IN THE SEYCHELLES COURT OF APPEAL

Jean Victor Morin — Appellant

v/s

Mary Cecile Morin — Respondent

Civil Appeal No. 2 of 1985

Mr. J. Esparon for the appellant

Mr. B. Georges for the respondent

JUDGMENT

The parties to this appeal were married on the 23rd June 1948. They had 10 children all of whom are now adults. The appellant, the husband, is aged 71 and the respondent, the wife, 66 years. In August 1984 the wife filed a petition for divorce in the Supreme Court on grounds of desertion and adultery of the husband. Apart from asking that her marriage be dissolved, the wife asked the Supreme Court that she be granted the sole occupation of the matrimonial home situated at Baie Ste Anne, Praslin. The husband resisted the wife's petition.

After hearing the case, the learned trial Judge delivered judgment on January 29, 1985. He accepted the evidence of the wife and her witnesses and rejected that of the husband and his witnesses. He found there was not sufficient evidence on the issue of adultery but granted a decree nisi of divorce on the grounds of the husband's desertion. In that respect the learned trial Judge's judgment runs as follows:-

> "Nonetheless the desertion without just cause has been amply proved and I am satisfied beyond reasonable doubt that the respondent (now appellant) deserted his wife for 10 years and that they have never cohabited since then."

The learned Judge considered the plea that a decree should not be granted because of unreasonable delay in bringing the petition to court. In that respect the learned Judge said he was not prepared to use his powers to dismiss the petition under the proviso to section 10 of the Matrimonial Causes Act (Cap. 72).

The learned Judge then turned to the issue of sole occupation of the matrimonial home by the wife. After considering the law and the facts the learned Judge made an order granting to the wife the sole right of occupation of the matrimonial home at Baie Ste. Anne Praslin.

The husband now appeals to this Court on several grounds which may be summarized as follows:-

1. The learned Judge was wrong to find desertion proved and that the parties have never cohabited since.

2. Desertion was put an end to -

   (a) By resumption of cohabitation from August to December 1982; or

   (b) by the parties returning to the matrimonial home coupled with a bona fide approach to the deserted spouse with a view to resumption of life together.

3. The finding that it would be impossible and intolerable for the parties to live in the same house is unsupported by the evidence.

4. The learned Judge was wrong to grant the respondent sole right to occupation of the matrimonial home in the circumstances of this case.

The ground of appeal based on unreasonable delay was specifically withdrawn by counsel for the appellant at the hearing of the appeal.

Grounds 1 & 2

I have considered the evidence of the wife and of her witnesses which the learned Judge accepted. I find that on such evidence he could properly and reasonably find that the husband had deserted his wife without cause for a period of at least two years immediately preceding the presentation of the petition as alleged in paragraph 7 thereof.

The husband returned to the house, referred to as "the matrimonial home", in 1982 only to look after it while the wife was away in England. When she came back from England there may have been a period during which the parties lived under the same roof. However there was no evidence whatsoever that there was a reconciliation between

them. On the contrary the parties were actively at odds, splitting the family into two camps, for or against either of them.

The principle stated in the case of Bartram v. Bartram 1949 2 All E.R. 270 applies here, namely, that desertion once established continues until it is proved to have been brought to an end by a true reconciliation.

These two grounds of appeal must therefore fail.

Grounds 3 & 4

As I pointed out in my judgment in the Didon case (Civil Appeal No. 3 of 1983) the Supreme Court has power to exclude a former spouse from the matrimonial home after the marriage has been dissolved or annulled by making a property adjustment order under section 24(1)(b) of the United Kingdom Matrimonial Causes Act 1973 as illustrated in that case and in the English case of Allen v. Allen 1974 3 All E.R. 385.

Before such an order is made it would be right for the Supreme Court to have regard to the principles laid down in the Figaro case (Civil Side No. 132 of 1981, judgment dated 9th March 1982) although in that case the jurisdiction to be exercised fell under section 21(1) of the Status of Married Women Act (Cap. 95).

It is immaterial that the learned Judge purported to act under powers which did not apply in this case (section 21(1) of Cap. 95, s. 24 of Cap. 72 and inherent jurisdiction under the common law). He in fact had the necessary powers under section 24(1)(b) of the U.K. Act of 1973 as explained in the Didon case.

