

IN THE SEYCHELLES COURT OF APPEAL

PAUL PERRIOL- DESAUBIN

APPELLANT

VERSUS

LENA PERRIOL (NEE DESAUBIN)

RESPONDENT

Civil Appeal No. 4 of 1997(Before: *Goburdhun P., Silungwe & Adam JJA*).....
Mr. P. Pardiwalla for the Appellant

Mr. F. Bonte for the Respondent

JUDGMENT OF THE COURT
-----**Delivered by Adam, J.A.**

The Appellant sought a supplemented order from Perera J. with view to enforcing the judgment entered by him on 16 May 1996 by setting a reasonable time limit within which the Respondent was to pay 80% of the market value of the matrimonial home since he had already dealt with the value of the land on which the house was built. This appeal is from that Ruling of Perera J. made on 24 January 1997.

At the hearing before this Court we were asked by consent of the parties to make the following Order:-

- (i) that a joint valuation be undertaken by Barker and Barton, Hubert Alton & Co. and Cecile Bastille within 15 days of the Order (14 August 1997);
- (ii) that from the date of the joint valuation the Respondent shall pay within 1 month to the Appellant 80% of that joint valuation and upon such payment within 3 months of the date of payment the Appellant shall give vacant possession of the matrimonial home to the Respondent;
- (iii) that failing payment by the Respondent as above the Appellant shall pay 20% of the valuation to the Respondent and he will acquire ownership;

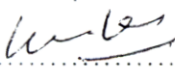
- (iv) that failing payment by the Appellant as above both parties must sell the matrimonial property;
- (v) that this Court give an interpretation of the following portion in the judgment of Perera J. of 16 May 1996;

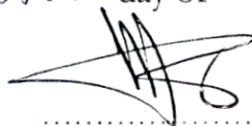
“In the circumstances I hold that the Petitioner will be entitled to 80% of the market value of the matrimonial home excluding the land, but only 80% of the actual purchase price plus duty in respect of the land, that is, a sum of SR156,480. The matrimonial home exclusive of the land shall therefore be valued by the parties for the purpose of ascertaining the amount due to the Petitioner. I would however direct that a sum of SR50,000 be deducted from the total amount in consideration of the indirect contribution made by the Respondent in performing her household duties as a wife. The Petitioner shall have the right of occupation until the full sum due to him is paid by the Respondent. Thereafter he shall peacefully vacate the house and hand over vacant possession to the Respondent. Failing which writ of possessionem shall issue forthwith. The ownership of the house and property shall be with the Respondent.”

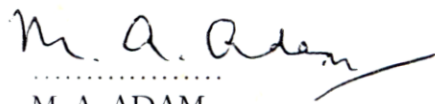
We draw attention to what Perera J had to say about the price of the land, that the Appellant (Petitioner) claimed that he paid SR305,000 as the purchase price but since the Deed of Transfer gave the price as SR180,000 along with duty of SR15,600 paid on registration, Perera J only allowed SR195,000 as the purchase price of the land. He had also indicated that the provisions of Section 20(1)(g) of the Matrimonial Causes Act, 1992 could not be used to transfer ownership of immovable property to the Petitioner as he was not a Seychellois and as such could not hold such property by virtue of the Immovable Property (Transfer Registration) Act (Chapter 95). On that basis, 80% of the land was SR156,480. This amount of SR156,480 together with 80% of the acceptable valuation of the matrimonial home would constitute the full amount from which SR50,000 would be deducted for indirect contribution and that amount must be paid in full to the Appellant until which time he would have the right of occupation and would only give vacant possession to the Respondent upon full payment who would then only have ownership. Payment of any sum less than that would not give vacant possession to the Respondent and she would not obtain ownership. In his

Ruling of the 24 January 1997 in paragraph 2 of the Order, Perera J indicated that his judgment of 16 May 1996 was a financial settlement in favour of the Appellant (Petitioner) and a property settlement in favour of the Respondent and the by the deposit of SR106,480 by her she had complied with his 16 May 1996 judgment and the only right the Appellant had was to that amount of SR106,480 and not to any other rights on the land. But in paragraph 1 of the Order of 24 January 1997 using SR1,403,825 as the valuation of the matrimonial home excluding the land, he indicated that 80% of that was SR1,123,060 which the Respondent shall pay to the Appellant within 1 month of 24 January 1997 and if she fails to do so the Appellant shall pay 20% of that which was SR280,765 within one month and become the owner of the house. The foregoing cannot be said to be consistent with his 16 May 1996 judgment. The payment by way of deposit of SR106,480 is not full payment which consisted of SR156,480 and had he used his figure of SR1,123,060 as constituting 80% of the matrimonial home excluding the land, he would have come up with SR1,279,540 from which SR50,000 would be deducted for indirect contribution leaving SR1,229,540 as the amount to be paid by the Respondent before she became owner and the Appellant was entitled to occupation of it until that amount of SR1,229,540 was paid in full. It must necessarily follow that the payment of SR106,480 cannot at all be regarded as the Respondent having complied with the 16 May 1996 judgment. By merely giving ownership of the matrimonial home on payment of SR280,765 to the Appellant, Perera J. seemed not to have made provision for SR50,000 as the Respondent's indirect contribution as well as the 20% value of the land. Perera J. could not give merely the ownership of the matrimonial home without the land since anything which is permanently affixed to land becomes part of the land.

Dated at Victoria this 25th day of November 1997.


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H. GOBURDHUN
PRESIDENT


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A. SILUNGWE
JUSTICE OF APPEAL


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M. A. ADAM
JUSTICE OF APPEAL

