

**IN THE SUPREME COURT OF SEYCHELLES**

**MARK ANDRE BENOITON**

Plaintiff

VERSUS

**SANDRA HANKS**

Defendant

Civil Side No. 84 of 2012

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Mr. Rajasundaram for the Plaintiff

Mrs. Amesbury for the 1<sup>st</sup> Defendant

*D. Karunakaran J.*

**RULING**

The Plaintiff, who is none else than the former wife of the defendant in this action, has come before this Court seeking a judgment against the Defendants in the sum of €50,000/- plus the sum of Rs.25, 000/- as moral damages with interest and costs. The Defendants, who are contesting the plaintiff's claim, have raised a plea in limine litis based on two points of law challenging the maintainability of this action and hence this ruling on the preliminary issues.

The gist of the pleadings in the plaint reveals that the 1<sup>st</sup> defendant signed an agreement on the 21<sup>st</sup> of January 2010

undertaking to pay the sum €50,000/- to the Plaintiff. However, according to the Plaintiff, the Defendant was in breach of the said agreement, in that, he failed or refused to pay the said sum to the plaintiff. Hence, the Plaintiff has instituted the instant action before the Court seeking the judgment first-above mentioned.

I gave careful thought to the submissions made by Mrs. Amesbury, learned counsel for the Defendant and Mr. Rajasundaram, learned counsel for the plaintiff, for and against the plea in limine litis. As regards the first point on the incompetency of this action on account of the alleged involvement of matrimonial property in the plaintiff's claim I note, Mrs. Amesbury conceded that this point is not maintainable in law. Therefore, she withdrew this point from the plea in limine litis, showing the good tradition of the Bar.

Now, the only issue that requires determination is the second point namely, *whether the instant action is improperly instituted relying on an agreement instead of an acknowledgment of debt.* On this issue, I venture to state that it is not for the Defendant or her counsel to decide which cause of action or the document the Plaintiff should choose or rely upon to institute a civil action in Court; but it is only the Plaintiff, who would take such decisions; even the Court has no role to play on those matters. Moreover, if the Plaintiff had chosen to sue the Defendant relying on a particular document, the Defendant has

no legal right either procedural or substantive to compel the Plaintiff to bring the action based on another document, which the Defendant believes would be relevant to the Plaintiff's claim. Hence, I reject the submission of Mrs. Amesbury in this respect.

In the circumstances, I find the second point is also devoid of merits and not maintainable in law. Therefore, I dismiss both points raised by the Defendant in the plea in limine litis. The case shall proceed to be heard on the merits.

**D. KARUNAKARAN**  
**JUDGE**

Dated this 10<sup>th</sup> day of May 2013