SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 410
CS 54/2013

In the matter between:

RICHARD HOAREAU **Plaintiff**
(rep. by Mr. S Rajasundaram)

and

BENOIT HOAREAU **Defendant**
(rep. by Mr. F. Bonte)

Neutral Citation: *Hoareau Richard v Hoareau Benoit* (CS 54/2013) [2020] SCSC 410 (2 July 2020).
Before: Andre J
Summary: Section 71 (d) of the Seychelles Code of Civil Procedure (Cap 213) – Cause of action – *Droit de superficie* – Acquisitive prescription
Heard: 11 March 2020
Delivered: 2 July 2020

ORDER

The following Orders are made:

(i) The plaint is dismissed for want of disclosure of a cause of action as per requirements of section 71 (d) of the Seychelles Code of Civil Procedure (Cap 213); and

(ii) Cost is awarded to the Defendant.

JUDGMENT

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[1] **ANDRE J**

Introduction

[2] This Judgment arises out of a plaint filed by Richard Hoareau ("plaintiff") as against Benoit Hoareau ("defendant"), filed on 17 July 2013. The Plaintiff moves this Court for

Orders that the Defendant quits, vacate the residential house on Title No. H2272 and hand over the same to the plaintiff; and such other reliefs as the Court deems fit and proper according to the nature and circumstances of the case.

[3] The Defendant by a statement of defence filed on the 22 October 2013 denies the paint and moves for dismissal of the plaint and raises a plea in limine litis to the effect that the action against the defendant is time-barred by the expiry of five years.

Background of the case

[4] In a gist, the case concerns the ownership of a house situated on Title H2772 ("the property"). The said land is presently co-owned by the heirs of Mrs. Therese Hoareau, the paternal grandmother of the plaintiff, and the mother of the defendant. The issue in this case concerns who owns the house.

[5] The plaintiff alleges that his parents, namely Mr. Alois Hoareau and Ms. Jenita Ally, built the house with the consent of the landowner, Mrs. Therese Hoareau. The plaintiff accordingly testified that his late father was the owner of the house and that on his death (intestate), the house passed to the plaintiff as his father's sole heir. In the course of the proceedings, it became clear that the basis of the plaintiff's claim was a *droit de superficie,* acquired by prescription. This was confirmed in the Counsel's final submissions.

[6] The defendant conversely avers that Mrs. Therese Hoareau built the house for Mr. Alois Hoareau. The defendant thus submits that the house belongs to all of the heirs and not to anyone heir without compensation for the others. When the estate is divided, it will be shared equally among all of the heirs, of which the plaintiff is one.

Cause of action

[7] A preliminary issue arises in this case, namely as to whether the pleadings are sufficiently clear to establish a valid cause of action filed on behalf of the plaintiff.

Law on pleadings

[8] It is a well-established rule of civil procedure that a plaint must clearly set out a cause of action. Section 71(d) of the Seychelles Code of Civil Procedure (Cap 213), provides that the plaint must contain 'a plain and concise statement of the circumstances constituting

the cause of action and where and when it arose and of the material facts, which are necessary to sustain the action'. (Emphasis mine).

[9] The reason for this rule is to ensure that the defendant is given a fair notice as to the case that must be met as explained in the case of ***Gallante v Hoareau* [1988] SLR 122**; ***Tirant & Anor v Banane* [1977] SLR 219*; and Lesperance v Larue* (Civil Appeal SCA 15/2015) [2017] SCCA46 (7 December 2017)**. In the *Lesperance case,* the Court of Appeal addressed whether the trial court had erred in finding that the Respondent 'may have acquired a right as a statutory tenant' when this was not pleaded by the Respondent. The comments regarding the importance of pleadings are relevant to the present case. Fernando JA noted: (emphasis added):

> *"The Seychelles Code of Civil Procedure is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so elaborate that many a time, the fulfilment of the procedural requirements of the Code may contribute to delay. But any anxiety to cut the delay or further litigation should not be a ground to float the settled fundamental rules of civil procedure.* ***The object and purpose of pleadings are to ensure that the litigants come to trial with all the issues clearly defined and to prevent cases being expanded or grounds being shifted during trial or judgment. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration.*** *In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called 'Any Other Business' in the sense that points other than those specified may be raised without notice. Therefore the Court could not have, on finding that the Defendant (Respondent herein) had not made out the case of succession put forth by him, grant him some other relief.*
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> *In his book "**The Present Importance of Pleadings" by Sir Jack Jacob, (1960) Current Legal Problems, 176;** the outstanding British exponent of civil court procedure and the general editor of the White Book; Sir Jacob had stated: "As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings...**for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made** …"*
>
> …

