

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 315/2010

[2014] SCSC

THOMAS JONATHAN SEARLES

Plaintiff

versus

WINSEL DOMINICA POTHIN

Defendant

Heard: 19 September 2012, 21 September 2012, 24 January 2013, 18 March 2013, 7 June 2013

Counsel: Mrs. Karen Domingue Attorney at Law for plaintiff

Mr. Charles Lucas Attorney at Law for defendant

Delivered: 31 January 2014

JUDGMENT

Burhan J

[1] The Plaintiff has sued the Defendant on the basis of unjust enrichment and seeks the following reliefs;

- An order that the Defendant transfers the bare-ownership in Parcel T 477 in the Plaintiff's name;
- An order that the Defendant transfers Parcels C 6439 in the name of the Plaintiff or in the name of the parties' two minor children, Jake Searles and Bijoux Searles;
- An order that the Defendant pays the Plaintiff the sum that she has obtained for the sale of Parcel C 7379;
- An order that the Defendant transfers motor vehicle S 20386 in the Plaintiff's name;
- An order that the Defendant pays the Plaintiff the sum that she obtained for the sale of the Daihatsu Terios registration number S 6889 and the Honda CRV registration number S 17;
- An order that the Defendant transfers the sum of SR 3,000,000 in the Plaintiff's name or in an account in the name of the Plaintiff's two minor children, Jake Searles and Bijoux Searles;
- In the alternative to the above an order that the Defendant pays the Plaintiff the sum of SR 7,718,500;
- And the cost of this case.

[2] In his evidence the plaintiff stated that he had met the defendant in 1993 and since 1995 he had a relationship with the defendant which had gone on for a few years and thereafter they had gone their separate ways. After being a couple of years apart they had reconciled and had come back in 2004. They had two children from the relationship who are presently 7 and 5 years of age. He stated that he was married and his wife was in Australia and they were going through a divorce in the Family Court in Australia. He had always wanted to purchase a property near the sea and when a property belonging to one Andy Monthy became available, he did purchase it but due to the ongoing litigation with his wife he purchased it in the defendant's name.

- [3] He had stated that his intention was also to pass the property eventually to his two children through the defendant. He produced the deeds in relation to the property as P1 and P2. One deed was in respect of the Usufructury interest in the land in his name the other in respect of the bare ownership which was in the name of the defendant. He stated he had paid for everything. He admitted he did not have children at the time he purchased the said property.
- [4] The plaintiff further stated he had built a house on the said land costing in the region of SR 2.8 million. He also referred to other properties he had bought in the defendants name C6439 and C 1201. He stated he had paid for these properties as well. It appears from his evidence that another land which he had bought in the defendant's name C7379 was sold by her without his consent. He thereafter produced the receipts and other documents referring to the payments made by him. He also referred to money and vehicles he had purchased in her name.
- [5] The plaintiff admitted that at the time he met the defendant he had an Australian wife. He admitted he had filed a case against the defendant in 2001 and withdrawn it after they had got back together. He stated when they got back together he had asked her to transfer the lands back to him and she had agreed to put it in her children's name. He admitted he had a brother who he trusted but he had not written properties in his name. He also admitted at the time he purchased the properties C6439 and C7379 he had children but he had put the properties in her name as he trusted her. He further admitted there were six plots of land at Anse Talbot but he could not give it to his children as there was a restriction order from his wife. He stated the children would eventually inherit it. It is apparent that his contention is that the children will inherit all his property belonging to him. He stated he had opened accounts for his children but it was in the defendant's name.
- [6] The plaintiff also referred to gifts in respect of jewellery he had given the defendant. In his evidence the plaintiff specifically states "I do not want anything for me. I do not want a cent. I want my children to be protected, I want them to get what is theirs and what I have saved for their inheritance and they will get nothing else." (pg 36 of the proceedings of 24 January 2013 1.45 p.m). He further stated he had opened SR 100.000

in their accounts with the Central Bank. He admitted he had put certain money in her account which she had used to pay bills and get foreign exchange, equipment and paid bills.

[7] The plaintiff admitted he had not opened joint accounts with his children. He admitted the children were presently with the mother. He stated he had not wanted interim access as she had a document stating she has to supervise access of his children and there is no overnight stay. He stated she had brought the children to his house sat there and watched him as he spoke to them. He said he could not tolerate this. He also admitted that he had not opened joint accounts with the children but the money he had given her was intended for the children.

[8] The plaintiff also called witness Cecile Julienne a housemaid who testified to the fact that he was a kind and generous person and had been financially very helpful to her. Cecile Sinon secretary to Golden Eggs testified to a few transactions she was aware of, while Keshrar Buddra a building contractor stated he had built the house at Bougainville and stated all handlings were done by the plaintiff though the property was in the name of the defendant. He stated he understood that it was the plaintiff's intention to do this was if anything happened to him she would be protected.

[9] The defendant in her evidence stated she is 35 years of age and admitted having a relationship with the plaintiff between the years 1993 and 2000 and again they were reunited in 2003 until they broke up in 2010. She stated during the relationship she received properties, vehicle and money from the plaintiff. She further stated she was never married to him and identified the first plaint he had filed against her. The plaintiff was requesting in that plaint that all the gifts and money be returned to him. After they reconciled he had withdrawn the plaint D1 and had proceeded to give her more gifts until the break up in 2010. She also stated that he had not got her to sign any document stating what he gave her belonged to him. She stated that the defendant's wife who the evidence shows lived in Australia intervened in the case D1 and moved court that if any money were to be given to the plaintiff she was claiming her share as the wife. However when they got back together though the court made order that she could pursue her claim as

intervenor, she had not done so and left them alone.

