

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES

Civil Side No 159 of 2010

Simon Ignace

Plaintiff

Versus

1. Joyceline Simeon
2. Elina Betina Simeon

Defendants

S Rajasunduram for the plaintiff
Defendants unrepresented

JUDGMENT

Egonda-Ntende CJ

[1] The plaintiff and defendant no.1 are stated to be common law partners living at Grand Anse, Mahe. Both signed a tenancy agreement on 9 May 1991 taking on a three bed roomed flat from Property Management Corporation of Victoria, Mahe. The plaintiff and defendant no.1 lived in that flat until sometime in September 2009 when the plaintiff was prevented by the defendant no.1 and her daughter, defendant no.2, from entering the rental premises. Defendants have since resisted the plaintiff from gaining entry and enjoying the premises at Grand Anse.

[2] The plaintiff therefore seeks a permanent injunction to restrain the defendants from obstructing his re entry into the premises in question. The plaintiff seeks a declaration that he is free to occupy and have convenient use of the flat as a co-tenant until it is determined by the Landlord and costs of this suit.

[3] In answer to this claim the defendant no.1 denied that the plaintiff was her common law partner. She contends that they were married but were divorced in 2003. The plaintiff has been violent to the defendant no.1 and her children. The plaintiff is also a drunkard who does not make any financial contribution to the household expenses. The defendant no 1 denies that she has sub let the property to her daughter, defendant no.2.

Defendant no.2 has always lived with defendant no 1 in the said house. Defendant no.1 remains the tenant to-date.

[4] As both the plaintiff and defendant no.1 are divorced and the plaintiff's conduct puts the lives of those in the premises at risk there is no reason why they should live together. The defendants prayed that this suit should be dismissed.

[5] The facts of this case as can be gathered from the pleadings and the testimony of the witnesses are that the plaintiff and defendant no.1 met and lived together for 15 years. Prior to coming together the defendant no.1 had already given birth to defendant no.2. They then had 2 other children. Initially they were in a smaller house. Government then rented them this flat given the size of their family. They got married in November 1991.

[6] In 2003 they divorced and the decree was made absolute in May 2003. No proceedings were initiated with regard to maintenance of either spouse or determination of any interest in the property acquired or in their possession at the time of the dissolution of their marriage. This is the first action since then.

[7] This action has been brought as one simply enforcing a right or an interest in land. However, in my view given the relationship of the parties it is more a domestic or matrimonial related dispute that ought to be determined in proceedings under the Matrimonial Causes Act and in particular Section 20 of the said Act. It states in part,

‘(1) Subject to section 24, on the granting of a conditional order of divorce or nullity or an order of separation, or any time thereafter, the court may, after making such inquiries as the court thinks fit and having regard to all the circumstances of the case, including the ability and financial means of the parties to the marriage --

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

(g) make such order, as the court thinks fit, in respect of any property of a party to a marriage or any interest or right of a party in any property for the benefit of the other party or a relevant child.’

[8] The plaintiff as a co-tenant or joint tenant with the defendant no.1 had an interest in the flat. As a divorced couple I do not see how this court can order that they live together in the same apartment unless partition is possible and is also permitted by the tenancy agreement or their landlord, issues that have not been canvassed in this proceeding. The kind of inquiry necessary for the substance of this dispute has simply not been possible given the way these proceedings were commenced, managed, heard and argued. What is before this court is simply an action to enforce an interest in a flat which in the circumstances of this case is not enforceable in my view.

[9] Accordingly I dismiss this action but given the relationship between the parties I will order each party to bear its costs.

Signed, dated and delivered at Victoria this 18th day of February 2011

FMS Egonda-Ntende
Chief Justice