SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC 244
CS77/2019

In the matter between:

VESSY CLARIBELLE CESAR — **Plaintiff**
(rep by Miss Parmantier)

and

RICKY CHRISTOPHER CHARLES — **1st Defendant**
(in his personal capacity and acting as executor of the late Yvon Charles)

PROPERTY MANAGEMENT CORPORATION SEYCHELLES — **2nd Defendant**
(rep by Mr Willy Lucas)

Neutral Citation: Cesar *v Charles & Anor* (CS 77/2021) [2023] SCSC 244 (3rd April 2023).
Before: Govinden C J
Summary: Plaint; specific performance; partial award; plaintiff declared owner of the property; sale of land declared null and void
Heard: 21/05/20;27/11/20;20/05/21
Delivered: 3 April 2023

ORDER

1. The court declares null and void the Instrument of Transfer dated 23rd of October 2014 entered between the 1st and 2nd Defendant.

2. The court orders the 2nd Defendant to refund and payback to the 1st Defendant the consideration of SCR19,890.

3. The court orders the Registrar of Land to rectify the register of land parcelH1682 so that the Plaintiff be declared to have 3/6 interest in that parcel; Jules Charles; Ricky Christopher Charles and Mivonne Charles each having 1/6 interest. The latter holding their rights as the legal heirs to the estate of the late Yvon Charles and the former as of right.

JUDGMENT

GOVINDEN CJ

The Pleadings

[1] The Plaintiff makes the following averments in heramended plaint; she was at the material time the partner of Yvon Charles, hereinafter also referred to as "the deceased". The 1st Defendant is the son of the late Yvon Charles and the executor of his estate. On the 16th of May 1988 a housing purchase agreement was entered between the statutory predecessor of the 2nd Defendant and Yvon Charles and the Plaintiff. The purpose of the agreement was to purchase Parcel H1682, hereinafter also referred to as the "property", which the Plaintiff and Yvon Charles were paying for by monthly instalments with a view to eventually ownthe property. The latter unfortunately passed away in December 2007 and left behind three legal heirs.They were entitled to only half of the shares in parcel H1682.

[2] The Plaintiff had wished to purchase herex-partner's shares from his heirs. Twoof them has sold her their shares in 2008 leaving only the 1st Defendant, who categorically refused to sell to the Plaintiff his share. Unknown to the Plaintiff at the time and without her consent, in October 2014 aland transfer document was signed between the 1st and 2nd Defendant, transferring the whole of parcel H1682 to the heirs of the late Yvon Charles in disregard ofher share. The Plaintiff avers that the 2nd Defendant had no authority to transfer the parcel to the 1st Defendantand the latter to accept it. As a result she avers that she has suffered loss of her shares interest amounting to 5/6in the parcel of land and moral damages in the sum of SCR30,000. As a result she asks the Court to nullify the instrument of transfer between the 1st and 2ndDefendant;to order the Land Registrarto rectify the land register and declare her as the co-owner of the parcel of land with5/6 of the shares; and the sum of SCR30,000 for damages.

[3] In his Statement of Defence the 1st Defendant denied that at the passing away of Yvon Charles, the Plaintiff was entitled to half shares of the property and instead avers that the legal heirs of the deceased were entitled to all the shares in parcel H1682. He averred that the Plaintiff had no interest in the property and denied knowledge of the other legal heirs having sold to the Plaintiff their interest. At any rate, it is his further averments that one of the other heirs, Mivonne Charles, being a minor, could not have been able to transfer her share. He denied all of the Plaintiff's averments of loss and damages and prays to the Court to dismiss the Plaint.

[4] The purported Sellor of H1682, the 2nd Defendant, avers that it has no knowledge if the Plaintiff, at the material time, was the partner of the late Yvon Charles. It however admits that the 1st Defendant is the Executor of the late Yvon Charles. It denies that the purchase agreement was to purchase the said parcel and that Yvon Charles and the Plaintiff were paying by monthly instalments so that the property would eventually be co-owned by the both of them. Instead it avers that the deceased took a loan for the purchase of the property and then the Plaintiff made contributions towards the purchase. It further avers that at the time that the deceased and the Plaintiff entered into a purchase agreement no transfer of ownership had taken palace to both of them for them to own half share in the parcel and, therefore, when the deceased passed away H1682 was not owned by the deceased and the Plaintiff. It admitted that it transferred the property to the 1st Defendant acting as the Executor of the deceased. Therefore the 2nd Defendant avers that the claim of the Plaintiff should properly be against the 1st Defendant as the Executor.

