

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS 78/2015**

[2016] SCSC 799

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**WILFRED FREMINOT  
EDWINA FREMINOT**  
Plaintiffs

versus

**CHRISTOPHER GILL  
LAND REGISTRAR**  
Defendants

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Heard:

Counsel: Mr. S. Rouillon for plaintiffs

Mr. P. Paridwalla for defendants

Delivered: 20 October 2016

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**RULING**

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**Renaud., J**

[1] On 21st September, 2015 the Plaintiff entered a Plaint containing 20 paragraphs praying this Court to make 8 orders as follows:

- (a) A declaration that the attempted sale of the property land titles T1393 and T1394 by the 1st Defendant to Takamaka Investment Limited dated 14th August 2015 in the land registry be declared null and void for fraud and collusion;

- (b) A declaration that the registration of the sale of Titles T1393 and T1394 by agreement for the sale of T696 between Mr. Charlemagne Grandcourt to the 1st Defendant dated 4th February 1993 and finalized by the final registration of transfer of titled T1393 and T1394 disguised as a transmission dated 31st December 2012 for the lack of sufficient stamp duty payment and a fraud on the revenue;
- (c) A declaration that the sale of the property land titles T1393 and T1394 by agreement for the sale of T696 between Mr. Charlemagne Grandcourt to the 1st Defendant dated 4th February 1993 and finalized by the final registration of transfer of Titles T1393 and T1394 disguised as a transmission dated 31st December 2012 be rescinded for lesion and that the sale be declared null and void; and/or
- (d) An order for the 1st Defendant to transfer the property back to the plaintiffs at his own costs unless the 1st Defendant pays the full market price valued as at the date of the registration of the transfer in 31st December 2012 upon three valuations by three valuers ordered by this honourable court; and
- (e) An order of damages in the sum of Rs1,000,000/- against the Defendants jointly and severally for the obvious examples of fraud and collusion shown in this case in an effort to permanently deprive the plaintiffs of their right to the return of their property; and/or
- (f) Such other order as may be lawful, just and reasonable in the circumstances
- (g) An order for costs jointly and severally in favour of the plaintiffs and against the defendants.

### **Plea in limine Litis**

By its Statement of Defence the 1st Respondent raised the following points of law:

- (i) The Plaintiff's claim's for lesion is prescribed under Article 1678 of the Civil Code of Seychelles as the Agreement for the Sale of the property (the Agreement) became effective as between the parties on 4 February 1993. The existence of the Agreement and the date that on which it became effective were confirmed by Seychelles Court of Appeal in both its majority and minority judgments of 7

December 2012 in SCA 7 of 2011 and are final and binding on the parties (res judicata) (copy of judgment attached).

- (ii) The issues relating to the validity of the Agreement, and in particular the averments in set out paragraph 4, 6, 7, 8, 9, 10, 11 and 12 of the Complaint (including the allegation or suggestion that Charlemagne Grandcourt acted under duress and lacked consent of the heirs, and any cause of action arising therefrom) have been disposed of by Seychelles Court of Appeal in its judgment of 7 December 2012 in SCA 7 of 2011 and are therefore res judicata.
- (iii) The Plaintiffs' claim that the Defendants acted in collusion in fraud of the Stamp Duty Act is incompetent and may not be entertained in the present proceedings. Further, the Plaintiff has no capacity or interest or locus standi to challenge the legality of 2nd Defendant's exercise of her powers under the Stamp Duty Act in the instance case.

