

IN THE SUPREME COURT OF SEYCHELLES

Carole Chetty née Emile

Of Bel Ombre, Mahé

Petitioner

vs

Freddy Chetty

Of Bel Ombre, Mahé

Respondent

Civil Side DV No: 84 of 2004

Ms. K. Domingue for the petitioner

Mr. W. Lucas for the respondent

D. Karunakaran. J.

JUDGMENT

The parties were once husband and wife having been married on 9 November 1968 in England. After the marriage, the parties started their family life, were employed and lived in England. There are two children born of the said marriage. Both are daughters, namely:

- i) *Christine Shirley Chetty, born on the 25th December 1968; and*
- ii) *Debra Anne Chetty, born on the 14th November 1970.*

The first daughter Christine, now 39, is still a child since she is mentally retarded with congenital mental deformity and needs constant care, support and attention from an adult. Since birth she has been suffering from permanent learning disability with mental handicap due to low intelligence quotient as a result of German measles infections during birth. She is registered handicapped with the London Borough of Harrow Social Services Department on the ground of (i) mental handicap; and (ii) partial sight. She cannot work nor can she lead normal life like others. She is incapable of supporting herself from her own earnings now and in the future. She will therefore be dependent on her parents or on another person for the rest of her life vide exhibit R4. The second daughter Debra is a normal child and of good health and living on her own. Be that as it may.

In 1988, the parties disposed of their assets in England and migrated to Seychelles with their family for permanent settlement. They bought a piece of land at Bel Ombre, Mahé, constructed their family home and started their new life in Seychelles. Their married life gradually took ugly turns. After 36 years of marriage, at the instance of the petitioner (the wife) this Court on the 22nd December 2004 dissolved their marriage. The petitioner was granted a *decree nisi* of divorce in her favour, on the ground that the marriage had broken down irretrievably as the respondent (the husband) had behaved in such a way that she could not reasonably be expected to live with him.

Consequent upon the dissolution of marriage, the petitioner applied to the court for a division of the matrimonial properties and thus in the instant application seeks "*a property adjustment order*" under Section 20 of the Matrimonial Causes Act, in settlement of the immovable properties, which comprise two adjacent parcels of land, situated at Bel Ombre, Mahé namely, parcel J2587 and parcel J2586. These two parcels are indeed, the subdivisions of the original parcel previously surveyed as J779, which the parties had jointly acquired during marriage as and when they migrated to Seychelles. After subdivision, both parcels now remain registered in their joint names.

The petitioner in essence, claims that she is entitled to 90% shares in the property parcel J 2586 including the matrimonial home situated thereon and also claims a half- share in land parcel J2787, on which the petitioner has

built a separate house at her own costs. As regards parcel J2787, the petitioner agrees to pay off the respondent for his half-share and interest in full quittance in the said parcel of land.

On the other hand, the respondent agrees that parcel J2587, on which the petitioner has now built her own house be allotted to her so that she shall become the sole owner thereof. As regards Parcel J2586, the respondent claims that he should be given sole ownership of the land and the matrimonial home thereon.

Pursuant to an order made by the Court, Ms. Cecil Bastille, a Quantity Surveyor carried out the valuation and submitted a valuation report in exhibit P21, dated 5th May 2006 in respect of both items of the said properties.

Land Parcel J2586 and Matrimonial Home thereon

The matrimonial home lies on parcel J2586 covering an area of 839 square meters. It is a three-bedroom house situated in a populated residential area, at Bel Ombre. Following the separation of the parties in 2003, the respondent has been and is in exclusive possession and enjoyment of the matrimonial home, whereas the petitioner has already moved out of the matrimonial home and is now living with her handicapped daughter in a new house built at her own costs, on the adjoining parcel J2787. According to Ms. Bastille, the market value of the land parcel J2586 is estimated at Rs210, 000/- and the matrimonial home thereon at Rs570, 000/- In addition, there is a garage on parcel J2586 valued at Rs30,900/-which is located close to the matrimonial home. Therefore, as per the quantity surveyor's report the total value of the land J2586 with the matrimonial home and the garage thereon is estimated at Rs810, 900/-