Issues for determination

[5] The issue left for this Court's determination is who had proprietary interest in the property at the time that it was supposedly transferred by the 2nd Defendant to the 1st Defendant. The determination of this issue has to settle both the issue of title to this property and shares in its ownership. If it was jointly co-owned by the deceased and the Plaintiff she would be entitled to half share and the other half would be distributed to the legal heirs including the 1st Defendant. If there was no co-ownership, it would mean that the transfer between the

1st and 2nd Defendant would be valid as the Plaintiff was admittedly not a legal heir of the deceased.

Evidence

[6] The Plaintiff testified that the 1st Defendant is her son. Mr Yvon Charles was her ex-partner who has passed away. She and the deceased had entered into a house purchase agreement to purchase H1682 and she identified this document as Exh P2, which according to her was signed by both of them. She had made an application to purchase the property through the then SHDC, the predecessor organisation of the 2nd Defendant. The latter included the name of the deceased on the agreement as he was the only one working and the loan was deducted from his salary. The Plaintiff said that she contributed in the repayment in kind by working at home and doing some gardening. She said that after the passing away of the deceased a discount was given to her under the new Home Ownership Scheme as evidence by Exh P4 and she was deemed to have paid up the loan. By that time she had also paid the outstanding sum of SCR18,51473 as evidenced by the receipt that she produced as Exh P5, before the letter was issued by the 2nd Defendant.

[7] After that she asked for the title of the property to be transferred to her but it was in vain. She went to see the Director of the 2nd Defendant and a lawyer. She was advised by representative of the 2nd Defendant that given that she was not married to the deceased and that the latter had children she was asked whether she was ready to give a share to the children of the deceased as half belonged to her and half belonged to the children, and she agreed. She also agreed that she would buy off their shares. It was agreed with the 2nd Defendant that she would pay each of the three children of the deceased SCR17,880 in consideration for their shares in the property. She was informed in writing that once the legal heirs had been paid their respective shares they shall sign an affidavit confirming receipt of the shares and convey their consent to the 2nd Defendant to transfer the property in her sole name. However, only one legal heir, Jules Steven Charles signed the affidavit and accepted payment. Mivonne is the minor daughter of the deceased, her mother refused to sell her share as she considered the payment amount to be too low. However the Plaintiff went and deposited her share into her bank account.

[8] Eventually the 2nd Defendant informed her that the property belonged to the three children as she had left the property and had gone away and that the deceased was the only person who was entitled to the property and he had passed away. This was a decision that the Plaintiff did not accept. The property is currently being occupied by the 1st Defendant. The transfer of title from the 2nd Defendant to the 1st Defendant shows that the former purchased it in consideration of SCR19,890 on the 23rd of October 2014. The Plaintiff became angry when she learned of this as Jules has no place of abode and two of her daughters are also having housing problems. According to her, Ricky was at the time of the hearing renting the property.

[9] Under cross-examination she accepted that she lives on a property which she owns. She also accepted, according to Exh P4, that in fact she did not pay the SCR18,000 but only SCR2,000 as SCR16,663 was discounted by the 2nd Defendant and that any deductions from the deceased salary would henceforth stop.

[10] Mr Jules Charles, one of the legal heirs of the deceased, testified for the Plaintiff. His mother is the Plaintiff. The 1st Defendant is his brother. He also has a little sister on his father's side. He accepted having signed the affidavit, Exh P7, transferring his share in the property to the Plaintiff. He however transferred back the purchased sum to the Plaintiff as according to him, *"I was giving her my shares with my heart"*.

[11] Mr Suma Sundaram Rajasundaram, Attorney at Law and Notary also testified on behalf of the Plaintiff. He remembered writing a letter, copy of which is before the Court as Exhibit P6, on behalf of the 2nd Defendant to the Plaintiff. He explained what he meant by the expression, *"your partner late Yvon Charles and yourself has jointly signed a house purchase agreement"*. He stated that this agreement was like a promise to buy and the 2nd Defendant's promise to sell and once the loan was paid off the property would have been sold to those people who signed the house purchase agreement. The witness confirmed that the document Exh P7 was executed in his presence and that he prepared the document. He stated that the consent of the other party to the purchase agreement is needed in order for the 2nd Defendant to transfer the property to one of them only.

[12] Under cross-examination the witness admitted that the house purchase agreement does not refer to the title number of the property or even its location. He also admitted that the affidavit which he drew for Mr Charles also does not refer to any title, which had been left blank. Referring to the letter he wrote to the Plaintiff and Exh P7, he admitted that he did not seek to see whether an Executor had been appointed at the time that he issued the letter.

[13] With those three witnesses the Plaintiff closed its case.

