IN THE SEYCHELLES COURT OF APPEAL

The Estate of Charlemagne Grandcourt
Represented by Wilfred Fréminot and Edwina Fréminot
acting as Joint Executors **1st Appellant**

AND

Wilfred Freminot and Edwina Freminot
acting as Joint Executors of the Estates of
Chalegmagne Grandcourt and Odrade Grandcourt **2nd Appellant**

VS

Christopher Gill **Respondent**

SCA 7 of 2011

Before: Fernando; Twomey; Msoffe; JJA

Mr. S. Rouillon for the Appellant
Mr. P. Pardiwalla for the Respondent

Date of Hearing: 27th November 2012
Date of Judgment: 7th December 2012

Judgment

Twomey J

1. This case concerns a contract of sale between one Charlemagne Grandcourt, the original Plaintiff, now deceased and the Respondent, Christopher Gill. The contract was signed together with a charge before France Bonté, Notary on the 4th February 1993 but never registered.

2. Our brother Fernando has summarised the facts of this case, together with its unusual trajectory and the grounds of this Appeal. We have no difficulty adopting his summary in this respect. We disagree however with certain of his findings and hereinafter state our reasons and decision.

3. We were invited first of all by the Appellants' Counsel to treat the unregistered deed of sale and the charge as back letters. If we understand him correctly, the fact that the notarial documents contained false statements, notably the fact that the money had been paid when in effect it was to be paid by instalments, and do not reflect the true nature of the agreement between the parties convert the notarial documents into back letters. He submits that since they were never registered as provided for by *article 1321 (4) of the Civil Code,* they were therefore null and void. His conclusion therefore was that they prevented the Respondent from seeking specific performance of the agreement. He has relied on the case of *Sidna Ruddenklau v Timm Botel (unreported) SCA 4/1995.* We are unable to accept Counsel's argument as even if we were to ignore the notarial documents, we would still have to deal with the fact that there was an agreement between the parties to sell the land at Takamaka for R500, 000. That is borne out by Counsel's pleadings, the two letters from the deceased and the evidence in this case.

4. The Appellants have also raised the issue of heirs' consent to the sale. This arises from the fact that half of the deceased' wife's (Odrade Grandcourt) share of the property had passed to her children. Mr. Pardiwalla for the Respondent has argued that there is no duty on an innocent purchaser to conduct research on whether the vendor as the Executor of an Estate has the heirs' consent. He states that in any event the heirs' consent does not have to be in writing. He further states that since the heirs only raised the issue of consent over 10 years after the sale they cannot be taken as genuine. He relies on the case of *Parcou v Parcou (unreported) SCA 14/1998.* We accept this submission and the authority as they state the correct legal position.

5. We have to point out that the issue of consent is a strange argument in this case. By raising it Mr. Rouillon imputes the good faith of his own client Charlemagne Grandcourt, the original defendant in this case. If the heirs of the estate of Odrade Grandcourt now represented by the Appellants, claim they were not consulted over the sale, their course of action is against the Estate of Charlemagne Grandcourt also represented by the Appellants. This may well lead to an Alice in Wonderland scenario of "curioser and curioser." In any case the whole thrust of the 1976 Civil Code provisions was to put an end to the nightmare faced by notaries and attorneys when transferring land in getting

the signature of all co-owners; hence the concept of the fiduciary and the executor. The executor's duties are equated to that of the fiduciary as set out in *article 825 of the Civil Code*. The fiduciary is certainly given the power to sell land and where he receives no instructions to sell, he can still sell as long as he does so in accordance with the provisions of *article 819 of the Civil Code.* There is no evidence adduced by the appellants to show that the deceased did not act in accordance with the provisions cited.

6. As the notarial documents were never registered they must be treated purely as a contract of sale between the parties. Although Mr. Rouillon raised the issue of *section 46 of the Land Registration Act 1967* nullifying the contract, we are of the view that the provisions have no such application. All these provisions do are to prescribe the form used for the transfer of land and to provide that the transfer of land shall be completed by registration and filing of the instrument.

7. Given the circumstances of this case, under the Act the notarial deed was clearly not accurate as it stated that the money had been paid when indeed it had not. Both parties knew this and were secure in the knowledge that on the one hand the transfer would be effected and on the other hand the charge would restrict further dealings with the land until the money had indeed been paid. It has been pointed out that this is normal practice in Seychelles and represents a legal fiction that has become acceptable by all attorneys and notaries. We suggest that this discontinues to be the practice and that the provisions of the Land Registration Act together with its Schedules of prescribed forms be followed.

8. However, as pointed out since the document was never registered it had no effect as far as third parties were concerned. But it has full application and binding effect as far as the two parties to it are concerned. Registration would only have perfected the transfer. In the case of *Hoareau v Gilleaux SCAR 1978-1982 158, Lavoipierre* JA quoted with approval Sauzier J's finding in the lower court that the parcel of land in question

> "being property subject to registration, the acceptance by the plaintiff of the promise of the defendant to sell her [the land] for R100,00 was, by virtue of Article 1589 of the Civil Code of Seychelles, equivalent to the sale of [the land], effective only as between the plaintiff and the defendant."

9. We therefore have to view the documents produced purely as a contract of sale. *Article 1156 of the Civil Code of Seychelles* stipulates that in the interpretation of contracts the common intention of the parties should be

sought. It is clear both from the written documents and the evidence of both parties that there was an agreement for the transfer of Parcel T696 from Mr. Charlemagne Grandcourt (the deceased) to the Respondent for the sum of R500, 000. It was a term of this agreement that payment for the transfer would be effected by instalments in the following manner:

> 1. Rupees one Hundred Thousand was to be paid by the first day of March 1993.
>
> 2. Rupees Two Hundred Thousand to be paid by June 1993.
>
> 3. The remaining balance of Rupees Two Hundred thousand to be paid by December 1993.

10. From the evidence adduced at the hearing it is clear that the Respondent breached the agreement by not paying the final instalment on the date agreed. The *mise en demeure (*letter of formal notice) was effected twice by the deceased to the Appellant once in his own hand on the 4th of May 1994 and secondly by a type written letter which was sent by registered post.

