

# **IN THE SUPREME COURT OF SEYCHELLES**

**MRS CECILE ELIZABETH**

**PLAINTIFF**

**VERSUS**

**MR JOSEPH MIRABEAU**

**DEFENDANT**

**Civil Side no 253 of 2002**

Mr. J. Renaud for the Plaintiff

Defendant absent/unrepresented

## **JUDGMENT**

**Perera J**

The plaintiff was living in concubinage with the defendant since 1983. They resided in the house of the defendant's parents. In 1986, one Mrs Ezilda Poussou who was living in a house belonging to the SHDC, invited the plaintiff to live with her and look after her as she was old and feeble. The said Mrs. Poussou died in September 2001 leaving the house and her belongings with the plaintiff who continued to pay the monthly rent to the SHDC. On 14<sup>th</sup> October 1992, the SHDC transferred the property bearing Title No. H. 1636 in the joint names of the plaintiff and the defendant for a sum of Rs.96,522. (P1). To finance the transaction, both of them borrowed the full sum of Rs.96,522 from the Government (P2). A further sum of Rs20,000 was borrowed from the Government to renovate the house. The plaintiff testified that both loans were

repaid by her and that the name of the defendant on the loan applications and the transfer deed was entered at the request of the SHDC as they were living together at that time.

The plaintiff further testified that on 25<sup>th</sup> November 1995, the defendant entered the house with another woman. The next day, he threatened her with a knife and forced her to leave the house with her belongings. She stated that several items of furniture and household goods listed in the plaint were now being used by the defendant and his mistress. She claims items worth Rs9,200 as belonging solely to her, and Rs25,922.50 as her half share of the other items purchased jointly by them. The plaintiff further claims *inter alia*, (1) a declaration that she is the sole owner of Parcel H. 1636, or alternatively declare that share she is entitled to, (2) proportionate rent for the period November 1995 to date of judgment (3) moral damages in a sum of Rs.50,000, (4) an order that the property be sold and the proceeds be shared.

The defendant defaulted appearance, and hence the case was heard ex-parte

Pursuant to Article 815 of the Civil Code, the plaintiff and the defendant are co-owners of the property Parcel H. 1636. Although the plaintiff stated that the defendant's name was entered in the transfer deed as a co-owner only nominally, there is no evidence contrary to the presumption of co-ownership. Hence the Court declares that the plaintiff will be entitled to  $\frac{1}{2}$  share of the property and the defendant to the other half. Accordingly, the property shall be valued, and one party shall purchase the share of the other if sole ownership is desired. However such transaction would be subject to the rights of SHDC in the property. The plaintiff will also be entitled to half of the monthly rental of Rs.610 from November

1995 to March 2006, a total sum of Rs.37,925 is due and payable by the defendant. The plaintiff has also averred that consequent to the attempted physical assault on her in November 1995, she was distressed and emotionally disturbed, and was hospitalized. She has also been deprived of the occupation of the house to which she was legitimately entitled. On a consideration of these uncontroverted facts, I award a sum of Rs.5000 as moral damages. As regards the claim for furniture and household goods, the defendant shall return the following items to the plaintiff, or pay Rs9200 being the value thereof.

1. *Divider*
2. *Glasses of different sizes*
3. *Set of cutlery*
- Coffee pot*
4. *2 nos. large bowls and 6 small bowls*
5. *1 no. flower pot (ceramic)*
6. *2 nos. pairs gold earrings*
7. *1 no. gold bracelets*
8. *1 no. table clock*
9. *1 frying pan*
- 1 no. dessert plate and 6 small plates*
10. *1 set of 6 small bowls*
11. *1 no. basket of flowers in ceramic*
12. *2 nos. wedding rings.*

As regards the balance items in the list attached to the plaint, the defendant shall retain them, but pay the plaintiff Rs.25,922.50 being half the value thereof.

No order for sale of the property and sharing of proceeds can be made as the loan from the SHDC has still not been paid and the property continues to be under a

charge.

Judgment entered accordingly in a favour of the plaintiff, together with interest and costs.

.....

A. R. PERERA

**JUDGE**

Dated this 31<sup>st</sup> day of March 2006