[14] The 1st Defendant lives at Mont Signal. He is the son of the Plaintiff and the deceased. He claims that his dad died on the 13th of December 2007. The property is presently registered on his name as the Executor for Jules and Mivonne Charles, his two siblings. He recounted that there was a negotiation between the siblings and their mother for their mother to purchase their shares and that this occurred in the office of Mr Rajah. According to him, his sister and he refused the offer but his brother Jules accepted it. He wanted a piece of land to build his home and he claimed that his mother has alternative land on Praslin. He stated that he cannot transfer the property without consent of the other heirs. His mother had attempted to remove them from the house on the date of their father's funeral and had even brought a case at the Rent Board against them.

[15] As for the 2nd Defendant, on the date of the hearing, its counsel informed the court that it would abide by the decision of the court and that it would not be leading any evidence.

Discussions and determination

[16] I have given careful consideration to all the evidence that has been led before me, especially to the testimonies tested by the cross-examination, with a view to determine where the truth lies. I have assessed all the facts and circumstance of the case. In so doing I find the Plaintiff's evidence to be partially truthful and I have acted on the credible part of her story. For the most part I also find the evidence of the 1st Defendant to be believable and I have acted on it. As a whole, I find that the Plaintiff has proven on a balance of probabilities the fact that she had acquired certain rights in the property and therefore it could not have been sold to the 1st Defendant. I however, find that she has not proven on the required burden of proof the rest of her Plaint for reasons which follows.

[17] The evidence on records shows the Purchase Agreement was entered on the 16th day of May 1988 between the predecessor in law of the 2nd Defendant, and the Plaintiff and the deceased as is commonly the case, in such agreements, when two persons are living "en menage". They were hence entered as "purchasers" in the agreement. Though, in Clause 1 of the said Agreement the parties had agreed that *"the purchasers will purchase the said property for the price shown in the schedule as soon as notice is given by the Corporation to the Purchasers that the property is available for transfer by deed of sale"*. In Larue v Hertel (MC76/2018) [2019] SCSC 737, a case where the Applicant was trying to assert title under a similar "Purchase Agreement" when the transfer of title was not yet effected, this court ruled on the nature of this agreement as follows:

> *"Based on the above facts I am of the view that although the Applicant is not the owner of the property, it does not mean that he has no valid title, I find that his title can be categorized as that of a lessee in a Lease-Purchase Contract or a "Rent to Own Contract", (location - vente).This contract gives to the lessee-buyer and the property owner reciprocal rights and obligations in order to allow a property to be rented with the option for the lessee-buyer to purchase the property at the end of the tenancy. It is an instrument used to facilitate ownership of immovable by individuals who would otherwise have difficulties to secure loan facilities. This contract is very much contemporaneous to the Civil Code and hence cannot be found as one of the specific contracts under provisions of the Code. Nonetheless, the essence and the principle of this contract is recognized in our law. A combine reading of Article 1709 and 1711 of the Code referring to contract of lease of immovable and that of article 1582, relating to contract of sale, shows that this contract is legally possible in Seychelles. As to whether it falls into both or any of the two regime is an argument that have taken place in other jurisdictions, but is one that is a moot point in this jurisdiction."*

[18] Hence I am of the view that irrespective of the titles given to the Plaintiff and the deceased in the agreement, the actual sale of the property is deferred in the future when notice is given by the lessor that the property is available for purchase. In the meantime the Plaintiff is one of the lessee-buyers and has no title as owner, which remains with the 2nd Defendant.

[19] Eventually the 2nd Defendant gave notice under Clause 1 that came in the form of Exh P4, in which both of the purchasers are informed that they have been granted a discount under the new Home Ownership Scheme and consequently they are now considered to have paid off their housing loan. Evidence tendered shows that the loan was still outstanding at the time when part of it was discounted under the new Home Ownership Scheme.

[20] I have gone over all the evidence in order to find out who was paying off the loan. All evidence points to the fact that it was the deceased who was doing it. The money was being directly debited from his salary. The Plaintiff firstly attempted to insinuate that, though she did not pay in monetary terms, she paid in kind by staying at home and doing the house work and also by doing some sewing and home gardening. This is not an action in *"enrichisement sans cause"*, but one of specific performance of a contract. Therefore I find that this evidence does not go in any way to prove either beneficial or formal title. The Plaint does not plead a cause of action "de in rem verso". It was held in the case of *Larame v Payet (1983 –87) 3 SCAR (VOL) .* 355 that *" No enforceable legal rights are created or arise from the mere existence of a state of concubinage, but a cause of action "de in rem verso" or "enrichisement sans cause" can operate to assist a concubine who has suffered detriment without lawful cause to the advantage of the other party to the concubinage"*. Therefore, the Court will not consider such argument in this case. Secondly, she also tried to say that she paid SCR18,514.73 being the last outstanding portion remaining on the loan, however no written proof has been adduced and I do not believe her in that regard as I find that this was the sum that was written off by the 2nd Defendant in its letter of the 13th of December. On the totality of the facts of the case it is my view that it was hence the deceased that paid the price for the property.

