

IN THE SUPREME COURT OF SEYCHELLES

MARY ELIZABETH KHAN NEE FLORENTINE

APPLICANT

VERSUS

CECILE FLORENTINE

RAYMOND FLORENTINE

RESPONDENT

Civil Side No 345 of 2007

Mr Chetty for the Plaintiff_
Mr Herminie for the Defendant

JUDGMENT

B. Renaud J

On 3rd December, 2007 the Plaintiffs entered a Plaint praying this Court to make the following orders:

To annul the document mentioned in paragraph 3 of the Plaint;

- (i) *Consequently declare that the property is part of the estate of the deceased and order the Land Registry to rectify the Register in respect of Parcel No. C. 1879, removing the Defendant as the proprietor to the property and inserting the heirs of the deceased as the proprietors of the property.*

It is not in dispute that the Plaintiffs and the Defendant are heirs of the late Marie Florentine,

hereinafter referred to as the “deceased”, who passed away on the 12th day of April, 2007.

The Plaintiffs averred that the Seychelles Housing Development Corporation (SHDC), which was still in existence at that time, had entered into an agreement with the deceased in the year 1999 to transfer a Parcel of land, situated at Anse Boileau, Mahe, namely Parcel No. C. 1879 along with a three bedroom house (*hereinafter both the land and house refer to as the “property”*) to the deceased.

At paragraph 3 of the Plaint the Plaintiffs averred that by a document dated the 14th of February, 2000, (*hereinafter the “document”*) the deceased purportedly assigned her right in respect of the agreement, mentioned above, to the Defendant.

The Plaintiffs also averred that on 22nd of May, 2000 SHDC granted the deceased Usufructuary Interest only in the property and on the same day transferred the bare ownership of the property to the Defendant.

The Plaintiffs further averred the following in respect of the document which is mentioned at paragraph 3 of the Plaint:

- (i) *The document was not signed by the deceased but was signed by the Defendant or by someone else at the instance of the Defendant; or*
Further and alternatively to (i) above, the deceased did not understanding and know the content of the document which she signed, and was misled by the Defendant as to the content of the document which she was signing.

The Defendant requested for further and better particulars of the Plaint as follows:

Under paragraph 3 of the Plaint

May I have sight of the document dated 14th February 2000, referred to by the

Plaintiffs?

The Plaintiffs did not answer.

The Defendant in her Statement of Defence averred that the only agreement she is aware of is Transfer Agreement between SHDC and herself wherein the bare ownership of Parcel C.1879 was transferred to her and the usufructuary interest was in the name of the deceased. On the 12th April, 2007, upon the passing away of the holder of the usufructuary interest in the land, she became the absolute owner of the said Parcel of land.

The Defendant also averred that the document referred to by the Plaintiffs has nothing to do with the transfer agreement dated 22nd May, 2000.

The Defendant further averred that the transfer agreement has been properly and lawfully executed before a legal practitioner duly authorized to execute the said document and the agreement has been registered in accordance with the law in the Land Registry of the Republic of Seychelles.

The evidence reveals that the Defendant purchased the bare-ownership in Parcel C1879 from its owner namely, Seychelles Housing Development Corporation (SHDC) as per Transfer Deed, Exhibit P2, on 22nd May, 2000. On the same day SHDC granted usufructuary interest to the mother of the Defendant.

Prior to those transfers, the Defendant and her mother were joint tenants of the house on Parcel C1879 and the Defendant was the one paying the rent as her mother was a pensioner. This is borne out by a Tenancy Agreement dated 13th July, 1987.

There is in evidence a written document dated 14th February, 2000, Exhibit P1 which is

worded as follows:

“Managing Director SHDC

Dear Sir,

*I Marie Florentine of Anse Boileau entered into a tenancy agreement with your co-
orporation 31St July 1987 for a three bedroom house situated at Anse Boileau. Now that
SHDC is ready to transfer the property unto me, I would like that transfer to be made in the
name of my daughter Marie Elizabeth Florentine in bare-ownership and I would retain
usufructuary interest.*

Thanking you for your usual co-orporation.

Yours Sincerely

Marie Florentine

(Sdg) M. Florentine”

This letter was handwritten by the Defendant at the SHDC Office in the presence of SHDC Officials after her mother had agreed with the SHDC following negotiations for the transfer. The signature of the late Mrs. Marie Florentine on that document is in the usual style and manner that she had signed other documents.

