of R90,000 plus a sum of R10,000 which had received from one of his sister by name Elizabeth, who was living in Denmark. In support thereof, he produced a photo copy of a draft in the amount of R90,000 dated 9 January 1990, issued by the Barclays Bank PLC, Independent State of Seychelles in favour of the Attorney, Mr John Renaud. The Third Defendant also produced two credit advices for R17,298.90 and R16,527.05 dated 8 August 1988 and 30 January 1990 respectively, claiming that those sums were sent to him by his sister Elizabeth from Denmark. Moreover, he testified that he never acted in collusion with his sister, the First Defendant in the sale transaction to defraud the Plaintiff. In cross-examination, however, he admitted that he knew the Plaintiff ever since he married his sister, the First Defendant. He knew that since the Plaintiff was a non-Seychellois in 1988, he could not buy the property. This witness also had known that matter personally, as it was discussed in the family in front of him soon after the purchase in 1988. Although, the Third Defendant knew that the First Defendant left the country six days after the transfer, he did not know the reason for such sudden departure and her failure to return to Seychelles until today. At one stage, the Third Defendant stated in

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the cross-examination that immediately after purchasing the property, he straight applied for eviction against his brother in law, but subsequently he changed his version stating that he approached and talked to him before applying for eviction. When the Third Defendant was asked about the movables namely, furniture, bed, side table, radio, TV etc. found inside the house, he answered as follows:

There are, but they do not belong to him (the Plaintiff). I believe they all sold together (to me), just as he (the Plaintiff) bought it.

Furthermore, the Third Defendant responded to the subsequent questions in cross-examination as follows:

Q: You are saying that when you purchased purportedly, the house on the 29<sup>th</sup> January 1990, did you purchase everything in the house?

A: We must make one thing clear that only now that we are going to claim the things that were present in the house, because, for all the times that he has been staying in the house.

Q: He (the Plaintiff) is the father of your niece and nephew. The niece and nephew are living in the house and going to school in the district of Anse Aux Pins, Did you ever consult with Mr Bason, the father of your niece and nephew, about where his children were going to stay, after you say you bought the house on the 29<sup>th</sup> of January 1990?

A: For this one I will not interfere. It must be their father and their mother who have to deal with this matter.

Having thus testified, the Third Defendant denied that he involved in any fraudulent dealing with the First Defendant in the entire episode of the impugned transfer. According to him, he purchased the suit-property for the price of R100,000, which sum he paid in full to the Attorney Mr J. Renaud, who was acting on his behalf in the sale transaction in question. In view of all the above, the Defendants seek dismissal of this action with costs.

Firstly, as I identify the issues, there are only three fundamental questions before the Court for determination in this matter namely:

1. Did the Plaintiff have any proprietary interest in the suit-property title 51640?
2. Did the First Defendant transfer the suit-property to the Second and Third Defendants with the intention of defrauding the Plaintiff in that, the First Defendant fraudulently deprived the Plaintiff of his proprietary interest in the suit-property? And
3. Is the Plaintiff entitled to be registered as the owner of the suit-property?

Before, one proceeds to examine the evidence, it is important to go through the position of the law relevant to the aspect of "fraud" in civil matters.

Article 1116 of the Civil Code reads thus:

Fraud shall be a cause of nullity of the agreement when the contrivances practiced by one of the parties are such that it is evident that without these contrivances, the other party would not have entered into the contract. It must be intentional but need not emanate from the contracting party.

It shall not be presumed it must be proved.

In fact, a contract is vitiated by fraud, for fraud affects the intention. It involves an act or omission which is deliberate or reckless without regard to the natural consequences that may ensue. Indeed, it is a matter of appreciation for the Court to determine whether there is a fraud or not. Even an excessive praise in an advertisement may amount to fraud if it is very convincing. However, here we are not concerned with fraud as an element in the commission of criminal offence - vide *Codification in a Mixed Jurisdiction* - by A. G. Chloros at 131. The nullity of the contract derives not only by the general rule of article 1134 of the Civil Code that "agreements shall be performed in good faith" but also from the specific provision of article 1116 quoted supra.

In the case of *Savy v Savy* SCAR (1978-1982) 325, the Court of Appeal reviewed the whole field of fraud in contract and the main elements constituting fraud.

1. It must be shown that fraudulent contrivances preceded the agreement or were used at the time the contract was entered into and had a direct effect on it.
2. Two principal element must be proved by the party seeking cancellation:
  - a. That the other party had an intention to deceive; and
  - b. That there was a material factor present consisting of contrivances, false allegations or the withholding of information which had induced the victim's consent to the agreement.
3. The word "contrivances" designates the material or physical means employed by the person perpetrating the fraud achieve his end. It includes all tricks, all cheats, illusions and delusions, all fraudulent setup. In certain cases it consists in exploiting the physical or intellectual weakness or the vicious tendencies of a co-contractant, such as pandering to his habits of intemperance with a view to inducing him to sign an agreement to which he would not otherwise have subscribed.

