

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) , B. Renaud (J.A), F. Robinson (J.A)]

Civil Appeal SCA 17/2016

(Appeal from Supreme Court Decision MA 158/2013)

Arising out of CS DV 146/2010

Jeffrey Gonthier

Appellant

Versus

Paquerette Denousse

Respondent

Heard: 23 August 2018

Counsel: Mr. Guy Ferley for the Appellant

Mr. Joel Camille for the Respondent

Delivered: 31 August 2018

JUDGMENT

F. MacGregor (PCA)

- [1] This is an appeal against the decision of the Supreme Court for the division of the matrimonial property between the Appellant and the Respondent pursuant to Section 20(1), Cap 124 of the Matrimonial Causes Act.
- [2] The property in dispute is the land comprised in Title V5971 situated at Le Niole, Mahé, Seychelles, and the matrimonial home standing thereon.
- [3] The parties were married on the 5th day of April 1989 and on an application made by the wife (Respondent herein), an order absolute granting the divorce was issued by Court on the 7th day of April 2011. Prior to that, the parties cohabited whilst in state of marriage from 1989 to 2003. During that material period,

- In 1998 land transferred jointly to Appellant and Respondent for the price of Rs.39,400/-
- Simultaneously loan of RS. 165,713/- advance to Appellant and Respondent by SHDC, the lender.
- Loan was in the value of a dwelling house on that land constructed by the SHDC

[4] After the divorce in 2011, in 2013, the Respondent moved the lower court seeking that she be declared to own a half share in the matrimonial property in question.

The law governing matrimonial property is provided for in the Matrimonial Causes Act at section 20(1) g:

“20(1) Subject to section 24, on the granting of a conditional order of divorce or nullity or an order of separation, or at any time thereafter, the court may, after making such inquiries as the court thinks fit and having regard to all the circumstances of the case, including the ability and financial means of the parties to the marriage –

(g) make such order, as the court thinks fit, in respect of any property (of a party) to a marriage or any interest or right of a party in any property for the benefit of the other party or a relevant child.”

[5] The trial Judge at paragraph 9 of his judgment considered that the title deed in the document produced as P1 itself entitled the Plaintiff a half share of the property. The trial Judge also applied the above provisions of the Matrimonial Causes Act in his judgment as follows;

Paragraphs 10, 11, 12, 13, 14, 15 and in particular 16 of his judgment brought him to a declaration that the Respondent has a half share in the matrimonial property. The authorities of **Florentine v Florentine, Civ App 4/1990, Samori v Charles (2012) SLR 371** and **Renaud v Geatan, SCA 48/1992** were in support the Respondent’s case.

[6] Thereafter and further in regards to contribution made by either party after weighing their varying and competing claims the trial Judge was satisfied that the Plaintiff then

(Respondent) had established on a balance of probabilities she was entitled to reliefs claimed in the prayer of the petition.

He then ordered the Appellant to pay the Respondent the current market value of a half share in the land title V5971 and the matrimonial home thereon.

[7] It is against this background that this appeal is before this Court of Appeal. The Appellant has three main grounds of appeal namely:

1. The Learned Trial Judge was wrong in law and his pronouncement that because the Respondent's name appears on the title deed to parcel V5971, she is entitled to a half share in the land contained in the said title and to half share in the matrimonial home standing thereon.
2. The Learned Trial Judge erred in not taking account of the whole body of evidence before the court but instead relied too heavily on the testimony of the Respondent.
3. The Learned Trial Judge, in assessing the fair shares of the parties to the matrimonial properties, failed to take into account that the Respondent had left the matrimonial home eight (8) years prior to the decree absolute. That the Appellant had done major renovation works after the Respondent had left.

