IN THE SUPREME COURT OF SEYCHELLES

Christopher Gill **Plaintiff**

Vs.

The Estate of Charlemagne Grancourt

Represented by its Executors,

Wilfred Freminot and Edwina Freminot **1st Defendant**

And

The Estate of Odrade Grancourt

Represented by its Executors,

Wilfred Freminot and Edwina Freminot **1st Defendant**

Civil Side No.174 of 1995

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Mr. P. Pardiwalla for the plaintiff

Mr. S. Rouillon for the defendants

D. Karunakaran, J.

JUDGMENT

The plaintiff instituted the instant suit about 17 years ago. He sought an order for specific performance of a contract of sale, in respect of an immovable property situated at Takamaka, Mahé. Since then, a number of events ensued over the intervening period of 17

years of inordinate delay. This delay and turn of events have indeed, changed the course of justice. Undue delays at times defeat the very purpose for which an action is instituted. “Time” is obviously, the essence of justice. The fruit that is not delivered in time gets decomposed and becomes unfit for consumption. The needy-consumer no longer remains on scene wait-listed but at times replaced by his or her legal heirs. Thus, delayed delivery unfortunately becomes a mockery of justice.

In fact, during the pendency of the suit, the subject matter therein - 93 acres of land - was sub-divided into different parcels. The parent parcel has lost its original title number. Its market-value has appreciated; skyrocketed in the recent past and has now gone through the roof. The original co-owner cum executor, who entered into the contract of sale with the plaintiff, is no longer living. The last Will and Testament he made subsequent to the contract of sale, has come into play challenging the contractual obligations he undertook during his life time in respect of the suit-property. His estate has now been inherited by the legal heirs of the deceased but none among those heirs is now residing in Seychelles. The executors, who represented the estate of the deceased themselves, are now deceased and replaced by another set of executors. A number of civil proceedings were instituted including appeals on the same subject matter. At one stage, the dispute had been settled amicably between the parties. A Consent-Judgment was accordingly, entered by the Court. However, a new executor, who intervened in the pending proceedings, challenged the said judgment on technical grounds. The matter went up to the Court of Appeal, which set aside the said judgment and remitted the case for fresh hearing paving the way for a multiplicity of another round of litigation on the same subject matter and cause of action. Following remittal, the original plaint was amended; the old wine in new bottles.

New facts crept in and broke new grounds giving birth to new issues. All those proceedings have inevitably moved at a pace even snails would complain. However, the Goddess of Justice is still waiting with intolerable patience, slowly but surely to answer the prayers of the parties.

Be that as it may. I would begin by saying that a court of law, be it appellate or trial, should steer the law towards the administration of justice, rather than the administration of the letter of the law. In that process, undoubtedly, its primary function is to adjudicate and give finality to the litigation it deals with. However, such finality in my view cannot and should not be given mechanically by the Court just for the sake of a technical conclusion of the case as some believe and moreso act on such belief. In each adjudication, the Court ought to ensure that all disputes including the latent ones pertaining to the cause or matter under adjudication, are as far as possible completely and effectively brought to a logical conclusion once and for all, delivering the fruits in time to the needy. The good sense of the Court, I believe, should always foresee the long term ramifications of its determination in each case. It should adjudicate the cause in such a way that its decision prevents or controls the contingent delay that could possibly, proliferate in future, due to multiplicity of litigations on the same cause or matter. Needless to say, prevention of potential delays with judicial forseeability is always better than cure. Therefore, our Courts in Seychelles - like any other Court of such forseeability and sense would do - should adjudicate the disputes accordingly and prevent the chronic delays that have cancerously afflicted our justice delivery system. After all, the law is simply a means to an end; that is, justice. If the means in a particular case fails to yield the desired result due to procrastination- as it has happened in the instant case because of the so called consent-judgments, repeated appeals, remittals and retrials

over a period of about 17 years, due to an incomprehensible misapplication of procedural laws by Counsel and to some extent by the trial Court, ***vide Judgment of the Court of Appeal in SCA No. 4 of 2006 delivered in this matter on 29th November 2006*** - we have to rethink, reinvent, reinterpret and sharpen those means in order to eradicate the judicial delay, the enemy of justice, as Lord Lane once remarked. Hence, the Courts should never hesitate, where circumstances so dictate, to adopt measures that are just and expedient to prevent the delays, procrastination and the resultant frustration in the due administration of justice. Now then, I would simply ask: Which is to be preferred the **"means"** or the **"end"**? Please, forgive me for my long-winded prologue. Although it is *obiter,* I have to ventilate what I feel about the **"judicial delays"** especially, when the Court itself becomes a party to it. As I see it, the Court that is short-sighted by the letter of the law, at times, prefers the **"means"** over the **"ends"**. I will now turn to the facts of the case on hand.