Land J2587

This parcel is also a fully developed plot, wherein the petitioner has now built her house with the consent of the respondent. Admittedly, the respondent did not contribute anything towards the construction of the house on this parcel. According to Ms. Bastille, the market value of this parcel of land J2587 is estimated at Rs180, 000/-

Hence, the total value the entire property namely, the two parcels of land, the matrimonial home and the garage amounts to Rs990, 900/- Indeed, the valuation thus, carried out by the Quantity Surveyor is not disputed by the parties. However, the parties dispute each other's claim on the amount of their original contribution towards the acquisition of the properties and the percentage of their share- entitlements, which necessitates this Court to make an appropriate property adjustment order in this matter.

At this juncture, it is pertinent to note that Part VI of the Matrimonial causes Act deals with financial provisions, which the Court may make upon dissolution of the marriage. Section 20(1) therein, provides that the Court may, after making such enquiries as it thinks fit, and having regard to all the circumstances of the case, including the ability and financial means of the parties to the marriage, order periodical payments or lump sum payment to a party to a marriage, or periodical payments or lump sum payment for the benefit of **a relevant child**, or make a property adjustment order under Section (1) (g) of the Act.

Now, the question arises: *Who is a relevant child, for the purposes of "financial relief" provided under Section 20 of the Matrimonial Causes Act?*

In fact, the interpretation clause under Section 2 of the Matrimonial Causes Act defines the term "relevant child" thus:

"relevant child" means -

- (a) a child of both parties to a marriage;
- (b) a child, not being a child in the care of the Director responsible for children affairs under the Children Act and in respect of whom a party to the marriage is acting as a foster parent under the Children Act, who has been treated as a child of the family by the parties;

Whereas the interpretation clause under Section 2 of the Children Act defines the terms "child", "young person" and "adult" as follows:

"child", except where used to express a relationship and except in sections 9 to 14, means a person under 18 years of age and includes a young person;

"young person" means a person of 14 years of age or older but under 18 years of age.

"adult" means a person of 18 years of age or older;

And whereas, Rule 2 of the Matrimonial Causes Rules defines a minor thus:

"minor" means an unemancipated minor;

Article 389 of the Civil Code of Seychelles defines a minor thus:

"A minor is a person of either sex who has not reached the full age of twenty-one"

Article 488 of the Civil Code again reads thus:

"Majority shall be attained at the full age of 21 years"

Section 2 of the "Age of Majority Act" runs thus:

"A person shall, for all purposes, attain the age of majority on the day he attains the age of 18 years"

It is obvious from the above provisions of law that there is no hard and fast rule or uniformity in the legal definition of the term "child" or "minor", which varies from legislation to legislation and therefore, its meaning ought to be construed in the context in which it is used in that particular legislation under consideration, which construction should undoubtedly, accord with reasoning and justice.

Coming back to the provisions under Section 2 and Section 20(1) of the Matrimonial Causes Act, in my considered view, the term "child", which appears in the expression to wit: *"relevant child"* and *"a child of both parties to a marriage"* used therein, means *not only a child, who is below 18 or an unemancipated minor* but also includes a handicapped child, *who could be of any age, provided that child suffers from any physical or mental disability and is incapable of supporting himself or herself from his or her own earnings and is dependent on her parents at the time or before the dissolution of the marriage of the parties.* These children of special category, whom I would refer to, as the "exceptional children" under the Matrimonial Causes Act, cannot be denied justice, by giving narrow interpretation to the term "child" drawing analogy from other definitions found in parallel legislations. To my mind, in the Matrimonial Causes Act, the term "child" is used rather to express a relationship in a cognate sense than simply associating it with age.

