

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2020] SCSC 259

MC 51/2017

In the matter between:

**ARTHUR BENOIT SERVINA**

**(Acting as Fiduciary of the heirs of the late Marcel Antha)      Petitioner**

*(rep. by Karen Domingue)*

and

**RENE LABICHE**

**(Representing the heirs of  
the late Maria Athala nee Pierre-Louis)      Respondent**

*(rep. by Brian Julie)*

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**Neutral Citation:** *Servina v Labiche* (MC 51/2017) [2020] SCSC 259 (17<sup>th</sup> April 2020).

**Before:** E. Carolus J

**Summary:** Division in Kind – Section 107 Immovable property (Judicial Sales) Act.

**Delivered:** 17 April 2020

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**ORDERS**

1. I appoint Mr. Antoine Ah-Kong of Ah-Kong Land Surveys, Providence Industrial Estate, Mahe to:
  - (a) carry out an appraisalment of title S1961 situated at Boileau, Mahe, Seychelles; and
  - (b) submit a report to this Court complying with section 112 of the Immovable Property (Judicial Sales) Act (Cap 94) and in particular proposing partition of title S1961 so that the parties may obtain a half share therein, on or before 31<sup>st</sup> August 2020.
2. The costs of the appraisalment will be borne in equal shares by the parties.
3. A copy of this Order is to be served on Mr. Antoine Ah-Kong.

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## RULING

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### CAROLUS J

#### Background

- [1] The petitioner acting in his capacity as fiduciary of the heirs of the late Marcel Antha has filed a petition for division in kind of the land comprised in title S1961, supported by an affidavit sworn by himself. The petitioner was appointed by two separate deeds both dated 9<sup>th</sup> June 2015 and registered on 17<sup>th</sup> September 2015, as fiduciary of the co-ownership existing between the signatories thereof, in title S1961. The respondent represents the heirs of the late Maria Athala nee Pierre-Louis. He was appointed as fiduciary in respect of the undivided rights and interests in title S1961 of the signatories of the deed of appointment dated 30<sup>th</sup> December 2008, which appears to be unregistered. The respondent has filed a reply to the petition supported by an affidavit sworn by himself.
- [2] It is averred in the petition that the petitioner is the fiduciary of the co-ownership existing among the heirs of the late Marcel Antha, namely Marie Elisa Louis, Fulgencia Servina, Elizabeth Melanie, Claire Antat-Meniconzi and the heirs of the late Marthe Alphonse (“heirs Marcel Antha”), and that the respondent represents heirs of Maria Athala born Port-Louis (“heirs Maria Athala”). It is also averred that the heirs Marcel Antha and the heirs Maria Athala are co-owners in indivision of a half share each in the land comprised in title S1961; that the heirs Marcel Antha no longer wish to remain in a state of indivision with the heirs Maria Athala; that the land comprised in title S1961 can be conveniently subdivided to distract the shares of the heirs Marcel Antha; and that it is therefore urgent and necessary that the land comprised in title S1961 be partitioned in accordance with the entitlement of the heirs Marcel Antha.

- [3] The petitioner therefore prays for the appointment of an appraiser to submit a report on the proposed partition; and for an order that the land comprised in title S1961 be divided in kind in order that the heirs Marcel Antha have their half share in the aforementioned title, or for each party to have their respective shares therein.
- [4] I note that although the petition refers to Maria Athala born Port-Louis, the evidence shows that her maiden name was Pierre-Louis and that she married Mr. Agathe Athala. She is referred to in the documents produced in evidence as Maria Pierre-Louis, Maria Athala and Mrs. Agathe Athala, and consequently will be referred to by these names in this ruling. Similarly Marcel Antha is also referred to as Marcel Antat which I take to be one and the same person.
- [5] The respondent, in his reply, did not object to the application for division in kind per se but contested the share in title S1961 to which the petitioner avers that the parties are entitled. He avers that the heirs Marcel Antha are not entitled to a half share in title S1961 as the petitioner claims, but to only Eleven Thousand One Hundred and Eighty Three square metres (11,183 m<sup>2</sup>) thereof and that the heirs Maria Athala are entitled to the remaining Thirty Three Thousand Nine Hundred and Forty One square metres (33,941m<sup>2</sup>). Counsel for the respondent explains his calculation of the entitlement of the parties in paragraphs 2 to 6 of his written submissions as follows:

2. *The said Parcel was originally acquired from Isidor Abraya by Francoise Pierre-Louis, wife of Celestin Rath on 17<sup>th</sup> November 1844, certified by Notary Despilly St. Jorre, referred to in Transcription No. 73 by Notary Arthur Duchene registered on 18<sup>th</sup> June 1872 confirming that Francoise Pierre-Louis purchased the property before her marriage to Celestin Rath on 28<sup>th</sup> April 1866.*
3. *On the 26<sup>th</sup> October 1961, Ref. Transcription Vol. 461433, Notary France Morel dealing with the sale of 4/6 acre of S1961 to Marcel Antat by Victor Pierre-Louis, nephew of Maria Athala, son of St. Ange Pierre-Louis and heir to 4/6 acre of S1961 quoting Notary Arthur Duchene, Ref: Reg. 6 Fol. 196 rept. No. 21781 mentioned that on the 9<sup>th</sup> December 1873 Mr. and Mrs. Celestin Rath i.e. Francoise Pierre-Louis sold 4/6 acre of S1961 to Maria*

*Athala Pierre-Louis, Virginie Pierre-Louis, Lespoir Pierre-Louis and St. Ange Pierre-Louis.*

4. *After the death of all four above, succession was passed on to Victor Pierre Louis, son of St. Ange Pierre-Louis, who on the 12<sup>th</sup> October 1961, sold 4/6 or 2/3 acre = 2698m<sup>2</sup> to Marcel Antat, son of Elisa Pierre-Louis-Antat-Rath, a daughter of Françoise Pierre-Louis Rath who was also the mother of Victoria Rath Francourt, Maria Rath Appassamy, Sylvie Rath, Jacob Rath all deceased.*
  
