

IN THE SUPREME COURT OF SEYCHELLES

Georgette Florentine
Of Grand Anse, Mahé

Plaintiff

Vs

Edline Chang-Time of
Ma Joie, Mahé

Defendant

Civil Side No: 203 of 2000

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Mr. Frank Ally for the plaintiff

Defendant - Absent

D. Karunakaran, J

JUDGMENT

By an amended plaint dated 13th of January 2003, the plaintiff in this action seeks the Court for a judgment:

- (i) ordering specific performance of the promise of sale, compelling the defendant to transfer the property, more specifically parcel V1874 to the plaintiff;
- (ii) in the alternative, ordering the Land Registrar to register the transfer of the said property in the name of the plaintiff;
- (iii) in the alternative to prayer (i) and (ii) above, ordering and condemning defendant to pay plaintiff double the deposit amount

of Rs 265,000/- which sum was paid by the plaintiff to the defendant;

- (iv) Ordering and condemning defendant to pay the plaintiff damages in the sum of SR 200, 000/- and
- (v) Such other order or further relief the Court may deem fit and just in the circumstances of the case.

The defendant, who was duly served with the suit-summons put up appearance through her counsel Mr. Elizabeth and informed the Court that she was contesting the plaintiff's claim. Accordingly, she filed her statement of defence together with a counterclaim made in the sum of SR225, 000/- against the plaintiff. Subsequently, there was a change of counsel. Mr. Juliette, another counsel put up appearance for the defendant replacing Mr. Elizabeth. The case had been set for hearing on 18th of May 2005. However, before the said hearing date, the defendant left the country leaving no instructions to her counsel Mr. Juliette. As a result, on the date appointed for hearing, Mr. Juliette appeared in Court and sought leave to withdraw his appearance from the case, due to lack of instruction from his client, the defendant. The Court, having given diligent thought to all the circumstances that prevailed on the date of hearing, granted leave for the plaintiff to proceed ex parte. The plaintiff accordingly, adduced evidence in this matter and hence this judgment.

The facts of the case are as follows:

The plaintiff is a middle aged woman. She is a resident of Anse Aux Pins, Mahé. She is 45 and currently unemployed. She is a mother of five disabled children. All the five children are mentally and physically

handicapped. They are living with the plaintiff and getting some financial assistance from the Social Security Fund. Following the death of first husband, the plaintiff is presently living with another man, who works as a casual labourer on boats at the Port. At all material times, the plaintiff owned a house at Grand Anse, Mahé, which was not big enough to accommodate the family. In the early 1999, she sold that house with the intention of purchasing a bigger one to accommodate her family of seven inmates.

In May 1999, the plaintiff met the defendant, who agreed to sell to the former, a house situated on a parcel of land V1874 at Belvedere hereinafter called the "suit-property" for the price of SR265, 000/- Accordingly, an agreement - a promise of sale - was drawn up - vide exhibit P1 - which was duly executed by the parties at the Chambers of a Notary Public. It was a term of the said agreement that the sale would be completed by 17th of May 1999 upon payment by the plaintiff to the defendant of the full purchase price SR265, 000/- According to the plaintiff, she paid the full amount to the defendant, on the date as agreed upon. However, the defendant in breach of the promise of sale, never transferred the suit-property to the plaintiff.

The notary concerned, who was called as a witness for the plaintiff, testified that the defendant initially represented herself as the owner of the suit-property and agreed to sell it to the plaintiff. Therefore, the notary prepared the necessary documents for the transfer. He also made arrangements for the parties to go over to his office for signing those documents. When both parties were present in his office for signing the transfer, the notary gave the said sum to the defendant by way of a cheque upon instructions from the plaintiff. The defendant having thus collected the cheque from the notary asked them to wait for her as she was going downstairs to call her husband to come up in order to sign the

document while she was going to the bank to deposit the cheque. The defendant thus left the scene with the cheque in her possession. Minutes and hours passed. Her husband never came up nor did the defendant. The plaintiff and the notary waited for the whole morning but in vain. There was no sign of defendant's return. The notary telephoned the defendant and asked her to return to his office immediately. She told him that she was sick and her husband would come to see him soon. However, the husband, who was the actual owner of the suit-property never turned up to complete the transfer. Two days later, the defendant called the notary and told him that she was going to Kenya with her husband on some urgent business and when they return they would come back to his office, sign and complete the sale transaction, which indeed, never happened. The notary referred the matter to the police. Since, then the defendant neither returned the sum to the plaintiff nor caused the transfer of the suit-property to the plaintiff in terms of the said promise of sale. The plaintiff having testified to the above facts, claimed that as a result of the breach of agreement by the defendant, she suffered not only financial loss in the sum of SR265,000/- but also moral damage estimated at SR200,000/- In view of all the above, the plaintiff prays this Court for a judgment seeking the orders first-above mentioned.

On the strength of the uncontroverted evidence adduced by the plaintiff, I find the following facts have been established more than on a balance of probabilities and to my satisfaction:-

1. In 1999 the defendant did misrepresent herself as the owner of the suit-property and did sign a promise of sale agreeing to sell that property to the plaintiff.

2. On 17th of May 1999, the defendant received the full price of SR265,000/- from the plaintiff and sneaked away from the office of the notary, without having the suit-property being transferred by her husband to the plaintiff.
3. The defendant was to say the least, dishonest and broke her promise of sale. She deceived the notary and escaped with the sum SR265,000/- causing loss and damage to the plaintiff.
4. At the time of the said promise of sale and even on the date, when the defendant received the sum from the plaintiff that was, on 17th of May 1999, the defendant had no power of attorney from her husband, the actual owner to transact any dealing with the plaintiff in respect of the suit-property. In fact, the power of attorney, which the plaintiff's counsel produced to the Court at the close of his case, is dated 13th August 1999, whereas all the transactions between the parties including promise of sale and receipt of the price have taken place prior to that date.
5. Moreover, it is evident that the amount SR 265,000/- which the plaintiff paid on 17th of May 1999 to the defendant was not a deposit that accompanied the promise of sale. In fact, it was the full purchase price, the plaintiff paid at the time when the transfer documents were about to be signed by the defendant. Hence, I find the plaintiff is not entitled to receive double the amount as it was not a deposit made towards the purchase price, as contemplated in Article 1590 of the Civil Code.
6. As regards moral damage, I find that the amount RS 200,000/- the plaintiff has claimed in this matter, is exorbitant and unreasonable. Having taken into account all the circumstances of

the case, in my estimate the plaintiff should have suffered moral damage only to the extent of SR50, 000/- consequent upon breach of the promise of sale by the defendant. Hence, the defendant is liable to compensate the plaintiff for all the loss and damages resulted from the said breach and so I conclude.

In view of all the above, I enter judgment for the plaintiff and against the defendant in the sum of SR315,000/- with interest on the said sum at 4% per annum, the legal rate as from 17th of May 1999 and with costs. For avoidance of doubt, I hereby dismiss the counterclaim made by the defendant against the plaintiff in this action.

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D. Karunakaran

Judge

Dated this 26th day of September 2005