

IN THE SUPREME COURT OF SEYCHELLES

IRENE JEANNY

Plaintiff

VS.

JASON ARRISOL

Defendant

Civil Side No. 105 of 2003

Ms. Domingue for the Plaintiff

Mr. Freminot for the Defendant

JUDGMENT

Gaswaga, J.

The plaintiff is suing the defendant for the recovery of a sum of SR 22.000.00, moral damages of SR 2.000.00 and costs of the case which arose as a result of a agreement entered into by the parties in 1998 whereby the defendant gave permission to the plaintiff to cultivate certain crops on the Government land that the defendant was leasing at Val d'endor, Mahe. In his defence dated 4th January 2002 the defendant denied any knowledge or existence of and or being party to the said agreement. He however stated that he did allow the plaintiff to cultivate the land at his own expense and risk

It is important to note at this stage that the defendant attended court for the hearing for some time and his counsel cross-examined two of the three witnesses but both of them abandoned the case along the way despite several notices served on them indicating the dates for the continuation of the matter. Hence leave was granted under **section 65 of the Seychelles Code of Civil Procedure Cap. 213.**

Mr. Irene PW1 and the plaintiff herein informed court that he came to know the defendant when the two were working at the present Indian Ocean Tuna (IOT) and they interacted for all the seven years the defendant was their until he retired. The defendant who was a driver at IOT then went to the plaintiff's home one day and asked him to enter into partnership with him in the business of rearing animals and cultivating crops because he knew that the plaintiff was a good farmer. He took the plaintiff to see the place at Val d'endor which the plaintiff approved. The parties also agreed that the plaintiff was to

incur all expenses in relation to clearing of the land, buying of the seeds and manure, cultivating the crops and that the defendant would be given a half share of the profits when the crops were harvested. As these terms were to be reduced in writing Mr. Juliette PW2, Attorney-At-Law was contacted for the job. In his testimony Mr. Juliette corroborated the plaintiff that when the parties came to his office they left without signing the agreement because the defendant, who kept postponing the date for signing did not want to do so although the cultivation had already started. The parties had also visited Mr. Racombo the then principal secretary of the Ministry of Agriculture to seek permission to start farming activities on that government land and had been advised to submit their agreement before the application could be processed and approved.

The plaintiff bought two pigs and nine piglets at a sum of SR 6.500.00 while the defendant had about twenty pigs. He also planted cassava, Chinese cabbage, potatoes, pumpkins, tomatoes and other vegetables during the 15 months he stayed at the farm. That on a date which he does not remember in 1999 the defendant revoked the permission given to the plaintiff to cultivate the land and further refused to hand over to the plaintiff the crops that were still on the land. The defendant was going to sell the land and the crops thereon to another person and the plaintiff called in his Attorney Mr. Juliette. On that day the plaintiff came with four men on a hired pickup to harvest all the remaining cassava but the defendant stopped him from taking away anything. He had already paid them a deposit of SR 600.00. At the farm, Mr. Juliette said, the two men started arguing and agreed to Part Company. The value of the remaining crops was estimated at SR 10.000.00 to SR 15.000.00. Mr. Juliette was instructed again to draw another agreement so that the defendant could be paid some of this money in installments of SR 1.000.00 if the plaintiff was allowed to harvest and take the remaining crops. It is the evidence of Mr. Juliette and the plaintiff that when the defendant was offered the SR 1.000.00 in the Law Chambers of Mr. Juliette he rejected it and straightaway proceeded to uproot all the cassava. He told the plaintiff to do what he wanted. Both Mr. Juliette and the plaintiff left the farm and never returned.

It is a cardinal duty for a plaintiff to prove his case as alleged if he is to succeed. **See Tirant & Or Vs Banane SCA 1977 No. 49 page 219.** From this evidence I do not want to believe, as stated in the defence, that the defendant was not party to the arrangement herein and further that he did not know anything about this agreement. One wonders why he twice responded to the lawyer's invitation to sign the agreement. If he had just allowed the plaintiff to cultivate the land at his own risk and expense then why did he claim a share in and later on stop the plaintiff from harvesting and taking away his cassava. It was deposed that the plaintiff took his pension money and added it to money he received after selling a piece of land and invested it. Unfortunately he suffered a loss when he was unexpectedly told to quit the farm leaving behind some of the crops unharvested. Moreover he did not make any profits nor sell any produce behind the defendant's back. But whenever the defendant sold pigs he never disclosed the proceeds. The plaintiff had spent SR 1.000.00 on clearing the land and SR 800.00 on labor costs, which he now claims together with SR 12.000.00 as the value of the crops he was not allowed to harvest, and SR 1.000.00 as miscellaneous. But it should be remembered that the defendant was entitled to half share of the profits once he allowed the plaintiff to

cultivate the land while the plaintiff was to provide the seeds, incur costs of clearing of the land etc. He cannot therefore claim some of the monies which he spent in line with their agreement especially that he had harvested and sold some of the vegetables and cassava. The plaintiff recorded all his expenditure in a note book where the employees signed whenever they were being paid. The plaintiff spent most of his time at the farm looking after the animals and overseeing the work of the farm employees. He also had to go to the agricultural farm shops to buy manure, pesticides, seeds and other farm implements. The plaintiff was rarely present at the farm hence leaving the entire management thereof to the plaintiff. Indeed Mr. Jose Guerreiro, PW3 working with the ministry of Agriculture as an extension officer testified that his job entails visiting farms and giving advise to farmers and further that during the 12 to 18 months the plaintiff was at that farm it was well managed and it had a variety of crops.

The plaintiff also claimed a sum of SR 2.000.00 as moral damages that he was stressed after losing his pension money in this venture to the defendant who unfairly benefited from his efforts. That this worsened his health condition and he started frequenting Mauritius for medical treatment. Mr Juliette stated that when the venture failed the plaintiff was very upset and could at times cry like a baby before him. The plaintiff spent a lot of time engaging and consulting his lawyer and hiring transport to come and attend court.

This court is satisfied that the plaintiff has proved his case on a balance of probability and judgment is entered against the defendant in the sum of SR 13.000.00 (representing the value of crops left on the land and miscellaneous costs) together with moral damages of SR 2.000.00 and costs of the suit.

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D. GASWAGA

JUDGE

Dated this day of November, 2006.