5. *The heirs of Marcel Antat are therefore entitled to 11,183m<sup>2</sup> calculated as follows:*  
$$45,124\text{m}^2 - 2,698\text{m}^2 = 42,426 \text{ m}^2 \text{ (purchase of 4/6 of an acre. See Paragraph 3 above, and}$$
  
$$8,435 \text{ m}^2 \text{ shares inherited (42,426 } \div \text{ by 5)}$$
  
6. *The heirs of Marie Athala are therefore entitled to the remaining 33,941 m<sup>2</sup> (42,426 – 11,183).*

[6] Counsel for the respondent then goes on to state in his submissions that:

7. *The land register ought to be rectified for the following reasons:-*
  - 1) *There were errors in registering property Title S1961 under Maria Athala Pierre-Louis on 25/9/1986. It should have been done under the name of Françoise Pierre-Louis Rath, the grandmother of the present claimants and heirs of Marcel Antat.*
  - 2) *Mistakes were made on the 7<sup>th</sup> September 2001 and before that date, in accepting affidavit 8831, amending the register without the proper legal documents or relevant information, allowing a half share of property S1961 to the heirs of Marcel Antat.*
  - 3) *The rights of the interested parties were affected, and they were not informed of changes as required by law*  
*To the best of the Respondent's knowledge, relevant information and beliefs, no other persons apart from the referred in paragraph 7 below are entitled to the undivided 33,941m<sup>2</sup> share of Title S1961.*

[7] Counsel for respondent then requests that:

a) *the heirs of the late Maria Athala be registered as co-owners of 33,941m<sup>2</sup> of S1961 as follows:-*

1. *Heirs Victoria Rath Francourt*
2. *Heirs Maria Rath Appassamy*
3. *Heirs Sylvie Rath*
4. *Heirs Jacob Rath*

b) *The heirs of Marcel Antha be registered as co-owners 11,183 of Parcel S1961.*

[8] No written submissions were filed by counsel for the petitioner in spite of having been given time to do so.

[9] Before making an order for an appraiser to submit a proposal for apportionment of title S1961, the Court has to be satisfied as to what proportion of the property each party is entitled to. The petitioner on the one hand claims that heirs Marcel Antha own an undivided half share in title S1961, which is contested by the respondent on the other hand. It therefore falls to this Court to determine the entitlement of each party to the property by an examination of the documentary evidence submitted by the parties in support of their respective cases in light of the pleadings and submissions of the parties as well as the applicable law, which I now proceed to do below.

### **Documentary Evidence**

[10] The following is a description of the documentary evidence produced by the parties in support of their respective cases.

[11] Transcription of deed of sale dated Wednesday 11<sup>th</sup> October 1961

The deed of sale dated Wednesday 11<sup>th</sup> October 1961 is transcribed in the Register of Transcriptions Vol 46, Folio 483. According to it, Monsieur Victor Pierre-Louis, being a proprietor of land sold to Monsieur Marcel Antat for the sum of One Hundred Rupees (Rs100/-) *“Tout les droits et pretentions generalement quelconques, sans aucune exception ni reserve, qu’il a ou peut avoir dans une portion de terrain de la contenance de huit arpents et cinq sixiemes d’arpent situee a Mahe, au lieu dit: Anse Boileau bornee comme suit, ainsi qu’il resulte du titre de propriete ci-apres relate, savoir:- d’un cote,*

*par le vendeur (Mr. Lespoir Pierre-Louis, du second cote, par le terrain Mussard ou ayants droi, du troisieme cote, par celui de Mr. Pool ou ayants droit et du quatrieme cote, par celui de Mr. Davis Petrouse”.*

[12] The root of title of the land transferred to Marcel Antat and from which Victor Pierre-Louis held his rights in such land, is described in the transcription as follows: By deed of sale of 9<sup>th</sup> December 1873 (Reg 6 Fol: 196 Recto 21178) Mr. Dominique Pierre-Louis and Mr. and Mme Celestin Rat sold to Mme Maria Pierre-Louis, the wife of Mr. Agathe Athala and to the minors Virginie Pierre-Louis, St. Ange Pierre-Louis et Lespoir Pierre-Louis *“les quatre/ sixieme indivis en nue-propriete de la portion de terrain de huit arpents cinq/sixiemes sus-decrite. Etant ici fait observer qu’il etait dit aux termes de ce contrat que l’usufruit dudit bien appartenait a Mr. Lespoir Pierre-Louis ou Lespoir Julie; ce dernier etant depuis decede, la consolidation a eu lieu.”* Virginie Pierre-Louis died intestate leaving as her heirs her siblings Maria Pierre-Louis a.k.a. Maria Athala a.k.a. Mrs. Agathe Athala, Mr. St. Ange Pierre-Louis and Mr. Lespoir Pierre-Louis. Mr. St. Ange Pierre-Louis also died leaving as his heirs three children namely, Victor Pierre-Louis (who sold the land to Mr. Marcel Antat), Jean-Baptiste Pierre-Louis and William Pierre-Louis. Mr. Lespoir Pierre-Louis also died intestate leaving as his heirs his surviving nieces and nephews including Victor Pierre-Louis.

