

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 49/2015

[2018] SCSC 801

Alex Salomé
(Acting in his capacity as executor to the estate of Louis Victor Nourrice)
Plaintiff

versus

1. Anne Nourrice
2. The Land Registrar
Defendant

Heard: Ruling on Plea 7 February 2018, Hearing 21 May 2018, Submissions 27 June 2018.

Counsel: France Bonté for plaintiff
Anthony Derjacques for 1st defendant
Michelle St. Ange Ebrahim for the 2nd defendant

Delivered: 7 September 2018

JUDGMENT

M. Twomey, CJ

Background

[1] On 7 February 2018, I delivered a ruling in regard to a Plea filed by the Plaintiff in which he claimed that the First Defendant had acted fraudulently in swearing an affidavit of transmission by death in which she had deposed that she was the owner of a 3/6 share in Parcel S2025. The Plaintiff claimed that by virtue of that affidavit the estate of the

deceased, whom he represents, had been deprived of its ownership in its entirety or in part.

[2] In relation to the remaining issues necessitating the adjudication by and consideration of the Court I also ruled that :

“[20] The question arises as to the circumstances in which a registered title can be annulled or rectified. Section 72 of the Land Registration Act (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.”

[3] In this respect I set the case for hearing on 21 May 2018 and also directed the Registrar of Lands to provide a report to the Court on the root of title and chain of ownership in

respect of Parcel S2025.

The Hearing

- [4] On 21 May 2018, Counsel for the Plaintiff, Mr. Bonté was absent but the Plaintiff was in court. Counsel for the First Defendant, Mr. Derjacques was also present. In view of the fact that Plaintiff was present, and as a matter fair process, I adjourned briefly to permit the court staff to find Mr. Bonté so that the hearing could proceed. On my return to court Mr. Bonté was still not present. I therefore directed the hearing to proceed.
- [5] The First Defendant started testifying when Mr. Bonté finally graced the court with his appearance. He was informed as was Mr. Derjacques of the Land Registrar's report in this matter.
- [6] The parties then proposed not to adduce any evidence but to proceed with their legal submissions in writing.

Submission that there was no hearing

- [7] To date Mr. Bonté has made no submissions. Mr. Derjacques has submitted that pursuant to section 129 of the Seychelles Code of Civil Procedure since no evidence was called there was no hearing before the court and the suit must be dismissed. He has also submitted that the report by the Land Registrar is not admissible as evidence as it falls afoul section 17 (4) of the Evidence Act. He has not addressed the substantive issues in the suit at all.
- [8] In the hearing of this suit, both Mr. Derjacques and Mr. Bonté chose not to lead evidence but to rely on their submissions. I set out the relevant extract of the transcript of proceedings of 21 May 2018:

“Mr. Derjacques: I need [to] file submissions...so I know it is not based really on facts. It is based on title so I need to do a legal research a final submission (sic).

Court: What do you want me to do Mr. Derjacques, what is your application.

Mr. Derjacques: I would like an opportunity to draft to have copies of one, and then to draft a legal submission (sic).

Court: Based on the findings of the Registrar?

Mr. Derjacques: Yes

Court: So what is your application now?

Mr. Derjacques: a date to be set for final submissions unless my learned friend wants mine (sic)

Court: So you do not want to lead evidence at this stage?

Mr. Derjacques: No with an annex and we have affidavits.

Court: The only issue left in this case in view of my ruling is if there was an error in the registration of title. .

Mr. Derjacques: We need to submit on law.

Mr. Bonte: He would submit and then I will reply.

Court:...I will give Mr. Derjacques two weeks to make his submissions... submissions based on the Report of the Land Registrar. Mr. Bonté then you will get two weeks. I will mention this matter on Wednesday 27 June 2018 at 9.30 am to make sure both your submissions are in. Is that alright.

Mr. Derjacques: Yes

Mr. Bonté: Yes

[9] In the light of the transcript of proceedings above it is clear that the decision not to call evidence was the parties' own decision. Mr. Derjacques now submits that what took place did not amount to a hearing. Apart from the disingenuity of this submission given the circumstances clearly apparent from the transcript above, I beg to differ on the issue of what constitutes a hearing.

[10] It is best at this juncture to bring to light the provisions of section 129 of the Seychelles Code of Civil Procedure, which Mr. Derjacques has relied on for his explication of what

amounts to a hearing, namely:

“On the date fixed by the court for the hearing of the suit, the parties shall appear and the court shall proceed to the hearing of the suit. The court may, at any stage of the suit, if sufficient cause be shown and subject to such order as to costs as to the court may seem fit, grant time to the plaintiff or defendant to proceed in the prosecution or defence of the suit and may adjourn the hearing of the suit.”

[11] As is obvious from these provision, at a hearing the parties appear and the court hears the suit. There is no further clarification as to what constitutes a hearing, nor is there any such definition in the Seychelles Code of Civil Procedure.

[12] Mr. Derjacques has submitted that for there to be a hearing, witnesses must be called, evidence must be produced and the court may only determine a suit based on oral evidence or documentary evidence.

[13] I agree with him that that is the general procedure at hearings. Nevertheless, I am of the view that that is not the only procedure to be adopted at hearings. It is certainly not so defined in section 129 of the Seychelles Code of Civil Procedure.

[14] The definition of hearing in the online legal dictionary is as follows:

A legal proceeding where an issue of law or fact is tried and evidence is presented to help determine the issue.

Any proceeding before a judge or other magistrate in which evidence and/or argument is presented to determine some issue of fact or both issues of fact and law (see <https://legal-dictionary.thefreedictionary.com>).

