

IN THE SUPREME COURT OF SEYCHELLES

MRS. LEA RAJA M. CHETTY

PLAINTIFF

VERSUS

MS. PRISCILLE SAROJ CHETTY

DEFENDANT

Civil Side No 337 of 2006

Mr. A. Derjacques for the Plaintiff

Mr. B. Hoareau for the Defendant

JUDGMENT

Perera CJ

The plaintiff is the grandmother of the defendant. Admittedly, the plaintiff owned land Parcel V. 3504 with a house standing thereon, at Beau Vallon. It is averred that on 1st February 2005, the plaintiff signed a transfer document, purporting to transfer the said property to the defendant. It is alleged that the said transfer was unlawful as consent was extracted by duress.

The plaintiff relies on the following grounds to establish duress-

- (1) *The plaintiff's husband, and grandfather to defendant, namely Mr. Mariapen Srinivasan Chetty, applied duress to plaintiff for the said transfer.*
- (2) *Plaintiff was ill and weak, both physically, emotionally and psychologically at the transfer and the period prior to the said transfer.*

(3) *Plaintiff did not sign the transfer voluntarily and did not legally consent to the transfer*".

It is further averred that the defendant had, purportedly, paid the sum of Rs.300,000 to Account No. 01-220958-10 being the plaintiff's Account at Bank of Baroda, without her instructions or consent. The plaintiff avers that she had no authority or mandate to operate the Account, and that in any event, third parties had withdrawn that amount leaving a balance of Rs20,686 on 11th August 2006. The plaintiff therefore seeks an order of this Court declaring the said transfer of Parcel V. 3504 null and void on the ground that her consent was extracted by duress used by her husband, a third party to the contract.

The defendant has, in a *plea in limine litis* pleaded that "the plaint discloses no reasonable cause of action against the defendant. Both parties agreed that this plea be considered with the merits of the case. In answering the plaint, the defendant avers that the plaintiff signed the said deed of transfer voluntarily without duress. It is further averred in an amended defence, that the plaintiff signed the transfer deed in the discharge of her obligation under the contract of sale, between the plaintiff and defendant for land Parcel V. 3504. It is also averred that the sum of Rs300,000 was paid into the plaintiff's bank account upon her instructions and consent. Admittedly, that account is a joint account with her husband Mr. Srinivasan Chetty.

The plaintiff called Ms Cecile Bastille (PW1) as regards the valuation of the property as at 2006. She testified that the property was worth Rs2,620,000.

As regards the account in issue at the Bank of Baroda, Ms Julia Monthy (PW2) a bank Supervisor, testified that A/C No. 01-220958 – 10 was in the joint names of Mr. Srinivasan Chetty and wife Mrs Lea Rasamanikam Chetty, and that it was an "*either and/or account*". This meant that anyone of them could operate that account. The balance in that account in

May 2007 was Rs1,974.65. She further testified that the plaintiff came to the bank on 11th August 2006, and that the balance on that day was Rs20,686 she asked for a statement of accounts but was told that her husband had taken one a few days before. She was however unable to testify as to who had withdrawn the money from that account.

Kathleen Gislaine Confait (PW3) worked in the plaintiff's shop. On 11th August 2006 she accompanied the plaintiff to the Bank of Baroda. When a copy of statement was asked, the bank Supervisor asked her to bring a letter of authorization from her husband. Then she wrote the balance on a piece of paper and gave her. The plaintiff looked surprised.

Mrs Lea Raj Manikam Chetty (PW4), the plaintiff in the case stated that he was 74 years old. She was married to Mr. Srinivasan Chetty on 5th January 1965. She managed one of several shops belonging to them. After marriage she lived with her husband at Huteau Lane. She purchased the Parcel V. 3504 in extent 1302 sq metres from Percy Delpeche on 24th February 1983 for Rs.200,000, (P2). She stated that she bought that property at Beau

Vallon so that she and her husband could spend weekends there. As regards the sale to the defendant, she stated that she did not want to sell that property, but her husband, Mr. Srinivasan Chetty "*forced*" her to sign the transfer in the name of the defendant. She further stated that her husband and the defendant took her to the office of the Notary, Mr. Chang Sam, although she had been on bed for two or three days suffering from vertigo. It was her husband who pressurized her and told that she should go to the Notary. At the office, she did not tell Mr. Chang Sam that she was under duress as the defendant was working under him as a lawyer in those chambers at that time. She also stated that Mr. Chang Sam did not explain what the document was, but only got her to sign it. The plaintiff described her husband as a domineering person, and stated that she had to do what he wanted.