[13] Affidavit of Mr. Marcel Antha dated 8<sup>th</sup> January 1985

This Affidavit was sworn by Marcel Antha of Anse Boileau on 8<sup>th</sup> January 1985, before D. T. Arnott, Adjudication Officer, pursuant to the Land Registration Project in Claim No.1763 (1974) and reads as follows:

*I bought rights in a portion of land, now surveyed as parcel S1961 from Victor Pierre-Louis by deed of sale transcribed 46/526. I understand Mr. Perajetty Pillay bought rights in the land in about 1927 by deed of sale transcribed 29/281. Mr. Pillay never lived on the land; he went away and I believe he died a long time ago. The land has been occupied only by the Pierre-Louis family and their heirs since the last century.*

*A long time ago there was a court case about the rights of Mr. Pillay. I do not have any records but as far as I know Mr. Pillay lost his rights in the land.*

[14] Affidavit of Mrs. Alexandra Labiche dated 8<sup>th</sup> January 1985

This Affidavit was sworn by Mrs. Alexandra Labiche of Anse La Mouche on 8<sup>th</sup> January 1985, before D. T. Arnott, Adjudication Officer, pursuant to the Land Registration Project in Claim No.1763 (1974) and reads as follows:

*I represent the heirs of Mrs. Maria Athala (Born Pierre-Louis) who was my great grand-mother.*

*She bought rights in 1873 by a deed registered Reg 6 Folio 196 No. 21178 jointly with Virginie Pierre-Louis, St. Ange Pierre-Louis and Lespoir Pierre-Louis. The rights of Lespoir were inherited by his nephews and nieces. The rights of Virginie were inherited by Maria, St. Ange and Lespoir Pierre-Louis. Victor Pierre-Louis, son of St. Ange, sold his rights to Marcel Antat. I understand that the other two children of St. Ange Pierre-Louis, Jean-Baptiste and William, sold their rights to a Mr. Perajetty Pillay in about 1927. Mr. Pillay never lived on the land and I believe he died a long time ago. There was a court case a long time ago about Pillay's rights in the land in which I understand he lost his rights. The land has been occupied only by the Pierre-Louis family and their heirs since the last century.*

[15] Cadastral Plan of S1961 dated 16<sup>th</sup> September 1985

This document shows a plan of title S1961 defining the beacons and boundaries of the parcel. It contains a list of the beacons and their positions, a description of the parcel and a description of the beacons. It is signed by Mr. Stephens, Land Surveyor, Land Registration Project. The description of the parcel is as follows:

*DESCRIPTION OF PARCEL:*

*The figure represents 45,124 sq. metres (4.512 hectares) of land situated at Anse Boileau and filed in the office of the Chief Surveyor as Parcel S1961.*

[16] Notice of first Registration of Parcel S1961

This is a Notice of First Registration under the Land Registration Act, 1975, dated 25<sup>th</sup> September 1986 giving notice to Heirs Mrs. Maria Athala and Mr. Marcel Antha that

parcel S1961, had that day been registered with a qualified title in their names under the provisions of that Act. According to the Notice, parcel S1961 is of an area of 45124 sq. metres and is burdened by a legal charge of Rs1,000/- in favour of the Government of Seychelles.

[17] Affidavit on Transmission by Death dated 30<sup>th</sup> July 2001

According to an affidavit on transmission by death sworn to by Marthe Alphonse born Antat (one of the daughters and heirs of Marcel Antat), dated 30<sup>th</sup> July 2001 and registered at the Land Registry on 7<sup>th</sup> September 2001, at the time of his death Marcel Antat was the registered proprietor of an undivided half share in title S1961. He left behind the following heirs who became entitled to undivided shares in the property as specified below:

- (i) Marie Elisa Louis (born Antha) ( $\frac{1}{10}$ );
- (ii) Fulgencia Servina (born Antat) ( $\frac{1}{10}$ );
- (iii) Elizabeth Melanie (born Antha) ( $\frac{1}{10}$ );
- (iv) Marthe Alphonse (born Antat) ( $\frac{1}{10}$ ); and
- (v) Claire Antat-Meniconzi (born Anta) ( $\frac{1}{10}$ )

[18] Affidavit on Transmission by Death dated 10<sup>th</sup> May 2014

Gisele Monique Nanon born Antat, (one of the daughters and heirs of Marthe Alphonse referred to at para 17(iv) above), swore an affidavit on transmission by death dated 10<sup>th</sup> May 2014 and registered at the Land Registry on 26<sup>th</sup> August 2014. In the affidavit she avers that at the time of her death, Marthe Alphonse was the registered proprietor of an undivided  $\frac{1}{10}$  share in title S1961, and that she left behind nine children named in the affidavit, as her legal heirs and who became entitled to undivided equal shares in the  $\frac{1}{10}$  share in title S1961.



### **Analysis of Documentary Evidence in light of the Pleadings and Applicable Law**

[19] It appears from the reply and submissions of the respondent on behalf of the heirs Maria Athala that he believes that title S1961 is the portion of land of “*huit arpents cinq/sixiemes*” (eight acres and five sixth of an acre) described in the deed of sale dated Wednesday 11<sup>th</sup> October 1961 (see para 11 above) and of which Mr. Dominique Pierre-Louis and Mr. and Mme Celestin Rat sold “*quatre/ sixieme*” (4/6) to Maria Pierre-Louis a.k.a. Maria Athala a.k.a. Mrs. Agathe Athala, Virginie Pierre-Louis, Lespoir Pierre-Louis and St. Ange Pierre-Louis. I note that eight acres and five sixth of an acre is equivalent to 35,733.74m<sup>2</sup> and the Notice of First Registration dated 25<sup>th</sup> September 1986 describes title S1961 as having an area of 45,124 sq. metres. However I am mindful that at the time the sale took place in 1961, it is unlikely that a proper survey of the land had been carried out and that the exact size of the land is reflected in the transcription of the deed of sale. Title S1961 appears from the affidavits sworn by Mr. Marcel Antha (see para 13 above) and Mrs. Alexandra Labiche (see para 14 above) and the cadastral plan of title S1961 dated 16<sup>th</sup> September 1985 (see para 15 above), to have been demarcated and surveyed pursuant to the land registration project under the Land Adjudication Decree (which will be discussed in greater detail later in this ruling) after which it was registered in the name of the parties with a qualified title in 1986 (see para 16 above). I am therefore inclined to find that S1961 is the portion of land of “*huit arpents cinq/sixiemes*” described in the deed of sale dated Wednesday 11<sup>th</sup> October 1961, and I so find.

