

IN THE SUPREME COURT OF SEYCHELLES

ANTOINE HOUAREAU

PLAINTIFF

VERSUS

ERICA LAPORTE NEE FRANCOISE

DEFENDANT

Civil Side No 253 of 2003

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Mr. B. Hoareau for the Plaintiff

Mr. F. Bonte for the Defendant

JUDGMENT

B. Renaud J

On 19th September, 2003 the Plaintiff entered this Plaint and prayed this Court for judgment:

- i. *Ordering the Defendant to demolish the wall she constructed on Title S190 and restore the land to its original state;*
- ii. *Ordering the Defendant to pay him a total of SR113,500.00 continuing damages;*
- iii. *Granting him any other remedy deemed fit and proper in the circumstances.*

The Plaintiff and Marie-Therese Houareau nee Gabriel are lawful spouses and co-owners of Title S190 situated at Val-des-Pres, containing their house which they have occupied since 1982; he brings this action as fiduciary of the co-ownership.

The Defendant is the owner of the adjoining property, Title S192, purchased in June, 1981.

In or around April, 1994, whilst the Defendant was in occupation of Title S192, without the Plaintiff's authority and consent, the Defendant, by herself and/or her servants and preposes, unlawfully entered on Title S190 and constructed thereon a concrete wall 30.6 m long and 1.50 m high, at a distance of 2.7 m from the common property.

The Defendant however, averred in her statement of defence that she and her then husband, William Laporte, approached the Plaintiff around 1994 and explained to the Plaintiff that they were to build a wall between the Plaintiff's property S190, the adjoining property then belonging to Allied Builders, and that the Defendant's then husband obtained verbal authority from the Plaintiff to continue building the wall in a straight line. The Defendant went on to allege that the Plaintiff was aware at the time that the wall being built was inside his boundary but chose to allow the Defendant to continue the wall in a straight line.

In my view this averment of the Defendant, in my view, cannot be maintained and sustained for given hereunder.

The Plaintiff averred that the Defendant's aforesaid acts constitute fautes in law and constitutes a contravention of his right of ownership and peaceful enjoyment of his property.

The plaintiff has obviously suffered material and moral prejudice. He estimated this to be in the sum of SR110,000.00 and continuing and for which, he averred, the Defendant is liable. The Defendant however averred that the Plaintiff had not suffered any serious material and moral prejudice.

The Defendant, in her Statement of Defence, added that she had, by building the wall, kept the amount of rubbish amassed by the Plaintiff and deposited between the back of his house and the wall. She stated that the house on S192 is a very large villa with large swimming pool, the value of which was quite large. The quantity of junk amassed by the Plaintiff was a constant eyesore to the Defendant and the wall therefore served as a means of keeping the Defendant's property within its defined market value. She also averred that that she found it extremely disturbing that the Plaintiff lived happily with the wall in place for ten years and now somehow decides that it is an encroachment worthy of compensation.

The Plaintiff particularized and estimated prejudice as follows:

- Trespass and construction of wall on Title S190: SR20,000.00
- Contravention of right of ownership and enjoyment and deprivation of use of 76 sq. m of land, for 9 years: SR45,000.00 (SR5,000.00 per annum and continuing).

- In convenience and nuisance, including obstruction of view, for 9 years: SR45,000.00 (SR5,000.00 per annum and continuing).

In order to institute these proceedings he has incurred Surveyor's fees in the sum of SR3,500.00 for which, he averred, the Defendant is liable, in addition to taxed costs. If in order to obtain evidence to enable him to sue the Defendant, the Plaintiff had to carry out a survey of his property, I do not see how the Defendant ought to be burdened with such expenses. I will not allow this head of claim.

At the sitting of this Court on 23rd November, 2004, Learned Counsel for the Defendant informed Court that "the wall complained of has been broken down and wanted to know whether this would be taken as the end of the matter". As the substantive Counsel for the Plaintiff was not present in Court, no answer could be given to that question by the Court.

In any event, Learned Counsel for the Defendant entered a Statement of Defence on 25th February, 2005 and responded to the material issues.

The parties took time trying to settle the matter amicably but to no avail and the suit finally came up for hearing on 6th March, 2009.

At the hearing only the Plaintiff testified and was cross-examined by Learned Counsel for the Defendant. After the Plaintiff closed his case, the hearing was adjourned for the Defendant to present her case. On the adjourned date Learned Counsel for the Defendant informed Court that he will not be tendering any

witness and submitted that the Defendant had no case to answer. Learned Counsel for the Defendant was called upon by the Court to elect between standing on his submission or calling evidence, before the Court rules. Upon being cautioned by Court as to the consequence of the stance taken by Counsel, he confirmed to Court that he knew of the consequences and would stand by his submission.

