

IN THE SUPREME COURT OF SEYCHELLES

FLAVIEN GRANDCOURT

PLAINTIFF

VERSUS

VIOLETTE ESPARON
DEFENDANT

CIVIL CASE NO 12 OF 2008

Mr. W. Lucas for the Plaintiff

Mr. Rajasundaram for the Defendant

FMS Egonda-Ntende C.J.:

JUDGMENT

1. The plaintiff is the registered owner of a parcel of land at Ma Constance, Mahe, registered as Parcel No. H 2638. In the 1994 he obtained a loan from the then SHDC of SR 150,000.00 which he used to build a house on the said land. The defendant was a friend of the plaintiff. They lived in cohabitation on this house and have had 2 children.
2. The relationship between the parties hit stormy waters and the plaintiff abandoned the home. In the meantime the plaintiff continues to be responsible for the loan. He contends that the defendant has not made any contribution towards the loan repayment. The plaintiff now desires to complete the said house. He requested the defendant to give vacant possession of the house to him but the defendant refused hence this action in which is sought an order compelling the defendant to quit the said house and give possession back to the plaintiff.
3. In her written statement of defence the defendant contended that she made arrangements with SHDC, all by herself, to repay the housing the loan, and that she continues to pay the said loan. She admitted that they are not living together with the plaintiff but that she was not the cause of the plaintiff's desertion. She maintained and continues to maintain the children.
4. The defendant denied the plaintiff's claim that she was not making any payments

to the housing loan. She undertook to establish her periodic payments to the housing loan. She contended that the plaintiff is not entitled to the relief claimed in the plaint as the defendant is the lawful and sole owner of the property on the title H 2638 and she cannot be compelled to quit her own property and give possession thereof to the plaintiff.

Lastly the defendant contended that the plaint is not maintainable as it is prescribed and the plaintiff is prohibited from claiming any relief as the plaint is filed out of time.

5. The plaintiff testified. He stated that he purchased from the Government land registered as H 2638. He tendered in court the transfer deed which was marked exhibit P1. He took a loan from SHDC of SR 150,000 and built initially a 2 bedroom house but he has since added a third room. The house is not completed. As he is a mason he did the building himself and got the assistance of a carpenter.

The loan granted by SHDC was in the names of Flavien Grandcourt and it was secured by title to the land. The monthly repayment is SR459. The last payment he made was in May 2009 and the receipt for the same was admitted into evidence and marked exhibit P2. The balance on the loan account is SR 47,458.97.

6. He further testified that they used to have problems with the defendant and it is now clear that both of them cannot live together. He had to move out of the house in order to have peace. Now he wants to get back into his place. He asked the defendant to vacate the house but she refused. Copies of the letters requesting defendant to vacate the house were entered in evidence and marked exhibit P3 and P4.
7. He further stated that they had two children now 24 and 20. The properties in the house were bought by both of them. The defendant has work as a house carer. He does not recall what she was earning. He stated that the defendant did not have any share or percentage of ownership in the house.
8. In cross examination he stated that they have had fights with the defendant and he has left the house but he comes back. He comes back to fix anything broken. The Sunday prior to his testimony in court he visited and talked with his 2 daughters at the house. The defendant had not made any contribution to the house. Having lived with the defendant he knows that they cannot live together. He admitted writing a letter to Housing Finance seeking authority to sell the house to the defendant. The letter was admitted into evidence as exhibit D1. The consent was refused. He wrote another letter withdrawing the offer to sell the property to her.
9. Defence witness number 1 was the defendant. She testified that she knew the plaintiff

and they had lived together for 16 years. These were 16 years of martyrdom in which she was not treated as his wife. They were not married. They had 2 children, who are now 21 and 20 years of age. She stayed at home until the children were about 5 or 6 years old.

She then started working as a home carer.

The plaintiff was the cause of their problems. They have been to the Police and Family Tribunal. The plaintiff beat her up and broke her nose. The plaintiff deserted the home though he still comes back to the home. She did not chase him away. She is prepared to allow him to live in their home. She is the one who raised the children. The plaintiff did not assist at all.