[20] In his submissions counsel for the respondent claims that Francoise Pierre-Louis, wife of Celestin Rath, acquired title S1961 prior to her marriage and explains how she acquired the land, making reference to the transcription of the document confirming the same (see para 2 of his reply reproduced at para 5 above). However neither this transcription nor any other documentary evidence have been produced by the respondent as proof of this claim.

[21] In the same submissions counsel further avers that the sale of 4/6 acre of title S1961 to Maria Athala Pierre-Louis, Virginie Pierre-Louis, Lespoir Pierre-Louis and St. Ange Pierre-Louis was executed by Mr. and Mrs. Celestin Rath a.k.a. Francoise Pierre-Louis. I

note however that the sale was not executed solely by Mr. and Mrs. Celestin Rath a.k.a. Françoise Pierre-Louis. According to the transcription of the deed of sale dated Wednesday 11<sup>th</sup> October 1961 (see para 11 above), it was “*Mr. Dominique Pierre-Louis*” and “*Mr. and Mme Celestin Rath*” who sold the bare ownership of 4/6 of a portion of land of “*huit arpents cinq/sixiemes*” to the four aforementioned people..

[22] Again in his submissions, counsel claims that after the death Maria Pierre-Louis a.k.a. Maria Athala a.k.a. Mrs. Agathe Athala, Virginie Pierre-Louis, Lespoir Pierre-Louis and St. Ange Pierre-Louis, Victor Pierre Louis (son of St. Ange Pierre-Louis) inherited the 4/6 acre (2,698m<sup>2</sup>), and sold it to Marcel Antat. He states that Marcel Antat is the son of Elisa Pierre-Louis Rath who together with her siblings Victoria Rath Francourt, Maria Rath Appassamy, Sylvie Rath and Jacob Rath are the children of Françoise Pierre-Louis a.k.a Mrs. Celestin Rath.

[23] The respondents therefore claim that Marcel Antat not only owned 2698m<sup>2</sup> of S1961 (i.e. 4/6 acre which he bought from Victor Pierre-Louis) leaving a remaining portion of 42,426m<sup>2</sup>, but also inherited one fifth of that remaining portion from his mother amounting to 8,435m<sup>2</sup>. According to the respondent therefore, in all, Marcel Antat was entitled to 11,183m<sup>2</sup> (2698+8,435). Consequently it is claimed that S1961 was correctly registered in the name of Marcel Antat as a co-owner albeit in the wrong proportion which should have been 11,183m<sup>2</sup>. It is however claimed that title S1961 should not have been registered in the name of the heirs Maria Athala but in the name of the heirs Françoise Pierre-Louis a.k.a Mrs. Celestin Rath, namely Heirs Victoria Rath Francourt, Heirs Maria Rath Appassamy, Heirs Sylvie Rath and Heirs Jacob Rath. If we are to follow this argument they would be entitled to an undivided share of 33,941m<sup>2</sup> which is what would have been left after subtracting Marcel Antat’s alleged share of 11,183m<sup>2</sup>.

[24] In the submissions made on behalf of the respondent, it is also claimed that the affidavit on transmission by death dated 30<sup>th</sup> July 2001 (see para 17 above) which resulted in the improper registration of S1961 in the name of heirs Marcel Antat should not have been accepted without proper legal documents and relevant information, that the rights of the interested parties were affected and they were not informed of changes as required by

law. On that basis, it is claimed in the submissions, that the Land Register should be rectified, and it is further requested that S1961 is registered in the names of firstly the heirs of the late Maria Athala (which I believe is a mistake and should be Heirs Francoise Pierre-Louis a.k.a Mrs. Celestin Rath) namely Heirs Victoria Rath Francourt, Heirs Maria Rath Appassamy, Heirs Sylvie Rath and Heirs Jacob Rath as co-owners of 33,941m<sup>2</sup> thereof; and secondly the heirs Marcel Antha as co-owners of 11,183 thereof.

[25] I note that no prayer for the rectification of the Land Register is made in the respondent's reply or supporting affidavit. In his reply, he limits himself to stating the shares in title S1961 to which according to him, the parties are entitled before finally stating that reference should be made to the *share* of the heirs of the late Marcel Antha instead of to their *half share* in the petition. The affidavit in support only identifies the petitioner as the deponent and contains a statement as to the truthfulness of the averments in the reply. Although rectification of the Land Register by the Court is permitted under section 89 of the Land Registration Act in cases of fraud or mistake, in the case in hand the question of rectification only arises in the submissions and in none of the pleadings and therefore cannot be acceded to by this Court. In any case, as will be discussed below, the respondent has brought no evidence in support of such rectification.

[26] This Court will however address the issue of the shares in title S1961 to which the parties are entitled, according to the evidence on record, for the purposes of this application. The respondent claims that Marcel Antha is entitled to a total share of 11,183m<sup>2</sup> in title S1961. I will first deal with the share of 8,435m<sup>2</sup> which he is alleged to have inherited from his mother and at the same time deal with the respondent's claim that title S1961 was wrongly registered in the name of heirs Maria Athala and should have been registered in the name of Heirs Francoise Pierre-Louis a.k.a. Mrs. Celestin Rath. Thereafter I will address the share of 2698m<sup>2</sup> which the respondent claims Marcel Antha purchased from Victor Pierre-Louis.