The Plaintiff in this action - *vide* the amended plaint dated 12th March 2008 - prays this court for a judgment ordering the defendants

(i) for specific performance of contract compelling the defendants to discharge their obligations under the sale agreement and execute the transfer of titles T1393 and T1394 in favour of the plaintiff;

(ii) to pay damages in the sum of Rs100,000/- to the plaintiff;

(iii) such other order as this Court considers appropriate; and

(iv) all with interest at 10% per annum and costs.

On the other hand, both defendants in their statement of defence dated 26th November 2008, deny the entire

claim of the plaintiff and seek dismissal of this action. It is also pertinent to note that the defendants in the concluding part of their amended statement of defence, which was in fact, filed by the defendants at the last minute before the trial began, pray for a number of declaratory and consequential reliefs, which obviously, constitute a counterclaim against the plaintiff. The defendant, who intends to make a counterclaim against the plaintiff in any matter, should plead specifically and distinctly all the material facts under a separate head, on which the counterclaim is based. At the same time the plaintiff should also be given sufficient time to file his pleadings in answer to the counterclaims made by the defendant. However, there are no such specific and distinct pleadings found as to counterclaim in the defence. Be that as it may. According to the defence, although Mr. Charlemagne Grandcourt (the deceased) signed the sale agreement - the deed of transfer - he did not sign it in his capacity as executor of the estate of his late wife since he did not have the consent of the living heirs to her estate at the material time. Further it is pleaded in the statement of defence that the deceased Mr. Charlemagne Grandcourt was at all material times old and at an advanced age, destitute and moreso acted under duress when he signed the said transfer. It is further alleged that the consideration of Rs 500,000/- to be paid for the said transfer of 93 acres was totally out of proportion to the real value of the property. The plaintiff took unfair advantage of the plaintiff’s advanced age and got the transfer signed by him. Further it is the case of the defendant that the plaintiff was in breach of the sale agreement having failed to make the installment-payments despite repeated requests. Furthermore, it is pleaded in the defence that the plaintiff’s claim is time-barred. In the circumstances, the defendants seek dismissal of the suit and a declaration that the purported transfer is null and void.

The facts of the case as transpire from the evidence on record are these:

The plaintiff in this matter Mr. Christopher Gill aged 44, is a resident of Anse Takamaka, Praslin. He is educationally well qualified person holding a number of University Degrees in different fields obtained from various Universities. Amongst other occupational activities, he is also engaged in the business of property development and real estate.

In 1993, he purchased a property - title number T696 - hereinafter called the suit-property, from one Mr. Charlemagne Grandcourt, who was then acting in his personal capacity as well as the executor of the estate as per the appointment of the Court and signed a transfer deed - the transfer of land dated 4th February 1993 in respect of title T696. He also produced the said transfer deed in evidence and the same was marked Exhibit P1. This document was prepared by Mr. Grandcourt's Attorney and Notary Public Mr. France Gonzalves Bonte (PW2) The consideration for that piece of land was Rs.500, 000/-. According to Mr. Gill, at the time of purchase that was, in 1993 the price agreed upon for that portion of land at Rs500, 000/- was fair and reasonable. The property was first offered to one Dr. Eddy Micock by Mr. Bonte for the price of Rs 1 Million. Since, Seychelles was that time undergoing a political transition from one party State to multi-party democracy, the country's economic future was very uncertain, Dr. Micock did not want to take the political risk and buy the suit-property for Rs 1 Million and so he declined the offer. However, the plaintiff took the risk and made an offer of Rs500, 000/- and the defendant accepted and sold it for that price. The main problem with that property was that it was land-locked; there was no authorized access to it. According

to Mr. Gill, there was a preference for the buyer to buy small pieces of land and it tends to be more expensive than the larger extent of land. The plaintiff found that dichotomy in the Seychelles real estate market where hundreds of acres of land would be selling for Rs.500,000/- an acre simply because people do not look for large properties. Considering all those factors, plaintiff concluded that Rs 500,000/- was a fair and reasonable price for the suit-property.

