

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2019] SCSC ...402
CS 119/2012

In the matter between

FLAVIENNE JEANNE
(rep. by Mr. Chetty)

1st Plaintiff

IVERSON JEANNE

2nd Plaintiff

and

GAINLUCA VALENTINO
(rep. by Ms. Wong)

Defendant

Neutral Citation: *Jeanne v Valentino* (CS 119/2012) [2019] SCSC 402

(22 May 2019)

Before:

Nunkoo J

Summary:

Action for acquisitive prescription-article 2229- need for publicity.

Heard:

Delivered:

[22 May 2019]

ORDER

The land Registrar to register part of the land in the name of the plaintiff following a proper survey report.

JUDGMENT

NUNKOO JUDGE

[1] The Plaintiffs by plaint dated 12 June 2012 are praying this court for an order declaring that they are co-owners in equal portion of part and parcel PR 2596 more specifically the part on which the Plaintiffs house is situated and the extensive area surrounding the house

on the basis that the Plaintiffs have acquired the said part and parcel PR2596 in equal portion by virtue of acquisitive prescription having been in possession of the said part of the land in their capacities as owners for more than twenty years.

- [2] The Defendants have pleaded that the possession of the Plaintiffs is not uninterrupted or unequivocal; that the Plaintiffs were evicted from the property by an order of the Court dated 19 October 2011 in the case of *Olaf v Iverson Jeanne and Flavienne Jeanne CS 98* of 2011 and that this case was not appealed by the Plaintiffs.
- [3] As regards the assertion of the Defendant that there was an order for eviction made as per the judgment given against the Plaintiffs ordering them to vacate the land that they have been occupying it is noteworthy that the Court is in presence of evidence showing that the said *ex parte* judgment obtained against the Plaintiffs was set aside on 19th October in the interests of justice.
- [4] The Plaintiff testified that she has lived on Parcel 2596 for 39 years. That they have built their house there and have been cultivating the land since then. When they went to live there, their son was three years old; he is now 42.
- [5] The next witness was Plaintiff's son, Elvis Jeanne who deponed to the effect that he has been living there since his childhood but moved to Mahe after finishing his polytechnic that is in 1998, and that they have been cultivating and staying on the said land and have always regarded it as theirs.
- [6] The law governing acquisitive prescription (*uscapion*) in Seychelles is found in the provisions of Articles 2229 - 2235 and 2261 of the Civil Code of Seychelles. Article 2229 of the Civil Code state that "[i]n order to acquire by prescription, possession must be continuous and uninterrupted, peaceful, public, unequivocal and by a person acting in the capacity of an owner." In their submissions, the Defendants relied on the case *Denis v Bonnelame (CS 91/2015) [2017] SCSC 992* (14 September 2017) to argue that the Plaintiff has failed to satisfy the requirement of public knowledge needed to make a case for acquisitive prescription. Indeed, one of the reasons the court dismissed the plaint in the *Denis v Bonnelame* case was that there was "no evidence adduced on the issue of the

publicity of the possession. No one was able to state that third parties knew that the Plaintiff was the possessor of Parcel C954”.

[7] The Defendant is arguing that the Plaintiff has not proven that their prescription was public knowledge as required under Article 2229 of the Civil Code. The *Denis v Bonnelame* case seems to suggest that a third party needs to state that the Plaintiff possessed the land under dispute to prove the requirement for publicity.

[8] The court in the case of *William & Anor v Dogley (CS 61/2005) [2007] SCSC 87* (30 May 2007) stated that “Normally, the phrase “third party” presupposes the existence of parties to an agreement or transaction and of one who is not a party to such an agreement or transaction but who claims a right or interest under the agreement. Article 555 would then apply notwithstanding that there are only two parties involved viz: the owner of the land and the person who has erected a structure thereon with his own materials”. Article 555 of the Civil Code provides that:

*“When plants are planted, structures erected, and works carried out by a third party with materials belonging to such party, the owner of land, subject to paragraph 4 of this article, shall be empowered either to retain their ownership or to compel the third party to remove them”. The case *Laporte v Chetty & Anor (CS 54/2016) [2019] SCSC 251* (27 March 2019) upheld this reference of third parties and noted that a third party “would include an owner of an adjacent property”.*

[9] Article 2229 of the Civil Code state is clear that publicity is an element needed in making an acquisitive prescription claim. A review of case law seems to suggest that third parties should have knowledge of the acquisitive prescription claim. The court has been broad on the interpretation of a third party. The court has held third parties to be any party other than the land owners, as such the Plaintiffs children qualify as third parties. The Defendants argument that third parties cannot be the owners’ children is not well founded.

[10] Furthermore, in the case *Prosper & Ano. v Fred (SCA 35/2016) [2018] SCCA 41* (14 December 2018) the Court of Appeal noted that “[t]here is also no adverse evidence adduced on the issue of the publicity of the possession” in their judgement of a land

encroachment dispute. This statement seems to place the onus on the party disputing a claim of acquisitive prescription to bring adverse evidence that shows that the requirement for publicity under Article 2229 was not met.

- [11] It has been submitted by the Defendant that the Second plaintiff having passed away and no amendment having been made to the plaint, the second plaintiff has not proved his claim. The question is in terms of procedure: what happens if one of the parties passes away?

The law relating to death of a party in a suit is found in Article 176-181 Seychelles Code of Civil Procedure

- [12] Article 176 covering with the cause of action states:

A cause or matter shall not become abated by reason of the death, bankruptcy or insolvency, or change of status or of capacity, of any of the parties, if the cause of action survives; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the hearing and the judgment.

The plaint was pursued by the first plaintiff and the cause of action being for the acquisitive prescription I do not find any irregularity that can prevent the first plaintiff pursuing the matter.

I am satisfied that the conditions of acquisitive prescription have been met. In the absence of a proper surveyors report specifying exactly the area that the Plaintiff wants to acquire I am guided by the approach adopted by *Judge Bernard Renaud in the case Paul Peter Aukorosis v Irene Jeannie and William Jeannie CS 226 of 2008* and submitted to me by Learned Counsel for the Defendant and for which I am thankful to her.

I therefore order that the house occupied by the Plaintiff number One and an area of 10 meters all around the house forming part of parcel PR 2596 be transferred in the name of the Plaintiff Number One and the Land Registrar is hereby ordered to register same in her name after a proper surveyors report showing the exact extent of the property to be transferred is drawn and produced to him.

Signed, dated and delivered at Ile du on 22 May 2019.



Nunkoo J