#### **Prescription – Lesion**

- [2] Chapter IV of the Civil Code of Seychelles (CCSey) sets out the grounds upon which prescription is interrupted or suspended.
- [3] Prescription may be interrupted either naturally or by a legal act. A writ or 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. A writ or summons to appear before a Court, even if that Court has no jurisdiction, shall also interrupt the prescription.
- [4] However, if the proceedings are dismissed owing to a formal defect, if the Plaintiff withdraws his claims, if he allows the proceedings to lapse, or if his claim is rejected, the interruption shall be deemed not to have occurred.
- [5] Prescription of 20 years is applicable in respect of all rights of ownership of land or other interest therein whether the party claiming such prescription can produce a title or not or whether such party is in good faith or not. Prescription of 10 years is applicable where the party claiming such prescription produces a title which has been acquired for value and in good faith. Special cases of 5 years prescription are applicable to all other rights of action.

- [6] Rescission of sales for lesion is applicable if the price paid by the buyer is less than half of the value of the thing bought, whether movable or immovable, the seller shall be entitled to a rescission of the contract, even if he has expressly waived his right to do so, and even if he has declared his willingness to give up the surplus value of the property. (Art 1674 CC Sey).
- [7] However, in order to establish whether there is a lesion of more than one half, the value of the property shall be calculated according to its condition at the time of the sale. (Art 1675). To establish whether there is lesion, the Court shall take into account the condition and value of the property at the time of sale. (Art. 1677).
- [8] It must be emphasized that the right to sue for rescission on the ground of lesion shall be barred after 5 (five) years. This time limit shall not be suspended while the time agreed upon for the exercise of the option to redeem is still running. (Art. 1678).
- [9] The Court shall not admit any claims that a contract is vitiated by lesion unless the Plaintiff is able to make out a prima facie case that the circumstances are sufficiently serious to warrant an investigation by the Court. (Art. 1679). To satisfy the Court that a prima facie case exists the Plaintiff must submit a report by three experts who shall be bound to draw up a single report and to express an opinion by majority. (Art. 1680). The three experts shall be appointed by the Court unless both parties have jointly agreed to appoint the three experts. (Art. 1680)
- [10] The Plaintiffs brought the instant action for lesion in respect of parcels T1393 and T1394 in the suit entered on 21st September, 2015. The 1st Defendant contended that the action was indeed filed on 21st September, 2015, and summons was served in October, 2015.
- [11] The 1st Defendant argued that the Agreement for the sale of the 2 parcels, initially parcel T696, was entered into on 4th February, 1993, that is 22 years ago. The validity of the Agreement for sale was confirmed as being effective on 4th February, 1993 by the Seychelles Court of Appeal at paragraph 9 of the majority judgment and also at paragraph 30 of the minority judgment in case SCA 7 of 2011.
- [12] The issue as to when the Agreement for sale was concluded has been adjudicated upon by the Seychelles Court of Appeal and it is now a sale which took effect in 1993 and as such

it is obviously prescribed by 5 years prescription period which is applicable to lesion. It is at the time that the sale is registered that lesion starts. The Seychelles Court of Appeal's judgment in the case of Hoareau v Gilleaux SCAR 1978 p 158 refers. There is therefore merit in the point raised by the 1st Defendant. So I find.

- [13] With regard to the issue of res judicata the 1st Defendant submitted that all the averments contained in paragraphs 4 to 12 are matters which have been raised before the Seychelles Court of Appeal and other Courts and have been duly dealt with. These included matters which are now being re-agitated by the Plaintiff.
- [14] The issue of res judicata is comprehensively discussed by the Seychelles Court of Appeal in the case of Gomme v Maurel (2012) SLR, in its judgment delivered on 7th December, 2012.
- [15] I have the benefit of perusing the Plaintiff in the previous case CS 174 of 1995 and have taken note of what was pleaded. This has enabled me to compare the pleadings and prayers to those of the present case.
- [16] I also take note of the facts set out by Fernando JA in the appeal case SCA 7 of 2011 between - The Estate of Charlemagne Grandcourt Represented by Wilfred Freminot and Edwina Freminot acting as Joint Executors as 1st Appellant and Wilfred Freminot and Edwina Freminot acting as Joint Executors of the Estates of Charlemagne Grandcourt and Odrade Grandcourt as 2nd Appellant versus Christopher Gill as the Respondent.
- [17] In the original case CS 174 of 1995 before the Supreme Court the parties were the same except that Christopher Gill was the Plaintiff and the other parties were the Defendants.
- [18] The facts admitted by the Seychelles Court of Appeal are contained in paragraphs 3 and 5 of the judgment of Fernando JA.
- [19] As gleaned from the facts stated in the relevant part of that judgment, it is evident that the parties are the same in both cases and the object is the same in that it refers to the same immovable property. The cause of action in the first case concerned the enforcement of a sale agreement. The cause of action in the instant case is concerned with various issues relating to the same immovable property. Although these causes of action are provided


