

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS63 /2015

[2017] SCSC

1. Daniel Jean
2. John Jean
3. Dorisca Legaie
4. Cecile Jean
5. Sonia Rachel Plaintiffs

versus

Angelita Jean Defendant

Heard: 29 March 2017
Counsel: Mr. Nichol Gabriel for plaintiffs
 Ms. Lucy Pool defendant
Delivered: 11 May 2017

RULING

M. TWOMEY, CJ

[1] The Plaintiffs and the Defendant are the heirs of Jean-Baptiste Jean (hereinafter the Deceased) who died intestate on 14 July 2014.

[2] The Deceased was the owner of immoveable property at Anse Royale, Mahé.

- [3] The first Plaintiff resides in the Deceased's house, which house and land was transferred to the Defendant.
- [4] The Plaintiffs aver that the transfer of the property was a *donation déguisée* and should be returned to the succession.
- [5] The Defendant has raised a plea in limine litis in which she submits that since the land and house is co-owned by all the parties by virtue of the law of intestacy, and neither an executor to the Estate or a fiduciary of the co-owned property has been appointed the Plaintiffs cannot act and their plaint is not property brought.
- [6] The Plaintiffs made no submission on the issue.
- [7] Articles 817- 818 of the Civil Code of Seychelles provides that:

“817 1. When property, whether moveable or immovable, is transferred to two or more persons, the right of co-ownership shall be converted into a claim to a like share in the proceeds of sale of any such property

2. Paragraph 1 of this Article regulates the exercise of the right of co- ownership. It does not affect the rights of co-ownership itself.

818 If the property subject to ownership is immovable, the rights of the co-owners shall be held on their behalf by a fiduciary through whom only they may act.”

- [8] Article 817 2 is drafted in infelicitous language and has had to be interpreted by the courts over the years. In both *Michel v Vidot* No. 2 (1977) SLR 214 and *Mathiot v Julienne* (1992) SLR 135, where the rights of co-owners to bring actions in relation to property were challenged, the court found that co-owners could indeed bring actions without representation by a fiduciary if those actions related to the protection of their individual rights of occupation of the property and that a fiduciary was only necessary in respect of actions which affected rights to the common property.

[9] In *Michel Sauzier J* stated that:

“Article 818 only affects the exercise of the right of co-ownership insofar as it relates to the immovable property itself and does not affect the right of the individual co-owners to deal with their rights of co-ownership.”

[10] Hence where they are dealing with their respective shares in the property the heirs can act directly instead of through the intermediary of a fiduciary.

[11] The Defendant’s plea is therefore dismissed and the court shall proceed to hear the case on its merits.

Signed, dated and delivered at Ile du Port on 11 May 2017.

M. TWOMEY
Chief Justice