

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS. 35 of 2017

[2018] SCSC 777

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**JEAN LOUIS CONFIANCE**

First Plaintiff

**ANGELINE DUGASSE**

Second Plaintiff

**MAXIME CONFIANCE**

Third Plaintiff

versus

**JEANETTE IDA PIA MONDON**

Defendant

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Heard: 1<sup>st</sup> March, 2018

Counsel: Mr. J. Camille for the Plaintiffs  
Ms. V. Gill for the Defendant

Delivered: 17<sup>th</sup> August 2018

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**JUDGMENT**

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**ANDRE J**

[1] This Judgement arises out of a Plaint filed before the Court by Jean Louis Confiance (*First Plaintiff*); Angeline Dugasse (*Second Plaintiff*), and Maxime Confiance (*Third Plaintiff*), (*Cumulatively referred to as ("Plaintiffs")*), on 30<sup>th</sup> March 2017 and filed on the 18<sup>th</sup> April 2017 against Jeanette Ida Pia Mondon (*"Defendant"*), wherein it is prayed *inter alia*, that, **(1) the transfer of title T2840 be declared illegal for having excluded all legal heirs to the estate of the deceased; (2) that the Court directs that the land title T2840 be returned to the hotchpotch and distribution of the same property to the Plaintiffs as legal heirs, as per the rightful entitlement in law, and (3) that for any other order that is deemed fit in the circumstances."**

- [2] On 11<sup>th</sup> July 2017, the Defendant filed a statement of defence, wherein she raises a *plea in limine litis* in that the Plaintiff is time barred by prescription of five years and generally denies the averments of the Plaintiff and further avers that the Last Will and Testament is not illegal and moves for dismissal of the Plaintiff with costs.
- [3] Thereafter, the matter was heard on the above-mentioned date and the parties then respectively submitted written submissions of which contents have been duly considered for the purpose of this Judgment.
- [4] The salient factual background as per the records of proceedings pertinent for this Judgment reveal as follows.
- [5] The Plaintiffs are three of five surviving heirs of the late Ameda Marie Confiance (herein after referred to as (*the “deceased”*)), who passed away on 25<sup>th</sup> August 2009, leaving behind a Last Will and Testament made before Notary Public, Mr. Bernard Georges, dated 18<sup>th</sup> January 2008 in which she bequeathed the property to her grand-daughter, the Defendant being the daughter of Plaintiff’s sister namely Joyceline Horace. (*Exhibit P6*)
- [6] As per the Plaintiff, the Plaintiffs aver that at the time of her death, the deceased was the registered owner of a property situated at Val Mer, Baie Lazare, Mahe, Seychelles known as land parcel Title T2840, (*“the property”*).
- [7] Plaintiffs further aver that in pursuance of an Affidavit of transmission by death of the 20<sup>th</sup> April 2010, the said property was bequeathed on the Defendant solely. In addition, the same Affidavit was registered and transcribed at the Registrar General’s Office in Volume 11, Folio 100 File T2840. (*Exhibit P7*).
- [8] Further, the Plaintiffs aver that the disposition made by the deceased in the above referred Last Will and Testament is illegal for having excluded all the legal heirs to the estate of the deceased. Moreover, the Plaintiffs allege that on the basis of the matters aforesaid, the Defendant has to return the property to the succession of the deceased to be equally distributed amongst the rightful heirs as joint owners.
- [9] The Plaintiffs moves the Court as per prayers at [*paragraph 1*] (*supra*).
- [10] The Defendant on her part, avers that the Plaintiff is time barred by prescription of five years in that the computation of the time to file the Plaintiff ought to start from the date of the death of the deceased.
- [11] The Defendant on the merits denies the Plaintiff and further avers that the Last Will and Testament of the deceased is not illegal hence moves for dismissal of the Plaintiff with costs.
- [12] At the hearing, the 1<sup>st</sup> Plaintiff Jean Louis Confiance testified on his own behalf and that of the other two Plaintiffs and the Defendant testified on her own behalf and called two

witness Joyceline Horace her mother and Wilhem Confiance (*both siblings of the deceased*).