With regard to the house she testified that she took 2 loans to help with the house from the Savings Bank. The loans were of SR15,000 and SR20,000 respectively. She tendered into evidence her bank statement and it was marked exhibit D2. She has completed payment of the loans. The plaintiff took all the money and he drank it all. The plaintiff asked the defendant to buy some cement which she did but he threw the cement away. She has contributed about SR 150,000 to the house. The plaintiff had offered to sell the house to her if she withdrew a case against him from the police which she refused to do. She would be prepared to buy the house from him. She would raise a loan to do so. She has no place to go to. If the plaintiff wants her to leave this property he must first get a place for her to move to.

In cross examination she testified that she took 2 jobs a day earning a total of SR 1600 per month. She used this to look after the children. The plaintiff was paying the loan at the time. The plaintiff drank the money she obtained for the first loan. For the second loan she used it to purchase tiles that were fixed inside the house. She is now claiming SR 150,000 because the plaintiff beat her and broke her nose. Her life with him was like that of a martyr. The claim for that amount is for mistreatment and not contribution to the property. She has never made any loan re-payment to HFC.

Defence witness number 2 (DW2) and defence witness number 3 (DW3) were Tania and Sandra Grandcourt, daughters to the plaintiff and the defendant. In their testimony they both stated that it is their mother that brought them and paid for their needs. It is their father that was violent to their mother and not the other way around.

That was all the evidence adduced in this case. The learned attorney for the defendant, Mr. Rajasundaram, addressed court first. He submitted that on equitable grounds the defendant should be allowed to stay in the house given the number of years that they had lived together with the plaintiff, her contribution to raising the children, and to the building of the house. She had approximately invested SR150,000 in the house. In light of the provisions of Article 632 of the Civil Code of Seychelles Mr. Rajasundaram submitted that the defendant, being an unmarried partner of the plaintiff, had been granted use and habitation rights.

Secondly Mr. Rajasundaram submitted that violence by the defendant against the plaintiff has not been proved. The plaintiff is still able to go and live in their home in question. That is not opposed by the defendant. The compromise is that both should live in the said house. There was no contract between the parties over the house. So there is no cause of action for the plaintiff against the defendant.

Lastly Mr. Rajasundaram submitted that the present action was prescribed and cannot be maintained against the defendant as it was brought more than 5 years since the cause of action. He stated that the plaintiff in his plaint stated that he left the home in 2002. The plaint was filed in 2008, a period of 6 years since the cause of action arose. In accordance with Article 2271 the prescription period is 5 years.

10. Mr. Lucas the learned attorney for the plaintiff submitted that this is a simple case of sole ownership of the house and land in which the owner is seeking an order from this court directing the defendant to vacate. The only way the defendant would establish any interest in the property is to show that she contributed to the property which she has failed to do. Given the pleadings of the defendant and the evidence in court, the defendant has no claim before the court. She did not file a counter claim. She is therefore not entitled to any remedy as she requested for none on her pleadings.
11. With regard to the issue of prescription Mr. Lucas submitted that as this is immovable property limitation to bring to an action is not 5 years but 10 or 20 years depending on the particular case. In any case he submitted that the defendant was first requested to move out of the house by the plaintiff only in July 2005 vide the defendant's attorney's letter, exhibit P3. It is when she failed to comply that time would start to run, in which case, 5 years have not elapsed between that letter and the filing of the this case.
12. Finally Mr Lucas submitted that there was no need to revert to English law under Section 5 of the Courts Act as the law that governs this dispute is the Civil Code of Seychelles which provides for remedies. If the defendant can prove contribution she would be entitled to that. Otherwise there is sufficient evidence that the plaintiff is entitled to possession to possession of his property.

On consideration of all the evidence adduced in this case it is clear that the plaintiff is the owner of the land registered as Parcel No. H2638 having bought the same from the Government of Seychelles. It is undisputed that he took out a loan from SHDC for SR150,000.00 to develop the said property. He built a 2 bed room house thereon. He added another bedroom later on. The plaintiff is still paying that loan though he may be in arrears.

13. Contrary to the defendant's claim on the pleadings that she 'made satisfactory arrangements with the SHDC all by herself, for her to repay the housing loan that she had taken' and that she is still paying the housing loan, it is clear that she made no such arrangements. Neither has she contributed to the payment of that loan. This is the position on her own testimony in cross examination. It is amply clear that her evidence is at variance with the case she put forth on her pleadings. Her assertion in the pleadings that, 'this defendant is the lawful and sole owner of the property on the title H2683' is

not borne out by her own evidence adduced in this case.