With respect to financial relief provided under Section 20 (1) of the Matrimonial Causes Act, it is pertinent to note that the Court of Appeal - in *Renaud v Renaud S. C. A No: 48 of 1998* - held thus: -

“The purpose of those provisions of these subsections is to ensure that upon the dissolution of marriage, a party to the marriage is not put at an unfair disadvantage in relation to the other by reason of the breakdown of the marriage and, as far as possible, to enable the party maintain a fair and reasonable standard of living commensurate with or near to the standard the parties have maintained before the dissolution”

In my considered view, the benefit of the said proposition should equally be extended to the children of the parties as well, including the ones, whom I referred to (*supra*), as the “exceptional children” under the Matrimonial Causes Act. Obviously, those children with such permanent disability become lifetime dependent on their parents. They are also adversely affected of their maintenance, care and financial support because of the breakdown of the marriage. Therefore, the court in making “property adjustment orders” ought to ensure that not only the parties to the marriage but also the children of the marriage including the “exceptional ones” are not put at an unfair disadvantage by reason of the breakdown of the marriage. In the circumstances, I believe, the court should enable also the children of the marriage, as far as possible to maintain a fair and reasonable standard of living including a stable environment commensurate with or near to the standard the parents had secured them before the dissolution. In the instant matter, having regard to all the circumstances of the case and more importantly considering the interest and welfare of the relevant child, it seems just and necessary that 20% shares in the total value of the entire matrimonial property is assigned to the petitioner over and above her entitlement, so that she can continue to take care, custody and provide maintenance to her “exceptional child” *Christine Shirley Chetty* for the rest of her life. This 20% share is assigned to the petitioner in lieu of a lump sum payment deemed to be made by the respondent as a parent, for the benefit of the relevant child namely, *Christine Shirley Chetty* in terms of Section

20(1) of the matrimonial Causes Act.

I will now move on to ascertain the parties' contributions and their respective share entitlements in respect of the properties in question. The following facts transpire from the oral and documentary evidence adduced by the parties in this matter:

After the marriage in 1968, the parties lived in the United Kingdom for the first twenty years of their married life, and then moved to Seychelles in 1988. Two years prior to their arrival in Seychelles they bought parcel J779, which was in 2001, subdivided into two parcels namely, parcels J2586 and J2587 vide exhibit P17.

The funds for the purchase of parcel J779 came from the petitioner's personal savings from the time she was working in the UK vide exhibit P3. She has transferred her funds to an account which the parties had opened at the Barclays Bank in Seychelles vide exhibit R11. One Mrs. Ivy Orr had their power of Attorney in Seychelles vide exhibit R1, and she withdrew the money and made the purchase of the land J779 on behalf of the parties.

As the petitioner was not a Seychellois at the time of the purchase of parcel J779, the land was registered in the sole name of the respondent. Later, after the petitioner had acquired her Seychellois citizenship, half of the property was transferred in her name. During their time in the UK, they were both employed. However, the petitioner was earning substantially more than the respondent. She was working as an assistant bank manager, while the respondent was a delivery driver. Further, the petitioner was working for the company Abbey National, which is a bank vide exhibit P5 and R10. This company gave her the benefit of a low interest mortgage which was used to purchase a house in the UK. The monthly payments for the mortgage were all deducted from her salary vide exhibit P6.

Although the respondent had been employed throughout, as his salary was less than that of the petitioner, he only contributed towards the cost of food and clothes for the children. The petitioner personally took care of all the payments for the property, which is the mortgage, taxes, insurance, utility bills etc.

By the time they moved to Seychelles in 1988, the mortgage on the house in England had been paid off. They sold the house and used the proceeds to finance their move, build a house on parcel J779 upon their arrival here, and

also purchased a car registration number S9421. According to the petitioner, as she was the one who had paid for the property in the UK, the sale of which enabled them to build the house on J779 that is, the matrimonial home, which is now situated on parcel J2586. Therefore, she claims that she is entitled to a larger share therein than the respondent. Further, she stated that she was the one who personally bought and paid for most of the furniture in the house. Five years after the house had been built, the roof was leaking badly and the petitioner claimed that she paid for the cost of a new roof from her personal funds.

In the year 2001, when the respondent and the petitioner began having difficulties living together, parcel J 779 was subdivided into parcels J2586 and J2587. The petitioner has personally taken a bank loan and built a small house on parcel J2587 for her to live in together with her handicapped daughter. The loan was repaid for entirely from her salary and the respondent did not give her any financial help at all. Undisputedly, the respondent has since March 2003 been solely occupying the matrimonial home on parcel J2586 and using the car. Obviously, Parcel J2586 is larger than parcel J2587 in extent, and even the house thereon is bigger.