*Entitlement of Marcel Rath to share of 8,435m<sup>2</sup> inherited from his mother*

[27] As stated above the respondent has brought no documentary evidence in support of his claim that Francoise Pierre-Louis a.k.a. Mrs. Celestin Rath, acquired title S1961 prior to

her marriage. The fact that the sale of 4/6 of title S1961 to Maria Pierre-Louis a.k.a Maria Athala a.k.a Mrs. Agathe Athala, Virginie Pierre-Louis, Lespoir Pierre-Louis and St. Ange Pierre-Louis was not executed solely by Mr. and Mrs. Celestin Rath a.k.a Françoise Pierre-Louis as claimed by the respondent but was also executed by a third person namely Dominique Pierre-Louis suggests that title S1961 was co-owned by Mr. and Mrs. Celestin Rath a.k.a Françoise Pierre-Louis and the said Dominique Pierre-Louis. This throws doubt on the respondent's claim that Françoise Pierre-Louis a.k.a. Mrs. Celestin Rath was the sole owner of title S1961 prior to her marriage and in turn on his claim that her heirs are entitled to 33,941m<sup>2</sup> of title S1961. Their entitlement, if any, would be affected by the share to which the said Dominique Pierre-Louis, and upon his death, his heirs if any, would be entitled to. However there is no information on the same. Furthermore no evidence has been produced to show that Elisa Pierre-Louis-Antat-Rath (averred to be the mother of Marcel Antha), Victoria Rath Francourt, Maria Rath Appassamy, Sylvie Rath and Jacob Rath are the children and heirs of Françoise Pierre-Louis a.k.a Mrs. Celestin Rath as stated in the respondent's submissions and are therefore entitled to a share in title S1961. This also means that there is also no evidence that Marcel Antat was entitled to a share of 8,435m<sup>2</sup> share by way of inheritance from his mother Elisa Pierre-Louis-Antat-Rath which she herself is alleged to have inherited from her own mother Françoise Pierre-Louis a.k.a Mrs. Celestin Rath.

[28] In the circumstances I cannot find that an undivided share of title S1961 should be registered in the names of the heirs of the Heirs Françoise Pierre-Louis a.k.a Mrs. Celestin Rath. For the same reasons I cannot find that Marcel Antat was entitled to an 8,435m<sup>2</sup> share of S1961 which he had inherited from his mother, who is alleged to be one of the children of Françoise Pierre-Louis Rath.

*Entitlement of Marcel Antha to share of 2698m<sup>2</sup> purchased from Victor Pierre-Louis.*

[29] The respondent also claims that Marcel Antha was entitled to a share of 2698m<sup>2</sup> (equivalent to 4/6 of an acre) in title S1961 which he purchased from Victor Pierre-Louis who had inherited the same from his father St. Ange Pierre-Louis and uncle Lespoir Pierre-Louis. The said St. Ange Pierre-Louis and Lespoir Pierre-Louis had together with

Maria Pierre-Louis and Virginie Pierre-Louis acquired the property from Dominic Pierre Louis and Mr. and Mrs. Celestin Rat.

- [30] According to the transcription of the deed of sale dated Wednesday 11<sup>th</sup> October 1961 (see para 11 above) between Victor Pierre-Louis and Marcel Antat, Victor Pierre-Louis inherited his rights in the land which he sold to Marcel Antat from his father St. Ange Port-Louis and his uncle Lespoir Port-Louis. According to the same deed Victor Pierre-Louis sold to Marcel Antat all the rights which he has or may have in a portion of land of eight acres and five sixths of an acre situated at Mahe, the boundaries of such portion of land being described by reference to the owners of land with common boundaries with the land.
- [31] The deed of sale also states that Victor Pierre-Louis' rights in that land arise from the title deed dated 9<sup>th</sup> December 1873, evidencing the transfer of the bare ownership of an undivided four sixths of a portion of land of eight acres and five sixths of an acre by Mr. Dominique Pierre-Louis and Mr. and Mrs. Celestin Rat to Mrs. Maria Pierre-Louis a.k.a Mrs. Maria Athala a.k.a. Mrs. Agathe Athala, Virginie Pierre-Louis, St. Ange Pierre-Louis and Lespoir Pierre-Louis, the purchasers of the land being all siblings. The usufructuary interest was reserved to Mr. Lespoir Pierre-Louis, upon whose death the bare ownership and usufructuary interest were consolidated so that full ownership of the land originally transferred to Mrs. Maria Pierre-Louis a.k.a Mrs. Maria Athala a.k.a. Mrs. Agathe Athala, Virginie Pierre-Louis, St. Ange Pierre-Louis and Lespoir Pierre-Louis devolved on their heirs.
- [32] It is clear that the respondent mistakenly believes that the "*quatre/ sixieme*" (4/6) referred to in the deed of sale dated Wednesday 11<sup>th</sup> October 1961 describing the property, the bare ownership of which was transferred to Maria Pierre-Louis, Virginie Pierre-Louis, St. Ange Pierre-Louis et Lespoir Pierre-Louis, meant 4/6 of an acre. However the description of the property, i.e. "*les quatre/ sixieme ... de la portion de terrain de huit arpents cinq/sixiemes*" shows clearly that it means 4/6 of a portion of land of eight acres and 5/6 of an acre.

[33] I have found at paragraph 19 hereof that the portion of land measuring eight acres and five sixth of an acre is the same property now registered as title S1961. According to the Notice of First Registration dated 25<sup>th</sup> September 1986, title S1961 has an area of 45,124 sq. metres, 4/6 of which amounts to 30,082.67m<sup>2</sup>. It is clear therefore that an undivided 30,082.67m<sup>2</sup> share of S1961 was transferred to Maria Pierre-Louis a.k.a. Maria Athala a.k.a. Mrs. Agathe Athala, Virginie Pierre-Louis, St. Ange Pierre-Louis and Lespoir Pierre-Louis so that each of them became entitled to 7,520.67m<sup>2</sup> thereof. When Virginie Pierre-Louis died her share of 7,520.67m<sup>2</sup> devolved upon her siblings Maria Pierre-Louis a.k.a. Maria Athala a.k.a. Mrs. Agathe Athala, St. Ange Pierre-Louis and Lespoir Pierre-Louis in the proportion of 2,506.89m<sup>2</sup> each so that when this was added to their own share of 7,520.67m<sup>2</sup> they ended up having 10,027.56m<sup>2</sup> each. Upon the death of St. Ange Pierre Louis his share of 10,027.56m<sup>2</sup> devolved upon his three children Victor Pierre-Louis, Jean-Baptiste Pierre-Louis and William Pierre-Louis. When Lespoir Pierre Louis died, his share of 10,027.56m<sup>2</sup> devolved upon his nieces and nephews which include the three children St. Ange Pierre Louis namely Victor Pierre-Louis, Jean-Baptiste Pierre-Louis and William Pierre-Louis, as well as the children of Maria Pierre-Louis a.k.a. Maria Athala a.k.a. Mrs. Agathe Athala, each of the two groups of heirs becoming, by representation entitled to 5,013.78m<sup>2</sup> representing half of the land belonging to Lespoir-Pierre Louis. Both the heirs of Maria Pierre-Louis a.k.a. Maria Athala a.k.a. Mrs. Agathe Athala and the heirs of St. Ange Pierre Louis namely Victor Pierre-Louis, Jean-Baptiste Pierre-Louis and William Pierre-Louis, therefore became entitled to half of the 30,082.67m<sup>2</sup> (4/6 of S1961) originally transferred to Maria Pierre-Louis a.k.a. Maria Athala a.k.a. Mrs. Agathe Athala, Virginie Pierre-Louis, St. Ange Pierre-Louis and Lespoir Pierre-Louis by deed of sale dated 9<sup>th</sup> December 1873, amounting to 15,041.34m<sup>2</sup>. The heirs of St. Ange Pierre Louis namely Victor Pierre-Louis, Jean-Baptiste Pierre-Louis and William Pierre-Louis therefore each became entitled to one third of 15,041.335m<sup>2</sup> amounting to 5,013.78m<sup>2</sup>.

