

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 253/2016

(Arising in MC 56/2013)

[2017] SCSC

LEONARD LEONEL

Applicant

Versus

PASCAL LEONEL

Respondent

Heard: 8th day of February 2017 (Pleadings closed).

Counsel: Mr. L. Boniface for Applicant

Mr. E. Chetty for Respondent

Delivered: 2nd day of June 2017

RULING ON MOTION

Govinden J

[1] This is a Ruling on a Motion filed by the Applicant dated the 8th day of August 2016, seeking for an Order restraining the Respondent from

undertaking any construction works on plot No. V5147 at Copolia (hereinafter referred to as the “Property”), pending final determination of the main suit for division in kind in Civil Side MC. No. 56 of 2013.

- [2] By an Application dated 29th day of October 2013, one Innocence Francis Leonel seeks for division in kind of the property, held in in-division by co-owners namely Marie-Ange Hyacinth Turner, Jean-de-Dieu Leonel, Pascal Leonel, Leonard Leonel, Louis Arsene Leonel and Alex Leonel, hence relief sought is for an appraiser to be appointed and submit a Report on the proposed partition as averred at paragraph 3 of the Application and an Order that the property be divided in kind, in order that the Petitioner will obtain his share in the property.
- [3] The Application as it would transpire from paragraph [2] of this Ruling arises out between the 3rd and the 4th Respondents in the main suit.
- [4] In support of the Application (paragraph [1] refers), the Applicant has filed an Affidavit in support averring the facts and other circumstances under which the Application arises and seeks a Restraining Order ‘pendente lite’ of the main suit.
- [5] The main basis of the Application is that the property is in the final stage of a division in kind before the Court and that Sinon Surveys (Pty) Ltd has been ordered by the Court to sub-divide the property. That the layout of the division in kind has already been laid before the Court by the said Surveyor showing the different demarcated plots suggested and that albeit the said division, the Respondent who is the son of one of the heirs, more particularly Jean Leonel, has been and is conducting construction works on the property.

- [6] It is further averred that the said construction works if allowed to continue will frustrate the division in kind as ordered by the Court, the work carried out by Sinon Surveys (Pty) Ltd and paid for by the heirs and therefore will not be in the interest of justice.
- [7] The Respondent on his part by way of an Affidavit dated 18th day of January 2017 avers that Sinon Surveys (Pty) Ltd has been ordered by the Court to subdivide the property subject to his perpetual 'droit de superficie' over the property and that he has permission to build and authorisation to build his dwelling house on the property by virtue of a document dated 17th day of November 2005. That as a result, he is entitled to build his house on any part of the property and to also enjoy the surrounding curtilage. That he has sought and obtained planning permission to construct a two hundred square meter house on the property and this has been approved by the Planning Authority and as such he should not be prevented from completing the construction of his house.
- [8] Now, having carefully scrutinized the averments in the Affidavits in support for and against the Application and the attachments in support thereof as above-illustrated, I am satisfied as follows:
- (i) Firstly, on the face of the pleadings, that the matter in the main suit MC 56/2013 is 'pendente lite' in that a survey of the property has been ordered by way of Court Orders dated 21st day of October 2015 as varied by Order dated 21st day of January 2016 and that same is pending hearing in the absence of consent as to the sub-division and this due to the objections of the 2nd and 4th Respondents as transpired

in records of proceedings of Court dated 30th day of November 2016. Hence hearing fixed for the 30th day of June 2017.

- (ii) I am further satisfied that unless the Court grants the Restraining Order as sought by the Applicant in this matter, Applicant will suffer substantial and irreparable loss, hardship, inconvenience, prejudices and distress for the Judgement (in the main suit) shall in any event have to take into account equal distribution of the inheritance of the deceased namely, late Leonard Leonel by virtue of the will dated 31st day of October 1994 and duly registered on the 26th day of August 2009, between his heirs as named in the Will and the Respondent's rights will simply be demarcated as part of the inheritance to be devolved on his father namely Jean Didier Leonel (who currently only enjoys usufructuary interest on his portion of the undivided inheritance), hence simply giving effect to the extent of land which he could have transferred to the Respondent by virtue of the Transfer of his undivided share as per Transfer deed dated 30th day of December 2011 and permission to build dated 17th day of November 2005.

[7] Having given careful thought to the entire circumstances of the case and in the interest of justice and in terms of the equitable powers conferred on this Court in pursuance to Sections 5 and 6 of the Courts Act (Cap 52), I hereby grant the Motion for a Restraining Order to the effect that the Respondent shall cease construction as per Planning permission referred to above and also any further constructions and or building works on any other part of the property forth with pending the full and final determination of the main suit on its merits or until further Order of this Court.

[8] For the reasons stated hereinbefore, I grant the Motion for a Restraining Order as sought by the Applicant in this matter.

Signed, dated and delivered at Ile du Port on 2nd day of June 2017.

Govinden J
Judge of the Supreme Court