IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 51/2015

[2018] SCSC 176

FRANCE HOAREAU

Plaintiff

versus

GILBERTE JULIE HOAREAU
ANETTE ANGELA HOAREAU

Defendant

Heard:

Counsel: Ms Karen Domingue for plaintiff

Mr Bernard Georges for defendant

Delivered: 21st February 2018

RULING

Pillay, J

[1] The Plaintiff who is the executor of the estate of the late Gilbert Lezin Hoareau seeks the following orders from the Court:

(a) an order granting an injunction prohibiting the 1st and 2nd Defendants from disposing of Titles H7964 and H7965 pending liquidation of the estate of the deceased;

(b) an order declaring that the structures in Tiles H7964 and H7965 belong to the Deceased and should therefore form part of the estate of the deceased;

(c) an order authorising the Plaintiff to commission a valuation of the structures on Titles H7964 and H7965;

(d) an order compelling the Defendants to disclose how much the structures on Titles H7964 and H7965 have been rented out for since they have been built and up to the present date;

(e) an order that any and all rents collected since the death of the deceased be credited to the executor account as designated by the Plaintiff in his capacity as executor of the estate of the deceased;

(f) an order that the 1st and 2nd Defendants hand over any and all personal belongings and/or documents of the deceased which will assist the Plaintiff in compiling an inventory of the estate of the deceased and the liquidation of the succession of the deceased;

(g) an order that the 1st and 2nd Defendants, more specifically the 2nd Defendant, provide the Plaintiff with information of transactions conducted by the deceased, the 1st and 2nd Defendants or any other third parties on the local and UK bank accounts;

(h) an order that any moneys which belonged to the deceased and which have been withdrawn from the local and UK accounts and used by the 1st and 2nd Defendants be forthwith returned to the estate of the deceased and credited to the executor account as designated by the Plaintiff in his capacity as the executor of the estate of the deceased;

(i) an order that the 1st and 2nd Defendants pay the cost of the suit;

(j) any other orders that the Court deems fit and proper in the circumstances of the case.

[2] Counsels agreed after hearing the evidence of the Plaintiff, to adjourn and file submissions on the issue of accession before we proceeded to decide any other matters in the suit since the evaluation and all orders following that the Plaintiff prays for only becomes relevant after the Court comes to a decision as to whether or not the ownership of the structures belongs to the estate of the deceased. Only if the structures belong to the estate of the deceased will the Court go on to consider the orders prayed for.

[3] Time was granted to both sides to submit their arguments. Counsel for the Defendants filed his submissions and after numerous extension the Plaintiff's counsel filed hers.

[4] Defendant position is that the buildings belong to the land by way of accession whereas the Plaintiff's position is that the buildings do not belong to the land or to the Defendants but are separate from the land and as such belong to the estate of the deceased.

[5] **The Law on Accession**

[6] The rules relating to accession is found in Article 553 of the Civil Code which reads as follows;

> *All buildings, plantations and works on land or under the ground shall be presumed to have been made by the owner at his own cost and to belong to him unless there is evidence to the contrary; this rule shall not affect the rights of ownership that a third party may have acquired or may acquire by prescription, whether of a basement under a building in the ownership of another or of any other part of the building.*

[7] The two presumptions that arise from the said article is;

(a) that the owner of the land is also the owner of the buildings, plantations and works on the land and under the ground; and

(b) that such buildings, plantations and works have been made by the owner of the land at the owner's cost.

[8] The onus is on the party challenging the owner's rights to rebut these presumptions. See **Gabriel v Gabriel (1976) SLR 259** and **Pouponneau v Janish (1979) SCAR 290**.

[9] According to the case of **Venturoli v Morgan (1980) SLR 70** referred to by Mr. Georges, which relied on the same principles as enunciated in the above cases "acquisition of a building by a party other than the owner of the land can be established by title, agreement, waiver of the right of accession or prescription."

[10] What the Plaintiff needs to show is that the buildings are not part of the land but are separate hence belong to the estate of the deceased.

[11] In order to show that the buildings are separate from the land and belong to the estate of the deceased the Plaintiff has to rebut the two presumptions above.

[12] On being called on her personal answers the First Defendant admitted that she is the co-owner of parcels H7964 and H7965. She admitted that along with her sister she is the bare owner of the properties in question with a usufruct in favour of her mother. The First Defendant admitted that it was her father who built the structures on the properties, being the house her mother lives in, two flats and a small apartment.

[13] On that basis the second presumption is rebutted, in that the structures were not built by the owners, the Defendants and their mother, but by the deceased with his own funds.

[14] However with regards to the first presumption as regards ownership, there is no evidence that the Defendants have renounced ownership or waived their right to accession at any time.

[15] If we were to follow the decision in **Mussard v Mussard (1975) SLR 170** wherein Sauzier J declared that:

> *Where an owner authorises a construction on his or her land, the owner, in the absence of contrary stipulations, renounces her right to accession derived from the Civil Code, and confers upon the constructor a right of use of that part of her land on which the construction stands, which right comes to an end when the constructor wants to rebuild or is bound to do so.*

at the most the deceased would have had a '*droit de superficie*' over the land. But there is no plea of *droit de superficie*.

[16] On the basis of the above while it is clear that the deceased built the house and apartments on the properties in question with his own funds, there is no evidence that the owners, being the Defendants, waived their rights of ownership. There is no evidence as to what was the intent of the deceased or the Defendants who in any case were minors at the time that the structures were built.

[17] I note at this point the submission of Plaintiff's counsel. Counsel poses the question "should that waiver, if it was meant to be one, not have been reduced in writing by the Deceased?" And in answer Counsel submits that "the waiver of the Deceased to his rights should have been in writing and the fact that it was not means that the Deceased intended all his heirs to benefit from the structures." It may be "fair and reasonable that the structures should belong to the estate of the Deceased", as counsel says however it is not for the Court to formulate the intent of the deceased in the absence of evidence, and there is no evidence of what was the intent of the deceased.

[18] In any case as I understand it the presumption is in favour of the Defendants, who are the owners of the land. It has to be shown that they have waived their rights to ownership for the first part, which has not been shown, and for the second part, that they did not pay for the buildings, the only part which has been proved.

[19] In my considered view the Plaintiff filed the wrong suit before the Court.

[20] In the circumstances the plea that the structures on H7964 and H7965 delay to the estate of the deceased cannot be maintained.

[21] The claims at paragraphs a, b, c, d are dismissed.

Signed, dated and delivered at Ile du Port on 21st February 2018.

L. Pillay, J

Judge of the Supreme Court