

# **IN THE SUPREME COURT OF SEYCHELLES**

RONALD DUBEL

PLAINTIFF

VERSUS

MAISY MARIE NADIA SOOPRAMANIAN

DEFENDANT

Civil Side No 6 of 2006

Plaintiff in person

Mrs Antao for the defendant

## **JUDGMENT**

**Perera ACJ**

The plaintiff, who was living in concubinage with the defendant for over 8 years claims a half share of a property which is registered in their joint names. The plaintiff avers that the full purchase price for the land was repaid by direct deductions from his monthly salary and that the defendant made no financial contributions. He therefore seeks to have the name of the defendant removed from the Lands Register in respect of Parcel H 5994.

Admittedly, Parcel H. 5997 was transferred in the joint names of the plaintiff and the defendant on 1<sup>st</sup> March 2002 by the Seychelles Housing Development Corporation (*S.H.D.C*), for a sum of Rs35,000 (P1). The plaintiff produced his salary statements issued to him by the Indian Ocean Tuna Limited where he was employed as a "Fish Racker", showing that a sum of Rs1500 was deducted from his monthly salary from April 2002 to November 2004 (P2). He stated that that loan has now been repaid completely .

The defendant does not dispute those payments, but avers that it was agreed between them that the plaintiff would repay the loan and that she would meet all other household expenses which she did by working in three different places as housemaid. She further avers that she contributed both financially and in kind and hence claims the market value of her ½ share, or a dismissal of the plaint.

The plaint was filed on 17<sup>th</sup> January 2006. The defendant admits that the concubinage ended three years prior to that date. The defendant on being cross examined by the plaintiff did not dispute that the concubinage ended on 2<sup>nd</sup> June 2002. Questioned as to what contributions she made thereafter, she replied *“when we broke up, we were still on good terms, you did not come to me and ask me for help, such as money, and I am a very concerned person. So if you had approached me and asked me in any way, help, to help you to repay for the piece of land, I would, but you just filed a case in Court, so I left you”*.

The plaintiff admitted in evidence that there was such an agreement between them for repayment of the loan. He however stated that that arrangement lasted only three months. This assertion is supported by the admission of the defendant that she made no contributions financially or in kind after they ended concubinage in June 2002. The defendant stated that she earned Rs.3500 per month and that she contributed from that amount towards the payment of utility bills and the food. During this time, that plaintiff was living in the house belonging to the defendant at Union Vale . She claimed that she was also repaying a loan for that property in instalments of Rs1000 but no proof was adduced in Court. The plaintiff did not pay any rent or the utility bills, although he also contributed towards the purchase of food.

As was held in the case of ***Larame v. Payet (1983-87) 3 SCAR (Vol). 355***, “no enforceable legal rights are created or arise from the mere existence of a state of concubinage, but a cause of action” de in rem verso *“can operate to assist a concubine who has suffered detriment without lawful cause to the advantage of the other party to the concubinage.”* In the present case, the plaintiff is seeking to rebut the presumption of co-ownership contained in Article 815 of the Civil Code, which states-

“Co-ownership arises when property is held by two or more persons jointly. *In the absence of any evidence to the contrary it shall be presumed that co-owners are entitled to equal shares.*”

The defendant on the other hand is seeking to rely on that presumption on the basis of indirect contributions allegedly made by her. Since no legal rights flow from a concubinage, considerations such as domestic services rendered, the fact that she was instrumental in

approaching the S.H.D.C to obtain the land, and such other matters would not enter that equation.

***(Dingwall v. Weldsmith – (1967) S.L.R. 47).***

In ***Dupres v. Balthide (C.S. 220/94) delivered on 7<sup>th</sup> October 1996***. The plaintiff who had been living in concubinage with the defendant, sought a declaration of her share in a property purchased and wholly paid for by the defendant while they were living together. She claimed that she had been paying maintenance of the family. The Court held that the claim must fail as it was based on property adjustment which had no place in concubinage, and as there had been no claim *de in rem verso* or unjust enrichment. It was also held in ***Esparon v. Monthy (1986) S.L.R. 124*** that the principles of division of property between married parties cannot be applied between parties living in concubinage. In ***Edmond v. Bristol (1982) S.L.R. 353***, the Court in similar circumstances held that the plaintiff (*woman*) was entitled to recover only such contributions to the extent of which the defendant had been unjustly enriched.

Hence the defendant will be entitled to recover her actual contributions, albeit indirectly towards the acquisition of the property. Accepting on the basis of the admitted agreement, that her financial contributions for domestic expenses enabled the plaintiff to pay Rs1500/- from his monthly salary, towards the loan repayment, but as that arrangement lasted only for three months, the defendant will be entitled to Rs4500/- (*Rs1500 x 3*). Limiting the rent free occupation of the defendant's house by the plaintiff to those three months, and estimating the ½ of the amount of the possible rent to be Rs1000, it would be equitable that she be entitled to a further sum of Rs3000. (*Rs1000 x 3*).

In the circumstances of the case, the defendant cannot be considered as a co-owner with equal rights. The Court therefore holds that the plaintiff will be entitled to be the sole owner of Parcel H. 5994 upon Rs7500 being paid to the defendant together with 4% interest thereon for three months. The defendant shall, upon receipt of such payment transfer her nominal ½ share to the plaintiff within two months thereafter, failing which the plaintiff shall register this judgment at the Land Registry as an instrument of transfer of the ½ share of the defendant, thus giving him sole ownership of Parcel H 5994.

There will be no order for costs.

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A.R. PERERA

**ACTING CHIEF JUSTICE**

Dated this 22<sup>nd</sup> day of January 2008