Mr. Bonte was then working at the Ocean Gate Law Center. During that time the real estate in Seychelles was not in progress and real estate offices or agents were unknown. All transactions were conducted through lawyers' offices for land sales etc. and Mr. Bonte was like a junior partner in Mr. Macgregor's Chambers. He had a list of properties that he was trying to sell at that time and so did Mr. Macgregor. The plaintiff also purchased similar properties through Mr. Macgregor's office for similar prices. Mr. Bonte was acting for Mr. Grandcourt in selling the land. The plaintiff did not personally negotiate or see the seller. It was his Attorney, who finalized the price. The plaintiff first time met the seller only when he signed the transfer deed (exhibit P1) in the office of Mr. Bonte at the Ocean Gate Law Centre. The seller Mr. Grandcourt, who came to the Law Centre to sign the deed, appeared to be very normal. He walked and talked like any other normal man. He was elderly but he really wanted the transaction to go through.

The plaintiff did all sale negations only through Mr. Bonte. The plaintiff had no direct conversation with the seller, who came to Mr. Bronte's office simply to sign the papers; that is all. As far as the price was concerned, the arrangement was made only through Mr. Bonte. The plaintiff told Mr. Bonte that he would accept to buy the land for Rs.500, 000/-. But, Mr. Bonte initially declined the offer. After a couple

of days, Mr. Bonte called the plaintiff and accepted the offer of Rs.500, 000/- and agreed to sell the property. The evidence of the plaintiff in this crucial aspect runs thus:

> *"He (Mr. Bonte) said to me, 'come to my office on Wednesday and we will sign.' I said but we do not have the money for it right now, we have to get the money and he said 'never mind, just do a charge and we back it up with a transfer and then you make the payments.' And that is what took place, there was a charge"*

The plaintiff agreed to pay the price by installments and also signed the charge - **Exhibit P2 -** in order to secure the seller the payment of the whole price of Rs.500,000/-

The plaintiff started making the installment- payments to Mr. Bonte, the Attorney for the seller. Before the final payment/ installment of Rs 125,000/- was to be paid, the documents were taken to the Land Registry for registration. Only that time the plaintiff discovered that the defendant Mr. Grandcourt had in the mean time effected subdivision of the suit-property- ***Title T696*** into two parcels with different title numbers namely, title T1393 and T1394. It had been done by the seller without the plaintiff's knowledge; that too, after signing the transfer deed in favour of the plaintiff.

Therefore, the transfer and the charge could not be registered with the land Registry. When the Registrar refused to register the transfer by virtue of the subdivision of the land the plaintiff immediately, in 1995 filed a case before the Supreme Court in order to register the transfer. Subsequently, both parties reached

a settlement in this matter. On the 23rd January 1997 the parties accordingly signed and filed an agreement in settlement of the dispute. The Supreme Court accordingly entered a Judgment by Consent vide Exhibit P8 and disposed of the matter. However, the said Judgment by Consent was subsequently, set aside by the Court of Appeal for procedural technicality and a fresh trial was ordered. This indeed, contributed to further delay - Judicial delay – in rendering justice to the parties within a reasonable time

Again on the 26th of June 1997, at the instance of an application made by one Marie-Claire Legaie, the 1st defendant - Edwina Freminot- was appointed as an executor of the estate of Grandcourt vide exhibit P4.

Further Mr. Gill testified in cross examination that although Mr. Charlemagne Grandcourt (the deceased) was old when he signed the sale agreement - the deed of transfer - he did sign it freely and willingly and in his capacity as executor of the estate of his late wife. He that time, was of sound mind and appeared to be of good health. Mr. Gill stated that he never applied duress, pressure or took any unfair advantage to acquire the suit-property from him. The consideration of Rs 500,000/- agreed upon and substantially paid for the said transfer of 93 acres was totally reasonable and fair given the mountainous nature of the terrain, location and inaccessibility. The price of Rs 500,000/- in 1993 was proportional to the real value of the property. The plaintiff never took unfair advantage of Mr. Grandcourt’s advanced age to get the transfer signed by him. Further, the plaintiff was not in breach of the sale agreement. He paid all installments punctually to Mr. Bonte, the agent of late Mr.

