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In the Court of Appeal of Seychelles

Civil Appeal No. 4 of 1990

Paul Florentine

APPELLANT

versus

Laurence Florentine

RESPONDENT

B. Renaud for appellant

A. Juliette for respondent



Judgment of Mustafa P

The respondent was the wife of the appellant. She filed a petition for divorce against the appellant and the marriage was finally dissolved on 30th November, 1989. In the divorce petition was a prayer for the division of matrimonial property. That application was heard after the dissolution of the marriage. The trial judge (Georges J) made an order to the effect that the parties were equal owners of the matrimonial home, and on basis that the house was worth Rs.105,000, ordered that if the wife paid to the husband Rs.52,500 by 30th September, 1990 the husband was to transfer the full legal ownership of the house to the wife, failing which the husband was to pay the wife Rs.52,500 in full settlement of her share whereupon the wife was to vacate the matrimonial home and if neither party made payment as above stated the matrimonial home was to be sold and ^{the} proceeds divided equally between them.

From that judgment and order the husband has appealed.

The following facts are not in dispute. The parties were married on 1st October, 1963. The wife was then 21 years and the husband 23 years old. There are two children of the marriage, both adult. The marriage lasted 25 years. The husband is/^aSelf employed skilled equipment technician. He exclusively acquired the land and constructed the matrimonial home from his own resources during the pendency of the marriage, while the wife remained at home looking after the house and children and carrying on the usual domestic duties. At the time of the divorce proceedings the husband was earning between Rs.3000 and Rs.4000 per month and the wife was gainfully employed earning Rs.1,500 per month. The wife is in occupation of the matrimonial home as the husband had left the house in June 1988 following marital differences and is living with his aunt. Both the adult children are overseas. The wife alleges that she has nowhere else to live in Seychelles. The wife has claimed a half share in the matrimonial house and the right to remain living there. The husband was prepared to pay the wife one third of the value of the property, although in the course of the appeal before us, the offer was reduced to payment of one fourth of the value of the property.

The appeal is on two main grounds:

- (1) The trial judge erred in finding equal ownership of the matrimonial home when there was no evidence of direct or indirect contribution by the wife.
- (2) The order to transfer ownership of the house to the wife on the terms in the order was unfair and wrong.

The jurisdiction of the Supreme Court in Seychelles as regards matrimonial property would seem to derive from the Courts Act Chapter 43. Ordinance No.13 of 1976 was passed on 22nd June 1976 to amend the Courts Act, and it came into operation on 29th June 1976. Section 3 of Ordinance 13 of 1976 created a new Section 3A which reads:

" General jurisdiction - 3A The Supreme Court shall be a Superior Court of Record, and in addition to any other jurisdiction conferred by this Act or any other law, shall have and may exercise the powers, authorities and jurisdiction possessed and exercised by the High Court of Justice in England."

I agree with Sauzier J (as he then was) when he stated in S.C.C.C No 219 of 1980 Finesse v Banane that by virtue of Section 3A above mentioned the Supreme Court in Seychelles has all the powers and jurisdiction of the High Court in England as at the date of its enactment i.e. in June 1976, such powers to include not only inherent powers derived from Common Law but also from Statutes of general application existing as on that date. Statutes enacted in England after that date would of course not be applicable.

Under the matrimonial Proceedings and Property Act 1970 and the Matrimonial Causes Act 1973 in England, the provisions of which apply to Seychelles, the judge, on the facts of this case, is empowered to make the orders he did. He took into account the fact that the husband was solely responsible for the construction of the matrimonial house, that it was practically the only asset left at the dissolution of the marriage, the length of the marriage, the respective hardships to the parties concerned,

their earning capacity, the age of the wife and after considering their competing claims he decided that a fair order would be that they share equally in the said property. He took into consideration all the relevant factors, and despite Mr. Renaud's gallant efforts to persuade us to the contrary I do not think that the judge had erred.

I must say I am not happy with the judge's order concerning the acquisition of the matrimonial house by the wife on the terms he laid down. I would have preferred an order for the sale of the house and the purchase price divided equally between the parties, giving each party liberty to bid. However the trial judge has exercised his discretion after due consideration, and I do not think I ought in this case to interfere with the exercise of his discretion.

I would therefore dismiss the appeal. I would agree with the amendments proposed by Floissac J.A. concerning the extended periods of time for payment by the wife and so on resulting from this decision. I would make no order as to costs.

A. Mustafa

A.MUSTAFA

President.

Dated at this 12th day of April 1991

*Judgment delivered in open court
by N. Alleea Dg. CJ.*

*N. Alleea
12/4/91*