

IN THE SUPREME COURT OF SEYCHELLES

Cecil Gomme

(Acting as Executrix of the Estate of the late

Cecilia Lanmour Anacoura representing

All three heirs to the Estate)

Plaintiff

Vs

Ganapathy Padayachy

of Baie St. Anne, Praslin,

Defendant

Civil Side No: 3(a) of

1999

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Mr. A. Derjacques for the plaintiff

Mr. P. Pardiwalla for the defendant

D. Karunakaran, J.

JUDGMENT

The three plaintiffs named in the original plaint dated 16 September 1998, are cousin-sisters. They are the granddaughters and legal heirs of one late Cecilia Lamour Anacoura - hereinafter called the "deceased" - who died intestate in Praslin on 17 February 1919, almost a century ago. The deceased was the daughter of one late Mr. and Mrs. Felix Anacoura, who were then residents of Praslin. It seems that the deceased had predeceased her parents. Be that as it may.

In the beginning of the last Century, the father of the deceased -the late Felix Anacoura - owned an immovable property - 12. 5 acres of land - at Baie Ste. Anne, Praslin, hereinafter called the "suit-property". During his lifetime, on 1st September 1922, he sold the suit-property to one late S. Kalimoothou Padayachy, who was also then, a resident of Praslin - hereinafter called "Kalimoothou" for the sum of Rs 350/- vide exhibit P2 and exhibit P7 under entry 26/77. The said sale was made by way of a "Vante à Réméré". Incidentally, "Vante à Réméré" is based on the French Legal Principle that provides seller the right of redemption or repurchase. This means a sale made reserving a right to the seller or to his legal heirs to repurchase the property sold, by returning the price paid for it. The time during which a repurchase may be made cannot exceed five years (redemption period), and if by the agreement it so exceed, it shall be reduced to five years. The time fixed for redemption must be strictly adhered to and cannot be enlarged by the judge, nor exercised afterwards. This was the law in those days in Seychelles; when French Civil Code was in force - vide *Articles 1659 - 1673 therein*.

After the said sale of the suit-property to Kalimoothou, presumably, before the expiry of the period of redemption, Mr. Felix Anacoura passed away. Nevertheless, his legal heirs Mr. & Mrs. D. Vel and others within the said period of redemption exercised their right of redemption, paid back the sum Rs 370 plus Rs 10 for costs and repurchased the suit-property from Kalimoothou on 16 March 1925 vide entry 28/09 in exhibit P7.

In the circumstances, the plaintiffs contended that the suit-property had thus reverted to the estate of their great grandfather the late Felix Anacoura on 25th March 1925 vide exhibit P3 and subsequently, evolved to the estate of their "deceased" grandmother Cecilia Lamour Anacoura. Hence, the plaintiffs claim that they jointly inherited or entitled to inherit their rights in

the suit-property since they are the only legal heirs to the estate of their great grandmother the late Cecilia Lamour Anacoura, who died on 17 February 1919. According to the plaintiffs, the said Kalimoothou or his legal heirs or successors or the defendant, who is acting in his capacity as fiduciary for the Heirs Kalimoothou has no right over the suit-property to alienate it or any part thereof or to deal with it by any manner whatsoever. However, the plaintiffs claim that the defendant acting in his capacity as fiduciary for the Heirs Kalimoothou has already alienated some portion from the suit-property to third parties. In view of all the above, Mr. Derjaques, learned counsel for the plaintiffs contended that plaintiffs are entitled in law to maintain or recover their proprietary rights over the suit-property. Hence, he urged the Court for a judgment:

- (i) Declaring that the plaintiffs have rights (of ownership) in the suit-property;
- (ii) Restraining the defendant from further alienating any portion of land from the suit-property to any third party; and
- (iii) Awarding plaintiffs damages, considering all the circumstances of the case.

On the other side, the defendant completely denies the plaintiffs' claim. According to the defendant, the plaintiffs' claim of right or ownership over the suit-property is not maintainable either in law or on facts. Besides, it is the case of the defendant that the instant action by the plaintiff is frivolous, vexatious and an abuse of the process of the Court. For, they have instituted the instant action despite their full knowledge of the exhibit D1. This exhibit clearly and conclusively proves the fact that the defendant (Kalimoothou) had lawfully purchased the suit-property in a Judicial Sale by licitation conducted by the Supreme Court on 13 November 1925.

Mr. Pardiwalla, learned counsel for the defendant in essence, contended that it is true that all transactions and the sequence of events leading up to

the point of repurchase of the suit-property in March 1925 by the plaintiffs' ancestors, did take place as correctly narrated by the plaintiffs. However, what the plaintiffs have very conveniently concealed from the Court is the fact that the defendant (Kalimoothou) on 24 September 1925, six months after the said repurchase, again purchased the same property in a *sale by licitation*, initiated by the heirs and conducted by a Judge of the Supreme Court. This is so evident as it is clearly stipulated in the Transcription of the licitation TJ5/74 dated 13 November 1925 in Exhibit D1. Therefore, Mr. Pardiwalla submitted that the defendant (the late S. Kalimoothou Padayachy) was the lawful owner of the suit-property ever since he purchased/acquired clear title for the same in a "judicial Sale" on 13 November 1925. The plaintiffs' ancestors' interest in the suit-property thus ended and since then they never had any right over the suit-property. Hence, the plaintiffs now cannot claim any right in the suit-property through succession or otherwise.

