

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA29/2016

Appeal from Magistrates Court Decision 09/2014

[2017] SCSC 518

GRAND ANSE MAHE INVESTMENT

Appellant

versus

MICHEL KENNY VIELLE

Respondent

Heard: 3 May 2017
Counsel: Mr. F. Bonte for appellant
Ms. L. Pool for respondent
Delivered: 20 June 2017

JUDGMENT

Vidot J

- [1] The Appellant has filed an appeal against a judgment of the Magistrate Court dated 04th November 2016. There is only one ground of appeal, namely that the decision is against the weight of the evidence. The Memorandum of Appeal as couched, is everything that a memorandum should not be. It fails to identify those parts of the evidence that are in

contention that maybe was not considered in the judgment. Unfortunately, submission by counsel for the Appellant did not prove to be of much assistance either.

[2] I have to note at the outset that I hold a very dim view of the recording of evidence in this case. The evidence is confusing and at times absolutely devoid of any sense. In order to ensure that the administration of justice is not impeded upon, it is important that the record of proceedings is coherent, giving a clear picture of the issues forming the basis of the case. This is in fact of the utmost necessity of proceedings from the Magistrate Court as the latter is not a court of records.

[3] In order to have a clear picture of the issues of this case I had to refer to the pleadings, particularly the Plaint which unfortunately was not very helpful. The cause of action was not expressly pleaded. It was not clear whether the SR150,000/- being claimed by the Appellant from the Respondent was sum paid as deposit for sale of land title C5912 or that it was being claimed by the Appellant from the Respondent as agency fees, as it seems it is claiming that it acted as agent for the Respondent for the sale of the said land title. The land belonged to the Respondent. The judgment dealt with the transaction as a “promise of sale” and the sum deposited, which is now being held in escrow by Mr. F. Chang-Sam, Attorney-at-Law as a deposit on the agreed purchase price of SR1.6 million. Nonetheless, I found assistance through an evaluation of the documentary exhibits adduced before court.

[4] In his submission, Learned Counsel for the Appellant, Mr. Bonte did not pinpoint with precision which portions of the evidence that ran contrary to or was overlooked by the Learned Magistrate. He nonetheless argued that the Appellant had purchased a plot of land from the Respondent. Upon the purchase, the Respondent offered the Appellant another plot of land which the latter was not in a position to purchase and that the Respondent had asked the Appellant to put down a deposit of SR150,000/-. This averment suggests that the money paid was a deposit for the purchase of the land. By a letter dated 28th November 2013 (Exhibit P1) from the Appellant, the sum is referred to as an advance for the purchase of C5912. In that letter it is suggested that land title was subsequently sold to another person by Raymond Furneau, a director of the Appellant. In

fact in his deposition Mr. Furneau stated that the Appellant had intended to purchase land title C5912 and that they had given to the Respondent SR150,000/-. It is abundantly clear that the money was a deposit on the purchase of the said land title. There was between the parties a “promese de vente”.

[5] Ms. Pool, Counsel for the Respondent, supported the judgment and argued that in fact there was a “ Promese de vente” between the parties. The agreement was partly oral and partly in writing. She referred to exhibit P2, a letter dated on 10th September 2013 which in fact indicates that there was a promise of sale between the parties. The letter states the price and the subject of the sale which was land title C5912. The letter goes on to state the date by which the sale was to be concluded; ie 15th August 2013. However, since the Appellant was not honouring the agreed time line, it was extended to satisfy the Appellant which had indicated that it was waiting for a loan from its bank. This is supported by the evidence of the Respondent which was unchallenged on that issue. Mr. Furneau, a director of the Appellant even confirmed that when in cross-examination he stated; *“the money was to be raised from SCB (which I assume is the Seychelles Commercial Bank), but we failed to get the loan”*.

[6] The Learned Counsel correctly referred to Articles 1589 and 1590 of the Civil Code of Seychelles. By virtue of Article 1589 the sale of C5912 was complete; see **Hoareau v Guilleaux (1978-1982) SCAR 158** (a case also cited by Ms. Pool). See also **Gummery v Ernestine SCA 5/2014** (unreported) and **Jeremey Arnold v Edmond Mussard SCA 31/2010** (unreported). Article 1589 provides as follows;

“A promise of sale is equivalent to a sale if the 2 parties have mutually agreed on the thing and the price.

However, the acceptance of a promise to sell or the exercise of an option to purchase property subject to registration shall only have effect as between the parties or in respect of third parties as from the date of registration”

As mentioned above, this court has found the existence of a promise of sale between the parties. Now what has to be considered is the SR150,000/- which this court has already ruled was a deposit for the sale of the said land parcel.

[7] Article 1590 provides as follows;

“If the promise to sell is accompanied by a deposit, each of the contracting parties shall be free to withdraw; the person who has paid the deposit shall lose it, the person who has received it shall return double the amount”

Since the Appellant frustrated the promise of sale then it is not entitled for a refund of the sum of SR150,000/- kept in escrow with Mr. F. Chang-Sam.

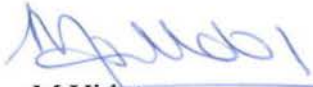
[8] This court also does not find favour with submission by Mr. Bonte that the sum above mentioned was to be payment to Mr. Furneau because he finally sold the land to a third party. As already mentioned the evidence shows that that sum was paid as a deposit. Mr. Furneau had stated that the Appellant’s intention was to purchase the land and that *“as part of the agreement we gave SR150,000/- as a deposit”* (P6 of proceedings). Admittedly he also added that the Respondent *“agreed for me to sell his land and to refund my money that I paid him”*. This contradicts the letter of 28th November 2013 (P2) from Mr. Bonte. If ever there was an agreement to pay to Mr. Furneau personally, the said sum for sale of the land, then he should have sued in his personal name and not that of the Appellant. Furthermore, Mr. Latulippe, who eventually bought the land, testified that despite in response to an advert for the sale of the land, he called a number that was answered by Mr. Furneau, he nonetheless negotiated the sale with the Respondent.

[9] I also note that the judgment failed to adjudge on the Respondent’s (then Defendant) counterclaim. I note nonetheless that despite this serious failure, the Respondent has not appealed against the same.

[10] The appeal is therefore dismissed and I further order that the sum of SR150,000/- being held in escrow by Mr. Chang-Sam, is disbursed forthwith to the Respondent, Mr. Michel Vielle.

[11] I make no order as to cost

Signed, dated and delivered at Ile du Port on 20 June 2017



M Vidot

Judge of the Supreme Court