

**IN THE SEYCHELLES COURT OF APPEAL**

**MR & MRS ANTOINE SINON**

**APPELLANTS**

**versus**

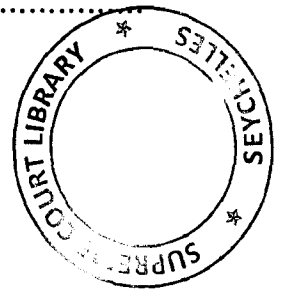
**LORMENA PIERRE**

**RESPONDENT**

Civil Appeal No: 19 of 2001

*[Before: Ayoola, P., Pillay & De Silva, JJ.A]*

Mr. R. Valabhji for the Appellant  
Mr. A. Juliette for the Respondents



**JUDGMENT OF THE COURT**

*(Delivered by De Silva, JA)*

The plaintiffs (now the appellants) instituted this action seeking a declaration that they are the owners of parcel S855. In the plaint it is averred inter-alia that – (a) the plaintiffs duly took possession of their lower plot parcel S855 in May 1978 and built their house thereon; (b) the plaintiffs aver that they have by themselves been in continued, uninterrupted, peaceful, public, non-equivocal, possession as owners for more than 20 years of parcel S855 and they have prescribed to the same.

Both plaintiffs were called to give evidence and they testified that they built their house on parcel S855 and have been continuously in possession thereof for a period of 20 years. The learned trial Judge correctly focused on the real issue in the case when he stated:-

“The issue which remains for determination is whether the plaintiffs have acquisitively prescribed land parcel S855 under Article 2262 of the Civil Code of Seychelles. The claim is resisted by the defendant.”

On a consideration of the evidence the learned trial Judge reached the crucial finding which he expressed in the following terms:-

"I do find from the evidence and the issues as pleaded that the plaintiffs have been in continuous, uninterrupted, public and non-equivocal possession as owner of parcel S855 since sometime in 1978."  
(Emphasis added)

In other words, the trial Court was satisfied that the plaintiffs have established all the elements required to sustain the plea of prescriptive possession in respect of parcel S855. However, the plea was dismissed on the ground that a letter dated 19<sup>th</sup> March 1998 addressed to the 2<sup>nd</sup> plaintiff by the Attorney-at-Law for the defendant was "*sufficient to interrupt the prescriptive period.*"

The only ground of appeal urged before us by learned Counsel for the plaintiffs-appellants was that "*the learned Judge was wrong in dismissing the plea on the basis that a letter from the defendant's attorney dated 19<sup>th</sup> March 1998 was sufficient to interrupt prescription ...*" The material Articles in the Civil Code of Seychelles Act relating to interruption of prescription are as follows: "*Prescription may be interrupted either naturally or by a legal act.*" (Article 2242) "*A natural interruption occurs when the possessor is deprived for longer than a year of the enjoyment of the thing through the actions of the former owner or even through the actions of a third party.*" (Article 2243) "*A writ or summons or a seizure served upon a person in the process of acquiring by prescription shall have the effect of a legal interruption of such prescription.*" (Article 2244) "*A writ or summons to appear before a Court, even if that Court has no jurisdiction, shall interrupt in prescription.*" (Article 2246) (Emphasis added)

We now turn to the contents of the letter, exhibit P1 on which the learned trial Judge relied to dismiss the plea:-

"My client is the owner of parcel S855 and your (sic) own parcel S856. My client has instructed me that you have given permission to two persons to construct two houses on her land. They are Maryline Reine and Roy Rein. My client will be taking legal recourse in respect of the said houses. In the meantime you are to instruct these two persons not to rent any of the houses, or sell

the houses to anyone, or extend the said houses and not to cut any trees on my client's property, without her permission...." (emphasis added)

On a consideration of the language used in Article 2244 and 2246 set out above, it would appear that an interruption of prescription by a legal act arises only upon an act done to commence proceedings in court or an act done pursuant to proceedings instituted in court. The word "*writ, summons, and seizure*" connote the institution of legal proceedings. The exhibit P1, on the other hand, is merely a letter sent by an Attorney-at-Law to the 2<sup>nd</sup> plaintiff informing her that the defendant "*will be taking legal recourse*". Exhibit P1 contemplates the commencement of legal proceedings at a future point of time and therefore falls far short of the requirements postulated in Article 2244. Exhibit P1 cannot possibly amount to a "*writ or summons or seizure served upon a person ...*" Furthermore, it is relevant to note that no action was taken pursuant to exhibit P1.

The view expressed above finds support in the following statement in **Amos and Waltons Introduction to French Law (2<sup>nd</sup> Edition) page 102:-**

"Possession of a nature to lead to acquisitive prescription may be either interrupted or suspended. Interruption may be either natural or civil. There is natural interruption when possession is abandoned, civil interruption when legal proceedings are brought by the owner."

Mr Juliette for the respondent argued strenuously to the contrary and maintained that Exhibit P1 would be sufficient to interrupt prescription and that the list enumerated in Article 2244 of the Civil Code of Seychelles Act is non-exhaustive. Learned Counsel, however, failed to cite any decided case or other authority in support of his submissions. It was further contended by Mr. Juliette that the evidence proved that the respondent herself had prescribed parcel S855 and, since admittedly, the registered deed was in her name the appellants' action had to fail.


These submissions are not acceptable for the reasons that:-


- (a) it is settled law that such a list specified in Article 2244 of the Civil Code of Seychelles Act is limitative, as rightly pointed out by learned Counsel for the appellant who pointedly referred in this regard to **Dalloz, Code Annotés, Nouveau Code Civil, article 2244, note 154;**
- (b) the learned trial Judge has not found in favour of the respondent on the issue of prescription and the respondent has failed to file a cross-appeal in this regard.

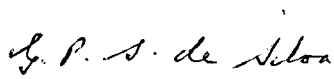
We wish to emphasise that Mr. Valabhji had intimated to the Court that his clients would not lay claim to parcel S856 which lawfully belongs to the respondent and, that the respondent would be allowed to remain in the house she had built on parcel S855.

For these reasons, we allow the appeal, quash the judgment of the Supreme Court and enter judgment for the plaintiffs-appellants as prayed for in the amended plaint dated 27<sup>th</sup> October 2000.

The appellants are entitled to costs of the appeal.

  
**E. O AYoola**  
**PRESIDENT**

  
**A. G. PILLAY**  
**JUSTICE OF APPEAL**

  
**G. P. S. DE SILVA**  
**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 19<sup>th</sup> day of **April** 2002.