

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2021] SCCA 41 13 August 2021
SCA 03/2019
(Appeal from CS 67/2017)

Ryan Darell Etienne Hoareau

1st Appellant

Akira Tania Hoareau

2nd Appellant

Tina Crystel Hoareau

3rd Appellant

(rep. by Mr. Kieran Shah)

and

Hanitra Hoareau

Respondent

(rep. by Mr. Daniel Cesar)

Neutral Citation: *Hoareau v Hoareau* (SCA 03/2019) [2021] SCCA 41 (Arising in CS 67/2017)
13 August 2021

Before: Twomey JA, Robinson JA, Dingake JA

Summary: Appellants' father died intestate – whether letter to the bank asking wife to be a joint account holder conferred beneficial ownership on the passing of her husband – held it does not.

Heard: 6 August 2021

Delivered: 13 August 2021

ORDER

The appeal is allowed. The Court orders as follows:

- (a) The Respondent is ordered to account to the heirs of the late Philippe Hoareau, the credit balance, being SCR 38 372.19, held in the account of Philippe and /or Hanitra Hoareau.
- (b) Costs in both courts awarded against the Respondent, in favour of the Appellants.

JUDGMENT

DR. O. DINGAKE, JA

INTRODUCTION

1. This is an appeal of against the judgment of the Supreme Court dismissing a petition by the Appellants for a share of monies in the joint account of their deceased father and his wife Hanitra Hoareau, on the basis that the said monies were not a part of the estate of the deceased.

BACKGROUND

2. The Appellants Ryan Darrell Etienne Hoareau, Akira Tania Hoareau and Tina Crystel Hoareau are the children of the late Phillipe Hoareau (deceased) who died intestate in Seychelles on 7 September 2012.
3. The First Appellant Ryan Darrell Etienne and the Respondent Hanitra Hoareau are the joint executors of the estate of the deceased.
4. The Respondent is the surviving spouse of the deceased and they had one child, Rai Hoareau, at all material times hereto aged 8 years old.
5. The deceased had a savings bank account with the Mauritius Commercial Bank (MCB) of Caravelle House, Victoria, Mahe, Seychelles and also owned immovable property where the Respondent and some of his children resided.
6. In a letter dated 16 June 2011, the deceased wrote to MCB to add the Respondent as a joint signatory on the bank account and the account was opened on the same day.
7. In the agreement with the bank on the joint estate was a survivorship clause stating that:

“in case of death of anyone of us, the balance standing to the credit of the account shall be payable either to the survivors or to the survivor or to anyone of the survivors as the banks joint and several creditor/s for the said balance.”

8. The deceased’s salary and social security benefits were credited to the bank account and after the death of the deceased, the Respondent withdrew the entire credit balance from the deceased’s account save for SCR 110. The sum withdrawn was SCR 306,977.59.

GROUND OF APPEAL

9. The grounds of appeal were framed as follows:
 - (a) The learned Judge was in error to conclude that the credit balance standing in the joint account held by the Appellants’ deceased’s father with the Respondent was not part of the estate of the deceased as this finding is contrary to the principle of co-ownership under Article 815 of the Civil Code of Seychelles.
 - (b) The learned judge was in error to hold that the intent of the deceased in transferring his personal account into the joint account was irrelevant and the fact that the deceased contributed most of the money to the joint account did not render the Respondent accountable to the heirs for the credit balance at his death, when this was done against a backdrop that the deceased was sick and undergoing medical treatment in and outside Seychelles with the purpose of allowing access to the funds.
 - (c) The learned judge misinterpreted the survivorship clause in the banks mandate form in that:
 - a. it concerned the Bank’s legal obligation in the Banker and Customer relationship as a debtor towards the joint account holders (as creditor of the bank), in the event of death of one of the joint creditors, and was not a donation by way of gift *inter vivos*.

- b. it entitled the Respondent to continue to operate the bank account at the death of the deceased but remaining accountable to the heirs as it did not extinguish their rights in the father's succession.

RELIEF SOUGHT

- (d) The Appellants pray that this Court allows the appeal, and orders the Respondent to account to the heirs of the late Phillipe Hoareau, the credit balance held in the account of Phillipe and/or Hanitra Hoareau being SCR 38,372.19 to each Appellant, with costs in both courts.

