

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: 49/2015**

**[2018] SCSC**

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**ALEX SALOME**

Plaintiff

versus

- 1. ANNE NOURRICE**
- 2. THE LAND REGISTRAR**

Defendants

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Heard: 22 November 2017, Submissions 29 January 2018

Counsel: Mr. France Bonte for the Plaintiff

Mr. Anthony Derjacques for 1<sup>st</sup> Defendant

Mrs. St. Ange Ebrahim for 2<sup>nd</sup> Defendant

Delivered: 7 February 2018

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**RULING**

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**M. TWOMEY, CJ**

[1] The Plaintiff filed a plaint on 18 May 2015 in which he claimed that the 1<sup>st</sup> Defendant had acted fraudulently in swearing an affidavit of transmission by death in which she had deponed that she was the owner of a 3/6 share in Parcel S2025.

[2] The plaint detailed the antecedents of the ownership of Parcel S2025 as follows:

Louis Nourrice (whose estate is represented by the Plaintiff as executor) and his sister Francine Sifflore (née Nourrice) were co-owners of land at Anse Aux Pins, transcribed in volume 40/226 in the Register of Deeds. Francine Sifflore who died in 1950 had a child, Marie Therese Nourrice. The latter who also died in 1956 also had one child Ann Nourrice (the First Defendant) who would have been co-owner of the said land with heirs Louis Nourrice, were it not for the fact that Marie Therese Nourrice prior to her death had extracted part of her share therein in 1951 and sold it to one Wilfred Lajoie with the deed transcribed in volume 41/145 of the Register. Further Marie Therese Nourrice sold the rest of her undivided share to one Charly Fostel as transcribed in volume 16/574 of the Register.

[3] In view of the circumstances as described, the Plaintiff claims that Louis Nourrice remained the sole owner of the land subsequently registered as Parcel S2025. He claims therefore that the notice of first registration by the Land Registrar in 1987 stating that Heirs Louis Nourrice owned 2/6 of Parcel S2025, Auguste Jeremie 1/6 and Francine Sifflore 3/6 was incorrect and that the affidavit of the 1<sup>st</sup> Defendant referred to above was fraudulent.

[4] He prayed inter alia for orders annulling the registration, declaring the Plaintiff the owner of Parcel S2025.

[5] The First Defendant in his statement of defence pleaded prescription pursuant to Article 2265 of the Civil Code as the title was registered more than ten years before the suit was filed. She also pleaded *res judicata* and submitted that the suit had been disposed of in October 2015 by order of the court. She also maintained that her affidavit was not

irregular and had been properly made and that she was the owner of the share as reflected in the Register.

- [6] The Second Defendant pleaded prescription under the Public Officers (Protection) Act 1976 as amended in 2017 and claimed further that no reasonable cause of action was disclosed in the plaint against her Office.
- [7] She also stated that the transfers of land as explained in the plaint were incorrect and maintained that Parcel S2025 was co-owned by the Plaintiff, Auguste Jeremie and the First Defendant.
- [8] In their submissions the parties expanded on their pleas in *limine litis*. The First Defendant submitted that pursuant to Article 2219 and 2265 of the Civil Code, the action of the Plaintiff was limited to a term of ten years. As the transfer of Title S2025 to the co-owners was registered on 9 January 2003 the plaint entered some twelve years later was prescribed.
- [9] Further, relying on the principle of *res judicata* and the authorities of *Gabriel v Government of Seychelles* (2006) SLR 169 and *Pillay v Bank of Baroda* SCA28/2001 (judgment delivered 18 December 2002) she submitted that the order of the court made in suit CS 276/2003 had finally determined the issues presently raised.
- [10] The Second Defendant relied on section 3 of the Public Officer (Protection) Act as amended in 2017 to submit that the action against her was prescribed some five years after the claim arose in 2003 when the registration of title was made. She further submitted that in terms of Article 2268 of the Civil Code, good faith was presumed in government actions where the public officer had acted in lawful performance of a public duty to register documents presented to it.
- [11] Further, she submitted, the Plaintiff in not disclosing a reasonable cause of action against her was precluded in claiming costs as stated in section 109 of the Seychelles Code of Civil Procedure. She relied on the authorities of *Otar v Hoareau and Ors* [2016] SCSC 395 and *Bibi v The Estate of the late Joseph Samuel Bibi and The Land Registrar* (CS26/2017).

[12] She also submitted that no allegation of bad faith had been made against her and that therefore pursuant to Article 2268 of the Civil Code good faith had to be presumed.

