

IN THE SEYCHELLES COURT OF APPEAL

ANTOINE ALCINDOR

Appellant

Vs

CHRISTINA ALCINDOR

Respondent

SCA 33 of 2010

Before: MacGregor PCA, Fernando and Twomey, JJA

Counsel: Mr. Basil Hoareau for Appellant

Mr Wilby Lucas for Respondent

JUDGMENT

MacGregor,P

FACTS

1. This is a case of settlement of matrimonial property between two divorcees that is Appellant and Respondent of their property at Anse Etoile.
After apportionment of the property by the court below of the proportion of 60/40 percent between Appellant and Respondent and the time frame and conditions to acquire it by each side, the parties disputed an evaluation figure referred to in the trial below, after judgement was given dated 1stFebruary 2010.
Much later on the 3rd November 2010 the Court ordered a re-evaluation of the matrimonial property.

ISSUES

2. It is this re-valuation that Appellant contests and forms in our view the main ground of appeal, inter alia that of res judicata, and certain maxims of equity breached..

3. This main ground of appeal argues that the learned judge below was functus officio, from the date of judgment 1st February 2010 and could not and had not the power to order a re-evaluation, dated 3rd November 2010.

4. We note that in the said judgment in the specific orders laid out at the conclusion to judgment, there is no reference to an order on evaluation. This is only referred to in the prior main body of the judgment that the parties had agreed to a specific evaluation of Rs.500,000..

5. Respondent's Counsel argues there are exceptions to the Rule on Functus Officio citing S.150 of the Seychelles Code of Civil Procedure which provides "The Court may, after hearing both parties, alter, vary or suspend its judgment or order, during the sitting of the court at which such judgment or order has been given.

This argument is easily disposed of as the post-judgment order was not made during the sitting, of such judgment of 1st February 2012.

The same Code provides for clerical errors in judgments in its S.147 stating that 'Clerical mistakes in judgment or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court on motion'.

However the case before us is not one of clerical errors. Its goes substantially beyond that, in changing a major criteria, that of the evaluation of the matrimonial property.

He further cites S.5 and 6 of the Courts Act and the case of *Mussard Vs. Laurencine* (2009), SCA 19/09, none of which in our view advances his position or arguments.

The authorities are clear on functus officio in relation to:

Amendment after entry of judgment or order

"As a general rule, except by way of appeal, no court, judge or master has power to rehear, review, alter or vary any judgment or order after it has been entered either in an application made in the original action, or matter or in a fresh action brought to review the judgment or order. The objection of the rule is to bring litigation to finality."

Halsbury Laws of England, Vol 26 4th Edition Paragraph 556;

This is also born out in ***MAttorney General Vs Marazorchi & Others (1996) SCAR 8***, and ***SDC Vs. Government of Seychelles (2007) SCAR 3***

6. After hearing arguments on both sides, we find this main ground succeeds and disposes of the matter without the need to go into the other grounds of appeal.

CONCLUSION

7. Accordingly this appeal is allowed, but we make no order as to costs.

M. Twomey
Justice of Appeal
Appeal

F. MacGregor
President, Court of Appeal

A. Fernando
Justice of Appeal

Delivered at Victoria, Mahé, Seychelles, this 13th day of April 2012.