

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS /91/2015

[2017] SCSC

Rosy Denis

Plaintiff

versus

Philippe Sinon Bonnelame

Defendant

Heard: 23 February 2017, 18 May 2017, 28 June 2017 (locus in quo), 26 July 2017
(Submissions)

Counsel: Ms. Alexandra Benoiton for plaintiff

Mr. Joel Camille for defendant

Delivered: 14 September 2017

JUDGMENT

M. TWOMEY, CJ

[1] The Plaintiff entered a plaint in which she claimed that she was the owner of Parcel C962 and the Defendant the owner of Parcels C 954 having bought the same on 27 September 2005.

[2] It is her case that after she bought her land in 1978 she used, enjoyed and possessed Parcel C 954 in the capacity of owner believing it to form part of her land and did so continuously, peacefully, publicly and unequivocally for over twenty years.

- [3] On this basis she prayed for an order to declare that she had acquired Parcel C954 prescriptively.
- [4] In his statement of Defence, the Defendant denied that the Plaintiff had occupied his land in the manner she averred but rather that she had been aware that Parcel C954 was a separate and contiguous parcel of land to her own.
- [5] He also averred that he said Parcel C954 had belonged to his predecessor in title, Percy d'Offay who had offered it to the Defendant for sale who had refused it. Upon his purchase of the same he had issued several warnings to the Defendant of her encroachments on the land. Moreover, the Plaintiff had acknowledged that Parcel C954 belonged to him. In the circumstances he prayed for the Plaintiff's plaint to be dismissed with costs.
- [6] The Plaintiff testified that she bought her land, Parcel C764 from Patrick d'Offay in 1978 which she later subdivided and sold part thereof (Parcel C961) and then occupied the remaining portion, Parcel C962 where she has lived since 1980.
- [7] She stated that she had maintained the land around the house since 1980. She cut the steep earth embankment and her septic tank was placed on the land created after cutting down the embankment.
- [8] She added that no one had ever told her that the land she maintained was not hers. She had treated the land as if it was hers. She later learnt that the Defendant had bought the adjoining land, Parcel C 954, and that her septic tank was situated on it. She had arrived one day to see plants she had planted cut down.
- [9] In cross examination she admitted that she knew where the beacons on her land was situated. She denied however that Parcel C954 was offered to her for purchase which offer she refused. She also denied that the Defendant had asked her husband to remove the septic tank, discharge pipes and banana trees they had placed on his land.

- [10] The Plaintiff's husband, Daniel Denis also testified. It was his testimony that their house on Parcel C962 was occupied mid-1980. He was aware that some time back some clearing was done on Parcel C954 and an illegal structure erected.
- [11] He could not remember when the Defendant had moved in next to him but was not aware from whom he had bought the land. He had been made aware of the beacons to his wife's land at the time it was purchased.
- [12] Between his wife's land and that of the Defendant's he admitted that there was small piece of land and that he allowed persons to clean it. He had never been offered the land for purchase.
- [13] The Defendant also testified. He had purchased his land, Parcel C555 in 1978 and moved into his house built on the land in 1982. He had purchased an adjoining small piece of land, Parcel C954 in 2005. He added that that land had been offered to the Plaintiff who had turned down the offer, stating that she would not purchase a sliver of land.
- [14] The Plaintiff's husband showed him *calice du pape* trees on the land which he asked to be cut down. He also showed him where he had built the septic tank and also located the beacons for him.
- [15] In cross examination he admitted that there were bushes and plants on Parcel C954 planted by the Plaintiff. Her septic tank was covered by earth cut down from the embankment but was also on Parcel C954. He had told the Plaintiff verbally that he had bought the land but allowed the Plaintiff to continue planting flowers on the land.
- [16] A *locus in quo* was conducted and it was observed that the land disputed was extremely narrow, in the words of the parties, a sliver of land. The Plaintiff's septic tank was indeed situated on that land.
- [17] The Plaintiff made no closing submissions but the Defendant did, extensively. On the facts he submitted that the Plaintiff was not a credible witness as she had admitted that she was shown all the beacons on her land before its purchase from Mr. d'Offay and therefore could not at the same time state that she did not know that she had encroached

on Parcel C954. He further submitted that it was obvious from the encroachment as observed on the *locus in quo* that the same was not on her land and this fact would therefore have been known to her.