The first letter although containing some grammatical mistakes is set out verbatim below:

> "Sir, It is with regret that I have taken the following measures regarding the proposed transfer of my property to you. According to the agreement we made, you were expected to end your payment by the 1st December 1993 which you failed to do so. You were then given the opportunity to do so before February 1994, and this too you failed to do so. For the past 3 months not a single rupee were paid, so I am revoking the transfer of land, with immediate effect because you could not abide to the regulations set and which you agreed. Secondly you will be paid your money back after I have sold my property. The proposed transfer regarding Mr. E. Morel transfer back to me cause he is no longer staying on my property. No more payments be made before we sit and have fresh discussions and have new agreements cause remember I had *ipotek* on the property after the 1st December 1993 and that I hold the power to choose if you could keep it. So I did not have any confirmation from you regarding why you couldn't comply with the agreement so I have nothing left but to revoke the agreement."

The second letter is dated the next day and reads as follows:

> "Payment for title No. T696 at Takamaka, Mahé

1. I refer to our agreement for the sale of land my land at Takamaka and the agreement for payments by instalments by you.

2. Our agreement was that you should have paid the full sum of R. 500,000 by December 1993. You have failed to do so despite repeated requests for you to do so.

3. I am therefore giving you a last chance by extending the payment date to May 15th 1994. On this date, if I have not received the whole sum of R500,000 from you I will have no choice but to consider our agreement as having been broken and I will not be obliged to sell the title No. T696.

4. I look forward to your co-operation and look forward to receiving the final payment.

Signed

Charlemagne Grandcourt

11. The inconsistencies in the two letters are glaring but not much was made of them at the hearing. On the one hand the deceased intimated that he would not be accepting any further instalments in accordance with the agreement and on the other hand he is asking the Respondent to fulfill his promise by paying the balance of the contract price by the 15th of May 1994.

The examination-in chief of the first Appellant, one of the executors of the estate of the deceased is also very revealing. In explaining his relationship with the deceased, he states:

A My wife's mother assisted him. Her father was also staying with us. She was the carer of the father and she also took care of him.

Q Is she literate?

A No. She has been a house wife all her life. Her name is Marie Claire born…

Q You knew he had sold a piece of land. What did you know about the circumstances of this matter?

A It is a long story. The first time the matter came to my knowledge was in 1994. Mr. Grandcourt came to us in 1990. When I came back from… Marie Claire Legaie had received notice to vacate and everybody was worried. The property did not belong to her. Grandcourt wanted to

subdivide and give her a piece. But apparently he did not know where he stood. According to him there was a promise of sale with Christopher Gill which he had instructed his lawyer to rebute. That was in 1994.

Q. The agreement with Mr. Gill was done in 1993?

A Yes and in 1994 his when we started becoming aware of what the situation was (sic). Grandcourt had written a letter in his own handwriting and then we suggested to him that it was best he had a more formal letter and register it.

Contained in this exchange between the executor and Counsel is a clear indication of what precipitated the letters of notice. It would appear to us that the fact that all concerned were living on land which was the subject of a contract for sale and for which a letter to vacate had been received sought a way out of the agreement.

12. It is true that the deceased was right to avail of the provisions of the Civil Code in relation to *l'exception d'inécution* until 19th May 1994. This right of non performance (non adimpleti contractus) is contained in *Article 1612 of the Civil code of Seychelle*s:

> "The vendor shall not be bound to deliver the thing if the purchaser has not paid the price, provided that the vendor has not granted him time"

Even if we are to ignore the contents of the first letter which declares the agreement at an end, the second letter incorrectly states the law as to rescission. When the purchaser does not make payment for the goods or property sold, the vendor can resort to non performance, in this case refuse to transfer the land. However, that right of non-performance is only temporary; it only suspends the obligation of the vendor not to transfer until payment of the contract price. This arises from the effect of several provisions of the Civil Code namely articles:

> 1583: "1. A sale is complete from the vendor to the purchaser as soon as the price has been agreed upon, even if the thing has not yet been delivered or the price paid."
>
> 1134: "Agreements awfully concluded shall have the force of law who have entered into them.
>
> They shall not be revoked except by mutual consent or for causes which the law authorizes.

They shall be performed in good faith"

1183: "A condition subsequent shall always be implied in bilateral contracts in case either of the parties does not perform his undertaking.…

Rescission must be obtained through proceedings but the defendant may be granted time according to the circumstances.

13. The comment on Article 1183 in Dalloz Codes Annotés, Nouveau Code Civil III states:

"La condition résolutoire est celle qui, lorsqu'elle s'accomplit, opère la revocation de l'obligation, ce qui remet les choses au meme état que si l'obligation n'avait pas existé.

Elle ne suspend point l'exécution de l'obligation: elle oblige seulement le créancier à restituer ce qu'il a reçu, dans le cas oú l'événement prévu par la condition arrive."

Clear and constant jurisprudence of the Cour de Cassation has established the principle of the temporary nature of the suspension of the corresponding obligation by the other party. (See *J. Carbonnier, Les obligations, p. 353; A. Bénabent, Les obligations, p. 231; P. Malaurie et L. Aynès, Les obligations, p.425.*

14. From the above we can summarise:

1. Contacts are of an obligatory nature.

2. Contracts cannot be unilaterally revoked.

3. Where a party to a bi-lateral contract fails to perform his obligation, the other party can suspend the performance of his own obligation but only until the other party performs his corresponding obligation.

4. Where a party to a contract fails to perform his obligation, the other party cannot of his own rescind the contract, he must seek the remedy in court. The exceptions to this rule are commercial contracts and contracts where the parties have inserted a term in the contract providing for rescission.

15. If we are to apply these principles to the present case it is clear that the Respondent breached the contract by not paying the last instalment on time.

The letters of 4th and 5th May indicate that he was given time to meet his obligation. The deceased would have been entitled to bring an action under *article 1183 of the Civil Code* to bring an action for rescission and damages. This he did not do.

16. Three sets of pleadings were filed by his Counsel in relation to this case. The first pleading filed on 3rd October 1995 contained a Defence and Counterclaim. That Counterclaim does ask for a rescission of the contract with costs. A second Defence in answer to an Amended Plaint was filed on 12th March 2008. There was no Counterclaim in those pleadings, only a prayer "for a judgment dismissing the amended Plaint with costs." A third set of pleadings was filed by Counsel on the 26th November 2008, an Amended Defence. There is no Counterclaim. In those pleadings the Appellants, then Defendants pray for rescission. We also find that after the close of his case on 26th March 2009, Counsel again tried to amend his pleadings. This was objected to by the Respondent's Counsel. The learned trial judge Karunakaran rightly denied the amendment, ruling that the application to amend had not met the conditions under *section 146 of the Civil Code of Procedure* (CPC).

