

THE REPUBLIC OF SEYCHELLES

IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT VICTORIA

Civil Side No 228 of 2004

Fanny Bertin=====Petitioner

versus

Marlene Farlour=====Intervenor

Charles Lucas for the Petitioner

Karen Domingue for the Respondent

JUDGMENT

Egonda-Ntende, CJ.

1. The Petitioner, Fanny Bertin, in her petition asserts that 47 years prior to the presentation of this petition she occupied a piece of land at Mare Angailase, owned by Milena Tirant, who passed away on 23rd October 1988. She built a house on the land and enjoyed the same and its curtilage continuously and publicly without any objections from the deceased. In 1985 Milena Tirant orally promised the petitioner to transfer to the Petitioner the land surrounding her house free of consideration and the same was to be distracted from a larger plot of land registered as title H1555.
2. Milena Tirant was not able to complete the subdivision as she passed away in 1988 after a long illness. The Petitioner avers that part of H1555 can be conveniently excised from the larger portion registered as title H1555 as was

intended after long uninterrupted possession which was unequivocal.

3. The petitioner then contends that in any event the Petitioner has thereafter continued uninterrupted, peaceful and public occupation of the property and has become entitled to ownership for reasons of her continuous, public, peaceful and unequivocal occupation of part of H1555 for a period in excess of 20 years without objection by anyone.
4. The intervenor opposed the petitioner's claim, asserting that this land has never belonged to Milena Tirant, the intervenor's mother, at any one moment. Rather at all material times the intervenor has been the owner of this land. She asserted that the petitioner occupied this land as a result of the relationship she enjoyed with the intervenor's relative. The house in question was built by the intervenor's relative and after the death of the intervenor's relative she continued to stay in the same house. The petitioner remained on the property as a licensee.
5. The intervenor further stated that the petitioner did not obtain the consent of her mother or the intervenor to rebuild the house left by the intervenor's relative and she did so at her own risk and peril. There was no agreement between the petitioner and the intervenor's mother or the intervenor to transfer a portion of H1555 for free to the petitioner as claimed by the petitioner. The intervenor denies that the petitioner has been in uninterrupted unequivocal possession or that she fulfilled the conditions for prescription as claimed by the petitioner on her pleadings. The intervenor further denied all the averments made by the petitioner other than those she had specifically admitted. She prayed that the petitioner's petition be dismissed.
6. The petitioner testified in person. As far as I can gather from her testimony she

went to live on the land in question, apparently, with the permission of Ms Milena Tirant for whom she worked including as a nanny for the intervenor. The house she occupied had been built by Henry Tirant, a brother of the intervenor's mother. Henry Tirant left the house and went to leave with his mother and that is when the petitioner moved into it. She did have a relationship with Henry Tirant and they produced two children after her first husband separated from her.

7. The petitioner testified that Milena Tirant, who was the owner of the land, and a friend of hers, gave her permission to build on the land. She converted the shack into a house with corrugated iron sheets and later into a house with brick walls with the permission of Mrs Milena Tirant. In her own words she stated,

'She [Milena Tirant] told me Fanny build your house because your kids are growing up. Build your house in bricks. I will leave all the necessary documents in the hands of my daughter Marlene and she will make the necessary if anything happens to me she will give you the said portion of land that you are living on with your kids.'

8. The petitioner further testified that three months after the death of Milena Tirant, her daughter the intervenor, came from abroad to take her inheritance. She came to make the necessary papers for the petitioner to get the land promised to her but the papers were not completed. The intervenor told the petitioner that since the work was not complete she would return to complete the work but she never saw her again though she used to hear she had come back to Seychelles. The land was never transferred to her. In a year she did not recall Maryse Tirant approached her and told her that the intervenor had said she was not to touch anything on the property any more. The following day she instructed her attorney at law to commence proceedings in this matter.

9. In cross examination she stated that Mrs Milena Tirant subdivided the land,

including the petitioner's portion, when she was selling part of her land to Mr Hoareau. Mr Pragassen, a surveyor, did the surveys and inserted beacons.

Further on the proceedings show as follows:

'Q: I am putting to you that neither Mrs Tirant nor Mrs Falor ever had any agreement with you to transfer or give you this property. It was always an understanding that you would live there and that when you would be required to vacate you would leave the property. That was always the understanding. A:

No, I was given a document from the owners of the land signed to give me permission to stay on the land.

Q: Where is this document madam that you were given permission to occupy the land? It is a very important document.

A: I was made to buy this document and all the owners signed the document to give me permission to stay on the land or for me to buy the land.

Q: Where is this document?

A: My paper was there. I went to Kingsgate to bring it to a lady.

Q: Where is this paper? It is a very important paper in this case.

A: My papers were at home and once I left for a holiday to England and when I came back I never saw this document nor my marriage certificate nor any necessary documents that I needed and after that I started to have this difficulty in my life.

Q: What difficulty?

A: The difficulty I am having right now.'

10. The petitioner further testified in cross examination that Mrs Tirant told her that everything would be left in Marlene's hands to give her the said property.