[18] He also made submissions on the law relating to this case which I shall address presently. It must be noted in this respect that the Plaintiff has stated in her statement of claim that after acquiring Parcel C962 she believed that Parcel C954 formed part of it and that she used, enjoyed and possessed the same in the capacity of owner uninterruptedly, peacefully, publicly, unequivocally.

[19] The law relating to adverse possession in Seychelles is contained in the provisions of Articles 2229 - 2235 and 2261 of the Civil Code of Seychelles.

[20] Article 2229 provides that:

In order to acquire by prescription, possession must be continuous and uninterrupted, peaceful, public, unequivocal and by a person acting in the capacity of an owner.

[21] Article 2232 also provides:

Purely optional acts or acts which are merely permitted shall not give rise to possession or prescription.

[22] In this case the Plaintiff claims Title to Parcel C954 *animo domini*. In this perspective it is Article 712 of the Civil Code that would apply to make good title to the land by prescription. With regards to the facts on this issue, Counsel for the Defendant has submitted that the specified period of twenty years required for prescriptive acquisition is not stated by the Plaintiff in her plaint but that rather a vague claim of possession of “over a period of 20 years” is made and that therefore this failure is fatal to her claim.

[23] I cannot accept this submission given the fact that even if I were only to accept the evidence of the Plaintiff’s witness their possession of Parcel C954 started at least since the mid-80’s when they moved into the house. However, the provisions of the Civil Code above imposes conditions on such possession: continuous and uninterrupted,

peaceful, public and unequivocal. In *Anglesy v Mussard and anor* (1938) SLR 31 Smith CJ defines each of these terms: to be contiguous and uninterrupted an act must have happened to disturb possession. He states:

“There are two sorts of interruptions; natural and civil. Natural interruption means the deprivation for more than one year... Civil interruption occurs in various ways amongst others than the person who is prescribing expressly or tacitly admits the right of the proprietor.”(p. 35)

[24] In respect of the present case there was no natural interruption but it is questionable whether having been shown where the beacons to her land were, the Plaintiff was put on notice in form of a civil interruption of the possession of Parcel C954. There is no conclusive evidence on this point. Insofar as the conditions of peaceful possession is concerned Gardner Smith, CJ states that there are two schools of thought on this definition:

“According to one it means peaceful on the part of dominant owner and on the part of others, according to the other it means on the part of the dominant owner alone (Daloz, C.C. Annoté, art. 229 nn. 44-49)...Possession is not peaceable if contradicted by resistance, by force consisting either numerous acts or in reclamation before competent authority (27 & 57, ib.n.57). Isolated acts of interference, immediately repressed, do not remove from the possession the character of the peaceable (ib. n. 53).

[25] In regards to the facts of this case, it is admitted by the Plaintiff that her plants were uprooted and that she had learnt that her septic tank was situated on the Defendant’s land. Does that suffice to disturb the peaceable possession of the land? Again I am not persuaded either way on this issue.

[26] There is also no evidence adduced on the issue of the publicity of the possession. No one was able to state that third parties knew that the Plaintiff was the possessor of Parcel C954. In so far as equivocality is concerned Gardner Smith, CJ has the following to say on the subject:

““Equivocal” means ambiguous, that is, not the manifest exercise of a right (Boyer C.C Annoté, art. 2229) and “animo domini” or “à titre de propriétaire” means not à titre précaire”, but exclusive and not ambiguous Boyer, art., 2229)”.

[27] Similarly in *Chetty v Boniface* and anor (1977) SLR 147 O’Brien Queen CJ held that where possession was promiscuous it was essentially equivocal. Possession is promiscuous when it is exercised by both the proprietor and the possessor. Moreover, Article 2232 of the Code is categorical that purely optional permitted on another land does not equate to renunciation of one’s ownership of the land.

[28] On the evidence adduced I am of the view that the Defendants allowing the Plaintiff’s septic tank to remain on his land was an act of neighbourliness and not in repudiation of his rights of ownership.

[29] In the circumstances I do not find the conditions satisfied for acquisitive prescription of Parcel C954 by the Plaintiff and I dismiss the plaint with costs.

Signed, dated and delivered at Ile du Port on 14 day of September 2017

M. TWOMEY
Chief Justice