SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 30
CS 43/2016

In the matter between

[redacted] W[redacted] **Plaintiff**
(rep. by Sundaram Rajasundaram)

and

[redacted] W[redacted] **Defendant**
(rep. by Joel Camille)

Neutral Citation:	*W[redacted] v W[redacted]* (CS 43/2016 [2020] SCSC 21 January 2020).
Before:	Twomey CJ
Summary:	challenge to testamentary disposition - Article 913 Civil Code of Seychelles - prescription
Delivered:	21 January 2020

ORDER

The suit is dismissed as it is prescribed.

JUDGMENT

TWOMEY CJ

[1] The Plaintiff brought a suit against the Defendant in which he claimed that his father, the late [redacted], (hereinafter the Deceased) unlawfully disinherited him by a Will made on 29 October 2009.

[2] He avers that the Deceased, in breach of Article 913 of the Civil Code, bequeathed all his movable and immovable property to the Defendant who could by law only have inherited half of the Deceased's property.

[3] In her Statement of Defence, the Defendant has pleaded in *limine litis* that the Plaintiff's suit is prescribed and cannot be maintained. She has also stated that the Plaintiff had been given gifts *inter vivos* amounting to his share of the Deceased' estate and that therefore the testamentary dispositions by the Deceased was not invalid.

[4] The Plaintiff testified that he was born on 3 April 1978; the Deceased was his father and his mother was the Deceased's first wife. They had married on 25 September 1977 and he was their only child. Hs mother had subsequently divorced the Deceased in 1994.

[5] The Deceased subsequently remarried the Defendant but before his marriage had owned immoveable property at Pointe Au Sel, namely Parcel C519 and he had grown up in the house thereon until his mother's divorce. His mother had never settled her share of the matrimonial property with his father. He had also never received anything from his father in this regard while he was alive and he was therefore entitled to his share of the Deceased's estate as a legal heir. The property had after his father's death, been transferred into the sole name of the Defendant.

[6] The Plaintiff stated that he only came to know of the Will in 2015 when he heard that the Defendant was attempting to sell the property and discovered that a Will had been registered. His father had also left moveables, namely shares in a business, Maison d'Orchide and money in a bank account. At his death he also owned a car, a blue Picanto, registration number S2712.

[7] A joint expert, a quantity surveyor, Mr. Stanley Valentin had valued the property at Point au Sel for SR1,504, 539. He would be happy for his share of the same in cash.

[8] His father, together with the Defendant, also owned a business Maison d'Orchide. He also had a bank account in the Seychelles Savings Bank.

[9] In cross-examination, the Plaintiff admitted that he did not know much about the business conducted by Maison d'Orchide or that the car had been sold off. He had not approached the Defendant, as executor of his father's estate about these matters or about the bank account held by his father. He denied that he was being pressurised by his uncle, [redacted]

[redacted]k to bring this case as a consequence of the Defendant claiming a right of way to her property against Mr. Jean-Claude Woodcock.

[10] The Plaintiff called the representative of the Seychelles Commercial Bank, Ms. Gracy Arrissol as a witness. She testified that the Plaintiff and the Deceased had taken a loan with her bank and that the Defendant had repaid it in September 2016 (Exhibit P2).

[11] The Plaintiff called his mother, Mrs. Lorna Awale who had married Francis Woodcock, the Plaintiff's father in 1977. She confirmed that together they had had a child, the Plaintiff, who was born on 3 April 1978. They had subsequently divorced in 1994 but had never settled any matrimonial property. The Deceased's house was on family land and the Deceased and herself had built it on around 1980. To her knowledge, her son had also not received anything from his father in this respect.

[12] In cross-examination, she admitted that she had purchased a house at Anse Louis but not with money received from the Deceased. She stated that with her son she had visited the Deceased when he was ill but was not familiar with his medial ailments or medication he had had to obtain.

[13] The Defendant testified that she had married the Deceased in 2003 and he had passed away in 2009 suffering from renal cell carcinoma. He received treatment overseas for which he had to pay. They met those payments together from loans they took from Barclays Bank and Seychelles Commercial Bank.

[14] She stated that the bank account with the Seychelles Commercial Bank produced by the Plaintiff as Exhibit P1 related to a loan taken for the house. The Bank, then the Seychelles Savings Bank, had threatened to repossess the house and she had taken over the repayment of the loan after a charge had been entered by the bank against the property (Exhibits D4 a and D 4 b). The repayment will be completed in 2022.