Grandcourt. Furthermore, the plaintiff testified that his claim is not time-barred as he filed the instant suit in 1995. In the circumstances, the plaintiff seeks this favour granting remedies first-above mentioned.

The Attorney Mr. Bonte (PW2) also testified for the plaintiff corroborating, the evidence given by the plaintiff in this matter. The evidence of Mr. Bonte given in question and answer form on the crucial aspect of the case runs in verbatim thus:

"Q State your name to the court.

A France Bonte.

Q What is your occupation?

A Barrister at law and notary public.

Q Do you know the plaintiff

A Yes he is my ex client.

Q Do you know the Charlemagne Grandcourt?

A Yes.

Q *Did you on the 4th February 1993 attest as notary public transfer of land of parcel T696 from Charlemagne Grandcourt to Christopher Gill?*

A *Yes.*

Q *Did the transfer take place in your office?*

A *Yes; at Law Centre Oceangate House, Victoria, Mahé.*

Q *Were both persons present?*

A *Yes.*

Q *Did they sign in your presence?*

A *Yes.*

Q *Do you remember a charge in respect of that land?*

A *Yes; because there was agreement for the payments to be made by installments.*

Q *And those were also signed by the parties?*

A *Yes.*

Q In your presence did you witness the plaintiff Mr. Gill threatening Mr. Charlemagne Grandcourt with harm to his person?...

A There was no duress. In fact he was enthusiastic to sell that property. He is the one who approached me to sell it. I approached Mr. Gill and they came and agreements were signed and payments were made through my chambers.

Q It is also alleged that Christopher Gill took advantage of Grandcourt because of his age and being destitute.

A It cannot be. This man came to my office a few times to collect the payments.

Q Rs.500,000/?

A Yes; by installments. All the payments were made.

Q After that did you sign the documents for registration?

A Yes

Q Were they registered?

A *I believe so.*

Q *Did you at any point in time have to take the matter on behalf of Mr. Gill to enforce the sale in the Supreme Court?*

A *At one point yes. But we entered judgment by consent and the parties the ladies and gentlemen were present.*

Q *At the time, were there any other persons who were interested in this land?*

A *Yes*

Q *Could you tell us why you did not sell to those other people?*

A *They wanted to pay cheap, they complained there is no road access, they complained the terrain was not good.*

Q *You as notary public have been involved in many transfers of land in Seychelles in 1993 or 1992. How would you describe the value of land at that time?*

A When you look at the terrain, to me one must be mad to pay more than this; (i. e Rs 500,000/-). I once went there and I was extremely tired and I nearly fell down a few times on the foot tracks"

The plaintiff also called Mrs. Lepathy, the Deputy Registrar of the Supreme Court, as his witness to produce some documents that were marked as exhibits in the related Civil Case 154 of 2000. In view of all the above, Mr. Pardiwalla, Learned Counsel for the plaintiff contended in essence that the plaintiff has established his case for a specific performance of the contract of sale in respect of titles T1393 and T1394 (the subdivision of T696) more than on a balance of probabilities; and so he urged the Court to grant the reliefs sought by the plaintiff in this matter.

On the other side, three witnesses were called by the defendants to testify in support of the case for the defence. The first witness was one Mr. Wilfred Freminot (DW1), who is none else than the first-defendant in this action. In fact, he has been pleaded as a defendant, in his capacity being a joint-executor along with his wife, to the succession of the late Grandcourts namely, Mr. and Mrs. Grandcourt. Although Mr. Freminot or his wife Edwina had never been a party to any transaction pertaining to the sale in dispute nor had any personal knowledge about the execution of the transfer deed by late Grandcourt, Mr. Freminot claimed his connection with the suit-property only through his mother-in-law one Marie Claire Legaie. According to Mr. Freminot, there were 5 families - comprised of totally about 22 people, who were living in the suit-property along with the late Grandcourt. Mr. Freminot was also living with his wife and mother in

