

**IN THE SUPREME COURT OF SEYHELLES**

Mrs. Raymonde Petrousse nee Fernandez  
of 207 Waye Avenue  
Crawford, Middlesex  
Hunslow WTW59SH, UK

**PLAINTIFF**

Vs.

Mrs. Marie-Ange Gregoretti  
of Beau Vallon, Mahe,  
And

**1<sup>st</sup> DEFENDANT**

Mrs. Mary Morel  
of Beau Vallon, Mahe

**2<sup>nd</sup> DEFENDANT**

**Civil Side No 321 of 2001**

*Mr. W. Lucas for the plaintiff*

*Mr. F. Bonte for the defendant*

**D. Karunakaran, J.**

**JUDGMENT**

By a plaint entered on the 7<sup>th</sup> day of November 2001, the plaintiff in this action seeks this court for a declaration that she is the lawful owner of the Parcel of land V.1112 and consequently order the Registrar General to amend the Land Register by deleting the defendants' names and registering the plaintiff as owner of the said parcel of land. The

plaintiff also seeks compensation from both defendants in the sum of Rs.510, 000.00 towards loss and damage the former allegedly suffered as a result the unlawful acts of the latter.

It is averred in the plaint that the Plaintiff, who currently residing in England is the daughter of one Donald Delpech, now deceased. On the 8th day of July 1972, the Plaintiff purchased from her father the late Donald Delpech, a portion of land situated at Beau Vallon, Mahe, demarcated by neighbouring Proprietors by measurements and one physical boundary, a river, registered in transcription 54/218 of the Registry of Deeds.

In November 1973 the said Donald Delpech sold to one Gunther Bongers the mother parcel known as Parcel V.772 of the extent of 7504 square meters with a **‘special reserve’** of a portion of land - hereinafter called *the suit-property* - lying west of the new road being a portion equivalent in area to the same portion purchased by the plaintiff as per the said transcription 54/218, and equivalent to a former plot known as parcel V.712 of which sale was registered in transcription 56/49 of the Registry of Deeds.

In 1981, the said Gunther Bongers sold to the 1st Defendant the same land he bought from Donald Delpech and registered in transcription 66/26 of the Registry of Deeds with protection to the same **“special reserve”** referred to in the said transcription 56/49. The Parcel V.772 hereinbefore referred to was subsequently sub-divided by the 1st Defendant into three parcels registered as V.964, V.965 and V.1112. According to the plaintiff, the said Parcel V.1112 with an area of 1683 square meters, by description is identical to the **special reserve** of the portion of land referred to, in the title deeds evidenced by the above transcriptions 56/49 and 66/26.

In August 1985, the 1st defendant as the registered owner of Parcel V.1112 sold to one Mr Sylva and Mrs. Nicole Ah-Time a portion of land extracted from Parcel V.1112 measuring 400 square meters and registered in transcription 73/120 of the Registry of Deeds.

On the 6<sup>th</sup> of June 1986, Mr and Mrs. Ah-time in turn sold to the 2<sup>nd</sup> Defendant the same portion of land bought from the 1st Defendant and registered in transcription 74/118

of the Registry of Deeds.

It is the case of the plaintiff that when the new Land Registration Project was introduced in 1986, the 1<sup>st</sup> Defendant lodged her ownership claim, based on her title deed of 1981 as per transcription 66/26, but failed to protect the reserved portion of land referred to in the 1973 and 1981 transactions or alternatively misled the Land Registration Project Officer. At that material time, the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants were and are still the registered co-owners of Parcel V.1112 in undivided shares.

In the circumstances, the Plaintiff avers that the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants are in illegal occupation of the suit-property that was the reserved portion incorporated into the mother Parcel V.772, prior to sub-division. Therefore, the plaintiff claims that she is the person with better title and proprietary right over the said reserved portion of land and so claims registered ownership and repossession of the said portion of land.

By reason of the foregoing the Plaintiff states that she has suffered loss and damages as follows:

PARTICULARS OF LOSS AND DAMAGES

(i) <i>Mesne profit for 10 years at SR.4,000/ per month for rent of a dwelling house</i>	<i>480,000.00</i>
(ii) <i>Damages for stress and inconvenience</i>	<u><i>30,000.00</i></u>
<i>Total</i>	<u><i>510,000.00</i></u>

Hence, Plaintiff prays this Honourable Court for a judgment seeking damages and remedies first above mentioned.

The defendants on the other hand, having denied the entire claim of the plaintiff on the merits, have also raised a *plea in limine litis* on a point of law. This plea reads thus:

*“The plaintiff has no valid cause of action against the defendants in that the matter is prescribed for having purchased the property Parcel 772 and enjoyed the undisturbed possession of it for over twenty years”*

In essence, the defendants claim that the plaintiff's right of action in this matter is barred by prescription since 20 years have elapsed without plaintiff's intervention in any manner at any time prior to the filing of the instant suit in October 2001. Hence, Mr. Bonte, learned counsel for the defendants sought dismissal of this action. On the other side the plaintiff's counsel Mr. W. Lucas submitted that the period of prescription starts to run when the Plaintiff was dispossessed of the suit-property by the occurrences of any one of the two events as follows:

- (i) Either on the 26<sup>th</sup> December 1984 when the 1<sup>st</sup> Defendant sub-divided Parcel V 772 into three smaller parcels and disregarded the previous agreement to protect the special reserve portion, the suit-property that belonged to the Plaintiff; **Or**
- (ii) When the 1st Defendant sold part of the identical Parcel V1112 to the extent of 400 square meters to Mr. & Mrs. Ah-Time in August1985.