The learned Judge did consider the principles laid down in the Figaro case. He dealt with the evidence with care and then made the following finding and order:-

"From the evidence before me concerning the marriage and the violence exhibited by the respondent (now appellant) I find that it would be impossible and intolerable for the parties to live together in the same house. I accordingly grant to the petitioner the sole right to the occupation of the matrimonial home at Baie Ste. Anne Praslin."

I see no reason why such finding and order should be disturbed.

The effect of the order is that the husband is deprived of his right of usufruct in the house during the wife's lifetime. As this order affects a right in rem it should be transcribed or registered in the Land Register, as the case may be. As against the husband, the order will remain effective until his death or until the death of his wife, if this happens sooner.

I would therefore dismiss the appeal. I would order the appellant to pay the respondent's costs of this appeal.

A. Sauzier

A. Sauzier

Justice of Appeal

Cor. Laws JA
Gobardhan JA
Sauzier JA

In The Seychelles Court of Appeal

Jean Victor Morin ... ... Appellant
Mary Cecile Morin ... ... Respondent
(~~Criminal~~ Civil Appeal No 2 of 1985)

Judgment of Law J.A.

The respondent in this appeal ("Mrs. Morin") sued her husband the appellant ("Mr. Morin") for divorce, on the grounds of desertion and adultery, in the Supreme Court. She also prayed to be granted the right of sole occupation of the matrimonial home, stating that she has nowhere else to live and that she finds it intolerable to live in the same house as Mr. Morin.

The learned trial judge (Wood J.) found that the allegation of adultery had not been proved with sufficient particularity, but that the desertion without just cause had been amply proved. He held that Mr. Morin had deserted his wife for 10 years and that they had never cohabited since then. He pronounced a decree nisi of divorce in her favour, and also granted her the sole right to the occupation of the matrimonial home.

Mr. Morin has appealed to this Court. His advocate Mr. Esparon has not pursued his ground of appeal against the finding of desertion, nor his ground complaining that the marriage ought not to have been dissolved because of the unreasonable delay in filing her petition on the part of Mrs. Morin. Mr. Esparon concedes the original desertion by Mr. Morin in 1972 but contends that the parties resumed cohabitation in 1982 thus putting an end to the desertion. As to this, the facts accepted by the judge were that in August 1982 Mrs. Morin had to go to England for medical treatment. While she was away, Mr. Morin moved back into the matrimonial home, at the request of one of his sons, so that the home should not be left unoccupied during his wife's absence. When Mrs. Morin returned, she found Mr. Morin living in the house. After violent quarrels, and some abortive litigation, Mr. Morin was persuaded to leave the house. The learned judge found that in these circumstances there had been no resumption of cohabitation. In Bartram - v - Bartram (1949) 2 AER 270 it was held that there was no interruption in the desertion by a husband whose wife was forced by economical

circumstances, against her will, to return to the family home. She refused to have anything to do with her husband, never went into his room nor paid any attention to him. In the same way, in the present case, Mr. Morin returned to the matrimonial home, in his wife's absence, without her knowledge. She strongly disapproved of his presence when she returned from abroad and did all she could to turn him out of the house. Clearly in these circumstances there was no intention on the part of Mrs. Morin to resume cohabitation with Mr. Morin and no interruption of Mr. Morin's desertion of his wife. I agree with the learned judge's finding on this point.

The main ground of appeal is that the learned judge was wrong to grant Mrs. Morin the sole right of occupation of the matrimonial home in the circumstances of this case.

Mr. Esparon does not dispute that the learned judge had jurisdiction to make the order excluding one spouse from the matrimonial home, but he submits that in purporting to exclude Mr. Morin from the matrimonial home permanently, the judge went beyond the powers conferred upon him by sections 24 and 25 of the English Matrimonial Causes Act of 1973. In the case of Didon - v - Didon (Civil Appeal No. 3 of 1983) this Court dismissed an appeal by the husband against an order giving the wife full and exclusive use of the matrimonial home until the youngest child of the marriage attained the age of 18 years. The present case is very different. The parties are now 65 and 72 years of age respectively. The many children of the marriage, 10 in all, are aged from 43 years to 25 years and do not live in the matrimonial home but in their own homes. Mr. Morin deserted his wife more than 10 years ago and since then has lived elsewhere. When he did live with his wife, there were constant quarrels and fights. On one occasion, Mr. Morin broke both his wife's arms, an incident which he deposed he could not now remember, but which was proved beyond doubt by the evidence. His daughter Mrs. Geffra deposed that both her father and mother had violent tempers, and that her father had told her

> ".....that he could not live with mother and that if he stayed with mother he would kill her."