- [13] The 1<sup>st</sup> Plaintiff testified that he was appointed as an Executor in the matter of the late Ameda Confiance (*Exhibit P4*). The Last Will and testament of the deceased of the 18<sup>th</sup> January 2008 and registered on the 16<sup>th</sup> December 2009 was also produced (*Exhibit P6*) which provides that the deceased bequeathed the property to the Defendant only.
- [14] The 1<sup>st</sup> Plaintiff further testified that in line with the Last Will and Testament, the Defendant transferred the property on to her sole name by way of an Affidavit of transmission by death (*Exhibit P7*).
- [15] The 1<sup>st</sup> Plaintiff further testified that albeit his attempts to try to communicate with the Defendant about the property, he got no response and thus proceeded to a lawyer, Mr. Frank Ally, who sent a letter written on behalf of the Plaintiff to the Defendant (*Exhibit P8*), informing her to return the property to the succession of the deceased within fourteen days of the receipt of the letter and failure of which appropriate legal action and or legal proceedings against her would be taken for such return and this in line with the laws of succession.
- [16] The 1<sup>st</sup> Plaintiff additionally testified that he was not aware of the transactions at first, as he was not consulted and had not been paid anything for his part of the share and that when he was appointed as an Executor, two of his siblings did not agree to the appointment, including Joyceline Horace (*mother of the Defendant*) and Wilhelm Confiance, (latter his brother).
- [17] The Defendant on her part, testified that the deceased left the *property* onto her name in her Last Will and that this was because of their close relationship. In addition, she testified that she was aware that the 1<sup>st</sup> Plaintiff was in fact the Executor of the property.
- [18] She further testified that nobody helped the deceased as much as her and her mother did, and insisted that she paid for the land when her grandmother bought it from the Government. Furthermore, she denied having seen the letter sent by the lawyer (*Exhibit P8*), on behalf of the Plaintiffs.
- [19] Joyceline Horace, the mother of the Defendant, testified that the deceased asked help from her children, especially Jean Louis Confiance her brother being the 1<sup>st</sup> Plaintiff to purchase the property from the government but however he refused and did not help. Instead, it was her daughter, the Defendant who paid for the property.
- [20] Furthermore, she denied to have been approached by the 1<sup>st</sup> Plaintiff concerning the property and that all heirs being the Plaintiffs were aware that the property of the deceased was to be transferred onto the Defendant.
- [21] Wilhelm Confiance brother of the 1<sup>st</sup> Plaintiff and uncle of the Defendant testified on his part that the Plaintiffs never approached him about the property, about any shares after

the passing away of their mother, the deceased. He also agreed that the property rightfully belongs to the Defendant as that was what was written in the Will of the deceased.

- [22] I shall now move to consider the legal standard and analysis thereto in line with the above illustrated evidence pertinent to this matter.
- [23] I shall foremost treat the *plea in limine litis* as raised by the Defendant for the Plaintiff falls and or succeeds dependent on the Ruling of this Court on the issue of prescription.
- [24] The Defendant argues in her defence that the case filed by the Plaintiffs is time barred by a prescription period of five years as per Article 2271 (1) of the Civil Code of Seychelles (Cap 33) (*“the Code”*) which provides that, *“All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262 and 2265 of this Code.”*
- [25] Article 2262 of the Code provides that, *“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 a party is in good faith or not.”*
- [26] Article 2265 on its part provides that, *“if the party claiming the benefit of such prescription produces a title that has been acquired for value and in good faith, the period of prescription of Article 2262 shall be reduced to ten years.”*
- [27] Now, this matter pertains to the challenge of Will and Last Testament of the deceased by some of his children the Plaintiffs, legal heirs of the donor, the right to inherit in favour of a third party, being the Defendant grandchild of the deceased. (*Plaint refers*)
- [28] The right of action hence in this case arises out of a right to inherit accruing to the Plaintiffs, heirs, by virtue of the provisions of Article 718 of the Code (The opening of the succession and *seisin* of heirs) as read with Article 731 of the Code (latter entitled the Various orders of succession).
- [29] Article 718 provides that, *“A succession shall open upon the death of a person. The succession shall open in the place where the deceased had his domicile”*.
- [30] It follows thus that the right of the heirs, Plaintiffs would have accrued upon the opening of the succession, more particularly the death of the deceased. In that respect our provision of the Code reflects the French Civil Code Article 78, to the effect that, *“Les successions s’ouvrent par la mort naturelle”*.
- [31] In further analysing the prescription period that should apply in relation to this case I further consider the Jurisprudence on the subject matter namely, [**Neddy Sandra Mirenda Nourrice and Ors v/s Flora Nicette (CS No. 57 of 2015)**], wherein the same subject matter was treated and the Court endorsed the applicability of the provisions of

