

IN THE SEYCHELLES COURT OF APPEAL

[Coram: A.Fernando (J.A) , B. Renaud (J.A) , M. Vidot (J.A)]

Civil Appeal SCA 07/2016

(Appeal from Supreme Court Decision CS 07/2016)

In the Matter between:

Wavel John Charles Ramkalawan

Appellant

Versus

Lizanne Reddy

Michel Bernard Selwyn Gouffe

Respondents

Heard: 22 August 2018

Counsel: Mr. Bernard Georges for the Appellant

Mr. Basil Hoareau for the Respondents

Delivered: 31 August 2018

JUDGMENT

B. Renaud (J.A)

Background

1. The suit was initiated by a twice amended Plaint dated 15th January, 2015. The two Plaintiffs, a sister and a half-brother of the Defendant as well as the Defendant are the children of the late Eva Kitty Ramkalawan (the deceased) who died intestate on the 18th February 2012.

2. The Plaintiffs sued the Defendant claiming for their shares in land comprised in Parcel V12164 which the deceased, during her lifetime, on 31st January, 2008, had transferred to the Defendant. It is the case of the Plaintiffs that the said transfer was in reality a disguised donation. They claimed that the deceased could only dispose gratuitously either by gift *inter vivos* or by Will, only one fourth of the total asset value of all her property that existed at the time of her death.
3. The Defendant in his statement of defence denied that the transfer was a disguised donation as the Transfer was for the land only and maintained that the sale of the land was valid and for value.
4. On 26th January, 2016 the Supreme Court entered judgment in favour of the Plaintiffs. The Court granted the disposable portion of one quarter to the Defendant and out of the remaining three quarters, each heir must receive an equal portion of one quarter each. The Defendant was ordered to carry out the reduction and to pay the Plaintiffs their shares of the estate of the deceased on or before the 26th July, 2016, with costs.
5. On 24th February, 2016 the Defendant entered a Notice of Appeal against the said decision, advancing two grounds of appeal. Before that appeal was caused-listed for hearing, the Defendant on 12th July, 2018, entered a Notice of Motion seeking leave to amend the Notice of Appeal so as to include two fresh grounds of appeal to read:
6. The restriction in the Civil Code on the free disposal by a person of property belonging to the person during the person's lifetime by providing a reserved portion of that property for children contravenes the right to property in article 26 of the Constitution.
7. Any reversal of the right of free disposal of property through the doctrine of disguised donation contravenes the right to property in article 26 of the Constitution and is unconstitutional insofar as it is not a restriction prescribed by law.
8. The Notice of Motion seeking leave to amend the Notice of Appeal was mentioned before

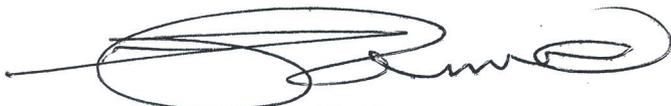
a single Judge of this Court, with notice to the Respondent. No objection was raised and the Court granted the leave prayed for.

9. The appeal was heard by this Court on 22nd August, 2018 when both Counsel made their submissions.

10. During our deliberations, we considered the Constitutional Court case No. 05 of 2012, *Achilla Durup & Ors v Josepha Brassel & or*, and found that the constitutional issue that was determined by the Constitutional Court in that case was based on a disposition by a Will, whereas the instant case involves the transfer for consideration, of immovable property during the lifetime of the Transferor, years prior to the passing away of the Transferor. We have determined the issue raised by the Appellant in the two grounds of appeal set out above, ought to be remitted to the Supreme Court for referral of the Constitutional Court for determination.

Order

11. We hereby order that the Supreme Court case CS No. 97 of 2013, which was the subject matter of appeal in Court of Appeal case SCA No. 07 of 2016 be remitted to the Supreme Court with a further Order that the Supreme Court refers the two constitutional questions raised to the Constitutional Court for their determination.



B. Renaud (J.A)

I concur:.

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A.Fernando (J.A)

I concur:.

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M. Vidot (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 31 August 2018