for in different provisions of the Civil Code of Seychelles and property law, the Plaintiff could have raised these issues at the time of filing its defence in 1995 when the selling price was within the knowledge of the Plaintiff at that time.

- [20] It is trite law that even matters which were not agitated at a previous hearing but being matters that could have been agitated then, cannot be re-agitated again in a new action as it may be considered to be an abuse of process and may be found to be *res judicata*.
- [21] Another point in issue is that the 1st and 2nd Defendant acted in collusion to defraud the Government of stamp duty.
- [22] The Plaintiff is challenging the 2nd Defendant that the latter has not performed her duties properly or has acted fraudulently. I have carefully analysed the circumstances surrounding the registration of the judgment of the Court of Appeal to effect the transfer of the property in issue. I also considered the application dated 20th December, 2012 to the 2nd Defendant by the Learned Counsel for the 1st Defendant.
- [23] Further, the Court of Appeal in its judgment had already considered this issue and *inter alia* stated that the Land Registrar is hereby authorized under section 75 of the Land Registration Act to levy any stamp duty due. Moreover, Learned Counsel for the 2nd Defendant assured Court that the property in issue is not yet transferred onto the name of any third party and it is still in the name of Christopher Gill.
- [24] I find and conclude that there is no sufficient and cogent evidence to support allegation of deliberate fraudulent act on the part of either of the two Defendants.
- [25] Learned Counsel for the Plaintiff submitted that the matter in issue is not yet closed by the majority judgment of the Seychelles Court of Appeal. Further, this Court could not have decided on a case of lesion when the case was only concluded by the judgment of the Court of Appeal and not by the Agreement for Sale.
- [26] I agree with the submissions of Learned Counsel of the Plaintiff that until the judgment of the Court of Appeal neither party knew who owns the property in issue and the land could have been reverted back to the Plaintiff. I also take note that the Agreement for Sale was made in 1993 and the first Court case was entered in 1995. The process was concluded by

the Court of Appeal in 2012. That was followed by the instant action filed in 2015 and the sum of SR500,000.00 was set by the Seychelles Court of Appeal in substitution of the sum of SR250,000.00 as contained in the Agreement. That brought to finality to the litigation between the parties.

- [27] I agree with the submission of the Learned Counsel for the 2nd Defendant who concurred with the submissions of the 1st Defendant to the extent that there was no collusion or fraud in this matter.
- [28] For reasons discussed above, I find that the action for lesion is time-barred because of prescription and that the present suit is res judicata. With regard to the issue of locus standi to raise the issue of stamp duty, I also find that the pleading does not indicate any fraudulent intent in the transaction referred to.
- [29] Having upheld all the objections raised in the Plea in Limine Litis, the instant suit is accordingly dismissed.
- [30] As a prologue not intended to be a legal decision of this Court I believe that the two persons who are fighting this case as Executors have been doing so in order to retain the part of the property on which they have lived their whole life and now at their present old age are still occupying. They acted as good Samaritans to the late Grandcourt. The Defendant herein should consider permitting them to continue to have this benefit.
- [31] I make no order as to cost.

Signed, dated and delivered at Ile du Port on 20 October 2016

  
B. Renaud  
Judge of the Supreme Court