[15] The Deceased had told him he had two sons, a legitimate one, namely the Plaintiff and another illegitimate one. He had also informed her that the Plaintiff's share of his property had been settled in the divorce settlement.

[16] [redacted] was a handicraft business name owned by herself, which she had run since 2006. She produced her licence to run the business. The Deceased had never been involved in the business. She had held two joint accounts with the Plaintiff, one with the Seychelles Commercial Bank that she had already disclosed and one with Barclays Bank, which he closed after the Deceased, passed away. She could not remember how much had been in it.

[17] The car mentioned by the Plaintiff had been purchased by both herself and the Deceased and the loan had been taken for its purchase which she had had to repay. She had sold the car but she could not remember when she had sold it off.

[18] She stated that she had made many alterations of the house subsequent to the Deceased passing away. She agreed with the valuation of the house submitted.

[19] Counsel for the Defendant has submitted that the suit was time barred pursuant to Article 2271 as the period of prescription started running on 29 October 2009 when the Will was executed. He relies on the authority of *Savy v Rassool* (1981) SLR 201 for the proposition that the right of action for recovery of the purchase price of property was five years and consequently in the present case, the matter having been filed in 2106, some seven years later, the matter was clearly prescribed.

[20] Counsel further submitted in the alternative that the action was also prescribed pursuant to Article 920 of the Civil Code, as an action for reducing the proportion of the estate disposed by Will was only so liable at the opening of succession. He relied for this proposition on the case of *Contoret and Ors v Contoret* (1971) SLR 257.

[21] Counsel also submitted that the Plaintiff was wrong in bringing the present action under Article 913 of the Civil Code seeking for the return of the whole property to the hotchpot as opposed to a reduction of the bequest, which renders the plaint bad in law. It should have been brought under Article 920 and 921. Further, the Plaintiff has not proved the value of the gift and the estate as the opening of succession.

[22] Counsel also submits that in the event that the portion of the bequest is reduced, then the debts of the Deceased should be taken into account when the value of the property is assessed for distribution.

[23] Counsel for the Defendant has submitted that the action is not prescribed as the Plaintiff only came to know of the Will in 2016 when he was approached regarding the sale of his father's land.

[24] With regard to the Defendant's submission regarding the reduction of the value of the estate due to the Deceased's debts, the Plaintiff has submitted that no evidence of such debts has been adduced by the Defendant.

[25] The following issues were agreed by the parties to be decided by the court:

1. Whether the dispositions of the Will were valid in terms of Article 913 of the Civil Code of Seychelles

2. If not, should the estate be redistributed

3. If the estate is to be redistributed what shares therein should be allocated to the parties

[26] With respect to the first issue of whether the dispositions of the Will were valid, it must be pointed out that it is not disputed that the Plaintiff is the son of the Deceased who passed away in 2009.

[27] I also find that despite the statement of the Defendant there is no evidence that the Plaintiff had received any gift *inter vivos* from the Deceased capable of reducing the portion of the Deceased's estate to which he was by law entitled.

[28] In this respect the following provisions of the Civil Code are applicable:

Article 913 Gift inter vivos or by will shall not exceed one half of the property of the donor, if he leaves at death one child; one third, if he leaves two children; one

fourth, if he leaves three or more children; there shall be no distinction between legitimate and natural children except as provided by article 915 - 1.

... (emphasis added)

Article 920 Dispositions either inter vivos or by will which exceed the disposable portion shall be liable to be reduced to the size of that portion at the opening of the succession.

Article 921 The reduction of dispositions inter vivos shall only be demanded by those in whose favour the law has provided the reserve, by their heirs or assigns; donees, legatees and creditors of the deceased shall not demand it nor shall they benefit from it.

[29] The Defendant has submitted that the Plaintiff should have grounded his plaint under the provisions of Article 920 and 921 above. I fail to follow this argument. The plaint has clearly stated that the Will is invalid for failing to meet the requirements of Article 913.

[30] Articles 920 and 921 are consequential and procedural provisions respectively of Article 913: if the disposition in the Will exceeds the disposable portion under Article 913, the bequest will be reduced and such reduction may only be asked by certain persons.

[31] I find therefore from the application of the law to the evidence adduced that the provisions of the Will relating to the portion bequeathed to the Defendant to have exceeded the disposable portion allowable by law. She could only have received half of her husband's estate.

