



IN THE SUPREME COURT OF NAURU

YAREN DISTRICT

CIVIL JURISDICTION

CIVIL CAUSE

NO 2 OF 2016

BETWEEN

CHADWICK TSIODE

APPLICANT

AND

ZELLA DOWIYOGO

RESPONDENT

Before: Khan, J

Date of Hearing: 25 August 2016

Date of Judgement: 7 September 2016

Case may be cited as: Tsiode v Dowiyogo

CATCHWORDS:

Intestate estate of both parents is shared between all issues in equal shares- section 16(d) of Succession, Probate and Administration Act 1976.

Estate property- cannot vest in a beneficiary- unless Deed of Renunciation is executed by all remaining beneficiaries.

APPEARANCES:

Counsel for the Appellant: Mr V Clodumar (Pleader)

Counsel for the Respondent: Mr K Talenoa (Pleader)

JUDGEMENT

1. There are 2 modes of commencing a civil action which are:-

- (a) by a Writ of Summons; or
- (b) by Originating Summons.

(a) Writ of Summons

A Writ of Summons is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff's claim. Actions including substantial dispute of facts are commenced by Writ of Summons.

(b) Originating Summons

An action is commenced by way of Originating Summons where it is required by statute; or the dispute is concerned with matters of which there is unlikely to be any substantial dispute of facts.

2. This action was commenced by the plaintiff by of Originating Summons. It involved substantial dispute of facts and should have, in my view, been commenced by a Writ of Summons.

Applicant's Claim

3. The applicant claims to be an owner of a garage. His claim is that being the owner he allowed the respondent to occupy it on a temporary basis and the respondent is now refusing to vacate and he seeks an order for vacant possession against the respondent and her family.

4. The applicant is the respondent's brother and the children of Mella and Detemaigo Tsiode.

5. In his affidavit at [6] the applicant states that "the building was originally a garage." He further stated that the garage was an existing structure. It had a corrugated iron roof and corrugated iron walls and concrete floor. He stated that he and his 2 siblings who included the respondent and the other sister Zelda Stephen (Zelda) decided to convert the garage into a store. It cost them the sum of \$15,000 in total and each of them contributed a sum of \$5,000.

6. After the renovation was completed the respondent asked for refund of her contribution of \$5,000 as she was facing financial difficulties and he gave her the sum of \$5,000. Later in 2003 or thereabouts the other sister Zelda also asked for a refund of her contribution of \$5,000 and the applicant refunded her the sum of \$5,000.

7. In paragraph 10 of his affidavit, the applicant stated "... since I am the only partner who did not withdraw my share in the business, I claim ownership of the premises and no one in the family protested then and now."

8. In 2010 to 2011 he rented the premises to a company called Skaff for a period of 1 year and thereafter he rented it to Capella & Partners for a period of 1 year as well for the sum of \$250 per month. It is not clear as to how much was it rented to Skaff for. The applicant kept all the rental income.

9. When the respondent gave evidence it became clear that their parents are deceased who had 5 children, 3 sons and 2 daughters who includes the applicant, the respondent, Zelda, Remick Tsiode and 1 other. Their father died in 1983 and the mother in 2003.

10. From the respondent's evidence it also became clear that the garage which was converted into a store was owned by their parents together with the family house which is now occupied by the applicant, Remick and the other brother. Zelda now lives in Australia and the respondent is in occupation of the store which is the subject of the dispute.

Intestate Estate

11. The intestate estate of a deceased is governed by the Succession, Probate and Administration Act 1976 (the Act).

11. Section 16(d) of the Act provides:

“if the intestate has left issues but no wife or husband surviving, then the issues shall take, stirpes and not per capita, the whole estate of the intestate absolutely.”

12. Stirpes is a Latin term which means in equal shares. The 5 children are entitled in equal shares to the whole of the deceased parent's property which includes the family home as well the premises which is the subject of this dispute.

Who is the owner of the store?

13. The applicant has spent a sum of approximately \$15,000 to convert the garage into a store together with the respondent and Zelda. Subsequently, the respondent and Zelda were refunded their share by the applicant. The applicant subsequently rented the store and collected all the rent as he claimed to be the owner of the store. However, the evidence of the respondent and Remick is that he was allowed to collect the rental because he was unemployed at the time but he was told that he was required to buy food for the respondent and her other siblings. The applicant disputes this.

Issues for determination

14. The issue is as to whether the applicant's act of spending the sum of \$15,000 to renovate the garage and converting it into a store made him its sole owner. No material was placed before me to suggest that the applicant and his other siblings entered into a Deed whereby the store was given to him. Being estate property the ownership of the store could have vested in the applicant if all the other siblings had entered into a Deed renouncing their rights in his favour, but it appears that it was never done so the store remained the property of the deceased parents' estate.

15. Being estate property the respondent did not require the applicant's consent and/or permission to take occupation of the store as he was not the sole owner.

16. The applicant has spent \$15,000 in the renovation of the garage into a store so what is his recourse? He has a possible cause of action against the estate but before he contemplates filing any action against the estate he has to account for the 2 years rental income that he kept as that was the estate property.
17. I find that the applicant's action against the respondent was totally misconceived and is dismissed with costs to be taxed if not agreed

DATED this 7 day of September 2016



Mohammed Shafiullah Khan
Judge

