

SUPREME COURT OF SEYCHELLES

Reportable
CS 139/2019

In the matter between:

ANTOINE RADEGONDE
(Presented by Mr Joel Camille)

Plaintiff

and

MATHILDA SERVINA
(Represented by Mr Guy Ferley)

1st Defendant

BRENDA SERVINA
(Represented by Mr Guy Ferley)

2nd Defendant

REGISTRAR OF LAND
(Represented by Mrs Gulmette Leste)

3rd Defendant

Neutral Citation: *Radegonde vs Servina & Ors* (CS 139/2019) (8 April 2024).

Before: Adeline J

Summary: Application for rectification of Land Register.

Heard: 22 November 2021

Delivered: 8 April 2024

FINAL ORDER

The plaint is dismissed without cost.

JUDGMENT

Adeline J,

INTRODUCTION

[1] By way of a plaint entered on the 18th October 2019, one Antoine Radegonde of Anse Aux Pins, Mahe, Seychelles (“the Plaintiff”) commenced a civil action pursuant to Section 22 read with Section 23 of the Seychelles Code of Civil Procedure (“the SCCP”) against one Mathilda Servina of Beoliere, Mahe, Seychelles (“the 1st Defendant”) and one Brenda, Servina also of Beoliere, Mahe, Seychelles (“the 2nd Defendant”), and the Registrar of Land (“the 3rd Defendant”), in which plaint the Plaintiff seeks from the court the following reliefs;

“(i) Direct an exchange of the parcel numbers between the Plaintiff and the 1st and 2nd Defendants.

“(ii) Direct that the land title B773 be registered in the sole name of Brenda Servina of Beoliere, Mahe.

“(iii) Direct that land title B774 be registered in the joint name of Antoine Radegonde and Mathilda Servina, and

“(iv) Any other order that the court shall deem fit in the circumstances”.

PLEADINGS

[2] It is pleaded by the Plaintiff, that by virtue of a deed of transfer dated 15th October 1990, duly registered in the Land Registry, he and the 1st Defendant are the joint registered proprietors and co-owners of the land parcel title B773, and that by virtue of a deed of transfer dated 22nd September 1998, duly registered at the Land Registry, the 2nd Defendant is the sole owner of the land parcel title B774. The Plaintiff also pleads, that the 3rd Defendant is the Registrar of Land in Seychelles.

[3] In his pleadings, it is averred by the Plaintiff, that by an order of the Supreme Court made on the 18th March 2013, the court made a declaration to the effect, that he is entitled to a half share of the land title B773, on which land he and the 1st Defendant have jointly built their house.

- [4] It is also averred by the Plaintiff, that following a survey of the two parcels of land, that is to say titles B773 and B774, the latter on which the 2nd Defendant has built her house, which survey was carried out on the 10th October 2018, it came to light, that the construction of the two houses has been erroneously done on the wrong parcel of land, in that, the house belonging to him and the 1st Defendant has been built on land parcel B774 instead of land parcel B773 that belongs to him and the 1st Defendant, and the house belonging to the 2nd Defendant has been built on land parcel B773 instead of land parcel B774 that belongs to the 2nd Defendant.
- [5] It is further averred by the Plaintiff, that he is in agreement for an exchange of the two parcels of land, in that, he is willing to transfer land parcel B773 in the name of the 2nd Defendant in return for the 2nd Defendant to transfer land parcel B774 in his name and the 1st Defendant jointly, who shall become co-owners of land Parcel B774 in equal share of 50% each.
- [6] In their statement of defence, the 1st and 2nd Defendants admit the facts pleaded by the Plaintiff as regards to the registered owners of land parcels B773 and B774 respectively. The 1st and 2nd Defendants also admit, that the construction of the two houses has been done on the wrong parcel of land, in that, the house belonging to the Plaintiff and the 1st Defendant has been built on land parcel B774, whereas, the house belonging to the 2nd Defendant has been built on land parcel B773.
- [7] It is pleaded by the 1st and 2nd Defendants, that the land parcel B773 should be transferred on the sole name of the 2nd Defendant, whereas, the land parcel B774 should be transferred on the sole name of the 1st Defendant if the exchange is to be effected. The 1st Defendant avers, that land parcel B773 was given to her by her father, and if the Plaintiff has acquired any interest in the land then he is only entitled to his financial contribution made towards the construction of the house on Parcel B774.
- [8] I find no necessity to rehearse the 3rd Defendant's pleadings in its statement of defence that include a plea in limine litis given that it would serve no purpose in view that in the proceeding of the 28th November 2023, the Plaintiff, through its counsel, withdrew the plaint against the 3rd Defendant.

