

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 346

CS 81/2013

In the matter between:

STEVEN RIDEAU-MEIN AND ANOR

(rep. by Mrs. A. Armesbury)

Plaintiffs

and

JOKY HENRI MEIN AND ANOR

(rep. by Mr. N. Gabriel)

Defendants

Neutral Citation: *Rideau-Mein & Anor v Mein Joky & Ors* (CS 81/2013) [2020] SCSC 346

(26 June 2020)

Before: Andre J

Summary: Succession as between legitimate and natural children under the Seychelles Civil Code (Cap 33)

Heard: 12 February 2020

Delivered: 26 June 2020

ORDER

The following Orders are made:

- (i) The plaintiff is granted to the following effect:
- (ii) The plaintiffs being the natural children of the late Mr. Michel Mein are entitled to a share in his inheritance as per the rules of intestacy as provided for in Article 760 of the Code;
- (iii) The affidavit of transmission by death which was sworn by the first defendant, Mr. Joky Mein (*Exhibit P2*) is thus false and is to be amended accordingly to include the plaintiffs, also as heirs of late Mr. Michel Mein;
- (iv) In line with the finding at paragraph [26] below, the portion of land on which the shop stands is to be extracted and given to the second plaintiff as her share

of the inheritance' subject to any cash adjustment in favour of the other named Heirs if the same is required.

- (v) The Registrar of Lands is directed accordingly with regards to the rectification of the affidavit of transmission by death (*Exhibit P2*).
- (vi) All other prayers of the plaint concerning inventory and distribution of the Estate of the late Mr. Michel Mein are to be subject of separate proceedings.
- (vii) Costs of this suit are awarded to the Plaintiffs.

JUDGMENT

ANDRE-J

Introduction

- [1] This Judgment arises out of a plaint filed by Steven Rideau-Mein (“first plaintiff”) and Marie France Rideau-Mein (“2nd plaintiff”) cumulatively referred to as (“plaintiffs”) on the 25 September 2013, as against Joky Henri Mein (“1st defendant”), Hillson Joseph Mein (“2nd defendant”) cumulatively referred as (“defendants”), wherein the plaintiffs seek Orders, to declare that they have a share in land Title H 1960 and they are allowed to extract their portion therefrom or in the alternative that they are adequately compensated for their share therein; an order that the portion of land on which stands the shop is extracted and given to the 2nd plaintiff as her share of the inheritance, an order that the 2nd defendant declares the amount of rent collected from the lease of the chalets and the house and that the plaintiffs are paid a proportion of that equal to their shares in the same, an order that the defendants pay costs of this suit and to any other Orders as to the Court may deem fit.

[2] The defendants on their side by way of defence of the 26 July 2017 aver that the plaintiffs are put to the strict proof of their entitlement as illegitimate heirs of late Mr. Michel Ange Mein and further at paragraph 5 of the defence aver that they alone are entitled to the Estate of the late Mr. Michel Mein and Mrs. Anita Mein in equal shares. In the alternative, however, they further aver that, should the Court find that the plaintiffs are natural children of the late Michel Ange Mein, that the plaintiffs being illegitimate children, would be entitled to inherit only half of what the legitimate children would inherit.

[3] The hearing of this matter took place on the above-mentioned date.

Evidence

[4] The first plaintiff testified in support of the plaint and the Defence did not call any witnesses.

[5] The 1st plaintiff testified in a gist as follows.

[6] That he was the son of Aline Moricia Rideau and fathered by Mr. Michel Ange Mein known as France Mein. Birth certificate (*Exhibit P1*) was produced to that effect.

[7] He further testified that at the time of his death, his late father had property at Glacis namely parcel Nos H 1960 and H 1310.

[8] That the affidavit of transmission by death signed by the first defendant and registered at the Registration's office on the 31 March 2006 (*Exhibit P2*) (*supra*), denied the plaintiffs of their rights as the heirs of their late father in that their names are not found therein as the heirs of late Mr. Michel Ange Mein, hence their averment that that affidavit is fraudulent and void.

[9] It was further testified that parcel No. H 1960, encloses a shop built thereon which belonged to the late father of the plaintiffs and that the shop was sold to the 2nd plaintiff, Marie France Rideau-Mein during his lifetime and reference was made to the case of SCA No. 6 of 2006 wherein the court of appeal dismissed an appeal to a Supreme Court Judgment dated 17 March 2006 in CS No. 319/02 between Joseph Mein, executor of the

estate of Anita Mein then plaintiff and Marie France Stella Elina Rideau, then defendant. (The judgment is considered at length in the analysis of evidence below).

- [10] The first plaintiff moved on behalf of both plaintiffs for the Orders as sought and reiterated in paragraph [1] (*supra*).
- [11] Upon cross-examination, the first plaintiff confirmed that their late father passed away one year after the late Mrs. Anita Mein and they were declared as his children before he passed away. It was admitted in cross-examination that it was not contested that both the plaintiffs were fathered by the late Mr. Joseph Mein.
- [12] The first plaintiff insisted that both plaintiffs were entitled to their share in the land upon which the shop was situated namely, parcel H 1960.
- [13] The first plaintiff further testified upon cross-examination as to the houses rented on the said property and no receipts provided to plaintiffs as heirs albeit the first plaintiff taking care of the property after the death of his late father.

The applicable law

- [14] Article 723 of the Civil Code (Cap 33) (hereafter “the Code”) provides that:

The law regulates the order of succession amongst legitimate heirs, natural children, and the surviving spouse; in default of such persons, the property passes to the Republic.

- [15] The rules for intestate succession are as follows:

- a. The surviving spouse, if there is one, takes all personal chattels plus half of the remaining estate (Article 767).
- b. The remainder of the estate is divided between any children: legitimate and natural (Article 745).

