

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 737
MC76/2018

In the matter between:
JEAN CLAUDE LARUE
Of Baie Ste Anne Praslin
(rep. by Joel Camille)

Applicant

and

GEORGETTE PHILOMENA HERTEL
Of Baie Ste Anne Praslin
(rep. by Brian Julie)

Respondent

Neutral Citation: Larue v Hertel (MC76/2018) [2018] SCSC 737 (6 September 2019).
Before: Govinden J
Summary: Application for a writ *habere facias possessionem* granted. Applicant has a clear title to the property
Heard: 26 June 2019
Delivered: 6 September 2019

RULING

GOVINDEN J

[1] This is an application for a writ of *habere facias possessionem*. The Applicant alleged that he is the owner of a three bedroom house situated at the Ex Moulinie, Baie Ste Anne, Praslin, herein after also referred to as “the property” by virtue of a purchase agreement entered into between him and the Property Management Corporation, herein after also referred to as “the PMC”, on the 22nd of June 2018. In his supporting affidavit to the application, the Applicant aver that the Respondent have failed or refused to vacate and give him possession of the property, of which she is in illegal occupation, this despite his repeated requests for her to vacate.

- [2] The Applicant avers that there is an urgent need for him to take possession of and occupy the property for his own used; occupation and enjoyment as the Respondent has no right or legal interest in it. He avers further that as a result of the illegal occupation the Respondent is a trespasser and whatever license, permission or authority which may have been given to him have now been expressly withdrawn.
- [3] In his written submissions Learned counsel for the Applicant also argued that a writ *habere facias possessionem* is available to any person who is dispossessed otherwise than by law and the Applicant being dispossessed of his rights of occupation of the property can apply for a writ on the basis of the agreement that he has with the PMC.
- [4] In support of these averments the Applicant have attached a copy of a document entitled, “PROPERTY MAMAGEMENT CORPORATION, PURCHASE AGREEMENT”, dated the 22nd of June 2018 and a “notice to vacate” document addressed to the Respondent dated the 28th of May 2018.
- [5] The Applicant also relies on a judgment of the Supreme Court, delivered by the learned Chief Justice in *CS 39/15*, a case previously brought by the Applicant against the Respondent and the PMC in which he had prayed for damages an order to be declared as sole owner of the property.
- [6] The Applicant, on this basis, applies for an order from this court, ordering the Respondent to quit, leave and vacate the property and for a writ of *habere facias possessionem* to be issued against her.
- [7] The Respondent on the other hand filed an affidavit in reply to the Application. In her reply, the Respondent denies the title of the Applicant and avers the latter’s title is questionable and dubious and that reference has been made in the Application to a purchase agreement in the name of both the Applicant and the Respondent. Relying on the authority of *Delphinus Turistica Maritima S.A v Villebrod (1978)*, *SLR 121*, the Respondent avers that a writ *habere facias possessionem* may only be issued on the application of an owner or the lessor of property, when the court is satisfied that the Respondent has no serious defence to make thereto. She avers that she is not in illegal

occupation of the property and as such prays to this court to dismiss the Application with costs.

- (1) An owner must show clear title, not just the title deed to the property.
- (2) If the owner proves title, the onus is on the defendant to show ownership or occupation rights over the property.
- (3) If the defendant raises a serious and bona fide defence, the writ will not be granted.
- (4) Simple denial of title is not a valid defence.
- (5) The defence must relate to real not personal rights.

[8] I have given careful attention to the pleadings, including the affidavits filed in this case, together with the written submissions of both parties. I have further given careful consideration to the law regarding the subject of the grant of the writ *habere facias possessionem*.

[9] There is settled law in this jurisdiction when it comes to the grant of the writ *habere facias possessionem*. The general principles enunciated in the cases of *Delphinus Turistica vs Villebrod (1979) SLR 121* and *Emerald Cove v Intour SCA, 5 2000*, can be summed up as follows;

[10] The principal matter for determination in this case is whether the Applicant has a clear title to the property and if he has, whether he can rely on this title to apply for the writ. It is trite law that if the Applicant establishes his title to the property and that the Respondent has no valid defence a writ must be issued

[11] On this issue I find that the Applicant who has entered into the purchase agreement with the PMC for the purchase of the three bedroom house situated at the Ex Moulinie, Baie Ste Anne, Praslin, is still not the owner of the property at the time of filing of this case. He has no title of ownership as he is still repaying the monthly purchase price in accordance with the agreement. The ownership still remains with the PMC, this title will be perfected and transferred to the Applicant once the purchase price is fully paid off, without any balance, in accordance with the schedule to the purchase agreement.

- [12] There being no right of ownership, there may however be other legal rights available to the Applicant in the property. Admittedly, he is the person who has entered into the house purchase agreement and not the Respondent .He is the prospective purchaser and the PMC is the prospective Seller in the purchase agreement. The Respondent is not a party to the agreement. Moreover, the Applicant is the only person paying back the purchase price for the property, failing which , the occupant, in this case being the Respondent, has to hand over the PMC the vacant property and the latter would refund the purchase price already paid. (clause 13 and 14 of the purchase agreement). In consideration of this contractual obligation the Applicant is to use the property as a private dwelling house for himself or his family, (clause 11 (b)).
- [13] Based on the above facts I am of the view that although the Applicant is not the owner of the property, it does not mean that he has no valid title, I find that his title can be categorized as that of a lessee in a Lease -Purchase Contract or a “Rent to Own Contract”, (*location - vente*).This contract gives to the lessee-buyer and the property owner reciprocal rights and obligations in order to allow a property to be rented with the option for the lessee-buyer to purchase the property at the end of the tenancy. It is an instrument used to facilitate ownership of immovable by individuals who would otherwise have difficulties to secure loan facilities. This contract is very much contemporaneous to the Civil Code and hence cannot be found as one of the specific contracts under provisions of the Code. Nonetheless, the essence and the principle of this contract is recognized in our law. A combine reading of Article 1709 and 1711 of the Code referring to contract of lease of immovable and that of article 1582, relating to contract of sale, shows that this contract is legally possible in Seychelles. As to whether it falls into both or any of the two *regime* is an argument that have taken place in other jurisdictions, but is one that is a moot point in this jurisdiction.
- [14] In the previous Case filed by the Applicant against the Respondent and the PMC (CS39/15), the Applicant had, amongst other prayers, also prayed that he be declared as the sole owner of the property. The learned Chief Justice after considering the evidence led before her, on this point, held, “*However, that is not an order that can be granted in*

the circumstances as neither he nor the First Defendant are the owners of the property in question . Ultimately, that is a decision for the Second Defendant based on their estimation as to which party should have exclusive possession of the house given the ability of the Plaintiff to continue making the loan repayments to the house”. In that the court rightly found that ownership belonged to a third party based on the specific prayer of the Plaintiff. However, here, the issue of title, as compare to ownership rights, is more profound and has a more far reaching effect, both given the pleadings and the nature of the action. The Applicant is pleading that he has valid and clear title to the property whether it be of ownership or otherwise and the Respondent denies that.

[15] Having found that the Applicant has clear title as the lessee-buyer in the property and the Respondent having not relied on any other defences other than denying the title of the Applicant I am of the opinion that the Application should be granted.

[16] I therefore order the Respondent to quit, leave and vacate the property, namely a three bedroom house situated at the Ex-Moulinie Estate, Baie Ste Anne Praslin and should she failed to do so, I issue a Writ *Habere Facias Possessionem*.

[17] I award cost in favour of the Applicant.

Signed, dated and delivered at Ile du Port 6 September 2019

Govinden J