

IN THE SUPREME COURT OF SEYCHELLES

1. ANNIE BOUCHEREAU
 2. FRANCIS BOUCHEREAU
- PLAINTIFFS**

VERSUS

1. GONZAGUES SAMSON
 2. CHRISTINA ROSALIE
- DEFENDANTS**

Civil Side No 87 of 2003

Mr. F. Elizabeth for the Plaintiffs
Mr. W. Lucas for the Defendants

JUDGMENT

Perera J

This is a delictual action in which the plaintiffs are claiming damages in respect of an alleged trespass on property and causing damage thereto, and an alleged encroachment on their land. It is averred that sometime in October 1999, the defendants entered the plaintiff's land without consent or authorization and broke a terrace, and removed a large quantity of soil. It is also averred that the defendants have unlawfully built a part of a laundry shed on the plaintiff's land without authorization.

The defendants, in their statement of defence denies those averments and states that the alleged damage was caused when a JCB Tractor hired by the plaintiff's themselves unearthed a boulder on their own land, causing it to fall on their (*defendants'*) land together with soil, the quantity of a 3 ton pick up load. The

defendants further aver that the encroachment has now been removed.

The 1st plaintiff in her testimony stated that the defendants entered her land and removed the soil to level their land. She further stated that although the laundry shed was removed, subsequently it was rebuilt encroaching her land. On being cross examined she stated that her land was on a higher level than that of the defendants, and that when the tractor was excavating, a “*small*” boulder fell onto the defendant’s land. Consequently some pillars were damaged. She maintained that the shed which was rebuilt, was still an encroachment on her land.

The 2nd plaintiff the husband of the 1st plaintiff who was called to testify candidly stated that he was not present during the incident and that hence was unaware as to the circumstances under which soil was removed.

However, Yvonne Azemia, a neighbour testified that the plaintiffs were doing construction work on their land, and that she saw the defendants cutting down the terrace and removing soil in a wheelbarrow. They used a hoe and spade to cut the soil. The removing of soil continued for about one week. The defendants used the soil to level their land. The witness stated that during that week she was on leave, and hence she could observe the process from her house.

James Sarah, the JCB Tractor driver testified that he was engaged by the plaintiff to clear the site for construction of a house. While working, a small boulder rolled down accidentally and damaged a casserole on the defendants’ land. He then picked that boulder and replaced it in the original position. Consequent to this accident a small amount of earth that could fill a “*ferblan*” which is about 60 cm in length and 50 cm wide, rolled down to the defendants land. The height of the plaintiffs land from that of the defendants was about 2 to 2½ metres. He denied

that soil of the quantity of a 3 ton pick up load rolled down with the boulder.

The 1st defendant stated that he and the 2nd defendant occupy a house belonging to the SHDC on rent. The land does not therefore belong to him. He denied entering the plaintiffs land to remove soil. He stated that soil about the quantity of half a pick up rolled down with the boulder. In his defence, he averred that the quantity was about the load of a 3 ton pick up. As the JCB driver did not remove the soil, he merely flattened it on his land with a spade. This incident happened in October 1999. The plaintiffs did complain to the SHDC, and it was only in April 2003 that this case was filed against them. He stated that Yvonne Azemia was earlier living in his place, but now she is not in good terms with him, and that therefore her evidence about moving soil in a wheelbarrow was a fabrication. As regards the laundry shop, he stated that he demolished it after the Surveyor told him that there was an encroachment. Hence he rebuilt it close to his house as advised by the Surveyor. He further stated that the plaintiffs are not in good terms with him and that if they have any dispute regarding the boundary, that should be settled with the SHDC. However as regards the present delictual claim, he denied causing damage to the terrace and removing soil. He also stated that the owner of the JCB has already compensated the defendants for the damage caused to some pillars.

On being cross examined he stated that he was offered the house by the SHDC for purchase, but he declined due to the behaviour of the plaintiffs on the neighbouring land. However as he was also a mason, he wanted to beautify the house and garden. He stated that about 1 to 1½ ton quantity of soil rolled on to his land with the boulder, and he used it as it was not reclaimed by the plaintiff.

Christina Rosalie, the 2nd defendant the wife of the 1st defendant,

corroborated her husband and stated that they were Tenants of SHDC. She also stated that she saw the boulder rolling down when the JCB was excavating on the plaintiff's land. The soil broke loose and fell when the driver was attempting to pick up the fallen boulder. About 2 to 3 pick up loads of soil came on to her land. Later further soil was washed down by the rain. She maintained that the soil was not removed purposely, she however stated that when her husband was working in a dumper belonging to one Serge Monthy who was building a house elsewhere, some soil was bought to fill her land. She also stated that soil from a land "*which did not belong to anyone*" was also brought down in gunny bags to fill her land. That soil had been dumped by Serge Monthy who was constructing a road closeby.

I have considered the evidence in the case there are material contradictions in the case of the defendants. The 1st defendant admitted that a quantity of about one to one and a half tone of soil came down with the boulder and that he used that to level his land. The 2nd defendant stated that the quantity was about 2-3 pick up loads. In addition there was soil being washed down by rain. As against that evidence, James Sarah, the tractor driver state that the soil dislodged with the boulder was only a small quantity. On their own admissions, the defendants were on the look out for soil to fill their land which had a slope. They got soil from a site where Serge Monthy was constructing and also some abandoned soil on a neighbouring land. On a balance of probabilities therefore I am inclined to accept the evidence of the 1st plaintiff and her witnesses, that the defendants purposely damaged the terrace and removed soil therefrom. However there is no definite evidence of the quantity of the soil so removed. The plaintiffs claim Rs.35,000 under that head. As the 2nd defendant admitted that 2-3 pick up loads came down from the plaintiff's land, albeit with the boulder; in view of the finding that that soil was purposely removed, a sum of Rs.20,000 would be adequate compensation. This

includes the aspect of trespass on land for the purpose of cutting and removing the soil.

As regards the encroachment, a survey was done by the Land Surveyor of the Property Management Corporation (*P.M.C*), by agreement of both parties. The report confirms that the laundry shed, which constituted the encroachment is on Parcel B. 1732 belonging to Christina Rosalie the 2nd defendant. Hence no award is made under the head of encroachment and loss of enjoyment of part of the property.

The plaintiffs have also claimed Rs.30,000 as moral damages for inconvenience, distress, anxiety and mental anguish. On a consideration of all the circumstances in the case, I award a sum of Rs.5000 under this head.

Accordingly, judgment is entered in favour of the plaintiffs in a total sum of Rs 25,000, together with interest and costs.

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A.R. PERERA

JUDGE

Dated this 18th day of September 2006