17. We are therefore only concerned with the Amended Defence of November 2008 which contains no counterclaim. Section 75 of the CPC states that the Statement of Defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. In this respect the pleadings are satisfactory. However if he seeks rescission of the contract and damages he has run afoul the rules of civil procedure. There is no point praying for remedies in a defence when the basis for the remedy is not set out in pleadings. *Section 80(1)* of the CPC provides:

> "…where a defendant in an action wishes to make any claim or seek any remedy or relief against a plaintiff in respect of anything arising out of the subject matter of the action, he may, instead of raising a separate action make the claim or seek the remedy or relief by way of counterclaiming the action; and where he does so the counterclaim shall be added to his defence to the action."

Although the CPC does not provide a form for the counterclaim, in such a situation we are empowered by section 17 of the Courts Act (Cap. 52) to resort to the "procedure, rules, and practice of the High Court of Justice of Justice in England." In this instance, the particular provisions are to be found in the White Book specifically rule 20.4 and the form is at paragraph 20. P.D.G.

18. A prayer for a remedy in a Defence does not by any stretch of the imagination amount to a counterclaim. A counterclaim is similar to a plaint in that is sets out similar materials facts. In any case if there was indeed a counterclaim the Respondent would have been given time, as is the practice, to answer it. This did not happen.

19. It is disappointing that pleadings for rescission and damages from the Appellants are not before us. All we are left to consider is the action for specific performance by the Respondent. We view this case as arising purely out of a right of action under *article 1142 of the Civil Code,* i.e. the obligation to perform. French jurisprudence has maintained that despite the provisions of *article 1142* there is an inherent right to specific performance corresponding with that contained in *article 1183*:

> "La partie envers laquelle un engagement contractuel n'a point été exécuté a la faculté de forcer l'autre à l'exécution de la convention lorsque celle-ci est possible." (Cass. civ. 1 16 janvier 2007).

The only exception would be when the execution of the obligation is impossible.

20. The trial judge did order specific performance of the contract but he failed to take into account the fact that R200, 000 due since May 1994 remains unpaid. We find that that sum is due together with interests at the legal rate of 4%. At the hearing of this appeal we asked Counsel to agree the interest due on this outstanding balance and to communicate to us an agreed computation bearing in mind the devaluation of the rupee. This unfortunately has not happened. Mr. Rouillon has submitted a computation based on compound interest. Interest on court judgments are calculated based on simple interest at 4% (Interest Act Cap. 100). Compound interest is exceptionally allowed only where an equitable remedy is granted by the court and there is for example an allegation of breach of trust or fraud by a party (see for example *Wallerstein v Moir (No. 2) [1975] Q.B 373).* The present case concerns a legal remedy under the Civil Code. We have proceeded on this basis and to be as fair as possible have accepted the depreciation in currency for each year since 2007and using as baseline currency the US dollar. We therefore find that the total amount of interest payable is SR176, 784.

21. We therefore set aside the order of the Supreme Court and make the following orders:

1. The Respondent, Christopher Gill is ordered to pay the sum of R200, 000 with interest amounting to SR 176,784, the total award of SR376, 784 to be

paid to the Appellants on or before 31st December 2012. This sum is to be deposited in the Court Registry.

2. The Land Registrar is hereby authorized under section 75 of the Land Registration Act on the application of the Respondent and the filing of this judgment and production of receipt of payment of the judgment award to register Christopher Claude Gill as the proprietor of Parcels T.1393 and T.1394.

3. As this appeal is partly successful no award is made as to costs.

Mathilda Twomey
Justice of Appeal

I concur

January Msoffe
Justice of Appeal

Delivered at Victoria, Mahé, Seychelles, this 7th day of December 2012

IN THE SEYCHELLES COURT OF APPEAL

The Estate of Charlemagne Grandcourt
Represented by Wilfred Freminot and Edwina Freminot
both of BaieLazare, Mahe,
acting as Joint Executors (1st APPELLANT - *DEFENDANT*)
AND
Wifred Freminot and Edwina Freminot
both of Baie Lazare, Mahe,
acting as Joint Executors of the Estates of
Chalegmagne Grandcourt and Odrade Grandcourt (2ndAPPELLANT - *DEFENDANT*)

VS

Christopher Gill
Of Anse Takamaka, Praslin (RESPONDENT - *PLAINTIFF*)

SCA NO CS 7 of 2011

Before: Fernando;Twomey;Msoffe; JJA

Mr. S. Rouillon for the Appellant
Mr. P. Pardiwalla, for the Respondent

Date of Hearing: 27th November 2012
Date of Judgment: 7th December 2012

JUDGMENT

A.F.T. Fernando JA

1. This is an appeal against a judgment of the Supreme Court Civil side No. 174 of 1995 dated 23rd of March 2011, entered in favour of the Respondent, ordering the Registrar of Land to register the Respondent as sole owner of land parcels titled T1393 and T1394, by treating the registration as a transfer on sale of the said two parcels of land; upon payment of stamp duty by the Respondent at the present market value as adjudicated by the Stamp Duty Commissioner; awarding the Respondent nominal damages in the sum of Rs 1/- against the Appellants and dismissing "the defendant's entire claim raised in defence including the one made in the nature of counterclaim, in the statement of defence dated 26th November 2008 in this matter."

2. The said judgment was in respect of a suit filed by the Respondent to this appeal against the two Appellants in this case.

3. In the Amended Plaint dated 11th of March 2008 the Respondent, Plaintiff before the Supreme Court; had stated that by Transfer Deed dated 4th February 1993, CharlemangeGrandcourt, acting for himself and as executor of the estate of his deceased wife, OdradeGrandcourt, sold to him Title T 696 for the sum of Rs 500,000.00. The parties had agreed that the purchase price would be paid to Charlemagne Garndcourt by installments and that the payment in full of the purchase price would be secured by a charge over Title T 696 in favour of CharlemangeGrandcourt. Immediately after the execution of the Transfer deed and pursuant to such agreement, he had executed a charge over Title T 696 in favour of Charlemagne Grandcourt. It had been the Respondent's position that in breach of the Transfer Deed and the Charge, Charlemange Grandcourt

unbeknown to him, had subdivided title T 696 into two parcels, namely Titles T 1393 and T 1394 and registered such subdivisions at the Land Registry, thus preventing the registration of the Transfer Deed T 696.CharlemangeGrandcourt had also refused to accept the final installment of Sr 130,000 from the Notary of the sale, stating that the purchase price was inadequate. Charlemange Grandcourt and after his death in 1997, the Appellants had refused and failed to give effect to the agreements dated 4th February 1993 and to execute the transfer of Titles T 1393 and T 1394 by collecting the outstanding balance of Sr 130,000 despite the Respondent's requests. It had been the Respondent's position that the Appellants were bound in law to give effect to the agreements dated 4th February 1993 in respect ofparcel titled T 696 between him and Charlemange Grandcourt and to make good the damages incurred by the Respondent by reason of the delay in completing the transfer of the property, which damages he had estimated at Rs 100,000. The Respondent had by way of relief, prayed for an order of specific performance compelling the Appellants to discharge their obligations under the agreements and to execute the transfer of titles T 1393 and T 1394 in favour of him and for an order for damages in the sum of Rs 100,000.

