

# **IN THE SUPREME COURT OF SEYCHELLES**

**1. MARIAPEN SRINIVASAN CHETTY**

**2. LEVI KRISHNA CHETTY**

**APPLICANTS**

**VERSUS**

**MERSIA CHETTY**

**RESPONDENT**

**Civil Side No 444 of 2006**

Mr. B. Hoareau for the plaintiff  
Mr. A. Derjacques for the defendant

## **JUDGMENT**

### **Perera CJ**

This is an application for a Writ Habere facias possessionem, seeking the eviction of the respondent from a unit on the first floor of the building known as "*Srinivasan Complex*" situated at Albert Street/Market Street on land Parcel V. 5495. The 1<sup>st</sup> applicant Mr. Mariapen Srinivasan Chetty has since filing this case passed away. Consequently, Mr. Elvis Chetty and Ms. Pricille Chetty were confirmed as joint executors of the Estate of the 1<sup>st</sup> applicant by virtue of their appointment in the last will of the said deceased person. For present purposes therefore, Mr. Elvis Chetty is the 1<sup>st</sup> applicant and Mr. Levi Krishna Chetty, the 2<sup>nd</sup> applicant. The respondent is the aunt of the 1<sup>st</sup> applicant and the sister of the 2<sup>nd</sup> applicant.

As no amended pleadings were filed, the Court will proceed on the averments in the affidavit of Mr. Mariapen Srinivasan Chetty. It was averred by him that the respondent, his daughter, is in unlawful occupation of the said unit in "*Srinivasan Complex*". He had further averred that the respondent is the bare-owner of 3/10 undivided shares in title V. 5495, and that Mrs. Lea Chetty, his wife had the usufruct on the respondent's shares. The other co-owners are Mr. Levi Krishna Chetty 3/10 share, Mr Elivis Chetty 2/10 share and Miss Priscille Chetty 2/10 share.

It was further averred that the respondent is already in occupation of three other office units, bearing nos. 106,107 and 108 in the same building and a store in the basement, and that hence she could conveniently shift her belongings to any of those units. The applicants therefore aver that the respondent has no serious or bona fide defence, as she is in occupation without any permission or authorization.

The respondent, in her affidavit avers that she is a co-owner of land Parcel V. 5495 together with the buildings standing thereon. This is not disputed by the applicants. She further avers that she pays rent for two other units, a store, and the unit from which the applicants seek to evict her. She also contests the right of the 2<sup>nd</sup> applicant to sue her in view of the provisions of Article 825 of the Civil Code, as he is a fiduciary to the co-ownership, in which she is also a co-owner. In this affidavit filed one month before the death of Mr. Mariapen Srinivasan Chetty, the respondent avers that he and Levis Krishna Chetty were not acting in compliance with

Articles 825 and 827 of the Civil Code. This latter averment is not relevant for present purposes. As regards the averment contesting the right of Mr. Mariapen Srinivasan Chetty (*now represented by Mr. Elvis Chetty, his executor*) and Mr. Levi Krishna Chetty to sue the respondent, Article 818 provides that co-owners of an immovable property can act only through a fiduciary appointed by themselves upon a document, or by Court. Article 825 provides that such fiduciary shall hold, manage and administer the property, honestly, diligently and in a business like manner as if he were the sole owner. However he is bound to follow such instructions, directions and guidelines given to him in the document of appointment, either by the co-owners or by the Court. He can sell the property as directed by all the co-owners. If he receives no such directions, he can sell in accordance with the provisions contained in Article 819, 1686 and 1687, and under the immovable property (*judicial sales*) act. The expression “*as if he were the sole owner*” cannot be considered independently of the context in which it has been used. The rights of the co-owners are crystallized in the fiduciary. Hence he should act in the best interest of all the co-owners. In that context, a fiduciary cannot institute an application for a writ habere facias possessionem to evict a co-owner from a property belonging to the co-ownership. He could, with or without the consent of all co-owners, seek to evict a third party, who has no right or title or permission to occupy the co-owned property.

It is settled law that a Writ Habere facias possessionem shall lie only against a party who is a stranger to the property which he occupies as a squatter, with no right or title thereto, and with no

serious or bona fide defence. The respondent in the present case is admittedly a co-owner of the property. Even if she had not obtained the permission of the other co-owners or the fiduciary before she occupied the said unit on the first floor of the building, she cannot be considered as a squatter or a person who has no legal right to occupy for purposes of the present application. The respondent has therefore raised a serious and bona fide defence, and in these circumstances the application for a writ habere facias possessionem is dismissed, but without costs.

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A.R. PERERA

**CHIEF JUSTICE**

Dated this 27<sup>th</sup> day of November 2008