

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: DC45/2008

[2015] SCSC 501

REGIS ANTOINE MOREL

Petitioner

versus

AUGUSTA JULIA ADRIENNE

Respondent

Heard: 22 May 2014, 24 June 2014, 23 July 2014, 20 October 2015 & (written submissions)

Counsel: Mr. Joel Camille for petitioner
Mr. Frank Elizabeth for respondent

Delivered: 30 October 2015

JUDGMENT

Robinson J

[1] Introduction

[2] This is a case for the division of the matrimonial property between the petitioner and respondent pursuant to the Matrimonial Causes Act. *The Matrimonial Causes Act is hereinafter referred to as "the Act"*.

[3] The property in dispute is the land comprised in title number V9993 situated at Roche Caiman, Mahé, Seychelles, and the matrimonial home standing thereon (hereinafter referred to as the "Property").

[4] Section 20 (1) of the Act provides that the court may make any of the orders set out in subparagraphs (a) to (g) of the said section, after making such enquiries as the court thinks fit and having regards to all circumstances of the case.

[5] Background

[6] The petitioner and respondent were married in Victoria, Mahé, on 12 March, 1991.

[7] There were five children born of their relationship. Three of the children were born issue of the marriage. The five children are now of major age.

[8] The petitioner and respondent obtained a divorce on 6 November, 2008.

[9] The petitioner prays this court to award to him the exclusive ownership of the Property.

[10] The respondent disputes the claim of the petitioner. The respondent prays this court to order that half share of the Property at "*market value*" be transferred to her name.

[11] Case for petitioner

[12] *Evidence of Regis Antoine Morel*

[13] Regis Morel, the petitioner produced the *Certificate of Making Conditional Order Absolute (Divorce)* of 6 November, 2008, as Exhibit P1.

[14] The petitioner testified that five children were born issue of the marriage. The five children are of major age.

[15] The petitioner lives in the former matrimonial home.

[16] The petitioner is currently employed as a driver in the Ministry of Health.

- [17] The petitioner made application for a house from the Government of Seychelles before the marriage between the petitioner and the respondent. During the marriage the petitioner received a three bedroom house, situated on the land comprised in title number V9993 (*i.e. the Property*), from the Government of Seychelles. The Government of Seychelles and the petitioner entered into an agreement for the house. A monthly rent of SCR 930.00/- to SCR 940.00/- was deducted from the salary of the petitioner, (Exhibit P5). The petitioner was a police officer in the Seychelles Police Force. He was paid Seychelles rupees 5000.00/- monthly, but could not recall if that was the exact amount. The respondent did not pay rent for the matrimonial home.
- [18] After paying the rent, the petitioner gave SCR 1500.00/- to the respondent towards the household expenses and child maintenance. As regards utility bills, the petitioner paid those to their full amount.
- [19] The petitioner explained that, other than his job in the Seychelles Police Force, he performed different jobs to make ends meet, including mechanic, cutting bamboo sticks in the forest and building fish traps. He earned around SCR 2000.00/- to SCR 3000.00/- monthly but could not recall if that was the exact amount.
- [20] When they first moved into the house, the respondent worked as a cleaner firstly at SEYPEC and then at the airport. He did not know how much she earned in those jobs. The respondent also worked at a hotel but did not stay there for long. The respondent contributed money towards child maintenance.
- [21] The petitioner and the respondent both looked after the children during their period of cohabitation of the marriage.
- [22] The petitioner and respondent bought the Property in 2003. The petitioner and respondent obtained a loan in both their names from the Seychelles Savings Bank Limited to pay for the Property. A monthly amount was deducted from the salary of the petitioner towards repayment of the loan (Exhibit P8). He repaid the entire loan amount in 2011. The respondent did not make any contributions towards the repayment of the loan.

- [23] The respondent left the matrimonial home on 15 February 2007. She left the five children with the petitioner. Two of the five children were of minor age when she left the matrimonial home. His evidence is that the respondent came to the house to visit the children.
- [24] He was at work one day, when the respondent forced her way into the matrimonial home. The petitioner was living with another woman in the matrimonial home, and had a 3 month old baby with the woman. The woman had to leave the matrimonial home when the respondent gained entry. The petitioner slept in a car for a while. He went to the Family Tribunal. The Family Tribunal ordered the respondent out of the matrimonial home. He received a restriction order against her, (Exhibit P3).
- [25] A joint expert report (Exhibit P9) was presented by the petitioner and respondent as to the value of the Property, which the petitioner wishes to be awarded exclusively to him. The report of Veronique L. Bonnelame, the expert, concludes that "*the value of the Property can be stated in the sum of SCR 855,000.00/-*".
- [26] The petitioner stated that the respondent is not entitled to half share of the Property value.
- [27] In cross-examination the petitioner confirmed his evidence in chief. The petitioner added that the respondent used part of her salaries to buy clothes for the children; that the respondent did not contribute any money towards household expenses; that the respondent would often travel on money borrowed from banks and would use her salary towards the repayment of those loans; that the respondent and himself performed household chores, namely, cleaning, washing, ironing and cooking, but that the respondent did most of the ironing.
- [28] In re-examination the petitioner stated that the respondent is not entitled to a share of the Property value because, during the time that the respondent worked on Desroches Island and in Bahrain, he (the petitioner) looked after the children and paid for the loan without any assistance from the respondent. Further, after the respondent left the Property in 2007, he remained in the former matrimonial home and had paid the loan in its entirety by 2011, without any financial contributions from the respondent.

