IN THE SUPREME COURT OF SEYCHELLES

Brian Cedras

Marie-Helene Cedras

Both of Anse Boileau, Mahé **Plaintiff**

Vs

M. Isaac
of Baie Lazare, Mahé **Defendant**

Civil Side No: 161 of 2007

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Mr. F. Bonte for the plaintiff

Mr. N. Gabriel for the defendant

D. Karunakaran, J.

JUDGMENT

This is a suit for specific performance of a contract relating to a sale of an immovable property. The defendant had executed a promise of sale in favour of the plaintiffs, wherein the former had agreed to sell a portion of his land - extent 1500 square meters - hereinafter called the "suit-property", to the latter after extracting that portion from a mother parcel Title C1131 situated at Baie Lazare, Mahé. According to the plaintiffs, the defendant, in breach of the said promise of sale, failed or refused to transfer the suit-property to the plaintiffs. Hence, the plaintiffs have entered this action to compel the defendant to make the transfer accordingly.

The defendant was at all material times and is the registered owner of the suit-property. Undisputedly, the defendant by a promise of sale dated 28

February 2006 - in exhibit P1 - agreed to sell the suit-property to the plaintiffs after extracting the same from the mother parcel by effecting a sub-division before August 2006. The purchase price was also admittedly agreed upon between the parties at Rs300, 000/-. In pursuance of the said promise of sale, the plaintiff paid a sum of Rs50, 000/- to the defendant as initial deposit being a part of the purchase-price. However, in breach of the said promise of sale, the defendant failed or refused to effect subdivision and to transfer the suit-property to the plaintiffs. Hence, by a plaint dated 18 April 2007, the plaintiff has come before this Court for a judgment ordering the defendant to effect sub-division of the suit-property from the mother parcel and make transfer of that portion of land in pursuance of said promise of sale.

Undisputedly, in 2005, a year prior to the said promise of sale, the plaintiffs had obtained possession and they were already in use and occupation of the suit-property as lessee by virtue of a lease agreement they had signed with the defendant. Having thus acquired possession, use and occupation, the plaintiff started cultivation on the land; they planted crops and set up farming on the property. They planted crops worth Rs150, 000/- to Rs200, 000 expecting that they were going to purchase the suit-property relying on the promise of sale made by the defendant. According to the plaintiffs, since then they also invested about Rs10, 000/- to put up a pigsty to rear pigs on the property.

In the circumstances, the plaintiffs pray this Court for specific performance of the promise of sale ordering the defendant to make the transfer the suit-property to the defendant.

On the other side, the defendant not only denied the plaintiff's claim based on the promise of sale but also has made a counterclaim against the defendant in the total sum of Rs 248,000/- for loss and damages, which the defendant allegedly suffered due to unlawful acts committed by the plaintiffs. According to the defendant, since the plaintiffs did not honor their part of the agreement, which the parties had entered into, he has revoked the promise of

sale. Therefore, there is no promise of sale in force. Further, it is the case of the defendant that after the plaintiffs took over possession and occupation of the property they started causing trouble, insulted and threatened the defendant. Also, the plaintiffs stopped the defendant from accessing the property and destroyed a number of structures, which the defendant erected on the property to carry out his pig rearing business. The plaintiffs caused damage to the suit-property and occupying the property without paying the rent. In the circumstances, the defendant claims loss and damages from the plaintiffs as detailed below:

- Loan taken, which being repaid by the defendant

  for the renovation of pigsty and agricultural purposes: Rs 9537. 00

- Loss of earning from the pig rearing business from

  February 2006 to date (@Rs17, 000 every 6 months): Rs 68,000. 00

- Crops and fruits harvested by the plaintiffs: Rs: 100,000. 00
- House and other items vandalized, lost or damaged: Rs: 20,000. 00
- Damage to the Septic Tank: Rs: 1, 000. 00
- Moral Damage: Rs: 50,000. 00

Total: Rs 248,537. 00

In view of all the above, the defendant seeks this Court for a Judgment

(1) dismissing the plaint;
(2) rescinding the promise of sale following revocation by the defendant
(3) evicting the plaintiffs from the suit-property as they are in illegal occupation; and

(4) ordering the plaintiffs to pay the sum of **Rs 248,537. 00** to the defendant with interest and costs.

I carefully sieved through the entire pleadings, evidence including the exhibits on record. I diligently analysed the submissions made by counsel on both sides; perused the relevant provisions of law. To my mind, following are the fundamental questions that arise for determination in this matter:-

(1) Is the Promise of Sale dated 28th February 2006 pertaining to the suit-property valid in law and binding the parties?

(2) What is the legal effect of the said "Promise of Sale" on the "Lease Agreement" the parties had previously entered into in respect of the suit-property?

(3) Is the defendant, the Promisor entitled in law to unilaterally withdraw or revoke the "Promise of Sale" at his will?

(4) If so, what is the legal remedy available to the plaintiffs, the "Promisee" upon such revocation?

(5) *Have the plaintiffs committed any unlawful act/s resulting in loss or damage to the defendants?; and*

(6) *If so, what is the quantum of damages payable by the plaintiffs to the defendant under the Counter-Claim?*

The first question on the issue of validity of the Promise of Sale is a question of law. Obviously, the answer to this question lies in Articles 1583 and1589 of the Civil Code of Seychelles when read with Section 46 of the Land Registration Act.

