

**THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES
HOLDEN AT VICTORIA**

Civil Side No. 14 of 2008

Jaya Lakshmi Chetty

Plaintiff

Versus

Elvis Raja Chetty
Prscille Saroj Chetty

Defendant No.1
Defendant No.2

Charles Lucas for the Plaintiff
Frank Ally for the defendants

RULING ON PLEA IN LIMINE

Egonda-Ntende, CJ

1. This is a ruling in respect of a plea in limine raised by counsel for the defendants that the action against the defendants does not disclose a cause of action and must be struck out. The substance of the plea in limine is that the plaint has been commenced against the wrong defendants given that it is a claim for reduction of the succession granted to some heirs to be readjusted to enable plaintiff receive her rightful portion of the estate. It has been brought against the executors alone without adding the heirs whose portions would suffer reduction. For that reason it has been brought against the wrong parties and ought to be struck out.
2. Mr. Frank Ally, learned counsel for the defendants submitted that much as there is no case law in support of the plea, the plea itself is trite law. All the people that would be affected by this action ought to be made parties to it.
3. Mr. Lucas, learned counsel for the plaintiff, opposed this plea. He submitted, if I understood him correctly, that at the time this action was brought no distribution of the estate had been made and it sought to prevent the executors distributing the estate until the plaintiff's claim had been fully agitated. He referred to several of his prayers which were to directed to the executors and could

only be directed to the executors. He conceded that since it appears distribution of the estate has commenced it may be necessary to add the heirs to the action for this action to be meaningfully ventilated and finally determined. However, this did not mean that there was no cause of action.

4. In order to determine if a plaint discloses a cause of action it is only necessary to look at the plaint itself, and its annexures if any. It is trite law that for a plaint to disclose a cause of action it must show three elements. It must show that the plaintiff enjoyed a right. Secondly that such a right has been violated. And thirdly that the plaintiff is entitled to relief against the defendants.
5. I take it by the nature of the argument advanced by Mr. Frank Ally that he conceded that the plaintiff had shown on the plaint that she enjoyed a right which on the plaint had been violated. What was in question was whether the plaintiff had a right to relief against the defendant against whom the action was brought. There are 2 prayers stated in the plaint against the defendants which are pertinent in answering this last question. I shall set them out in full.

(iii) Order the Defendants to disclose and account for the totality of the estate of the deceased and to produce the estate bounty accounts and details to the court.

(iv)

(v) Order the defendants to refrain from administering the estate as per testamentary instructions on legacies, gifts, assets both moveable and immovable, bank accounts, transfers of land held in escrow or pending bank accounts, cash, rents and any other property or entitlement of the deceased until they are fully instructed by the court on how to distribute the bounty.'

6. The relief sought against the defendants, the executors of the estate in dispute, would appear to me to be in line with their duties as provided for in the law relating to succession. Article 1027 of the Civil Code states,

'The duties of an executor shall be to make an inventory of the succession to pay the debts thereof, and to distribute the remainder in accordance with the rules of the intestacy, or the terms of the will, as the case may be. He shall be bound by any debts of the succession only to the extent of its assets shown in the inventory. The manner of payment of debts and other rights and duties of the executor, insofar as they are not regulated by this Code, whether directly or by analogy to the rights and duties of successors to moveable property, shall be settled by the Court.'

7. Relief claimed against the defendants is in relation to their duties as executors provided for at law. I am satisfied that the plaint discloses that the plaintiff has a right, which she claims was violated and

for which she may be entitled to relief against the defendants and other heirs of the deceased/testator, not named in the plaint. Of course as was argued by Mr. Ally and conceded by Mr. Lucas, for the full, effectual and final determination of all matters in controversy it may be necessary that all heirs be joined to this action. Nevertheless that does not lead to the conclusion that Mr. Ally pressed upon this court, that the plaint in question did not disclose a cause of action. The necessity to join the heirs to the present action and whether a cause of action arises as against the present defendants are two matters that are separate and raise different legal considerations.

8. I am satisfied that the plaint in this matter discloses a cause of action against the defendants. The plea in limine has no merit. It is dismissed with costs.

Signed, dated and delivered at Victoria this 15th day of February 2010

FMS Egonda-Ntende
Chief Justice