IN THE SUPREME COURT OF SEYCHELLES

Cecil Chetty (Formerly Lepere)

Of Green Which, Mahé **Petitioner/Applicant**

Vs

Patrick Lepere

Of Green Which, Mahé **Respondent/ Respondent**

Divorce Side No 127 of 2007

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==========Mr. F. Elizabeth for the Applicant

Mr. B. Houareau for the Respondent

D. Karunakaran. J.

JUDGMENT

This is a petition by an ex-wife, hereinafter referred to as "the petitioner" against her ex-husband, hereinafter referred to as "the respondent" for an ancillary relief consequent upon the dissolution of their marriage. In this matter, the petitioner prays this Court for a judgment

I. Ordering the respondent to keep sole ownership and possession of the motor vehicle Registration number S10060;

II. Ordering the respondent to transfer his half share in parcel of land H7184 to the petitioner; and failing which

III. Ordering the Land Registrar to register the said parcel of land in the sole name of the petitioner.

The petitioner and the respondent were lawfully married on 29th December 1997. After the marriage, the parties lived together at Mont Buxton, Mahé. They have two children born of the marriage. They are now, minors. Throughout the marriage, both parties have been earning members and have contributed towards the maintenance of the family. During marriage, they bought a piece of land parcel H7184 at Mont Buxton in their joint names. In 2008, their married life came to an end. On 27th March 2008, at the instance of a petition by the petitioner, the Court dissolved the marriage of the parties.

Following the dissolution of marriage the petitioner has now come before this court seeking property adjustment first-above mentioned. The petitioner claims herein that she is the sole owner of the said parcel of land since she paid the entire purchase price Rs 30,000/- out of her own funds to acquire the property with no contribution from the respondent. Besides, it is the case of the petitioner that motor vehicle Registration number S10060 was purchased by them during marriage out of their joint earnings, which is now in respondent's possession.

The respondent in his answer to the petition has raised a point of law as a plea in limine litis. He contends that the petition filed by the petitioner for ancillary relief in this matter, is bad in law since the petitioner has not complied with rule 4(1) of the ***Matrimonial Causes Rules, 1993 (hereinafter called the Rules)*** which reads thus:

> *"Every application in a matrimonial cause for ancillary relief where a claim for such relief has not been made in the original petition, shall be by notice in accordance with Form 2 issued out of the Registry that is to say every application for:*
>
> *(a) maintenance pending suit;*
>
> *(b)*
>
> *(c)*

(f) an order 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"

Therefore, Mr. B. Houareau, learned counsel for the respondent submitted that this petition is not maintainable in law and liable to be dismissed in limine. Moreover, on the merit the respondent contended that there is no evidence on record to show how and when the petitioner contributed her funds or earnings towards the purchase price of the land and the motor vehicle in question. According to the respondent matrimonial properties - the land and the motor vehicle - were purchased from the joint contribution and as such belong to both parties jointly and so should remain registered accordingly. Furthermore, it is the contention of the respondent that he has also contributed from his earnings for the maintenance of the family and for the purchases of the properties in dispute. Hence, the respondent seeks this Court for an order that his half share in the matrimonial property should remain as it is and that status quo should be maintained in respect of both properties in dispute.

I diligently perused the pleadings and averments made in the affidavits. I gave a careful thought to the submissions made by counsel on both sides.

Obviously, on the face of the record it is evident that the petitioner has not complied with rule 4(1) of the ***Matrimonial Causes Rules, 1993 (hereinafter called the Rules)*** which reads thus:

"Every application in a matrimonial cause for ancillary relief where a claim for such relief has not been made in the original petition, shall be by notice in accordance with Form 2 issued out of the Registry that is to say every application for:

The petitioner has simply filed an application for division of matrimonial property, which is not even supported by an affidavit. Hence, as rightly

submitted by Mr. B. Houareau, the application is liable to be dismissed in limine. I therefore, dismiss the petition accordingly.

In any event, the evidence on record in this case is grossly insufficient to enable the Court to embark on the exercise of ascertaining and declaring the shares of the parties in the disputed properties. It is true that there is no evidence on record to show how and when the petitioner contributed her funds or earnings towards the purchase price of the land and the motor vehicle in question. It is therefore, not appropriate for this Court to deal with the instant application in that respect: ***vide A. Edmond vs. H. Edmond SCA CA 2 of 1996.***

Having arrived at the above conclusion, I would also like to point out that in matters of matrimonial cause, when a party, whose marriage has been dissolved, if intends to seek any ancillary relief in relation to any property right he or she should apply for such relief under section 25 of the Matrimonial Causes Act and in accordance with rule 4(1) (f) of the Matrimonial Causes Rules, 1993.

In the final analysis, I find the instant application is not maintainable either in law or on facts. Accordingly, I order status quo to be maintained in respect of both properties in dispute. For the avoidance of doubt this Court declares that both parties to the instant application are co-owners in respect of land Title H7184 situated at Mont Buxton, Mahé and the respondent shall keep sole ownership and possession of the motor vehicle Registration number S10060.

In the event of any appeal to the Court of Appeal against this judgment in this matter, I would like to mention that the above declaration by this Court shall not fall in the spectrum of ***ultra petita***. May the attention of the Court of Appeal be drawn to Section 20 (1) (g) which provides that this Court has unfettered discretion to make such order, as it thinks fit, in respect of any property of a party to a marriage etc. …It is

also pertinent to note that this Court has jurisdiction to make any order as it thinks fit, in relation to matrimonial properties in exercise of its equitable powers conferred by Section 5 of the Courts Act, in the interest of justice, irrespective of the fact, whether the issues were alive before the Court or not in respect of any determination it makes in relation to those properties. ***See, Renaud vs. Renaud CA No: 48 of 1998 and Paul Florentine vs. Laurence Florentine SCA CA No: 4 of 1990.***

Having said, I should venture to state with humility and a sense of duty that some of the recent judgments have been determined by the Court of Appeal *per in curium* in this respect.

I make no order as to costs.

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D. Karunakaran

Judge

Dated this 30th day of July 2012