4. The Appellants in their Defence dated 12th March 2008, while admitting that CharlemangeGrandcourt signed the Transfer Deed and Charge dated 4th February 1993 had stated that both these documents were not registered and therefore the Respondent never obtained any real rights to the property in law. According to the Defence, Grandcourt was not acting as executor of the estate of his wife since he did not have the consent of the living heirs to her estate, that he was at an advanced age, destitute and acted under duress when he signed the said transfer and that it is obvious that the consideration of R500,000 to be paid for the said transfer of 93 acres was totally out of proportion to the real value of the property.It had also been the Appellants' position in their defence that it was the Respondent who failed to honour the agreement by paying the balance

purchase price as per the parties original agreement despite repeated requests and thus Grandcourt subdivided the two parcels due to the failure by the Respondent to maintain his installment payments. The Appellants had also taken up the position that the Respondent is barred by prescription from recovering monies paid to the deceased. The Appellant had thus moved for a dismissal of the Amended Plaint.

5. The Appellants had thereafter by way of motion dated 26th of November 2008 sought to amend their defence; by stating that Grandcourt had acted under a mistake instead of under duress as originally pleaded and by seeking the additional relief from court, namely (b) to declare the documents signed by the parties and any purported agreements null and void, and rescind the same; (c) release all inhibitions in respect of this matter in the land Registry, (d) to declare that the Plaintiff (*Respondent*) is barred by prescription from recovering monies paid to the deceased. The learned Trial Judge by his Ruling dated 26th January 2009 had refused the motion seeking an amendment to the defence and ordered the case to continue as per the defence dated 12th March 2008. We however find that the learned trial Judge had in his judgment dated 23rd of March 2011 proceeded on the basis of the Amended Defence dated 26th November 2008.

6. The Appellants have raised the following grounds of appeal against the judgment referred to at paragraph 1 above:

    1. The learned Judge erred in law by wrongly exercising his discretion against the Appellants in refusing the requested amendment to the defence and he has also erred in considering the wrong defence.
    2. The learned Judge erred in law by relying on both deeds presented in support of the sale to the Respondent which were back letters, unregistered and void under the law.

3. The learned Judge erred in law in not listening to or appreciating the strict legal requirements and limitations of the Land Registration Act in relation to transfer and charge documents.
4. The learned judge showed extreme bias and erred considerably inmany respects in his overall consideration of the facts of the case.
5. The learned Judge erred in fact and law in failing to appreciate blatant inconsistencies and omissions in the Respondents' and his witnesses' evidence.
6. The learned Judge erred in law in failing to appreciate the age and condition of Mr. CharlemangeGrandcourt at the relevant period and the time limits set in the parties purported agreement; his real lack of proper guidance or independent advice at the time of the transaction and the complete lack of relevant dates in the Plaint.
7. The learned Judge erred in law in not paying enough or any attention to the series of transactions surrounding the signature of the purported sale document and simply skipped over the requirement for heirs consent.
8. The learned Judge erred in law when considering, or not as the case may be, what really happened when Mr. Grandcourt went into the chambers of Mr. France Bonte and what documents he actually signed.
9. The learned Judge erred in law when he wrongly quoted the Civil Code and failed to appreciate that when dealing with the new land register The Land Registration Act overrides Civil Code principles when dealing with registered land under the Land Registration Act.
10. The learned Judge erred in law and showed extreme bias to find that the Respondent had completed everything to qualify for the remedy of specific performance and in law in using an equitable relief to please one party.
11. The learned Judge showed an unfair and extreme bias in favour of the Respondent and failed to properly evaluate the strength of each parties

case and gave the benefit of the doubt completely to the Respondent without considering the complete evidence before him furthermore he paid no respect to enshrined principles of law such fairness before the law, the rule of equality before the law and properly evaluating evidence and enforcing the rule of law.

12. Overall the learned Judge expressed his general dissatisfaction about the approach of the courts and the time taken to complete this suit too blatantly and publicly to be in a position to give a balanced reasoned judgment according to law.
13. That the learned Judge wrongly failed to properly take into consideration the gross undervaluation of the property subject of the purported sale especially bearing in mind the age and condition of Mr. Grandcourt at the time and of the fact that the land also belonged to others not just him.
14. The learned Judge erred in law in refusing to consider the admitted facts in the rejected judgment and to ignore the ruling against the Respondent by the Registrar of lands on a caution application.

By way of relief the Appellants have sought an order setting aside the judgment of the Supreme Court and substituting therefore an order for the Respondent to return the property to the Appellants to distribute among the lawful heirs of Odrade and Charlemagne Grandcourtand for the Registrar to remove the inhibition from the Supreme Court against the said properties.

7. In order to understand this case, the cause of action of which arose almost 20 years ago, one has to understand the trajectory this case has taken over these years. On the 4th of February 1993 Charlemagne Grandcourt acting as Executor of the estate of the late OdradeGrandcourt, his wife, decided to sell land parcel T 696 to the Respondent as evinced by the two documents exhibits P1 and P2, the contents of which are repeated below:

P1

"THE LAND REGISTRATION ACT

TRANSFER OF LAND

I, M CharlemangeGrandcourt of BaieLazare, Mahe, Seychelles, acting as Executor of the estate of the late OdradeGrandcourt, as per appointment of the Supreme Court dated 27th November 1979, C.S. No 109 of 1979, hereinafter referred to as the "TRANSFERROR" in consideration of Rupees Five Hundred Thousand (R500,000/-)net,which sum has been paid hereby transfer to Mr Christopher Claude Gill of AnseTakamaka, Praslin, Seychelles, hereinafter referred to as the "TRANFEREE" the land comprised in the above-mentioned title, at Val D'Endor, Mahe.

The Transferee is not a non-Seychellois.