[13] I have considered the submissions made by the two defendants. Insofar as the plea is made for the protection of the acts of the Second Defendant both because of the presumption of good faith and because of the provisions of the Public Officer (Protection) Act, I am satisfied that her submissions have validity. There is in any case no cause of action made out against her Office. No tort or any breach of duty is alleged, nor is there a prayer for any relief against her apart for an order that she pay costs of the suit. As has rightly been pointed out, costs cannot arise when a defendant is joined without a case for relief made out in a suit. I therefore dismiss the case against the Second Defendant.

[14] I now turn to one of the limbs of the First Defendant's plea, that of *res judicata*. In the case of *Gamatis v Chaka Brothers* (1989) SLR 235, the court held that a plea of *res judicata* with the underlying rationale that there must be finality in the determination of disputes, is governed by Article 1351 of the Civil Code of Seychelles which provides in relevant part:

“1. The authority of a final judgment shall only be binding in respect of the subject-matter of the judgment. It is necessary that the demand relate to the same subject-matter; that it relate to the same class, that it be between the same parties and that it be brought by them or against them in the same capacities...”

[15] The court in *Gamatis* further held that the three elements, namely the same claim, the same cause of action and the same parties must co-exist for the plea to succeed.

[16] In the present case, while the parties may be much the same, the causes of action and claims are patently different. In suit CS276/2003, Anne Nourrice petitioned for a division in kind of Parcel S2025 against Auguste Jeremie and Heirs Louis Victor. In the present suit, Alex Salome in his capacity as the executor of Heirs Louis Victor is suing Anne Nourrice for the fraudulent or mistaken swearing of an affidavit of transmission

by death and for the annulment or rectification of an entry on the Land Register purporting to make her a co-owner of Title S2025. The plea cannot therefore be upheld.

**[17]** Another plea by the First Defendant is that of prescription. The submission as I understand is based on Articles 2219, 2262 and 2265 of the Civil Code which provide: in relevant part:

*Article 2219*

*“1. Prescription involves loss of rights through a failure to act within the limits established by law.  
2. It is a means whereby, after a certain lapse of time, rights may be acquired or lost, subject to the conditions established by law.  
...*

*Article 2221*

*All real actions in respect of rights of ownership of land or other interests therein shall be barred by prescription after twenty years whether the party claiming the benefit of such prescription can produce a title or not and whether such party is in good faith or not.*

*Article 2265*

*If the party claiming the benefit of such prescription produces a title which has been acquired for value and in good faith, the period of prescription of article 2262 shall be reduced to ten years.*

**[18]** The provisions are self-evident. The First Defendant is claiming that the action of the Plaintiff is prescribed by the statutory ten year limitation given that she has registered title. The Plaintiff has tried to rebut this submission by stating that it is the prescription of twenty years that applies in this case as the First Defendant did not have good title.

[19] It must be noted that Section 46 of the Land Registration Act( hereinafter the LRA) provides that land transfers are completed by registration of the transferee as proprietor of the land and the filing of the document. Hence, under the current system, registration perfects and completes the transfer and certifies the ownership of absolute title to realty (See *Morin v Simeon and ors* [2016] SCSC 512.

[20] Furthermore, section 20 of the LRA provides in relevant part:

*“Subject to the provisions of this Act-*

*shall (a) the registration of a person as the proprietor of land with an absolute title vest in him the absolute ownership of that land, together with all rights, privileges and appurtenances belonging or appurtenant thereto;...”*

[21] The question arises as to the circumstances in which a registered title can be annulled or rectified. Section 72 of the LRA protects the interest of a proprietor who succeeds a deceased landowner upon production and filing of an affidavit by them in the prescribed form. There is an averment that the Affidavit on Transmission by death was made by fraud or in error. The rectification of the Register is permitted by the Registrar only where the error or omission does not materially affect the interest of a proprietor, is consented to by all persons interested and in other very limited circumstances (section 88 of the LRA). However, section 89 of the LRA permits the rectification of the register by the court in other circumstances outlined as follows:

*(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.*

*(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in*

*consequence of which rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.*

[22] As I have stated there is an allegation of fraud, mistake or bad faith made by the Plaintiff. In the circumstances and in view of the provisions of the LRA relating to rectification of title by the Court and the provisions of the Civil Code relating to prescription, I am duty bound to hear evidence in order to determine if the First Defendant's title was obtained in good faith or by other means.

[23] I therefore set this case down for hearing of the merits on 21 May 2018.

[24] The Registrar of Lands is also hereby directed to provide a report to the Court on the root of title and chain of ownership by the First Defendant and other co-owners of Parcel S2025 on or before the 29 March 2018. A copy of this ruling is to be served on her Office.

Signed, dated and delivered at Ile du Port on 7 February 2018

**M. TWOMEY**  
Chief Justice