THE EVIDENCE

- [9] Giving evidence on his own behalf, the Plaintiff, a 60 year old taxi driver, testified, that he and the 1st Defendant who is the sister of the 2nd Defendant and therefore his sister in law, have been living in co-habitation as common law spouses for a period between 10 – 13 years. The Plaintiff also testified, that they are joint registered owners of a parcel of Land registered as title B773 situated at Beoliere, Mahe, Seychelles which they purchased from the 1st and 2nd Defendant's father, one Louis, Albert, Servina on the 15th October 1990. The transfer deed pertaining to the sale and purchase of land title B773 was registered on the 18th October 1990, exhibit P1.
- [10] The Plaintiff further testified, that he and the 1st Defendant were living together when the said parcel of land was transferred in their joint names, and together they caused to be built a dwelling house which at the time they thought was on land title B773. It was the testimony of the Plaintiff, that after sometime their relationship broke down, and thereupon they separated.
- [11] It was also the testimony of the Plaintiff, that following the breakdown of their relationship, it commenced court proceedings before the Supreme Court for a declaration of its share in the land and house built thereon registered as B773. The Plaintiff testified, that following an ex parte hearing before the Supreme Court, he obtained an ex parte judgment date 18th March 2013, exhibit P2, in which judgment, the court made an award of 50% shares in the land parcel B773 in his favour.
- [12] The Plaintiff also testified, that he was the one who commissioned a survey of the land with the sanction of the owner then, the father of the 2nd and 3rd Defendant, which land was then subdivided and the subdivision registered as parcel B773 was registered in his name and the name of the 1st Defendant jointly on which land they intended to build their house.
- [13] The Plaintiff further testified, that in 2018, the 1st Defendant hired one Michel Leong, a local land surveyor to survey the land following which a Surveyor's Report dated 10th October 2018 was produced, exhibit P3. The surveyor's report reveals, that an error had

occurred, in that, the house which belongs to the Plaintiff and the 1st Defendant jointly had been erroneously built on land parcel B774 instead of land parcel B773, whereas, the house that belongs to the 2nd Defendant has been erroneously built on land parcel B773 instead of land parcel B774.

[14] It was the testimony of the Plaintiff, that he has commenced legal proceedings against the 1st and 2nd Defendants as well as the 3rd Defendant for the court to direct rectification of the Land Register by the 3rd Defendant for land parcel title B774 to be registered in their joint names, that is, his name and the 1st Defendant in order to reflect his 50% shares awarded to him by the Supreme Court judgment dated 18th March 2023, and for land parcel B773 to be registered in the 2nd Defendant sole name.

[15] It was stated by the Plaintiff, that an application was made to the Land Registrar to effect the necessary rectification of the Land Register pertaining to land parcel B773 and B774 in order for land parcel title B774 to be registered in his name and the name of the 1st Defendant, and Parcel B773 to be registered in the name of the 2nd Defendant which the Land Registrar has refused to do. The Plaintiff testified, that he wants land parcel B774 to be registered in his name and the name of the 1st Defendant jointly to reflect the judgment of the Supreme Court given that he was the one who obtained the loan to build the house on land parcel title B774, and also because land parcel B773 is registered in his name and the 1st Defendant as co-owners.

