(14)

IN THE SEYCHELLES COURT OF APPEAL

In the matter between:

RAOUL SOUFFE ***APPELLANT***

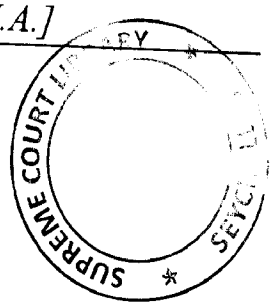
VERSUS

DENISE LEWIS ***RESPONDENT***

SCA No. 14 of 2002

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

Mrs. A.G. Antao for the Appellant
Mr. F. Bonte for the Respondent



JUDGMENT OF THE COURT

(Delivered by Silungwe, J.A.)

It is common cause that the appellant and the respondent (who were plaintiff and defendant, respectively, before the Supreme Court) had lived together in concubinage for seven years. The respondent is a mother of four children one of whom was fathered by the appellant.

On the pleadings and the evidence adduced by the parties in the Supreme Court, they both contributed - during their relationship - "financially and in kind" (as found by the trial court) to the construction of a house situated at Amitie, Praslin, on a parcel of land leased by the appellant from the Government. Although the trial court held that the appellant had spent a total sum of R.42,500/- on the house, as supported by invoices, the record demonstrably shows that the appellant had *"produced four receipts of payment made to Georges/Jeanne for Sr.19,000/-, Sr.6,500/-, Sr.6,000/- and*

"5,000/- respectively", totaling R.36,500/-. It is thus apparent that the appellant's financial contribution (let alone his contribution in kind) came to R.36,500/-. Similarly, and as conceded by Mrs. Antao during her argument before us - in the light of the evidence - the respondent's financial contribution (besides her contribution in kind) was *"Sr.37,000/-, plus tiles and cement"* (which items were not quantified).

Sometime after the completion of the house, the appellant, the respondent and the four children took occupation of the house and lived there for about one year. Thereafter, the appellant left to go and cohabit with another woman whom he subsequently married. The respondent and the children have since continued to live in the house.

The appellant instituted an action in the Supreme Court in which he sought *"a declaration of title to the said house"*. In its judgment, the trial Court held that the appellant was entitled to R.82,500/-, inclusive of R.40,000/-, for his contribution in kind. It was further held that, as the respondent was living in the house with her four children, it was fair that she continued to live there. The respondent was then given six months within which to pay the appellant the sum of R.82,500/-.

Mr. Bonte concedes on behalf of the respondent, and quite properly so, in our view, that the court *a quos's* monetary order against the respondent was *"ultra petita as it was not prayed for"* by the respondent in her defence but contends that the court should simply have dismissed the plaint. In aid of his submission, he cites the case of *Charlie v Francoise* (1995) SCAR where it was observed that:-

> *"2. Of paragraph 2 of the plaint. The defendant avers that the house she is presently occupying was constructed with her own funds. She further avers that at all times she was the one making financial payments towards the building of the house by two loans she took from Seychelles Savings Bank. The defendant further avers that the plaintiff took an SHDC loan of Rs.12,000/- and as he ceased the monthly payments the defendant avers that she continues to pay the said loan at a monthly instalment of Rs.723/- for about 2 years until July 2001 when she finished the payments."*

Contrary to Mrs. Antao's principal contention, the central issue that falls for decision is whether the appellant was entitled to the relief that he sought in paragraph 4 of his plaint to wit: "(A) declaration of title to the said house". On the plain facts of the matter, the appellant's claim to ownership of the house was not controverted. What was mutually demurred was confined to the respective contributions that the parties had made towards the construction of the house in question. It is thus undeniable that the appellant was entitled to the declaration (of ownership of the property) that he sought. In coming to this conclusion, however, we make no pronouncement on the right to possession of the property aforesaid, for want of pleading in that regard. The rationale for this observation is that, in anticipation of the appellant taking steps to gain possession of the house, it would be inequitable to deny the respondent's legitimate claim to her clear beneficial interest in the property, created by both parties' joint efforts, and thereby giving rise to a *de facto* partnership envisaged by the provisions of Article 1371 of the Civil Code of Seychelles. Vide: *Monthy v Esparon* (1983-1987) SCAR Vol. 11 12 at 17 and 19 (per Mustafa, P), 26-28 (per

Sauzier J.A. and *Hallock v. [illegible]* 1985-1987 SCAR (Vol. 1) 295 at 314-316 (per Sauzier, J.A.).

In the premises, we make the following order:

1. the appeal is upheld to the extent that the appellant is declared to be the owner of the house situated at Amitie, Praslin;
2. no pronouncement is made as to the right to possession of the said house since this was not pleaded;
3. in the circumstances of this case, no order is made as to costs.

PRESIDENT JUSTICE OF APPEAL JUSTICE OF APPEAL

Dated at Victoria, Mahe, this 5 day of June 2003