

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS94/2016

[2018] SCSC 598

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|---|---------------------------|
| 1. Bethzie, Florence, Edwards, Anacoura | 1 st Plaintiff |
| 2. Max, Bedson, Bryan, Anacoura | 2 nd Plaintiff |
| 3. Melina, Flo, Judy, Anacoura | 3 rd Plaintiff |
| 4. Lindel, Sandra, Baccus | 4 th Plaintiff |
| 5. Simone, Patricia, Diana, Anacoura | 5 th Plaintiff |
| 6. Antoine, Georges, Peter, Anacoura | 6 th Plaintiff |
| 7. Gerta, Marine-Vonne, Baccus | 7 th Plaintiff |

Versus

Philibert, Donald Anacoura

Defendant

Heard: 19 October 2017
Counsel: Mrs Natasha Burian for plaintiffs
Mr John Renaud for defendant
Delivered: 15 June 2018

JUDGMENT

R. Govinden, J

[1] The Plaintiff aver that the Defendant and the Plaintiffs are the legitimate children of the late Simone Baccus hereinafter referred to as “the deceased”. And that by a transfer of land dated the 9th of December 2010, the deceased transferred her undivided 1/9 shares in Parcel J920 only to the Defendant.

[2] The Plaintiffs aver that, the deceased, by making this disposition by gift inter vivos in the manner she did made a disguised donation and the transfer is therefore null and void and as a result (1) the Court has to declare the transfer null and void; (2) that the 1/9 undivided shares of the deceased in J920 must be returned back to the succession of the deceased and that it be shared equally amongst the Plaintiffs and the Defendant; (3) that the Court must order the Land Registrar to rectify the register of Land Parcel J920 accordingly.

[3] The Defendant in his statement of Defence had denied the Plaintiffs, however, at the end of Plaintiff's case, Mr John Renaud, Counsel for the Defendant decided not to call any evidence and submitted as follows:-

[4] "My lord the property has been surveyed when he knows its value now which my friend had not appreciated at the time. We have heard the evidence of the brothers and sisters of my client. We know that they all want the two parcels of land the one at Bel-ombre and the one at Le Niol considered together. The Plaintiffs and the Defendant are the only heirs to both properties in conscious my client would accept that the sale of the property to him alone would not have been part of the dictates of his mother in reference to their other siblings if this has been understood. Until today my client had not appreciated the size of the property since he and his brothers and sisters had not physically visited. He would be happy to have a share in both parcel J920 and the Bel ombre property and that an executor be appointed by the Plaintiffs to distribute the estate of their late mother. Thank you my lord".

[5] Effectively, the Defendant, by his concession submitted himself to and accepted the prayers of the Plaintiffs. This is further shown by the following proceedings.

Court: "So it's prayer no. (1) and no (3) of the first sets of prayers."

Miss Benoiton: "Yes my lord."

Mr Renaud: "Go back to the share."

- [6] The concession amounts to a judicial admission in terms of Article 1356 of the Civil Code of Seychelles Act which states-
- [7] “A judicial admission is the declaration which a party makes in the course of legal proceedings. It shall be accepted against the persons who make it. It may be admitted only in part to the detriment of the person making it. It may not be revoked unless it be proved that it resulted from a mistake of fact. It shall not be revoked on the ground of mistake of law.”
- [8] For the aforementioned reasons, I make the following orders:-
- [9] I declare that the instrument of transfer dated the 9th of December 2010 entered into between the late Simone Baccus and Mr Philibert Anacoura and registered in terms of the Land Registration Act on the 17th of January 2011, by which the late Simone Baccus transferred the totality of her undivided 1/9 share in land parcel J920 to Mr Philibert Anacoura to be a “*donation déguisée*” and is therefore null and void and of no effect.
- [10] I further order the Land Registrar to rectify the register of the land Parcel J920 and to return the 1/9 share in land Parcel J920 to the deceased succession to be shared equally between the Plaintiffs and the Defendant according to the rules of succession as set out of the Civil Code of Seychelles Act.
- [11] The Plaintiffs and the Defendant shall apply to the Supreme Court for the appointment of an executor in accordance with the provisions of the Civil Code of Seychelles Act, who would carry out the apportionment of the property in accordance to law.
- [12] I make no order as to cost.

Signed, dated and delivered at Ile du Port on 15 June 2018

R. Govinden
Judge of the Supreme Court