

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 206
MA 313/2018
Arising in CS24/2017

In the matter between

FABIEN VILLEMONT
(rep. by Edith Wong)

Applicant

and

1. CHARLES DUBIGNON

2. MEDGE DUBIGNON
(rep. by Alexandra Madeleine)

Respondents

Neutral Citation: *Villemont v Dubignon & Anor* MA 313/2018) [2020] SCSC 206 (27 March 2020)

Before: Twomey CJ

Summary: Application for execution of judgment- rectification of judgement by consent - powers of the court - new trial

Heard:

Delivered: 27 March 2020

ORDER

Application dismissed.

JUDGMENT

TWOMEY CJ

[1] The parties entered into an agreement by consent on 24 January 2018 in which it was agreed that after valuation of Parcel V4105 the Plaintiff would be entitled to twenty-five percent of its value and to the movables in the house on the property. It was also a term of the judgment that thereafter the Respondents would buy the Plaintiff's share in the

property within a period of six months from the date of the valuation. If the Respondents failed to pay the Respondent his share within the time agreed, the Applicant would then have six months to buy the Respondents' share in the same property and failing which the property would be sold by licitation.

- [2] On 28 December 2018, the Applicant filed an application for the execution of the judgment pursuant to section 225 of the Seychelles Code of Civil Procedure averring that the valuation made by the Valuer was incomplete and could not be relied on for the execution of the judgment. He also averred that, contrary to the judgment by consent, he had not been allowed into the house to conduct an inventory of the movables contained therein for him to receive the same.
- [3] In answer to the application, the First Respondent has averred that the Surveyor's report is biased, inaccurate and exaggerates the value of the property. In respect of the movables, the First Respondent has averred that the Applicant was not denied access to the house and that the movables mentioned in the judgement by consent to be given to the Applicant were only those that belonged to his mother. The Respondents claimed that the matter was procedurally incorrect and should be dismissed
- [4] The court set the case for hearing the Valuer's Report and for the cross examination of the deponents of the affidavits in the matter to ascertain the intention of the parties in the judgment by consent.
- [5] The Valuer, Mr. Jacques Renaud gave evidence that he was refused access into the house but was allowed to measure the external dimension of the house and therefore limited his report to the information he could gather. He explained that this would result in a 10 to 20 percent margin of error. However, he did not think it would be critical to the value he arrived at.
- [6] He valued the land, which he thought was a prime site given its proximity to Victoria, at SR 3.577 million. The house itself was worth SR1.1 million. The land also had some partial views of Victoria and the La Misère mountains. He agreed in cross-examination that the views are partially blocked by Le Chantier Mall, a four-storey building. He also

accepted that the property does not enjoy independent access to the public road but uses an access road across adjacent properties. He stated that he had done research on prices at which other land in the vicinity had been sold for when compiling the valuation in the instant case. He disagreed that adjacent land which had been sold for SR 1 million in 2000 should reflect the value of Parcel V4105 in 2019.

- [7] Mr. Lester Quatre, a Quantity Surveyor contracted by the Respondents also valued the property in issue on 16 March 2019. He only valued the land and did not take the house into consideration. He stated that the land is zoned residential and is in a high density area. It also had limitations as access to it is tight and steep. He valued the land at SR 2.054 million considering it as residential and not commercial.
- [8] The Applicant testified that the house and property comprised in Parcel V 4105 had belonged to his mother and step-father. Both his mother and his step father had built the house. (the Respondents were his step father's brother and mother respectively). He stated that the land had been bought by his mother and step father from the Second Respondent for about SR88,000 although the land had originally only been transferred into his step father's name.
- [9] The First Respondent testified that his brother Jean Claude Dubignon, the Applicant's step- father acquired the property in issue in 1980 or 1981 from the Second Respondent and his father. On the transfer deed the consideration for the transfer is entered as SR 15,000. Subsequently the Applicant's mother transferred her half share therein to the Applicant's step-father for SR 20,000 in 2012. He stated that the Applicant's share of the house was paid to him in the sum of SR 300,000. As executor of his brother's estate he had come across the transaction. The twenty-five percent mentioned in the judgement by consent was in respect of the value of the land as the Applicant had already been paid for the house and movables.
- [10] I have received no closing submissions from the Applicant and the submissions filed by the Respondent do not address the legal issues presented by this case.
- [11] Section 131 of the Seychelles Code of Civil Procedure provides:

“The parties may at any stage of the suit before judgment, appear in court and file a judgment by consent signed by both parties, stating the terms and conditions agreed upon between them in settlement of the suit and the amount, if any, to be paid by either party to the other and the court, unless it see cause not to do so, shall give judgment in accordance with such settlement.”

