

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 327/2010

[2014] SCSC

NOELLA FULGENTIA ADRADA BARRA

Plaintiff

versus

DORIS MARIE GERMAINE BRISTOL

First Defendant **DOREEN AZEMIA (NEE BRISTOL)**
Second Defendant

THE LAND REGISTRAR
Third Defendant

Heard: 26 October 2012, 29 January 2013,,31 January 2013, 11 February 2013,
18 February 2013, 25 February 2013

Counsel: Mr. Divino Sabino Attorney at Law for plaintiff

Mr. Melchior Vidot Attorney at Law for first defendant
and second defendant

Mrs. Langsinglu Assistant Principal State Counsel for the third defendant

Delivered: 31 January 2014

JUDGMENT

Burhan J

[1] The plaintiff in this case filed plaint against the defendant seeking damages in a sum of SR 100.000.00 for a faute committed by the defendant.

- [2] It is averred by the plaintiff that in effecting the transfer of Title T2398, the Defendants have committed a faute in law. In particular, the 1st and 2nd Defendants, wilfully, negligently or unwittingly transferred land that they were not entitled to transfer as they had not obtained the consent of all of the heirs of the late Joseph Belle. It is further averred that the 3rd Defendant wilfully or negligently allowed a transfer of land without ensuring or taking reasonable steps to ensure that the consent of all heirs was obtained by the 1st and 2nd Defendants.
- [3] It is further averred that as a result of the Defendants' faute in law, the Plaintiff suffered loss. In particular, the Plaintiff has been deprived of her right to succeed to part ownership of land registered as Title T 2398.
- [4] The Plaintiff therefore prays for the following reliefs--
- (i) The Defendants pays the Plaintiff SR 100,000; and
 - (ii) The Defendants be ordered to transfer and/or register ownership of land registered as Title T2398 to the Plaintiff in 2/5 shares; to Felix Joseph Belle in 2/5 shares and to the Estate of the late Louis Joseph Belle in 1/5 shares.
 - (iii) Costs.
- [5] The 1st Defendant is the Executrix of the Estate of one Joseph Bell. The 2nd Defendant is a purchaser of shares in land that formed part of the Estate of the late Joseph Bell. The 3rd Defendant is the authority in charge of the registration of land title.
- [6] It is apparent from the evidence led in court that the dispute is in respect of a parcel of land T607 situated at Takamaka Mahe. It is the plaintiffs position that the said parcel of land formed part of the Estate of Joseph Belle born on the 19th of November 1896 referred to by the plaintiff as Joseph the Elder. He was married to one Amelina Dugasse in 1924 and fathered 3 children namely Marie Edwige Belle, Felix Joseph Belle who

were the legitimate children of Joseph the Elder and Louis Joseph Belle who was illegitimate.

- [7] It is the contention of the plaintiff that she is the sole heir of the legitimate child Marie Edwige Belle. It is alleged by the plaintiff that the 1st defendant claiming herself to be the daughter of illegitimate child Louis Joseph Belle had got herself appointed as Executrix of the estate of Joseph Belle the Elder. In doing so it is alleged by the plaintiff that the 1st defendant failed to get the consent of the plaintiff and Felix Joseph Belle.
- [8] The 1st defendant then proceeded to subdivide the said parcel of land T607 into two parcels of land T2398 and T2399. By instrument of transfer dated 20th February 2003 the 1st defendant transferred parcel T2398 to the 2nd defendant. The 3rd defendant proceeded to register the said sale.
- [9] It is the position of the 1st defendant that she is the daughter of Louis Joseph Belle (also called 'Bout') who is the illegitimate son of one Joseph Belle (also called 'Koumpo') born on 4th March 1896 and not Joseph the Elder as referred to by the plaintiff who was born on the 19th of November 1896. The mother of Bout was one Elisa Dine. It is the position of the 1st defendant that her father Bout was the owner of the land T607 and she had obtained consent from her heirs to be appointed as Executrix which was granted by court. She had thereafter sold parcel T2398 to the 2nd defendant. The 2nd defendant's position is that she bought the land in good faith and paid value for same and thus had not committed any faute.
- [10] It is apparent the position of the plaintiff that T607 belonged to her grandfather Joseph Belle the Elder who was married to Amelina Dugasse. The plaintiff claims to be the daughter of the legitimate child of Joseph the Elder, Marie Edwige Belle. The plaintiff avers that the 1st defendant is the daughter of Louis Joseph Belle the illegitimate child of Joseph the Elder.

- [11] The 1st defendant disputes this fact and states she is the child of Bout who is not related to the plaintiff or Joseph the Elder and states that she is not the Executrix of the estate of Joseph the Elder but the Executrix of the estate of Bout. She states her father Bout bought the land in 1946 and stayed on the property in Takamaka since 1946. It is to be noted that the evidence of the 1st defendant is supported by witness Benilda Esparon who is the daughter of one Canrobert Belle one of the co owners mentioned in the deed transferring the land to Joseph Belle. She stated that as far back as she knew the 1st defendant had occupied the said land at Takamaka which was sold to her father Joseph Belle (Bout). She stated the Joseph Belle she was referring to was the one married to Elcine Benoit and perusal of the marriage certificate establishes it was a Louis Joseph Belle. The birth certificate of the 1st defendant D3 establishes the fact that these were her parents.
- [12] The main thrust of the plaintiffs case is that Joseph the Elder he refers to is married to one Amelina Dugasse. An extract of the Repertoire in the land registry office revealed the 1st transaction on the folio was in regard to a land transaction at Cascade by Joseph Belle where the name of the wife is entered as Amelina Dugasse. It is the plaintiff's position there is only one Joseph Belle entry in the repertoires meaning there was only one Joseph Belle who owned property.
- [13] It is to be noted the 4th entry in the repertoire refers to the land which is the subject matter of this case T607. It has been purchased by Joseph Belle in April 1946. The repertoire refers to the Joseph Belle married to Amelina Dugasse as per marriage certificate P5. This is also borne out in the document furnished by the Mr Allain Lucas.P11. The plaintiff contends that while Joseph the Elder was a land owner as shown by the lands registered in the repertoire under his name, the Joseph Belle described in the deed of sale of T607 as a landowner is Joseph the Elder and not Louis Joseph Belle who was a fisherman. It is the plaintiff's position that the name on the deed was not Louis Joseph Belle but Joseph Belle and therefore it refer to Joseph the Elder. It is the defendant's position that the witness from the land registry did testify to the fact that it was possible that it was not Joseph Belle and Amelina Dugasse who had bought the land in the 4th

transaction. It is the plaintiff's position that Louis Joseph Belle is the son of Joseph the Elder and being the son went into occupation of the said land.

[14] It is to be noted the contention of the plaintiff is that she is the sole heir of Marie Edwige Belle. However the genealogy chart marked P11 indicates otherwise and that she has seven other members in the family. It is the view of this court that considering the nature of the case the omission of the plaintiff to disclose same and the fact that she has sought to misdirect the court on this issue is serious. The plaintiff has failed to come to court with clean hands and full disclosure. Further document P11 indicates that the said Joseph Elder passed away as far back as 1st July 1975 since then the plaintiff has been sleeping on her rights and would therefore by operation of law Article 2262 of the Civil Code of Seychelles be prescribed from any claim.

[15] The plaint stands dismissed with costs.

Signed, dated and delivered at Ile du Port on 31 January 2014

M Burhan
Judge of the Supreme Court