

**IN THE SEYCHELLES COURT OF APPEAL**

**[Coram: A. Fernando (JA), M. Twomey (JA), Tibatemwa-Ekirikubinza (JA)]**

**Civil Appeal SCA 24/2017**

**(Appeal from Supreme Court Decision DV 161/2007)**

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Philippe Omath

Appellant

Versu  
s

Edwina Lesperance

Respondent

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Heard: 03 December 2019

Counsel: Alexandra Madeleine for Appellant  
Lucy Pool for Respondent

Delivered: 17 December 2019

**JUDGMENT**

M. Twomey (J.A)

[1] This appeal concerns a property in dispute comprising the land recorded under title PR3656 situated at Marie Jeanne Estate, Cote D’Or, Praslin, and House Number 11 situated thereon, hereinafter collectively referred to as ‘the property’.

[2] There are many undisputed facts in this case and we summarise them for the purpose of this appeal: neither the Appellant nor the Respondent are the registered owners of the property; it was acquired as part of the government’s home ownership scheme. The nature of the agreement signed by the Appellant and the Respondent on 18 May 2001 with the Seychelles Housing Development Corporation (hereinafter SHDC) was that, once the parties had paid off the loan for the house, it would be transferred to them. SHDC was later succeeded by the Housing Finance Company (HFC) and the Property Management Corporation (PMC).

[3] On 1 December 2005, the HFC which then owned the property (see Exhibit P12) wrote to

the parties informing them that the house for which they had been paying monthly instalments of SR1130 and which had originally been offered to them for the price of SR 180,000 was now being offered to them for purchase at the discounted price of SR53,882.74. There is no evidence that this offer was formally accepted by the parties but the loan for the purchase of the house was paid off on 13 February 2012 (see Exhibit R 2- Statement of Housing Loan).

- [4] The evidence of the representative from PMC, Ms. Coralie, was that although the loan for the property was paid off, the property was never transferred to either of the parties. At the time that the loan was paid off, there was no parcel number on record due to an outstanding subdivision of the land as a result of a road encroachment. The transfer to the parties was therefore never executed.
- [5] Despite the property not being in the name of either of the parties, the Supreme Court in its decision found that the property was matrimonial property for the purposes of section 20 of the Matrimonial Causes Act (see para. 73 of the learned trial judge’s decision). This finding was made based on the evidence we have outlined above.
- [6] We state at the outset that we have no difficulty in endorsing this finding on the basis that the parties are the beneficial owners of the property, even if not the registered owners.
- [7] However, there are some difficulties with the purchase agreement (Exhibit P5) in that at the time of signing the agreement, the cost of the house and land had not been determined and only the monthly instalment of SR1130 was set out in the agreement. We opine that this is most unconventional and it is this aspect of the agreement that has contributed to one of the vexed issues in this appeal – the value of the house.
- [8] Based on a review of the evidence as regards the direct and indirect contributions of both parties to the repayment of the loan, the Supreme Court found that the Appellant was entitled to a 60 per cent share of the value of the property and the Respondent 40 per cent.
- [9] The Appellant has appealed this decision on three grounds summarised below:

1 The learned trial judge erred in her appreciation of the overall circumstances of the

case in coming to the decision on the apportionment of shares in the matrimonial home in that she failed to give due weight to the factors reducing the Respondent's share in the property.

2 The learned trial judge erred in that upon accepting the valuation of Parcel PR3656 and house thereon in the sum of SR953.000 she failed to give due weight to factors which reduced the value of the property.

3 The learned trial judge's Respondent's share in the property is unfair in all circumstances of the case and because it did not take into account the financial means of the Appellant.

**[10]** We have read the skeleton heads of the parties and considered their submissions. With regard to the first ground of appeal, we again have no difficulty in accepting the apportionment of the property between the parties. We find that the Supreme Court's decision that the Respondent was entitled to a 40 per cent share of the value of the property was based on a review of the evidence as regards the direct and indirect contributions of both parties to the relationship. It is trite law that this court will not readily interfere with the findings of fact arrived at by the trial court to which the law entrusts the primary task of the evaluation of the evidence. We are only under a duty to intervene when the trial court has so fundamentally misdirected itself, that one may safely say that no reasonable court which had properly directed itself and asked the correct questions would have arrived at the same conclusion. We are not of this view on this specific finding and therefore dismiss this ground of appeal.

