SUPREME COURT OF SEYCHELLES

Reportable
CS 41/2017
[2020] SCSC 710

In the matter between

JUDANE BRADBURN Plaintiff
(rep. by Alexandra Benoiton)

and

1. GEORGE AMEDÉ

2. DAVID AMEDÉ

3. JERRILIA GUY

4. NANCY RAGAIN

5. ELIZABETH AGRICOLE

6. ESTATE OF JEAN AMEDÉ

ESTATE OF JULIENNE CROISE Defendants
(rep. by Nichol Gabriel)

Neutral Citation:	*Bradburn v Amedé* CS 41/2017 [2020] SCSC 710 (30 September 2020)
Before:	Twomey CJ
Summary:	claim for acquisitive prescription for having been in possession of land in the capacity of owner for over fifty years
Heard:	27 March 2020/30 July 2020
Delivered:	30 September 2020

ORDER

The plaint is dismissed with costs.

JUDGMENT

TWOMEY CJ

[1] The Plaintiff claims that she and the Defendants were co-owners in indivision of Parcel V5030 at Greenwich. She further claims that she resided with her father, Jean Amedé (the Sixth Defendant, whose estate she also sues in these proceedings) in a house he built on the land and after his death continued to reside therein until the house burnt down in 2015. She claims she lived for 54 years on the land and enjoyed continuous, uninterrupted, peaceful, public, unequivocal use of the property and for that length of time acted in the capacity of owner. In that regard she prays the Court to declare her the owner of Parcel V5030 by virtue of acquisitive prescription.

[2] In their statement of Defence, the Defendants deny the Plaintiff's claim as to her continuous, uninterrupted, peaceful, public, unequivocal use of the property and for that length of time acting in the capacity of owner.

[3] The Plaintiff testified that she was fifty-seven years old and had lived on Parcel V5030 until the house she occupied burnt down. Her father was co-owner of Parcel V5030 and after his death in 2017 she was appointed the executor of his estate. She stated that her father built the house in which she had resided and that she had added a room and a veranda when she gave birth to her to her first child in August 1987. She was unaware until the house burnt down that the property was co-owned and nobody prevented her from living on that property. Her two uncles David and Georges Amedé had lived nearby but they had also passed away. She stated that the Third Defendant lived on part of Parcel V5030 as did the Fourth and Fifth Respondent. Unfortunately, the house burned down in 2015 and she had to move elsewhere with her family. She filed a caution against the Title V5030 but she never filed an affidavit of transmission by death to transmit her father's share of the land into her name.

[4] Mr Georges Bradburn, the Plaintiff's husband also testified that since 1994, he had lived with her on V5030 and had always known this property to be that of Jean Amedé's also known as Frank. No none had told him differently and the Plaintiff had been acting as its owner. They only found out that the house was co-owned when the house burnt in 2015. They had sought the assistance of PMC to help rebuild the house and were told they needed the consent of the other co-owners.

[5] Mr Brian Marie who lives at Greenwich testified that he had known the Plaintiff for a long time, perhaps between fifteen to twenty –five years. He had never been told of the ownership of the property where the house was built on V5030. He only knew the owner as the Plaintiff and had never seen someone else on that property.

[6] Sharon Amedé, the Plaintiff's daughter who is 32 years old and lives at Perseverance since the house at Greenwich was burnt down testified that her grandfather owned the house. She was unaware of the ownership of the property until after the fire. It was put to her that there was a list of people who were in co-ownership with names given and has admitted knowing most of them.

[7] The Fifth Defendant, the cousin of the Plaintiff's father testified on behalf of all the Defendants. She stated that the co-owners of Parcel V5030 were all siblings and cousins. There had been a parent parcel which was subsequently subdivided into three parcels namely V5030, V5031 and V5032. V5030, the subject of the present suit, was allotted to Albert Henry but he drowned. The land had been the subject matter of a court case but she could not recall the details or outcome. She disputed the Plaintiff's claim in regards of the exclusive ownership and possession of the said parcel V5030. According to her, there had been no communication from the Plaintiff in regards the claim until she was served with summons to appear in Court.

[8] Ms Juliette William from the Land Registry produced registry documents from 1924 to 2017 in relation to Parcel V5030 which had originally belonged to Albert Henry. On his death, the land parcel V5030, according to the adjudication records, was transferred to the new land register and the co-owners were listed in the new land register on the 7th September 1987 as Jean Amedé, George Amedé, David Amedé, Julienne Croisé, Jerrilia Guy, Nancy Ragain and Elizabeth Agricole. Jerrilia Guy transferred her undivided share in the property to her daughter Marie-Antoinette Guy in 2008. All the co-owners have a 1/7 undivided share in the property.

