

IN THE SUPREME COURT OF SEYCHELLES

PAUL PETER AUKSORIUS

Vs

**1. MR. IRENE JEANNIE
2. MRS. WILLIANA JEANNIE**

Civil Side No: 226 of 2008

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*Mr. Derjacques for the plaintiff
Mr. Gabriel for the defendants*

Judgment

RENAUD, J

The Plaintiff entered this Plaint on 28th August 2009, praying this Court for a judgment ordering the Defendants to immediately vacate the house and land parcel S3664 and for the Defendants to allow the Plaintiff vacant possession and peaceful occupation of the same, and, for any other order that may meet the justice in this case, all with costs.

It is the averments of the Plaintiff that he is a pensioner residing in Australia and is the owner of land parcel **Title S3664** and a house thereon situated at Anse Aux Pins, Mahe and that the Defendants are occupants of the said house. That he and his wife as well as the preceding owner have repeatedly informed the Defendants to vacate the said house and allow the Plaintiff vacant possession and have cancelled the Defendants' license to reside therein. That the Defendants continued

possession and occupation of the house and land is unlawful and exposes Defendants to liability in law to the Plaintiff.

The Defendants raised a plea *in limine litis* that –

“The Defendants have lived on the said parcel S3664 for the past thirty years. The Plaintiff’s action is therefore prescribed under the terms of the law on prescription of 20 years”

The Defendants contended that the Plaintiff does not hold a clean title on parcel S3664 as they (Defendants) have been living on this same parcel since 1974 with the permission of the previous owner in title, the late spouse of the Plaintiff. That they are not aware of any communication from the Plaintiff or his late wife requesting them to leave or vacate the said house and the Plaintiff is put to strict proof of this. That they have always been in lawful occupation of the said house and land and had been allowed to live there by the late wife of the Plaintiff, Danielle Aukorius. That the 1st Defendant was further appointed Executor of the Estate of the Heirs Amelie Pothin nee Baillon by the Supreme Court on the 26th September, 1989. That the late wife of the Plaintiff was the only heir of Amelie Pothin nee Baillon.

In Limine Litis

Article 2229 of the CCsey states that, in order to acquire by prescription, possession must be continuous and uninterrupted, peaceful, public unequivocal and by a person acting in the capacity of an owner.

Article 2230 of the CCsey states that, a person shall be presumed to possess for himself as owner unless it is proved that he possesses on behalf of another.

Article 2231 the CCsey states that, when a person begins to possess on behalf of another, he shall always be presumed to possess on the same basis unless there is proof to the contrary.

Article 2236 the CCsey states that, those who possess on behalf of another shall not acquire by prescription however long they may be in possession.

Thus the tenant farmer, the lessee, the depositary, the usufructuary and all the others who hold the property of the owner for a temporary period shall not be entitled to prescription.

There is no evidence that the Defendants occupied the land as tenant farmer, lessee, depositary, usufructuary or as an employee of the owner. I however find that for a certain period of time during those 30 odd years, the 1st Defendant was the caretaker of the whole property before it was subdivided, and he was also the duly appointed Executor of the original owner Amelie Baillon from 1988 until 27th November, 2002 when he was removed as Executor by the daughter of Amelie Baillon, namely, Danielle Auksorius who by then had succeeded her mother, who herself passed away in 2008. It is in evidence, and this evidence is not contradicted, that Danielle Auksorius instructed notary Raoul Nageon de L'Estang to transfer the land where the house occupied by the Defendant stands, onto the Defendants but this transaction was not concluded.

There is ample evidence to establish that the Defendants lived on the property in issue parcel Title S3664 for the past over thirty years.

When referring to the question of prescription of the property in issue parcel Title S3664, it came out in evidence that there are two aspects. Firstly there is the situation when the 1st Defendant was the proxy of the owner with regard to the whole property since 1974 when the owner left Seychelles for good. Secondly, there is the question of the house and its curtilage occupied by both Defendants on parcel Title S3664. I believe that these two situations ought to be treated separately.

The property was sub-divided and the Defendants occupied one of the sub-divided plots where there was once an old house. The Defendants caused the old house to be demolished and they built another one out of their own funds with the acquiescence and permission of the original owner. The removal of one of the Defendants as Executor of the whole property does not necessarily affect the right of occupation by the Defendants of the part of the property where their house is located

The witness who testified on behalf of the Plaintiff, Adrian Lacroix, did not have personal knowledge of how the Defendants came to be living on the property. I believe that his evidence carries little weight when viewed in the light of the evidence of the Defendants. The witness of the Plaintiff made reference to various phone calls but he did not produce any documentary evidence confirming the contents of any of the phone conversations between the owner and the 1st Defendant. He made reference to agreement between the original owner who had since passed away and the 1st Defendant. The only documentary evidence is Exhibit P6 which is a letter dated 23rd March, 1996 from the daughter of the original owner.

I find that the house in which the Defendants lived and occupied on the land belonged to the Defendants having constructed it from their own funds with the acquiescence and permission of the owner. They acted in good faith and as such I find that they are *possesseur de bonne foi*. The Defendants occupied their house on that land from 1974 to at least 28th August 2009, that is a period of over 35 years and I find that throughout all these years their occupation was continuous, uninterrupted, peaceful, public and unequivocal.

In the light of my findings, it is my judgment that the Defendants have acquired prescriptive rights on part of the property of the Plaintiffs where their house is situated and this includes a reasonable cartilage of say not less than 10 metres all around the said house. The Plaintiff's action is therefore prescribed under the terms of the law on prescription of 20 years.

For reasons stated above, I therefore decline to order that the Defendants immediately vacate the house and land parcel Title S3664 and for the Defendants to allow the Plaintiff vacant possession and peaceful occupation of the same, and, to meet the end of justice I order that the Plaintiffs excise the portion of land where the Defendants' house and its cartilage is situated and that this be registered on the name of the Defendants as property they have acquired by prescription.

I make no order as to costs.

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B. RENAUD

JUDGE

Dated this 11 March, 2013