IN THE SEYCHELLES COURT OF APPEAL

ROCH BEDIER 1ST APPELLANT
AMILIE ACCOUCHE 2ND APPELLANT

versus

PETER LOW-HENG RESPONDENT

Civil Appeal No: 37 of 1999

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

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Mr. P. Pardiwalla for the 1st Appellant
Mr. B. Georges for the 2nd Appellant
Mr. P. Boulle for the Respondent

JUDGMENT OF THE COURT

(Delivered by De Silva JA)

The respondent, (then the plaintiff) filed this action seeking a declaration that the 1st and 2nd appellants (then the1st and 2nd defendants) have no right or interest in the bare ownership of a portion of land in extent of 30 acres situated at Anse Cimetiere, Praslin, described in paragraphs 1 and 2 of the plaint. The devolution of title to the property in dispute as averred in the plaint may be stated thus. Francois Lavigne transferred the property by deed of sale dated 20th July 1956 to Earnest Accouche, the husband of the 2nd appellant. Accouche by last will devised to the respondent the bare ownership of the entire property reserving the usufruct thereof to his wife, the 2nd appellant. Accouche died on 27th April 1977.

Thereafter the 2nd appellant by deed of sale dated 23rd October 1995 transferred a half share in the property to the 1st appellant. The case for the respondent is that the 2nd appellant had no interest in the bare ownership of the property and accordingly the deed of sale to the 1st appellant is null and void. The respondent accordingly sought a declaration to that effect.

In her statement of defence, the 2nd appellant averred that she was entitled at all material times to one half share of the property and was thus entitled to sell the same.

The 1st appellant in his statement of defence is more explicit in pleading his defence. He averred that the 2nd appellant had a half share in the property by reason of her marriage to Accouche in 1928 under the matrimonial regime of Community of Property and therefore the transfer of her half share to the 1st appellant was valid. He accordingly counter-claimed for a declaration in his favour.

It is not disputed that Accouche married the 2nd appellant on 16th May 1928 and the marriage certificate (exhibit D1) shows that there was no marriage settlement in respect of property. Accordingly the parties to the marriage were governed by the system of Community of Property.

Learned Counsel for the respondent relying mainly on the provisions of Section 25(1) of the Status of Married Women Act (hereinafter referred to the Act) submitted that the system of Community of Property was dissolved as from 20th April 1948 and that thereafter the parties to the marriage could hold separate property which they could lawfully dispose of in any manner. It was further emphasized by Learned Counsel for the respondent that the property in dispute was purchased by Accouche on 20th July 1956 and therefore did not fall into the system of Community of Property.

On the other hand, Learned Counsel for the 2nd appellant strenuously contended that Section 25(1) of the Act did not dissolve the system of Community of Property but dissolved only the Community of Property. The argument was that since the system of Community of Property continued to exist even after 20th April 1948, the 2nd appellant became the owner of an undivided half share of the property when it was purchased by her husband (Accouche) in his sole name in 1956.

At this point it is necessary to consider the provisions of Section 25(1) of the Act which reads as follows:-

> "**25(1)** The community of property between husband and wife married in community before the commencement of this Act, in respect of either movable or immovable property, is dissolved as from the twentieth day of April one thousand nine hundred and forty-eight, and any property belonging to

> the community aforesaid shall as from that date and until partition be deemed to be held as undivided property of the husband and the wife." (Emphasis added)

Admittedly, Accouche and the 2nd appellant married in Community of Property before the commencement of the Act. Immediately upon their marriage, Community of Property took place by operation of law. What is relevant and needs to be stressed is that Community of Property is a proprietary consequence of the marriage. All property belonging to the spouses at the time of their marriage and assets acquired subsequent to the marriage became part of the joint estate by reason of the marriage in Community of Property. When Section 25(1) of the Act clearly and expressly states that "*the Community of Property between husband and wife married in community before the commencement of this Act ... is dissolved as from twentieth day of April one thousand nine hundred and forty eight,*" the dissolution was in respect of the proprietary consequence of the marriage. The contract of marriage, however, continued to subsist. In other words, after the 20th of April 1948 the parties to the marriage could hold separate property which they were entitled to dispose of in any manner though they were married prior to 20th April 1948. Therefore the property in dispute which was purchased by Accouche on 20th July 1956 did not fall into the system of Community of Property. Admittedly the property in dispute was purchased by Accouche in 1956 in his own right and in his sole name. Accouche was therefore entitled to devise the property by will to the respondent with only a usufructuary right to his wife, the 2nd appellant. It follows that the 2nd appellant had no proprietary right to transfer ½ share of the property to the 1st appellant. Accordingly the sale by the 2nd appellant to the 1st appellant by deed dated 23rd October 1995 is null and void.

Learned Counsel for the 2nd appellant sought to draw a distinction between the "*system of Community of Property*" and "*Community of Property*". The contention was that Section 25(1) dissolved only the "*Community of Property*" but the "*system*" continued even after the 20th of April 1948. This contention is in the teeth of the explicit provisions of Section 25(1) which are of decisive importance in this appeal. If the distinction sought to be drawn by Learned Counsel for the appellant is valid, then Section 25(1) and indeed the object of the whole Act are rendered nugatory. As rightly pointed out by Learned Counsel for the respondent, Schedule I of the Act expressly repealed those Articles of the earlier French Civil Code which related to the system of Community of Property.

Schedule I of the Act specifically repealed Articles 1429 and 1430 of the French Civil Code "*in so far as they apply to married women.*" Thus, it is abundantly clear that one of the objects of the Act was to "*dissolve*" the system of Community of Property. This view is confirmed by the observation of Sauzier J in **Etienne v Constance**, Seychelles Law Report 1977, 234, at 240:-

> "The system of Community of Property between spouses has been abolished by section 25 of the Status of Married Women Act." (Emphasis added)

For these reasons, we affirm the judgment of the learned trial Judge (Perera J) and dismiss the appeals of the 1st and 2nd appellants, with costs.

A.M. SILUNGWE
JUSTICE OF APPEAL

A. G. PILLAY
JUSTICE OF APPEAL

G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 11th day of ***April*** 2001.