

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC

CS No. 97 of 2020

In the matter of:

SIMONE ADELA

(rep by Mr. S. Roullion)

Plaintiff

Versus

BETTY ADELA

(rep by Mr. J. Camille)

Defendant

Neutral Citation: *Adela Simone v Adela Bettyr* (CS No. 97 of 2020) [2023] SCSC
21st February 2023

Before: Andre JA (sitting as a Judge of the Supreme Court)

Summary: Legal right or interest on the immoveable property – specific performance of a contract – eviction and compensation ‘*tiers de bonne foi*’

Heard: 30 January 2023 (last sitting to fix Judgment date)

Delivered: 21 February 2023

ORDER

The Court makes the following orders:

- i. Both the plaint and counterclaim partially succeed.
- ii. The defendant and her agents are ordered to leave and vacate the immoveable property of the plaintiff namely, S4542 which the defendant is currently occupying and the plaintiff is to pay the sum of Seychelles Rupees Twenty Five Thousand (SCR 25,000) for home improvements before the defendant is evicted from the property.
- iii. The defendant is given six (6) months from the date of this judgment to find alternative accommodation.
- iv. The plaintiff is to additionally pay back the sum of Eight Thousand Seychelles Rupees (SCR 8,000/-) for subdivision paid to her by the defendant and the late

Elvis Adela since the same was not put into effect.

- v. Both parties shall bear their own costs.

JUDGMENT

ANDRE JA

(Sitting as a Judge of the Supreme Court)

Introduction

- [1] This judgment arises out of a plaint filed by Simone Adela (hereinafter referred to as the plaintiff) on 12 October 2020 against Betty Adela (hereinafter referred to as the defendant).
- [2] The plaintiff alleges that the defendant has no legal right or interest to remain on land parcel S4542 (hereinafter referred to as “property”) owned by the plaintiff and the small house situated thereon and should be ordered to leave and vacate the property. Plaintiff further moves for such other orders as may be fair and just in the circumstances and the whole with costs.
- [3] The defendant filed a statement of defence and a counterclaim on 25 November 2020. She denies the plaint and claims legal occupation of the property based on her construction contribution to the property with her own materials and in good faith. The defendant avers that she is a *tiers de bonne-foi* and cannot be evicted. That she has the right of retention over the house she has built until she is evicted and paid compensation for her investment in the said property. In her counterclaim, the defendant seeks specific performance of an alleged agreement between the late Elvis Adela and the defendant for the survey, extraction, registration, and transfer of the portion of land to be extracted from the property to the defendant and the estate of the late Elvis Adela.

- [4] Defendant thus moves for the dismissal of the plaintiff with costs and specific performance as per the said counterclaim. In the alternative, to direct that the defendant is in legal occupation of the property based on the construction on the property with her materials in good faith. Furthermore, the defendant being a *tiers de bonne foi*, cannot be evicted and has a right of retention over the house she has built until she is evicted and paid compensation for her investment in the said parcel of land belonging to the plaintiff. Finally, the defendant prays that the Court makes any other orders it deems fit in the circumstances.

Plaintiff's case

- [5] The plaintiff avers that she is the registered owner of land Title S4542 situated at Pointe Larue (hereinafter to be referred to as 'the property'). That she has been living on that said land for more than 50 years along with some of her other children. The defendant is her daughter-in-law.
- [6] Plaintiff avers that her daughter, Maryline, sought permission some years ago for her son, the late Elvis Adela (Plaintiff's grandson) to erect a small temporary house on the property. This was because Elvis' partner at the time, Ms. Rosette, was expecting a child and they could no longer live with Maryline. The Plaintiff allowed Elvis to build a small corrugated iron sheet house using existing materials given to him by his own family and only the kitchen was constructed with bricks.
- [7] It is averred that Elvis worked as a casual labourer in carpentry and welding, and he built a small 2-bedroom house. After the separation of Elvis and Ms Rosette, the defendant moved into the 2-bedroom house with Elvis Adela. The plaintiff was later informed that a plywood partition was put in one of the existing bedrooms to make a third bedroom but the structure of the house remained the same except for a small open shed held by 4 wooden poles with a corrugated iron sheet roof at the front of the house that was added to be a small open veranda.
- [8] Plaintiff further avers that after some time Maryline approached her to ask her consent for a potential subdivision of the property into 2 portions. Where the corrugated iron sheet is located to be given to Maryline so that it could later on be given to Elvis and

the rest of the plaintiff's property was to be left for the benefit of the rest of the plaintiffs' children.

