

# 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/2013)**

**Arising out of CS DV 146/2010**

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Jeffrey Gonthier

Appellant

Versus

Paquerette Denousse

Respondent

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Heard: 23 August 2018

Counsel: Mr. Guy Ferley for the Appellant

Mr. Joel Camille for the Respondent

Delivered: 23 October 2018

## **JUDGMENT**

F. Robinson (J.A)

1. The facts leading to this appeal are set out in the judgment of the President of the Court of Appeal of Seychelles, F. MacGregor, who has, in his judgment, dismissed the appeal. Renaud J.A, in a separate judgment, allowed the appeal. I was also of the opinion that the appeal should be dismissed. I stated that I will give reasons for my opinion in a separate judgment. I now give reasons.
2. The respondent (then the petitioner) instituted these proceedings under the Matrimonial Causes Act CAP 124 (hereinafter referred to as the "Act"). In her petition the respondent sought the following orders from the Court:

*"(i) The Honourable Court be pleased to declare a half share in*

*favour of the Petitioner in the land comprised in Title V5971 situated at Le Niole, Mahe, Seychelles and the matrimonial home standing thereon;*

(ii) *The Respondent be ordered to pay me the value of a half share in the land Title V5971 with the matrimonial home thereon, to the Petitioner;*

(iii) *The Respondent be directed to pay the costs of this matter; and*

(iv) *The Court makes any other orders that is deems fit and reasonable in the circumstances."*

3. The appellant (then respondent) resisted the petition.

4. The evidence establishes that the appellant and the respondent hold the land comprised in title number V5971 jointly. Article 815 of the Civil Code of Seychelles Act states: "*[i]n the absence of evidence to the contrary it is presumed that co-owners are entitled to equal shares*". The evidence does not establish whether or not the appellant and the respondent are registered as the owners of the land comprised in title number V5971 with absolute title or with qualified title. Under section 20 (a) and (b) of the Land Registration Act CAP 107:

"(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."***

Emphasis supplied

5. The learned trial Judge, at paragraph [16] of his judgment, made the following orders —

*"[16] Having also considered the fact that the petitioner in terms of document P1 has title to a half share to the property and the aforementioned factors contained herein, this court is satisfied that the petitioner has established on a balance of probabilities that she is entitled to the reliefs claimed in the prayer of the petition. This court therefore holds in favour of the petitioner and proceeds to:*

- (a) Declare a half share in favour of the petitioner in the land comprised in Title V5971 situated at Le Niole, Mahe, Seychelles and the matrimonial home standing thereon;*
- (b) Order the respondent to pay the petitioner, the current market value of a half share in the land Title V5971 and the matrimonial home thereon;*
- (c) Each party to bear their own costs."*

6. In the light of the above, for the present I am only concerned with whether or not the Supreme Court had jurisdiction, under section 20 (1) (g) of the Act, on the application of the respondent in respect of her property to the marriage, to make such orders, as it thinks fit, for her benefit. Section 20 of the Act deals with financial provision and property adjustment orders in connection with divorce proceedings. The property adjustment orders for the purposes of section 20 (1) (g) of the Act are the orders concerned with property rights available for the purpose of adjusting the financial situation of the parties to a marriage and the children of the family on or after the grant of a conditional order of divorce, nullity of marriage or judicial separation.

7. Section 20 (1) (g) of the Act provides:

*"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."*

(Emphasis supplied)

8. As I understand it, the respondent has instituted these proceedings, asking the Supreme Court to make such orders in respect of her property to the marriage for her benefit, under section 20 (1) (g) of the Act. A careful reading of section 20 (1) (g) of the Act expresses that the Court may make such order, as the Court thinks fit, in respect of any property that is owned, or in which an interest or right is held by a party to a marriage, for the benefit of the other party. In that regard, I am convinced that the Court had no jurisdiction under section 20 (1) (g) of the Act, on the application of the respondent, in respect of her property to the marriage, to make the orders prayed for. It is plain that the respondent's property cannot be dealt with under the Court's powers to make property adjustment orders under section 20 (1) (g) of the Act.

F. Robinson (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 23 October 2018