[32] With respect to the second issue of whether the estate should be redistributed, the plea in *limine litis* relating to the prescription of the suit now comes into play. The Deceased died in 2009 and his Will was registered on 2 December 2010 – that was notice to the whole world. It is the Defendant's contention that the present suit filed in 2016 was therefore prescribed by virtue of Article 2221 by at least one year.

[33] At this juncture it is important to bring to light the relevant legal provisions relating to prescription:

Article 2219 1. Prescription involves loss of rights through a failure to act within the limits established by law.

2. It is a means whereby, after a certain lapse of time, rights may be acquired or lost, subject to the conditions established by law.

Article 2271 1. All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262 and 2265 of this Code. ...

Article 2262 All real actions in respect of rights of ownership of land or other interests therein shall be barred by prescription after twenty years whether the party claiming the benefit of such prescription can produce a title or not and whether such party is in good faith or not.

[34] It must first be noted that any action to recover movable property is prescribed by virtue of Article 2271.1 above. Hence the Plaintiff cannot recover any portion of the movables transferred to the Defendant.

[35] With respect to the land at Pointe Au Sel, in order to decide whether the suit is prescribed or not I must also take into account the provisions of Article 526 of the Civil Code which defines immovable as follows:

Article 526 Immovable by reason of the purpose to which they apply are:

A usufruct relating to immovable property;

Easements;

Actions to recover immovable property. (emphasis added)

[36] In *Reddy & Anor v Ramkalawan* (CS 97/2013) [2016] SCSC 31 (26 January 2016), the Supreme Court, in reference to these same provisions in respect of the validity of a gift *inter vivos* and the prescription of a suit challenging the same stated:

"[16] To ascertain the correct prescriptive period applicable to an action it is necessary to classify it. ... At first blush, ... it would appear that [if] this is a case involving property ... it would be the prescriptive period for immoveables that should apply...

But Article 918 states: "The value of full ownership of the property alienated, whether subject to a life annuity or absolutely or subject to a usufruct in favour of one of the persons entitled to take under the succession in the direct line, shall be set against the disposable portion; the excess, if any, shall be returned to the estate. This calculation and return shall not be demanded by other persons entitled to take under the succession in the direct line who have agreed to the alienation, and in no circumstances by those entitled in the collateral line." (Emphasis added).

[17] The perceived conflict between Articles 526 and 918 has been the cause of much argument in establishing the prescriptive period in actions for excessive gifts where the gift is immoveable property. The Civil Code does not state the position clearly. In the absence of clear legislative direction, the Court has sought to balance the conflict between what may be perceived as an action to recover property and an action to recover the value of the property.

[18] There is now a jurisprudence constante not only in France and in Seychelles but in other countries where the French Civil Code has formed the basis of civil law to the effect that an action for the reduction of a gift and its return to the hotchpot or collation as it is called in Louisiana, is regarded as an action relating to the value of the donation to the succession, and not in terms of the actual donation itself. Hence it is not the immoveable property that is the subject of the action but the value of the immoveable property. ...

[19] ...in terms of Seychellois jurisprudence ...the twenty year prescription provision does not apply .. [See] Clothilde v Clothilde (1976) SLR 247 and Hoareau v Contoret (1984) SLR 151."

[37] It is clear therefore that an action for reduction of a bequest in a Will is bound by the five-year limitation rule even if it relates to immovable property as it is the value of the property that is taken into account and not the property itself. *Reddy* also qualified the time from when the five-year prescription would run:

> *[20... the five-year prescriptive period is not triggered by the transfer of the property but rather by the death of the de cujus. Both Contoret v Contoret (1971) SLR 257 and Hoareau v Contoret (supra) are authority for the principle that the heirs' rights vest at the moment of death...*

[38] Counsel for the Defendant has rightly raised the plea in *limine litis* and is also right to rely on the authorities of *Contoret* and *Savy* (supra). These same issues were again raised before the Supreme Court in *Confiance & Ors v Mondon* (CS 35/2017) [2018] SCSC 777 (17 August 2018) and decided similarly. In the present suit, the Deceased died on 27 November 2009 and the suit was filed on 20 May 2016. The action was therefore clearly prescribed.

[39] The suit therefore has to be dismissed and I so Order.

Signed, dated and delivered at Ile du Port on 21 January 2020

Twomey CJ

SEAL OF THE SEYCHELLES SUPREME COURT

Dr. Mathilde Twomey
Chief Justice
Supreme Court of Seychelles

Read out in open court in presence of
to parties on the 21 Jany 2020 by Judge
M.N. Burhan

21-01-2020