The plaintiff denied that she was aware that the sale price was Rs300,000. She also denied that she was aware of the joint account at the Bank of Baroda. She went to the

bank to check when she found a "*piece of paper*" in the bed closet of her husband. Before that she was unaware of the existence of that account. She therefore stated that there was no prior negotiation for the sale of the property, and that it was never her intention to sell. She also did not get any money from that sale. Hence she claimed a declaration that the said sale was void on the ground that the transfer was done under duress. She produced medical certificates to establish that she was suffering from diabetes, high blood pressure and heart ailments, which necessitated medical treatment being obtained in Singapore.

As regards the alleged "*duress*," she stated that the defendant, her granddaughter Priscille came with Mr. Srinivasan Chetty and asked her to accompany them to the Notary's office. She stated "*it was Priscille who took me from my bed, took me to Mr. Chang Sam, in a car. She took me by the hand, from the bed to a car to Mr. Chang Sam's office*". She further stated that she did not refuse to go, as her husband came to make sure that she signed the deed. As regards the transfer of the property, she stated that Mr. Chang Sam, the Notary did not explain the document, but merely asked her to sign it.

The plaintiff stated that a few days later she realized that she had done something which she ought not to have done. Questioned by Counsel for the defendant as to why she took over one year to file action, she stated that she was "*seeing a lot of things happening around*" her, and that she was a person who would first listen and then take a decision. She stated that during that time she spoke to her husband and told him that she did not like what he made her to do, and that she wanted the house back.

The plaintiff stated that health wise, her husband was weaker than her for more than four years before the signing of the deed of transfer. She however stated that he dominated her, and that although she signed the document voluntarily, she did so under pressure. Once again, questioned by Counsel for the defendant as to why she took such a long time to file the case, she said.

“Like I have stated before, I took all the time to reflect on what has happened since 1st February 2005, because I did not like what I did on that day. I am aware of the problems, it does not concern this case. The family, they knew the problem they are into and the 1st February does not get into those problems. It is apart”.

What the plaintiff was stating was that it was not due to subsequent events that she decided to institute this case for cancellation of the transfer on the basis of duress. However she stated that she asked the defendant to grant her a usufructuary interest on the property, and that it was granted one month of signing the transfer deed. She denied that the granting of the usufructuary right had been agreed before or at the time of the transfer.

Mercia Chetty, the daughter of the plaintiff testified that her mother purchased the property in issue in 1980's for her to spend weekends with her father away from town. The same day the deed of transfer to the defendant was signed, her mother asked her to come as she was sick. When she went there she told her that “they” had made her sign a document. She spoke with the defendant and asked her why she had put her grandmother virtually to the streets. Then she became emotional and asked whether she wanted her to return the property. There is documentary evidence, on record that the deed of transfer to the defendant was executed on 1st February 2005 (P5), and that the defendant granted the plaintiff a “joint usufructuary interest for their respective lives” by a notarially executed document on 11th March 2005 (P4). It is the case for the plaintiff that the granting of the usufructuary right was due to her own insistence after she realized the implications of the transfer.

Mercia Chetty further testified that when the house was purchased in 1983, the house was

in a bad condition and that she and her husband spent over Rs.200,000 for extension and renovation work. She looked after that house and property with the plaintiff, for over 20 years. She herself resided there for about 10 years. She stated that she did not want anything she had invested on that house as she did that for her mother. She maintained that she met the defendant outside her office and when she questioned her about the transfer, the defendant cried and volunteered to grant a usufruct. Although Counsel for the defendant put to the witness that there was no such meeting, where the defendant allegedly cried, his suggestion was belied by his own subsequent suggestion that it was the witness who cried on that occasion. She denied instigating the plaintiff to institute this case as she was disappointed that the property had passed on to the defendant when she had the expectation that she could eventually obtain a transfer on her behalf.