- [9] That she never entered into any agreement with Elvis or with the defendant for any subdivision or selling her property to Elvis. That Maryline informed the plaintiff that she and Elvis would financially contribute to the subdivision and although they got on with the process, the subdivision was never concluded.
- [10] Plaintiff further avers that defendant took a personal loan in 2016 to pay off two existing loans for home improvements and she may have contributed to the improvement of the house she and Elvis were living in. That Elvis passed away and for some time before his death, Elvis and the defendant were living apart but Elvis was always at home every day and did his work from home.
- [11] That immediately after Elvis' death, the defendant was living her life as if nothing happened, constantly making noise and playing loud music, swearing, and disturbing other people in the vicinity. That there is always a group of people playing dominoes and causing trouble at the house. The plaintiffs' children and family are being disturbed and they are not given peace to mourn the loss of Elvis with all this commotion.
- [12] The plaintiff further avers that the defendant has no legal rights or interest to remain on her property namely Title 4542 and the small house thereon and she should be ordered to leave and vacate the said property of the plaintiff.
- [13] It is the plaintiff's prayer that this Court orders the defendant, her agents, and invitees to forthwith leave and vacate the property of the plaintiff which the defendant is currently occupying. It is also prayed that the Court makes any orders it deems just and fair in the circumstances, and costs in favour of the plaintiff.

Defendant's case

- [14] The defendant denies the bulk of the plaint and asks the plaintiff to be put to strict proof. Further, the defendant moves the court to dismiss the plaint with costs. The

defendant also submits a counterclaim, seeking for specific performance of the alleged agreement between the plaintiff, defendant, and the late Elvis Adela. Alternatively, the defendant seeks that this Court pronounces that the defendant is in legal occupation based on the construction on the plaintiffs' property with her own material in good faith. Moreover, she is a *tiers de bonne foi*, she cannot be evicted and has a right of retention over the house. If she is to be evicted, she contends that she be paid compensation for her investments onto the said parcel of land.

- [15] The defendant admits ownership of the property by the plaintiff and her relationship with the plaintiff but denies the averments in paragraphs 6, 7, and 8 of the plaint and puts the plaintiff to strict proof. Defendant admits that there were a few houses on the land title S4542, but adds that when she moved in with the late Elvis Adela, the house purported to be Elvis' was partly built. She further avers that when she moved in with the late Elvis Adela, she contributed towards the construction of the house by way of securing a loan from the Barclays bank.
- [16] Defendant further avers that the plaintiff agreed to the construction of the house and for the subdivision of land title S4542 to extract a portion where the house is on to be transferred onto the Defendant and her late husband jointly. This, according to the defendant, as per the agreement concluded by her, the late Elvis Adela, and the plaintiff. The defendant further avers that owing to the said agreement, she had engaged and paid for the services of the land surveyor to effect the subdivision, which is now pending.
- [17] It is averred that at all material times, she had invested in the construction and improvement of the house where she lived as husband and wife with the late Elvis Adela based on the agreement for them to subdivide the land and have the extracted portion transferred onto the defendant and late Elvis Adela jointly. That despite her late husband having an extra-marital relationship, they both lived together as spouses and had not been separated. The defendant further avers that it is the plaintiff's children and grandchildren who harass, threaten, and disturb her, intending to make her leave the house she constructed and invested in.

[18] In her counterclaim, the defendant seeks specific performance of the agreement between the plaintiff, defendant, and the late Elvis Adela for the survey, extraction, registration, and transfer of the portion to be extracted from title S4542 to the defendant and the estate of late Elvis Adela.

Legal analysis and Discussion of evidence

Testimony and evidence of the Plaintiff and witnesses

[19] In her testimony, the plaintiff testified that Maryline Adela asked Elvis to purchase the land. At some point, Elvis met with the plaintiff and he gave her SCR 8,000 to get the land one day. The defendant was present when this occurred. Plaintiff further testified the defendant was untruthful when she said that she took a loan for home improvements. It is to be noted that this is contrary to what the plaintiff herself avers in her plaint.