law in one of the households. His mother in law was assisting the deceased Mr. Grandcourt during his old age. The late Mr. Grandcourt had promised to give her a portion of land extracting from the suit-property. In 1996, subsequent to the alleged sale the late C. Grandcourt left a Will, wherein his mother in law was given a portion of land from the suit-property. Obviously, if the suit-property had not been sold to the plaintiff, his mother in law would have gained through the Will and in turn his wife and himself. In this backdrop of facts, he testified in essence that he came into picture only in the year 2000, by virtue of his appointment as a joint - executor to the estate of the Grandcourts. According to Mr. Freminot, the legal heirs, who had been abroad at all material times, did not give their consent to the late Mr. Grandcourt for the sale of the suit-property to the plaintiff. Moreover, the price was never paid to the late C. Grandcourt for the alleged sale of the suit-property; the suit-property was never sold to the plaintiff as it was never registered. Further, according to Mr. Freminot that C. Grandcourt was of advanced age and did the plaintiff and Mr. Bonte took unfair advantage of his old age and got the property transferred by him. It pertinent to rehearse herein the crucial part of his testimony in this respect, which reads thus:

> *"When Grandcourt made this document (the transfer deed) he was 83 years old. From what I have heard from Grandcourt when he made this agreement he was alone with Mr. Bonte and Mr. Gill. Nobody else was present. Grandcourt at that age he always referred to this land as his land. He forgot that he was acting under heirs- property. It was easy for them to get him to sign for the land. Even us, we did not know that the land belongs to heirs until the case was brought to court by Mr. Bonte"*

In cross examination Mr. Freminot gave the following answers to some of the important questions put to him by Mr. Pardiwalla, learned counsel for the plaintiff, which are worth quoting:-

Q *You are saying that here is an old man alone with Mr. Bonte and Mr. Gill and he signs documents under threats or what? Did they put pressure or did they threaten him?*

A *He was under aging pressure.*

Q *Were you there?*

A *No.*

Q *So you don't know.*

A *Mr. Gill admitted himself that the agreement went very fast. He said he did not have time to look at the document.*

Q *If consideration was paid you would not complain would you?*

A *I am saying I don't think he knew what he was signing.*

Q *You are saying that Mr. Bonte made the defendant to sign over his land to Mr. Gill.*

A *I said he was under pressure. What I mean is that he was of advanced age, he was desperate, he was destitute and he did not receive independent advice when he signed the document.*

Q And when he signed this Will three years later he was in perfect mind because it is signed by someone in the family?

Q That was in 1996 when he bequeathed his property to MC Legaie. Who is that?

A The mother of Edwina (my wife), the woman who cared for Grandcourt.

Q In 1996 he was of sound mind because he signed this.

A I did not say that.

Q Was he or was he not of sound mind when he signed that will?

A I did not say so.

Q When he signed the transfer documents 1993 he was not of sound mind?

A I said he was under undue pressure.

Q The defendant says that the deceased was at all material times acting under duress?

A Yes.

Q You were not even present yet you say he was advanced age under pressure.

A (No answer by the witness)

Q Can you tell us whether he was under undue pressure when he signed the will?

A I can say he was of advanced age but I don't know. In my statement I say that it has always been his intention to reward M.C. Legaie for taking care of him during his old age. He always meant this all the time. The reason why he subdivided the land was to give a plot to MC Legaie who was at the time being asked to vacate the property.

Q You are challenging this document on the basis that it was acquired by duress? Is that the sole reason in your defence?

A I said Grandcourt did not have consent of the heirs.

Q The land belongs to Odrade Grandcourt, when she dies half of it belongs to CM Grandcourt. Is that correct?

A I don't know.

Q And the other half belongs to?

A I don't know.

Q How come you talk about lack of consent of the children when you don't know?

A I know that when Grandcourt dies the land will belong to her children and husband. I don't know about half- half.

Q Let us try and split things for the sake of it. Grandcourt is entitled to half.

A I said he is entitled I don't know half- half.

The second witness for the defence one Mr. Winsley Leon (DW2), a police officer and a close friend of the late Mr. Grandcourt testified in essence that on the day in question, when Mr. Grandcourt went to Mr. Bonte's office to sign the transfer documents, he too, accompanied him. However, he was not present before the Notary Mr. Bonte, when the parties signed the documents but was simply sitting outside. According to Winsley, soon after signing the document, Grandcourt came out and told him that he had already sold the property for Rs 500,000/- In fact, this witness testified that Mr. Bonte was looking for potential buyers that time at the request of Mr. Grandcourt. In January 1993 Mr. Grandcourt was called by Mr. Bonte. He also went there accompanying Mr. Grandcourt. The relevant part of his testimony in this respect reads in verbatim thus:

> *"He told me that Mr. Bonte had got a buyer ready to buy his land. I accompanied him. On the 2nd February 1993 we went to Mr. Bonte at Ocean Gate House Victoria. When we got there he presented us to Mr. Christopher Gill and he said this was the person he had chosen to buy that property. He then, took Mr. Grandcourt to go into his chambers. I did not go inside. I was going to enter but they told me to wait outside because they were going to negotiate the price but if there are documents to be signed they would call me to sign as a witness. About thirty minutes later Mr. Grandcourt came out and he told me that he had signed a promise of sale for Rs.500,000/. I told him that the area should be costing more than that. Let us go back inside and renegotiate. At that time Mr. Bonte and Mr. Gill were coming*

out of the chambers. I asked Mr. Bonte if he did not tell me there was any document to sign. Christopher Gill said the agreement had already been signed and he is not going to go back because he had to go to Praslin to look after his business. He came out and went away"

The third witness for the defendant one Mr. Brassel Adeline (DW3), who was working as Registrar of Land in 1993 to 1994, testified in essence that the landed-properties situated in the area of Takamaka were sold according to the Land Register, at different prices; the rates ranging from Rs13.75 to Rs48.35 per square meter. He also testified that such rates depend upon the size, nature and location of the land. If the Registrar finds that the consideration is too low, he normally adjudicate and say what would be an acceptable rate. This is usually done simply for the purpose calculation and collection of the stamp duty. Moreover, Mr. Adeline testified that he had not seen the nature, location and other conditions of the suit-property and therefore would not be able ascertain the value of the property. Therefore, the defendants seek dismissal of the suit and a declaration that the purported transfer is null and void.

I meticulously perused the entire pleadings and the evidence including all exhibits on record. I gave diligent thought to the submissions made by both counsel raising a number of factual and legal issues. I examined the authorities cited by counsel in support of their respective arguments. With due respect, most of those issues and authorities are in my view, red-herring and not relevant to the case on hand. One should never miss the wood for the trees. Most of the issues raised do not fall within the parameters of the pleadings and the evidence on record. Herein I would like make it clear that the Court of

Appeal has remitted this matter for a fresh hearing with specific direction that this matter should be heard anew as though no judgment has ever been entered before, implying that no extraneous matters ought to be considered *now and here* apart from the one under adjudication. However, it seems that the defence Counsel by and large in his longwinded written submission invites the Court to determine matters extraneous that are not relevant to the case on hand. They are not supported by pleadings or evidence on record. Hence, I have to exclude those matters from my consideration including certain events that happened subsequent to the filing of the main suit and certain documents such as (i) the Will of Mr. Grandcourt dated the 28th of December 1996 - Exhibit P6. (ii) the Judgment by consent dated the 23rd January 1997- Exhibit P8 and (iii) Ruling of the Land Registrar dated 13th of August 1995 - Exhibit D2.

The real issues involved herein are simple and straightforward. To my mind, the following are the only fundamental questions that arise for determination in this matter:

1. *Did the* deceased Mr. Charlemagne Grandcourt *sign the transfer deed – on the* 4th February 1993 *at the office of the attorney Mr. Bonte*- under duress or pressure or by mistake?

2. *Did the plaintiff or the Notary Mr. Bonte take unfair advantage of Mr. Grandcourt's advanced age and misled him so that he could transfer or sell the suit-property for an insufficient price to the plaintiff?*
3. *Had the late C. Grandcourt obtained the consent or concurrence from the other co-owners namely, his children to deal with their part of interest in the suit-property?*

4. *Is the transfer in dispute null and void for any reason, whatsoever?*
5. *Is the plaintiff entitled to the relief of specific performance of contract? and*
6. *If so, [Is] the plaintiff entitled to any damages payable by the defendants?*

Before I proceed to find answers to the above questions, for avoidance of doubt, I should mention here that the present action is not a suit for ***lesion*** governed by Articles 1674 to 1681 of the CCS. It seems to me, that an action for ***lesion*** is available only to a plaintiff, the seller, to be used it as a "sword" - see the repeated use of the term "plaintiff" in Article 1679 and 1680 of the CCS – so as to obtain a declaratory relief against the buyer. In my view, this relief is not open or available to a defendant to be used as a "shield" in his defence to an action brought against him for specific performance of a contract. In fact, the defendants did not bring this action to set aside or rescind or annul the sale of the suit-property made in favour of the plaintiff; rather it was the plaintiff, who came before the Court for specific performance of the contract by the defendant. Evidently, completion of sale is a condition-precedent required for instituting an action for lesion. The defendant in the instant case however, does not concede that there was a valid sale at first place. Therefore, I have to exclude from my consideration the defence of "lesion" likewise "fraud" though Mr. Rouillon is indirectly attempting to draw the Court to tread into that arena.

