Leonil v Leonil
(1998) SLR 100

Nichole Tirant for the Applicant

Judgment delivered on 26 October 1998 by

AMERASINGHE J: The petitioner has made an application in accordance with section 21 of the Status of Married Women Act (Cap 231), by petition and affidavit in respect of a question between husband and wife with regard to the title of parcel of land v 5147 on which their matrimonial home stands.

The parties were married on 5 August 1943 and the respondent husband inherited a portion of land on 22 March 1974, situated at Belvedere Mahe and identified as title v 5147 , passed on transmission by death to the respondent as registered on 14 February 1994.

It is averred by the petitioner and not disputed by the respondent that during the pendency of the marriage but prior to the inheritance by the respondent, the matrimonial home was built substantially with proceeds supplied by the petitioner. She claims that throughout her working life she has been gainfully employed and invested her earnings for the construction and maintenance of the said dwelling house. She therefore claims on account of her direct financial contributions to the construction and upkeep of the matrimonial home, that she has acquired one half share of the matrimonial property.

The respondent has not contested the petitioner's claim. At the hearing of the petition on 31 July 1998, the petitioner produced their certificate of marriage as P1, and a copy of a loan agreement between the petitioner and Seychelles Housing Development Corporation for a sum of R5,585.75 borrowed as P2. Receipts and statement of payments of the loan were produced as p3 and p4. A copy of the respondent's last will was produced as exhibit P5, to show that she does not benefit by it.

Pleadings, evidence and submissions of counsel signify that the petitioner claims and seeks an order of court for a declaration of the extent of the title of the parcel of land V5147, as owned by her. It is without dispute that at least by registration the title is indisputably owned by the respondent, her husband having inherited the title.

According to the evidence, title V5147 was never acquired by the parties to the marriage by any contribution of both or one of the parties. Whatever rights may have been acquired in respect of the building standing thereon, the petitioner has no way of establishing any legal right or claim to the said title.

In law if the registered proprietor is the respondent, which is not disputed, he alone is the owner of the immovable property title V 5147. (See section 20 of the Land Registration Act (Cap 107)). No doubt if the petitioner has contributed to the building of

their matrimonial home and improvement or maintenance of it, she necessarily acquires a right to a share of the building or to benefit by her contributions by way of a claim against the respondent to the extent he has been unjustly enriched. However the Court in the instant proceedings is called upon to declare, "the extent of her title in the matrimonial property owned in the sole name of the respondent and granting the petitioner a half share therein".

It is my considered opinion that the petitioner, by contributing towards the construction of a building or for improvements or for maintenance of the building, acquires no legal right to the title to any portion or share of the land.

Article 815 of the Civil Code prescribes that "co-ownership arises when property is held by two or more persons jointly". By the petitioner's own admission the ownership of the entire property in question is held by the respondent.

Seychelles Court of Appeal in the case of *Andre Edmond v Helen Edmond* (unreported) Civil Appeal 2/1996 delivered on 5 July 1996 held thus,

> Where a co-owner has discharged an obligation jointly incurred by the co-owners in respect of the property under co-ownership that the co-owner may recover what he has spent beyond his own share of liability from the other co-owner or co-owners would not affect the entitlement of the co-owners to equal shares……..

Although the parties in the instant matter are not co-owners, the conclusion drawn by the learned Judges is that the title or any share of the title of any party will not be affected by the investment of the other party after the acquisition of its title in respect of the said property.

The aforesaid conclusion appear to be strengthened by the finding of Adam JA in the case of *Angelika Ursula Maurel v Marie Joseph Maurel* (unreported) Civil Appeal 1/1997 when he pronounced thus,

> The Status of Married Women Act (Cap 231) provides that a married woman is capable of acquiring, holding and disposing any movable and immovable property and has remedies for the protection and security of her separate property. It follows that any assets acquired during the marriage does not necessarily mean that such assets are held by each spouse in co-ownership of half share each. Spouses can enter into prenuptial and post-nuptial contracts relating to property. But when this is not the case, assets owned in the name of each spouse must be regarded prima facie as such spouse's property unless it can be established, that was not the intention of the party or parties.

In the case of parcel title v 5147 the fact of inheritance by the respondent leaves no room to consider the intentions of the party, which can relate only to acquisitions by the

parties during the subsistence of the marriage. It is also a fact that, the respondent being the registered proprietor of the said title by a transmission on death, there can be no question between the husband and wife as to the title of the property, which was so restricted by the petition, for the determination of the court under the aforesaid statutory provisions.

I therefore dismiss the petition, without costs.

Record: Civil Side No 151 of 1997