[20] In cross-examination, the plaintiff stated that the SCR 8,000 given to her was for the subdivision of the land. ***Exhibit D1 namely the agreement dated 9th February 2015*** was adduced as evidence proof of an acknowledgment that Mrs. Simone Adela had received a sum of money SCR 8,000 in cash from Mr. Elvis Adela for the property that is being surveyed. The plaintiff was also asked if she had seen any improvements done to the house whilst the defendant was living with Elvis. She testified that she saw that they were fixing the corrugated iron sheet house and they place tiles in the veranda but that it was the defendant's husband Elvis who did that.¹ She further testified that she changed her mind concerning what she had agreed earlier because of the persecution the defendant brought to her and her children.

[21] Plaintiff's witness Patrick Arissol, the partner of Maryline Adela, testified that he was the one who helped build the house together with Elvis and Egbert. That he would have seen if any work was being done on the property because he lives above the house of the late Elvis. He was questioned as to if he saw any tiles being put in the *hangar* and he testified that he did not see any tiles because he did not go to the house.

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- [22] Witness Egbert Adela who is the older brother of Elvis Adela testified that he remembered that he helped Patrick Arrisol and the late Elvis Adela build a corrugated iron sheet house and that they got some help with construction materials. He testified that they did not complete the house but the bathroom and everything else were there. Egbert further testified that he did not know if Betty Adela had anything to do with building the house, that the house was already completed. When asked about the tiles he testified that it was his brother who sourced the same.
- [23] Witness Egnert Adela was shown a set of photographs, Exhibit P1 which he admitted taking on his phone on the 16th of October 2021. He testified that based on the photograph everything was there when they constructed the house, except electricity. The old corrugated iron sheets were painted by him and Elvis, except for the veranda and some parts of the front of the house which were completed by his late brother Elvis. He does not know if the inside of the house has been renovated, however, the exterior structure is still the same.
- [24] When asked about the tiles, Egbert Adela testified that his late brother took them off somewhere where they had a job. He testified that he does not know whether the defendant contributed anything to the house but maybe personal things. In cross-examination, the witness was asked why he took those photographs. He testified that was because he heard that the defendant had taken loans to do renovations but he has not seen any renovations.

Testimony and evidence of the Defendant

- [25] As part of her Defence, the defendant testified that she met the late Elvis in October 2002 and he was residing in a small corrugated iron sheet house. There was no living room, kitchen, or toilet. That there were no rooms and they had to do partitions. That there was a little shed to bathe outside and wash clothes. Defendant further testified that the late Elvis improved the house by collecting corrugated iron sheets from her uncle's place at Anse aux pins which at the time was being demolished. They brought it to Pointe Larue to make another room because at the time defendant and the late Elvis had a one-year-old son.

- [26] The defendant further testified that she took a loan with Housing Finance Company (HFC) with the permission of Simone Adela. At that time, she had to go to the district administration office to get a loan with the permission of the owner of the property to get the loan. At the time she did not have electricity or water. That they got the utilities from the mother of Elvis, Maryline. After that, she got a loan from HFC for SCR 50,000. She asked for permission from Simone Adela to get utilities at the house and purchased bricks to improve the bathroom living room and kitchen.
- [27] She first took a SCR 50,000 loan from HFC and got the loan in two portions. Before they gave her the other portion they came to do visits and eventually they give the second portion to complete the construction. That she took another SCR 150,000 loan from Barclay's Bank because they needed some money and she was the only one employed as late Elvis did casual jobs. She wrote off the housing loan using Barclay's loan to finish adding the living room and veranda that they had to build on a beam and a shelter next to it.
- [28] She further testified that for them to be able to do any improvements, they had to crush rocks. All this work was done by Elvis and she assisted him together with the defendant's son and several other friends. The defendant produced Exhibit D2 which is a personal instalment loan agreement dated the 26th of September 2016.
- [29] Defendant further testified that she took a second loan of SCR 8,000 from HFC and handed it over to Simone Adela in the presence of Maryline Adela, Elvis, and everyone present and signed. The agreement was done towards Elvis because he was family with Simone Adela and since he was married to the defendant hence, she wanted him to take up the issue of land as he was close to his grandmother. She paid the SCR 8,000 for the portion of land Simone Adela had proposed to sell to them. Defendant confirmed that this agreement is attested by **Exhibit D1** (supra).
- [30] Defendant further testified that the SCR 8,000 was for the plot of land and the survey there was another agreement to be done however she has no written proof of the same. **Exhibit D8** a copy of the credit profile report of the defendant was produced based on credit information relating to the loans that the defendant had. Defendant denied that

the family members came together when anything had to be done in terms of materials and manpower to improve the house. She testified that even though Elvis is a casual worker, only she and Elvis contributed towards building their house.