[29] Evidence of James Camille

[30] Mr. James Camille works with the Seychelles Commercial Bank as Legal Officer. He testified that the petitioner and respondent had a joint Mortgage Finance Loan Account with the Seychelles Savings Bank for a housing loan. The Bank loaned the petitioner and respondent jointly the amount of SCR 95, 254.60/- on 7 October, 2003. The amount of SCR 95, 254.60/- was paid to the Seychelles Housing Development Corporation, now Housing Finance Corporation.

[31] The loan was repaid fully by the petitioner with money coming from an account of the petitioner that was in the sole name of the petitioner. The first payment was made on 5 October, 2003, (Exhibit P8). The petitioner paid the outstanding amount on the loan on 28 October, 2010 from a personal loan of SCR 8000.00/- obtained from the Seychelles Commercial Bank.

[32] In cross-examination it came out that the petitioner paid SCR 95, 254.60 less 20% towards the repayment of the loan.

[33] Evidence of Greta Simara

[34] Greta Simara works with the Property Management Corporation. She is the Senior Enforcement Officer. The Property Management Corporation does not have any records with regards to the joint housing transaction of the petitioner and the respondent.

[35] **Case for the respondent**

[36] Evidence of Augusta Julia Adrienne

[37] Julia Adrienne, the respondent confirmed that she and the petitioner have five children together. Three of the five children were born issue of the marriage. The five children are now of major age.

[38] Before the marriage, the petitioner and herself and their children lived at her brother's house at Cascade. The petitioner was a police officer with the police mobile unit. They

moved out of her brother's house, to a house at the police mobile unit, after she (the respondent) had problems with her brother. The family spent five years at the police base.

[39] The family occupied the Property in 1995. The Property has three bedrooms. The petitioner and the respondent transferred the Property on both of their names when they got married.

[40] The respondent fulfilled the traditional role of mother and wife during the period of cohabitation of the marriage, including cooking, washing and ironing the clothes for their five children and the petitioner.

[41] The respondent looked after the education of the five children.

[42] The respondent has worked outside of the home in various jobs during the marriage. She worked as a Chambermaid at the Beau Vallon Bay Hotel for a short time and earned SCR 1400.00/-. She then moved to SEYPEC where she earned SCR 3500.00/-. The respondent spent salaries earned from Beau Vallon Bay Hotel and SEYPEC on food consumed within the home, other household expenses, namely water and electricity, and the maintenance of the children. The respondent also assisted her husband with the repayment of the Property loan.

[43] Thereafter, she worked part time at Desroches Island for less than a year. She earned SCR 3500.00/- monthly. During her employment on Desroches she was in touch with the petitioner. She would often bring money for her children when she was on leave. When she left her employment on Desroches, she went back to the matrimonial home.

[44] The respondent then moved to Bahrain in 2004 and worked as cleaner and as nanny. She earned Euros 200.00/-. She worked in Bahrain for two years. She spent part of her salary on the maintenance of the family.

[45] The respondent returned to Seychelles in 2006 and has since worked at the Ephelia Resort as laundry attendant, where she continues to work. She earns SCR 4900.00/-. The evidence of the respondent is that she spent her salary on her daughter because she was not allowed to go to the matrimonial home by order of the Family Tribunal in 2008. The

petitioner was by then involved with her next door neighbour. Her evidence is not clear about which of their children remained at the house with the petitioner and which children moved out with her.