[9] Counsel for the Defendants, Mr. Gabriel has relied on the provisions of Articles 2229 - 2235 and 2261 and the authorities of *Prosper & Anor. v Fred* (SCA 35/2016) [2018] SCCA 41 (14 December 2018), *Anglesy v Mussard* and anor (1938) SLR 31 and of

Lesperance v/s Lesperance (1977) SLR 139 for the proposition that for co-heirs to acquire by prescription the whole or part of the common property they must establish their exclusive possession *proprio nomine* of the property as against the other co-heirs. In the present case, the Plaintiff in her own right and as Executrix of the Estate of Jean Amedé has failed to establish exclusive possession *proprio nomine* of the land parcel V5030 as against the Defendants.

[10] Having reviewed the evidence both documentary and oral I agree whole heartedly with the Defendants' Counsel submissions. The Plaintiff's possession of Parcel V50530 did not fulfil the conditions necessary for acquisitive prescription.

[11] I give reasons. The following are the relevant provisions of the Civil Code: Articles 2229 - 2236 provide:

> *"2229 In order to acquire by prescription, possession must be continuous and uninterrupted, peaceful, public, unequivocal and by a person acting in the capacity of an owner.*
>
> *Article 2230 A person shall be presumed to possess for himself as owner unless it is proved that he possesses on behalf of another.*
> ...
>
> *Article 2232 Purely optional acts or acts which are merely permitted shall not give rise to possession or prescription.*
>
> *Article 2236 Those who possess on behalf of another shall not acquire by prescription however long they may be in possession."*

[12] The provisions make it clear that a claim for uscaptive or acquisitive prescription can only succeed if certain conditions are fulfilled by the possessor of the property. It is also clear that those who possess on behalf of others only have precarious ownership. Moreover, the person who prescribes must do so *nec vi, nec clam* and *nec precario*.

[13] In the light of the above conditions, it is clear first of all from the evidence adduced that the Plaintiff did not possess the property in issue when she claimed acquisitive prescription of the same. Her possession of the house had been interrupted by the fire

which destroyed it. She had moved to Perseverance. There was no house to possess and therefore it cannot be claimed that her possession of the same had not been continuous and uninterrupted.

[14] Secondly, she had lived with her father who was a co-heir of the property, in his house until the house burnt down in 2015. Her father actually passed away in 2017. She had therefore never possessed the house *animo domini*.

[15] In *Chetty v The Estate of Regis Albert & Ors* (CS 131/2018) [2020] SCSC 268 (08 May 2020); on the same issues, this court stated:

> *"[61] In general, a person seeking to prove acquisitive prescription must show corpus and animus. As explained in relation to French and Quebecois law:*
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> *"Acquisitive prescription in French and Quebec civil law is a means of acquiring property that is based on possession, which includes a material aspect and an intentional aspect: the possessor must demonstrate corpus and animus in order to acquire a title by prescription. Corpus refers to "physical control" or "the exercise in fact of a real right". As for animus, it refers to animus domini, in other words, the intention to become the owner, or more broadly the "desire of the possessor to present himself to others as the holder of a real right" (Emerich Yaëll. Comparative overview on the transformative effect of acquisitive prescription and adverse possession: morality, legitimacy, justice. In: Revue internationale de droit comparé. Vol. 67 N°2,2015. La comparaison en droit public. Hommage à Roland Drago. pp. 459-496).*
>
> *[62]As explained by Cody in relation to the Louisiana law of acquisitive prescription, the absence of animus operates as a bar to a finding of acquisitive prescription:*
>
> *"The absence of animus or the admittance of proof that possession began on someone else's behalf implicates the concept of precarious possession, which is insufficient for acquisitive prescription. The Civil Code defines precarious possession as "[t]he exercise of possession over a thing with the permission of or on behalf of the owner or possessor." The precarious possessor in turn suffers from a legal presumption that he or she is presumed "to possess for another although he may intend to possess for himself." This presumption is an important part of defeating acquisitive prescription and can be fatal to both a supposed possessor and quasi-possessor" (Cody J. Miller, Boudreaux v. Cummings: Time*

to Interrupt an Erroneous Approach to Acquisitive Prescription, 77 La. L. Rev. 1143 (2017).”

[16] Further, on this point the case of *Anglesy* (supra) is particularly informative and relevant. The Plaintiff has failed to prove that she lived on the property as its owner and not merely as her father’s licensee.

[17] With respect to the fact that the land is held in co-ownership, it must be pointed out that although a co-heir may and can acquire the whole property, in this context it is necessary to prove that the co-heir possessed the property exclusively and unequivocally. The case of *Lesperance* (supra) cited by Counsel for the Defendants is on all fours with the instant case. It cannot be said that proof of exclusive and unequivocal ownership was brought by the Plaintiff in this case.

[18] In the circumstances her plaint is dismissed with costs.

Signed, dated and delivered at Ile du Port on 30 September 2020

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Twomey CJ