

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 259/2015 and 169/2016 arising in DV 158/2010**

**[2017] SCSC**

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Anne Marie Loizeau                      Applicant

versus

Marcel Banane                              Respondent

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Heard:                      22 March 2017- 23 June 2017

Counsel:                      Mr. Joel Camille for the for the Plaintiff  
   Mr. Charles Lucas for the Defendant

Delivered:                      1 September 2017

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**JUDGMENT**

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**M. TWOMEY, CJ**

- [1]**     The parties were married on 23 November 1993 and divorced on 24 February 2011. They both applied for the division of their matrimonial property and their applications were consolidated for the purposes of the hearing.
- [2]**     The Applicant claimed that the property at Quincy Village, namely Parcel H1302, occupied by the Respondent exclusively was registered in both their names and that she be granted a half share in the same.
- [3]**     The Respondent in his reply affidavit averred that he owned Parcel H1302 absolutely and that he was further entitled to half shares in Parcels H4940 and H4941 which were registered in the Applicant’s name as he had contributed to their purchase.

- [4]** In court, the Applicant produced the title deed to Parcel H1302 which was registered in the joint names of the parties on 24 April 2002. It was her testimony that the property was acquired by a housing loan of SR128, 500 from Seychelles Housing Development Corporation (SHDC) and that she was an employee of the Public Utilities Company (PUC) at the time of the purchase. She stated that the repayment of the loan was made by monthly deductions of SR500 from her salary. It must be noted however that the charge document (Exhibit P.3) in favour of SHDC which she produced provides that the repayments were in equal monthly instalments of SR1141.
- [5]** In further contradiction to her own statement she also admitted that the Respondent had already purchased the property at the time of their marriage and the house was already built when she went to live with him. She later stated that when she moved in with the Respondent, the property was still in the name of the government and that she had lived with him for two and a half years before getting married.
- [6]** It was also her testimony that the Respondent had not made any contribution to the repayment of the housing loan initially but that it was only when she left her job and was assisted by the Welfare Agency that he started making repayments to the loan.
- [7]** Further, in June 1997, a bank loan of SR50, 000 from Nouvobanq was obtained by the Applicant for the purchase of a pickup repayable by instalments of SR3000 per month. The pickup was for the use of the Respondent in his job as electrician which pickup he subsequently sold for SR120, 000.
- [8]** In addition to her stated contributions to the home she also received a gratuity of SR47, 000 (Exhibit P7) on leaving work which she invested in home making improvements and repairs.
- [9]** In 2014, she agreed with the Respondent that they would have the matrimonial home partitioned and then occupy different parts of the same. This agreement was subsequently breached or withdrawn by the parties.
- [10]** As concerns the claim by the Respondent of a share in Parcels H4940 and H4941, she testified that it was an inheritance from her father in which he could not have a share.

- [11] In cross examination, she admitted that she was laid off from PUC in 2002 shortly after the loan agreement with PUC was signed. She insisted however that she continued to pay SR500 monthly to the loan which was deducted from her welfare payments. She also stated that she had also worked for the Democratic Party and earned a monthly salary of SR3, 500 and that further, she also received monthly maintenance payments of SR800 from the father of two of her children.
- [12] She did not agree that after she was laid off that it was the Respondent who paid for household expenses and contributed to the welfare of all their respective children living with them.
- [13] When it was put to her in cross examination that she had used her gratuity money to travel to Dubai and then to the UK, she stated that she had got the ticket for the UK from her family to go there for medical treatment.
- [14] She denied that the Respondent had helped her purchase the bare interest in Parcels H4940 and H4941.
- [15] The Respondent also testified. He was 72 at the time of the trial. In regard to the purchase of the pickup truck he stated that he personally contributed SR85, 000 towards it and that the Applicant obtained the balance for the purchase price by a loan of SR 50,000 from the bank which he refunded to her by monthly instalments of SR3000. He alone paid for the insurance of the pickup.
- [16] It was also his testimony that the Applicant used her gratuity money to travel to her sister's in the UK where she remained for one month and that he had to struggle on his own to take care of her children. He also testified that the Applicant's former partner had not paid any maintenance for their children and that he had had to make all the repayments to the housing loan from the beginning. At one point he defaulted as he was not able to make ends meet. In 2009, he authorised the HFC (who had taken over from SHDC) to deduct SR1200 from his social security benefits to pay for the loan. He supported this by documentary evidence.
- [17] He also stated that he had recently made improvements to the house. He had affixed ceramic tiles to the floor.

