

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS27/2017

[2018] SCSC 824 -

ESTATE OF LATE MARIE TAYVANNY DELAFONTAINE
(REPRESENTED BY THE EXECUTRIX MONIQUE ADRIENNE)
Plaintiff

versus

CHARLES PHILIP MOREL
First Defendant

ESTATE OF LATE MARIE ANEA MOREL
(REPRESENTED BY EXECUTOR CHARLES PHILIP MOREL)
Second Defendant

REGISTRAR GENERAL
Third Defendant

Heard: 09-11-17, 19-02-18, 15-05-18 and 18-05-18
Counsel: Mr. J. Camille for plaintiff
for first defendant
Mrs. L. Rogmei for third defendant
Delivered: 17 September 2018

JUDGMENT

Vidot J

- [1] The Plaintiff is the executrix of the estate of the late Marie Teyvanny De La Fontaine who died in Seychelles on 25th April 2015 (“the Deceased”). She was so appointed further to a Court Order dated 27th May 2016, (Exhibit P1). The deceased was her mother. The 1st Defendant is being sued in a personal capacity and as executor of the Estate of the late Marie Anea Morel. The 1st and 2nd Defendants were duly served but defaulted appearance before Court and therefore the case proceeded ex-parte. The 3rd Defendant is the Registrar of Land mandated inter alia with the registration of deeds pertaining to dealings in land.
- [2] This Plaint arises from the non-registration of a deed of transfer pertaining to land parcels V2355 and V2356, submitted for registration by Mr. Frank Elizabeth, Attorney-at-Law and Notary. The transfer document relates to the sale of these land parcels by the co-owners, being the 1st and 2nd Defendants to the late Marie Tayvanay De La Fontaine and her husband Camille de La Fontaine. The land sale transaction as per the Plaintiff and Attorneys-at-Law, Bernard Georges and Frank Elizabeth, who were called as witnesses on behalf of the Plaintiff, took place around April 2008. The consideration for these land parcels was six hundred thousand rupees (SR600,000/-). The 3rd Defendant refused to register the transfer document because by letter dated 23rd June 2008, (Exhibit D3) Mr. G. Maurel, Attorney-at-Law, made application on behalf of Julien Morel for the registration of a Restriction over the land titles. Julien Morel is an heir to the estate of the late Marie Anea Morel. The grounds on which the registration of that Restriction is based is because the heir of the latter had not been consulted in regards to the sale. The registration of the restriction was confirmed by a Restriction Order dated 01st September 2008 (Exhibit D2).
- [3] The 3rd Defendant filed a Statement of Defence whereby most averments pertaining to the capacity of the parties, the sale transaction, including the payment agreement were denied particularly because such averments were not within the knowledge of the 3rd Defendant. It was averred that there were 2 sale transfers dated 17th August 2015 submitted to its office, one for the transfer of undivided shares of Louise Marie May Morel and Mr. Ange Charles Morel to one Philippe Morel and that both transfers were returned in view of the Restriction, entered in 2008 by Mr. Julien Morel. The 3rd Defendant further averred that

the necessary steps provided for under the Land Registration Act had not been adopted to have the restriction lifted before the transfer document could be registered. The 3rd Defendant further pledged its undertaking to follow any Order from this Court.

[4] The Plaintiff testified that she became aware of the purchase transaction of the land parcels through her mother. She was aware that the chambers of Mr. Frank Elizabeth was retained to prepare the transfer document and facilitate the purchase. Mr. Elizabeth was acting on behalf of the Morels. This was confirmed by Mr. Elizabeth. The consideration was €60,000/- which was to be paid by Mr. B. Georges, Counsel for the Deceased and Camille de La Fontaine. She confirmed that her mother and Mr. Camille De La Fontaine signed the transfer document. She confirmed that her mother and the latter have been residing in the house on the land titles since 2008 when the purchase was agreed upon and payment made.

