CONSTANTIN R. v DE ROSNAY M.P. & ORS
[The Supreme Court of Mauritius]
2018 SCJ 33
SUMMARY

Facts: The plaintiff, a notary public, is praying for a judgment homologating the final deed drawn up by him, in relation to the liquidation of the succession of late Dr. Darné. The defendants, his legatees, are resisting the application. Dr. Darné had made a *testament olographe* which consists of 2 parts, namely a main part and a post scriptum. The validity of the post scriptum is being challenged by the defendants on the grounds that it was undated and was not written in the same ink.

1st Issue: Is the post scriptum valid and does it form part of the will?

2nd Issue: If the answer is in the affirmative, what is the meaning to be ascribed to the word "héritiers" used twice in the post scriptum, or more precisely, whether the word "héritiers" means all the legatees named in the will or only the heirs born Darné.

Held:

With respect to the first issue, the Court referred to **Article 970 of the Code Civil Mauricien** and held that a *testament olographe* must be written, dated and signed by the testator himself in order to be valid. However, as can be gleaned from **Note 67 Repertoire de Droit Civil, Dalloz, janvier 2016, Tome XI, Testament**; an undated or imperfectly dated testament olographe will not necessarily be declared null and void and may be regularised in certain circumstances. As regards the principles applicable to the validity of an addendum to a holographic will which is not in compliance with Article 970, the Court referred to French doctrine and also to the case of **Corgat v Lemarchand (1961 MR 210)**. After having perused the post scriptum, the Court came to the conclusion that there is "*un lien materiel et intellectuel"* between the main part of the will and the post scriptum *"qui n'en fait qu'un seul et meme acte"* and that they form "un tout indivisible*"* for the following reasons:

1. The post scriptum was accordingly a completion of Dr. Darné's instructions as to how any remaining surplus should be distributed.
2. Since the post scriptum "*fait corps avec le testament olographe*", there was no need for the post scriptum also to be dated.
3. There was nothing sinister in the use of a different ink, the more so that the testator himself wrote and signed the post scriptum.

As regards the second issue, the Court referred to the case of **Brochon v Lebrun (1908 MR 21)** as regards the fact that a testator's intention was to be gathered from the words of the will. In the main part of the will, the testator made a list of legatees to whom the sum of money from the sale of his shares and deposits were to be distributed. In the post scriptum, he indicates how any surplus remaining after the distribution "to his heirs" should be distributed. Hence, the Court held that he could only have been referring to those legatees to whom he had bequeathed various amounts of money in the main part of the will. Moreover the testator ended by saying that any surplus remaining after the distribution mentioned in the post scriptum, should be distributed proportionally between all heirs. Hence, the Court held that the testator meant that the surplus was to be distributed among all legatees in the proportions already stipulated in the main part of the will and that the word "héritiers", therefore, did not only mean the heirs born Darné.

This summary is provided for information purposes only and to assist in understanding the Court's decision. It does not constitute legal advice. The full judgment of the Court is the only authoritative document.

Short Summary

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In the present matter, the Court held that the post scriptum was valid and formed part of the will. As regards the second issue, the Court found that the word "héritiers" meant all the legatees named in the will and not only the heirs born Darné. The Court therefore homologated the final deed of partition drawn up by the plaintiff to effect the partition and liquidation of the succession of late Dr. Darné.