- [18] He also stated that had transferred SR30, 000 to the Applicant's step mother, one Christa Vadivello in 2009 so that the Applicant could purchase the bare interest in the property. He produced two receipts of the same (Exhibits R3 and R11).
- [19] He also produced a letter dated 6 May 1982 from the Ministry of Planning and Development in which it was stated that Parcel H1302 would be sold to him for SR 15,000. In 1989, he had together with his partner Maryline Furneau (now deceased) with a housing loan from SHDC purchased the land at SR15,00 and the house situated thereon at SR96, 917.65 (Exhibit R5).
- [20] In 1998, the Applicant moved in with him. Subsequently, in 2002 he had agreed to transfer a half share to the Applicant so that she would help him repay the then outstanding loan of SR128, 574 for the house.
- [21] In cross examination he stated that he had agreed to transfer a half share in the property to the Applicant if she helped with the repayment of the loan but that she hadn't done so.
- [22] Mr. Nigel Roucou a quantity surveyor valued the matrimonial property on Parcel H1302 at SR1.275 million (Exhibit R 10). The land and external structures were valued at SR390, 000, the original building at SR 665,000 and the extension to the building at SR 220,000 (Court Exhibit 1).
- [23] Mr. Viral Dhanjee also testified. He has known the Respondent for about twenty years. The Respondent had assisted him with his company while he was away. In 2000, he built an annexe to the Respondent's house so that his son could live there. He paid for the cost of the construction. His son lived there for about two or three years. The extension to the house was a gift from him to the Respondent.
- [24] Mr. Camille for the Applicant made no closing submissions whereas Mr. Lucas for the Respondent submitted extensively in writing. It was his submission that at the time the parties met the Respondent was already the owner of Parcel H1302 and was living in the three bedroomed house thereon with his two children. He submitted that all repayments for the loan was made solely by the Respondent. The half share was transferred to her in 2002 on the basis that she would make repayments towards the loan on the house but as she had been made redundant the same year she could not help with payments.

- [25] Relying on *Maurel v Maurel* SCA 1/1997 he further submitted that the part payment for the purchase of Parcels H4940 and H4941 ought to be taken into account when settling the matrimonial property.
- [26] He further submitted that her claim in the proceeds of sale from the pickup truck was time barred.
- [27] It is my view that the documentary evidence in this case bears out the fact that the Respondent was the occupier of Parcel H1302 before he met the Applicant. I find his evidence that he lived in the house with his previous partner and children also credible. I therefore accept that when the Applicant met the Respondent and moved in with him in 1993 he was already the occupier of the property and presumably had made payments towards it and maintained it.
- [28] It is however not established that the land and home he was occupying had been transferred to him by the time the Applicant moved in with him. There is certainly evidence that the Ministry of Planning and Development had informed him that there had been approval to transfer the property to him as far back as 1982. There is however no such conveyance registered to that effect. There is also evidence that in 1989 the Respondent and his partner Maryline Furneau were granted a housing loan of SR111, 917.65 for the purchase of the same property by SHDC at a rate of 3% interest. That agreement states that the property is owned by SHDC.
- [29] I have to assume therefore that when the parties started living together in 1993 (I use that date as that was the year they married), the Respondent was not the owner of the matrimonial home. I can certainly take into account the fact that he was residing therein and that he had made some contributions to the property by the repayment of his loan to SHDC. The Statement of Housing Loan (Exhibit R 6) that he produced shows that at the end of November 1999 there was an outstanding amount of SR111, 072.81 to be paid with a monthly interest of about SR560 accruing. He was clearly in default. It is only on 13 May 2002 that a sum SR1500 was repaid after a gap in repayments. Payments continued to be made irregularly to the SHDC.
- [30] When SHDC was dissolved and the Housing Finance Company (HFC) took over its functions, the balance transfer of the loan to it in August 2004 is reflected on the ledger as SR118, 454.66

24. No further sums are paid into the account until January 2005. Irregular repayments continued until the loan was finally repaid in October 2013.

- [31] The ledger sheet produced for the year 1998 to 1999 show cheque payments of SR10, 000 for that year. However, there is no evidence brought from the housing loan company as to who of the two parties was making the repayments. Although the Applicant alleges that deductions were made from her salary, no such evidence has been brought. In any case the ledger shows that the payments were made by cheque and not salary deductions.
- [32] The Applicant seems from her testimony to be also unaware of when the housing loan was fully repaid. She stated that by the time they divorced in 2010 the loan repayment had been completed. This is certainly not true as the ledger shows otherwise. The account was only closed in 2014 although a refund of overpayment of SR2, 962.04 was made in October 2013.
- [33] She has also not been able to explain fully whether the gratuity money she received was applied fully to the repayment of the loan or for her travels overseas. She does state that she invested the money into home improvements and repairs for the house. I take this into consideration when making an adjustment to her share in the matrimonial home.
- [34] In the circumstances, I find given the paucity of evidence from either party on this issue that the Respondent was the initial occupier of the house and had made repayments to the housing loan before he met the Applicant. They contributed equally to the repayment of the loan from 1993 to at least 2002. There is no evidence apart from the Applicant's own assertion that she made SR500 payments from her Social Welfare payments to the monthly housing loan repayments subsequent to 2002.
- [35] After 2002, irregular payments were made by sums ranging from SR1200 to SR1500. I am more inclined to believe the Respondent that after being laid off work she would have had little or no money for such payments. The Respondent's testimony is supported by an authority letter to HFC in 2009 to deduct SR12000 from his social security benefits to meet his housing loan. I find therefore that little or no repayments to the housing loan was made by the Applicant after 2002. I find therefore that the Respondent made substantially more payments towards the matrimonial home than did the Applicant.

