

IN THE SUPREME COURT OF SEYCHELLES

Mirenda Esparon of

Glacis, Mahé

Plaintiff

Vs

Alexis Monthy of

Glacis, Mahé

Defendant

Civil Side No: 436 of 1998

=====

===== Mr. F. Bonte for the plaintiff

Mr. D. Lucas for the defendant

D. Karunakaran. J.

JUDGMENT

The plaintiff in this matter is the former common law wife of the defendant. The parties began to live together as man and wife in the middle of 1990s, although they had known each other over a couple of years before. While they were living together, they were occupying a rented house situated on Title H2557 at Glacis hereinafter called the “property”. Both of them were employed throughout their cohabitation and earning members of the family with three minor children.

It is not in dispute that during their cohabitation - on the 24th January 1995 - the parties purchased the said "property" in their joint names vide exhibit P1, for the price of Rs250, 000/- They took a joint-housing-loan of Rs 250,000/- from the then Mortgage Finance Company of Seychelles (now merged with Seychelles Savings Bank and Seychelles Development Bank). The property was given in mortgage as security for the repayment of the said loan. Both parties started making repayments of the said housing-loan by paying regular monthly installments, as per the terms of the Loan Agreement vide exhibit P2. Over a period of about three years of such monthly repayments, their relationship gradually got deteriorated and the concubinage ended in August 1999. According to the plaintiff, since June 1998, the defendant thus ceased all loan repayments leaving the plaintiff to bear the burden of the repayments. On 26th June 1998 and 7th July 1998, the plaintiff authorized the Seychelles Savings Bank to deduct the loan repayments from her personal account on a monthly basis. Thus, the plaintiff continued paying her regular monthly installment on her own taking sole responsibility for the repayment of the housing loan. According to the plaintiff, as at 3rd December 1998, she had paid a total sum of Rs114, 509.98 and the defendant had paid a total sum of Rs56, 446.60 towards the repayment of the said housing-loan. In the circumstances, the plaintiff contends that it is just and necessary that the defendant's name should be removed from all documents pertaining to his interest in the property and the plaintiff should be declared as sole owner of the property upon imbursement to the defendant of his contribution of all moneys paid towards the said housing loan. Therefore, the plaintiff accordingly, prays this Court for a judgment in her favor in this matter.

On the other side, the defendant claims that he was making regular monthly loan repayments to the bank through the plaintiff. Those payments were made from his own earnings as he was self-employed as a mechanic throughout his cohabitation with the plaintiff. Moreover, the defendant testified that he used to give Rs3800/- every month to the plaintiff so that she could pay that sum at the bank towards housing loan repayments. He thus continued repayments until 2002. Further, the defendant stated that in order to take the housing-loan from the bank, he had to pay a deposit of about Rs87, 000/- with the bank to get the loan. He also sold his motor vehicles and gave plaintiff substantial sums to effect repayments of the loan. He further testified that although the plaintiff was working in his shop "Style Boutique" she was getting a salary from him. According to the defendant, while they were living together in the property - on the 23rd August 1999 - the plaintiff unlawfully evicted him from the property. Consequently, the defendant had to move out and has been living in a rented house paying a monthly rent of Rs 3,000/- per month. He therefore, had to stop his

contribution for the monthly repayments of the housing loan. Moreover, according to the defendant, the plaintiff committed a fault in law for having unlawfully evicted him that resulted in prejudice, damage and loss to the defendant. Hence, the defendant makes a counterclaim against the plaintiff for loss, damage and prejudice as follows:

Contribution towards rented accommodation

at R3,000/- per month

Rs 9,000.00

Moral damage and prejudice
45,000. 00

Rs

Total _____

Rs 54,000.00

In the circumstances, the defendant prays this Court to dismiss the plaintiff's claim and enter judgment for the defendant and against the plaintiff in the sum of Rs 54,000/- with interest and costs.

I meticulously, examined the evidence on record including the affidavits and documents adduced by the parties. I gave diligent thought to the submissions made by both counsel. First of all, on the question of repayments of the housing-loan, on the strength of the evidence adduced by the plaintiff, I am satisfied more than on a balance of probabilities that it was the plaintiff, who has substantially repaid and has been currently repaying the housing-loan in question, except the payment of Rs69, 028/- vide exhibit P4, which sum approximately amounts to Rs70, 000/-, the defendant has directly paid from his own earnings during the cohabitation of the parties. As regards the defendant's counterclaim, I attach much credibility to the evidence of the plaintiff to the effect that she did not commit any fault in law against the defendant nor did she unlawfully evict the defendant from the property. I believe the plaintiff, while she testified that the defendant left the property on his own as he was warned by the police

not to threaten assault and cause domestic violence against the plaintiff and the children. I do not believe the defendant's version to the contrary. In any event, I find that the defendant has not proved his counterclaim to the degree required in civil cases. Hence, I reject the defendant's counterclaim in its entirety.