Mr. Srinivasan Chetty testified that the defendant had wanted to purchase a plot of land close to Parcel V. 3504 owned by the one Delpeche. So she had made an offer to the plaintiff to purchase Parcel V. 3504 together with the house which was accepted. He, as husband, denied pressuring the plaintiff to effect that transfer. He further stated that the plaintiff told him that as Mercia had bought a property elsewhere, she was going to sell Parcel V. 3504. At that time the plaintiff was living on that property, and he was living in Victoria. He further stated that the plaintiff always relied on advice from Mercia.

As regards the purchase of property, he stated that he bought the Delpeche property for Priscille, and he wanted Parcel V. 3504 also to go to her, so that she could develop both properties for tourism. He therefore told the plaintiff several times to transfer Parcel V. 3504 to the defendant.

Mr. Srinivasan Chetty also stated that the purchase price of Rs.300,000 would have been credited to the joint account she had with him at the Bank of Baroda. He had the cheque book. The bank statement from bank of Baroda (P6) shows that a sum of Rs.300,000

was deposited on 4th February 2005, and a sum of Rs.200,000 was withdrawn on 28th February 2005. The transfer was effected on 1st February 2005 and registered in the Land Registry on 4th February 2005. Mr Chetty was unable to state how, by 19th March 2007 various amounts were withdrawn leaving a balance of Rs.1,974.65.

As regards the granting of the usufruct, he stated that it was decided at the time of the transfer. However, on being questioned by Court he stated that he could not recall, and that the defendant may have decided later.

Mr. Francis Chang Sam, Attorney at Law and Notary Public testified that he attested the transfer of Parcel V. 3504 on 1st February 2005 (P5) in the presence of the plaintiff and the defendant. Mr. Srinivasan Chetty was also present. He stated that at the time of executing the document, *"there was no tension at all, because I remember making a joke. I can't remember which joke I made, usually because I know both parties so I remember making a joke and there was some laugh before the signing was done"*. He also stated that the plaintiff also laughed, and that there was no tension. He explained the document in creole before it was signed by the parties. The plaintiff signed voluntarily, and there was no pressure on her. Nobody told her anything, and she signed without any hesitancy. Mr Chang Sam also stated that the plaintiff was not looking tired or sick on that day. The purchase price of Rs.300,000 had been agreed by the parties, so he did not state that it was too low. Money did not pass before him. The stamp duty of Rs.27,000 was paid by Mr Srinivasan Chetty.

As regards the usufruct, he explained that the usual practice was to execute two documents, as was done in this case. Questioned as to how the execution of the usufruct was done over one month after the execution of the deed of transfer, he stated that that was when the defendant, Priscille, gave him instructions. He was not aware of the reason for the delay. At the time of the transfer he was not instructed about executing a usufruct.

The defendant, Priscille Chetty testified that the plaintiff, her grandmother transferred Parcel V. 3504 to her voluntarily. According to her, her father Krishna Chetty, the son of the plaintiff negotiated on her behalf to purchase this property for her, as he was intending to purchase another adjacent property for her. At a meeting held in the premises of the plaintiff at Huteau Lane, where she was also present, the plaintiff agreed to transfer. That was about 5 years before the actual transfer in 2005. Her father purchased the adjacent property from Delpeche around 1998. She was then around 17 years of age.

As regarding the events on the day of the transfer of the property, Ms. Chetty stated that he picked up the plaintiff and her grandfather from the house at Huteau Lane, and took them by car to Mr. Chang Sam's office. She stated that the plaintiff came voluntarily and that she did not complain of any illness that day. However she held her hand to assist her to go up to the Notary's office. After the document was read and explained she signed it. Everyone present there enjoyed a joke made by Mr. Chang Sam. She also stated that her grandfather did not apply any pressure on the plaintiff. When she drove them back to the house, the plaintiff did not complain or express any dissatisfaction with what took place at the Notary's office.

Ms. Chetty further stated that the usufruct was given as the plaintiff asked for it, and also as she received a lot of pressure from her aunt Mercia and her husband Crystold Chetty. However it was a joint usufruct as, being the owner, she wanted to enjoy the property as well. The plaintiff asked only for the usufruct and not a re-transfer of the property.

As regards the relationship between the plaintiff and her husband, she stated that from her observations, they were a loving couple. But it was the plaintiff who had the last say in any matter.

On being cross examined, Ms Chetty stated that she would not know whether the plaintiff received Rs.300,000 for the sale, but stated that that sum was deposited in her joint account. She further stated that although the valuation for that property was Rs.2,620,000, the negotiated price was Rs.300,000, and that sum was paid by her father on her behalf.