[15] Stroud’s Judicial dictionary defines hearing as follows:

“To “hear” a cause or matter means, to hear and determine it.”

[16] In the present case, the report of the Second Defendant was made available to the parties and they proceeded to deliberate about it and then decided to make submissions on it. The pleadings, pleas in *limine litis* and the ruling of the court on the pleas were also very

much live matters at the hearing. These were deliberated on and the course adopted by the parties was to proceed to make submissions only. That indeed constitutes a hearing and the submission that the process did not amount to a hearing is therefore rejected.

Submission on Expert Evidence

[17] Mr. Derjacques has also submitted that the report of the Land Registrar is not admissible as it does not conform to section 17 (4) of the Evidence Act. That section deals with expert reports.

[18] I am unable to follow Mr. Derjacques' submission on this issue. Perhaps he ought to be reminded that the Land Registrar was the 2nd Defendant in this case. Her evidence was admissible. In any case it was the order of the court that she supply a report on root of title and the chain of ownership or Parcel S2025. The Court can call evidence to elicit the truth of matters of fact raised before it.

[19] The Land Registrar's evidence is compelling and I am persuaded by it as it is pieced together using the transcription of deeds from 1917. This evidence has not been objected to, opposed or rebutted in any way. In any case the superiority of documentary evidence in our civilist tradition cannot be underemphasised. In *Hedge Funds Investment Management Ltd v HedgeIntro International Ltd & 2 Ors* (CC 4/2012) [2017] SCSC 88, the Court stated:

“In this context, it must be noted that the procedural rules of our civilist tradition, namely the rules of evidence are subject to a hierarchy insofar as their weight in deciding a case is concerned. Article 1316 et seq of our Civil Code provides for rules of evidence in respect of “written evidence, oral evidence, presumptions, admissions...” Articles 1341 to 1348 and 1715 of the Code forbid oral testimony in certain circumstances. Further, civil evidence gives priority to documentary evidence over oral evidence (see the Civil Code). Distilled from these rules together with jurisprudence is the presumption that documentary evidence is superior to oral evidence. Implicit in those rules is the belief that documents are more reliable and truthful than the memory of witnesses” (at [27]).

[20] In the circumstances, that submission is also rejected.

Is the Second Defendant a co-owner of Parcel S2025?

- [21] I now address the only issues in this case, that is, whether there was fraud or mistake in this registration of Title S2025 and whether the proprietor, namely the 3/6 co-owner therein (the First Plaintiff) had paid valuable consideration for its acquisition and had knowledge of the omission, fraud or mistake or caused the omission, fraud or mistake or contributed to it by her act, neglect or default.
- [22] The family tree in this case has clarified much. It is reminded that Theresine Labrosse had married Adolphine Nourrice. They had three children Joseph, Louis, and Francine Nourrice to whom their property devolved in equal shares (that is, one third each)
- [23] Joseph Nourrice did not marry and had no heirs. His share devolved onto his two siblings, Louis and Francine.
- [24] Louis Nourrice had four children, namely Marie-Medicie, Marie-Alenda, Marie-Therese and Johnnet. Marie-Therese married, and was the mother of Alex Salome who is the Plaintiff in this case representing his grandfather's Louis's estate.
- [25] Francine Nourrice (later Sifflore by marriage) had one child Marie Therese Nourrice. The First Defendant is the daughter of Marie Therese Nourrice. It is clear from the documentary evidence that Marie Therese Nourrice sold her share in the property partly to Charly Fostel (See Transcription Volume 16/574) and the remaining part to Wilfred Lajoie (See transcription Volume 41/145).
- [26] That being the case, the Second Defendant's notice of first registration to Heirs Victor Nourrice, Auguste Jeremie and Francine Sifflore was erroneous as concerns the latter co-owner as Francine Sifflores's daughter, namely Marie Therese Nourrice, had already alienated her deceased's mother's share in the property.
- [27] The Affidavit of Transmission by death sworn by the First Defendant on 8 January 2003 with the averment that that Francine Sifflore was owner of 3/6 share in Parcel S2025 therefore was also incorrect.
- [28] There has been no evidence produced by the Plaintiff to show the fraud he alleges on the

part of the First Defendant. However, I am satisfied that the averments in her affidavit and the registration a 3/6 share of the land in her name are clearly erroneous. Moreover had care been taken to check the deeds, the mistake would not have arisen.

[29] Section 89 of the Land Registration Act permits the court to rectify the Land Register where it is satisfied that the registration has been obtained by mistake so long as the proprietor obtained the land for valuable consideration and she had knowledge of the mistake, caused the mistake or substantially contributed to by her act, neglect or default.

[30] It is debatable whether inheriting land would amount to obtaining it by valuable consideration. I am however satisfied that the First Defendant substantially contributed to the mistake in the erroneous registration of a 3/6 share of the property in her name by her neglect in properly checking title deeds.

[31] In the circumstances I am satisfied that the Land Register should be rectified to exclude the First Defendant as co-owner in 3/6 share of Parcel S2025.

[32] In respect of the Second Defendant I had already ruled:

“[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.”

[33] I therefore make the following orders:

1. I direct the Land Registrar to rectify the Land Register to remove the First Defendant, Anne Nourrice, as a co-owner of 3/6 share in Parcel S2025.
2. I direct the Land Registrar to register the heirs of Louis Nourrice as the sole

co-owners of Parcel S2025.

3. I order the First Defendant to pay the costs of this suit.

Signed and dated on 6 September 2018

M. TWOMEY

Chief Justice

Delivered at Ile du Port on 7 September 2018

L. PILLAY

Judge