> This Court also held in the case of ***Vandagne Plant Hire Ltd VS Camille [SCA 03/2013] 2015, SCCA 17***: "*In terms of procedure and pleadings,* ***the rule bears no repetition that parties are bound by their pleadings and that they may not ask nor can the Court grant any relief which goes beyond the four corners of the plaint and the pleadings.*** *Nor may it consider any issue any more than grant a remedy flowing from that issue when that issue was not joined by the parties in the first place. Contributory negligence in this case was never part of the plaint nor the pleadings. As such, it was incorrect for the Court to proceed to a judicial excursion for the purposes of considering, deciding the issue of contributory negligence which had not been pleaded and granting a relief thereon: In the case of Boulle v Mohun [1933 MR 242], the Court held that contributory negligence should be first raised as an issue in the pleadings before the Court may pronounce itself thereon. This principle was endorsed in the jurisprudence of Seychelles, as early as 1977 in the case of Tirant and Anor v Banane 177 SLR 1977. See Tirant v Banane 1977 SCA 219; Therese Sophola v Antoine Desaubin SCA 13 of 1987; Andy Confait v Sonny Mathurin SCA 39 of 1994; Equator Hotel v Minister of Employment and Social Affairs SCA 8 of 1997; Georges Verlacque v Government of Seychelles SCA 8 of 2000; Kevin Barbe v Jules Hoareau SCA 5 of 2001; Etienne Gill v James Gill SCA 4 of 2004*."

[10] The recent case of ***PTD Ltd v Zialor*** **Civil Appeal SCA 32/2017 [2019] SCCA 47 (17 December 2019)** is particularly apposite on the facts. On appeal, the counsel for the respondent conceded that the respondent's defence did not contain any pleadings in respect of the issue of a *droit de superficie*. Nonetheless, the counsel for the plaintiff argued that the pleadings of the appellant were sufficiently wide to allow the trial Judge to make the findings and grant the relief he did. The Court of Appeal rejected this, ultimately finding that the trial judge acted ultra petita when it recognized the respondent as having acquired a *droit de superficie* over the land of the appellant. The judgment is very comprehensive. The Court of Appeal noted:

> *"We reiterate that the allegations in every pleading must be, "(i) Material. (ii) Certain". With regard to materiality —*
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> *"the fundamental rule of our present system of pleading is this: "Every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be brief as the nature of the case admits" Order 18, r. 7 (I).)*
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> *This rule involves and requires four separate things:*

i. *Every pleading must state facts and not law.*

ii. *It must state material facts and material facts only.*

iii. *It must state facts and not the evidence by which they are to be proved.*

iv. *It must state such facts concisely in a summary form".*

"The word "material" means necessary for the purpose of formulating a complete cause of action, and if anyone "material" fact is omitted, the statement of claim is bad." (Bruce v Odhams Press Ltd. [1936] 1 KB at p. 697). The same principle applies to the defence. See Monthy v Seychelles Licensing Authority & Another (SCA 37/2016) [2018] SCCA 44, which referred to Order 18, r. 7 (1) for guidance. Order 18, r. 7 (1) is essentially similar to section 71 (d) of the Seychelles Code of Civil Procedure. See also Maria Adonis supra."

[11] The Court went into great detail as to the root of the *droit de superficie* in Seychelles law. Robinson JA concluded:

> *"As can be gathered from the above doctrinal writings and jurisprudence, the "droit de superficie" is the right which a person (the "superficiare") has on immovable property found on or under land belonging to another person (the "tréfoncier") who owns the land or under which the immovable property of the superficiare is found. Therefore, a person who has a "droit de superficie" on a property is the owner thereof without being the owner of the land on or under which the immovable property is situated."*

[12] The Court also addressed the issue of prescription, and the respondent's failure to plead accordingly.