[12] It is trite that a judgment by consent is a judgement of the court and has the same validity and effect. With respect to judgments, section 147 of the Code also provides that:

“Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court on motion.”

[13] In this regard the Court of Appeal in *Chetty vs Chetty* (SCA MA15/13) [2014] SCCA 12 (11 April 2014) stated;

“This rule confers the power of this Court to correct any slip or accidental error arising in its proceedings, so as to give effect to the manifest intention of the Court, notwithstanding that the proceedings have terminated and the Court is otherwise functus officio in respect thereof”

[14] The Court also found that where upon reading the judgment the manifest intention of the parties is clear and concise it is not open to the court to interpret or clarify the judgment. The Court added:

*“There are certain things that can be done under it and there are certain things that cannot be done. There can be an amendment to a figure for example but there cannot be an amendment to any final order unequivocally made the result of would trigger another process of adjudication: see *Revera v Dinan* 3 SCAR (Vol II) p. 225; *Moore v Buchanan* [1967] 1 WLR 1341; *Tak Ming Co. Ltd v. Yee Sang Metal Supplies Co.* 1973 1 WLR 300...”*

[15] In *Payet v Vinta Trading Company* (MA 330/2015 (arising in CS 108/202012)) [2017] SCSC 377 (30 May 2016); the court was asked to amend a judgment by consent to decide

whether an amount to be paid was intended to be in US dollars or Seychelles rupees and did so but did not refer to any law grounding its powers to do so .By contrast in *Gill v Freminot and Another* (4 of 2006) (4 of 2006) [2006] SCCA 7 (28 November 2006) on appeal against the refusal by the Supreme Court to permit a challenge to a judgment by consent on the grounds that the law was silent on the issue, the Court of Appeal stated:

“[9] ... if the law of Seychelles allows for a consent judgment to be entered, it is our view that it should also allow an avenue for challenge not necessarily by way of appeal which in the majority of cases may be foreclosed because of an absence of determination by the court either on the facts of the case or the law applicable in the case. In such circumstances, the only avenue left to the parties would be to go to the Supreme Court by way of motion for the purposes of setting it aside. If an applicant can demonstrate that there are good grounds for setting aside the order made, it may do so and order that the case where the consent judgment was given proceeds for hearing in the normal course of things.”

[16] All well and good if the party has applied for rectification of a judgment. The present application was brought under section 225 of the Seychelles Code of Civil Procedure which provides:

“If the party liable fails to satisfy the judgment or to comply with the order of the court, application may be made to the Registrar by the judgment creditor, forty-eight hours after such default, for the enforcement of the judgment or order by means of execution. Before applying for execution, the judgment creditor must have his bill of costs taxed by the Registrar and where the judgment is for a sum of money exceeding sixty rupees or for the delivery of property exceeding sixty rupees in value, the judgment creditor may also obtain from the Registrar a formal judgment stating the substance of the judgment or order and must cause the same to be registered at the Registration Office:

Provided that the court may, on grounds of urgent necessity, direct that a judgment or order be enforced by execution, except in so far as it relates to the costs of the suit, immediately after judgment has been given and before the costs

incurred in the suit can be ascertained by taxation, and that the judgment or order, in so far as it relates to the costs, be enforced by execution so soon as the amount of the costs shall have been ascertained by taxation. “

- [17] The supporting affidavit has averments similar to the evidence adduced by the Applicant reproduced above, and in the main stating that the Valuer’s report is based on limited information and that the Applicant has not received the movables in the house.
- [18] It is obvious that although the application was argued along the lines of a rectification of the judgment by consent it was grounded on an application for execution. It cannot therefore stand and must be dismissed.
- [19] It is also clear that having heard the parties they are not *ad idem* on what was meant by “property” and the “movables” to be transferred to the Applicant. In the circumstances, it would seem therefore that the Applicant ought to have moved the court for a new trial.

Signed, dated and delivered at Ile du Port on 27 March 2020.

Twomey CJ