

SERRET v SERRET

(2012) SLR 112

N Gabriel for the appellant
W Herminie for the respondent

Judgment delivered on 13 April 2012

Before MacGregor P, Fernando, Twomey JJ

TWOMEY J:

A long relationship and marriage between Marjorie and Marcel Serret culminated after a number of years into its break up and the bitterest of battles, with both parties completely entrenched and unwilling to settle matters in relation to their matrimonial home amicably. They had lived together for a number of years, were formally married on 6 October 1992 and divorced on 17 May 2007. They have three children, two are grown up and have set up homes of their own, the youngest only 12, is currently living with her mother, the appellant.

In July 2010 after a protracted court case over the division of matrimonial property pursuant to the Matrimonial Causes Act 1992, the trial judge Bernadin Renaud made the following decision and orders:

In the final analysis of the matrimonial property between the parties I hereby make the following orders:

1. Taking into consideration all the evidence of the parties before this Court I find that the contribution of Mrs Serret towards the matrimonial asset is adjudged to be 40% of the market value thereof.
2. Considering the trajectory as to how the house and property were acquired over the years, it is my judgment that it is Mr Serret who should in the first instance be allocated the whole property parcel S3451.
3. Mr Serret has to pay Mrs Serret R 178,000 being 40% of the value of the property which is R 445,000 within 6 months from the date of this judgment.
4. Pending the payment of the said amount by Mr Serret, Mrs Serret shall occupy the property.

The rest of the Judge's orders relate to the consideration of what should happen in the event that Mr Serret was unable to pay the said amount to Mrs Serret. Dissatisfied with this decision the appellant, Marjorie Serret appealed on the grounds that the Judge had erred in law by not properly considering the whole evidence before him, in particular the evidence she had adduced. She also contends that the Judge was wrong in allocating a 60% share to the respondent and had failed to take into account that she had contributed much more than her husband because of her earning capacity and that given their present economic status her husband was in a much better position to build a new house.

In the intervening period between the decision of the Supreme Court and this appeal, the respondent's attorney wrote to the appellant advising her that a cheque of R 178,000 had been prepared and was ready for collection, and after receiving the payment she should vacate the matrimonial home. She did not collect the cheque but she was ejected from the family home.

Further, it appears from the court record that different battles have raged between the parties and their relatives both in the Supreme Court and the Family Tribunal, indicative of the extremely volatile situation between them. We are informed that the present status is such that the respondent resides in the matrimonial home and the appellant by her account is an errant resident of homes of friends.

In his submissions Mr Gabriel for the appellant argues that the trial judge based his findings purely in terms of monetary contributions to the matrimonial home. He contends that there was no value put on the appellant's love, nurturing and care for the family. He also argues that no reliance should be placed on the fact that the original house and property were transferred to the parties solely because of the respondent's employment with the Seychelles People's Defence Forces. Rather he points out, the house was allocated to the two parties because of the fact that the appellant was pregnant at the time and the army wanted to provide a family home for one of their soldiers and his family. He also emphasizes that during a period of three years when the respondent was injured, the appellant single-handedly supported the respondent and the family.

Mr Herminie for the respondent argues that the decision of the trial judge should not be interfered with as he had ample opportunity to consider all the evidence adduced and had the opportunity to observe the demeanour of the parties. He adds that in subsequent years the appellant has paid off all arrears due on the mortgage of the house and has met the monthly payments sometimes by having to work two jobs. He emphasized his client's attachment to the house through his dedication and toil for it. He points out that the appellant's active membership of the Jehovah's Witnesses took her away from her duties, deprived him of the love, affection and care normally expected of a wife. He states that he had to cook, clean, wash and iron his own shirts.

We have studied the evidence on record and note that both parties have contributed to this matrimonial home. In our view the evidence is equivocal in terms of the parties' shares in the home. There was input from each of them both in monetary terms and in kind, bearing in mind that they both worked at different times in different jobs and also in self-employment. The practice of this Court where the evidence is equivocal in terms of contributions to the family home has been to resort to the documentary evidence and principles of law. As the title deeds clearly demonstrate that the property in question is in joint names, and by operation of article 815 of the Civil Code of Seychelles, and relying on previous authorities (namely *Florentine v Florentine* (1990) SLR 141, *Edmond v Edmond* SCA 2/1996 and *Charles v Charles* SCA 1/2003) we presume that it was intended that each party would be entitled to a half share in the matrimonial property.

In considering how to practically give effect to these shares we have given anxious thought to the possibility of dividing Parcel S3451 into two. It would certainly be big enough given the fact that it comprises 1,471 square meters and has two buildings, the matrimonial home and a bakery cum shop standing on it. However, having acquainted ourselves with the ongoing volatile relationship between the parties we have hastily disabused ourselves of that option. It would be impossible to divide the land and place the parties in such close proximity to each other without inviting further dire consequences.

We are also of the view, given the respondent's emotional and familial attachment to the village of Anse Boileau and the house and the fact that he has been in exclusive occupation of the matrimonial home for a considerable time now, that he should have first option to buy out the appellant's share.

There is yet another matter which troubles us. We find that there is a minor child of the parties, presently aged 12 for whom no consideration was made when the matrimonial property was settled - vide section 20(g) of the Matrimonial Causes 1992. The mother was granted custody of this child. She is not in the matrimonial home and we are concerned about both their access to alternative housing.

We realise that a half share in the house valued at R 222,500 ($R\ 445,000 \div 2$) may not fetch very much given the current housing market. With this in mind we further enhance the appellant's share in the matrimonial home to 55%, hence R 244,750. We know that this is an extra R 66,750 that the respondent will have to find over and above the amount already assessed by the judge but we feel that he is wholly compensated by the possibility of exclusive ownership and final closure of this matter.

We therefore assess the shares of the parties in the matrimonial property at 55% for the appellant and 45% for the respondent. We give the respondent first option to purchase the share of the appellant within three months of the date of this judgment failing which the option shall revert to the appellant on the same terms. If neither party within 6 months hereof succeed in buying out the other party's share the property shall be sold on the open market and each party will receive equal shares from the proceeds of the sale.

We order accordingly but make no additional order as to costs.