> *"We agree with Counsel for the appellant that, under the Civil Code of Seychelles, **it is imperative that prescription is pleaded for a court to be able to rely on it** because "la prescription n'opère pas de plein droit". The Appellate Court in Prosper & Another v Fred (SCA 35/2016) [2018] SCCA 41 (14 December 2018) observed that —*
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> [13] *"it must be noted that generally prescription must be pleaded and cannot be raised by the court itself (see Article 2223 of the Civil Code and Gayon v Collie (2004-2005) SLR 66".*
>
> *In addition, we also hold that when a party has pleaded a longer period of prescription which has not been acquired, the court cannot "**d'office**"" rely on a shorter period of prescription which has been acquired."*

[14] The Court cited leading case law on the need for pleadings to contain all necessary material facts, including *Gallante and Lesperance cases* (all supra). It also referred to ***Maria Adonis v William Celeste* (Civil Appeal SCA 28/2016) [2019] SCCA 32 (23 August 2019**), which reaffirmed the principle that in the Seychelles system, every pleading must contain all the material facts on which a party relies for his claim or defence as good law.

Analysis

[15] The plaintiff seeks an order that the defendant 'quit, vacate the residential house on the Title H2772 and hand over the same to the plaintiff' and any other relief that the court deems fit and proper according to the nature and circumstances of the case. The plaint provides the following material facts:

> *"The deceased at all material times co-owned a property comprised in title H2772 being the legal heir of late Therese Hoareau.*
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> *The deceased at all material times was cohabiting with Jenita Ally (born Nicette), hereinafter referred to as partner.*
>
> *The mother of the plaintiff Jenita Ally … helped the deceased in constructing a 2 bedroom house on H2772 and more than ¾ value of the construction was contributed by the said partner.*
>
> …
>
> *The plaintiff being the legal heir and sole beneficiary of the residential house and the portion of the land in H2772 approached the defendant and requested him to quit and vacate the house on the property H2772 but the defendant failed, neglected and refused to vacate the premises.*
>
> *The plaintiff requires his lawful entitlement in the said residential house on the land H2772 but he is deprived of his rights in view of the defendant's refusal, failure to deliver vacant possession of the house.*

[16] The plaint does not refer to a *droit de superficie* or prescription. It was revealed in the course of the proceedings and in the final submissions that this forms the basis of the plaintiff's claim.

[17] During the hearing of 6 December 2019, a without prejudice discussion between the counsel and the Court took place (pp.10-11 of the record). The following comments were made:

"Mr Rajasundaram: Correct my Lady. Droit de superficie is the one that my client is claiming.

Court: He is asking him to move out of land which is already in indivision?

Mr Rajasundaram: No, I am only asking the Defendant to quit and vacate the house on that legal heir's land. I am not asking to vacate from the land.

Mr Bonte: It is vacate on the land.

Mr Rajasundaram: No we will address this in the Court my Lady at the time of the address but I am only asking him based on my right which I have also impressed the Court, my right that I am claiming is purely based on the droit de superficie and there is an evidence here abundantly available that he has subsequently moved into the house and it is also a case for the Plaintiff.

Court: But if you are claiming droit de superficie, droit de superficie has to be pleaded.

Mr Rajasundaram: Not exactly the word but the averments are very clear to say that the house belonged to the Plaintiff's father.

Court: No but why do you not claim droit de superficie in the plaint, this is something novel. Where in the plaint is there droit de superficie Mr. Raja?

…

Court: In fact to be honest there is nothing to do with droit de superficie in this plaint, it is simply alleging rights in a house, not the droit de superficie. In order to claim droit de superficie you need to satisfy certain requirements. At least you should be staying on the property and now it's been established that nobody was staying in that property it was abandoned for five years prior to him …"

[18] The written submissions of the counsel for the plaintiff further elaborates on this. The submissions note that the 'plaintiff's claim on his father's house is thus based on his father's uninterrupted acquisitive possession'. The submissions then go on to cite case law regarding the acquisition of a *droit de superficie,* notably the judgment of Twomey JA in ***Ministry of Land Use and Housing v Stravens*** **(Civil Appeal SCA 24/2014) [2017] SCCA 13 (21 April 2017)**, citing the part of the judgment, which addresses whether *a droit de superficie* can be perpetual. The case of ***Sinon v Pierre*** **SCA19/2001** was also cited. The reason for this was not made clear by their counsel for the plaintiff, as

the judgment concerns the law regarding interruption of prescription. In any case, it is clear that the basis of the claim for the plaintiff, as set out in the submissions, is acquisitive prescription of a *droit de superficie* in respect of the house by the plaintiff's father.