- [31] Upon cross-examination, the defendant was asked about the contents of ***Exhibit P1***. She confirmed that it displayed the property she has been developing for over 20 years. She was asked about the dilapidated roof condition and she testified that a mango tree fell on it the year before. This part has not been maintained because of the court case but the rest of the exterior and interior are in good condition until now.

Analysis

- [32] Upon reading the pleadings of the parties, I find that the issues to be determined are as follows. First, it is whether the plaintiff's prayer to evict the defendant can be granted. Second, it is whether there is an agreement between the parties and if so, whether the remedy of specific performance can be given by this Court. Third, it is whether the defendant is a *tiers bonne foi*.
- [33] The plaintiff prays that this Court makes an order which essentially evicts the defendant from the property. To begin, her ownership of the property is not disputed. By virtue of such title ownership, she enjoys the rights conferred to her by Article 26 of the Constitution and Articles 544 and 545 of the Civil Code and may approach the Courts seeking eviction in accordance with the law to protect her rights. However at this stage, in view of the counter-claim, I make no final findings as to the prayer to evict the defendant.
- [34] In the counter-claim, the defendant seeks that this Court enforces an agreement that is said to have existed between her, the plaintiff, and the late Elvis Adela. In the alternative, she prays that by virtue of being a *tiers bonne foi*, she can only leave the property following
- [35] The agreement in question is averred by the plaintiff centres around a subdivision of the property in favour of the late Elvis Adela. It is denied by the plaintiff in her Plaint that an agreement was ever-present in respect of selling the property to the defendant

and Elvis Adela. The defendant on the other hand averred that the plaintiff had consented to the subdivision of the property. Furthermore, the defendant in her testimony referred to SCR8,000 as having been given to the plaintiff for this purpose. I also take note that the plaintiff has admitted that she received SCR 8,000.

[36] Counsel for the plaintiff, Mr Rouillon submits that any agreement in respect of immovable property, such as the one in the present case, must be written and registered as provided by Article 1321 (4) of the Civil Code and affirmed in the cases of *Labonte v Fred* SCA 9 of 2018; *Ugnich v Lavrentieva* SCA 125 of 2012 and *Parcou v Hall* SCA 51 of 2018. I agree with the submissions of Counsel in this regard. The agreement must have been written and registered in accordance with the law. Therefore, the counter-claim's first prayer fails.

[37] The above analysis leads to the question of, whether can the Defendant be considered to be a *tiers de bonne foi* and possibly rely on article 555.

[38] Sauzier J in his article 'Consequences of Encroaching on the Neighbour's Land' *Bar Association of Seychelles Law Journal* 2015, explains Article 555. He states that:

“If one builds on someone else's property a structure which entirely stands within the boundaries of that property, it will be Article 555 of the Civil Code of Seychelles under which the fate of the structure and the indemnify, if any, to be paid will depend.”

[39] Article 555 reads as follows:

“When plants are planted, structures erected, and works carried out by a third party with materials belonging to such party, the owner of land, subject to paragraph 4 of this article, shall be empowered either to retain their ownership or to compel the third party to remove them.”

[40] The defendant is, in my view, a constructor contemplated by article 555 (1) above. She undertook some works through her contributions made towards the house belonging to her husband, although the said house was built on the land of the Plaintiff.

Simultaneously, the plaintiff, who enjoys property rights as earlier stipulated, is entitled under article 555 (1) to retain ownership or compel Defendant to remove works carried out. In her Complaint, the Plaintiff has asked for the 'removal' of the defendant, which is essentially an eviction.

[41] The entitlements that the plaintiff has under Article 555 (1) must be read with Article 555 (4) which states:

“If plants were planted, structures erected, and works carried out by a third party who has been evicted but not condemned, owing to his good faith, to the return of the produce, the owner may not demand the removal of such works, structures, and plants, but he shall have the option to reimburse the third party by payment of either of the sums provided for by the previous paragraphs.”

