

In the Seychelles Court of Appeal

Therese Sophola

Appellant

v

Antoine Desaubin

Respondent

Civil Appeal 13 of 1987

**Judgment of Goburdhun J.A**

Appellant and respondent occupy contiguous plots of land in Takamaka, Mahe bearing nos. T 278 and T 279 respectively which plots of land they purchased from a common vendor.

In a suit brought before the Supreme Court appellant prayed (1) for a declaration from the Court to the effect that she is the lawful owner of plot T 278 (2) for an order compelling respondent to vacate the parcel of land T 278 respondent is occupying (3) for an injunction against respondent, his agent or servants restraining them from interfering with the peaceful enjoyment by appellant of the plot of land T 278. She also claimed R20,000 as damages.

Respondent admitted that appellant was the owner of T 278 but claimed there was mistake in the extent of plot T 279 registered in his name and he was in lawful occupation of a triangular portion of plot 278.

The learned Chief Justice who heard the case came to the conclusion that (1) appellant has proved 'prima facia' that she has a good statutory title (2) respondent has trespassed on the land of appellant as alleged by her. He consequently awarded R2,000 as damages to appellant and made an order of injunction as prayed for by appellant. The learned Chief Justice went on to make the following order: "I should direct that application be made by the parties to the Chief Surveyor as Mr Georges has requested for a re-survey and for rectification of the register if any dimensions or area of T278 or T279 are found to be incorrect"

Appellant is challenging the part of the judgment ordering a re-survey of the lands on the grounds (1) that her title is unimpeachable and (2) as no demand for a resurvey had been made by respondent in his defence the learned Chief Justice was wrong to grant such an order. There is merit in ground (2).

I need not go into the long history and facts of this case to dispose of this appeal.

On the pleadings the learned Chief Justice had not to decide whether there was a mistake in parcel T279 as to the area of land and it should be rectified (this can only be done by bringing a separate action) but whether appellant had a good title to plot T278 and whether respondent had committed a trespass on the land of appellant.

Having decided both those issues in favour of appellant and thus having substantially satisfied appellant, the learned Chief Justice in my humble view should not have gone further and made the order for a re-survey of the lands.

I agree that the title of appellant may be rectified on the ground of mistake or fraud but so long as the title is not rectified she remains the owner of the whole plot T278.

In any action for rectification of title all the interested parties- especially the vendor must be impleaded. In this case this has not been done. In the circumstances I am of the opinion that the learned Chief Justice was in error when he made the order for a resurvey of the lands. I accordingly strike down the order directing for a re-survey and rectification of the register.

Respondent to pay the costs of this appeal.

*H Goburdhun*

H Goburdhun  
Justice of Appeal

Delivered at Victoria this            day of            1988

*Delivered in open court*  
*GODDARD*            Just 22. 7. 88