

**Pillay v Rajasundaram**

**(2013) SLR 11**

Egonda-Ntende CJ

21 March 2013

SCCS 340/2010

**Counsel** B Hoareau for the plaintiff

F Bonte for the defendants

**EGONDA-NTENDE CJ**

[1] The plaintiff is a son and one of the heirs of the late VTT Pillay who passed away on the 15 October 2001. Defendant no 2 is an executor of the estate of the deceased. Defendant no 2 is a son, heir and co-executor with defendant no 1 of the estate of the said deceased. The plaintiff has brought this action seeking basically several remedies. He seeks compensation of R 4,000,000.00 being the present value of parcel C4240, one of the properties belonging to the estate which he claims to have developed. And that pending the payment of said sum that he is entitled to retain the said property. Further he seeks the annulment of a purported distribution of the estate of the deceased that was effected on 27 April 2010 as being void in law. He prays for a new distribution of the estate in accordance with the law and costs of this action.

[2] The defendants opposed this action, contending that no monies were due to the plaintiff. And that the distribution of the estate was lawful.

[3] During his final address to the Court, Mr Hoareau, counsel for the plaintiff, submitted with regard to the claim for the value of parcel C4240 as follows:

Now my lord with regard to the case based on paragraph 9 of the plaint I would submit that there is no evidence as to the amount that was spent by the plaintiff in this case. That I would concede. I will concede there is no value as to the property and in that regard, in respect of paragraph 9 of the plaint, your Lordship, will have no other choice but to dismiss the plaint in that regard.

[4] I agree with counsel for the plaintiff. I am indebted to Mr Hoareau for being forthright in this matter. The claim for compensation of the value of parcel C4240 of R 4,000,000.00 from the estate of the deceased is unsupported by evidence on record. It is dismissed with costs. So is the claim to retain possession of the said property on that account until payment of the said sum.

[5] I now turn to the remaining cluster of claims with regards to the distribution of the estate. The facts of what transpired with regard to distribution are not in dispute. Defendant no 1 after receiving values of the properties belonging to the estate, proceeded to divided and partition the properties into two portions, giving one portion to the group headed by the plaintiff and another portion to the group headed by defendant no 2. He ordered the group headed by the defendant no 2 to pay the plaintiffs an additional sum of money in order for the plaintiff's group to receive their share of the estate of their father, the deceased. He did not make provision for the debts of the estate which he indicated in his report only as outstanding and unpaid. Defendant no 2 the other co-executor then ratified and

adopted the actions of defendant no 1. However defendant no 2 was not willing to pay the sum ordered by defendant no 1 to be paid to the plaintiff's group of heirs in his distribution scheme.

[6] Mr Hoareau has attacked these actions of the defendants as being void. Firstly that defendant no 1 should not have acted alone. They are required to act jointly. More importantly he attacked the division of the estate of the deceased as amounting to a partition of the same which went beyond the authority of the executors. The executors were only empowered to distribute the estate by declaring the share of each heir in the remaining properties of the estate, leaving the heirs in a state of indivision.

[7] Mr Bonte counsel for the defendants submitted that the fact that the defendant had acted alone was cured by the ratification and adoption of his actions by defendant no 2. He submitted that the plaintiff was estopped from bringing this action as its remedy has been to appeal to the Court of Appeal as the defendants were complying with a Court of Appeal order. He prayed that this action should be dismissed with costs.

[8] Article 724(4) of the Civil Code of Seychelles, herein after referred to as the CCS, states:

if any part of the succession consists of immovable property the property shall not vest as of right in any of his heirs but in a executor who shall act as fiduciary. In respect of such fiduciary the rules laid down in Chapter VI of Title 1, and Chapter V Section VII of Title II, of Book III of this Code shall have application.

[9] Article 1027 of the CCS states:

The duties of an executor shall be to make an inventory of the succession to pay the debts thereof, and to distribute the remainder in accordance with the rules of intestacy, or the terms of the will as the case may be. He shall be bound by the debts of the succession only to the extent of its assets shown in the inventory. The manner of payment of debts and other rights and duties of the executor, in so far as they are not regulated by this Code, whether directly or by analogy to the rights of and duties of successors to moveable property, shall be settled by the Court.

[10] The duties of an executor or executors are many. Firstly the estate vests in the executors. The executors are entitled to possession as well as the legal title thereto. The legal title thereto is reposed in executors as it is with fiduciaries not on their own account but in trust for the heirs or owners to be. The executors must gather in the estate and make an inventory of the same. The executors must pay the debts of the estate but only to the extent of the value of the estate. After paying off the debts of the estate the executors must then distribute the remainder of the estate, to the heirs to accordance with the terms of the will in respect of testate succession or in accordance with the law with regard to intestate succession, or a combination of both in appropriate circumstances.

[11] “Distribute” as a verb has many possible meanings or synonyms. It could mean to share, divide, parcel out, dispense, mete out, shell out and many others. It is contended for the plaintiff that “distribute” in the sense used in art 1024 of CCS, is restricted to determining shares of each heir in the remainder of the estate, leaving the heirs in a state of co-ownership in indivision. To take this

argument to its logical conclusion it would mean that if there were ten heirs, and five heirs were entitled to half of what the other five heirs were entitled to, then an executor would have to declare that five were entitled to 13.34% each while the other five were entitled to 6.67% each of the immovable property in the estate and cause them to be registered as co-owners of the same in those respective shares. This would be so whether there was one immovable property or ten immovable properties remaining in the estate.

[12] In support of this argument Mr Hoareau contended that the law was in place to take care of what would follow after that. For instance if the parties did not want to stay in indivision there was provision for that in the law. The parties could apply to court for relief. On the other hand for an executor to partition the estate and give one group of heirs a different property and another group another piece of property amounted to a partition of the estate for which the executor had no power. In so doing as was done in this case it was suggested that the executors acted in excess of their authority or without authority in law to do so.

[13] I am inclined to agree with Mr Hoareau as it appears that while the executors may have authority to dispose of properties of the deceased to settle debts, and in that regard may choose what property to sell for that purpose, once the executors determine that the remainder is for distribution to the heirs, their authority is limited to determining shares in the case of immoveable properties and causing the heirs to be registered as co-owners thereof leaving the co-owners to take any further steps as authorized by the law to choose which heir will succeed to what property. The duty of the executor will stop at determining the shares and in law causing those shares to be registered in the names of the heirs. Thereafter it is for the heirs to

appoint for instance their own fiduciary or fiduciaries to manage the property and to take any other steps that the law allows them to take.

[14] I therefore find that the distribution by the executors date 27 April 2010 was voidable for not being in accordance with the law. I set it aside. I direct the joint executors to now proceed according to the law and pay off the debts of the estate. And then distribute the remainder in the appropriate shares to the heirs.

[15] As this is an administration of estate matter I direct that the estate of the deceased will pay one third of the costs of the plaintiff who has succeeded only in part and the costs of the defendants in this matter.