



IN THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION]

Civil Suit No. 69 of 2014

Between JANET DEIRERAGEA Plaintiff

and

GLORIA ADUN Defendant

Before: Crulci J

Plaintiff: V. Clodumar

Defendant: M. Depaune

Date: 11 September 2015

CIVIL – Deceased estate – Beneficiary – Ownership of property

JUDGMENT

1. This is an action commenced by Writ of Summons on the 22 December 2014 by the Plaintiff in relation to a building situated next to the Defendant's house.

BACKGROUND

2. The Plaintiff was married to the late Ben Deireragea (also known as Panyuella Deireragea) and they had eight children. In 1999 Mr

Deireragea died having been ill with cancer. The Plaintiff is the beneficiary of her husband's estate, as published in Gazette 65 dated 20th October 1999; GNN266/1999 and Gazette 75 dated 8th December 1999; GNN315/1999.

3. The building in question is on land referred to as Portion 185 in the Ewa District. This land was determined by the Nauru Lands Committee to have, amongst others, the Plaintiff Janet Deireragea as a LTO (Life Time Only) beneficiary with a share of 1/42 (Gazette 75 on 8th December 1999, GNN 315/1999).
4. The Defendant is the daughter of the Plaintiff's husband's sister; niece to the Plaintiff by marriage.
5. In the 1980's Ben Deireragea purchased the use of the building from his aunt Dogin. The building had been used as a store. Ben Deireragea later sold the building to his brother Olivier in the 1980's. Olivier sold it on to another brother DeHaviland. The Plaintiff's husband later purchased it from DeHaviland after the building had been destroyed by fire.
6. Prior to his death Ben Deireragea commenced renovating the building; the renovations were to render the property liveable to provide a home for the Plaintiff and their children. Ben Deireragea died before the building was completed.
7. The structure of the building fell into disrepair. A few years ago the Defendant's mother had enquired as to whether she could purchase the building and the Plaintiff had declined to sell it to her. Approximately two years ago the Defendant asked the Plaintiff if she could purchase the property from her in order to renovate it. The Plaintiff declined to sell the property to her either.

8. Notwithstanding this, the Defendant paid monies to the Plaintiff's son and commenced repairing the property. When the Plaintiff saw the building work she sought and was granted an injunction preventing the Defendant from doing anything further to the structure until such time as this Court determined the matter.
9. At no time has it been suggested that the land that the building is on was transferred from one person to another, nor have any documents been filed with the court to that effect. The matter in question is who has the authority to deal with/ alter/ use or reside within the building or structure.

EVIDENCE GIVEN TO THE COURT

10. The Plaintiff's evidence to the Court is that she and her husband had eight children. When they were first together they lived with family and there came a time in the late 1970's early 1980's that her husband bought the building from his aunt Dogin for \$1000. The Plaintiff took the money and handed it over herself. She was not told at that time or prior to this Court hearing that the payment was incomplete. They lived in the building as a family for a short while.
11. There was a disagreement within the extended family and they moved to live with the Plaintiff's parents. The building was then rented out as a Restaurant. At some later point the Plaintiff's brother-in-law Olivier wanted to live in the building so the deceased sold the property to Olivier.
12. The Plaintiff gave evidence that the property was subsequently sold on by Olivier to another brother, DeHaviland. Sometime later there was a fire and the property was destroyed leaving only the foundation. In the 1990's the Plaintiff's husband purchased the structure for \$500 from DeHaviland. No documentation has been produced to the court to

show these changes in 'ownership' of the building, but it is accepted by all parties that monies were paid in the past for the use of the building by the various family members.

13. After his diagnosis of cancer, the Plaintiff's late husband began work on the property to provide a home for the Plaintiff and the five youngest children. When the Plaintiff's husband died in 1999 the building was incomplete; walls constructed but no roof.
14. The Plaintiff accepts that she has not been in a financial position to complete the structure and that the property had fallen into disrepair. Despite the Defendant and other family members wishing to purchase the property from her, the Plaintiff does not wish to sell it but to keep it as her deceased husband wanted it to be a home for her and their children.
15. The Plaintiff cannot recall there being any issue in the past as to an incomplete payment made by her deceased husband to his aunt in relation to the original purchase.
16. The Plaintiff was made aware that her son Gad Deireragea accepted money from the Defendant in exchange for the use of the building. The Plaintiff has offered to repay the money (paid to her son Gad Deireragea) to the Defendant.
17. The Defendant Gloria Adun said in evidence that she is 29 years of age, having been born in 1986. She recalled the building in question being constructed by her uncle (Ben Deireragea) in 1999 when she was around 13 years of age.
18. The Defendant stated that her mother approached the Plaintiff in relation to the purchase of the building after her uncle died but was

unsuccessful. The Defendant knew that the Plaintiff did not want to sell the building.

19. In recent years the building deteriorated as it was incomplete and without support. As the building is meters from the dwelling in which the Defendant lives she wished to renovate and make use of it. As such she sought the agreement of the other family member landholders and secured 75% signatures supporting her use of the building.
20. In January 2014 the Defendant paid money to Gad Deireragea (Plaintiff's son) who assured her he had authority to sell the structure to her. Gad Deireragea was not called to give evidence. After the first payment instalment the Defendant had the collapsed walls removed. The Defendant's evidence is that Gad Deireragea told the Defendant that the Plaintiff had nothing to do with the property; a total of \$3,000 was paid to Gad Deireragea.
21. The Plaintiff approached the Defendant in February 2014 about the damage to the walls, and was informed about the transaction between the Defendant and Gad Deireragea.
22. Dogin, the aunt of the Plaintiff's deceased husband, gave evidence that she and her husband had the building built in the 1970's and it was initially used as a store and possibly a restaurant. She agrees that she sold the building to her nephew Ben Deireragea for \$1000. She told the court that this was not enough money and the amount should have been \$5000.
23. The witness Dogin accepted that the rents paid by those running the restaurant went to the deceased when he owned the building. She said the Plaintiff's husband was a violent man and she preferred to leave matters as they were. She did nothing over the years after she sold the

use of the building to recover the rest of the money she says she was owed.

