

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS 57/2015**

**[2016] SCSC208**

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**NEDDY SANDRA MIRENDA NOURRICE OF BEL EAU, MAHE**

1<sup>st</sup> Plaintiff

**JOSEPH MANDY KADY NOURRICE OF ROCHON, MAHE**

2<sup>nd</sup> Plaintiff

**DEREK DAVE STIM NOURRICE OF ROCHON, MAHE**

3<sup>rd</sup> Plaintiff

**ELISA MARIONETTE JACQUELINE NOURRICE OF ROCHON, MAHE**

4<sup>th</sup> Plaintiff

**MARIE ANTOINE PAMELA NOURRICE**

5<sup>th</sup> Plaintiff

**FLORA NICETTE OF LA GOGUE, MAHE**

Defendant

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Heard: 22<sup>nd</sup> day of February 2016

Counsel: Mr. M. Vidot for the Plaintiffs

Mr. F. Elizabeth for the Defendant

Delivered: 29<sup>th</sup> day of March 2016

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**RULING ON PLEA IN LIMINE LITIS**

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Govinden J

- [1] This Ruling arises out of a plea in *limine litis* as raised by the Defendant as part of her Statement of Defence of the 4<sup>th</sup> day of November 2015 to the effect that '*firstly, the matter is prescribed in law; secondly that the matter is res judicata since the court has already adjudicated over it in Civil Side No. 227 of 2011; and thirdly, that the application is an abuse of the process of the court as the plaintiffs had knowledge of this matter well within the prescription period and retained an attorney, namely Mr. Clifford Andre to defend the same in Civil Side No. 227 of 2011 which ended on the 13<sup>th</sup> day of August 2014*'.
- [2] Albeit raising the threefold points of law, the Defendant chose by way of written submissions of the 30<sup>th</sup> day of December 2015 to argue only as to the first plea in *limine litis* on the ground that it sufficiently and substantially disposes of the matter without the need to argue the second and third plea in *limine litis* as raised. However, the Defendant reserved the right to argue the latter points of law at the final stage in the event that the defendant is no successful on the first point of law.
- [3] Learned Counsel for the Plaintiffs Mr. M. Vidot on his part also filed written submissions of the on the 22<sup>nd</sup> day of February 2016 strenuously objecting to the first plea in *limine litis* as raised and of which contents has been duly considered for the purpose of this Ruling.
- [4] In order to properly understand and adjudicate over the point of law as raised, it is crucial to rehearse a brief history of the events giving rise to the main cause of action as follows.
- [5] The main cause of action in this matter as per plaint of the 30<sup>th</sup> day of June 2015 and filed on the 3<sup>rd</sup> day of July 2015 at the Registry of the

Supreme Court pertains to the plaintiffs being the legitimate children and reserved heirs of the late Jean Nourrice, deceased, **who passed away on the 20<sup>th</sup> day of September 2009.** (Emphasis is mine).

[6] The defendant is the sole legatee under the Last Will and Testament of the deceased drawn up before Notary Public Frank Ally of Victoria on the 20<sup>th</sup> day of June 2006 and duly registered on the 14<sup>th</sup> day of May 2010 and transcribed in Volume 85 No. 120 at the Mortgage and Registration Office, Victoria. In the said Will, the deceased left and bequeathed all of his property to the Defendant.

[7] The Plaintiffs aver in the Complaint that they came to learn about the Will only after they were taking steps to have the immovable owned by the deceased transferred in their names more specifically immovable property situated in Seychelles, and more specifically land Title No. S. 3108.

[8] The Plaintiffs **'in the Complaint, are alleging that the Will was obtained by way of fraud and or fraudulent means and further, that they are entitled to the entire estate of the deceased or at least to the reserved portions as legitimate heirs of the deceased.'** (Emphasis is mine).

[9] The Plaintiffs **'further aver that the disposition of the entire estate of the deceased to the Defendant exceeds the disposable portion of the Defendant's share in the deceased succession and should be reduced and redistributed in accordance with the laws of succession.'** (Emphasis is mine).

[10] In furtherance to the above averments of the Complaint, **'the Plaintiffs move the Court in the main case to declare that the Last Will and Testament of the deceased was fraudulently obtained and that they are the only legal heirs entitled to inherit in equal**

**shares; or in the event of the Court holding that the Will and Last Testament being valid, to declare that the disposition in favour of the Defendant is to be reduced for it far exceeds the disposable portion hence redistributed in accordance with the laws of succession and hence declare the Plaintiffs entitlement to the reserved portions in equal shares and that the Defendant is only entitled to the disposable portion.'**(Emphasis is mine).

