

IN THE SUPREME COURT OF SEYCHELLES

Marie Claudia Pointe nee Delpech

Petitioner

vs

Terrence Fred Pointe

Respondent

Divorce Side No. 81 of 2010

Mr. France Bonte Attorney at Law for the Petitioner

Mr. B. Georges Attorney at Law for the Respondent

JUDGMENT

Burhan J

This is an application under section 20(1) (g) of the Matrimonial Causes Act (Act No.3 of 1992) for property and financial adjustments consequent to a dissolution of marriage.

The main two issues to be decided in this case is the adjustments to be made in respect of the matrimonial house and property which admittedly is in the name of both parties, situated at Bel Air bearing Title V1166, comprising of a plot of land with an area of 510 square metres and a three bedroom house which has a total floor area of 129 square metres as described in the valuation report of Hubert Alton & Co dated 28th February 2007.

The other issue to be decided is the adjustments to be made in respect of the business which admittedly is in the name of both parties bearing the business name “View”, the nature of the business being “Land Surveying.”

It is the contention of the petitioner Marie Claudia Delpeche that she is willing to adjust her original claim of a 3/4 share as set out in her affidavit dated 9th November 2010 to a claim of a 2/3rd share in respect of the matrimonial house and property. It is submitted on behalf the respondent Terence Fred Pointe that the petitioner is entitled to only a 1/2 share of the said matrimonial property.

It is admitted by both parties that the petitioner has left the matrimonial home and is now living elsewhere. The respondent further states that after the petitioner left he is now making full payments in respect of the loan taken in respect of the said house and property a matter not contested by the petitioner.

On the admissions made by the parties it is apparent that the petitioner has now left the matrimonial home and has lost the comfort and security she enjoyed prior to the marriage being dissolved. It is apparent therefore that a benefit enjoyed by the petitioner has now been lost by her as a result of the said divorce. In the case of ***Senville Esparon v Beryl Esparon SCA 12/1997*** it was held:

When considering “all the circumstances” under section 20(1) of the Matrimonial Causes Act, the court may have regard to factors such as:

“Any benefit which a party loses as a result of the said divorce.”

It is apparent that the petitioner has not only lost a benefit namely the comfort and security enjoyed by her in her matrimonial home but would have to now meet the escalating costs of either constructing or purchasing a new house and property.

In the case of ***Freddy Chetty v Carole Emille SCA 11 Of 2008*** it was held that:

“Court may make an order for the benefit of a party to the marriage even if that party has not contributed financially.”

It is to be noted the respondent admits that the petitioner is entitled to 1/2 share of the said property.

For the aforementioned reasons, considering the admission of the respondent, the loss of benefits sustained by the petitioner and the escalating costs of constructing and purchasing a new house and property, I am satisfied that the claim of the petitioner of a 2/3rd share of the matrimonial house and property is justified and thus award same to the petitioner based on the current market value of the said house and property.

As admittedly the respondent is in possession of the said premises he will be given the option to decide whether he wishes to continue living in the said premises or not and if he decides to continue in possession of the said premises as sole owner, he must deposit the said 2/3rd share of the petitioner, in a sum of money, in the account of the petitioner or to her credit in court.

Further if both parties are unable to agree on the current market value of the said house and property both parties may jointly appoint a valuer to ascertain same. Expenses in respect of the joint valuation are to be equally borne by both parties. If both parties are unable to agree on a joint valuation and a valuer, each party may at

his or her own expense obtain an independent valuation and court will thereafter determine which valuation is to be accepted.

With regard to the adjustments to be made in respect of the business "View" it is admitted by the respondent that the said business is in the name of both parties a fact affirmed by the registration of business document filed in the record. Both parties have no objection to an accounting of the said business being carried out and a report made available to the parties.

The petitioner also moves court that the business be valued and her half share be paid to her of the value of the business and also states that on this being done she will consider the possibility of a joint enterprise after her profits have been paid up to date. I find this claim of the petitioner unfair by the respondent as once the petitioner's half share of the value of the business is paid, she ceases to have made any contribution towards the value of the business and for her to thereafter be paid profits accruing from the business would be not acceptable. Further if she is claiming a share of the profits made from the business, her claim for her share of the rent for the business being conducted in the matrimonial home up to date, cannot be accepted as that would be her contribution towards the joint enterprise.

Considering the abovementioned facts this court makes order that an immediate accounting of the business "View" be done at the expense of both parties and the value of the business be ascertained. The petitioner will be entitled to a 1/2 share of the value of the said business. The petitioner is also entitled to be paid a 1/2 share of the profits only from the date of filing of the plaint (dated 27th May 2010) up to the date her share of the value of the business is paid as this court is of the view,

in the absence of evidence to the contrary, any profits earned earlier would have been utilized to cover the cost of household expenses of both parties.

Thereafter the respondent is free to run the said business on his own and may take all necessary legal measures to do so. Considering the nature of the application no order is made in respect of costs.

M.N BURHAN

JUDGE

Dated this 23rd day of August 2011