[21] Coincidentally it appears however that the deceased passed away on the 13th of December 2007 and on the same day the Plaintiff received the letter that title would be transferred to herself and the deceased. This letter crystallised the rights of both parties. To me it is clear that the future title to the property to be purchased has been agreed in the Purchase Agreement and this was conditional upon notice being given to the joint purchasers by the Sellor and this condition was fulfilled by the letter. As of that date of this notification, the proprietary interest passed from the 2nd Defendant to the deceased and the Plaintiff jointly as co-owners, with the formality of transferring the title to them being deferred to another date, something that unfortunately was not done in this case. This should be the case as a result of the contractual obligations arising out of the Purchase Agreement for the 2nd Defendant to transfer to them jointly upon completion of payment. This is irrespective of whether the Plaintiff contributed to the purchase price or not. The 2nd Defendant having

transferred the property for consideration to the 1st Defendant defaulted in its contractual obligation.

[22] There was no obligation for the loan to be repaid jointly and equally by both purchasers in order for the rights in the land to be transferred to both of them as co-owners. Article 815 of the Civil Code therefore would have direct application in this case. This article reads as follows;

> *"Co-ownership arises when property is held by two or more persons jointly. In the absence of any evidence to the contrary it shall be presumed that co-ownership are entitled to equal shares".*

[23] The right to co-ownership in this case however being subject to a condition precedent, being a notification by the 2nd Defendant that the total fee has been paid under Clause 1 of the agreement. Something that I am satisfied that the Plaintiff has proved here. To make the issue of transfer subject to beneficial interest would go against the letter and the spirit of the agreement. If that was to be the case, only the purchaser making the payment of the price would have been allowed to be included as purchasers or at least provisions as to this effect should have been inserted in the contract, none of which exist.

[24] What remains to be decided therefore is the apportionment of shares. It is clear that there was non-acceptance on the part of the minor Mivonne Charles of the attempt by the Plaintiff to purchase the latter's shares. This was refusal done on her behalf by her mother. Any unilateral effort on the Plaintiff's side to bank the so called shares consideration is therefore null and to no effect and cannot be considered as an acceptance. Accordingly, Mivonne Charles still has 1/6 interest in the property. The 1st Defendant having categorically refused to sell his shares has 1/6 also. The only heir who could have sold his share is Jules Charles, however evidence reveals that he returned the total consideration for his shares to his mother. After careful analysis of this aspect of the evidence I therefore consider that this sale was but a sham and exhibit P7 is of no effect. This also means that in effect no transfer of shares took place between the two even though Jules says that this was done out of the abundance of his heart to his mother. This means that the Plaintiff enjoys only 3/6 of the total shares in parcel H1682, being half of the co-ownership.

[25] However, there are some difficulties with the purchase agreement in that it is missing a schedule, referred to in Clause 1, which would have shown the purchase price and hence the value of the property. This was never produced in evidence. However, present in evidence is the price that the Plaintiff herself has been willing to purchase each share of the legal heirs of the late Yvon Charles, that is SCR17,880.00 being around 1/6 of the total sum of SCR107,280, the latter being what the Legal Counsel of the 2nd Defendant had stated to be the purchase price of the property. References are made here to exhibit P7 and P6. The court will hence take it that this would be the actual share value of each of the remaining co-owners Mivonne Charles, Jules Charles and Ricky Charles in the property, with the rest belonging to the Plaintiff in the sum of SCR53,640.

[26] It is clear therefore that the 2nd Defendant erred when it sold to the 1st Defendant the property for the sun of SCR19,890 acting as the Executor of the late Yvon Charles. There should have been no sale, the land had simply transferred to all the co-owners as fiduciaries, including the Plaintiff and not sold to the 1st Defendant for consideration, which in effect is what Exh P10 turns out to be.

[27] As to the issue of compensation I find that the Plaintiff has not managed to prove to the satisfaction of the Court that she suffered any particular forms of inconvenience, distress or anxiety, therefore I do not order any form of compensation in the case.

Final determination.

[28] As a result of the above findings I therefore make the following orders:

[29] I declare null and void the Instrument of Transfer dated 23rd of October 2014 entered between the 1st and 2nd Defendant.

[30] I order the 2nd Defendant to refund and payback to the 1st Defendant the consideration of SCR19,890.

[31] I order the Registrar of Land to rectify the register of the land parcel H1682 so that the Plaintiff be declared to have 3/6 interest in that parcel; Jules Charles; Ricky Christopher

Charles and Mivonne Charles each having 1/6 interest. The latter holding their rights as the legal heirs to the estate of the late Yvon Charles and the former as of right.

[32] I make no order as to cost.

Signed, dated and delivered at Ile du Port on day 3rd of April 2023

Govinden CJ