The Law

Article 1109 provides that in a contract, “*the consent shall not be valid if it is given by a mistake, or extracted by duress, or induced by fraud*”. Hence, unlike for “mistake” or “fraud”; for duress, there should be an “*extraction*” of the consent. Article 1112 provides that –

“There is duress when it is of a kind to impress a reasonable person, and put him in fear of substantial harm in respect of his person or property.

With regard to this matter, the age and condition of a person shall be taken into account in the sense that the wrong doer must take the victim as he finds him.”

Hence “*duress*” consists of a combination of both objective and subjective elements.

In the present case the ground on which nullity is sought is duress by the husband of the plaintiff, who was not the person benefitting from that contract, exercising influence to the extent that her consent was extracted. In that respect, Article 1111 provides that –

“Duress used against a contracting party shall be a ground of nullity, even if used by a third party other than the person whose benefit the contract was concluded; provided that that duress was the main reason why the victim of it has entered into the contract.”

Article 1114 however provides that reverential fear towards the father, mother or other ascendant, without duress having been used shall not be sufficient to annul the contract. In this case, the plaintiff sought to establish that the plaintiff and her husband who were of Indian origin, belonged to a cultural background, where by tradition, the man was head of the family, and that hence the wife was obliged to obey him in whatever he decided. The defendant on the other hand sought to deny that and to submit that the plaintiff and her husband have deviated from such a culture, and adopted the local culture and even become Christians. She stated that the plaintiff transferred the property voluntarily, but her daughter Mercia had pressurized her to seek a nullification. Hence it becomes necessary to determine the circumstances in which the plaintiff executed the deed of transfer on 1st February 2005.

Of the three vices specified in Article 1109, the present case is based on duress (or “*violence*” as known to French Law). The constraint that Article 1112 envisages would be any physical or moral constraint which would put a person in fear of substantial harm in respect of his person or property. ***Planiol Civil Law Treatise Vol 2 Part 1***, Paragraph 1070 defines “*violence*” as follows-

“Violence is the act of inspiring a person with the *fear of considerable harm to him, or for one of his near relatives.* Violence, or rather *the fear which it engenders* (*metus*) is a vice of consent which gives rise to the action of nullity.”

Article 1112 provides that the violence must be of a nature to make an impression on a “*reasonable person*”. This is a tempering of the Roman Law concept that only those acts which could affect persons of extraordinary firmness and courage should be considered as constituting violence or duress. Further para 2 of Article 1112, modifies it further by introducing a subjective consideration as regards such impressions being made on persons

depending on the age and condition of such persons. “The wrongdoer must take the victim as he finds him.”

Barry Nicholas, in the French Law of Contract (2nd Edition) Page 111, states that the Court could base its decision interchangeably on the vices of *erreur* (error) and *dol* (fraud), as *dol* is a vice only as it produces error or mistake, but that “*violence*” is independent of these two vices as it lacks the common ground of mistake. Hence, where, as in the present case, the cause of action is based on duress (*violence*), the Court is obliged to consider that vitiating factor *sua generis*.

Nicholas however submits that in France the distinctions between the three vices were disregarded by the **Cour d’Appel of Colmar, (Colmar 30.1.1970)** (*the facts of which are somewhat similar to the present case*). In that case, an old woman had, after much pressure and late at night, in highly suspect circumstances, signed over to her daughter and son in law, sufficient shares to give them a controlling interest in a family company, to the disadvantage of her son. The Court declared that transaction as void, not of “*violence*”, but of “*dol*”, on the basis that *dol* did not require the element of deceit, and that the idea of *dol* overlaps with those of *erreur* and *violence*. The Court stated further that “any dishonest act tending to “*surprise*” a person with a view to making him sign an undertaking into which he would not otherwise have entered could be qualified as “*manoeuvres dolosives*”, Nicholas however states that although that decision has attracted support from French Jurists, there seems to have had no sequel in jurisprudence. Hence I do not consider it prudent to adopt such a liberal approach to the jurisprudence of Seychelles.