[34] In the Affidavit of Mrs. Alexandra Labiche dated 8<sup>th</sup> January 1985 (see para 14 above), she avers that she understands that *“the other two children of St. Ange Pierre-Louis, Jean-Baptiste and William, sold their rights to a Mr. Perajetty Pillay in about 1927. Mr.*

*Pillay never lived on the land and I believe he died a long time ago. There was a court case a long time ago about Pillay's rights in the land in which I understand he lost his rights.*" These averments are confirmed by the affidavit of Mr. Marcel Antha dated 8<sup>th</sup> January 1985 (see para 13 above). In the absence of any evidence to the contrary, it would appear that the shares of Jean-Baptiste and William Pierre-Louis of 5,013.78m<sup>2</sup> each, reverted back to them and eventually to their heirs. It is only in the absence of any heirs of their own that their share would devolve upon Victor Pierre-Louis. In the deed of sale, it is merely stated that Victor Pierre-Louis declares having sold to Mr. Marcel Antat all the rights he had in the land without stating the extent of the land sold. It is therefore not possible from this deed of sale to know whether he sold only his share of 5,013.78m<sup>2</sup> or the share of 15,041.34. which he and his three brothers inherited, to Marcel Antha. I will proceed on the assumption that the land he sold to Marcel Antat included his own share and that of his brothers which amount to 15,041.34 as there is no evidence of any claim made by the heirs of Jean-Baptiste and William Pierre-Louis to the property.

[35] The above analysis of the transcription of the deed of sale of dated Wednesday 11<sup>th</sup> October 1961 reveals that heirs Maria Athala (the respondent) and heirs Marcel Antha (the Petitioner) are each entitled to 15,041.34m<sup>2</sup>, that is half of the original 30,082.67m<sup>2</sup> (4/6 of a portion of land of "*huit arpents cinq/sixiemes*") transferred to Maria Pierre-Louis a.k.a. Maria Athala a.k.a. Mrs. Agathe Athala, Virginie Pierre-Louis, St. Ange Pierre-Louis and Lespoir Pierre-Louis by deed of sale dated 9<sup>th</sup> December 1873.

[36] This leaves us with the remainder of title S1961, of an extent of 15,041.33 (45,124m<sup>2</sup> less 30,082.67m<sup>2</sup>) which we know belonged to Mr. Dominique Pierre-Louis and Mr. and Mrs. Celestin Rat which entitled them to sell 2/3 thereof by title deed dated 9<sup>th</sup> December 1873 as described above. This Court has no documentary evidence as to who their heirs are, if any. There are only the averments in the respondent's reply to the effect that title S1961 was originally acquired by Françoise Pierre-Louis a.k.a. Mrs. Celestin Rath and that her children were Elisa Pierre-Louis Antat Rath, Victoria Rath Francourt, Maria Rath Appassamy, Sylvie Rath and Jacob Rath and therefore her heirs but this is unsupported

by any evidence, and I cannot in the absence of such evidence find that they inherited the unsold portion of S1961.

*Adjudication and Registration of title S1961 under Adjudication of Title Decree*

[37] This leads me to the manner in which the whole of title S1961 (including the unsold portion thereof) came to be registered in the names of heirs Maria Athala and Mr. Marcel Antha, namely in the course of the land registration project carried out under the Adjudication of Title Decree. It is clear from the affidavits of Marcel Antha (see para 13 above) and Alexandra Labiche (see para 14 above) both dated 8<sup>th</sup> January 1985 as well as the cadastral plan dated 16<sup>th</sup> September 1985 (see para 15 above) that these documents came into being during that process.

[38] At the time of execution of the deed of sale between Victor Pierre-Louis and Marcel Antha in 1961, not all land in Seychelles had been surveyed and demarcated by beacons and allocated a parcel number as is now mostly the case. Unsurveyed land was therefore described in deeds of sale by reference to their sizes and the description of their boundaries, as was done in the deed of sale between Victor Pierre-Louis and Marcel Antha. This situation brought about a parallel system of registration of unsurveyed land in the old land register under the Mortgage and Registration Act (Act 5 of 1927) alongside registration of surveyed land identified by a plot number in the new land register under the Land Registration Act (Act 25 of 1965).