**[11]** We now turn to the value of the property which is raised in the Appellant's second ground of appeal. The trial judge made a finding that the value of the house was SCR953,000. This was based on the expert evidence of two quantity surveyors. Mr. Renaud valued the property at SCR1,159,000/- and Mr. Roucou valued the property at SCR953,000. The Supreme Court found at paragraph 77 of its judgment that "on the facts and circumstances of the case the court accepts the evaluation of the Matrimonial Property in the sum of

Seychelles rupees 953,000.” The Court therefore made an order that the Petitioner be paid the sum of SCR381,200.

- [12]** We have difficulty accepting this value for the property. First, this value did not take into account that the parties had not paid market value for the property in question as the house was part of the government’s social housing scheme. The parties purchased the property at the discounted value of SR 53,882.54.
- [13]** Secondly, the value adopted by the Court does not take into account the fact that the house is part of a triplex semidetached construction and the land on which it stands has yet to be subdivided.
- [14]** Thirdly, there is also a road encroachment issue as raised by the witness for PMC.
- [15]** Fourthly, if the property were to be transferred to the parties, restrictions will be placed on them as regards a subsequent transfer of the property. This is because the property was acquired by them at a reduced rate as part of a social housing scheme. As such, the property will not be able to be sold on the private market for at least several years – the precise period to be determined by the PMC at the time of transfer. If the parties decide to sell the property before the period of restriction expires, they will only be able to sell it back to the government at an amount commensurate with the value for which the property was acquired.
- [16]** The market value of the property therefore does not even remotely reflect its actual value when one takes into account the above factors. As such, the Supreme Court erred in relying on the market value of the property.
- [17]** With the above factors in mind, the Court’s only guide as to the cost of building the house is that identified in the applicable insurance policy (see Exhibit 5). This values the property at SCR220,000 in 2001, presumably that is how much it cost to build. There is no evidence on file as to the present insured value of the property and it is not a matter we can determine without such proof. We do not consider such evidence sufficient to allow us to place a value on the property.

**[18]** We also need to point out that the Supreme Court also erred in making the orders concerning PMC. The relevant part of the judgment reads as follows:

*“The judgment under the seal of the Supreme Court shall suffice for the Registrar of Lands to give effect to the transfer of the Matrimonial Property in terms of the judgment. Copy of the judgment to be sent to PMC forthwith.”*

**[19]** This was in effect an order to PMC as the registered owner of the property. However, the PMC was not, and is not, a party in this case. To make this order, the Supreme Court should have exercised its discretion under section 112 of the Code of Civil Procedure to add PMC as a party. The relevant provision states:

*“Misjoinder, adding of parties, etc*

*112. No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.*

*The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the names of any persons improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.”*

**[20]** The Court recalls the case of *Wilmot v W&C French* (1971) SLR 326, in which Sauzier J concluded that the only reason which makes it necessary to make a person party to an action is so that he or she should be bound by the result of the action which cannot be effectually and completely settled unless he or she is a party (citing *Amon v Raphael Tulk & Sons Ltd.* (1956) 1 QB 357).

**[21]** If PMC was a party, the Court could have made an order binding on PMC as regards the transfer of the property. Such an order was made in *Mende v Payet & Property*

*Management Corporation* [2019] SCSC 291. However, in the present case as PMC was not added as a party, the Supreme Court could not make an order binding on PMC and nor can this Court. Recalling section 112 of the Seychelles Code of Civil Procedure that no cause shall be defeated by reason of non-joinder of a party, this Court restricts any orders made to the rights and interests of the parties before us.

[22] We therefore reaffirm the share allocation of the beneficial interest in the property at House Number 11 on title PR3656 situated at Marie Jeanne Estate, Cote D’Or, Praslin as 60% for the Appellant and 40% for the Respondent. However, the Court rejects the value of the property and the house as identified by the Supreme Court. The parties are at liberty to enter into negotiations with PMC for the legal transfer of the property presently occupied by the Appellant.

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M. Twomey (J.A)

**I concur:.** .....

A.Fernando (J.A)

**I concur:.** .....

L. Tibatemwa-Ekirikubinza



Signed, dated and delivered at Palais de Justice, Ile du Port on 17 December 2019