

IN THE SUPREME COURT OF SEYCHELLES

**Tommy Marie of
Baie St. Anne, Praslin
Plaintiff**

Vs

**Jules Radegonde
1st Defendant**

**Belle Rose Victor
2nd Defendant**

Civil Side No: 258 of 2006

**Mr. C. Lucas for the Plaintiff
Mr. F. Bonte for the Respondent**

D. KARUNAKARAN, J.

JUDGMENT

**This is a suit for specific performance of a contract.
The plaintiff in this matter seeks the Court for a
judgment against both defendants jointly and severally:-**

- (i) Declaring that the plaintiff is entitled to specific
performance of contract in that the defendants are
legally bound to effect transfer of their property
Title PR 3308 to the plaintiff in due performance of
their contractual obligation.**

Consequently, ordering the defendants to execute the

**transfer deed alienating title PR 3308 to the plaintiff or make such appropriate order to transfer the said title to the plaintiff; and
Ordering the defendants to pay damages to the plaintiff in the sum of Rs36000/- and Rs3000/- monthly from July 2006 until the date of judgment plus interest and costs of this action.**

It is not in dispute that in January 2000, the plaintiff and the defendants entered into a contract whereby the defendants promised to sell and the plaintiff agreed to purchase a parcel of land title PR 3308 (property) situated in Praslin for the price of Rs55, 000/- vide Promise of Sale in exhibit P2. Accordingly, the plaintiff paid the price the sum of Rs 55,000/- to the defendants, who agreed to execute the necessary transfer deed and effect legal transfer of the said parcel of land title PR 3308 in favour of the plaintiff after expiry of five years, since the defendants had a restrictive covenant with the Government of Seychelles, the predecessor in title stipulating that the defendants shall not sell the property to any third party within the first five years of that transfer without first offering the property for sale to the Government.

The plaintiff testified that the defendants in breach of the said promise of sale failed and refused to make transfer of the property in favour of the plaintiff, despite the expiry of the said restrictive period of five years. In the circumstances, the plaintiff urged the Court to enter

judgment for him and against the defendants granting the reliefs first-above mentioned.

On the other side, the defendants did not contest the plaintiff's claim nor did they adduce any evidence in defence. However, the defendants contend that they do not intend to execute the transfer to the plaintiff since they need the property for the use of their children. Besides, the defendants informed the Court that they wish to cancel the promise of sale and are ready and willing to refund the money, the sale price even with interest, to the plaintiff. Hence, the defendants requested the Court to dismiss the suit.

I carefully analysed the uncontroverted evidence adduced by the plaintiff in this matter. On the face of the evidence on record, it is abundantly clear that the defendants have failed to honour the agreement. They are indeed, in breach of the promise of sale, which they had entered into with the plaintiff, although the plaintiff had performed his part of the contractual obligation by paying the purchase-price in full to the defendants. The defendants now attempt to revoke the agreement unilaterally for the simple reason that they need the property for the use of their children. Herein, it is pertinent to note Article 1134 of the Civil Code reads thus:

“Agreements lawfully concluded shall have the force of

law for those who have entered into them. They shall not be revoked except by mutual consent or for causes which the law authorises. They shall be performed in good faith”.

Undoubtedly, the agreement, which the parties had entered into have the force of law between them. It cannot be revoked by the defendants except by mutual consent or for causes which the law authorises. The contractual obligations should be performed by the parties in good faith. Legally speaking, the requirement of the property for the use of the defendants’ children does not and cannot constitute a valid cause in law, for the unilateral revocation of the promise of sale. In the circumstances, I find that the plaintiff is entitled to the remedy against the defendants for specific performance of the contract. Having said that, I note the plaintiff has withdrawn his claim against the defendants for damages, which the former allegedly suffered due to breach of the contract.

In the final analysis, I therefore, enter judgment for the plaintiff and against the defendant as follows:

- (i) I declare that the plaintiff is entitled to specific performance of the contract, in that he is entitled to get the parcel of land title PR 3308 transferred onto him by the defendants;**

(ii) Consequently, I order the defendants to jointly execute the transfer deed transferring title PR 3308 to the plaintiff, within the period of 6 weeks from the date hereof or in default the defendants shall pay jointly and severally the entire costs of this action to the plaintiff;

(ii) If the defendants fail or neglect to execute the transfer deed within the period stipulated in paragraph (ii) above, I direct the Registrar of Land to register the plaintiff *Tommy Marie of Baie St. Anne, Praslin* as owner of title PR3308 in the relevant Land Register, upon payment of the necessary stamp duty and registration charges.

(iii) I award no damages to the plaintiff; and

(iii) I make no order as to costs except in case of default by the defendants as stipulated in paragraph (ii) above.

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D. Karunakaran

Judge

Dated this 13th day of October 2010