[8] From the outset we want to state that in the case of *Chetty v Emile SCA 11/2008*, the Court of Appeal stated that the role of the court as stated in other previous cases is to ensure that upon dissolution of marriage, a party to the marriage is not put at an unfair disadvantage in relation to the other by reason of the breakdown of the marriage and, as far as such is possible, to enable the party maintain a fair and reasonable standard of living commensurate with or near to the standard the parties have maintained before the dissolution. Furthermore, it was stated in this judgment that, "contributions towards the matrimonial property cannot be measured in pure monetary terms...the cooking, the sweeping, the cleaning, the sewing, the laundering, tending to the children and many other nameless chores in a home are not things for which a value can be put on, but certainly contributes towards the buildup of matrimonial property. We also find it difficult to accept that once a party makes a choice of his or her partner and decide to live together as husband and wife, one party cannot be heard to say that I had the better job or I am the person who brought in more money..."

- [9] As to ground one, it challenges the status of the Respondent's name appearing on the Title Deed. The Title Deed on record was presented as exhibit P1 of the record. It clearly shows it was registered under the Land Registration Act on 23rd September 1998. It is an official and authentic document drafted in a prescribed form also qualifying for protection under articles 1317 and 1341 of the Civil Code.
- [10] Consequently relevant provisions of the Land Registration Act namely sections 20(a) and (b) entitled "Effect of Registration and Conversion of Title" and Interest conferred by registration provide that:-
- (a) *the registration of a person as the proprietor of land with an absolute title shall vest in him the absolute ownership of that land, together with all rights, privileges and appurtenances belonging or appurtenant thereto;*
 - (b) *the registration of a person as the proprietor of land with a qualified title only shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the proprietor and subsisting or capable of arising at the time of registration of that proprietor; but save as aforesaid shall have the same effect as registration of a person with an absolute title."*
- [11] It is important to note here that at the time of registration there was no effect or prejudice of the enforcement of "any right or interest adverse to or in derogation of the title of the proprietor and subsisting or capable of arising at the time of registration of that proprietor;" as they were still in a state of marital bliss and no matrimonial property dispute then. In those particular circumstances the Respondent has acquired absolute title with absolute ownership.
- [12] The interpretation of "land" in section 2 of the said Act includes inter alia buildings.
- [13] Whilst it is noted that the jurisprudence so far is that, if both names are on the title deeds there is a presumption that the property is owned equally.

That jurisprudence so far proves that that presumption can be set aside on evidence adduced.

[14] In this case I find that this presumption cannot operate.

Further to that I find acquisition of title under the Land Registration Act as earlier cited vests absolute ownership which implicitly makes the presumption in those circumstances irrebutable.

[15] Further to and following from those acquired rights the following laws expound, protect, and preserve those rights, that there is a presumption the property is owned equally.

The Civil Code Act, Articles:-

“544: *Ownership is the widest right to enjoy and dispose freely of things to the exclusion of others, provided that no use is made of them which is contrary to any laws or regulations.*”

“546: *The right of ownership of property, whether movable or immovable, shall give the right to everything that the property produced and to anything that accedes to it either naturally or artificially.*

This right is called right of accession.”

“815: *Co-ownership arises when property is held by two or more persons jointly. In the absence of any evidence to the contrary it shall be presumed that co-owners are entitled to equal shares.*”

“1317: *An authentic document is a document received by a public official entitled to draw-up the same in the place in which the document is drafted and in accordance with the prescribed forms.*”

“1341: *Any matter the value of which exceeds 5000 Rupees shall require a document drawn up by a notary or under private signature, even for a voluntary deposit, and no oral evidence shall be admissible against and*

beyond such document nor in respect of what is alleged to have been said prior to or at or since the time when such document was drawn up, even if the matter relates to a sum of less than 5000 Rupees.”

[16] Furthermore, section 4(1)(a) of the Seychelles Housing Development Corporation (SHDC) Act, states as its functions:

“4.(1)(a) To ensure the provision of housing in Seychelles in accordance with the policy of the Government as set out from time to time in the National Development Plan or as communicated to it by directors under section 5(1)(a).”

[17] It was the SHDC that conveyed title and a loan to the Respondent and built the matrimonial house clearly in line with the provision of housing in accordance with the policy “of the Government as set out from time to time in the National Development Plan” and further and better reflected in the right to adequate and decent shelter through organization to facilitate the realization of this right as provided for in article 34 of the Constitution, later hereinafter referred to.

