

IN THE SUPREME COURT OF SEYCHELLES

SARAH DIDON

Vs

Jeanne d'arc sinon

Civil Side No: 85 of 2007

Mr. Derjacques for the plaintiff

Mr. W. Lucas for the defendant

Judgment

Renaud. J

By Plaint entered on 16th March, 2007, the Plaintiff is praying this Court to order the Defendant to unblock the Plaintiff's right of way by ordering the Defendant to remove all the constructions and plantations across the Plaintiff's right of way over Parcel H1617, and, granting an injunction against the Defendant restraining her from placing any further constructions, plantations or obstructions in the Plaintiff's right of way over Parcel H1617, and, to also order the Defendant to pay her the sum of SR50,000.00, with interests and costs.

It is not in dispute that the Plaintiff and the Defendant are the owners of adjoining parcels of land situate at Ma Joie and registered as parcels H1616 and H1617 respectively.

The Plaintiff claimed that she has a right of way over the property of the Defendant which the latter denied and averred that there is a 2 metre right of way but that is as demarcated on Survey Plan of Parcel H1617.

The Plaintiff alleged that since approximately four years prior to the date of entering this Plaint the Defendant had willfully and maliciously obstructed the said right of way by erecting a wall on part of the right of way and also planting banana trees on the said right of way. The Defendant denies each and everyone of these allegations and put the Plaintiff to proof.

The Plaintiff averred that the acts of the Defendants as pleaded have put her and her family to great inconvenience and the Plaintiff and her family cannot use their right of way. This averment is also denied by the Defendant.

The Plaintiff claimed that as a result of the acts of the Defendant, she and her family are forced to pass over another neighbour's property in order to gain access to their home. The Plaintiff averred that the neighbor is allowing her and her family to pass over his property only until the Defendant unblock the Plaintiff's right of way. Again, the Defendant denied these allegations.

The Defendant averred that the 2 metre right of way is free for the usage by the Plaintiff and her family.

The Plaintiff also averred that the Defendant acts amount to a "*faute*" under the law and that as a result of that "*faute*" the Plaintiff has suffered loss and damages which she estimates in the sum of SR50,000.00. This claim is denied by the

Defendant who stated that if the Plaintiff has suffered any loss, she is not responsible for such loss.

On the basis of **Exhibit P6**, a Plan drawn up by G & M Surveys dated 17th March, 2008 there is in existence a two metre wide right of way reserved on the property of the Defendant Parcel H1617 from the public road leading to the property of the Plaintiff Parcel H1616. This right of way is encumbered by footsteps; retaining walls; underground sewage pipe and sewage manhole laid by Public Utilities Corporation many years ago. Indeed Certificate of Official Search dated 14th November, 2011 (**Exhibit P2**) confirms as encumbrance – “*Reservation on water pipe and right of way (trans 67/241)*”. There is, however, no indication that the right of way must be a motorable access road. The Chief Executive Officer of the Seychelles Planning Authority testified that it is the Authority’s policy that a 2 metre right of way is normally for a footpath and not a motorable right of way.

The Plaintiff is claiming moral damages from the Defendant. She has not established any reason as to why she is entitled to claim such sum. I decline to make any such order.

In the final analysis it is my judgment that the Plaintiff has a 2 metre right of way on parcel Title H1616 belonging to the Defendant and on that basis I make the following orders:

- (a) I order the Defendant to clear the right of way as depicted on Survey Plan dated 2nd September, 1987 drawn up by Government Surveyor as approved by the Chief Surveyor (Exhibit P3) by removing her footsteps;

retaining wall and any plantations across that right of way over Parcel H1617, and,

(b) I hereby grant an injunction against the Defendant restraining her from placing any further constructions, plantations or obstructions in that right of way over Parcel H1617.

(c) I also order the Defendant to pay the Plaintiff cost in this suit.

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B. RENAUD
JUDGE

Dated this 13 March, 2013