Mrs. Geffra also said that if her father and mother were to live together, there would be murder, although she could not say who would murder whom.

The evidence of Mr. Morin was described by the learned judge as being so contrary to the obvious truth as to be ridiculous. Notwithstanding his age, he is obviously of a violent and uncontrollable disposition. He has apparently no difficulty in finding other places in which to live, as he has done for the past ten years and more.

In making the order excluding Mr. Morin from the matrimonial home, the learned judge, in addition to relying on his power to order a settlement of the property, also invoked the court's inherent jurisdiction under the common law.

In all the circumstances of this case, I do not feel justified in interfering with the order giving the wife the sole right to occupy the matrimonial home, and I would dismiss this appeal, with costs.

Delivered at Victoria this 13th day of September, 1985.

Fullerton

(Sir Eric Law.)

per E.D. Fraser (C.J.)

IN THE SEYCHELLES COURT OF APPEAL

Jean Victor Morin — Appellant

v/s

Mary Cecile Morin — Respondent

Civil Appeal No. 2 of 1985

JUDGMENT

The respondent sued the appellant for divorce on the grounds of desertion and adultery. She also prayed the Court that she be granted the right of occupation of the matrimonial home.

The appellant resisted the petition.

After hearing evidence the learned trial Judge found the allegation of adultery not proved but he was satisfied that the husband had deserted his wife for 10 years and they have never cohabited since then. He accordingly pronounced a decree nisi of divorce and also granted the wife the sole right to the occupation of the matrimonial home.

The judgment of the learned trial Judge is being challenged on the following grounds:

1. The learned trial Judge was wrong to find desertion and that the parties have never cohabited.

2. Desertion was put to an end by
   (a) resumption of cohabitation from August to December 1982 or
   (b) by the parties returning to the matrimonial home.

3. The finding that it would be impossible and intolerable for the parties to live in the same house is unsupported by evidence.

4. The learned trial Judge was wrong to grant the respondent sole right to occupation of the matrimonial home in the circumstances of the case.

The appellant is challenging the findings of fact by the learned trial Judge. I have closely scrutinized the record of this case and I find no reason to disturb the findings of the learned trial Judge. All the points made before us were also put to the Judge and the learned trial Judge in his considered judgment carefully weighed all the facts from both sides and came to the right conclusions. Grounds 1 to 3 fail.

Ground 4. The learned trial Judge cited the following extract from the Figaro case:

> "It follows from what has been said above that in Seychelles the Supreme Court has power under section 21(1) of the Status of Married Women Act (Cap. 95) to exclude either spouse from the matrimonial home. The judge has power to make such order as he shall think fit. Such wide discretion must be exercised judicially after all the circumstances of the case have been taken into account --------
>
> Before an order is made excluding a spouse from the matrimonial home it must be shown that it would be impossible or intolerable for both spouses to live in the same house. It is not enough to show that it would merely be unpleasant or inconvenient for them to live under the same roof."

and said the following in his judgment:

> "The facts of this case are that until a few months ago the petitioner lived all her married life in the matrimonial home whereas her husband left it and deserted her 10 years ago. As the house was empty it appears that the husband moved into the house. He has not used the house himself for 10 years and it is surely obvious that the petitioner's need is far greater than the respondent's. From the evidence before

me concerning the marriage and the violence exhibited by the respondent I find that it would be impossible and intolerable for the parties to live together in the same house. I accordingly grant to the petitioner the sole right to the occupation of the Matrimonial Home at Baie St Anne, Praslin."

In the context of the case and on the facts as found by the learned Judge I do not consider that he could have come to any other conclusion than the one he did. Ground 4 fails.

The appeal is accordingly dismissed with costs.

Delivered at Victoria this _____ day of _____ 1985.

H Goburdhun
Justice of Appeal