[18] This clarifies that when SHDC transfers property to couples it is not to be customary as pleaded by Appellant at paragraph 3(a) of his amended answer at page C1 of the record, but a policy to encourage housing and ownership of property of the citizens of Seychelles. It was therefore wrong for the Appellant to argue putting the Respondent in the title deed was just customary and therefore signifying that not much weight should be added to it.

[19] The Constitution of the Republic of Seychelles accord the following rights to property owners,

“26.(1) Every person has a right to property and for the purpose of this article this right includes the right to acquire, own, peacefully enjoy and dispose of property either individually or in association with others.”

“27.(1) *Every person has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in this Charter without discrimination on any ground except as is necessary in a democratic society.*

(2) *Clause (1) shall not preclude any law, programme or activity which has as its object the amelioration of the conditions of disadvantaged persons or groups.”*

“34. *The State recognises the right of every citizen to adequate and decent shelter conducive to health and well-being and undertakes either directly or through or with the co-operation of public or private organizations to facilitate the effective realization of this right.*”

[20] The sub-clause abovementioned provides for persons disadvantaged by illiteracy or standard of education or discrimination of gender. In this case it came out during proceedings that the Respondent was illiterate and thus must have left everything to the Appellant to handle.

On Page 19 of the brief we find the following,

Q: you cannot read?

A: I know a bit but I can write my name

Given all the above legal provisions, ground one fails.

[21] Some of the laws cited may appear to conflict with the Matrimonial Causes Act. In this regard, where those laws, which provide those rights are in the Constitution, then the rule is, it is the Constitution which is the Supreme law, it should prevail.

Pertinent here is its Article 26 and 34 read with section 4 of the SHDC Act.

Otherwise these laws can also be seen as complimenting each other or protecting already acquired and protective rights.

[22] As to ground two, in general the principle here is the trial Judge is the best judge of facts, unless perversely wrong, and on the argument that the trial Judge relied too heavily on the Respondent, on the contrary some of the cogent evidence considered came from the Appellant himself at the following parts of the transcript:

“Page 28: We bought both of it together.”

“Page 38: She also did it and sometimes she was the one that cleared, washed the clothes in fact we shared the work.”

“Page 48: At 1st when we received the loan to pay the total to pay was SR 440 a month, it was only after that that we started to pay more.”

[23] The Appellant in general denies that the Respondent was ever in employment particularly on the islands, yet there is a Certificate of Employment from IDC uncontested as exhibit P3. There are 2 more Certificates of Employment at page 2 and Page 4 of the brief.

[24] In the case of *Samori v Charles (2012) SLR 371*, the following was said, “We have no reason to interfere with any of the above findings of fact made by the trial judge as regards the financial contributions made by the two parties to the marriage. But a marriage is not only about financial contributions, it is also about love, of friendship, of security, of commitment, of moral and emotional support, which combine together to make a success of the lives of the two people to the marriage. These are matters that cannot easily be measured in monetary terms and also cannot be ignored when a court is called upon to make a determination on matrimonial property.

[25] Applying these principles, we find the trial Judge did not err. This ground has no merit.

[26] Ground three, relates to the trial Judge assessing the fair shares of the Respondent and failing to take in account the Respondent had left the matrimonial home 8 years prior to decree absolute.

[27] We find that at that particular time the Respondent had already acquired title as referred to in paragraph 5 of his judgment. That acquired right also accrued in value. The fact that the Appellant had done major renovation works after the Respondent left does not

and cannot preclude or negate her already acquired rights. What we are prepared to consider here is that the market value of the home should be as at the time of decree absolute on divorce in 2011, Counsel for Appellant conceded to this at hearing of this appeal.

[28] Subject to that qualifier, having considered all the above I would not disturb the finding of the Court below and accordingly dismiss the appeal with costs.

F. MacGregor (PCA)

Signed, dated and delivered at Palais de Justice, Ile du Port on 31 August 2018