[36] In *Waye Hive v Waye Hive* (unreported) DV 92/2009, I made the following observations which I find equally applicable to the present case:

*“[22] Section 20 (1) (g) of the Matrimonial Causes Act 1992 grants the Court the widest of powers to inquire into all matters which may assist it in coming to an equitable decision when settling matrimonial property. Finesse v Banane (1981) SLR 103 is authority that in such exercise, the Supreme Court is vested with the same power, authority and jurisdiction as the High Court of England by virtue of section 4 of the Courts Act.*

*[23] In this regard, the following extract of my decision in Pillay v Pillay (unreported) MA 322/2016 and MA 43/2016 (consolidated) is of equal application in the present case:*

*‘This therefore enables the Court to take into account all considerations such as contributions made by each party both for the welfare of the family and for the home itself. What the Court seeks to do is find a level of equity so that each party is not deprived of their fair share of contributions to the matrimonial asset despite such assets being registered solely in the name of one party (Esparon v Esparon (2012) SLR 39). The Court of Appeal in Chetty v Emile (2008-2009) SCAR 65 went further establishing that the court may make an order for the benefit of one party even in the absence of any financial contribution by that party and that the acquisition of property during marriage is not solely through the consideration of monetary contribution but also through love and affection that permits such acquisition.’”*

[37] I bear these principles in mind to come to a reasonable assessment of the shares of the parties in the matrimonial home. I also take into consideration two other matters in which the parties contest their shares. The first concerns a pickup truck and the second, the Applicant’s family land in which she purchased a bare interest.

**[38]** The uncontested evidence for the price of the pickup truck is that it was purchased for SR 135,000. The Respondent says that he personally paid for SR85, 000 towards it and that it was supplemented by SR50, 000 from the Applicant but that he paid her back. He sold the pickup for SR 120,000. The Applicant is adamant that she borrowed the money from the bank and paid it back herself. She supports this by documentary evidence. I am more inclined to believe her on this issue.

**[39]** With regard to Parcels H4940 and H4941, I am not of the view that it forms part of the matrimonial property. The advantageous price at which the bare interest therein was acquired by the Applicant is no doubt due to the family relationship that she had with the transferor. I am however persuaded by the documentary evidence (Exhibit R 3) that she was helped in its acquisition by the Respondent in the sum of SR30, 000.

**[40]** I find therefore that her interest in the proceeds from the pickup truck would have been cancelled out by his interest in her investment in the two parcels of land. I therefore do not propose to take any of these matters into consideration when deciding the parties' respective shares in the matrimonial home at Quincy Village.

**[41]** I also find that both parties contributed equally to the home in terms of its maintenance and care of their respective children. I also find that when the Applicant came on the scene in 1993, the Respondent already had a home. I also take into account the length of their marriage.

**[42]** In all the circumstances of this case I am of the view that the Applicant is entitled to a fifth share in the matrimonial home. I exclude the extension to the home given the uncontested evidence of Mr. Dhanjee that it was built for the benefit of his son and ultimately for the Respondent with whom he had a very close relationship.

**[43]** I therefore make the following Orders:

1. The Respondent is pay the Applicant SR211, 000 (1/5 of 1, 055, 000) on or before the 1 March 2018 after which Title H1302 is to be registered in his sole name.
2. In the event that the Respondent fails to make the payment by the due date, the Applicant is to pay the Respondent the sum of SR884,000 on the same date with the



Respondent handing over vacant possession and transferring Title H4694 to the Applicant.

3. If, despite receipt of either sum in full, the other party fails to execute the transfer, I direct the Land Registrar to effect registration of the said parcel in the sole name of the party upon proof to her satisfaction of payment of the sum stipulated in either case.

4. In the event that neither party is in a position to pay the other party his/her share in the matrimonial home on or before the 1 March 2018, Title H1302 is to be sold by public auction with the proceeds of sale being divided 20% for the Applicant and 80% for the Respondent.

5. Each party to bear his/her own costs.

Signed, dated and delivered at Ile du Port on 1 September 2016.

**M. TWOMEY**  
Chief Justice