She testified that she would wish the plaintiff to sell the house or property to her. In fact one such offer had been made to her in light of exhibit D1 in which the plaintiff had sought the permission of Housing Finance Company to transfer the property to the defendant. The matter did not progress any further on her own testimony. It is inconceivable that she would be willing to buy 'her' property of which she was already 'the lawful and sole owner'.

The defendant contends that this action is filed out of time, by virtue of the provisions of Article 2271 of the Civil Code of Seychelles, having been filed more than 5 years since the cause of action arose. She asserts that the cause of action arose in 2002 when the plaintiff states that he deserted the home. As pointed out by the Mr Lucas this is not a matrimonial cause of action. That date may be relevant with regard to the personal relationship between the 2 parties.

With regard to the claim for the land and house the operative date must be the date when the plaintiff asked the defendant to vacate the house and she declined. This is the date when the cause of action in respect of the current claim arose. Likewise any calculation of the period of prescription must commence with this date which is 7th July 2005. The plaintiff's action therefore is neither prescribed nor out of time whether you take 5 years or 10 years or 20 years.

Mr. Rajasundaram submitted that the defendant, on equitable grounds, was entitled to remain in the house. She had contributed to the building of the house. She had raised their 2 children. All her earnings were towards that home. She had invested approximately SR 150,000.00 in the house. Mr. Lucas's response is that contribution would be the defendant's only remedy but it had not been proved.

It is possible that the defendant could have maintained an action under Article 1381 of the Civil Code of Seychelles to claim her contribution to the property in question. This would be an action for unjust enrichment against the plaintiff to recover her contribution to the property in question given the absence of any contractual, semi-contractual or delictual or semi-delictual relationship between the parties in relation to the property. In Payet v Larame [1987] SLR 78, a woman, in somewhat similar circumstances to the defendant, was able to recover her contribution to the property in question.

The difficulty in this case, apart from the question of evidence, is that the defendant did not file a counter claim, in which she could have put forth her claim and a prayer for relief. The adverse party would then have known the case it was going to meet. A party must be bound by the pleadings filed in court.

Notwithstanding the defendant's failure to file a claim for her contribution to the property in question there are serious evidential problems with the same. It is true that in her evidence in chief she claimed SR 150,000.00 as contribution to the house. However, during cross examination she agreed that this sum had not been spent on the house by her. Rather it was a claim for mistreatment suffered at the hands of the plaintiff.

She also had claimed that she borrowed money from a bank which she gave the plaintiff but the plaintiff drank all of it. So that money obviously did not go to the house. She testified that the second loan was used to buy some tiles which were put inside the house. No further

particulars were provided to substantiate that claim. The plaintiff did admit that she borrowed money that was used to work on a retaining wall for the property but he did not indicate how much money this was. Given the state of evidence on this matter I am unable to determine what contribution, if any, the defendant made to the property in question.

Lastly Mr. Rajasundaram submitted that the defendant, being the unmarried partner of the plaintiff for 16 years, had either expressly or impliedly been granted 'use and habitation rights' by the plaintiff under Article 632 of the Civil Code of Seychelles. Again this 'answer' to the plaintiff's claim was never pleaded. It is being raised for the first time in the final address of the learned attorney for the defendant. No evidence was adduced in support of or against the same by either party.

In Allen Ernestine v Mario Ricci [1984] SLR 122 the Supreme Court was faced with a similar situation. E E Seaton CJ stated at page 125,

'During the closing address, counsel for the defendant attempted to raise the defence based on the second paragraph of Article 1589, that if there was a promise to sell or an option to purchase in the present case it was not registered and therefore cannot be sued upon. I would, however, agree with counsel for the plaintiff that as the validity of the promise or option agreement has not been challenged in the statement of defence or earlier in the trial, it could not be done at such a late stage.'

14. I am satisfied that the defence of 'use and habitation rights' under Article 632 of the Civil Code of Seychelles is not available to the defendant in these proceedings as an answer to the case by the plaintiff. It is being raised late in the proceedings. Secondly it is contrary to the position of the defendant on her written statement of defence in which she contended that she was the lawful and sole owner of the property on H2638.

In the result I find for the plaintiff. He is the lawful and sole owner of the land and house on Parcel No. H 2638. The defendant is ordered to vacate and give up possession of the land and house to the plaintiff within 30 days from the date of this judgment. Given the nature of the prior relationship between the parties I will make no order as to costs.

Signed, dated and delivered at Victoria this 19th day of October 2009

FMS Egonda-Ntende

Chief Justice