- [10] The Defendant by way of Statement of defence afore-mentioned, on the merits, vehemently denies the averments of the Plaint and puts the Plaintiffs to the strict proof thereof and moves for dismissal of the claim with costs subject to the Ruling on three points of law as raised (Paragraphs 1 and 2 of this Ruling refers).
- [11] Learned Counsel for the Defendant as above-enunciated, has pleaded prescription in this case subject matter of this Ruling. The Defendant relies on Sections 90 and 91 of the Seychelles Code of Civil Procedure as well as Article 2271 of the Civil Code (hereinafter referred to as the "Code"), which latter provision provides for a prescriptive period of five years.
- [12] Learned Counsel for the Defendant has referred the Court in support of its first plea in limine litis, to the cases of **(Lorta Gayon v/s Antoine Collie (SCA 8/2001)); (Hoareau v/s Contoret(1984) SLR 151); (Khany v/s Canie(1983) SLR 65); (Savy v/s Rasool(1982) SLR 191); and (Wilmont v/s W& C French (Sey) Ltd (1972-1973) SLR 144).**
- [13] Learned Counsel for the Plaintiffs on his part submitted in rebuttal in a gist, that, firstly, the case pertains to the challenge of a Will and Last Testament that denies the children, legal heirs of the donor, the right

to inherit in favour of a third party being the defendant. Secondly, that the will is being contested on the ground of fraud. Thirdly, that the succession of the deceased was never opened in the manner prescribed under Article 718 of the Code and since there was no formal opening of the succession, then only the Defendant had knowledge of the alleged existence of a Will hence Plaintiffs could not have ascertained their rights of inheritance within five years and it was further argued that in any event no limitation period is provided for in the Code as to inheritance of an heir save in cases of illegitimate children.

[14] The Plaintiffs further, submitted that despite their objecting to the plea of res judicata, the matter in Civil Side 227/2011, which involved the same parties, whereby the Defendant sought to declare the Plaintiffs not to be the legitimate children of the deceased effectively provided a break in prescription if indeed there is prescription.

[15] Now, in this case, prescription is being pleaded as a ground in *limine litis* by virtue of the provisions of Article 2271 of the Code on behalf of the Defendant.

**Article 2271 provides that:-**

**“All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262 and 2265 of this Code.”**

[16] The latter mentioned Articles refer to The Prescription of Twenty Years and Ten Years respectively. The former being in all cases of *‘all real actions in respect of rights of ownership of land or other interests therein whether the party claiming the benefit of such prescription can produce a title or not and whether such party is in good faith or not.* In

the latter respect, *'if the party claiming the benefit of such prescription produces a title which has been acquired for value and in good faith.'*

[17] Now, this matter pertains to the challenge of A Will and Last Testament of the deceased by his children, legal heirs of the donor, the right to inherit in favour of a third party, being the Defendant. The Plaintiffs claim is clearly laid out at paragraphs 5 to 9 for the purpose of this Ruling (supra).

[18] The right of action in this case as clearly set out above, arises out of a right to inherit accruing to the Plaintiffs, heirs, by virtue of the provisions of Article 718 (The opening of the succession and seisin of heirs) as read with Article 731 of the Code (latter entitled The Various orders of succession).

[19] **Article 718 provides that:-**

**“A succession shall open upon the death of a person. The succession shall open in the place where the deceased had his domicile”.**

[20] Now, it follows, that the right of the heirs, plaintiffs would have accrued upon the opening of the succession more particularly the death of the deceased. In that respect, our provision of Code reflects the French Civil Code Article 78, to the effect that, *'Les successions s'ouvrent par la mort naturelle'*.

[21] In view of the nature of the action as above enunciated, it is obvious without need for any stretch of imagination, that the cause of action falls squarely within the prescriptive period of five years as provided for by Article 2271 of the Code hence, the prescriptive period of five years to start running from the death of the deceased.