Dated this 4th day of February 1993."

- Both the Tranferor and Transferee have placed their signatures to the above document with an attestation by the Notary to the transaction at the bottom of the document to the effect "Signed by the said Charlemagne Grandcourt and Christopher Claude Gill, who are known to me, in my presence."

(The underlining of the words "which sum has been paid", by us

P2

THE LAND REGISTRATION ACT

CHARGE

Title No T. 696 (Six Nine Six)

I, Mr Christopher Claude Gill of AnseTakamaka, Praslin, hereinafter called the Chargor, hereby charge my interest in the above-mentioned title to secure the payment to MrCharlemangeGrandcourt of BaieLazare, Mahe, Seychelles, of the principal sum of Rupees Five Hundred Thousand (R500,000) payable as follows;

1. Rupees One Hundred Thousand (R100,000) to be paid by the first day of March 1993.
2. Rupees Two Hundred Thousand (R200,000) to be paid by June 1993.
3. The remaining balance of Rupees Two Hundred Thousand to be paid by December 1993.

Dated this 4th day of February 1993.

- Both the Christopher Gill and Charlemagne have placed their signatures to the above document with an attestation by the Notary to the transaction at the bottom of the document to the effect “Signed by thesaid Christopher Claude Gill and Charlemagne Grandcourt, who are known to me, in my presence.”

8. The Respondent had failed to complete the payment of the agreed sum of R500,000 by December 1993 despite repeated requests and therefore Charlemagne Grandcourt by his registered letter dated 5th May 1994 and addressed to the Respondent and produced at the hearing without objection from the Respondent as **Exhibit D7**; had given a last chance to the Respondent to complete payment by extending the payment date to May 15th 1994 and stated that if payment is not made by that date he will consider the agreement as having been broken. The contents of Exhibit D 7 is reproduced herein as it is of importance:

5th May 1994

"Payment for Title No.696 at Takamaka, Mahe.

1. I refer to our agreement for the sale of my land at Takamakaand the agreement for payments by installments by you for the land.
2. Our agreement was that you should have paid the full sum of R500,000 by December 1993. You have failed to do so despite repeated requests for you to do so.
3. I am therefore giving you a last chance by extending the payment date to May 15th 1994. If I have not received the whole sum of R500,000 from you I will have no choice but to consider our agreement as having been broken by you and I will not be obliged to sell you Title No. T696.
4. I look forward to your co-operation and look forward to receiving the final payments."

Yours faithfully
ChalemagneGrandcourt

9. On the 19th of May 1994 two divided subdivisions of land parcel T 696 the subject matter of the sale agreement between the Respondent and Grandcourt had been registered with a qualified title in the name of Grandcourt under the Land Registration Act (CAP 97) as titles T 1393 and T 1394, by the Land Registrar.

10. On the 3rd of October 1994 the Respondent applied for a Caution to be entered against Titles T 1393 and T 1394 and on the 19th of April 1995 Grandcourt applied to have the Caution removed. The Actg. Registrar General by his Ruling of 30th August 1995 removed the caution against both titles T 1393 and T 1394 since the transfer documents had not been registered as required by section 46(2) of the Land Registration Act and the Respondent had thus not been able to show an interest in land capable of creation by a registrable instrument. The Actg. Registrar General had also been of the view "It is evident that the transfer in the actual case has not been completed. It is also obvious why the registration was not sought by Mr. Gill. The reason is that consideration for the transfer has not been fully paid. In the circumstances, Mr. Gill cannot claim ownership of the land in question. Hence his claim to a right to the land as owner is not sustainable."

11. The Respondent then filed plaint, dated 3rd April 1995, against Charlemange Grandcourt in the Supreme Court, case numbered CS 174/95. It had been the Respondent's position that he had paid Grandcourt R 370,000 with a balance of R 130,000 due to him and that Grandcourt had refused to accept the final balance when the sum was paid to him. The Respondent had complained that as a result of the registration unknown to him of the subdivided parcels T 1393 and T 1394, it had become impossible for him to register land parcel T 696, the subject matter of the sale agreement. He had therefore averred that it is imperative for Grandcourt to sign a new transfer of the two parcels to him to give effect to the sale of parcel T 696.

12. Grandcourt in his Defence dated 3rd October 1995hadtaken up the position that he had received only R300,000 by the 2nd of December 1993 and the "balance of R200,000 was never offered or paid to him within the time limit agreed by the parties or during an extension of such time limit by him" and that the subdivision took place on 19th May 1994 long after the time limit of the parties agreement had expired and following an extension of time allowed by him. It had been Grandcourt' position that the Respondent's failure to complete the sale entitled him to rescind the contract and that the sale agreement had lapsed.

13. On the 23rd of January 1997 according to Exhibit P8 a Consent Judgment had been filed by the parties to case No. 174 of 1995. Grandcourt had not been present in Court on this date due to illhealth but had been represented by his lawyer, the Counsel for the Appellant's in this case. As per this Judgment by consent both parties had agreed that the Respondent shall pay Grandcourt the sum of Rs 375,000/- without interest and that the said sum shall be payable within 2 years. It was also agreed that the Registrar be ordered to transfer Parcels T 1393 and T 1394 immediately, in the name of the Respondent.

14. Charlemange Grandcourtdied on the 8th of March 1997.Grandcourt had by his Will dated 28th December 1996 bequeathed all his property to Marie Claire Legaie, the mother of Edwina Freminotand appointed Edwina as the Executrix of his will.EdwinaFreminot (one of the Appellants) was appointed as the Executrix of the estate of the late CharlemangeGrandcourt on the 26th of June 1997. In the Amended Petition for confirmation of Executrix dated 24th June 1997 Counsel for the Petitioner in describing the property of Charlemagne Grandcourt had said: "At the time of his death the said Charlemagne Grandcourt left behind several substantial interests in moveable properties namely the benefit of a settlement amount in the case Christopher Gill V ChalemagneGrandcourt in Supreme Court case 174/95 namely R375,000 in his favour and the benefit of a compensation

claim presently with the Government of Seychelles for the acquisition of his land Title T708 at BaieLazare, Mahe. It is the counsel for the Appellants' in this case who filed the Amended Petition.

15. By a Court Order dated 1st June 2000, Wilfred Freminot and Edwina Freminot, the Appellants in this case, were appointed as "Joint Executors to the estate of the late Mrs. and Mr. CharlemangeGrandcourt, which estate includes two portions of land namely titles T 1393 T 1394", on application made by the only heirs of Mrs. OdradeGrandcourt and Mr. CharlemangeGrandcourt.