4. As fraud vitiates consent, it is inevitable that a simple lie constitutes fraud. However, every lie does not amount to fraud. The lie must amount to "dolus malus". What constitutes "dolus malus" depends on the circumstances of every case. In this respect consideration must be given to the position of the person, who utters the lie, as well as to the mental capacity and status of the person against whom the fraud is perpetrated, as for example his age or lack of education.
5. Even if fraud has been used, the party who relies on the fraud to ask for the nullity of the contract must not have committed a serious fault such as neglecting to check a statement which may easily be checked. It is indispensable that the fraud should have been the determining factor in producing the consent. If such consent has resulted in the victims own fault or negligence, annulment of the agreement will not be decreed.
6. Fraud usually vitiates consent. In certain circumstances, however, fraud may only lead to a divergence between the real intention of the parties and the intention of the parties as expressed in the deed, without vitiating consent. Proof of fraud in such a case allows such divergence to be established and the real intention to be given effect to.

Indeed, all the above guidelines are generally applicable in cases, where there is privity of contract between the victim of the alleged fraud and the defrauder. In other words, in cases, where the victim is a party to the impugned contract that is allegedly vitiated by such fraud.

Coming back to the present case, it should be noted that the Plaintiff is obviously a third party to the contract of sale of the suit-property by the First Defendant to the Second and Third Defendants. Although the English doctrine of privity is stated as a principle in article 1165 of the Civil Code, article 1121 to which it refers has modified the doctrine, so that the claims by a third party are also enforceable against the contracting parties, provided that third party has any lawful interest in the matter affected by such contract. Indeed, this modification to the doctrine of privity has created the effect of obligations by the contracting parties towards third parties to the contract. This implies that a party to any contract is under a twofold legal obligation namely:

- (i) not to defraud the other party to the contract by fraudulent means, inducement, misrepresentation of facts etc. and
- (ii) not to defraud any third party, who has a lawful interest in the subject matter of the contract or is directly affected by the transaction involved in such contract.

In this particular case, it is evident that the Plaintiff has purchased the suit property during marriage out his own funds, utilizing withdrawing the sum from his bank account with the Standard Chartered Bank, vide exhibit P3. Hence, I conclude that the Plaintiff



had and still has the proprietary interest in the suit-property title S1640 by virtue of the payment he made towards the entire purchase price. In the circumstances, I find that although the First Defendant is not a party to the transfer or sale of the suit-property by the First Defendant to the Second and Third Defendants, still he is entitled in law to claim recession of the sale on the ground of fraud, as he has a lawful interest in the subject matter of the contract namely, the suit-property,

As regards the standard of proof in civil proceedings to prove a criminal act such as fraud, it is no higher than the standard of proof ordinarily required namely, on a balance of probabilities. See, *General Insurance Company of Seychelles Ltd v SeyBake Seychelles Limited* SCAR 1983-1987 at 252. However, to prove a serious allegation such as adultery in civil proceedings, it is said, the standard of proof required is not as high as in criminal law, but is high vide *Govinden v Govinden* (1971) SLR 19. Therefore, the more serious the allegation, the higher the degree of probability required and the more cogent the evidence required to overcome the likelihood of what is alleged and thus to prove it. See, *GIC v SeyBake* supra. In the light of the authorities of case law, I hold that to prove *fraud* in the present case, the standard of proof required is higher than on a "balance of probabilities" but obviously, lower than that of "beyond reasonable doubt".

On the allegation of fraud, the following facts and circumstances, to my mind, prove more than on a balance of probabilities that the First Defendant did transfer the suit-property only with a fraudulent intention of depriving the Plaintiff of his ownership thereof and so I find:

1. The First Defendant has unequivocally admitted in her own letter, exhibit D8 thus: I may become entitled to some money following the sale of a parcel of land title 51640. The parcel of land belongs to me and my husband, Robert Bason who presently live at Anse Aux Pins. Indeed, the first part of her admission clearly shows that at the time of sale, she was not even sure if she was entitled to any share in the suit-property. She knew full well that the Plaintiff had proprietary interest in the property. Having known all these facts, she has deceptively proceeded to transfer the property to third parties, without the Plaintiffs knowledge. In the circumstances, what else could have been in her mind except a fraudulent intention to deprive the Plaintiff of his ownership?
2. In any event, the First Defendant as a reasonable wife should have been conscious of the facts that (i) she had been married to the Plaintiff (ii) the marriage was then in subsistence (iii) the suit-property was purchased during the subsistence of the marriage (iv) the suit-property formed part of the family asset and (v) their marital relationship had turned acrimonious with the possibility of dissolution. Hence, as a reasonable person, she should have known that such family assets should be settled or adjusted or disposed of, only after dissolution of the marriage of the parties. In spite of that knowledge, she has transferred the matrimonial property, during the