[16] In cross-examination, it was put to the Plaintiff by learned counsel for the 1st and 2nd Defendants, that it was never the intention of the father of the 1st and 2nd Defendants, the transferor of land parcel title B773, to transfer the same in his name and the 1st Defendant jointly, but rather, his intention was to transfer land parcel title B773 in the sole name of his daughter, the 1st Defendant. Although such line of questioning was not objected to by learned counsel for the Plaintiff, I cannot see any relevance of this question to the current proceeding. In fact, this is a point that was raised by my sister, Andre J (as she then was) when she was presiding over the case at the early stage of the proceedings.

[17] The court heard no evidence from the 1st and 2nd Defendants who were expected to be present in court for continuation of the hearing on the 28th November 2023. The court was

informed by learned counsel that its clients were present in court on the day the case was fixed for continuation of the hearing, but unfortunately, both of them have not put up appearance in court. Learned counsel left the matter in the hands of the court to decide what to do and the court put an end to the proceeding at that point. It is to be noted, that neither of the two counsels representing the parties tendered submissions, in writing or otherwise.

DISCUSSIONS OF THE FACTS AND THE LAW

- [18] Although, admittedly, litigation allows people to settle disputes that they are unable to on their own and offers finality to it, quite often, parties in disagreement are so emotionally invested in the argument that it is hard for them to look at the problem with objectivity. That is to say, to see a problem as it is without personal biases, emotions or assumptions. It is worst when neither side wants to budge because they feel wrong. In practice, to take the emotions out of the dispute, they would bring counsel, an attorney-at-law in the mix. Counsel on both sides can talk calmly and civilly about the dispute and attempt to get the other side to see reason. This allows parties to take a step back and get another person's perspective of the problem.
- [19] Having said that, clearly, this case is a typical example of counsels who mystify the legal system, that laymen find it unintelligible. In the instant case, it is not clear from the pleadings what are the remedies being sought for by the Plaintiff. This is because the prayer is fraught with ambiguities. As regards to the 1st and 2nd Defendants their statement of Defence does not include a counter claim. Yet, they pray for different remedies or reliefs flouting the provisions of Section 80 of the Seychelles Code of Civil Procedure. For this reason, this court has to disregard them.
- [20] On account of the meagre evidence laid before this court, the facts that have prompted the institution of this court proceeding by way of a plaint filed in court, is that by a Deed of Transfer dated 15th October 1990, registered on the 18th October 1990, one Louis Albert Servina transferred in the Plaintiff and the 1st Defendant name jointly, a parcel of land title B773. It is not clear whether, at the time of the transfer of land parcel B773 in the

name of the Plaintiff and the 1st Defendant, the house thereon which they claim to be theirs was built then.

[21] By another Deed of Transfer dated 22nd September 1998, the said Louis, Albert, Servina transferred in the name of the 2nd Defendant a parcel of land title B774. The Deed of Transfer makes no mention of any house built thereon, although, the parties are in agreement that there is a house built thereon that belongs to the Plaintiff and the 1st Defendant.

[22] In an ex parte judgment of the Supreme Court dated 18th March 2013, the court declared that the Plaintiff is entitled to 50% share in the land parcel title B773.

[23] Following a survey of land parcel title B773 in 2018 initiated by the 1st Defendant, a Surveyor's Report dated 10th October 2018 was produced. In the surveyor's Report, it is reported that the Plaintiff and the 1st Defendant have had their house build on land parcel title B774 owned by the 2nd Defendant, whereas, the 2nd Defendant has had her house built on land parcel B773 owned by the Plaintiff and the 1st Defendant jointly.

[24] On the face of the pleadings of both parties to this plaint, it is quite obvious, that both parties agree, that an error or mistake has occurred, in that, their house has not been built on their land but on each other's land. In spite of that, the parties have been unwilling to compromise in order to come to an out of court negotiable settlement. The Plaintiff has now sought for redress from this court. At paragraph 5 of his pleadings, the Plaintiff has this to say;

“The Plaintiff is desirous to rectify their respective title numbers so as to best reflect their respective property and is in agreement for an exchange of the land title numbers between themselves to the same effect”.

