

**IN THE SUPREME COURT OF SEYCHELLES**

**MARIE-FRANCE FAURE**

Plaintiff

VERSUS

**LOUIS HOAREAU & OR**

Defendants

Civil Side No. 103 of 2012

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Mr. Rajasundaram for the Plaintiff  
Mrs. Amesbury for the 1<sup>st</sup> Defendant  
Mr. Camille for the 2<sup>nd</sup> Defendant

*D. Karunakaran J.*

**RULING**

The Plaintiff in this case has come before this Court for a judgment against both Defendants seeking the following relieves;

- (i) A declaration that the transfer deed dated the 7<sup>th</sup> March 2008 in respect of the property C2461 is null and void;
- (ii) An order directing the Land Registrar to divest the property C2461 in the name of the first Defendant on record of the ownership;

- (iii) Direct with a direction ordering the Defendant not to alienate, transfer or dispose of the said property in detriment of the Plaintiff's recourse of recovering a judgment debt; and
- (iv) An order which this Court deems fit and proper in the given circumstances of this case.

Counsel for both Defendants have raised a plea in limine litis stating; (i) The Plaintiff has no locus standi to challenge the sale as she has no rights to the property, (ii) The plaint fails to disclose any cause of action. Therefore, both Defendants seek this Court for a dismissal of the Plaint.

The plaint reveals the following facts: The Plaintiff obtained a judgment for a sum of Rs.550,000/- against the first Defendant in Civil Side No: *250 of 2007* on the 18<sup>th</sup> of November 2010. The first Defendant was or had been the owner of an immovable property namely, Title C2461 even before the said judgment was delivered by the Court. When the case Civil Side No: *250 of 2007* was pending before the Court for determination, the first Defendant on the 7<sup>th</sup> of March 2008 transferred his property to the second Defendant, who is none else than his son. Now the Plaintiff has come before this Court alleging that the said transfer made by the first Defendant to the second Defendant in respect of the said property was done with the intention of defrauding the Plaintiff, in that, the first Defendant would avoid

the payment of the judgment debt which became due and payable to the Plaintiff on the 18<sup>th</sup> of November 2010. In the circumstances, the Plaintiff seeks this Court for a declaration that the said transfer dated the 7<sup>th</sup> March 2008 is null and void due to fraud.

I gave careful thought to the submissions made by both counsel on the issues as to (i) locus standi and (ii) fraud. For the sake of convenience I will take up the second limb of the plea in limine litis namely, "fraud". On the question of fraud it is evident that in paragraph 5 of the pleading the Plaintiff has clearly stated that the transfer was made with an intention to defraud the plaintiff. In the circumstances, on the first issue as to fraud, I find the plaintiff does disclose the cause of action based on "fraud".

Now let us move on to the second ground. On the issue of locus standi, on the face of the pleadings I am satisfied that the Plaintiff has no right to bring any action against these defendants for the following reasons;

- (i) There was no privity of contract, i.e Sale of the suit-property;
- (ii) The alleged act of transfer occurred even before the Plaintiff became a judgment creditor by virtue of a judgment in another case.

Obviously at the time when the transfer was made she had no color of right or any interest in the property or on the transfer of the property by the first Defendant to the second Defendant. In the circumstances I find the Plaintiff has no locus standi to bring this action before the Court challenging the transfer made by the first Defendant to the second Defendant in respect of the suit-property. As I find there was no contract, no legal relationship or any interest in the property for the Plaintiff at the time it was transferred to the second Defendant. In the circumstances, I rule that the Plaintiff has no locus standi to bring this action before the Court. Accordingly the Plaint is dismissed.

**D. KARUNAKARAN**

**JUDGE**

Dated this 10<sup>th</sup> day of May 2013