

IN THE SUPREME COURT OF SEYCHELLES

_____ **HENSLEY ALBEST**
PLAINTIFF

_____ **VERSUS** _____

_____ **ISABELLE ROMAIN** _____ **DEFENDANT**

_____ **Civil Side No 334 of**
2002

Mr. B. Georges for the Plaintiff
Mr. S. Freminot for the Defendant

JUDGMENT

B.Renaud

It is not in dispute that the Plaintiff is the Executor of the estate of the late Mary Albest, nee Mussard, hereinafter referred to as the deceased, for having been appointed by this Court on 3rd July, 2002. The deceased died intestate leaving:

- (i) *A number of heirs, her children, all of whom have died leaving heirs.*

A parcel of land, surveyed as parcel V5184 at Rochon, Mahe.

One of the said heirs of the deceased was Violette Romain, nee Albest, now deceased. The Defendant is the Executrix of the estate of the said Violette Romain, per appointment of this Court. One Beryl Coopoosamy has commenced the construction of a dwelling house on the said parcel V5184, and has offered to purchase the said parcel V5184 for SR5,250.00.

It turns out that all the heirs of the deceased, save for those represented by the Defendant in her capacity as Executrix of the estate of the late Violette Romain, have agreed to sell the said parcel V5184 to Beryl Coopoosamy for SR5,250.00. The Plaintiff believes that it is unlikely, given the position of the said parcel V5184 and the partial construction by Beryl Coopoosamy thereon, that the said parcel V5184 can be sold by public auction.

The Plaintiff wishes to have the direction of this Court in the matter and prays for the following:

- (a) *A declaration that he can sell parcel V5184 to Beryl Coopoosamy for SR5,250.00.*
- (b) *An order under Article 819 of the Civil Code to that effect.*

In its Statement of Defence the Defendant contends that Beryl Coopoosamy had no authority whatsoever to build a house and that a Court Order was given to that effect. She also states that she has no knowledge that all the heirs of Violette Romain have agreed to sell to the Plaintiff the said parcel V5184 to Beryl Coopoosamy, and that the property is valued at SR5,250.00.

The Plaintiff, when testifying, produced consent of all the heirs of the late Mary Albest as per Exhibit P4 (1 to 11) agreeing to sell the said parcel V5184 to the said Beryl Coopoosamy for SR5,250. A valuation certificate, Exhibit P... shows that Quantity Surveyor Ms C. Bastille has valued the property at SR5,250.00.

The parcel of land in issue, namely Parcel V5184 is to the extent of approximately 105 square metres. It borders the Defendant's property and that of her nephew. The Defendant objects that parcel V5284 be transferred to Beryl Coopoosamy for a mere consideration of SR5,250.00 and is also of the view that a proper valuation of the said property should be sought and then sold by public auction as there are other heirs who are willing to pay more.

Article 819 of the Civil Code is as follows:

"In the case of immovable property held in co-ownership, unless all the co-owners agree to postpone the sale, such property shall be sold. If the co-owners do not agree to a private sale, or if one of them is subject to an incapacity such as minority or interdiction or is absent from Seychelles and is not represented therein by a duly appointed agent, the property shall be sold at a public auction. In this respect, articles 1686, 1687 and 1688 of this Code relating to licitation shall have application.

Nevertheless, even if one or more of the co-owners is subject to an incapacity as aforesaid, or is absent from Seychelles, the property may be sold otherwise than by a public auction with the permission of the Court."

By virtue of Article 817 of the Civil Code, immovable property held in co-ownership is no longer a co-ownership of rights in the immovable property, but a co-ownership of the proceeds of sale. Thus the rights of the co-owners are not in the land itself but in the money generated from its sale. The obligation of the fiduciary of the co-owners therefore is primarily to sell the co-owned property

and share out the price received among the co-owners in relation to the respective shares of each co-owners. The method of selling property held in co-ownership under article 819 of the Civil Code is by any method to which the co-owners agree, and if they cannot agree, the method is by public auction in order to ensure that the best possible price is received for the property in issue to the benefit of the co-owners. However, this Court has wide powers under Article 819 of the Civil Code to permit a sale otherwise than by public auction.

Should this Court use these powers in this present matter?

Parcel V5184 is small and of no great financial value. It is completely surrounded by other houses belonging to the same family or relatives of both the Plaintiff and the Defendant. It cannot properly and practically be divided among the heirs in view of its size. It has on it a partly-built house said to belong to Beryl Coopoosamy. The Court visited the site and found that the partly built house covers practically every inch of that parcel of land and it almost touches the house of the Defendant. It is true that land in Seychelles is no doubt a scarce commodity and every buildable portion is fully utilized by its owners. With respect to the property in issue, it is best known to the said Beryl Coopoosamy the reason as to why of all places he had chosen to fit his dwelling house in such a tight location. I can understand the concern of the Defendant as to what would be the inconvenience that she would have to endure if the property is sold and the house is built as proposed, hence her objection. It is unfortunate that Beryl Coopoosamy started construction on the property before the question of ownership had been settled.

This Court understands the concern of and sympathises with him for having spent his hard earned money and is as yet not able to enjoy a dwelling house of his own. On the other hand, in facilitating a citizen to make optimum use of land, this Court cannot pretend to be oblivious of the prevailing peculiar circumstances of this present matter and the ensuing perpetual social strife that could result among the adjacent property owners or occupiers including the Defendant and other heirs. Taking all these in consideration, this Court would regrettably decline to exercise its powers to permit the sale of the said property Parcel V5184 otherwise than by a public auction. The orders prayed for are accordingly declined. The parties, if so advised, may proceed otherwise as provided for by law.

I make no order as to costs.

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B.RENAUD

JUDGE

Dated this 23rd day of May 2005