11. Mr Pragassen was PW2. He stated that he is a surveyor. In 1985 he was working with Government. Mrs Milena Tirant approached the Government then with a request to distract land for the Fanny Bertin and as a result he visited the land. The sub division did not proceed for reasons he does not know. Now he is in private practice. He was approached by Mr Lepathy in 2005 who told him that they had a case in court and wanted to delineate the land that Fanny Bertin and family was occupying for purposes of the court case. He went to the land and drew a plan showing the area that was occupied by the Bertin Fanny family. In cross examination he admitted that he did not have the consent of the owner to enter the land in question and in retrospect he

should have sought this permission.

12. The defence called two witnesses. Ralph Tirant had a power of attorney to represent the intervenor. With regard to matters of fact in issue his evidence was for the most part hearsay. It is sufficient to note that he is the son of the Marsya Tirant who was a sister of Milena Tirant. Mrs Marsya Tirant had been appointed prior to her death as the attorney for the intervenor. Mrs Marsya Tirant was also the executor of the estate of Milena Tirant.

13. DW2 was Mrs Lepathy, a Deputy Registrar of the Supreme Court who produced an old supreme court file, Civil Side No. 355 of 1981. From this file it was clearly demonstrated that Ms Marlene Falor was a co-owner in indivision of the land in question by 1981 when that case was instituted.

14. The relevant provisions of the Civil Code of Seychelles (CCS) are Articles 2229, 2230, 2231 and 2236. I shall set them out in full.

2229

In order to acquire by prescription, possession must be continuous and uninterrupted, peaceful, public, unequivocal and by a person acting in the capacity of owner.

2230

A person shall be presumed to possess for himself as owner unless it is proved that he possesses on behalf of another.

2231

When a person begins to possess on behalf of another, he shall always be presumed to possess on the same basis unless there is proof to the contrary.

2236

Those who possess on behalf of another shall not acquire by prescription however long they may be in possession.

Thus the tenant-farmer, the lessee, the depositary, the usufructuary and all others who hold the property of the owner for a temporary period shall not be entitled to prescription.'

15. In Henriette Leonel v Willy Theresine 1979 SLR 165 the Supreme Court considered the foregoing provisions of the CCS in relation to a plaintiff who

had been shown to occupy the land in question as a tenant. It held that where a person possesses land on behalf of another, he shall always be presumed to possess on that basis unless there is proof to the contrary. Secondly that possession on behalf of another shall not confer prescriptive title however long the possession may be.

16. The other case to consider is Seychelles Development Corporation v Peter Morel SCA 8 of 2002 that has been cited to me by both parties hereto. The Court of Appeal held that to acquire by prescription, possession must be continuous, uninterrupted, peaceful, public, and by a person acting in the capacity as owner. Secondly that permission negates a claim of acquisitive prescription.

17. The petitioner has been clear. She was given permission to stay on this land or at least develop it by the owners according to her own testimony. She imagined the owner to be Milena Tirant. This is not surprising given that the land was in in-division for sometime and Milena Tirant was one of the several (one eighth) co-owners of the land in Mare Angailase. However, after sub division title H1555 on which the petitioner was living was owned by the intervenor, who had had two eighth ownership in the in-division before sub division.

18. It is therefore clear that she did not occupy this land as owner. She knew the family that owned the land. She sought their permission for the various developments. She occupied the land on behalf of another and not herself. She knew this to be the case. The defence disputes the accuracy of all her claims including seeking permission. It may very well be the case that what the petitioner has put forward may not be true.

19. Nevertheless it is clear to me that on the basis of the testimony for the

petitioner that she did not possess this land in her own right claiming ownership of the same. She knew the land belonged to some other people. She did not dispute their title. When Mrs Milena Tirant died the petitioner waited for the intervenor, as the only legal heir of her mother, Milena to process the gift of land promised to her by the mother. And that was not to happen as she was told in 2004 to stop touching anything on the property.

20. Obviously on the evidence before this court Milena Tirant was not the owner of H1555. It was not in her power to give a portion thereof away as a gift to another. This raises doubts about the credibility of the petitioner's rendition of the facts of this case. Notwithstanding the improbable nature of some of the claims that she has put forth the case she has put forth does not support prescriptive acquisition of title to the land in question. Permission she sought to develop the land in question negates prescriptive title.

21. It is clear that the attempt to assert ownership occurred only in 2004 after she was told by Marsya Tirant not to touch anything on the property in question. That is when she went to an attorney and this case was filed. She had previously on the strength of her own evidence been waiting for the intervenor to prepare papers to transfer the land in question to her as it had been given to her by the intervenor's mother as a gift.

22. The testimony of the petitioner undermines the claim for prescriptive title. She was on the land in question with the permission of the owners. The permission ended when they sought to restrict her activity on the land in question and this was in 2004. Time would only start to run then. The plaintiff can only succeed on the case she has put forward and not on the weaknesses of the defence case though the evidence of both sides is considered together.

23. In the result I am satisfied that the petitioner has failed to prove her case on a balance of probabilities. This case is dismissed with costs.

Signed, dated and delivered at Victoria this 30th day of June 2011

FMS Egonda-Ntende
Chief Justice