[42] In my view, the above provision does not only limit what the owner of the property does in respect of plants, structures, or works but also provides an avenue for a constructor to be compensated should the owner decide to evict. To rely on the application of article 555 (4) and in particular the compensation aspect of it, the defendant in the present case must have been evicted and be a good faith constructor.

[43] The complaint does seek the eviction of the defendant. At the same time, I also consider the defendant to be a good-faith constructor. This is because she carried out works on the reasonable belief that she can do so given that the said house where improvements were made was her matrimonial home. The extent of compensation is what this Court will have to determine based on the evidence adduced by the parties. The Court must seek to strike a balance between the property owner and the good faith constructor.

[44] Upon this Court's examination of Exhibit D8 which is a credit profile report of the defendant, it can be seen on page 2 of the said report, that indeed the defendant requested a loan at the HFC. I take judicial notice that there is a mode or approach preferred when issuing housing loans. Half of the loan is first issued to the applicant. The remainder of the loan is later disbursed after verification by HFC that the applicant is improving the house. The verification is usually through the inspection of the premises by a Building Inspector and issuing a certification by the same. With

this, it can be reasonably concluded that at least SCR 25,000 was used towards home improvements given that the defendant was given the full loan.

[45] Beyond the SCR 25,000, I am unable to see from the evidence adduced, how the remaining SCR 25, 000 was used towards home improvements. I explain below.

[46] The photograph taken by witness Egbert Adela admitted as Exhibit (supra), does not show a full picture of the house. It shows a partial view. The picture does not also provide any conclusive evidence that the house is no different from the house which stood before the defendant started to live there with her late husband. In essence, I cannot compare the said picture against another to make a finding that there were no real improvements made by the defendant. Therefore, a proper evaluation of the house and renovations that were undertaken cannot be assessed only from the picture produced as an exhibit. Therefore, I do not rely on this evidence to counter the averment by the defendant that she made improvements to the house.

[47] While taking full cognisance that the defendant was given SCR50,000 by HFC for home improvements, she has not produced anything apart from the credit profile report Exhibit D8 (supra), to prove her case. This must be understood in view of ‘he who avers, must prove’ (see ***Suleman v Joubert SCA 27/2010; Laporte & Anor. v Prakash (CA 31 of 2014) [2015] SCSC 483 (26 October 2015)***). What the defendant has so far proved is that she did get a loan of SCR 50,000 for home improvements. And as indicated earlier, I take judicial notice of how HFC disburses loans, in that half is disbursed first and the rest after inspection of the improvements. In the circumstances, therefore, one can reasonably conclude that the defendant made improvements with at least SCR 25,000 of the loan which promoted the HFC to disburse the remaining SCR 25,000. However, the defendant has not proved home improvements of the remaining SCR 25,000.

[48] Notwithstanding the above, I do not doubt that that the Defendant did contribute to improvements of the house she and her late spouse Elvis Adela lived in. They lived in the house for the duration of their marriage until the unfortunate departure of Elvis Adela. In the circumstances, I find that it is more probable than not that the Defendant

made improvements to the property based on the reasonable belief that she could do so as the spouse of the late Elvis Adela. She is therefore entitled to at least SCR 25,000 this Court is satisfied was contributed towards the house.

Conclusion

[49] Against the above analysis, I find that both the plaint and counterclaim partially succeed.

[50] The defendant is ordered to leave and vacate the immoveable property of the plaintiff namely, S4542 which the defendant is currently occupying, however, the plaintiff must pay the Seychelles Rupees Twenty-Five Thousand (SCR 25,000/-) for home improvements before the defendant is evicted from the property.

[51] Both parties have also prayed that this Court makes orders it deems fit in the circumstances or orders that the Court deems fit. On reliance of this, I make further make the following additional orders:

- (i) The defendant be given six months from the date of this judgment to find alternative accommodation; and
- (ii) The plaintiff pays back the Seychelles Rupees Eight Thousand (SCR 8,000/-) for subdivision paid to her by the defendant and the late Elvis Adela since the same was not put into effect.
- (iii) Both parties shall bear their own costs.

Signed, dated, and delivered at Ile du Port on the 21st day of February 2023

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ANDRE JA
(Sitting as a Judge of the Supreme Court)