

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Suit No. 13/2012**

**[2013] SCSC**

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BHARTI DHANJEE Plaintiff

versus

JAVAHAR DHANJEE First Defendant

and

KIRAN DHANJEE Second Defendant

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Heard: 7 March 2013

Counsel: Mr Rouillon for plaintiff  
Mr Rajasundaram for defendants

Delivered: 29 May 2013

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**JUDGMENT**

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**Egonda-Ntende CJ**

[1] This is the latest issue to have come before the Courts in a long-running family dispute which appears increasingly bitter and intractable.

[2] On 29 October 2012 I delivered a ruling which struck out most of the plaintiff's claim. The only remaining issue is unrelated to the rest of the plaint and does not directly involve the first defendant. The plaintiff, Dr Bharti Dhanjee, is suing in her capacity as executrix of the estate of her mother, Kalambai Vadilal Dhanjee. The relevant paragraphs of the amended plaint are as follows:

10. The Plaintiff has discovered that the 2<sup>nd</sup> Defendant has in her possession a gold locket which belonged to the late Kalambai Vadilal Dhanjee which was wrongly taken by his [sic] late step grandmother Mrs. Diwaliben Dhanjee and given to Kiran Dhanjee.

11. The Plaintiff avers that the said gold locket was the property of Kalambai Vadilal Dhanjee and should be returned to her estate for the Executrix of her estate to deal with as per the express instructions given to the Plaintiff by the late Kalambai Vadilal Dhanjee.

12. The Plaintiff has asked the Defendants for the return of the locket many times and the latter have refused to return the same.

[3] The relief sought is the return of the locket. The plaintiff is also claiming costs, including international airfares back and forth to the United Kingdom where she resides.

[4] The allegations about the locket are unequivocally denied by the defendants (the plaintiff's brother and sister-in-law):

The claim of gold locket from and against the first defendant is not within the knowledge of the defendants. The Plaintiff, out of ill-will, malice and vindictive [sic] towards the defendants demand [sic] this vexatious claim without any footing. The alleged ownership of the locket, hearsay instructions of late Kamlabai Dhanjee and the demand for the same are all part of concocted stories by the Plaintiff while the Plaintiff's claim is simply vexatious. The 2<sup>nd</sup> defendant does not possess any such gold locket of the late Kamlabhai Dhanjee.

[5] The plaintiff testified in person but did not call any other witnesses or produce any documentary evidence. At the close of her case, Mr Rajasundaram, learned counsel for the defendants, elected to make a "no case to answer" submission. The consequence of this election, as stated in *Victor v Azemia* (1977) SLR 195, is that the defendants have waived their right to call evidence if the submission does not succeed.

[6] Mr Rajasundaram ended his submission by citing section 92 of the Civil Procedure Code, which reads as follows:

The court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in such case, or in case of the action or defence being shown by the pleading to be frivolous or vexatious, the court may order the action to be stayed or dismissed, or may give judgment, on such terms as may be just

[7] An application for strike-out under section 92 is distinct from a "no case to answer" submission. Section 92 is concerned with pleadings, and is therefore naturally invoked before a hearing commences, whereas a "no case to answer" submission is concerned

with the inadequacy of evidence that has already been presented. If Mr Rajasundaram had confined his argument to the plaint itself, there would have been no need to waive his clients' right to call evidence. Section 92 does not require an "election" of that kind. However, while Mr Rajasundaram certainly did characterize this plaint as vexatious (one of the grounds for strike-out in section 92), he also advanced the submission that the plaintiff has failed to provide a "single piece of evidence" in support of her claim.

- [8] Had a section 92 application been made before the hearing, I would not have been prepared to conclude that this claim was vexatious, or that the plaint disclosed no reasonable cause of action. The language of the relevant paragraphs of the plaint is straightforward enough. The narrative is not obviously unsupportable. If the locket existed and was wrongfully taken, the executrix would have a duty to seek to restore it to the estate. That is why, in striking out the rest of this plaint, I allowed the claim based on the locket to proceed to hearing.
- [9] Mr Rajasundaram's "no case to answer" submission, coming at the end of the plaintiff's evidence, is however clearly well founded. I have considered the plaintiff's testimony with care and am satisfied that she has failed to establish a prima facie case requiring rebuttal. In reaching this conclusion I note that the plaintiff has been legally represented throughout the proceeding.
- [10] First, the plaintiff did not produce any documentary evidence. That is not necessarily fatal, particularly in cases like this where records and possessions have been destroyed by fire. The plaintiff deposed that her mother had signed a paper containing instructions on how to dispose of the locket, and that she could not find this paper in Seychelles, so it "might have gone in the fire". However, she also stated that it is possible she still has a copy of this document in the United Kingdom (where she has been returning regularly every few months). If such a document exists, the plaintiff was obliged to take this opportunity to produce it in Court.
- [11] Secondly, the plaintiff was unable to give a detailed description of the locket (simply describing it repeatedly as "gold"). This was despite her testimony that her mother was

“always showing” the locket to her and her siblings as children. Nor did the plaintiff refer to any photographs of her mother wearing the locket.

[12] Thirdly, the plaintiff in her own testimony, failed to adduce any evidence to support her claim that she ‘discovered’ that the defendant was in possession of the golden locket. Her testimony does not show the defendant to be in possession of the said locket. She has never seen the locket with the defendant. She has no other evidence that shows that the defendant obtained possession of the said locket and or continues to keep the same in her possession.

[13] Fourthly the plaintiff failed to produce any witness to fill in the missing parts of her version of events. She explained that several people who had witnessed a conversation between her and the second defendant “would not say anything” because of their employment relationship with the second defendant. That may be understandable. She also explained that her brother, the first defendant, had “pretended he did not know” about the locket when she confronted him about it on multiple occasions. That is of course consistent with the defendants’ case. The plaintiff was cross-examined by Mr Rajasundaram about one of her other brothers, Mr Viral Dhanjee, who she said knew about the locket. Her eventual answer was “Call Viral, he will tell you he knows about the locket”. Even bearing in mind the admittedly strained current relationship between Dr Dhanjee and her siblings, it is telling that she chose not to call Viral in support of this claim.

[14] In conclusion, I am satisfied that the plaintiff has failed to establish a prima facie case that the golden locket exists, was wrongfully taken, and or is now in the possession of the second defendant. I dismiss this case accordingly with costs to the defendants.

Signed, dated and delivered at Victoria this 29<sup>th</sup> day of May 2013

F M S Egonda-Ntende  
**Chief Justice**