- [46] The respondent confirmed that the petitioner made payments towards the loan.
- [47] The respondent is now staying at her daughter's house.
- [48] The respondent is asking for half of the value of the Property valued by Veronique Bonnelame, the expert, at SCR 855 000.00/-.
- [49] In cross-examination she stated that only three of the children were born issue of the marriage.
- [50] At the time of the divorce in 2008, the petitioner and she (the respondent) shared the matrimonial home.
- [51] She confirmed that salaries she earned during the marriage, when she cohabited with the respondent, contributed to household expenses and maintenance of the children, including food and clothing. She also contributed SCR 500.00/- towards the housing loan.
- [52] The respondent stated that when she worked on Desroches Island, the order of the Family Tribunal, which prevented her from having access to the matrimonial home, was in force (Exhibit P8). She contributed towards the repayment of the loan and helped her children. She did not give any money to the petitioner because of the order of the Family Tribunal, but gave her youngest daughter, who was at the Seychelles Tourism Academy, SCR 750 monthly.
- [53] When she worked in Bahrain, the petitioner looked after the children. She did not contribute towards household expenses and maintenance of the children. She was, however, in touch with the petitioner.

- [54] When she returned to Seychelles, she lived in Port Glaud and worked at Ephelia Hotel. She gave SCR 750.00/- to the youngest daughter monthly. She stated that only the youngest daughter was staying with the petitioner at the time.
- [55] The respondent later admitted in cross-examination that she did not contribute any money towards the repayment of the loan; that she contributed money towards the payment of household expenses but that the petitioner contributed more than her towards the household expenses.
- [56] The respondent stated that she is entitled to half share of the Property at market value because, "*he [the petitioner] is not able to make contribution on his own because we had five children so this indicates that I contributed and he also did*" (Proceedings of 23rd July 2014 at 9:00 a.m.).
- [57] Submission and discussion
- [58] This court has considered the pleadings, the evidence for the petitioner and for the respondent, and the submissions of both counsel.
- [59] It is well established that the Supreme Court in terms of section 20 (1) of the Act when considering "*all the circumstances of the case*", may have regards, without being exhaustive, to such matters as the standards of living enjoyed by each of the parties before the breakdown of the marriage, the age of the parties and the duration of the marriage and the contributions made by each to the welfare of the family including looking after the home or caring for the family.
- [60] The petitioner and respondent were married for about 17 years but cohabited for about 13 years.
- [61] The Property is registered in the names of the petitioner and respondent, (Exhibit P12).
- [62] The market value of the Property is SCR 855,000.00/-.

[63] The Property was acquired by the efforts of the petitioner. The petitioner paid the loan for the Property in full. The respondent admitted in cross examination that she did not make any contribution towards the repayment of the loan for the Property.

[64] The petitioner and respondent brought their earning capacities to the marriage. The evidence shows that the petitioner contributed more money towards the running of the household. This court found the testimony of the petitioner to be credible and coherent. The petitioner gave SCR 1500.00/- to the respondent monthly towards household expenses and child maintenance. His testimony is that he paid the utility bills to their full amount. Further, to make ends meet, other than his job in the Police Force, he held other jobs and earned around SCR 2000.00/- to SCR 3000.00/- monthly. As regards the monetary contributions of the respondent towards the running of the household, I found her testimony to be very brief, scant and incoherent by comparison to that of the petitioner. I accept the testimony of the petitioner that the respondent bought clothes for their children from her salary, would often travel on money borrowed from banks and would use her salary towards the repayment of those loans. There is no evidence from the respondent that establishes how much money she spent monthly towards the payment of other household expenses, including the payment of the utility bills. The respondent did remember, however, that she gave her youngest daughter, who was at the Seychelles Tourism Academy, SCR 750.00/- monthly. This court notes that during the time that the respondent worked on Desroches Island and in Bahrain, the petitioner alone maintained the house, looked after their children and took care of the household expenses.

[65] I accept the testimony of the respondent that she performed the traditional roles of mother and wife during the period of cohabitation of the marriage. There is evidence, which was not seriously disputed, that the respondent also did household chores like cleaning, cooking, washing, ironing and looking after the children during the marriage.

[66] The evidence is that the petitioner is currently employed as a driver in the Ministry of Health and the respondent currently works as laundry attendant with Ephelia Hotel.

[67] **DECISION**

[68] In light of the above this court —

Awards the petitioner the exclusive ownership of the Property;

Orders the respondent to sign any deeds or documents necessary to confirm the title of the petitioner to the Property;

Awards the respondent 35% value of the Property;

Orders the petitioner to pay the respondent a sum of 35% value of the Property within 6 months of the date of this judgment, failing which procedure should be engaged for the sale of the Property at market value. The proceeds of sale shall be shared between the petitioner and respondent on a 65% and 35% basis, respectively. The respondent retains a first option to buy the 65% shares of the petitioner at the original market value.

[69] The judgment and proof of payment shall suffice for the Registrar of Land to give effect to the transfer in terms of this judgment.

[70] The petitioner and respondent shall each bear his or her own costs.

Signed, dated and delivered at Ile du Port on 30 October 2015

F Robinson
Judge of the Supreme Court