Coming back to the questions Nos. 1, 2 and 3 above, they are simply questions of fact. They do not involve any point of law. The answers to these questions completely depend upon the credibility of the witnesses, their testimonies and the circumstantial

evidence if any, surrounding the execution of the alleged transfer. In fact, there are two contradictory versions on record on this material issue. According to the testimony of the Attorney Mr. Bonte and that of the plaintiff, the late Charlemagne Grandcourt signed the transfer deed in question, freely and voluntarily while he was of sound mind and good health. They did not take any unfair advantage of Mr. Grandcourt's advanced age misleading him on any matter in order to get the transfer signed by him.

On the question of credibility, I believe the Attorney Mr. Bonte and the plaintiff. I accept their evidence, when both testified that the deceased Mr. Grandcourt did visit the office of the attorney Mr. Bonte on the 4th of February 1993 without any inducement or instigation and signed the said transfer deed out of his free will. He was of sound mind and of reasonably good health. Although he was relatively an elderly person, no duress, coercion or deception was employed by any one in order to get him sign the transfer. Undisputedly, the plaintiff had never seen the seller before he met him at the office of Mr. Bonte to finalize and document the transaction. Even Mr. Leon (DW2), who had accompanied Mr. Grandcourt to Mr. Bonte's office testified that soon after signing the documents, Mr. Grandcourt came out and told him casually that he had sold the property for Rs 500,000/- Had there been any duress/pressure/deceit applied on him by anyone or had he mistakenly signed the transfer for any reason whatsoever, Mr. Grandcourt would have certainly, told something to that effect to his close friend Mr. Leon, who was waiting outside at the material time or to say the least, Mr. Grandcourt should have shown some signs of disapproval or unwillingness or dissatisfaction over the deal. Had there been any such unusual observation on the demeanor and deportment of Mr. Grandcourt that could not have escaped the attention of his close friend Mr. Leon.

The evidence given by Mr. Bonte and the plaintiff on this crucial issue is reliable, cogent, corroborative and consistent with the contents of the authentic document in exhibit P1 evidencing the transfer of the suit-property in favour of plaintiff for a valuable consideration. Hence, I find and conclude that exhibit P1 is a valid transfer. It was not vitiated by any adverse factor such as duress, coercion or mistake as alleged by the defence. Moreover, I find upon evidence that Mr. Bonte as an attorney and as Notary Public properly and correctly ascertained and explained to the parties as to the nature of the transaction, the suit-property, its extent and the price agreed upon by the parties before executing the said transfer deed. I also find that Mr. Grandcourt signed the said transfer-deed in the presence of Mr. Bonte knowing full well that the price was Rs500, 000/ and accepting that sum as a valuable consideration for the transfer; and after having the concurrence of his children, who were also the legal heirs to the estate of the deceased Mrs. Grandcourt. I do not believe the defendant Mr. Freminot, while he testified to the contrary by advancing his guesswork. I completely, reject his hearsay evidence on the allegations as to (i) lack of consent from the other legal heirs to the estate of Mrs. Grandcourt (ii) unfair advantage on the advanced age of Mr. Grandcourt and (iii) insufficiency of price. Besides, the transaction of the alleged transfer took place in 1993. Mr. Grandcourt signed the deed about 17 years ago, when the Freminots were not in the picture. Admittedly, Mr. Freminot (DW1) had never been a party to any transaction pertaining to the sale in dispute; nor had any personal knowledge about the execution of the transfer-deed by the late Grandcourt. However, he attempted in vain to testify on matters based on hearsay and conjectures.

Having said that, I note, the defendant has pleaded alluding or implicitly alleging fraud to be the cause to annul the

transfer deed. In law, fraud cannot be presumed by Court, it must be proved by adducing positive evidence in terms of Article 1116 of the Civil Code.