16. The Appellants after having sought the permission of the Supreme Court to intervene in the case, thereafter challenged the consent judgment and sought a new trial which was declined by Karunakaran J. The Appellants then made application to the Supreme Court and the Chief Justice decided "in the best interest of justice that the matter be fully exhausted before the Supreme Court." He accordingly, ordered a new trial and also ordered a stay of the consent-judgment." The Respondent then appealed against the judgment of the Chief Justice to this Court. This Court by its Judgment dated 29th November 2006 dismissed the appeal and upheld the judgment of the Chief Justice who had ordered a new trial "with a direction that the parties to the case where the purported "consent judgment" was given are put back to the position of status quo ante to the purported decision. In other words, the case should proceed as though there has been no consent-judgment as yet given." The Court came to this conclusion because Charlemagne Grandcourt one of the parties (Defendant), to case No: CS 174 of 95 in which the Consent-Judgment was given was not present in court when the agreement was filed; and because neither party to the case had moved that the judgment be entered as per the agreement reached between the parties nor was any formal judgment entered by court as required by section 131 of the Seychelles Code of Civil Procedure.

17. In this case there are two judgments being delivered by this Court the majority judgment that of Justices Twomey and Msoffe and the minority judgment that of mine. I am in agreement with the findings of Justices Twomey and Msoffe in respect of ground 2 which has dealt with the issue of back letters and ground 7 which has dealt with the issue of heirs consent to the sale. I am of the view that grounds 3, 4, 5, 10 11 and 14 do not by themselves suffice to allow the appeal and that there is no merit in grounds 8, 9, 12 and 13 in view of the facts and circumstances of this case.

18. It is set out in ground 6 of the appeal thatthe learned Judge had erred in law in failing to appreciate the time limits set in the parties' purported agreement. It is clear that the agreement between the Respondent is necessarily in two parts, namely **P1,**the document pertaining to the 'Transfer of Land' referred to at page 7 of this judgment and **P2**, the 'Charge', referred to at page 8 of this judgment. Also it is clear that the parties had agreed that the transfer of land shall not take place until the payment of R500,000 was made in full and as per the agreed dates. This was a necessary condition for the transfer of sale to be effective and complete, and is evidenced by the behavior of the Respondent in not seeking to have the transfer registered until the time set out in the Charge for the payment of the last installment. It is also clear from**D7** referred to at paragraph 8 above that there was a sum overdue even as late as 5th May 1994 despite earlier requests for completion of payment of the agreed sum of R500.000; and that the Respondent had been given a last chance to effect payment before the 15th of May 1994, failing which, Grandcourt, had clearly stated he would consider the agreement as having been broken by the Respondent and his obligation to sell Title 696 as extinguished. **Article 1175 of the Civil Code** of Seychelles Act states: "A condition shall be fulfilled in the manner in which the partners appear to have wanted and agreed that it should.",and **article 1176** states: "When the

obligation is agreed upon subject to the condition that an event will occur within a fixed period, that condition shall be deemed to have failed if the time has expired without the event having occurred." The Respondent has admitted how the installment payments had been made andnot denied that he received D7. His evidence on these matters under cross-examination is of importance:

"Q: I put it to you that even despite the schedule which were put into the charge you still did not pay the money when you should have, I will say how you paid. You paid in March 1993 Rs.50,000/- but you were supposed to pay a Rs 100,000 not RsRs 50,000/-. You paid in July 1993 Rs 200,000/- still Rs 50,000 in arrears, and in February 1994 you paid Rs 50,000/- and you were supposed to pay a balance of Rs 200,000 by December 1993.

A: Yes.

Q. There is a registered letter here saying you….and finish with this deal.

(*The registered letter referred to is, D7*)

A. Can I read the letter?

Q. You can.

A. Frankly I do not recall this letter.

Q. It is a registered letter.

A. But I do not recall.

Q. It is asking you pay in May 1994 well pass the agreed dates.

A. I do not recall the letter. I am not saying that I did not receive it but I do not recall.

Q. Can we have the receipts of those payments?

A. Yes. Mr. Bonte can hand in that to you.

In answer to the question "you paid in accordance with the installments schedule?" by Court; the Respondent had said: "Yes, except for the last payment" Again in answer to the question by his Counsel: "When were they sent for registration?" the Respondent had said: "I think about a year later after I had

made complete payment to Mr. Bonte". This shows that complete payment had been made if at all, and that, to Mr. Bonte only after 19th May 1994. Even if payment had been made to Mr. Bonte on time, this is no excuse for the Respondent to breach the payment conditions specified in the Charge, for **section 14(2) of the Notaries Act** (Cap 149) specifically provides that: "A notary shall not, except with the written permission of the client, keep in his possession for more than 30 days any sum of money entrusted to him by a client." The Respondent could not have got away from his contractual obligations by claiming that he had paid Mr. Bonte.Further the Respondent should have checked with Mr. Bonte, when he received P7 and ensured that payment of the last installment was effected before 19th May 1994.

19. There is no proof before Court of the amount due under the final installment, for there is disagreement between the Respondent and the Appellants; R 130.000 according to the Respondent and R 200,000 (although the Respondent had also admitted at one stage under cross-examination that the last installment outstanding as at December 1993 was R 200,000 as referred to at paragraph 17 above) according to the Appellants. In regard to the final installment, the person who was acting then as Counsel for Grandcourt had said that he took the cheque for Rs 130,000 to Grandcourt but "they did not want to take it" and when asked "Where is the cheque?" had said "I must have returned it to the payer", meaning the Respondent. Counsel for the Respondent, who according to the Respondent's own testimony to whom he paid the money for disbursement to Grandcourt, was unable to produce any documents to show proof of payment to Grandcourt. His excuse being "its been over ten years". The evidence of DW1 Mr. W. Freminot and DW 2 Mr. W. Leon show that there was an outstanding balance of Rs 200,000. The burden of payment and proof of which in this case fell on the Respondent and on his failure to do so the Appellants version is accepted.

Counsel for the Respondent did not contest before us that the sum due was Rs 200,000.