Article 555 of the Civil Code of Seychelles inter alia provides that when structures are erected by a third party with materials belonging to such party, the owner compel the third party to remove such structure.

If the owner of the property demands the removal of the structures, such removal shall be at the expenses of the third party without any right of compensation. The third party may further be ordered to pay damages for any damage sustained by the owner of land.

In other words, the provisions of **Article 555** of the Civil Code of Seychelles applies only to possesseurs de bonne ou mauvaise foi who build on land that does not belong to them, without authorization from the owner of the land. The article does not apply where the owner of the land agrees to the construction.

The Defendant, in her Statement of Defence, claimed that the Plaintiff authorized the construction of the wall in issue, which the Plaintiff denied. There is no evidence before Court of any documentary proof that there was such an authority emanating from the Plaintiff authorizing the construction of such a structure. If

the Plaintiff had agreed to the Defendant's constructing the wall on his property he would not have claimed the removal of it. The Defendant on the other hand, if she had been granted such permission by the Plaintiff, she would not have immediately demolished the wall which was the subject matter of this suit, when the Plaintiff sued her. The Plaintiff however claimed that he was not sure that the Defendant's wall was actually erected on his property until after he had surveyed his property in June, 1999. I find that the Defendant was sufficiently candid in her Statement of Defence when she gave the reason as to why she erected that wall. She stated that she had, by building the wall, kept the amount of rubbish amassed by the Plaintiff and deposited between the back of his house and the wall. She stated that her house on S192 is a very large Villa with very large swimming pool, the value of which was quite large. The quantity of junk that had been amassed by the Plaintiff was a constant eyesore to her and the wall therefore served as a means of keeping her property within its defined market value.

For reasons stated above I find that the Plaintiff did not give any authorization, verbal or in writing, to the Defendant to build that wall on the property of the Plaintiff. I find that she unilaterally helped herself to preserve the value of her property. By her act the Defendant indeed committed a faute for which she is liable in law to pay damages to the Plaintiff.

It is rite procedure in a civil case, that, when at the close of the Plaintiff's case, the Defendant submits that he has no case to answer, the Judge should call upon the Defendant to elect between standing on his submission or calling evidence, before he (Judges) rules, as happened in the present case. Having come to this

conclusion, I therefore find that the Defendant had a case to answer and the claim shall be determined on the basis of the evidence of the Plaintiff.

The Defendant having already demolished the wall in issue, this Court finds that the making of such an order is simply academic and therefore not necessary in the circumstances.

Having found that the Defendant committed a faute in law when she erected a wall on the property of the Defendant, this Court hereby orders the Defendant to pay the Plaintiff damages which will now be determined.

The Plaintiff particularized and estimated his claim as being SR20,000.00 for trespass and construction of the wall on Title S190. I believe that with the passage of time and the depreciation of the value of the Seychelles Rupees, such amount is fair and reasonable. I award the Plaintiff **SR20,000.00** under that head. The Plaintiff claimed SR45,000.00 as contravention of right of ownership and enjoyment and deprivation of use of 76 sq. m of land for 9 years at SR5,000.00 per annum and continuing. The Plaintiff himself stated that he was not sure of any trespass to his lad until after the survey was carried out. Having not known that his lad had been trespassed, the mind of the Plaintiff could not have been engaged in any worry about any trespass as he was not conscious that his right was being violated during that time. However, he became conscious of such violation after the survey had taken place in June 1999 and it could only have been at that point in time that his mental anguish went back to all the time that he had unknowingly been deprived of his right. I believe that it was henceforward

that the Plaintiff had a claim for moral damage until the wall was demolished in November, 2004. I therefore find that the Plaintiff is entitled to be compensated for the prejudice he suffered during that period only. He has claimed SR5,000.00 per annum for such and I believe that this basis is fair and reasonable. However, for reason given above, I will entertain his claim for the period June 1999 to November, 2004 only - 5 years 5 months at SR5,000.00 per month making a total of **SR27,085.00**.

The Plaintiff also claimed for inconvenience and nuisance, including obstruction of view, for 9 years, at SR5,000.00 per annum and continuing

After the Defendant had demolished the wall in issue it was open to the Plaintiff to mitigate further prejudice, loss and damage. In the circumstances I do not believe and the Plaintiff is entitled to any other remedy.

I accordingly enter judgment in favour of the Plaintiff as against the Defendant in the total sum of SR74,170.00 (SR20,000.00 + SR27,085.00 + SR27,085.00) with interest and costs.

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B. RENAUD

JUDGE

Dated this 4th day of March 2011