Coming back to the plaintiff's claim, now, the question arises:

'Who should be given the sole ownership of the suit-property among these two co-owners upon payment of compensation being made to the other for his or her contribution?'

It is not in dispute that the plaintiff is presently living in the property with the children, whereas the defendant is living in a rented accommodation. Hence, the **degree of personal need** for the defendant to have a shelter for himself by acquiring the sole ownership of the suit-property is undoubtedly, **higher** than that of the plaintiff. At the same time, the fact remains that the amount of contribution the plaintiff has made towards the purchase-price is substantially more; in other words **higher** than that of the defendant. Now, the plaintiff competes to acquire sole ownership and whereas the defendant attempt to maintain his interest as a co-owner of the property claiming that he has contributed more than the plaintiff towards the repayment of the housing loan. In a situation of this nature, when two or more co-owners compete among themselves to acquire sole or co-ownership of their co-owned property and especially, when their claims are based on the **varying degree of their personal need** and **varying degree in the quantum of their contributions**, the Court is obviously, placed on the horns of a dilemma. On one side, the defendant resorts to the factor of **higher degree of personal need** as he is now living in a rented house and on the other side, the plaintiff resorts to the factor of **higher degree of contribution** towards the purchase price. Obviously, there arises an irreconcilable conflict between the claim of the defendant as it is based on **equity** and the claim of the plaintiff as it is based on **law** (legal claim). Now, the Court cannot fully honor its separate duty to do justice to each co-owner by granting each, the sole-ownership of the property. The Court is inevitably, placed in an impossible position. What is then, reasonable to do in the given circumstances of the instant case? In such a conflicting situation, to my mind, the only solution is to apply **"reasonableness"** and choose the

“least detrimental alternative” and make a determination accordingly. As rightly observed by Lord Green (M. R) in **Cumming Vs. Janson 1942 2 All E R 653** and p656:

“In considering reasonableness, it is my opinion perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing that he must do, in what I venture to call, a broad commonsense way as a man of the world, and come to his conclusion giving such weight, as he thinks right to the various factors in the situation. Some factors may have little or no weight; others may be decisive but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”

Applying the above dictum, in considering **“reasonableness”** in this matter, I gave due weight to various factors in the situation. In striking a balance amongst others, I find that the factor as to **“higher degree of contribution”** relied upon by the plaintiff outweighs the factor as to **“higher degree of personal need”** relied upon by the defendant. It is not uncommon that at times **equity** is eclipsed by **law**. Be that as it may, the factor as to the **“degree of personal need”** since based on **equity**, the Court ought to be cautious that this factor should not be allowed to unduly influence its mind in deciding which co-owner should be given the sole ownership and which one should be compensated for the contribution made. Having said that, I conclude that the decisive factor, which the Court ought to take into account in determining the issue as to **“sole ownership”**, is the **“higher degree of contribution”** the plaintiff has made towards the purchase price. Indeed, **reasoning** dictates that the plaintiff should be granted the sole ownership of the property since she has substantially contributed or has made major contributions towards the purchase price, rather repayment of the housing loan. Moreover, the plaintiff has three children for whom she ought to provide a decent shelter. At the same time, **justice** demands that the defendant should also be compensated for the

material and financial contributions he has made.

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

- (a) *I hereby declare that the plaintiff **Ms. Miranda Esparon** is entitled to sole ownership of the property namely, parcel of land **Title H2557** situated at Glacis, Mahé, whereas the defendant **Alexis Monthy** is entitled to compensation in **the sum of Rs. 70,000/- payable by the plaintiff** in settlement of the defendant's share in the property.*
- (b) *Further, I order the plaintiff **to pay the said sum of Rs. 70,000/- to the defendant** within four months from the date of the judgment hereof.*

*As and whereupon such payment under paragraph (b) above, is made in full by the plaintiff either directly to the defendant or through his attorney, I order the defendant to transfer thenceforth all his rights and undivided interest in **Title H2557** including all or any super structure thereon to the plaintiff.*

*In the event, despite receipt of the said sum in full, should the defendant fail or default to execute the transfer in terms of order (c) above, I direct the Land Registrar to effect registration of the said parcel **Title H2557** in the sole name of the plaintiff, upon proof to his satisfaction of payment of the said sum **Rs.70,000/-** by the plaintiff to the defendant; and*

- (c) *I make no order as to costs.*

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D. Karunakaran

Judge

Dated this 7th day of October 2010