- [16] Where there are legitimate and natural children, the rules are as follows:

- a. *Natural descent shall only give rise to rights of succession to the extent that a natural child has been legally recognized (Article 756).* (Emphasis is mine)

- b. Natural children have the same rights as legitimate children (Article 757).
- c. However, Article 760 provides:

Natural children, whose father or mother, at the time of their conception, was married to another person, shall be entitled to succeed together with any legitimate children of that marriage; in that case, however, the share of each such natural child shall be one half of what it would have been if all the children of the deceased had been legitimate.'

The part of the share of each such natural child, which does not accrue to him by reason of the foregoing provisions of this article, shall accrue to the legitimate children of the marriage which is affected by the adultery; it shall be divided amongst the legitimate children of that marriage in proportion to their hereditary parts. (Emphasis is mine).

Analysis and findings on evidence

- [17] Both Mrs. Anita Mein and Mr. Michel Mein died intestate. At the time of her death, Mrs. Anita Mein was still married to Mr. Michel Mein. As such, half of her estate passed to Mr. Michel Mein on her death.
- [18] The affidavit sworn by the first defendant, Mr. Joky Mein (Exhibit P2), was thus incorrect. It lists Mrs. Anita Mein's heirs as Fuljera Nella Pool, France Conrad Mein, Joky Mein, and Hillson Mein. It states at para. 4: 'That no other persons have an interest in the above-mentioned titles H1310 and H1960 except for the heirs abovementioned in paragraph 2'. Contrary to this, Mr. Michel Mein had an interest in the abovementioned titles.
- [19] On the evidence presented, it follows that Mr. Michel Mein inherited half of Mrs. Anita Mein's estate on her death. Mr. Michel Mein's estate then passed on death to his children, both legitimate (including the defendants) and natural (including the plaintiffs). The 'natural children' being namely, those children parented by Mr. Michel Mein and Mrs. Aline Rideau, would however only be entitled to half of that of the legitimate children, being namely those children parented by Mr. Michel Mein and Mrs. Anita Mein
- [20] The Orders sought by the plaintiffs, in this case, relate only to Title H1960, on which land there is a shop.

- [21] The Court of Appeal confirmed in a separate case (No. 6/2006) that the shop is owned by Ms. Marie-France Rideau, the second plaintiff in the present action. While the land on which the shop is located was (and is) in the name of Mrs. Anita Mein, the Court found that the shop was owned by Mr. Michel Mein. He subsequently sold the shop to his daughter, Ms. Marie-France Rideau. The Court confirmed that he was entitled to do this as the owner of the shop. The effect of this is that the shop did not form part of Mrs. Anita Mein's estate through the land on which it is situated did.
- [22] This case is relevant to the order sought by the plaintiffs that 'the portion of land on which the shop stands be extracted and given to the second plaintiff as her share of the inheritance'.
- [23] The second plaintiff does not have a legal right to request that the land on which the shop stands be transferred to her share of the inheritance. Article 761 of the Code grants preference to the legitimate children in terms of distribution as follows:

Article 761

If the surviving spouse, or the children of his or her marriage, demand that in any distribution of property they are preferred in the award of certain specific items of the succession, the natural children referred to in the two preceding articles shall not be entitled to refuse it. Provided that such surviving spouse or his or her children are prepared to make a cash adjustment if necessary. The same choice of items of the succession shall extend to the home which the claimant or claimants were using for casual residence.

- [24] However, as per the pleadings, the defendants have not indicated a preference regarding the distribution of property and seeking that the plaint is dismissed only and the alternative as per paragraph [2] above, that '*should the Court find that the plaintiffs are natural children of the late Michel Ange Mein, that the plaintiffs being illegitimate children, would be entitled to inherit only half of what the legitimate children would inherit*'. (Emphasis is mine).
- [25] Based on the above analysis, it is thus clear that the plaintiffs are natural children of the late Mr. Michel Mein hence entitled to his succession alongside the legitimate heirs as named above subject to the rules of intestacy in terms of share of distribution as clearly

outline in Article 760 of the Code, namely, “one half of what would have been if all the children of the deceased had been legitimate.”

[26] As for the right of the second plaintiff to the ‘land on which the shop belonging to the second plaintiff is situated’ as analyzed earlier, since the defendants have through their defence not expressed their right under Article 761 as legitimate children, it is only fair and in the interest of justice that this Court uses its discretion in the special circumstances of this case and grants the prayers as sought in that ‘the portion of land on which the shop stands be extracted and given to the second plaintiff as her share of the inheritance’.

Conclusion

[27] Following the above findings, the Court thus hereby orders as follows:

- (i) The plaint is granted to the following effect:
- (ii) The plaintiffs being the natural children of the late Mr. Michel Mein are entitled to a share in his inheritance as per the rules of intestacy as provided for in Article 760 of the Code;
- (iii) The affidavit was sworn by the first defendant, Mr. Joky Mein (Exhibit P2) is thus false and is to be amended accordingly to include the plaintiffs, also being illegitimate heirs of late Mr. Michel Mein;
- (iv) In line with the finding at paragraph [26] above, the portion of land on which the shop stands is to be extracted and given to the second plaintiff as her share of the inheritance’ subject to any cash adjustment in favour of the other named Heirs if the same is required.
- (v) The Registrar of Lands is directed accordingly with regards to the rectification of the affidavit of transmission by death (Exhibit P2).
- (vi) All other prayers of the plaint concerning inventory and distribution of the Estate of the late Mr. Michel Mein are to be subject of separate proceedings.
- (vii) Costs of this suit are awarded to the Plaintiffs.

Signed, dated and delivered at Ile du Port on 26th day of June 2020.

ANDRE-J