[39] However a great deal of uncertainty and confusion arose regarding ownership and demarcation of land registered under the old land register, especially where such ownership had been transferred many years ago, and in no small part because transfers of such “old” land were not clearly demarcated. This led to the enactment of the Adjudication of Title Decree (29 of 1979) which came into operation on 1<sup>st</sup> July 1979. The purpose of this Decree was the adjudication and registration of rights and interests in or over land (other than land and rights and interests therein registered under the Land Registration Act), by an adjudication officer. The adjudication officer had, *inter alia*, the power to administer oaths and take affidavits in any enquiry made by him in the course of carrying out adjudication in respect of any land. The adjudication officer was also



required under the Decree to ascertain and record all interest in land subject matter of an adjudication and to require any person claiming any interest in such land to make a claim thereto. A demarcation officer appointed under the Decree had the duty to demarcate such land ensuring that the boundaries of each parcel of land subject of a claim was indicated or marked by the claimant and that any person likely to be affected by such demarcation was given notice of such demarcation. The survey work was carried out by a survey officer and included the preparation of a demarcation map for all areas undergoing adjudication, showing every separate parcel of land identified by a distinguishing number as well as a diagram of such parcels. The recording officer then considered all claims and after any investigation considered necessary, prepared an adjudication record in respect of any parcel of land shown on the demarcation map. Notice of completion of an adjudication record was given by publication in the Gazette and any person named in or claiming any interest in any land referred to in the adjudication record, map or diagram who claimed that such record, map or diagram was inaccurate or incomplete could object thereto to the adjudication officer. Section 25 of the Decree provides that after the expiry of 90 days from the date of publication of the notice of completion of the adjudication record or on determination of all objections, whichever is the later, after approval of the diagram by the Director of Surveys, the adjudication officer shall make and sign a certificate to the effect that the adjudication record, diagram and the relevant demarcation map have become final and deliver the certificate, adjudication record, diagram, relevant demarcation map as well as any document received by him in the process of adjudication to the Registrar. An appeal lies against any act or decision of the adjudication officer on the grounds that it is erroneous in point of law or of failure to comply with any procedural requirement of the Decree. The time for making the appeal is three months from the date of the certificate of the adjudication officer.

[40] It is clear that the two affidavits dated 8<sup>th</sup> January 1985 and sworn by Mr. Marcel Antha and Mrs. Alexandra Labiche respectively, before D. T. Arnott, Adjudication Officer, as well as the cadastral plan of S1961 dated 16<sup>th</sup> September, 1985, were made pursuant to a claim (Claim No.1763 (1974)) under the Adjudication of Title Decree for the adjudication and registration of a parcel of land surveyed as parcel S1961. These are the

only documents which have been produced in respect of the adjudication of the land and the Court is therefore not in a position to make any comment about the correctness or not of adjudication or registration process. In any case such comments or any findings by this Court would be futile since the time for making any appeal under the Decree has long since run out.

### *Registration of proprietors with qualified titles*

[41] The Notice of first Registration of Parcel S1961 dated 25<sup>th</sup> September 1986 shows that “Heirs Mrs. Maria Athala” and “Mr. Marcel Antha” are registered as qualified owners of that parcel which is stated to be of an extent of 45124 sq. metres but does not specify the proportion of S1961 to which each party is entitled. Presumably they were registered thus pursuant to the adjudication process described above. In that respect, I take note of section 18(1)(a) and (b) of the Decree in respect of registration of land with a qualified title, which is reproduced below:

#### *18. Principles of Adjudication*

##### *(1) In preparing an adjudication record –*

##### *(a) if the recording officer is satisfied that a person –*

- (i) has a good documentary title to the land referred to in such record and that no other person has acquired a title to such land under any any law; or*
- (ii) has acquired ownership of the land referred to in such record by prescription in accordance with Title XX of the Civil Code of Seychelles,*

*the recording officer shall record such person as the absolute owner of the land.*

##### *(b) if the recording officer is satisfied that a person is in possession of, or has a right to possession of, the land referred to in such record, but is not satisfied that such person is entitled to be recorded under paragraph (a) as the owner of the land, the recording officer may record such person as qualified owner of the land, and if he does so, shall also record –*

- (i) the date on which the possession, if any, of that person, began, or is deemed to begin or have begun;*

- (ii) *particulars of any deed, instrument or other document under or by virtue of which some estate, right or interest in such land adverse to or in derogation of the entitlement of that person might exist; or*
- (iii) *any qualification which affects the title;*

[...]

[42] Section 10(2) and section 11(2) of the Land Registration Act further provide:

*10. Compilation of Land Register*

(1) ...

(2) *Whenever an adjudication record has become final under section 25 of the Adjudication of Title Decree, and the adjudication officer has delivered the adjudication record to the Land Registrar, the Land Registrar shall prepare a register for each parcel shown in the adjudication record ... and shall register therein such particulars in the adjudication record as required registration.*

[...]

*11. Nature of title on first registration*

(1) ...

(2) *The following rules shall apply in registering any land under subsection (2) of section 10 –*

(a) *Where any person is recorded in the adjudication record as an absolute owner of land, that person shall be registered as a proprietor of land with an absolute title; and*

(b) *Where any person is recorded in the adjudication record as a qualified owner of land, that person shall be registered as a proprietor of land with a qualified title.*

Underlining is mine.

[43] The following provisions of the Land Registration Act concern the effect of registration of a person as proprietor of land either with an absolute or qualified title:

*20. Interest conferred by registration*

*Subject to the provisions of this Act-*

(a) *the registration of a person as the proprietor of land with an absolute title shall vest in him the absolute ownership of that land, together with all rights, privileges and appurtenances belonging or appurtenant thereto;*

*(b) the registration of a person as the proprietor of land with a qualified title only shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the proprietor and subsisting or capable of arising at the time of registration of that proprietor; but save as aforesaid shall have the same effect as registration of a person with an absolute title;*

*[...]*

[44] On the basis of these provisions, it can be gathered that pursuant to the adjudication process, heirs Maria Athala and Marcel Antha were recorded in the adjudication record as qualified owners of title S1961 because the recording officer was satisfied that they either were in possession of, or had a right to possession of title S1961, but he was not satisfied that they were entitled to be recorded as the owner of the land as a result of having good documentary title to the land or that no other person had acquired a title to such land under any law. Consequently, they were registered in the Land Register as joint proprietors of S1961 with a qualified title. The effect of registration of a person as proprietor of land with a qualified title has the same effect as registration of a person with an absolute title i.e. vesting in that person absolute ownership of that land and all interests, rights and obligations arising out of such ownership, except that registration with a qualified title does not prevent enforcement of any right or interest adverse to or in derogation of the title of the proprietor so registered and subsisting or capable of arising at the time of such registration. To my mind, the respondent, could have contested the apportionment of the half share of title S1961 to Marcel Antha as he only had a qualified title, and enforced any right that the heirs Maria Athala claim to have in respect of that share. However, there is no evidence that they have done so and, as previously stated, they have not proved that they are entitled to any part of the half share of title S1961 allocated to Marcel Antha.