subsistence of the marriage, that too, without her husband's knowledge, what else could have been in his mind except a fraudulent intention to deprive the Plaintiff of his ownership

knowledge. In my mind except a

3. The First Defendant knew very well that her husband had a proprietary interest in the suit-property by virtue of the fact that he paid for the purchase price and was in lawful occupation of the property. In spite of that she attempted to evict her husband and take possession of the suit-property by filing a writ habere facias possessionem in the Supreme Court falsely alleging that the Plaintiff was in illegal occupation of the property. This conduct amounting to "dolus malus" clearly shows that even before offering the suit-property for sale, the First Defendant has at first place attempted to get vacant possession of the property obviously, with a hidden agenda of sale in mind. This treacherous act of the wife, in my view, amounts to "fraud" in the given circumstances of this particular case. As rightly observed by the Court of Appeal in *GIC* supra, what constitutes fraud in a matter depends on the circumstances of every case.
4. Moreover, the Second & Third Defendants, being very close relatives and having lived in the neighborhood should have certainly known what was actually happening in the family of the Plaintiff during the period of the transfer. Any reasonable man for that matter, who goes to purchase the matrimonial home of his brother-in-law would naturally enquire and consult or at the very least, would have got the opinion of his brother-in-law before making the purchase. Moreoever, at the time of purchase he did not had the courage even to speak to him personally in order to get the vacant possession of the house, rather he has asked his wife, to file an application for eviction before the Rent Board against his brother in law. In the given circumstances of this particular case, the conduct of the Third Defendant prior to, at and after the alleged purchase leads this Court to draw the only inference that he has also taken part in the fraudulent stratagem engineered by his sister, the First Defendant against the Plaintiff, a fortiori by accepting the transfer in favour of himself and his wife.
5. I had the opportunity of observing the demeanour and deportment of the Plaintiff and that of the Third Defendant, when testifying in Court. I am satisfied that the Plaintiff was a credible witness and was speaking the truth that he was the one who paid for the price, when the suit-property was originally purchased in the name of his wife. There was a unilateral agreement that the First Defendant would retransfer the suit-property as and when the Plaintiff obtains Seychellois citizenship. At any rate, I am satisfied from the entire circumstances of this case that the Plaintiff had a "legitimate expectation" like any other husband in his position would have, that as and when he obtains Seychellois citizenship the wife would do the retransfer. On the contrary, the wife being driven by fraudulent intention has transferred the property to her brother and sister-in-law.

6. The suit-property was purchased in 1988 for the price of 1,000,000 but after 10 years it has been purportedly sold for the same price despite the notorious fact that the market value of immovable property in Seychelles have substantially appreciated in the past ten years. I take judicial notice of it in this respect. No prudent owner- if really he or she in the normal circumstances, will sell his property disregarding the appreciation of its market value. However, the First Defendant has acted unwise playing a quick trick in this matter obviously, for reasons of quick sale and quiet slip.
7. "The truth will out" it is said. This is true in the case of the First Defendant. In fact, under cross-examination he retorted angrily that the suit-property did not belong to the Plaintiff. That was the inevitable in the case. It came to light slipping out of his mouth, when he said "I bought it together to me, just as the Plaintiff bought it" - vide supra - in vino veritas - it comes out of anger too!

In view of all the above, I find the answers to all three fundamental questions (supra) in the affirmative thus:

1. Yes, the Plaintiff had and has proprietary interest in the suit-property title 51640 for having purchased the same from his own funds.
2. Yes, the First Defendant did transfer the suit-property title 51640 to the Second and Third Defendants only with the intention of defrauding the Plaintiff. The First Defendant fraudulently deprived the Plaintiff of his proprietary interest in the suit property title 51640; and
3. Yes, the Plaintiff is entitled to be registered as the owner of the suit property.

In the result, I enter judgment for the Plaintiff as follows:

- (a) The transfer of land Title No. 51640 made by the First Defendant Rose Bason on 29 January 1990, in favour of the Second and Third Defendants namely, Jacqueline Agnes Labonte nee Derjacques and Jean-Baptiste James Labonte being a fraudulent one, I hereby set aside the said transfer. I declare that the Plaintiff is the lawful owner of the said property Title No. S1640, and he is entitled to be registered as such in the land register, for having paid the consideration to its previous owner Mrs Dorothy Jessie Gozmao (born) Corgate.
- (b) Consequently, I direct the Land Registrar to cancel the registration of the transfer referred to in (a) above, and register the Plaintiff as owner of Title No. S1640 and give effect to the judgment given herein; and
- (c) Having regard to all the circumstances of the case, I make no order as to costs

**Record: Civil Side No 17 of 1992**