

IN THE SUPREME COURT OF SEYCHELLES

**1. SUZANNE ESPARON
2. FRANCIS ESPARON**

PETITIONERS

VERSUS

AUGUST DENIS
(Rep. by his executrix Jenny Denis)

RESPONDENT

Civil Side No 381 of 1999

Mr. C. Lablache for the Petitioners
Mr. B. Georges for the Respondent

JUDGMENT

Perera J

The petitioners originally instituted proceedings in this case in their capacity as the legatees and lawful heirs of one Delphine Hoareau who by a last will left her movable and immovable properties to them. It was averred that the said Delphine Hoareau had inherited property bearing Parcel No. J 837 from her sister, one Williamine Morel. The original respondent, August Denis who was the executor of the estate of Williamine Morel, had transferred Parcel J 837 to himself and his wife Jenny Denis, without authority. This Court, by a judgment dated 6th July 1995, allowed the petitioners' case and revoked the transfer. The following order was made *inter alia* –

- “3. Consequent to the revocation of the deed of transfer as aforesaid, the Court suggests that Parcel J 837 and the house standing thereon, be valued at the market rate as at June 1989 (date of transfer) and shared equally with the petitioners amicably in lieu of a sharing

of property”.

The equal sharing of the value of the property was ordered as the respondent August Denis was in any event entitled to a $\frac{1}{2}$ share as aforesaid, and as there was evidence that he demolished a small wooden house on the present lot 1 and rebuilt it with concrete blocks.

On 26th August 1999, the petitioners made an application for division in kind. This application was resisted by the respondent on the ground that *“the property cannot be divided between the parties by reason of its situation and the constructions thereon”*. It was further averred that the respondent was prepared to pay the petitioners the value of the $\frac{1}{2}$ share as suggested by Court.

An Appraiser who was appointed by Court has furnished a report dated 6th March 2002 together with a survey plan depicting the land and the building standing thereon. The Appraiser, Mr. Gerald Pragassen, has stated that the house on the land consisting of two units was being occupied by August Denis. It was his observation that previously, there had been two separate houses of very close proximity, but now been joined by a long corridor to make it into one large house. The extent of the land is 1088 square metres. The property was valued at Rs.652,000. His recommendation is as follows-

“In my opinion, the property can be subdivided into two lots as shown on the plan. The two units can be easily detached. There is adequate space to extend the units or build new ones. There is no problem of access, as both lots are bounded by the main road.

I have proposed that lot 1 be allocated to Suzanne Esparon and

others, whilst lot 2 be allocated to August Denis”.

It must here be stated that August Denis passed away, and his widow Jenny Denis was appointed as the executrix, and consequently substituted as the respondent in this case.

Francis Anthony Esparon, the son of the 1st respondent testified that he and his mother lived in the house on Parcel J. 837 where Delphine Hoareau and her sister also lived. However, after the death Delphine in 1990, they left the house as they were not in good terms with the Denis family who occupied the adjoining house. Subsequently, the respondent, built a corridor and joined the two houses to form one unit. He and her mother sought a division in kind as recommended by the Appraiser. He stated that both of them did not intend to sell plot 1 allocated to them. He however admitted that one of the two houses, had been a wooden, corrugated iron house, and that it was renovated and rebuilt by August Denis.

Jenny Denis, in her testimony stated that she and her husband had been living on that property for 37 years. She stated that both houses, as they stand now were built by her late husband. She vehemently opposed the division into two units, and stated that such division would reduce the value of the property. She was therefore prepared to purchase the half share from the petitioners, or in the alternative to sell whole property jointly and share the proceeds.

On a joint motion made by Counsel, the Court visited the locus in quo. The Court observed the narrow corridor which connects two units to form one house. The Court also observed the roof structure, which lends support to the assertion that the two units were joined. Basically there is no material dispute between the parties regarding that issue. The only issue therefore is whether a division, as suggested

by the Appraiser is possible.

The two plots depicted in the plan are both 544 sq metres each. The portion of the house on plot 2 is larger than the one on plot 1. The petitioners are nevertheless prepared to accept the plot. However, the court is of the view that although the Appraiser had stated that the two units can be easily detached, yet the corridor being narrow, a division along its center, will necessitate structural alterations to the portion on lot 2. Moreover, such a division will also necessitate the construction of a wall to separate the two units, which may not be approved by the Planning Division due to its close proximity. Further, the suggestion in the judgment of 6th July 1995, for sharing of proceeds was done on the basis of the evidence that the respondent had reconstructed the house on plot 1 in the bona fide belief that he was entitled to do so. Taking all these factors into consideration, I find that it would be in the interests of both parties that the petitioners sell their 1/2 share to the respondent on the basis of the valuation, or in the alternative sell the whole property and share the proceeds equally.

Hence the application for division in kind is therefore dismissed, with no order for costs.

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A..R. PERERA

JUDGE

Dated this 10th day of November 2006