As Planiol states in Paragraph 1074, “*the constraint exercised by one person on another to induce him to make a juridical act does not always constitute “violence” in the legal sense of the word*”. As regards reverential fear of ascendants recognized in Article 1114, it is stated that the law understands the moral authority which the parents and grandparents exercise in

the family and that often their wills are imposed on their descendants. It is further stated that when a person decides to consent to a juridical act for fear of displeasing his ascendants or one of them, he cannot attack it as tainted with violence for that reason alone..... the constraint resulting from reverential fear of the ascendant is tolerated only when it is “*alone*”, and “*no violence is exercised*”. If acts of another nature are joined to it, the nullity can be demanded”.the law “*simply refuses to consider as violence properly so called, the moral pressure which (the ascendant) exercises*”.

In the present case, even if the “*reverential fear*” recognized in Article 1114 is extended in the context of a husband and wife belonging to a conservative cultural background, and even if there had been some amount of “*moral pressure*” exercised on the wife by the husband, yet that alone would be insufficient, for legal purposes to ground an action for nullity.

The evidence that the plaintiff was constantly “*nagged*” to effect the transfer of the property to the defendant, and thereby “*pressurized*” to sign the deed of transfer, would in the absence of acts of any other nature, be inadequate to establish duress. As regards her alleged medical condition, Mr. Chang Sam, the Notary testified that he did not observe any signs of illness at the time of signing the deed of transfer and also that there was no atmosphere of tension. Had the signing been done while a person is bed-ridden with a terminal illness which had reached a stage of imminent expectation of death, the circumstances would have been different.

There is another ground on which, in my view, the plaintiff cannot succeed in an action for nullity on the basis of duress. Article 1115 is as follows-

“A contract shall not be challenged on the ground of duress if it has been approved since the duress has come to an end, whether expressly or *tacitly* or if the victim allows

the time fixed by the law for its recession to lapse.”

Pursuant to Article 1304, the period for limitation of action is five years. This case has been filed within time.

In the case of ***Gemma Contoret v. The Government of Seychelles, SHDC & Or (S.C.A. 2 of 1993)***, the Ministry of National Development sent a letter to the plaintiff threatening her that if she did not repair the house on her land, she would be deprived of it. As she had no money to effect repairs, and fearing that she would lose the property, she agreed to let SHDC to demolish that house and build a new one for one Therese Hoareau, the 3rd defendant to the case. The plaintiff sought rescission on the ground that the agreement was extracted by duress. However, I, as trial judge dismissed the case upon a plea in limine being raised by the 1st and 2nd defendants that the action was time barred as duress had ended on 31st December 1988, and hence the action against them ought to have been instituted within 6 months thereof, as required by the Public Officers Protection Act. That ruling was upheld by the Court of Appeal. Ayoola JA stated thus-

“Duress vitiates consent because the will of the victim of duress has been so prevailed upon, by force or threat to make the victim’s consent involuntary. Duress, in my view, comes to an end when the subject of the duress successfully resists it, when the force or threat is withdrawn, or by the victim yielding to the force of threat and obeying the wish of the other party. Where a person has entered into a contract under duress, such duress should normally be deemed to have ended upon the contract been entered into.”

In the present case there is no evidence that there was any threat or force on the plaintiff. The duress ended on the 1st February 2005 when she signed the deed of transfer. The evidence in the case is that the plaintiff obeyed her husband and executed the transfer of the property without reserving at least usufructuary rights. In these circumstances, she

could have been virtually, “*put to the streets*” as Mercia Chetty told the defendant. Hence to prevent that, the plaintiff agreed to a joint usufruct and signed that document on 11th March 2005. By doing so, she “tacitly” approved the contract of sale, and hence this action for nullity cannot be maintained on the ground of duress.

The evidence disclosed other grounds on which the plaintiff may have relied on to seek rescission of the contract. However, as was held by the Court of Appeal in the case of ***Charlie v. Francois (S.C.A.12 of 1994)***, “*the system of civil justice does not permit the Court to formulate a case for a party after listening to evidence and to grant relief not sought by either of the parties that such evidence may sustain, without amending the plaint.*”

In the adversarial procedure, the parties must state their respective cases on their pleadings and the plaintiff must state the relief he seeks on his plaint.”

Hence for the reasons stated, the plaintiff’s action, as presently constituted, fails. Accordingly, it is dismissed, but without costs.

.....
A.R. PERERA
CHIEF JUSTICE
(Pursuant to Article 132(3) of the Constitution)