

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS 277/2002**

**[2013] SCSC**

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**MINA LAPORTE**

Plaintiff

versus

**FELIX PHARE**

Defendant

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Heard:

Counsel: Mr. Frank Elizabeth for plaintiff

Mr. Wilby Lucas for defendant

Delivered: 4 November 2013

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**JUDGMENT**

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**Renaud J**

[1] The plaintiff is seeking an order of this court requiring the Defendant to remove all constructions from her land and to replace the said land in its original state. She is also asking this Court to order the Defendant to pay her Rs80,000.00 as damages with interest and costs.

[2] At all materials times the Plaintiff was and is the owner of Parcel PR236 situated at Baie Ste Anne, Praslin and the Defendant is a resident in the same area owning a different parcel of land, namely, Parcel PR2098.

- [3] The Plaintiff averred that the Defendant has through his employees, servants and/or agents trespassed onto her land by building a retaining wall onto the said land without any permission or consent.
- [4] The Plaintiff also averred that the Defendant had, by his action pleaded above, cracked the Plaintiff's house in various positions.
- [5] As a result of the alleged encroachment the Plaintiff claimed to have been deprived of the use of her land and the value of her property has been affected. Further, the Plaintiff claimed to have suffered loss in the total sum of Rs80,000.00 for which he averred that the Defendant is liable to pay her.
- [6] The Defendant denied the allegations and claims of the Plaintiff and averred that he did not build a retaining wall onto the Plaintiff's land and that the Plaintiff should strictly prove that allegation.
- [7] The Defendant also averred that the retaining wall was built over 16 years ago prior to the Plaintiff's purchase of parcel PR236 and the Plaintiff's house is over 300 feet away from the said wall, therefore the crack is not a result of the retaining wall.
- [8] The Defendant refused to remove the structure as it is not on the land of the Plaintiff.
- [9] The Defendant categorically denied being liable to the Plaintiff for any damage.
- [10] The evidence of the Plaintiff, who resides in Italy, shows that she is the owner of Parcel PR236 having purchased it from Mrs. Sarah Laporte on 13 January, 1998. She first noticed a wall on her property in 2002 when she visited Seychelles. During her absence from Seychelles it is her mother who looked after her property. Her mother occupied a house on that property. She denied the allegation of the Defendant that this wall was built over 16 years ago. When she came on her property the Defendant was already living in his small house where he is still living today. The wall is hampering her development of another of her property because she would not be able to build an access road in view of that wall being in the way.

- [11] Mr. Terry Biscornet is the Director General of Land Planning in the concerned Government Ministry. He confirmed that there is no planning application in the record to show that the Defendant ever applied to build a retaining wall on the property as shown on the plan of the Surveyor Exhibit P2. He however confirmed that there was an old wall already constructed there and that is what is shown on the plan.
- [12] Mr. Gerard Hoareau is a Land Surveyor employed by the Ministry of Land Use and Habitat. His office holds all the Cadastral plans in Seychelles. He produced cadastral plan of PR236 as Exhibit P3.
- [13] Mr. M. Leong testified that he surveyed the property and assessed the extent of the encroachment. He drew up a plan to show the encroachment and this is set out in a plan which is before the Court as Exhibit P2.
- [14] Exhibit P2 drawn up by Land Surveyor shows the extent of the encroachment.
- [15] The Defendant testified that when he came to live at that place the retaining wall was already placed there. That was in 1976 when he first came to live on that property. It was not a concrete wall but it was a loose stone wall. That wall had been built by people who used to live there in the past. He broke down some rocks and just tried to fix it so that it will be able to stand properly. That was well before the Plaintiff purchased her adjacent property. At that time he did not know if the Plaintiff was the owner of that land.
- [16] Since 1971 the Defendant was living as the concubine of the mother of one Mr. David Philoe. In 1974 Mr. David Philoe who was the previous owner of that property at the time, allowed him and his concubine to occupy and live on that land. He then built his house on the land with the written permission of the owner, Mr. Philoe. His concubine passed away in 1991. In February, 1993 Mr. Philoe formally gave him a Power of Attorney to manage that land. Mr. Philoe then sold the land to the Government of Seychelles and he (Defendant) thereafter bought the property from the Government of Seychelles for Rs45,000.00 by means of a loan which repaid in installments. The property is registered in his name and that of his present concubine Ms. Florena Marie.

[17] It was during the time that the Defendant initially came to live on the property that he caused the blasting of some rocks which he used to repair the existing old loose stone retaining wall which is about 3 to 4 feet high. It took him more than one year to complete that wall as he had to do it bit by bit. Without that retaining wall the soil was being eroded in view of the slant in the land. That was done before he constructed his small house to live with his concubine.

[18] If the wall is now to be demolished the property will be eroded thus affecting his house. In view of his age and lack of means he will never be able to rebuild a retaining wall. He is prepared to buy out that little portion where the wall has encroached in order to avoid any dispute with his neighbor. However, he cannot afford the asking price of Rs80,000.00. if he is required to demolish the wall he will consent to do it provided he is given sufficient time in order to rebuild one on his property to retain the soil. He will need at least two months for that.

[19] It is clear and there is no doubt that the retaining wall of the Defendant has encroached on the property of the Plaintiff. It may be true that the encroachment had existed well before the present Defendant and the Plaintiff purchased their respective property. This can only go to the extent of mitigating the claim but cannot give a right to the Defendant over the property of the Plaintiff as it stands today. In order to regularize this matter the Defendant will have to demolish the encroachment as he has agreed to do.

[20] In the circumstances I order and direct the Defendant to demolish the retaining wall which has encroached on the property of the Plaintiff within 6 months from the date of this judgment and failing to do so will make liable to the Plaintiff in damages which I set at Rs20,000.00 in addition to the cost of Plaintiff will incur in having it demolished. The claim for damages by the Plaintiff is dismissed.

[21] The mater is set for review in six months from today.

[22] I make no order as to cost, in view of the particularities of this case.

Signed, dated and delivered at Ile du Port on 4 November 2013

[Sgn] B. RENAUD

B Renaud  
**Judge of the Supreme Court**