Throughout their marriage, the petitioner has earned substantially more than the respondent, whose business here in the Seychelles constantly ran into financial difficulties, and the petitioner had to keep injecting money into it to keep it afloat. She also did the book keeping for the respondent's business, for which she was not paid, as he could not afford an accountant, and as such she was very conversant with the state of his finances. After the parties came to Seychelles, the petitioner's intention, according to her, was to stay at home to care for their handicapped daughter, however, she had to go and work as the money the respondent made was never sufficient to provide for the family. Since parties began living apart, the petitioner has been the only one looking after and taking care, both emotionally and financially, of the handicapped daughter.

Having regard to all the circumstances of the case, and in balancing fairness to the parties, I find that the petitioner is entitled to 60% shares in the total value of the entire matrimonial properties, which comprise the said two parcels of land, the matrimonial home and the garage thereon. The total value of the said properties has been estimated by the quantity surveyor at Rs990, 900/- . The breakdown of the valuation is as follows:

- Value of the land Parcel J2586..... Rs210, 000.00

• Value of the land Parcel J2587..... Rs180,000.00

Value of the matrimonial home on J2586..... Rs570,000.00

• Value of the garage on J2586..... Rs 30,900.00

Total value of the entire properties
Rs990, 900.00

The petitioner's entitlement

at 60% of the total value Rs594, 540.00

The child *Christine Shirley Chetty's share*

at 20% of the total value..... .Rs198, 180.00

Total value of the shares payable to the petitioner

including the child's share from the entire

property.....

792,720.00

Rs

(Less)

The value of the land Parcel J2587 on which the petitioner

has already built her house..... Rs180, 000.00

Balance recoverable by the petitioner from the rest

of the properties (Rs 792,720.00 less Rs180, 000.00)

612, 720.00

= **Rs**

In view of all the above, and in summing up I make the following declarations and orders: -

- a) *I hereby declare that the petitioner **Ms. Carole Chetty née Emile** is the sole owner of the parcel of land **Title J2587** and the house she has built thereon at her own costs. Consequently, I direct the Land Registrar to effect registration of the said parcel in the sole name of the petitioner.*
- b) *I further declare that the respondent Mr. Freddy Chetty is entitled to sole ownership of the parcel of land **Title J2586** including the*

matrimonial house and the garage situated thereon, provided he pays the sum **Rs 612, 720.00** (her balance of share) to the petitioner within four months from the date of the judgment hereof. As and whereupon such payment is made in full by the respondent, *I order the petitioner to transfer to the respondent all her rights and undivided interest in **Title J2586** including the super structures thereon.*

*On the other hand, should the respondent fail or default to pay the petitioner the said sum **Rs 612, 720.00** in full, within the stipulated period in terms of order (b) above, then on the payment by the petitioner of the sum **Rs 198, 180.00** to the respondent within two month from the date of such default, I order the respondent likewise to transfer his rights and interest in the property **Title J2586** to the petitioner and deliver up possession of the property including the matrimonial home and the garage within 30 days of the receipt of such payment.*

*In the event, should neither party complies with the order for the transfer of interest in **Title J2586** specified either under paragraph (b) or (c) above, in which case the property will be held on trust for judicial sale jointly by the respondent and petitioner and sold in public auction. From the proceeds of such sale, the petitioner shall receive 2/3 of the amount realized, whereas the respondent shall receive 1/3 thereof, after deduction of the necessary legal expenses incurred therefor.*

For avoidance of doubt, I hereby declare that the respondent is exonerated or discharged from his parental or legal obligation if any, to make periodical payments in future towards the maintenance of the relevant child Christine Shirley Chetty, as the "property adjustment order" made herein has also covered a provision in lieu of lump sum payment deemed to be made by the respondent for the benefit and maintenance of the said child; and

c) *I make no orders as to costs.*

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D. Karunakaran

Judge

Dated this 31st day of March 2008