

IN THE SUPREME COURT OF SEYCHELLES

NELSON LABROSSE REP.

BY MS DENISE RENE

PLAINTIFF

VERSUS

GITANNE LABROSSE

RESPONDENTS

Civil Side No 177 of 2011

Mr. Camille for the Plaintiff

Mr. Elizabeth for the Defendant

D. Karunakaran, Judge

RULING

The plaintiff in this matter, is the son and sole descendant of one late Adrian Labrosse, hereinafter called the “deceased” - who died in Seychelles on the 31st October 2004. The deceased was then married to the defendant. At the time of his death the deceased had left as his heirs the Plaintiff, and the defendant, who are the only legal heirs to inherit his estate.

Prior to his death the deceased had transferred to the defendant an undivided half share in his immovable property parcel No: 1953 for a consideration of SR1.00/- . After his death the defendant became owner of three quarter shares in the said parcel whereas the plaintiff inherited one quarter in the said property.

In the circumstances, the plaintiff has now come before this court for lesion, praying the Court to set aside the said transfer of half-share in Parcel No. 1953 made to the defendant on the 12th April 2004 by the deceased.

Now learned counsel for the defendant, Mr. Elizabeth has raised a point in limine litis contending that the instant suit is not maintainable in law as the plaintiff has no locus standi to institute this action in this matter for the following reason: This suit is brought under articles 1674 of the Civil Code for lesion. The article clearly states only a seller can bring an action for lesion for selling the property to a price lower than half of the market value of the property.

In this particular case, according to the defendant, the plaintiff is not a seller. Hence, he has no locus standi to bring this action before the court for lesion. Beside, counsel for the defendant submitted under article 1679 of the Civil Code, the Court should be satisfied that there are circumstances (sufficiently) serious enough to order investigation into the alleged sale of the suit property.

First of all, on the issue of seller, I quite agree with the interpretation given by Mr. Elizabeth to the term “seller” used in Article 1674 of the Civil Code. Although French Authorities show that seller might include successors, I believe these authorities are not applicable to our jurisdiction, as our civil law and legal principles are governed by the Civil Code, which is tailored to suit our needs and opinion of our Seychellois society. Therefore, I quite agree with that interpretation, given to the word ‘seller’, which term in my view, means only seller. It will not include any other person either successors or heirs or assignees.

In the circumstances, even on the first ground the suit is liable to be dismissed. Accordingly I do so.

As regards the second ground, under Article 1679, I do not find any serious ground which warrants this court to order an investigation into the said sale. This transaction has taken place between husband and wife. The purchaser was not a third party and the plaintiff in this matter is none else than the step-son of the defendant. I quite agree with the submission made by learned counsel Mr. Elizabeth that circumstance are not sufficiently serious enough to order an investigation in this matter.

For these reasons, I uphold the defendant's plea limine litis. The suit is not maintainable in law.

Hence, the suit is dismissed.

I make no orders as to costs.

D. KARUNAKARAN
JUDGE

Dated this 15th day of May 2013