Article 1583 reads thus:

"A sale is complete between the parties and the ownership passes as of right from the seller to the buyer as soon as the price has been agreed upon, even if the thing has not been delivered or the price paid"

Article 1589 reads thus:

"A promise to sell is equivalent to a sale if the two parties have mutually agreed upon the thing and the price. However, the acceptance of a promise to sell or the exercise of an option to purchase property subject to registration shall only have effect as between the parties or in respect of third parties as from the date of registration"

Land Registration Act (Cap 97)

"46 (1) *A proprietor may transfer his land, lease or charge, with or without consideration, by an instrument in the prescribed form: Provided...*

(2) *The transfer shall be completed by registration of the transferee as proprietor of the land, lease or charge and filing the instrument"*

Undisputedly, the parties had agreed upon the extent and description of the suit-property as well as on the price. In the light of the above provisions of law, it is evident that the Promise of Sale dated 28th February 2006 pertaining to the suit-property is valid in law and binding the parties unless and until revoked by the parties or by a party in accordance with law.

Coming back to the second question, although the parties prior to the promise of sale, had admittedly entered into a lease agreement in respect of the suit-property, the said **lease agreement** is deemed to be terminated in the eye of law by novation as and when the parties subsequently entered into a new

agreement namely, the **promise of sale** in respect of the **same property** and between the **same parties**. By operation of law under Article 1234 of the Civil Code, both parties are completely discharged from their contractual obligations under the lease agreement that became ineffective for all legal intent and purposes as and when both parties impliedly consented to and replaced the "*lease agreement"* by the *"agreement for sale"* (the promise of sale). In effect, there has been an implied or constructive termination of the contract of lease by novation. Therefore, as I see it, **the "Lease Agreement"**, which the parties had previously entered into in respect of the suit-property, is of no effect since 28 February 2006 as and when the parties entered into the said **"Promise of Sale"**. This is the legal effect of the said **"Promise of Sale"** on the **"Lease Agreement"** the parties had originally entered into in respect of the suit-property and so I find.

Now, moving onto the 3rd and the 4th questions, it is evident that in terms of Article 1590 of the Civil Code, if the *promise of sale* is accompanied by a deposit, each of the contracting parties **shall be free to withdraw**; however, the person who has paid the deposit shall lose it; the person who received it shall return double the amount. Admittedly, the *defendant, the Promisor* in the instant case has withdrawn his promise to sell to the defendant, the Promisee. Undoubtedly, he is free and *entitled to do so; in law he may unilaterally revoke the "Promise of Sale" at his will. However, upon such cancellation of the promise, s*ince he is in receipt of the deposit in the sum of Rs50, 000/- he shall liable to return double the amount; that is Rs100, 000/- to the plaintiffs. In the circumstances, I find that the *only legal remedy available for the plaintiffs upon such revocation of the promise by the defendant is to* recover double the amount of the deposit from the defendant. Hence, the demand made by the plaintiffs against the defendant for "specific performance of contract" in the present suit is obviously, not tenable in law.

Now I will turn to the fifth question on the issue of unlawful acts allegedly committed by the plaintiff on the property of the defendant. As per pleadings, it is the case of defendant that since the plaintiffs did not honour their part of the agreement, he revoked the promise of sale. However, the defendant did not adduce any evidence to substantiate his case in this respect to establish that the plaintiffs were indeed, in breach of any agreement. On the contrary, it was the defendant, who unilaterally revoked the promise of sale for no reason. To say the least, no reason was given to the plaintiffs. Therefore, I find that the plaintiffs can in no way be faulted for the breach any agreement with the defendant or for the unilateral revocation of the promise of sale by the defendant himself. Having lawfully authorised the plaintiffs to have the use and occupation of the suit-property, the defendant cannot subsequently allege that the plaintiffs were in unlawful use and occupation the suit-property. The defendant is estopped by his deed and conduct from challenging the lawfulness of the plaintiffs' use and occupation of the suit-property. In fact, the defendant's contention that the plaintiffs did not allow him access to the suit-property using threats and insult is not maintainable in law, since the defendant had no right to enter the suit-property after he had already given the right of use, possession and occupation to the plaintiffs. In the circumstances, I hold that the plaintiffs did not commit any unlawful act in denying defendant the access to the suit-property. Since the plaintiffs did not commit any unlawful act/s against the defendant, they cannot be responsible for any loss or damage, which the defendants might have suffered through his own fault. Hence, I find that the counterclaim made by the defendant against the plaintiffs in this matter is not tenable in law and liable to be dismissed. In view of the negative answer found to the fifth question, obviously, answer to the sixth question becomes irrelevant.

Accordingly, I enter judgment for the plaintiffs as follows:-

(1) I declare that the *Promise of Sale dated 28th February 2006* executed by the defendant for the intended sale of the suit-property to the plaintiffs is a nullity since the defendant has unilaterally withdrawn his promise of sale. Therefore, I hereby rescind the said promise of sale accordingly.

(2) Consequently, I order the defendant to return double the amount of the deposit, which is Rs100, 000/- to the plaintiffs with interest on the said sum at 4% per annum as from the *28th February 2006* until the sum is fully repaid.

(3) I dismiss the entire counterclaim made by the defendant against the plaintiffs in this matter; and

(4) Having regard to all the circumstances of the case, I make no order as to costs.

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D. KARUNAKARAN

JUDGE

Dated this 18th day of February 2013