

THE REPUBLIC OF SEYCHELLES

IN THE SUPREME COURT OF SEYCHELLES AT VICTORIA

Civil Suit No. 340 of 2010

RAMESH PILLAY=====PLAITNIFF

VERSUS

S. RAJASUNDARAM=====DEFENDANT NO.1

V.T. PANDIYARI PILLAY=====DEFENDANT NO.2

Mr B. Hoareau for the Plaintiff

Mr F. Bonte for the 2nd Defendant

RULING

Egonda-Ntende, CJ

- 1 The Defendant no. 2 in this matter has raised a plea in limine contending that this suit is res judicata and therefore ought to be dismissed. The Defendant relies on the decision of the Court of Appeal in Seychelles Court of Appeal no. 6 of 2005, as the decision between the parties.
- 2 The Plaintiff objects to the plea in limine and asserts that the matter is not res judicata. On the contrary it is arising because the executors have not complied with the order of the Court of Appeal in Seychelles Court of Appeal no. 6 of 2005.

- 3 I have perused the plaint in this matter. The Plaintiff is one of the beneficiaries of the Estate of the Deceased V.T. Thirumany Pillay. The Defendants are the executors of the estate of the said deceased. The plaint is contending that the distribution of the property by the Defendants was not in accordance both with the law and the decision of the Court of Appeal referred to above, No. 6 of 2005. It is obvious that the parties in Seychelles Court of Appeal no. 6 of 2005 and the present suit are different. The Court of Appeal decision was in respect of an action between two different lines of beneficiaries. So, clearly the parties are different. The cause of action is also different. The cause of action in the current case is arising out of the actions of the executors or one of the executors of the estate of the deceased rather than a dispute between the heirs per se.
- 4 For res judicata to apply there must be three fold identity of subject matter, cause and parties in the first and the subsequent case. This was ably explained by Sir Georges Souyave, CJ, in Hoareau v Hemrick [1973] SLR 272 at 273.

‘For the plea of res judicata to be applicable, there must be between the first case and the second case the threefold identity of “objet”, “cause” and “personnes”.
The “objet” is what is claimed. “La cause” is the fact, or the act, whence the right springs. It might be shortly described as the right which has been violated.’

- 5 In the instant case it is clear that the parties are different. In the first case it was heirs disputing over their share in the estate of their late father in accordance with the nature of their birthright. Now it is one of the heirs challenging the distribution of the estate by the executors, asserting that it is not in accordance with the decision of the Court of Appeal in SCA No. 6 of 2005 and the law of succession. It is not the same cause of action in issue in this case as it was in the first one.
- 6 In the end result I am satisfied that this case is not res judicata and I dismiss the plea in limine.

Signed, dated and delivered at Victoria, this 24th day of September 2012.

F.M. S. Egonda-Ntende

CHIEF JUSTICE