24. Aidio Tsiode is a younger sister of Ben Deireragea, Plaintiff's husband. The witness was born in 1969; there is a thirteen year age gap between her and Ben Deireragea. The witness recalls there being an argument between her mother and the deceased. She herself never witnessed any arguments between her aunt Dogin and the Plaintiff's husband. She does not believe that her brother was a good person. The incidents and timing of the purchase of the property were when she was a young girl.

ISSUES RAISED

25. (a) Original payment for the building incomplete;
(b) Who currently has the use of the building;
(c) Retention / repayment of monies paid by the Defendant to purchase the use of the building.

(a) Original payment for the building incomplete?

26. This Court has heard evidence from the witness Dogin that she is of the view that the payment for the building in 1970's was never completed. The witness acknowledges that she did nothing over the years to bring this alleged shortfall to the attention of the Plaintiff, nor to seek completion of the payment she believed was outstanding. The right to the use of the building has been sold at least three times since Dogin's original sale to the Plaintiff's husband.
27. There is no evidence before the Court that this transaction was anything other than one conducted in the usual way between family members on Nauru. No lease documents or reference to the practice of having a lease or anything similar in writing has been placed before the Court.

28. Payment was made by the Plaintiff on behalf of her husband to the family member (Dogin) who was responsible for the construction of the building. This payment was for the use of the building as Ben Deireragea determined, and for him and his family to benefit from that use. The Plaintiff herself delivered the payment to Dogin. The right to use the building passed upon payment to the Plaintiff's husband. In relation to (a) above the witness Dogin did nothing in the intervening four decades to pursue the claim she now makes that payment was incomplete. The Court finds on the facts before it that payment made at the time completed the transaction.

(b) Who is the current owner of the building?

29. After the Plaintiff and Ben Deireragea lived in the building it was rented out as a Restaurant; the Plaintiff's family collected the rent. Ben later sold the use of the building to his brother Olivier. Olivier subsequently sold the right to use it to another brother, DeHaviland. Whilst DeHaviland had use of the building there was a fire and the structure was destroyed leaving just the cement foundation. The Plaintiff's husband purchased the structure from DeHaviland in the 1990's for the sum of \$500.

30. There is no suggestion before this Court that the actual ownership of the land on which the building is situated was transferred at any time as a result of any of these transactions. The *Lands Act 1976* regulates land transfers on Nauru in relation to land, as well as regulating the transfer, sale, lease grant of estate or interest in any land in Nauru.

31. The clear evidence before the Court is that the Plaintiff's husband purchased what was left of the building for a second time after there had been a fire. At no time during the preceding decades whilst the use of the structure was being transferred from family member to family member for consideration of sums of money, was there any

intervention by other members of the family to the effect that this process was inconsistent with what was customarily accepted, nor that it was an unlawful procedure. As previously stated there are no documents before the Court indicating lease or rental agreements in place either now or at any time since the original building was constructed in the 1970's.

32. The Plaintiff had, to the Defendant's knowledge, been approached on a number of occasions to sell the building, both by the Defendant and the Defendant's mother. On each occasion the Plaintiff has declined to sell her interest in the building.
33. Notwithstanding this, the Defendant gave evidence to the Court that she sought the agreement of a large proportion of the landowners for their agreement for her to use the building when she was admittedly aware that such permission lies with the Plaintiff. It is disingenuous of the Defendant to give evidence to this Court along the lines that the Defendant believed that Gad Deireragea (the Plaintiff's son) had authority to sell the use of the building to her.
34. It was also, in the Court's opinion, ill-advised for the Defendant to pay money to Gad Deireragea in relation to the building or to expend monies on renovating the building whilst aware that it is the Plaintiff who has the authority to sell or lease the use of the building in question.
35. At the time of his death, the Plaintiff's husband was in the process of renovating the building to make it into a home for the Plaintiff and their children. The Plaintiff is the beneficiary of her husband's estate and his estate included at the time of his death this partly renovated building. At the time of his death this building formed part of the personal property of Ben Deireragea. The Court holds that the Plaintiff is the current owner of this building to use as she sees fit.

(c) Retention /repayment of monies paid by the Defendant to purchase the use of the building

36. The Plaintiff has said that she is prepared to repay the monies paid by the Defendant. It is in the Court's view a generous offer and one that will hopefully foster reconciliation.

GENERAL COMMENT

37. The building is placed nearby to the Defendant's residence. Access to the building and renovations to it will result in the Plaintiff and the Defendant being in close proximity with each other and coming into contact with one another and their families. It is to be hoped that all parties will conduct themselves appropriately and in the spirit of family harmony.

HELD

28. (1) The property in question is part of the personal property of the Plaintiff's late husband, and as she is the beneficiary of his estate, the use of the property belongs to the Plaintiff.
- (2) No one is to interfere with the Plaintiff's rights to use the property and to reasonable access and enjoyment of the property.
- (3) Costs awarded to the Plaintiff (Costs to be taxed by the Registrar)


CRULCI J



Dated this 11th day of September 2015