

IN THE SUPREME COURT OF SEYCHELLES

1. ARTHON LESPERANCE

Executor of the Succession of Alda Elise Lesperance

2. HERIBERT LESPERANCE

Executor of the succession of Simon Lesperance

3. JOSIANNE DUBIGNON

Executrix of the succession of Therese Dubignon

Nee Lesperance

PLAINTIFFS

VERSUS

1. MARIONA LESPERANCE

2. OMBRE VERT (PTY) LTD

(Represented by Elisie Simeon)

DEFENDANTS

Civil Side No 63 of 2000

Mr. C. Lablache for the Plaintiffs

Mr. F. Ally for the Defendants

JUDGMENT

Perera J

This is an action seeking a revocation of a deed of transfer of a portion of land belonging to a succession by an executor without the authority or consent of the heirs. The 1st plaintiff is the executor of the succession of the late Alda Elise Lesperance who died intestate on 26th June 1996. The 1st plaintiff was appointed executor by this Court on 25th February 1999. The 2nd plaintiff was appointed as the executor of the succession of the late Simon Lesperance who died intestate on 11th August 1983. The 3rd plaintiff was appointed executrix of the succession of the late Therese Dubignon nee Lesperance who died intestate on 23rd September 1957.

One Elise Lesperance, also known as Alexandre Elyse was the father of Alda Elise Lesperance (*who died on 26th June 1966*), the late Simon Lesperance, and the late Therese Dubignon. He died intestate on 20th September 1962,

and the 1st defendant was appointed as the executrix of his succession by this Court 28th February 1994, The 2nd defendant is a registered company.

It is averred that the succession of the late Alexandre Elyse Lesperance included a land situated at Anse La Blague, Praslin and transcribed in Vol 45 no. 88 of the Register of deeds. It is further averred that the 1st defendant sold a portion of that property on 16th March 1994 to the defendant company without the authority or consent of the heirs to the succession. Accordingly the plaintiffs seek orders-

- (1) *Revoking the transfer of that portion of the property by the 1st defendant to the 2nd defendant.*
- (2) *And revoking the appointment of the 1st defendant as the executrix of the succession of Alexandre Elyse Lesperance.*

Notice of the plaint was duly served on the Secretary of the 2nd defendant company. However as the company defaulted appearance, the case was heard ex parte against them.

The 1st defendant however, together with the plaintiffs filed a judgment by consent in the following terms-

“Subject to the outcome of the exparte proceedings against the 2nd defendant, the plaintiffs and the 1st defendant have agreed to enter a judgment upon the terms set out below:

- (i) *The transfer of land situate at Anse La Blague, Praslin, Seychelles by the 1st defendant to the 2nd defendant by deed dated 16th March 1994 transcribed in Volume 79 no. 181 in the register of deeds is hereby rescinded.*

- (ii) *The Registrar General is directed to record such recession in the Register of deeds.*

- (iii) *The 1st defendant shall return to the 2nd defendant the sum of Seychelles rupees three hundred thousand (SR.300,000) being the consideration received for the sale of the property described in paragraph (i) above.*

- (iv) *Each party to bear its own costs.*

Dated this 9th day of November 2004

Sgd: Arthon Lesperance

Sgd: Heribert John Lesperance

Sdg: Josianne Dubignon

Sdg: Mariona Lesperance

In the exparte proceedings against the 2nd defendant company, the 1st plaintiff testified that none of the heirs were aware of the transfer of the portion of the property by the 1st defendant to the 2nd defendant. They came to know only upon a search at the Registry of lands. He further stated that the 1st defendant also breached her duties as executrix by appropriating the proceeds of the said sale. He maintained that the 1st defendant had negotiated a fraudulent transaction in defraud of the rights of the heirs.

On the basis of the evidence in the case, the Court is satisfied that the 1st defendant had fraudulently sold a portion of the property belonging to the heirs of the late Elise Lesperance, also known as Alexandre Elyse, without their consent and approval. Hence that transfer deed transcribed in Vol 79 no 181(P6) is hereby revoked.

Accordingly, pursuant to the judgment by consent entered between the plaintiffs and the 1st defendant the 1st defendant shall return the sum of

Rs300,000 being the consideration on the said deed to the 2nd defendant company. The acceptance of the said sum would however be without prejudice to the rights of the 2nd defendant company to sue the 1st defendant in damages, if so advised.

The Registrar General shall record the revocation of the said deed of transfer in the Register of deeds.

Parties will bear their own costs.

.....

A. R. PERERA

JUDGE

Dated this 17th day of February 2005