Article 2271 of the Code (*supra*) and I also refer to the case of [(CS 97/2013): **Lizianne Reddy, Michel Gouffe v Wavel Ramkalawan**] (“Reddy case”), wherein the Chief Justice Dr M. Twomey held that, “*In France the prescriptive period is now statutorily fixed by Article 9 of the Loi no 2006-728 du 23 Juin 2006 in that, "le délai de prescription de l'action en réduction est fixé a cinq ans a compter de l'ouverture de la succession, ou a deux ans a compter du jour ou les héritiers ont eu connaissance de l'atteinte portée a leur réserve, sans jamais pouvoir exceder dis ans a compter du decès."*

It was further held that, “*it is important that one takes heed of the legal position in France in view of the fact that Seychelles Civil Law has derived from the French Civil Law*”.

- [32] The same case also reiterates the fact that in cases such as this one, an action can be brought before the Court from the death of the de cujus which is 5 years. In the **Reddy case** it was also further held that, ‘*Contoret v Contoret (1971) SLR 257 and Hoareau v Contoret (1984) SLR 151 are authority for the principle that the heirs’ rights vest at the moment of death*’. In the latter cited case, the Court held that, “*all real actions except in respect of ownership of land or other interests therein were subject to prescription after a period of five years. That the action for reduction of the disposable portion was an action for recovery of compensation and therefore not an action in respect of rights of ownership in land hence the right of action arose on the death of Guy Contoret in 1976 and therefore was time barred by prescription.*”
- [33] In regards to the Interruption of Prescription as established namely five years, it is essential to analyze whether prescription was ever interrupted or not as claimed by the Plaintiffs. In that respect the provisions of Article 2244 of the Code is relevant and provides for causes for legal interruption of prescription and stipulates that same can be interrupted by, “*A writ summons or a seizure served upon a person in the process of acquiring by prescription shall have the effect of a legal interruption of such prescription*”.
- [34] Now, in this case, upon a careful reading and analysis of the relevant provisions of the Code with respect to the applicable prescriptive period in cases of contest of succession and the right to and opening of the succession, it is clear that the succession opens upon the death of the de cujus, in this case on the 25<sup>th</sup> day of August, 2009 upon the death of late Ameda Marie Confiance. I further note that there were no interruption to the prescription period as laid out in article 2244 of the Code (*supra*) and or article 2248 of the Code which provides that in that, “*prescription shall be interrupted by an acknowledgment by a debtor or a possessor of the right of the person against whom the prescription was running*”. All evidence proves to the contrary on record in the latter regards.
- [35] It follows thus and I find that the Plaint of the Plaintiffs has been filed around eight years after the opening of the succession of the deceased and therefore it is accordingly time barred as per the provisions of Article 2271 of the Code.

[36] The Plaintiff is thus accordingly dismissed on the plea in limine litis as raised with costs to the Defendant.

Signed, dated and delivered at Ile du Port on the 17<sup>th</sup> day of August 2018.

**S. ANDRE**

Judge of the Supreme Court