On the point of law, it is the submission of Mr. Pardiwalla that the cause of action in this matter is prescribed or time- barred by virtue of Article 2271, 2265 and 2262 of the Civil Code. These Articles read thus:

Article 2271

1. All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262 and 2265 of this Code.

2. Provided that in the case of a judgment debt, the period of prescription shall be ten years.

Article 2265

All real actions in respect of rights of ownership of land or other interests therein shall be barred by prescription after twenty years whether the party claiming the benefit of such prescription can produce a title or not and whether such party is in good faith or not.

Article 2262

If the party claiming the benefit of such prescription produces a title which has been acquired for value and in good faith, the period of prescription of article 2262 shall be reduced to ten years.

In the light of the above Articles, Mr. Pardiwalla submitted on points of law that:

- (i) The defendant purchased the suit-property in a Judicial Sale by Licitation in 1925 as per exhibit D1 (discussed supra) and the title of which has been acquired for value and in good faith. In such a case, the period of prescription of article 2262 shall be reduced to ten years. This means the defendant has become absolute owner of the suit-property and his title cannot be challenged after 1935 since all real actions in respect of the suit-property are prescribed or time-barred. Hence, the instant suit as has been filed in 1999 is not maintainable in law in terms of Article 2262 of the Civil Code.
- (ii) Furthermore, in terms of article 2265 all real actions in respect of rights of ownership or other interests in the suit-property shall be barred by prescription after twenty years from 1925, whether the

defendant claiming the benefit of such prescription can produce
a
title or not and whether he acted in good faith or not. Hence, the
present action is not tenable in law by virtue of Article 2265 of
the
Civil Code as well, since this action has been instituted in 1999;
nearly 67 years exceeding the statutory period of limitation; and

- (iii) since the suit is one for a declaration, the plaintiffs' rights of action is subject to prescription after a period of five years in terms of Article 2271(supra). Hence this action is liable to be dismissed limine.

I diligently, sieved through the entire pleadings, evidence including all exhibits on record. I carefully analysed the submissions made by both counsel on the merits as well as on points of law. I meticulously, perused the relevant Articles in our Civil Code.

First of all, on facts, it is evident - as rightly submitted by Mr. Pardiwalla that although all transactions and the sequence of events up to the point of repurchase of the suit-property by the plaintiffs' ancestors in March 1925, did take place, the fact remains that the defendant (Kalimoothou) subsequently, on the 24th September 1925 - six months after the said repurchase - again purchased the same property through a sale by licitation, initiated by the heirs and conducted by a Judge of the Supreme Court. This is abundantly clear from the Transcription of the licitation TJ5/ 74 dated 13 November 1925 in Exhibit DI. Therefore, I find that the defendant (the late S. Kalimoothou Padayachy) has been the lawful owner of the suit-property ever since he purchased the same through "judicial Sale" on 13 November 1925. Since then the plaintiffs' ancestors obviously, lost the right of ownership thereof

and they could not have had or continue to have any right or interest whosoever in the suit-property. The plaintiffs had no proprietary right to inherit after the said judicial sale to Kalimoothou. Therefore, now they cannot claim any right over the suit-property. For this reason alone, the plaint is liable to be dismissed and I do so accordingly.

Having said that, on a point of law I note that the plaintiffs rely upon and trace back description, extent, title and the dealings in respect of the suit-property to the archived Repertoires 16/256 18/444, 28/29 & 13/374 and Transcription Vol. 26/177, which were recorded/registered under the old system of registration of deeds that was in existence, when Seychelles was a colony, dating back to land dealings that were recorded more than one hundred years ago.

As rightly submitted by Mr. Pardiwalla under point (i) supra, the defendant, who claims the benefit of prescription, relies on a title (in exhibit DI), showing that the suit-property was purchased by him in 1925 for value and in good faith in a sale by licitation before the Supreme Court. Hence, by virtue of Article 2262, the period of prescription stipulated under Article 2265 (20 years) is reduced to 10 years. This means that after 1935, all real actions in respect of the suit-property are prescribed or barred by time-limit and so I find. Hence, I conclude that the instant suit being time-barred is not maintainable in law in terms of Article 2262 of the Civil Code. It is therefore, liable to be dismissed in limine.

As was contended by Counsel under point (ii) supra, I also note, in terms of article 2265 all real actions in respect of rights of ownership or other interests in the suit-property are barred by prescription after twenty years. This means in the present suit, all real rights of action in respect of the suit-property is prescribed or extinguished after 1945 whether the defendant claims the benefit of prescription produces a title or not and whether he

acted in good faith or not. Since the instant suit has been instituted after a delay of 67 years, evidently, it is time-barred and so not tenable in law by virtue of article 2265 of the Civil Code and so I find.

Since the findings on points (i) and (ii) above have substantially and effectively disposed of the case, it seems to me, redundant for this Court to examine the point (iii) raised by Mr. Pardiwalla on five-year-prescription, contemplated under Article 2271 of the Civil Code.

In the final analysis, having carefully examined the entire evidence on record, I find that the plaintiffs have failed to establish their case on the merits as well as their action is time-barred in the eye of law. Hence, in my judgment the plaintiffs' suit herein is not maintainable either in law or on facts. The suit is accordingly dismissed with costs.

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D. KARUNAKARAN

JUDGE

Dated this 14th November, 2011