20. It must be noted that the words in P1 to the effect: "in consideration of Rupees Five Hundred Thousand (R500,000) net, which sum has been paid hereby transfer to Mr Christopher Claude Gill of AnseTakamaka, Praslin, Seychelles", is both false and incorrect, for on the 4th of February 1993 no payment whatsoever had been made. It is clear from the conduct and intention of the parties that the transfer of land parcel titled T 696 would have taken place only after full and complete payment of the agreed purchase price, in accordance with the agreement set out in the Charge that was prepared namely, P2 and after registration of title at the Land Registry. **Article 1589of the Civil Code**, states: "….However, the acceptance of a promise to sell or the exercise of an option to purchase property subject to registration shall only have effect as between the parties or in respect of third parties as from the date of registration." Instruments of disposition according to**section 58(3) of the Land Registration Act**(Cap 107): "…shall contain a true statement of the amount or value of the purchase price……and, when received, an acknowledgment of the receipt of the consideration or of any part thereof"(underlining by us). It is only when the purchase price is received that there can be an acknowledgement of it. The transfer document, namely P1 has also been prepared in violation of the **Notaries Act** (Cap 149) which requires a deed of transfer to contain a clause to the effect "that the parties declare to the best of their knowledge and belief that the purchase price or consideration represents the actual price and real value of the property …..transferred" and "a clause stating that the notary has warned the parties to the deed of the consequences to which they expose themselves if the full purchase price, consideration or conditions giving rise to stamp duty under the Stamp Duty Act, is not truly expressed."

21. We are of the view that Notaries should in the future refrain from stating in notarial documents executed before them incorrect and false statements such as the one found in P 1 namely, that moneys have been paid when it is not so. The risks involved in making such a statement is shown in the following dialogue between the Respondent and Counsel for the Appellants:

"Q. Did you Mr. Gill and a 80 year old man sign a transfer charge and you did not pay him a cent on that day? Is that the way you do business?

A. Yes

Q. He could have walked out of that door and within half an hour he could have dropped dead at that age.

A. That is very sad, it could have been unfortunate if it happened."

We do not agree with the argument of Counsel for the Respondent that the Notary had prepared the transfer document according to the **Form LR 1 as set out in the Land Registration Act**. An examination of Form LR 1 set out in the Land Registration Act shows that provision has been made to make the necessary amendments to it, namely "I/We…….. In consideration of Rupees……(which sum [or of which sum Rupees……] has been paid) hereby transfer to……". **Rule 3 of The Land Registration Rules** states: "Subject to section 58 of the Act, every instrument shall with such variations as may be necessary to meet the circumstances of any particular case, be in one of the forms in the Second Schedule to these rules, whichever is appropriate."

22. The breach of these statutory provisions in the preparation of the transfer documents does not in our view necessarily vitiate the agreement between Grandcourt and the Respondent. We have highlighted these deficiencies so that there will be no repetition of it by notaries in the future. The Bar Association is requested to bring this judgment to the notice of all of its members especially those who practice as notaries.

23. **Article 1589** states: "A promise to sell is equivalent to a sale if the two parties have mutually agreed upon the thing and the price. However, the acceptance of a promise to sell or the exercise of an option to purchase property subject to registration shall only have effect as between the parties or in respect of third parties as from the date of registration." In the case of **Hoareau V Gilleaux SCAR 1978-1982 158** the Court of Appeal held that the trial Judge had rightly interpreted article 1589 of the Civil Code of Seychelles namely that when parties have agreed on the thing and the price, a promise to sell, property subject to registration is complete and effective as between the parties. The words "as from the date of registration" in article 1589 only govern the expression "as between third parties".

24. **Article 1156** of the Civil Code of Seychelles stipulates that in the interpretation of contracts the common intention of the contracting parties shall be sought. It is clear both from the written documents and the evidence of both parties that there was an agreement for the transfer of Parcel T696 between Mr. Charlemagne Grandcourt (the deceased) and the Respondent for the sum of R500, 000. It is also clear that the final installment of Rs 200,000 which was due since the extended date for its payment, namely the 15th of May 1994 was never paid by the Respondent. Although the Consent Judgment cannot be enforced or has no legal validity the fact that the Respondent's Counsel had agreed with the Counsel for the Appellants' to settle the case on the payment of Rs 375,000 on the 23rd of January 1997, cannot be ignored. Also the statement made by the Appellants' Counsel in the Amended Petition for Confirmation of the Executrix dated 24th June 1997 that "At the time of his death the said Charlemagne Grandcourt left behind several substantial interests in moveable properties namely the benefit of a settlement amount in the case Christopher Gill V ChalemagneGrandcourt in Supreme Court case 174/95 namely R375,000 in his

favour is of significance. It is therefore clear that the only outstanding issue until the filing of the Amended Defence in November 2008 had been the non-payment of the final installment.

25. The failure of the Respondent to pay the last installment of Rs 200,000 as per his agreement with Grandcourt was sufficient ground for Grandcourt to have sought termination of the agreement. The full and complete payment of the agreed price of R500,000 as agreed between the Respondent and Grandcourt in the charge that was prepared, P2, was a necessary condition to the agreement; and the sale would have been effective only upon such payment. **Article 1175 of the Civil Code** states: "A condition shall be fulfilled in the manner in which the partners appear to have wanted it should." We are of the view that this alone would suffice for Grandcourt to seek rescission of the contract, under article 1184 (1) of the Civil Code.

26. **Article 1184(1)** states: "A condition subsequent shall always be implied in bilateral contracts in case either of the parties does not perform his undertaking…

…In that case, the contract shall not be rescinded by operation of law. **The party towards whom the undertaking is not fulfilled may** electeither to demand execution of the contract, if that is possible, or to **apply for rescission and damages.** If a contract is only partially performed, the Court may decide whether the contract shall be rescinded or whether it may be confirmed, subject to the payment of damages to the extent of the partial failure of performance. The Court shall be entitled to take into account any fraud or negligence of a contracting party.

Rescission must be obtained through proceedings but the defendant may be granted time according to the circumstances.

Rescission shall only be effected by operation of law if the parties have inserted a term in the contract providing for rescission. It shall operate only in favour of the party willing to perform"

1184(2) states: "The Court may, in relation to an action for rescission, make such order as it thinks fit, both in relation to the rights and duties of the contracting parties and in relation to the rights of their heirs"(emphasis by me)

27. The right to seek rescission of a contract under article 1184 is only available to the "party towards whom the undertaking is not fulfilled", namely Grandcourt and on his death the Appellants but not the party who failed to perform his undertaking under the contract, namely the Respondent in this case. If we are to apply these principles to the present case it is clear that the Respondent breached the contract by not paying the last installment on time. P7 indicates that he was given time to meet his obligation. Grandcourt and on his death his executors therefore became entitled to bring an action under article 1184 of the Civil Code for rescission and damages.

