

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 613
CS 44/2020

In the matter between:

GEORGETTE ADONIS
(rep. by Karen Domingue)

Plaintiff

and

TAHIRY MARIAM CEDRAS
(rep. by Amanda Faure)

Defendant

Neutral Citation: *Adonis v Cedras* (CS 44/2020) [2021] SCSC 613 (22 September 2021)

Before: Pillay J

Summary: Donation Deguisee

Heard: 9th April 2021

Delivered: 22 September 2021

ORDER

[1] The Plaintiff’s claim is dismissed.

[2] Each side shall bear their own costs

JUDGMENT

PILLAY J

[3] The Plaintiff seeks a finding that the Deceased, Stanley Cedras, (hereinafter “the deceased”) made a “donation deguisee” with regards to Title V7742 and prays that the

house and property be valued and the Defendant to pay the Plaintiff the value of the half share of Title V7742 and the house thereon.

- [4] From the outset it has to be noted that the matter was filed in 2020 so is subject to the Civil Code prior to the 2021 Amendments.
- [5] The Plaintiff claims that she is the daughter of the late Sunley Cedras, (the Deceased) who passed away on 5th October 2014. The Defendant is the great niece of the Deceased.
- [6] The Defendant admitted that the Plaintiff is the daughter of the deceased who passed away on 5th October 2014. The Plaintiff was declared by the Supreme Court, on 11th January 2018, to be the daughter of the deceased after his death. The Defendant also admitted that the deceased was the owner of Title V7742 and a house thereon. It was also admitted that in February 2005 the deceased transferred the bare-ownership of his property, registered as Title V7742 together with the house thereon to the Defendant. The transfer of the house was for a consideration of SCR 20, 000.00. The Defendant further admitted that the Plaintiff had on several occasions reached out to the Defendant and the Defendant's mother with the aim of jointly commissioning a valuer's report so that the Defendant can pay the Plaintiff half share of the estate of the deceased.
- [7] The Defendant however denied that she was the great-niece of the deceased or that the transfer was a disguised donation. In effect those are the only points of relevance and in issue.
- [8] In evidence the Plaintiff stated that the grandmother of the Defendant is the niece of the deceased. The Defendant's grandmother, one Paula, was the deceased's foster daughter. They all lived with the deceased. The deceased transferred the property to the Defendant when she was a minor keeping the usufruct for himself. She has no knowledge whether any sums were paid in exchange for the transfer. She was declared as the daughter and sole heir of the deceased.
- [9] She accepted in cross examination that no executor has been appointed and there has never been an inventory of the estate of the deceased. According to her the money he had in the bank was given to his sister and brother.

- [10] Julian Cedras testified for the Defendant. It was her testimony that the deceased was her foster grandfather. She lived with him since she was a child. It was her testimony that when the deceased passed the house to the Defendant she paid the consideration from her pay as a carer by way of monthly deductions.
- [11] Paula Annacoura testified for the Defendant stating that the deceased is her foster father. She believed that her mother, Marie-Therese and the deceased were cousins. When the deceased passed away she was informed by one of the officers on scene that the deceased was the Plaintiff's father. After his death, the deceased brother and sister came from Praslin and got the money that he had in the bank. Then the Plaintiff informed her that her counsel would be writing a letter for the brother and sister to refund the money which they did. Every month they sent the money which she collected and paid into the office of Miss Domingue at Trinity House.
- [12] In summary the Defendant's counsel submitted that the Plaintiff has not established that there has been a disguised donation as she has not proved that the alleged gift is over and above the disposable portion.
- [13] Counsel relied on the cases of **Contoret v Contoret [1971] SLR 257**, **Clothilde v Clothilde [1976] SLR 245**, **Pillay v Pillay [1976] SLR 249**, **Pragassen v Vidot [2010] SL 163**, **Reddy and Anor v Ramkalawan [2016] SCSC 31** and **Bibi and Ors v The Estate of the Late Joseph Samuel Bibi (CS 26/2017) [2019] SCSC 1052**.
- [14] Indeed as submitted by counsel for the Defendant in order to establish that there has been a donation deguisee the Plaintiff has to show that that there has been a gift to the Defendant over and above the disposable portion. This of course means that the Plaintiff has to establish the value of the estate in order to calculate the reserved and disposable portion in relation to the number of reserved heirs.
- [15] So the issue for the court is whether there was a "donation deguisee" in favour of the Defendant. In order to answer that question the Court has to look at what a "donation deguisee" is in essence.
- [16] Article 921 of the Civil Code provides as follows:

The reduction of dispositions inter vivos shall only be demanded by those in whose favour the law has provided the reserve, by their heirs or assigns; donees, legatees and creditors of the deceased shall not demand it nor shall they benefit from it.

[17] In **Contoret v Contoret [1971] SLR 257** which counsel for the Defendant relies on, in order to establish that there was a “donation deguisee” the object of the sale must be to deprive the “other children of their prospective rights as “héritiers réservataires” in the deceased succession.

[18] In essence then donation deguisee is a claim by one reserved heir against another reserved heir.

[19] A reserved heir is one who inherits under the rules of Article 913 of the Civil Code which provides that

*Gift inter vivos or by will shall not exceed one half of the property of the donor, if he leaves at death one child; one third, if he leaves two children; one fourth, if he leaves three or more children; there shall be no distinction between legitimate and natural children except as provided by article 915-1.
Nothing in this article shall be construed as preventing a person from making a gift inter vivos or by will in the terms of article 1048 of this Code.*

[20] In **Reddy and Anor** Twomey CJ found that Article 918 which provides that

The value of full ownership of the property alienated, whether subject to a life annuity or absolutely or subject to a usufruct in favour of one of the persons entitled to take under the succession in the direct line, shall be set against the disposable portion; the excess, if any, shall be returned to the estate. This calculation and return shall not be demanded by other persons entitled to take under the succession in the direct line who have agreed to the alienation, and in no circumstances by those entitled in the collateral line.

“creates an irrebuttable presumption in favour of disinherited heirs – a donation to one entitled to succeed to the exclusion of others who are also entitled to succeed shall be reduced if it exceeds the disposable portion.”

[21] The Plaintiff having been declared to be the child of the deceased is therefore a reserved heir under the article 913 and entitled to succeed in the direct line under article 918. On that basis it stands to reason that she has the right to make a claim. Can she claim against the Defendant though? Is the Defendant an heir in the same category?

[22] The evidence shows that the Defendant had no familial relationship to the Deceased nor is there a Will. According to defence evidence the Defendant is the foster grandchild of the deceased. There is evidence that the Defendant is the great niece of the deceased however no conclusive proof was placed before the Court. In my view, the right to claim back the value in excess of the disposable portion exists for one reserved heir as against another reserved heir. There is no evidence on record that the Defendant is a child of the deceased which would bring her within the ambit of article 913 and 918.

[23] Furthermore as rightly submitted by counsel for the Defendant “in order for a disguised donation to be proved, there needs to be evidence brought forth by the Plaintiff that the alleged ‘gift’ is actually over and above the disposable portion” (see **Reddy** above). I have to agree with counsel that this has not been proved in the present case.

[24] On the basis of the above findings the Plaintiff’s case is dismissed.

[25] In view of the nature of the case each side shall bear their own costs.

Signed, dated and delivered at Ile du Port

Pillay J