

IN THE SUPREME COURT OF SEYCHELLES

PHYLLIS VALENTIN

VS

WILHELM VALENTIN

YVETTE OMATH

MARCELINE VALENTIN

ANGELA VALENTIN

CLAUDETTE CONSTANCE

Civil side no: 388 of 2006

Mr. Rajasundaram for the Plaintiff

Mr. Camille for the 1st Defendant

Mr. Chetty for the 2nd, 3rd, 4th and 5th Defendants

JUDGMENT

Burhan, J

The plaintiff in this case filed plaint against the defendants seeking;

A) "That the defendants 1-4 to give possession of the residential property PR 846 Praslin to the

plaintiff for his use and enjoyment, per the testamentary disposition recited in the last Will dated 7th March 1990.

The defendants 1-4 render an account for the rental proceeds/ mesne profits they derived from the 5th defendant and to pay the plaintiff of his share in the rental.

The 5th defendant to quit and vacate the residential property in PR 846

To pay the plaintiff the costs of this suite

Pass such other and suitable reliefs to the plaintiff as the hon'ble Court deems fit and proper according to the circumstances of the case."

At the close of the plaintiff's case, learned counsel for the plaintiff informed court that he would not be pursuing his claim in prayer B of the plaint and thereafter as it was borne out in the evidence that the 5th defendant had vacated the said premises, the claim in respect of prayer C was not pursued.

The background facts of this case as stated in the plaint are that the plaintiff and the defendants, are the children of one Emmanuel Andrea Valentine and bequeathed residential property Title PR 846 belonging to him by virtue of last will dated 7th March 1990 marked P1. It is averred by the plaintiff in his plaint, that the 1st to 4th defendants in collusion gave possession of the property to the 5th defendant, a niece of the plaintiffs without his consent. He further avers that he has been deprived of the possession of the said property which he is lawfully entitled to by virtue of the last Will dated 7th March 1990 and seeks an order granting him possession of the said premises.

When one considers the evidence before court, it is admitted by all parties that the plaintiff and the 1st to 4th defendants are co-owners of the said property. It is apparent that the co-ownership in this case has arisen mortis causa, where property has devolved by Will on the plaintiff and 1st to 4th defendants in this case. As all parties admit that the plaintiff and the 1st to 4th defendants are co-owners of the said property it could be presumed in terms of Article 816 of the Civil Code of Seychelles Act Cap 33 that in the absence of any evidence to the contrary, that the co-owners are entitled to equal shares. In his evidence the plaintiff states that at present, as the premises are in a dilapidated condition and as he intends to pursue a business in Ladigue, for his own convenience, he wishes to move in to part of the existing building on the said premises and renovate and occupy same. The defendants strongly object to the plaintiff moving in to the said premises and renovating same, as they feel he would take over the said premises and prevent them from entering and possessing same. It is apparent from the evidence of both parties, that at present neither the plaintiff nor the defendants are living on the said premises. All parties admittedly including the plaintiff have their own residential premises elsewhere. When one considers the evidence, it is apparent that the said property has not been subdivided nor is any part of it being physically occupied at present by any of the co-owners including the plaintiff. In the light of the objections of the 1st to 4th defendants and as the plaintiff is not in physical possession of the said premises or part thereof, this court cannot permit the plaintiff to carry out any improvements on the said premises, unless the consent of the other co-owners is obtained. Further as at present the plaintiff admittedly is not in possession or in occupation of any part of the said premises and admittedly lives elsewhere, this court cannot grant the plaintiff possession of any

specific part of the property, in the absence of consent of the other co-owners to the said property.

The proper course of action would be to divide the said land either amicably or by the intervention of court and thereafter the respective owners, possess and affect any repairs to the property allotted or allocated to them. . It is to be noted, that a clause in the last will of Emmanuel Andrea Valentine states that the property must be kept within the family and heirs and should not be sold to any outsider. This fact too is admitted by both the plaintiff and the defendants. The defendants in evidence indicated their willingness to have the property sold to a third party. This again would be contrary to the intention of the testator and not a relief sought in this present action before court.

For the aforementioned reasons this court holds that the plaintiff has failed to establish the merits of his claim on a balance of probabilities. The plaint is therefore dismissed with costs.

M. BURHAN

JUDGE

Dated this 30th day of July 2010