

**IN THE SUPREME COURT OF SEYCHELLES**

**LUISANNE INEEZE TIRANT**

**V**

**GUY CHARLES THOMAS TIRANT**

**Civil Side No. 286 of 2010**

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Mrs. Alexia Amesbury Attorney at Law for the Plaintiff

Mr. Clifford Andre Attorney at Law for the Defendant

**JUDGMENT**

***Burhan J***

The plaintiff in this case filed plaint against the defendant seeking the following reliefs;

- a) declare that the plaintiff is sole legal owner of parcel C. 6409.
- b) order the land registrar to rectify the land register of parcel C. 6409 by removing the defendant's name on the register.
- c) order the defendant to pay the cost of this action.

The main contention of the plaintiff as borne out in her evidence and pleadings is that she had sold a property bearing Title No. H. 4747 belonging to her and from the proceeds thereof, she had given a sum of SR 150,000 to the defendant for his labour in assisting to build a partly completed dwelling house on the said property and thereafter with the balance money she had purchased a land bearing Title No.

C. 6409 situated at Point Aux Sel in their joint names. It is in respect of this property that she seeks the aforementioned reliefs.

The case for the defendant is that the said property was purchased during the time the marriage existed, a fact not contested by the plaintiff and that he had contributed in labour for the building of the house in the property bearing Title No. 4747 which was sold and parcel C. 6409 purchased. He therefore claims he had contributed in the purchase of property C.6409. He denies receiving in total a sum of SR 150,000 from the plaintiff.

It is admitted in the evidence led at the trial and admitted by the plaintiff that the said property bearing Title No. C. 6409 was purchased during their marriage and therefore quite obviously has to be considered as matrimonial property. It is also admitted by both parties that the defendant had subsequently obtained an ex-parte divorce from the plaintiff. It is borne out by the evidence in the case that neither party had filed an application in the divorce case for the division of the matrimonial property. The plaintiff instead has sought to file this action to have the defendants name removed from the title deeds.

In the case of *Desaubin v Perriol 1996 SLR pg 90* it was held;

- (1) Under the Matrimonial Causes Act 1992, the court has the power to vary and divide a property registered in the name of one party to a marriage if circumstances warrant such a division. The question then becomes “what are the respective contributions of the parties?”

Though admittedly the property is matrimonial property as the action before court is not one based on section 20 (1) (g) of the Matrimonial Causes Act 1992 this court cannot now proceed to decide on what was the respective contributions of the parties towards the purchase of the property. In an action for the division of matrimonial property this could have been looked into and the property divided or apportioned according to the contributions made by each party.

When one peruses the documents marked by the plaintiff namely document P2 the transfer of land document in respect of parcel of land bearing Title No. C. 6409 it is apparent that both the plaintiff and the defendant are co owners of the said property.

Article 815 of the Civil Code of Seychelles Act CAP 55 reads as follows:

*Co-ownership arises when property is held by two or more person jointly in the absence of any evidence to the contrary it shall be presumed that co-owners are entitled to equal shares.*

Therefore it could be inferred from document P2 that the plaintiff and the defendant hold equal shares to the said property. Further scrutiny of document P2 reveals that there is no evidence that the defendant is owner of a lesser share than that of the plaintiff. As the action before court is not in respect of the division of matrimonial property one cannot in this action proceed to divide the property according to the contribution made by each party. On the face of document P2 the only conclusion one can come to is that both parties are co-owners of the said property in equal shares. There is no evidence to show that the defendant either fraudulently or by threat or by duress made the plaintiff enter his name in the

transfer deed. I also note that a vital witness namely the notary who executed the transfer has not been called to give evidence in this case.

For the aforementioned reasons I am satisfied that the plaintiff has failed to establish her case on a balance of probabilities and therefore proceed to dismiss the plaint of the plaintiff. No order is made in respect of costs.

**M.N BURHAN**

**JUDGE**

**Dated this 27<sup>th</sup> day of January 2012**