

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS195/2002

[2017] SCSC 285

MARYLINE AGATHE PAYET

PLAINTIFF

Of Praslin

In the capacity of Executor in the Estate

Of late **LEON LABLACHE**

VERSUS

ACHILLES VENANT SAVY

DEFENDANT

Formerly of Alphonse island, Seychelles and now

Of Consolation, Praslin, Seychelles

Heard: 8 February 2017

Counsel: Mr Davino Sabino for Plaintiff

Mrs Natasha Burian for Defendant

Delivered: 28 March 2017

JUDGMENT

McKee J

[1] The Plaintiff was lodged with the Registry of the Supreme Court on 24th July 2002. The then Plaintiff, Mr Leon Lablache, alleged that, on 2nd May 2000, the Defendant had acted

fraudulently, and had dishonestly obtained the signature of the Plaintiff on an agreement which transferred an area of land amounting to six hectares to him for the price of Rs 80,000. Further, it was averred that the price paid was an amount which was less than half the value of the land and hence the Plaintiff was entitled to an Order of Rescission on the grounds of lesion.

- [2] An injunction was granted by the Supreme Court on 18 December 2002 prohibiting the Defendant from disposing of the land acquired. A Request for Further Particulars was made on 2 March 2003. On 15 March 2003 further particulars disclosed that the Plaintiff, by this date, was very old and very ill, had no recollection of the dates of negotiation and had no recollection whether there were any witnesses present at the signing of the agreement.
- [3] Thereafter the Court was advised that there were prospects of settlement but discussions produced no tangible results. Trial dates were arranged but later cancelled. Attempts were made to appoint three assessors to value the property in question but, again, no real progress was made here.
- [4] The Plaintiff passed away on 11 July 2008 and this matter was continued by an executor of the estate, Mrs Maryline Agathe Payet, who was a daughter of the deceased. There was no progress again until 2011 when the case was restored to the court lists. The formal substitution of Mrs Maryline Payet, as executor and as Plaintiff, was granted on 17 October 2012. Further trial dates were set but cancelled and the Survey and Valuation Report on the land was finally received by the Court in November 2014. On 21 May 2015 I took carriage of this matter. Amended Defences were lodged on 3rd March 2016 and evidence commenced on 30 June 2016.
- [5] The Plaintiff, the daughter of the deceased and an executor in his estate, sought to substantiate her case by giving evidence and calling further witnesses. Charles France Lablache, her brother, also gave evidence. The Court also heard from Mr Nigel Roucou, a quantity surveyor, who had been called upon by Mrs Maryline Payet to produce a valuation of an area of ground at Consolation, Praslin extending to some 2 acres.

[6] The Defendant also gave evidence. He is a nephew of the deceased. He called as a witness Ms Monique Madeleine Lablache, also a daughter of the deceased, Leon Lablache, and who at the material time, had resided with the deceased as a housekeeper. Mrs Wendy Pierre, the Registrar General, also gave evidence and produced various property documents which could relate to what may be called “Lablache property”.

[7] FINDINGS

[8] This is a civil case and hence the standard of proof is on the balance of probabilities rather than on the more onerous standard of beyond reasonable doubt as required in criminal cases. However in this case, the original Plaintiff, Leon Lablache, and the substituted Plaintiff, Mrs Maryline Agathe Payet, have made allegations of fraudulent behaviour on the part of the Defendant which allegations are more criminal in nature. Despite this, however, the standard of proof remains the civil standard of proof.

[9] The main thrust of the now Plaintiff’s case is that the Defendant acted in a fraudulent manner to obtain the signature of Leon Lablache on the Agreement which, in effect, led to a conveyance in favour of the Defendant. The evidence of Mr Roucou and Mrs Wendy Pierre is of no assistance to the Plaintiff’s case.

[10] I can find from the evidence of Mrs Maryline Agathe Payet that from 1975 she has resided in Takamaka, Mahe while Mr Leon Lablache resided in Praslin. Mrs Maryline Agathe Payet has tried to persuade the Court that, despite the distance factor, she had always been in regular communication with her father. I find that she has been prone to exaggeration on this point and that contact was spasmodic and irregular. Her brother, Mr Charles France Lablache has lived continuously on Mahe since 1968 where he had been a police officer, but now retired. He continues to reside on Mahe and I also find that his contact with his father has been irregular. I have listened carefully to their evidence. Neither was present when the meeting between Leon Lablache and the Defendant took place They had no personal knowledge of this transaction or the genuineness of it and their evidence is based on supposition, heresay evidence of dubious reliability and generally lacks credibility.

- [11] The Defendant has given detailed evidence of the transaction with his uncle, Leon Lablache, which culminated in a total payment of Rs 130,000 in exchange for the transfer of 6 acres of land. He has given evidence of what transpired on the day that the agreement was signed. His evidence on events of that day is corroborated by the evidence of Ms Monique Madeleine Lablache. Each of these witnesses remained firm under cross-examination. One material piece of evidence which arose during trial was that while the Defendant was of the opinion that he had obtained 6 acres of land in the transaction it became likely that he had only received title to 2 acres since Leon Lablache had already disposed 4 acres from the 6 acres to a person, named Confait. This piece of evidence seemed to catch both Counsel by surprise. If this is subsequently found to be correct, it would seem that the actions of Leon Lablache may be open to question or tainted with illegality.
- [12] In my opinion the Plaintiff has failed to satisfy the burden of proof, which always rested on her as Plaintiff and as required of her in this action. She has failed to prove to the required standard that the Defendant acted in a fraudulent manner in respect of the transaction which he had with Leon Lablache.
- [13] It is also worthy of note that the purchase price stated in the Plaint is Rs 80,000 while the evidence of the Defendant is that a full purchase price of Rs 130,000 was paid. The whole position is unclear and unsatisfactory in respect of the area of ground purchased and the price paid. There is insufficient and conflicting evidence in respect of the whole land issue. I find that the Plaintiff has failed to satisfy me on the burden of proof required in respect of the claim for rescission of the sale based on lesion.
- [14] Therefore I dismiss the Plaintiff's case.
- [15] I also discharge the order of Injunction imposed by the Court 26th November 2002 in relation to this matter.
- [16] I also dismiss the Motion that the Defendant should be found in Contempt of Court in relation to a sale of property of land surveyed as PR5848 to Rosh Gadol [Pty] Ltd on 9 July 2012.

[17] There will be judgment for the Defendant, with costs.

Signed, dated and delivered at Ile du Port on 28 March 2017

C McKee
Judge of the Supreme Court