[22] Support is also, further lent to this finding, from the ‘ratio decidendi’ in the case of **(ThereseHoareau v. Mrs Guy Contoret (Representing the Estate of Guy Contoret) (1984) SLR 151)**, wherein which case, Madeleine Contoret, the mother of the plaintiff and the late Guy Contoret, on May 1955 sold 2 portions of land to late Guy Contoret. In an action filed before the death of Madeleine Contoret this sale was held to be a disguised donation made with the object of depriving the plaintiff and other heirs in their respective rights in Madeleine Contoret’s succession. After her death in 1976 the plaintiff brought this action in 1984 for reduction of the disposition to the disposable portion. The defendant pleaded that the action was time barred by prescription and the Court held that, **“all real actions except in respect of ownership of land or other interests therein were subject to prescription after a period of five years. That the action for reduction of the disposable portion was an action for recovery of compensation and therefore not an action in respect of rights of ownership in land hence the right of action arose on the death of Guy Contoret in 1976 and therefore was time barred by prescription.”** (Emphasis is mine).

[23] Now, in this matter, the deceased passed away admittedly on the 20<sup>th</sup> day of September 2009 and Plaint filed by the Plaintiffs was signed on the 30<sup>th</sup> day of June 2015 and filed at the Registry of the Supreme Court on the 3<sup>rd</sup> day of July 2015.

[24] The Plaint therefore has been filed around five years and six months after the opening of the succession as per the provisions of 781 of the Code (supra), and hence well beyond the five year prescription as provided for by Article 2271 of the Code.

[25] Learned Counsel for the Plaintiffs further argued in his written submissions, that they recently became aware of the Will and that they

laboured under the impression that they would by operation of the law as to right of intestacy and inheritance as laid down in the Code be entitled to the land title. That the existence of the Will came to fore when the defendant instituted Civil Side CS 227 of 2011. In the same breath, it was also further as argued that despite arguing against the plea of resjudicata (which the defendant) chose to leave for determination of the Court at the conclusion of the case), whereby the defendant sought to declare the Plaintiffs not the children of Emmanuel Nourrice effectively provided a break in prescription if indeed there is prescription.

[26] Now, in the latter respect, it is clear that the Code makes provision for exceptions to the application of prescription as cited above and as borne out by the provisions of Articles 2251 to 2259 and the Plaintiffs do not in any way fall within those designated categories.

[27] Further, since Learned Counsel for the Plaintiff raised the issue of interruption and albeit the reservation of the defendant on the consideration of the point of law raised vis-a vis the matter in Civil Side No. 227/2011, I deem it crucial at this stage to clarify the legal position regarding this very issue on the grounds upon which prescription is interrupted or suspended and whether it is in any event or if at all applicable in the case of the Plaintiffs.

[28] Now, the relevant Article of the Code namely, **Article 2242 reads thus:-**

**“Prescription may be interrupted either naturally or by a legal act.”**

[29] **Article 2244 further provides that:-**



**“A writ of summons or a seizure served upon a person in the process of acquiring by prescription shall have the effect of a legal interruption of such prescription.”**

[30] **Article 2247 of the Code further provides that:-**

**“If the proceedings are dismissed owing to a formal defect.  
.....**

**The Interruption shall be deemed not to have occurred.”**

[31] Now, after a careful perusal of the proceedings in Civil No. 227/2011, it has become evident that the matter as filed by the Defendant as against the Plaintiffs in the year 2011 was called before the Learned Judge D. Karunakaran on the 23<sup>rd</sup> day of February 2012 and adjourned sine die. In fact, Learned Counsel for the Defendant undertook to file a plaint replacing the original Application made in the matter. Despite an elapse of more than two years, the Defendant had not rectified the procedural irregularity in that matter. Hence the Learned Judge found that:

**“In the circumstances, I find the application is not maintainable in law and so dismiss the same. I make no order as to costs. The Registry is directed to remove this case from pending list cases in the system.”**

That Order was made on the 13<sup>th</sup> day of August 2014.

[32] Now, in the light of the Order of the Learned Judge of the above-mentioned date as read in the light of the provisions of Articles 2244 and 2247 of the Code, it is clear that the arguments of Learned Counsel does not hold good in the specific circumstances of this case.

[33] It follows, therefore, based on the analysis as per paragraphs 11 to 32 of this Ruling (supra), that the Plaint as filed by the Plaintiffs as against the Defendant in this matter is time barred and dismissed accordingly.

Signed, dated and delivered at Ile du Port on 29<sup>th</sup> day of March 2016.

Govinden J  
Judge of the Supreme Court