The Defendant who had lived for many years with her mother confirmed that the signature on that letter is definitely that of her mother. She asserted that she did not influence her mother in any way to cause that letter to be written and neither did she forged the signature of her mother on that letter.

The Defendant testified that the transfer document Exhibit P2 had been lawfully executed.

The cost of the property was SR120,000.00. The Defendant paid the entire rental by herself from 1987 to 2000 and she repaid the housing loan from 2000 to 2003.

Her late mother contributed SR800.00 per month towards her own upkeep and that of her other children.

The housing loan was being repaid solely by the Defendant out of her salary deductible at source in the sum of SR1,100.00 as shown by letter dated 14th February, 2000, Exhibit D4. That sum stopped in May, 2003 as per letter dated 9th May, 2003, Exhibit D3. The Defendant completed the payment of her housing loan as confirmed by letter from SHDC dated 9th July, 2003.

Mrs Greta Simara had been working with SHDC for the last 18 years and is now working with HFC which was taken over from SHDC. She confirmed that the property in issue belonged exclusively to SHDC and the latter rented it out to the Defendant and Marie Florentine jointly under a tenancy agreement, Exhibit D2 with effect from 31st July, 1987. SHDC then put up the property for sale and usually the tenants would get the first offer. In this case the mother wanted only the usufructuary and allowed her daughter, the Defendant to buy the bare-ownership and that agreement was then put in writing, Exhibit P1. Such arrangement is common and it happened in many similar instances between parents and children. When the Transfer document is finally drawn up by the Lawyer or Notary Public, before the parties signed, they are explained the contents of the documents. It was 6 years after the transfer that a letter was received from a C. Florentine addressed to the President which makes reference to this matter. According to Mrs. Simara, it was undoubtedly the Defendant who repaid the entire housing loan.

The document referred to in paragraph 3 of the Complaint is a document dated the 14th of February, 2000, and has been admitted in evidence and marked as Exhibit P1 and that

entire document is reproduced above.

The Plaintiffs contended that document was not signed by the deceased but was signed by the Defendant or by someone else at the instance of the Defendant; or further and alternatively, the deceased did not understand and know the content of the document which she signed, and was misled by the Defendant as to the content of the document which she was signing.

Mrs. Marie Florentine passed away on 12th April, 2007.

The evidence reveals that Parcel C1879 always belonged to the Seychelles Housing Development Corporation (SHDC). On it there is constructed a dwelling house which SHDC rented out jointly to the late Marie Florentine and Mary Florentine, the Defendant herein, by virtue of a Tenancy Agreement dated 31st July, 1987. In the year 2000 SHDC took the decision to sell Parcel C1879 and the first option was given to the sitting tenants. The sitting tenants after consultation with SHDC decided on their purchasing strategy and accordingly informed SHDC. Their strategy was set down in writing in a document dated 14th February, 2000 in that bare-ownership will be transferred to the Defendant and the late Marie Florentine would have a usufructuary interest. The owner of the property namely SHDC instructed its Legal Counsel to do the necessary to transfer the property in issue. SHDC then transferred the bare-ownership of the property to the Defendant in consideration of the sum of SR120,000.00 and granted usufructuary interest onto Marie Florentine (the mother) for her lifetime in consideration of SR1.00. The Plaintiff repaid the housing loan all by herself whilst her mother, brothers and sisters enjoyed the dwelling house. After the passing away of the mother, the Defendant became the sole owner of Parcel C1879 and sought to gain possession of it. The Plaintiffs now entered this Plaint against the Defendant.

The thrust of the Plaintiffs' case is set out in paragraph 2 of the Plaint to the effect that the Seychelles Housing Development Corporation (SHDC), which was still in existence at that time, had entered into an agreement with the late Marie Florentine in 1999 to transfer Parcel

No. C.1879 with a three bedroom house thereon, to the deceased. The Plaintiff failed to produce such agreement and I find that no such agreement exists.

The Plaintiffs also contended that Exhibit P1 was a forged document and this ought to be annulled. There is no basis to support the allegation that the signature on that document is not that of the deceased Marie Florentine. In any event it is my judgment that Exhibit P1 has no bearing and effect on the transactions evidenced by a Transfer Document, Exhibit P2 dated 22nd May, 2000, properly drawn up between the parties. The property in issue belonged to SHDC and the latter transferred it onto the Defendant. I find no merit in the contention of the Plaintiffs.

For reasons stated above, I dismiss the plaint with costs.

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B. RENAUD
JUDGE

Dated this 20th day of November 2009