According to Mr. Lucas, under the *first* situation the transaction of subdivision took place on the 26<sup>th</sup> December 1984 and the plaint in this case was filed in 2001 that is, 17 years after the transaction date. Therefore, the 20 years prescription will not apply in the instant case.

Under the second situation, 1st Defendant sold part of the property Parcel V1112 to the extent of 400 square meters, which is a sub-division of Parcel V.772 to Mr. & Mrs. Ah-Time in August1985. This sub-divided Parcel is identical to the suit-property. Hence, according to Mr. Lucas, under the second situation the transaction of sale took place in August 1985 and the plaint in this case was filed in 2001 that is, 16 years after the transaction date. Therefore, the 20 years prescription again will not apply in the instant case.

Mr. Lucas further submitted that the 1<sup>st</sup> Defendant has admitted under oath in open Court in the case Civil Side No. 305 of 1996, *Monique Delpech v/s Marie-Ange Gregoretti and Mary Morel* that the Plaintiff was the owner of Parcel V 712, which parcel was later incorporated in parcel V 772. In support of his contention in this respect, counsel

drew the attention to page 9 of the Supreme Court judgment, the extract of which is attached and marked as folio 9 in the case file.

The said case Civil Side No. 305 of 1996 was heard in 1998 thus a statement of acknowledge in open Court as to status of the Plaintiff's ownership to a share in parcel V 712 and later in V 772 amount to an interruption in the running of the prescription period in term of Articles 2248 and 2249 of the Civil Code of Seychelles.

Therefore, Mr. Lucas submitted that the *plea in limine* based on 20 years prescription period under article 2262 should fail in view of the fact that the claim was brought within the prescription period and has also been interrupted in 1998 when both Defendants were involved in a case before the Supreme Court, wherein ownership status of the plaintiff was established and acknowledged by them.

I gave a careful thought to the submissions made by both counsel on points of law pertaining to prescription in this matter. I meticulously perused the documents adduced by the parties and the relevant provisions of law in the Civil Code.

Obviously, the defence of prescription raised by the defendants in this matter is based on article 2262 of the Civil Code of Seychelles, which reads thus:

*“All real actions in respect of rights of ownership of land or other interests therein shall be barred by prescription after twenty years whether the party claiming the benefit of such prescription can produce a title or not and whether such party is in good faith or not”.*

Undisputedly, the present action was instituted by the plaintiff in November 2001. Needless to say, it is a real action in which the plaintiff claims right in respect of ownership of a land namely, the suit-property, which she admittedly, purchased on the 8<sup>th</sup> day of July 1972, from her father the late Donald Delpech. Obviously, she legally acquired her real right that is, the right of ownership over the suit-property as and when the sale deed was registered on the 15<sup>th</sup> July 1972, in register B. 29 No. 1374, transcribed in Volume 54 N0. 218. Hence, as I see it, her right of action to claim ownership/title or possession or any

other real right or interest in respect of the suit-property arose the minute she legally acquired ownership thereof. In the circumstances, in terms of article 2262, she had the right of action to claim ownership of the suit-property only upto twenty years from the date of acquisition of the ownership. In other words, she had right of action to claim real rights in this matter upto 15 July 1992. However, the present action has been filed only in November 2001, nearly nine years after the deadline. Hence, I find the plaintiff's real action herein is time barred by virtue of article 2262 of the Civil Code and so not maintainable in law.

Obviously, the two transactions namely, (i) the sub-division of Parcel V772 dated 26<sup>th</sup> December 1984 and (ii) the sale of Parcel V1112 dated 19<sup>th</sup> in August 1985, which the plaintiff's counsel mentioned supra are not in my view, the starting point for computation of the period of prescription as far as the plaintiff's right of action is concerned. For, from any of the said two transactions, the plaintiff did not acquire any new real right, which he did not have before in respect of the suit property.

It was further submitted by Mr. Lucas that the defendants' admission as to plaintiff's ownership of the suit-property in the court case Civil Side No. 305 of 1996, *Monique Delpech v/s Marie-Ange Gregoretti and Mary Morel* - interrupted the prescription of twenty years by virtue of articles 2248 and 2249. Even if we assume for a moment that there had been such an implied interruption, the fact remains that the said court- case was filed only in 1996. That is, nearly four years after the deadline of twenty years' period, required to complete and constitute a valid prescription in law. Hence, I find that the twenty-year-period required for prescription in terms of article 2226 of the Civil Code was never interrupted either by the admission made by the defendants in the said court-case or by any other factor recognized by law under our Civil Code.

It is pertinent to note that article 2219 states that prescription involves loss of right through a failure to act within the limits established by law. Hence, the plaintiff herein has clearly, lost her right of action through her failure to act within the statutory period of twenty years.

In the Circumstances, I quite agree with the submission made by learned defence counsel Mr. Bonte in support of the plea in limine. This action is therefore, time barred and liable to be dismissed. And, I do so accordingly. I make no orders as to costs.

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**D. Karunakaran**

**Judge**

**Dated this 28<sup>th</sup> Day of October 2007**