Needless to say, the “deed in dispute” is an authentic document in terms of Article 1317 of the Civil Code. This document has been signed before Mr. Bonte, an Attorney at law and Notary Public, who categorically testified that the contract of sale was not vitiated by any adverse factor, and Mr. Grandcourt signed the deed as transferor freely and voluntarily. The Attorney has also attested to the authenticity of their signatures in the deed. It is true that the document has not been registered yet under the provisions of the Land Registration Act. Registration of a transfer deed is only a procedural formality. Non-registration cannot invalidate any contract of sale or any agreement for that matter. *All 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 authorizes. They shall be performed in good faith* vide Article 1134 of the CCS. Therefore, there arises a rebuttable presumption of law in favour of the plaintiff that the document in question is a valid legal transfer deed bearing the genuine signature of the parties evidencing the transaction it embodies. As the maxim goes: ***“Omnia proesumpunter rite et solenniter essa acta” -*** which means - that all legal acts are presumed to have been done rightly and regularly. Hence, the evidential burden of proving the alleged duress, mistake or the alluded fraud on this authentic document - in exhibit P1 – and rebutting the presumption in this respect obviously, lies on the defendants, as they repudiated the validity of the contract of sale. Evidently, the defendant in this case has miserably, failed to discharge that evidential burden and so I find.

De hors, the above finding on facts, it is pertinent to note, Article 1582 of the Civil Code clearly states that *a sale is complete between the parties and the ownership passes as of right from the seller to the buyer as soon as the price has been agreed upon, even if the thing has not been delivered or price paid.*

On the question of damages claimed by the plaintiff, I do not find any concrete evidence on record to show on a balance of probabilities that the plaintiff did suffer any special loss or damage following the non-performance of the contractual obligation either by the late Mr. C. Grandcourt or by the executor/s of his estate. Hence, in my judgment the plaintiff is not entitled to any damage in this respect except a nominal moral damage for breach of contract by the defendants. After hearing and examining the entire evidence in this matter, I find answers to the above questions in seriatim as follows:

1. *The* deceased Mr. Charlemagne Grandcourt *signed the transfer deed - on the* 4th February 1993 *at the office of the attorney Mr. Bonte- freely and voluntarily, not* under duress or pressure or by mistake.

2. *Neither the plaintiff nor the Notary Mr. Bonte took any unfair advantage on the advanced age of Mr. C. Grandcourt at the material time and none of them misled or induced Mr. Grandcourt so that he could transfer or sell the suit-property for an insufficient price to the plaintiff.*

3. *Mr. Grandcourt had obtained the consent or concurrence from the other co-owners namely, his children to deal with their interest in the suit-property.*

4. *The transfer in dispute is a valid sale in the eye of law, which cannot be annulled or rescinded or faulted for any reason, whatsoever.*

5. *The plaintiff is therefore, entitled to the relief of specific performance of contract as prayed for in his plaint; and*

6. *[t]he plaintiff is entitled to only nominal damages payable by the defendants for having unlawfully prevented the plaintiff from registering the transfer deed with the Land Registry in respect of the suit-property.*

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

1. *I direct the Registrar of Land to register the plaintiff namely, Mr. Christopher Gill as sole owner of the two parcels of land comprised in titles T1393 and T1394 - hereinafter collectively referred to as the "property" - situated at Takamaka, Mahé, upon payment of stamp duty made by the plaintiff to the satisfaction of the Stamp Duty Commissioner/Land Registrar, who shall ascertain and adjudicate the present market value of the property for the purpose of charging, assessing and computing the stamp duty, treating the registration herein, as transfer on sale of the said two parcels of land. The Commissioner may adjudicate on such valuation in such manner and by such means as he/she may think fit and, for that purpose, may authorize any person to value the property in terms of Section 22(5) of the*

stamp Duty Act and whose decision on such valuation shall be final in this respect.

2. *I award the sum of Rs1/- to the plaintiff as nominal damage payable by the defendants on behalf of the estates they represent in this matter.*

3. *I dismiss the defendants' entire claim raised in defence including the one made in the nature of counterclaim, in the statement of defence dated* 26th November 2008 in this matter.

4. *Having regard to all the circumstances of this case, I make no order as to costs.*

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D. Karunakaran

Judge

Dated this 23rd day of March 2011