- [10] The defendant further stated that she did not accept the fact that the plaintiff had put the property in her name so as to prevent his wife in Australia who he was divorcing him laying her hands on his property. She stated that he had registered several transactions with his brother Guy Esparon as far back as November 1999. She also produced several other documents registered D5 to D10 showing that he had even registered properties in his name. On perusal of document P2 title number T477 she stated that it gave her bare ownership of the land in Bougainville. She stated the property was gifted to her in 1997 and at that time she had no children with the plaintiff. She stated her children were born in 2005 and 2007. She admitted he had bought her several vehicles as gifts. She stated it was not possible for her to force him to put the vehicles in her name as he was a big businessman.
- [11] She admitted he had purchased 2 plots of land for her one at Anse Royale the other at Point Au Sel. She admitted the plaintiff had paid for these lands and put them in her name as gifts in order to secure her future and he had told her so. He had not requested that the said land be put in the name of the minor children. She stated that she had gone to court and sought custody of her two children. She was in court for 2 ½ years. During that time she stated the plaintiff had not made any financial contributions towards their maintenance. He had not made a request even for access. She stated she never forced him to give her any gifts. She admitted she was paying the contractor Keshra Buddra from the funds given to her by the plaintiff.
- [12] Having thus analysed the evidence in this case this court will now proceed to answer the main issues.
- [13] It is apparent that the plaintiff is basing her claim on unjust enrichment. In the case of Antonio *Fostel v Magdalena Ah tav SLR 1985 p 113* Justice Seaton held the action for unjust enrichment ought to satisfy 5 conditions and as set out in Article 1381-1 of the Civil Code namely a) an enrichment b) an impoverishment iii) a connection between the enrichment and impoverishment iv) an absence of lawful cause or justification and an

absence of another remedy.

- [14] It is the contention of the plaintiff that as they were living together, the plaintiff being the sole breadwinner was providing for the family and making provision for her and the children. The plaintiff also contended that even if it was a gift the defendant had failed to fulfil the conditions upon which they were made and therefore should be revoked.
- [15] It is apparent from the evidence before court and admitted by both parties that the relationship between the defendant and the plaintiff lasted between the years 1993 and 2000. Thereafter they had parted and again were reunited in 2003 until they broke up in 2010. The defendant admitted during the relationship she received properties, vehicles and money from the plaintiff. She stated she was never married to him she had common law relationship with the plaintiff.
- [16] It is apparent in the 1st action filed by the plaintiff on the 14th of August 2001 the plaintiff claimed the house and property on parcel T477, a Daihatsu Terrios motor vehicle and a sum of 1.000.000.00. It was pleaded in the plaint that the said property had been written in the name of the defendant due to the fact that the plaintiff was undergoing divorce proceedings with his wife in Australia and transferred the land in her name on the condition she would give it back when the case was concluded. However it is the contention of the defendant that this is not so as he had given the said property as a gift to her for her security and protection in the event anything happened to him. It is to be observed the evidence of his own witness Keshra Buddha, affirms this fact.
- [17] Mr. Keshra stated that he had done the construction work on the house and he understood that it was the plaintiff's intention to build a house for the defendant as if anything happened to him the defendant would be protected. The defendant had the bare ownership of the said property whilst the plaintiff had retained the usufructury interest in same. It is also to be noted that the defendant had no children from the plaintiff at this time. Considering all these facts and the fact that the plaintiff subsequently withdrew the said action, this court holds that the properties both movable and immovable as set out in the earlier plaint were outright gifts to the defendant and not subject to any condition. It

cannot be said that the defendant had been unjustly enriched. The claims made in respect of such properties in this plaint therefore stand dismissed.

[18] It is admitted by both parties that they reconciled and lived again in a common law relationship from 2003 till the 2010. During this period two children were born to them in the years 2005 and 2007. It is apparent and admitted by the defendant that the plaintiff was lavish and generous on her and continued to give her the gifts by way of property as set out in the present plaint, vehicles money and jewellery. The plaintiff's position is that he had given her these things on the condition she would give it to her children and therefore moves court that the said properties be removed from the defendant and given back to him or the children.

[19] It is to be borne in mind that the evidence shows that both children are now with the defendant who has now moved for full custody for them. Her position is that the plaintiff has not sought even access to the children and does not support them in any way. The plaintiff states that he has not sought access to the children as the order made in respect of access, entitles her to sit and supervise him while he speaks to the children which he will not tolerate. The proper move in the view of court would have been to have the said order varied or set aside.

[20] It is also apparent that maintenance is not been paid by the plaintiff for the children though there is an arrangement regarding the school. Be that as it may, this court is of the view that the plaintiff is not precluded from opening joint accounts with his children to ensure that their future is secure. It is apparent from the evidence before court, the plaintiff is a man of means and it surprises court why the plaintiff has not thought of this in a more substantial manner though it appears he has opened up one joint account with each child in the Central Bank, a fact not denied by the defendant.

[21] It is the plaintiff's contention that he was forced by the defendant to write the properties in her name. It is in evidence the plaintiff is a big businessman. It is unlikely that the defendant would have been able to force him against his will to write properties in her name. Considering the fact he had filed a plaint against her earlier he would have been

aware of the consequences but yet he had chosen on his own accord to write properties in her name with no conditions in writing. The defendant cannot be faulted for accepting same considering they were having a common law relationship at that time. It must be borne in mind that as the situation stands at present the defendant will have to meet most of the expenses and requirements of the two children on her own.

[22] For the aforementioned reasons this court holds that the plaintiff has failed to establish on a balance of probabilities that the defendant has been unjustly enriched or that the gifts made to her were conditional. The plaint is dismissed with costs.

Signed, dated and delivered at Ile du Port on 31 January 2014

M Burhan
Judge of the Supreme Court