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IN THE SEYCHELLES COURT OF APPEAL

JOSSY CEDRAS

APPELLANT

versus

LYDIA RATH

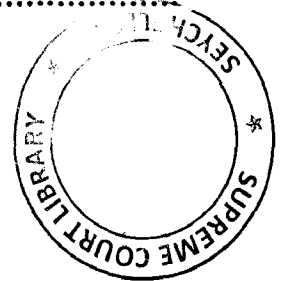
RESPONDENT

Civil Appeal No: 22 of 1999

[Before: Ayoola, P., Silungwe & De Silva, JJ.A]

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Mr. J. Renaud for the Appellant
Mr. F. Bonte for the Respondent



JUDGMENT OF THE COURT

(Delivered by De Silva JA)

The respondent (the plaintiff at the trial) and the appellant (then the defendant) cohabited for a period of eleven years. Admittedly the parties were not married. They had two children who were ten and six years old. The relationship between the two parties had come to an end, each one seeking to blame the other for what had happened. The respondent instituted these proceedings seeking a declaration of the share each party is entitled to in the properties they jointly owned.

In her plaint, the respondent averred inter alia that during the period of their cohabitation;

- (a) they jointly purchased a parcel of land to build the family home and for this purpose they jointly obtained an SHDC loan in the sum of SR76,974;

(b) they purchased a motor car for a sum of SR45,000 and the respondent contributed a sum of SR25,000;

(c) the parties had agreed that they appellant would pay for the housing loan and the respondent would meet the household expenses such as food and clothing for the children;

(d) the furniture and the "soft furnishing" were all purchased and made by the respondent.

In his statement of defence the appellant admitted the loan taken from SHDC to build the house and the purchase of the motor car for which the respondent had contributed SR25,000. He averred that the domestic expenses were met by him and he denied that the furniture and "soft furnishing" were purchased and made by the respondent. He admitted cohabitation and prayed for a dismissal of the plaint.

The respondent testified at the trial. She was willing to allow the appellant to keep the car but she requested that the sum of SR25,000 which she contributed for the purchase of the car be returned to her. She conceded that the appellant contributed towards the purchase of food for the family. She further testified that the property was valued by a valuer at SR250,000 and she asked the Court to declare what share she is entitled to in the property. In cross examination the following important items of evidence were elicited.

"Q: He (ie. The appellant) got the house and brought you in to live with him?

A: No.


As for the first ground, there is no merit in it. Both in the pleadings and in evidence the parties admitted that they were not married. The learned trial Judge was not called upon to reach a finding on that matter because it was never an issue in the case. However, on a reading of the judgment it is abundantly clear that the learned trial Judge was at all times mindful of the nature of the relationship between the parties. Said the learned Judge:-


“It is important to note that living in concubinage is different from living a married life, the length of that period notwithstanding. Neither party can claim rights from the other as would be a spouse in a marriage ... Examining the evidence in the present application, it is evident that the parties have come to an end of their relationship. Therefore they request this Court to determine each party’s share in the properties they own jointly.”

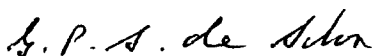
Thus the learned Judge was fully aware of the relevant issue in the case.

In regard to the second ground, it is equally clear that it is devoid of merit. All that the learned Judge has stated is that the party who gets the care and the custody of the children will have preference to remain in the house. We see nothing unreasonable or unjust in the view taken by the learned Judge.

We are of the opinion that the evidence has been correctly evaluated and the findings are in accord with the evidence. The orders made are eminently fair, just and equitable. The judgment is accordingly affirmed and the appeal is dismissed. We make no order as to costs.


E. O. AYoola
PRESIDENT


A. M. SEUNGWE
JUSTICE OF APPEAL


G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 12th day of April 2001.

Q: Who applied for the house?

A: I did.

Q: Would you consider Mr. Cedras (i.e the appellant) buying a new house?

A: No.

Q: Then why do you insist that you should have the house?

A: Because I am insisting that I should have the children as well so that I can maintain them in the house in which we have been living in all that time. Because I am the one responsible for the children at school and elsewhere. Mr. Cedras has never showed his face at school or elsewhere.

.....

Q: All you want is to get your share in the property or for an order that you stay and he goes?

A: Yes."

The appellant also gave evidence. He stated that he paid the housing loan but conceded that the respondent bought clothes for the children and paid the water and electricity bills. As for the furniture, he admitted that the respondent "*brought the wood to a carpenter*" to make the furniture in the house.

On a consideration of the entirety of the evidence the learned trial Judge (Bwana J) made the following orders.

- (1) That the appellant must pay back to the respondent the sum of SR25,000 which she contributed to the purchase of the motor car and its ownership should be transferred wholly to the appellant.
- (2) As for the family property, the parties were directed to appoint "a valuer to value the property afresh" and that each party would be entitled to half share..
- (3) In regard to the custody of the children, he remitted the case file to the Family Tribunal for determination of this issue. The learned judge further stated that "only thereafter that this court will determine who should remain in the family home and buy off the other. That is, the party who will get the care and custody of the children shall have preference to stay in the house to the one without."

At the hearing before us learned counsel for both parties did not make any oral submissions but relied only on their written submissions. The two principal grounds of appeal are:-

- (1) "that the trial Judge wrongly and in a manner prejudicial to the appellant tried the case as if the parties were legally married, despite the fact that he found that the parties were not married."
- (2) that the trial Judge was wrong to have decided that the granting of the custody of the children will determine "who of the two parties shall have preference to stay in the house."