[25] In essence, based on the uncontroverted evidence put before this court, it is proved, that the Plaintiff and the 1st Defendant are the joint co-owners of the parcel of land title B773. It is also proved, that the 2nd Defendant is the sole legal owner of title B774. It is equally proven, that the Plaintiff and the 1st Defendant have erroneously or mistakenly built their house on land parcel title B774 owned by the 3rd Defendant, and that the 3rd Defendant

has erroneously built her house on land parcel B773 owned by Plaintiff and the 1st Defendant jointly.

[26] Nonetheless, although these are admitted facts, which have also been proven by evidence, the 1st and 2nd Defendants have been unwilling to accede to the Plaintiff prayer that would have settled the dispute between them out of court by way of a negotiable settlement. As a consequence, the Plaintiff has had to resort to litigation by entering a plaint against the 1st and 2nd Defendants.

[27] In his plaint, the Plaintiff seeks from this court the following orders;

“(i) Direct an exchange of the parcel numbers between the Plaintiff and the 1st and 2nd Defendants.

(ii) Direct that the land title B773 be registered in the sole name of Brenda Servina of Beoliere, Mahe.

(iii) Direct that land title B774 be registered in the joint name of Antoine Radegonde and Mathilda Servina.

(iv) Any other orders that the court shall deem fit in the circumstances”.

[28] Without a counterclaim to its defence, the Defendant seeks for the following orders;

“(i) Order the exchange of parcels and for parcel B773 to be registered on the sole name of the 2nd Defendant.

(ii) Order that the Plaintiff is not entitled to a half share in parcel B774 and that it should be registered in the sole name of the 1st Defendant.

(iii) Order that the Plaintiff is entitled to his contribution in the house he helped to construct.

(iv) Order a valuation of the house built by the Plaintiff and the 1st Defendant, and

(v) Any other order the court deems fit in the circumstances of the case”.

[29] The pleadings for the reliefs being sought for by the Defendants in this case is flawed because it flouts the provision of Section 80(1) of the Seychelles Code of Civil Procedure that reads as follows;

“80.(1) Subject to subsection (2) where a defendant in any action wishes to make any claim or seek any remedy or relief against a Plaintiff in respect of anything arising out of the subject matter of the action, he may, instead of raising a separate action make the claim or seek the remedy or relief by way of a counter claim in the action and where he does so the counter claim shall be added to his defence to the claim”.

[30] Therefore, for the reason of the failure of the Respondent to comply with Section 80 (1) of the Seychelles Code of Civil Procedure, the reliefs being sought for by the Respondents against the Plaintiff are not worthy of consideration because they have not been pleaded in accordance with procedural law.

[31] It is noted, that the parties have not made any submissions in this case whether oral or in writing. As such, the court has not been provided with any legal arguments from both sides for and against the reliefs being sought for by the Plaintiff. The failure of the Plaintiff to submit on the law, means, that it has not indicated to the court under which law he seeks for those reliefs and the jurisdiction of the court he seeks to invoke. It appears, based on paragraph 5 of the Plaintiff’s pleadings, that the Plaintiff is seeking for the rectification of the Land Register, a remedy available under Section 89(1) of the Land Registration Act.

[32] For ease of reference, Section 89 (1) of the Land Registration Act reads;

“89(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.

[33] Section 89 (2) of the Land Registration Act reads;

“(2) The Register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such

proprietor has knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or cause such a omission, fraud or mistake or substantially contributed to it by his act, neglect or fault”

[34] Having closely examined the evidence put before this court by the Plaintiff, I have not been persuaded, and is indeed not satisfied, that the registration of Land Title B773 and B774 has been obtained, made or omitted by fraud or mistake. All that the facts of this case reveal, is that the parties erroneously built their house on each other’s land. As such, this is not a case that warrant invoking the court jurisdiction under Section 89(1) of the Land Registration Act to order the Land Registrar to rectify the register pertaining to land title B773 and B774.

[35] For the aforementioned reason, this court dismisses the plaint without cost.

Signed, dated and delivered at Ile du Port on 8 April 2024.

Adeline J