[19] This is not however remotely clear from the plaint. No reference is made to *droit de superficie* or an equivalent description for a right to the surface of the land. Contrary to what counsel avers, this is not clear from the facts contained in the plaint. The plaintiff prayers for an order of the Court that the defendant 'quit, vacate the residential house on the title H2772 and hand over the same to the plaintiff'. The pleadings note that he seeks 'his lawful entitlement in the said residential house on the land H2772'. However, the plaint does not specify the nature of that lawful entitlement. Moreover, the plaint refers to the plaintiff 'being the legal heir and sole beneficiary of the residential house and the portion of the land in H2772'. The latter reference to '*the* portion of the land' (as opposed to *a* portion of the land) opens the possibility that the plaint alleges ownership not just of the building, but the land underneath it as well.

[20] Moreover, there is no mention in the plaint of prescription. To claim a *droit de superficie*, the plaint must stipulate how the right was acquired, i.e. by agreement, alienation or prescription clearly set out in ***Albest v Stravens (No 2)*** **(1976) SLR 254.** A claim for acquisition of a *droit de superficie* by prescription must be supported by facts, for instance, the number of years that the house was occupied. However, the plaint does not even include the year that the house was built. The evidence of Ms. Jenita Ally was that they were living in the house for 'maybe 10' years and that permission to build the house was given by Mrs. Therese Hoareau verbally. She testified that she took the loans, but that her and Mr. Alois Hoareau built the house together (though this is disputed by the defence's witness that Mrs. Therese Hoareau built the house).

[21] The reasons for requiring that a plaint contains a clear cause of action are outlined above. The present facts provide further support for this position. Without being able to ascertain the nature of the plaintiff's claim, the defence is in a difficult position to defend it. For instance, if the plaintiff was claiming a right 'of ownership of land or other interests therein', then the period for prescription would be twenty years (Article 2262), as

opposed to the usual period of five years (Article 2271). This is an essential fact that should be clear from the plaint so that the defence can mount an adequate defence.

Findings on the Merits

[22] Even if the pleadings were accepted, the evidence presented by the plaintiff is insufficient to show that the father of the plaintiff had acquired a *droit de superficie* in respect of the house.

[23] The evidence presented shows that Ms. Jenita Ally took certain loans. One loan was taken in 1999 for a property in Glacis (P6). It is for SCR6, 000. The other loan, for SCR15, 000, is dated 30 July 2008 (P7). This was after Mr. Alois Hoareau had died (in 2006), and well after Ms. Jenita Ally had moved out of the house (the plaint itself notes that: 'The partner had left the deceased in or about 2005'). Furthermore, the bank statements provided are from 2008. It is not clear what can be taken from these statements insofar as they relate to the second loan of 2008, the first loan being paid off much earlier according to P8. The evidence of payments for utilities does not conclusively prove that Ms. Jenita Ally or her partner, Mr. Alois Hoareau, necessarily owned the house, only that they paid for the bills at the house. The evidence thus only supports a finding that the mother of the plaintiff contributed SCR6, 000 to the construction of the house.

[24] The claim for acquisitive prescription of a *droit de superficie* is also unsupported by the evidence. The Court has not been presented with clear evidence as regards the date of the house's construction. The oral evidence of Ms. Jenita Ally was that she was living in the house for 'maybe 10 years' (6 December 2018, p 37). A *droit de superficie* is a real right as outlined in ***De Silva v Bacarie*** **(1982) SCAR 45**, thus, the twenty-year period of prescription applies. The period of time of occupation was thus insufficient to acquire a *droit de superficie* by prescription on the evidence of the plaintiff.

[25] It would thus appear that, in the absence of establishing a *droit de superficie*, the presumption in Article 553 applies in respect of the house.

> *Article 553*
>
> *"All buildings, plantations and works on land or under the ground* ***shall be presumed to have been made by the owner*** *at his own cost and to belong to him unless there is evidence to the contrary; this rule shall not affect the rights of ownership that a third party may have acquired or may*

acquire by prescription, whether of a basement under a building in the ownership of another or of any other part of the building."

[26] Pursuant to Article 555(3), Ms. Jenita Ally would have been entitled to a refund for the money spent on constructing the house. It is to be noted, however, in the latter instance, that such a claim by Ms. Ally would now be prescribed based on the above findings.

Conclusion

[25] Following the above analysis and findings this Court orders as follows:

(i) The plaint is dismissed for want of disclosure of a cause of action as per requirements of section 71 (d) of the Seychelles Code of Civil Procedure (Cap 213); and

(ii) Cost is awarded to the Defendant.

Signed, dated and delivered at Ile du Port on 2nd July 2020.

ANDRE J