#### *Registration of joint proprietors of land*

[45] I also take note of sections 19(3) and 20(1)(b) of the Adjudication of Titles Decree, from which it appears that when two or more persons are recorded in the adjudication record as

joint proprietors of land, the proportion of the land to which they are entitled must also be specified in such record.

*19. Rules to be followed in adjudication*

*(1) ...*

*(2) ...*

*(3) Where two or more persons have rights which will entitle them to be registered as joint owners, the recording officer shall record such persons as joint owners and the share of each such owner.*

*20. Adjudication record*

*(1) The adjudication record shall consist of a form in respect of each parcel of land, which form shall show –*

*(a) the number and approximate area of the parcel as shown on the diagram of that parcel;*

*(b) either the name and description of the person entitled to be registered as the owner of the parcel with particulars of his entitlement and of any restriction affecting his power of dealing with it, ...”;*

*[...]*

Underlining is mine.

[46] The Land Registration Act is however silent on whether the share of joint proprietors of land must be specified in the Land Register upon their registration as joint proprietors of such land in the Land Register, pursuant to the adjudication process under the Adjudication of Title Decree. I take note however of section 56 of the Land Registration Act which provides that: “*Instruments in favour of two or more persons, and the registration giving effect to it, shall show the undivided share of each proprietor*”. I find no good reason why this should not also apply to people who have been adjudged joint proprietors of land following the process under the Adjudication of Title Decree.

[47] I note that the “Heirs Mrs. Maria Athala” and “Mr. Marcel Antha” have been registered as joint proprietors of S1961 with a qualified title as per the Notice of First Registration, but that the share of each proprietor was not specified in the notice. Article 815 of the Civil Code of Seychelles Act provides that “*Co-ownership arises when property is held by two or more persons jointly. In the absence of any evidence to the contrary it shall be*

*presumed that co-owners are entitled to equal shares.*” I therefore find that, in the absence of any evidence to the contrary, “Heirs Mrs. Maria Athala” and “Mr. Marcel Antha” each owned a half share in parcel S1961.

[48] Consequently I find that the Land Registrar correctly registered the affidavit on Transmission by Death dated 30<sup>th</sup> July 2001 in respect of the land belonging to the late Marcel Antat which states that he was the registered proprietor of an undivided half share in title S1961 so that each of his five heirs including Marthe Alphonse became entitled to a  $\frac{1}{10}$  undivided share in the property. For the same reasons I find that the second Affidavit on Transmission by Death dated 10<sup>th</sup> May 2014 sworn by Gisele Monique Nanon born Antat (one of the daughters and heirs of Marthe Alphonse), averring that Marthe Alphonse was the registered proprietor of an undivided  $\frac{1}{10}$  share in title S1961 so that her nine heirs inherited undivided shares in her  $\frac{1}{10}$  share of the property was also correctly registered.

### **Findings**

[49] I therefore find that:

- (a) the respondent’s claim that the petitioner does not own a half share in parcel S1961 but owns only 11,183m<sup>2</sup> and that therefore the respondent is entitled to the remaining 33,941m<sup>2</sup> is without merit;
- (b) the petitioner and respondent are each entitled to a half share in parcel S1961.

### **Decision**

[50] I therefore grant the prayer of the petitioner for the appointment of an appraiser to submit a report proposing partition of title S1961 in accordance with the entitlement of the parties, namely a half share each.

[51] Applications for division in kind are governed by the provisions of the Immovable Property (Judicial Sales) Act (Cap 94). The present Petition is made pursuant to section 107(2) of that Act. Section 112 of the same Act provides as follows:

**1. Appraisalment**

*The Judge may also, before deciding upon the demand, order an appraisalment (expertise) by an appraiser to be named by him.*

*In such case the appraiser shall, within a delay to be fixed by the Judge, make and file in the registry his report which shall in a summary manner give a description of the property, the estimated value thereof, and the basis upon which such valuation is made. The report shall further state whether or not the property can conveniently be divided in kind, and if so divisible shall set forth the proposed lots in conformity with this Act and the provisions of the Civil Code of Seychelles.*

*In no case of appraisalment under the provisions of this Chapter shall it be necessary to administer an oath to the appraiser.*

*The parties to the division in kind shall be summoned, by a notice served upon them in person or at the domicile elected by them in accordance with section 110, four days at least before the day fixed for the appraisalment, to attend at the time and place where the said appraisalment is to be made.*

[52] In accordance with the above provision I hereby appoint Mr. Antoine Ah-Kong of Ah-Kong Land Surveys, Providence Industrial Estate, Mahe to:

(a) carry out an appraisalment of title S1961 situated at Boileau, Mahe, Seychelles; and

(b) submit a report to this Court complying with section 112 of the Immovable Property (Judicial Sales) Act (Cap 94) and in particular proposing partition of title S1961 so that the parties may obtain a half share therein, on or before 31<sup>st</sup> August 2020.

[53] The costs of the Appraisalment will be borne in equal shares by the parties.

[54] A copy of this Order is to be served on Mr. Antoine Ah-Kong.

Signed, dated and delivered at Ile du Port on 17<sup>th</sup> April 2020.

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E. Carolus J