28. In the Amended Defence dated 26th November 2008, which was considered by the Trial Judge, at paragraph 8 had stated: "The Defendants further aver that there was never any attempt by the Plaintiff to pay the balance of the purchase price and the Plaintiff is put to strict proof of this fact. The Defendants aver that in fact it was the contrary it was the Plaintiff who failed to honour the agreement by not making payments as per the parties original agreement despite repeated requests for him to do so." This averment was in addition to the other averments whereby the Appellants (then Defendants) dealt with separately the several averments of the Amended Plaint. In the prayer seeking relief the Defendants had sought for a declaration that "the documents signed by the parties and any

purported agreements null and void; rescinding the same" and "for any order this Court may deem reasonable in the circumstances."

29. Section 75 of the Seychelles Code of Civil Procedure states: "The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere general denial of the plaintiff's claim is not sufficient. Material facts alleged in the plaint must be distinctly denied or they will be taken to be admitted." Section 80(1) of the said Code states how a Counter–claim may be made namely "where a defendant in any action wishes to make any claim or seek any remedy or relief against a plaintiff in respect of anything arising out of the subject matter of the action, he may, instead of raising a separate action make the claim or seek the remedy or relief by way of a counter claim in the action; and where he does so the counterclaim shall be added to his defence to the action."(underlining by me) The Code has not set out a particular format in which a Counter-claim may be made. In the White Book (2009) it is stated: "A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim (r 20.4). Practice directions state that "the defence and counterclaim should normally form one document with the counterclaim following on from the defence". The counterclaim has been defined in the Glossary of the White Book as "A claim brought by a defendant in response to the claimant's claim, which is included in the same proceedings as the claimants claim." The White Book too does not contain a format of a counterclaim. The Learned Trial Judge in entering judgment for the plaintiff (Respondent) appears to have accepted that the Amended Defence of 26th November 2008 contained a Counter-claim when he said "I dismiss the Defendants' (Appellants') entire claim raised in defence including the one made in the nature of a counterclaim, in the statement of defence dated 26th November 2008 in this matter". (underlining by me) I am in agreement with the Trial Judge that the Appellants' (then Defendants') had made application for

rescission in their Amended Defence dated 26th November 2008. In my view it is sufficient for the pleader to state the material facts upon which he makes the Counterclaim. Each pleader may adopt his own style in the absence of a format and provided the other party is put to sufficient notice of a Counterclaim. In view of what was averred in the Amended Defence of 26th November 2008 as referred to at paragraph 28 above and the proceedings in this case, it is difficult to conclude that the Respondent, Plaintiff then, was unaware that the Appellants, Defendants then, were seeking a rescission of the contract by way of a counterclaim and therefore in any way prejudiced.

30. We take the view that there was an agreement between Grandcourt and the Respondent to transfer land parcel T 696 and that there was partial performance of the contract by the Respondent by the payment of more than half of the contract price. This is in view of D7, and as stated at paragraph 24 above the Consent Judgment and the statement made by the Appellants' Counsel in the Amended Petition for Confirmation of the Executrix dated 24th June 1997. We have decided therefore to confirm the contract. However the Respondent's failure to pay the balance Rs 200,000 since 15th May 1994 amounts in my view to negligence on his part calling for an award of damages against him to the extent of the partial failure of performance. I estimate the damages at Rs 500,000, bearing in mind that a sum of Rs 200,000 has remained unpaid as agreed upon by the Respondent under P2 for over 18 years.

31. It is clear that the learned Trial Judge had proceeded and based his judgment on the Amended Defence of 26th November 2008, which he had earlier by his Ruling of 26th January 2009 refused to accept. Thus there is no merit in ground 1 of appeal.

32. The averments in the Will/Testament of Charlemange Grandcourt dated 28th of December 1996 (P6) and prepared after 3 years and 10 months after the signing

of the agreement, by the very Counsel who appeared before us for the Appellants, goes to show that there is no substance in the allegations in grounds 6 and 13; namely, that the learned judge failed to appreciate the age and condition of Mr. Charlemagne Grandcourt at the relevant period and his lack of proper guidance or independent advice at the time of the transaction. In the said Will, Counsel for the Appellants had stated: "Charlemagne Grandcourt of Baie Lazare, Mahe Seychelles, who being of sound mind and desirous of settling the succession of his means after his death dictated the following Will and Testament which has been typewritten on this page:…."; and Charlemagne Grandcourt had stated: "I Charlemagne Grandcourt of Baie Lazare, Mahe Seychelles, being of sound mind and in full control of my faculties, hereby bequeath…." (underlining by me).

33. The trial judge did order specific performance of the contract but he failed to take into account the fact that R200,000 due since May 1994 remains unpaid. I find that in the circumstances of this case that sum is due together with compound interest. The Interest Act (cap 100) states: "Whenever the rate of interest shall not be fixed by contract, the legal rate of interest shall be four per centum per annum in civil or commercial matters."In cases where interest has to be calculated over a period of time more than one year, there is a certain ambiguity as to whether the 4% is to be computed as compound interest, by adding the 4% interest to the Rs 2000,000 at the end of each year to form a new principal for the next year or the interest computed for the entire period at 4%, as simple interest. The use of the words "per annum" is suggestive that it is compound interest. I have arrived at the computation of compound interest at Rs 214,302.11.

34. I therefore set aside the order of the Supreme Court and make the following orders:

1. The Respondent, Christopher Gill is ordered to pay the sum of R200, 000, the unpaid amount under the contract, with interest amounting to SR 214,302.11 to the Appellants on or before 7th of June 2013. This sum is to be deposited in the Court Registry.
2. The Respondent is ordered to pay a sum of Rs 500,000 by way of damages to the Appellants for the partial failure of performance of the contract , on or before the 7th of June 2013. This sum is to be deposited in the Court Registry.
3. The Land Registrar is hereby authorized under section 75 of the Land Registration Act on the application of the Respondent and the filing of this judgment and production of receipt of payment of the judgment award referred to in paragraphs 1 and 2 above, to register Christopher Claude Gill as the proprietor of Parcels T.1393 and T.1394.
4. In the event of the failure of the Respondent to deposit the sums set out in paragraphs 1 and 2 above on their due date, namely the 7th of June 2013, there will be no change to the ownership of titles T 1393 and T1394.
5. As this appeal is partly successful no award is made as to costs.

Anthony Fernando
Justice of Appeal

Delivered at Victoria, Mahé, Seychelles, this 7th day of December 2012