

IN THE SUPREME COURT OF SEYCHELLES

Civil Side No.: 117/2014

[2018] SCSC 195

JOHN DAVID AHWAN

Plaintiff

Versus

GEORGE GUICHARD

Defendant

Heard: 30th day of January 2018

Counsel: Mr. B. Hoareau for Plaintiff

Defendant Absent/Unrepresented

Delivered: 27th day of February 2018

JUDGMENT

EX-PARTE

Govinden S.-J

[1] This matter arises out of a Plaint filed by John David Ahwan (“Plaintiff”), of the 4th day of November 2014 wherein Orders are being sought from this Court against the Defendant inter alia, for the issue of a writ of mandatory injunction, compelling the Defendant to remove and demolish the building from the property of the Plaintiff and vacate the property; make any order it deems just and necessary in all the circumstances of the case, and issue a Prohibitory injunction against the Defendant prohibiting the Defendant from trespassing onto Parcel H 1952 and from effecting any construction thereon.

- [2] The Respondent was duly served with summons and counsel also notified of the date for the hearing and both failed to appear before the Court without due cause, hence the hearing proceeded ex-parte.
- [3] The Plaintiff testified in support of his Complaint in essence that at all material times he was and is the registered proprietor of a parcel of land registered as H 1952 (“Property”).
- [4] That the Defendant without the consent and authority of the Plaintiff, illegally built or caused to be built, entirely on part of the Property, a house in which the Defendant was residing prior to its destruction by fire (“the building”).
- [5] The Plaintiff further testified that he wishes the Defendant to remove and demolish the building from his Property and to vacate the Property.
- [6] The Plaintiff further testified that the illegal construction of the building was denied and he continues to deny same and the Plaintiff has the right to fully enjoy his Property.
- [7] As highlighted above, the Defendant failed to turn up for the hearing albeit the Court noting the averments in Statement of the Defence filed on the 18th November 2015 which are denials of the averments of the Complaint and which denials remain unsubstantiated by way of evidence and further the Defendant also filed a counter-claim which also remains unsubstantiated and which is directly linked with the Plea in limine litis as raised and again the latter cannot be adjudicated upon in the absence of evidence which is not present in this cause through default of appearance of the Defendant and Counsel and hence the counterclaim is dismissed in that regard.
- [8] It follows thus, in my analysis of the uncontested testimony of the Plaintiff whom the Court believes to have been very cogent and reliable, that this Court finds that the Plaintiff is the owner of the Property as claimed *Exhibit P1* and that the Defendant has as per the Plaintiff’s testimony which is believed by this Court, has without Plaintiff’s consent and authority illegally built or caused to be built entirely on part of the Property a house in which the Defendant resided in and which is already demolished by way of fire.

[9] To meet the ends of Justice and in view of the above, since the Plaintiff is the owner of the Property and is entitled to full rights of ownership of the Property and enjoyment of same without unlawful hindrance, I enter Judgement in favour of the Plaintiff as follows:

- (i) I decline the prayer for a writ of mandatory injunction as per prayer (i) for it is irrelevant in view of the admitted destruction of the building on the Property. However I hereby issue a writ of Prohibitory injunction against the Defendant prohibiting the Defendant from trespassing into the Property of the Plaintiff namely Parcel No. H 1952 and from effecting any construction thereon.
- (ii) Costs of proceedings is further awarded to the Plaintiff; and
- (iii) Copy of this Judgement is to be served on the Defendant accordingly.

Signed, dated and delivered at Ile du Port on 27th day of February 2018.

S.Govinden J
Judge of the Supreme Court