

# **IN THE SUPREME COURT OF SEYCHELLES**

**ROBIN MARIE**

**PLAINTIFF**

**VERSUS**

**DIDIER LAPORTE**

Civil Side No 227 of 2002

Mr. Rajasundaram for the plaintiff  
Mr. R. Valabhji for the defendant

## **JUDGMENT**

### **B.Renaud**

The Plaintiff is claiming damages from the Defendant for the latter's use and occupation of his property.

The Plaintiff alleges that he became owner of Parcel S405 situate at Pointe Larue on 26<sup>th</sup> October 2000 and the Defendant was in possession and enjoyment of the said property without paying any rent to the Plaintiff. The Plaintiff had obtained an Eviction Order against the Defendant whereby the latter was ordered to vacate the said property by 24<sup>th</sup> December, 2002. The Plaintiff is now claiming damages for use and occupation of his property by the Defendant for the period 1<sup>st</sup> November 2000 until the date of his eviction, at the rate of SR5000.00 per month.

The Defendant in denying the claims of the Plaintiff stated that licitation proceedings leading to the auction of the property in issue were not yet completed, and, that he remained in possession thereof as co-owner since he had not been paid his share of the property which belonged jointly to him and his wife and which was the subject of a licitation. The Defendant admitted that there was an Eviction Order but claimed that the Rent Board did not make any order for payment of any rent.

Learned Counsel for the Defendant raised a Plea in Limine Litis as follows:

**“The Defendant avers that the claim of the Plaintiff in this case is prescribed under Section 3 of the Evidence Act, Cap. 74 of the Laws of Seychelles”**

This Court, on 13<sup>th</sup> May 2004, ruled that the Plea was premature and it would be considered at the conclusion of the hearing after hearing the case on its merits. This I will now proceed to do.

Section 3 of Cap.74 states thus:

*“In any claim to rent or indemnity for the occupation of immovable property oral evidence shall, when a lease is denied and is not completely established by writing, be admissible to prove or disprove the occupation and the amount or payment of the indemnity; and the party suing shall be entitled to such indemnity although it may result from the oral evidence given that the occupation existed under a lease:*

*Provided that such claim for indemnity shall be barred by one year’s prescription:*

*Provided further that nothing in this section contained shall alter any law by virtue of which the possessor of immovable property is entitled to retain the fruits thereof, and to make them his own.”*

After hearing the evidence in this matter, it is clear that the Plaintiff, despite using the word “rent” in his pleading, is claiming damages from the Defendant for the latter’s use of his property after he, the Plaintiff, had become owner thereof for having purchased and paid for it at a Court Auction.

It is my considered view that the nature of the claim of the Plaintiff cannot be subjected to the limitation prescribed in Section 3 of Cap. 74, referred to above. The limitation or prescription in such matter, in my view, is five years as laid down in Article 2271 of the Civil Code. The provision of Section 3 of Cap.74, is relevant in claims for rent or indemnity arising out of occupation of immovable property without the benefit of a written lease. In such matter oral evidence shall only be admissible if the claim for rent or indemnity is made within one year. In the present claim, the Plaintiff has not pleaded that rent due arising out of a lease which was not made in writing, but

simply damages for use and occupation of his property by the Defendant. Furthermore, the fact that the defendant has occupied the property up to 23/12/02 is not a contention issue that calls for any proof. It is admitted by defendant. For the reasons stated above the Plea in *Limine Litis* fails and is accordingly dismissed.

The Plaintiff testified that he bought parcel S405 at a Court Auction on 26<sup>th</sup> October, 2000 and paid SR210,00.00 for it at the Registry of the Supreme Court and obtained a receipt No.75025 dated 19<sup>th</sup> October 2000, marked as Exhibit P1. He also paid the Registration fee of SR18,025.00 and obtained receipt No. 79519 dated 26<sup>th</sup> October 2000, marked as Exhibit P2. The property is registered on the name of the Plaintiff as proved by the certificate of official search produced to Court. At the time of purchase there were about 9 people of Indian origin, all employees of the Defendant or his construction company, who were living in and occupying the 3-bedroom house on the said property. The Defendant, incidentally, is the Director of a construction company, called D & M Construction, which employs Indian workers. There was a store and a workshop equipped with electrical woodworking machineries installed by the Defendant on the property. After the purchase of the property, the Plaintiff, requested the Defendant to vacate his property. The Defendant did not vacate the property, but instead, phoned the Plaintiff and advised him to "*be careful you do no loose your money.*" The Plaintiff applied to the Rent Board on 21<sup>st</sup> November, 2000 for an eviction order against the Defendant in case R/B 78/00 and the Board made its order on 28<sup>th</sup> June, 2002, evicting the Defendant by 23<sup>rd</sup> December, 2002. The Defendant demolished the store, removed the workshop and vacated the house on the property only on 23<sup>rd</sup> December 2002 on which date the Plaintiff took possession. By letter dated 9<sup>th</sup> August 2002, (*Exhibit P7*) the Plaintiff claimed damages from the Defendant before filing his claim in Court.