THE ISSUE

10. Having regard to the facts as stated above the issue that falls for determination is really whether the court below erred in holding that the Appellants were not entitled to a share of the monies left in the joint account, and that the joint account was not a part of the estate of the deceased.
11. The answer to the above question lies in a proper appreciation and construction of the relevant provisions of the Civil Code, Article 815 and 816 thereof, the surrounding circumstances and the survivorship clause.
12. Context is always of critical importance. At all material times hereto, the husband to the Respondent was sickly and undergoing medical treatment in and outside Seychelles. The money in the account came from the deceased. This included money that came into the account as the deceased's salary transfer. This context is crucial in understanding the letter the deceased wrote to the bank making the Respondent a joint account holder.
13. The Articles of the Civil Code referred to above state the circumstances under which co-ownership arises.

14. Article 815 of the Civil Code is clear that co-ownership arises when property is held by two or more persons jointly and that in the absence of any evidence to the contrary it shall be presumed that co-owners are entitled to equal shares.
15. Article 816 of the Civil Code provides that co-ownership inter vivos arises when two or more persons acquire or become entitled to property on their own account jointly, or when a party conveys property upon more than one person jointly. It continues to provide that co-ownership arises mortis causa when property devolves, whether on intestacy or by will, upon more than one person jointly.
16. We have read the letter filed onrecord by the Appellants' father to the bank, in which he added the Respondent as a joint account holder. The letter does not give the money in the account to the Respondent as a beneficial owner or as a gift. No such intention is manifest in the letter.
17. We are of the view that had the deceased wanted to give the Respondent beneficial ownership of the funds in the account he would have said so in the clearest terms.
18. We would go further to say that given the background of an ailing husband the letter to the bank manifested an intention to grant easy access to the funds to the Respondent. It is not implausible to draw the inference from the established facts herein that this was related to his failing health.
19. We agree with Counsel for the Appellants that the mere fact that the bank's account is in the joint names does not mean, in law, that both named parties have a joint beneficial ownership, as such would depend on the provisions of the law and the circumstances of each case.
20. In all the circumstances of this case, having regard to the provisions of the Civil Code referred to above, it is plain that the deceased and the Respondent had joint legal ownership of the funds, and certainly nothing to suggest that on the passing of the

Appellants' father the funds in the account would now be beneficially owned by the Respondent.

21. The upshot of our reasoning above is that when the Respondent's husband passed on the credit balance standing in the joint account was part of the estate of the deceased.
22. We are persuaded by Counsel of the Appellants that the court below fell into error when it interpreted the survivorship clause in the bank's mandate form to be giving beneficial ownership of the funds to the Respondent. There is nothing in the bank's mandate form that could be construed as extinguishing the Appellants' rights in their father's succession.
23. On the material before us, and in applying the relevant law, we are satisfied that the Supreme Court, per Pillay J, fell into error, when it held, *inter alia*, that:
 - a. the bank does not distinguish who credited the account during the lifetime of both account holders, but the credit balance becomes payable to the surviving joint account holder on the death of the other.
 - b. the Respondent owned the money in the bank account as of right, having agreed same at the time of the opening of the account.
 - c. that account on the death of the deceased belongs to the Respondent as a result of the survivorship clause.
24. Our view that the funds in the joint account did not accrue to the Respondent and instead formed part of the estate of the deceased is consistent with a respectable lineage of authorities, as brought to our attention by learned Counsel for the Appellants in such cases as: *Re Figgis, Decd. Roberts and Another v Maclaren and Others* (1967 F. No. 1675) – 1969) 1. Ch.123 and *Sillett and Another v Meek* (2007) ALL ER(D) 248, (2007)EWHC 1169 9Ch)
25. In the result the appeal is allowed.

26. We make the following orders:

- (a) The Respondent is ordered to account to the heirs of the late Philippe Hoareau, the credit balance, being SCR 38 372.19, held in the account of Philippe and /or Hanitra Hoareau
- (b) Costs in both courts awarded against the Respondent, in favour of the Appellants.

Dr. O. Dingake, JA

I concur



Dr. M. Twomey, JA

I concur

F. Robinson, JA

Signed, dated and delivered at Ile du Port on 13 August 2021.