

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 32/2011

[2018] SCSC 95

AHTEE LABONTE
Plaintiff

versus

LUCY FRED
Defendant

Heard: 15th November 2017
Counsel: Mr Derjacques for plaintiff
Mr Camille for defendant - Absent
Delivered: 5th February 2018

JUDGMENT

Nunkoo J

- [1] The Plaintiff agreed to buy a plot of land, Parcel PR1541, situate at Anse Consolation, Praslin, from the Defendant. The Plaintiff avers in his plaint that he appointed Mr Gerard Maurel as Notary for the transfer of the said parcel of land. The Plaintiff is averring that on 9 September 2008 the parties signed the transfer for the price of SCR 900,000.00
- [2] Plaintiff avers that he made the following payments:
- Scr 400,000.00 on September 2008
- SR 80,000.00on 19 October 2008

SR 150,000.00 on 22 January 2009

SR 96,000.00 on 12 May 2009.

SR 10,000.00 13 May 2009

SR 2000.00 on 2 June 2009

SR 22000.00 on 4 June 2009

SR 7100 on 6 June 2009

SR 11000 on 6 June 2009

SR 55000.00 on 21 June 2009

SR 25000.00 on 21 September 2009

[3] It is averred by the Plaintiff that the Defendant has acknowledged payment of the above sums. He also avers that he owes a balance of SR 41,900.00 and is willing to pay this balance. It is averred by the Plaintiff that he is in possession of the plot of land parcel PR 1541 but the Defendant has instructed the notary not to register and give effect to the said transfer of land parcel 1541.

[4] The Plaintiff is averring that this constitutes a breach and prays from this court

(A) that an order of injunction is issued ordering the Notary Mr Gerard Maurel of Kingsgate House Victoria to immediately deposit and register the said transfer document pertaining to land parcel PR 1541 between the Plaintiff and the Defendant.

(B) that an order of injunction is issued ordering the Registrar of Lands, to effect the registration of land parcel PR 1541 in the Land Registry, in the name of the Plaintiff, namely Ahtee Labonte.

(C) that the Defendant be ordered to do the legal necessities, including consent and instruct the said notary and Registrar of Lands to deposit, register and give full effect to the said transfer document.

(D) That the Defendant be ordered to accept from Plaintiff the said final instalment in the sum of SR 41,900 as part of the transfer sum

(E) Any necessary order the court require to give effect to the sale agreement.

[5] In his defence the Defendant is pleading that the sale agreement was signed and executed on 4 July 2008. It is being denied that the sale agreement was for the sum of Rs 900,000.00 and she avers that the sale price was in fact for a sum of Rs 2.5 million SCR and 25,000.00 pound sterling, but for the purpose of stamp duty the price of SCR 1000,000.00 was declared for the benefit of the Plaintiff and as well as hers.

[6] The Defendant avers that she has been paid only SCR 858,100.00 ; that she vacated the property since 28 July and is waiting for the payment of SCR of the balance of the price that is Rs 1641,900 plus 25000 pounds.

[7] In her counterclaim she is averring that the Plaintiff had undertaken to clear all her arrears amounting to SR 80,663.84 owed to the Housing Finance Company and that the accumulated arrears amounted to SR 147,902.56 by 2013 and she had to clear it herself.

[8] Defendant avers that Plaintiff has breached the agreement in having failed to pay the price of the sale of the said land parcel.

[9] Defendant is therefore praying this court

(a) to declare the said transfer void on account of the breach of the agreement by the Plaintiff and to dismiss the plaint and give judgment in her favour on the counterclaim in the total sum of Rs 1,909,138.72 plus 25,000.00 pounds.

[10] The main issue is to decide whether there was a contract of sale and what were its terms.

[11] The second issue is whether it has been breached by the Defendant, or, by the Plaintiff, as being claimed by both parties.

[12] At the start of the proceedings in this case objection was raised about the oral testimony adduced by the Defendant. The Honourable Judge had to give a Ruling and indeed he gave one in favour of the Defendant.

[13] That being so my task is to assess the evidence adduced by the parties and the witnesses. I heard part of the evidence and for the rest I had the benefit of perusing the proceedings as recorded before my Honourable Judge Karunakaran.

[14] I have gone through all the evidence. On the one side we have the experts who came with their valuation reports and also adduced evidence. We have on record the evidence of Mrs Cecille Bastille, valuer for the plaintiff. She valued the property at Rs 1.2 million. It must be noted that it is above the price being alleged by the Plaintiff by Rs 200,000.00.

[15] She also conceded that every valuer has his own method of evaluating and she could not say that one was wrong and the other right.

Q “ But in fact I will suggest to you that the valuation of the property is way over and above SR 1.2 million.that you had submitted...”

A: “There again I can’t say that the one is wrong or I am right because everyone has the way they qualify theirs..”

[16] On the other hand the Defendant’s valuer, Mr Valentin submitted his report and his valuation is SR 2.1 million.

[17] Both valuers agree that the property being in Praslin has a value apart and of its own. Mr Valentin also made the point that the price there, that is at Praslin, is 30 to 40 % higher than that in Mahe and that the costs of transporting construction materials must also be taken into account.

[18] Now I come to the evidence of Mr Morel, the Notary. He testified to the effect that the transfer was not registered upon the instruction of the Defendant. He confirmed that he knew there was an agreement made verbally between the parties but did not know its terms.

- [19] The Plaintiff deponed to say that he had agreed to pay the price of SR 1 million and denied having met the Defendant several times prior to the sale or having said that he was badly in need of the house because he was renting a house and he had three children.
- [20] Plaintiff also denied having agreed to pay SR 2.5 million and 25,000.00 pounds. He denied having agreed to the price of SR 1 million for the sake of evading stamp duty.
- [21] The Defendant deponed and said that when the Plaintiff first approached her to buy her property she had indicated it was worth SR 4.5 million and that she had a buyer ready to pay that price but was not in the country. She stated in court she accepted to sell because she pitied the Plaintiff who was coming back from UK after several years and had three children; in addition he had to rent a house. She said she was “”begging”” of her to sell the property.
- [22] She maintained that there was an agreement for SR 2.5 million plus 25000.00 pounds but for stamp duty purposes they had both agreed that the price would be recorded at SR 1 million in the transfer agreement.
- [23] The question before me is whom to believe. In such cases the party whose version is more probable wins: the civil standard is always on a balance of probability. On the strength of the evidence before me it is my conclusion that the Plaintiff has failed to prove his case on a balance of probability. The Defendant appears more credible throughout. I am satisfied that there was an oral agreement between the parties.
- [24] I therefore give judgment in favour of the Defendant on the counterclaim and order that Plaintiff pays the sum of SR 1,909,138.72 plus 25 000 Pounds.(GBP).

Signed, dated and delivered at Ile du Port on 5th February 2018.



S Nunkoo
Judge of the Supreme Court