The Defendant testified that he was the owner and occupier of parcel S405 until he was paid for it on or around 20<sup>th</sup> December, 2002 and he vacated the property on 23<sup>rd</sup> December, 2002. He admitted that his lawyer in October 2000 informed him that the Plaintiff had bought the property for SR210,000.00. He (*Defendant*) complained that he was never invited to bid for it even the property belonged to him. He continued to run his business on the property and his workers were staying on the property. The Defendant testified that he has over 38 years experience in

building construction and stated that the value of one house on the property was about SR500,000.00.

It is evident that this is a claim for damages arising out of the use and occupation of a property belonging to another. Here, the Defendant was a previous co-owner of the property that ended with a licitation procedure before the Court in October 2000. The Defendant admitted knowledge of the sale to the Plaintiff who was the highest bidder. The Plaintiff complied with the court sale procedure and paid for the property in Court and became owner thereof on 26<sup>th</sup> October, 2000. The Plaintiff requested the Defendant to vacate his property and the latter refused. The Plaintiff obtained an eviction order for the eviction of the Defendant and the Rent Board made an order evicting the Defendant by 23<sup>rd</sup> December, 2002. The Defendant complied with the eviction order. The Defendant claimed that he continued to use and occupy the property because he had not received his money for the property. The Plaintiff is claiming damages for the use and occupation of his property by the Defendant for the period 1<sup>st</sup> November 2000 to 23<sup>rd</sup> December, 2002 at the rate of SR5000.00.

I believe that Article 549 of the Civil Code is the appropriate legal provision applicable in this matter. That Article states:

*“A mere possessor acquires the natural produce only if he is in good faith. Otherwise, he is bound to restore the produce together with the property to the owner who claims it; if the said produce no longer exists in its natural state, its value is calculated at the date of payment.”*

*The Defendant admitted that he had a Lawyer representing him in his litigation with his ex-wife. In October 2000, his Lawyer informed him that the Plaintiff had purchased the property in an auction sale in Court. Despite this knowledge that he is not the owner or co-owner of the property anymore, he continued to run his business as well as accommodate his Company workers thereon free of charge. The Defendant went as far as ignoring the request of the Plaintiff who requested him to vacate the property. The Defendant contended that he had not received his money arising out of the sale, hence, he used and occupied the property until he received his money.*

Article 550 of the Civil Code states:

*"The possessor is in good faith when he possesses as owner by virtue of a title of ownership the defects of which are unknown to him.*

*He ceases to be in good faith from the moment that they become known to him"*

In the circumstances of this matter, I find that the Defendant ceases to be acting in good faith from the moment his Lawyer advised him that the Plaintiff had purchased the property and had become owner thereof. Moreover, the Plaintiff informed him that he had become owner of the property and he, the Defendant was requested to vacate the property to the point of obtaining an Eviction Order. The persistence and recalcitrance of the Defendant in vacating the property, in my view, amounts to nothing less than bad faith on his part, and so I find.

As regards the position taken by the Defendant that he was retaining the property until he is paid, this is devoid of any merit. The Plaintiff is not to be penalized if the Defendant still had contentious matters to be sorted out with the other co-owner.

In the circumstances, I find that the Plaintiff had a right to claim an indemnity, which right stems from the provisions of Article 549 of the Civil Code.

The next point that I have now to consider is the quantum of indemnity.

The Plaintiff has based his claims on the basis of SR5000.00 per month that the Defendant was enjoying the fruits of his (*Plaintiff's*) property. I believe that in the light of the evidence that the property was being used for commercial purposes, including woodworking workshop, as well as accommodating the Company expatriate workers, bearing in mind the going rent for a three-bedroom house on the market, I find the claim of the Plaintiff to be fair and reasonable in the circumstances.

I therefore allow the claim of the Plaintiff and fix the indemnity payable by the Defendant to the Plaintiff from the 1<sup>st</sup> November 2000 up to and including 23<sup>rd</sup> December, 2002 at SR5,000.00 per month for 25 months and 23 days.

There will therefore be judgment for the Plaintiff against the Defendant in the sum of SR128,710.00 with interests and costs.

B.RENAUD

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**JUDGE**

Dated this 1<sup>st</sup> day of July 2005