

SUPREME COURT OF SEYCHELLES

Reportable/
[2019] SCSC 1073
MA 162/2019
Arising in CS 80/2017)

In the matter between:

PIERRE RICHET

PASCALE RICHET

CHRISTELLE LEMORE-RICHET

(rep. by Elvis Chetty)

Plaintiffs

and

CHRISTOPHE PAYET

(rep. by Kelly Louise)

1st Respondent

GERARD MAUREL

(unrepresented)

2nd Respondent

Neutral Citation: *Richet and Ors v Payet and Anor* (MA 162/2019 arising in CS 80/2017)
[2019] SCSC 1073 (3rd December 2019).

Before: Pillay J

Summary: Applicants, have moved the Court for an order requiring Mr. Gerard Maurel to deliver and/or produce the Will of the Defendant, Respondent, executed on 3rd March 2008 to the Court.

Heard: By way of submissions

Delivered: 3rd December 2019

ORDER

The motion is allowed and this Court orders Mr. Gerard Maurel to deliver to and produce to this Court the Will of Christophe Payet made on 3rd March 2008.

RULING

PILLAY J

[1] The Plaintiffs, Applicants, have moved the Court for an order requiring Mr. Gerard Maurel to deliver and/or produce the Will of the Defendant, Respondent, executed on 3rd March 2008 to the Court.

[2] The Defendant opposes the Application on the basis that the Will remains unregistered since the Defendant is still alive. The Defendant argues that since the Will only has legal effect once the maker of the Will is deceased producing the Will will only cause prejudice to the Defendant and will have little probative value.

[3] In summary the Plaintiffs case is that they agreed with the Defendant to purchase parcel PR2465 in his name, in view of the fact that the Plaintiffs were all non-Seychellois. In spite of the fact that the property was to be registered in the name of the Defendant, the Plaintiffs would be the real, beneficial and ultimate co-owners of the property.

[4] According to paragraph 3 (vi) in order to protect and safeguard the Plaintiff's interest in parcel PR2465 the Defendant would execute the following documents;

(a) a testament by which the Defendant would give, devise and bequeath parcel PR2465 and any building situated thereon to the 3rd Plaintiff;

(b)...

[5] Mr. Gerard Maurel has indicated that he has no objections to producing the Will subject to an order of the Court for such production.

[6] Mr. Chetty relies on section 23 (2) (c) of the Notaries Act which provides as follows:

Subsection (1) (a) shall not apply to –

(a)...

(b)...

(c) a deed which the court has ordered the notary to deliver to any person named in the order;

Section 23 (1) provides as follows –

Subject to this Act, a notary shall not –

(a) deliver an authentic deed or authenticated copy of a deed;

(b) give any information to any person other than the person interested, his heirs, beneficiaries or executor or a person to whom the court has ordered the notary to do so in respect of a deed,

drawn up by the notary or deposited with the notary on accordance with this Act.

[7] Paragraph 3 of the Plaint above is noted as well as the evidence of Mr. Richet and the affidavit of Mr. Daniel Belle that a Will was executed by Mr. Payet on 3rd March 2008 before Notary Gerard Maurel.

[8] There is no indication that the Will was a secret Will.

[9] The Plaintiffs' attempt to produce the Will is in the view of this Court their attempt to prove their case, effectively to show that the alleged agreement that the parties had was put into effect by the Defendant executing a Will bequeathing the property to the third Plaintiff on his death. The Defendant has not shown how he will be prejudiced as a result of the production of the Will. As rightly stated by Defendant's counsel the Will has no effect until the death of the Defendant. Indeed there is no guarantee that this particular Will will be the final Will of the Defendant. However the Plaintiffs are not seeking to give the Will any legal effect but are attempting to show the intent of the parties and prove their case in that there was an agreement for the Defendant to hold the property for their joint benefit and then bequeath it to the third Plaintiff. In that sense the probative value of the production of the Will, its ability to show that a disputed point if more or less true, outweighs the prejudicial value.

[10] Since the Defendant denies and puts the Plaintiffs to proof that there was an agreement and that there was a Will following on from that alleged agreement, it is for the Plaintiffs to show that there was an agreement and a Will. Hence the production of the Will itself is very much relevant to the issues in dispute and to be decided.

[11] The Defendant's counsel further argues that the Will cannot be produced since it has not been duly stamped. As noted by counsel a Will will not be stamped until the death of the

testator. In effect it is at the time of death of the testator and registration that a Will is given legal effect. As I stated earlier it is not the Plaintiff's case that they want to give effect to the Will or its contents but as a document showing what the intention of the parties were.

[12] Noting the above the motion is allowed and this Court orders Mr. Gerard Maurel to deliver to and produce to this Court the Will of Christophe Payet made on 3rd March 2008.

Signed, dated and delivered at Ile du Port on

Pillay J