[5] Mr. B. Georges deponed that he acted on behalf of the Deceased and Mr. Camille De La Fontaine. He was aware that the latter was selling property he inherited from his father. Mr. Georges was the executor of latter's estate. The property was on Cerf Island. Mr. De La Fontaine used proceeds from that sale to purchase the land parcels which is at the crux of this case and are situated at Chenar Estate, Mont Fleuri. When the sale of the Cerf Island property was conducted, the payment was received by the chambers of Mr. Georges, credited to a bank account in Paris with the Banque Francaise Commerciale. By letter dated 08th May 2008 (Exhibit P2) Mr. Elizabeth had provided instruction that payment should be credited to the account of Philippe Antoine Morel held with Mauritius Commercial Bank based in Mauritius. The money was accordingly transferred to that account as confirmed by Exhibit P4.

[6] Receipt and payment of the consideration for the sale was acknowledged by Mr. Elizabeth when he testified. He confirmed that he submitted the transfer documents for registration but was subsequently informed about the Restriction. By letter dated 17th March 2008 (Exhibit P3) addressed to the Land Registrar, he protested against the imposition of the Restriction. He brought to the attention of the Land Registrar a Court of Appeal case; **Jane Westergreen v Suzanne Whiting & Ors [1998] SCCA 19** (13th Aug 1998) wherein it was stated that "*if any the part of the succession consists of immovable property, the property*

shall not vest as of right in any of his heirs but in an executor who shall act as fiduciary....”. This position is further reinforced by Article 774 (2) of the Civil Code of Seychelles which reads; *“A succession consisting of immovable property only or of both movable and immovable property shall devolve upon an executor who shall act as a fiduciary, as laid down in article 724 of this Code.”*

[7] The 3rd Defendant called as witness Mr. Fred Hoareau, Deputy Registrar. He confirmed receipt of the transfer document. He produced certificates of Official Search (Exhibits D5 and D6) confirming the registration of the Restriction against titles V2355 and V2356 respectively.

[8] Section 84 of the Land Registration provides as follows;

(1) *“For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.”*

(2) *“ A restriction may be expressed to endure-*

(a) for a particular period; or

(b) until the occurrence of a particular event; or

(c) until the making of a further order,

and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register.”

(3) *“The Registrar shall make and enter a restriction in any case where it appears to him that the power of the proprietor to deal with the land, lease or charge is restricted.”*

- [9] A restriction may be lifted in circumstances listed in Section 86 of the LRA which states
- (1) *“The Registrar may at any time, upon application by any person interested or of his own motion, and after giving the parties affected thereby an opportunity of being heard, order the removal or variation of a restriction.”*
 - (2) *“Upon the application of any proprietor affected by a restriction, and upon notice thereof to the Registrar, the court may order a restriction to be removed or varied, or make such other order as it thinks fit, and may make an order as to costs.”*
- [10] Having evaluated the evidence, I am satisfied that there was a valid sale by the 1st and 2nd Defendants to Andre Ernest Camille De La Fontaine and Tayvanny Marie De La Fontaine. I am satisfied that the consideration of €60,000/- has been paid to and received by the 2nd Defendant.
- [11] As per Exhibit D2, the Restriction was to remain in force for 6 months or until the Registrar or the Court makes a further Order. I understand that to mean that 6 months would be the maximum period for the Restriction to remain unless the court or the Registrar makes any further Order. Mr. Fred Hoareau admitted that once the time specified is up and nothing else has been done, then the Restriction will lapse. In this case after the 6 months, there was no application from those who applied for the Restriction to extend it further and therefore it should have lapsed. Section 86 of the LRA, above reproduced, provides the manner in which the Restriction could have been lifted. The Plaintiff did not take steps to have the Restriction lifted.
- [12] Therefore, I declare the sale of land titles V2355 and V2356 was a valid sale and order the Registrar of Lands to lift the Restriction registered against them and register the land titles in the name of the Plaintiff and Andre Ernest Camille De La Fontaine as co-owners of the land titles.

Signed, dated and delivered at Ile du Port on 17 September 2018



M. Vidot

Judge of the Supreme Court