

IN THE SUPREME COURT OF SEYCHELLES

Civil Slide: CS 33/2016

[2017] SCSC

1055

GONZALVES MALVINA

OF ST.LOUIS, MAHE, SEYCHELLES

Plaintiff

Versus

CECILE BONIFACE

OF REEF ESTATE, MAHE, SEYCHELLES

Defendant

Heard: 20th February 2017

Counsel: Mrs. Burian for the Plaintiff

Mr. Juliette for the Defendant

Delivered: 9th of November, 2017

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RULING
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GOVINDEN - J

[1] This Ruling arises out of a plea *in limine litis* raised by the Defendant as per Statement of Defence of the 9th November 2016 on the grounds that the Plaintiff discloses no cause of action against the Defendant; that the Plaintiff is bad and unsustainable in law and should be struck out; and that the Supreme Court of Seychelles has no jurisdiction to determine the Plaintiff.

[2] The factual and procedural background of the Pleadings for the purpose of this Ruling reveals as follows.

[3] In direct reference to the Plaint of the 27th April 2016, the Plaintiff avers that he is the registered and absolute proprietor of the land comprised in Title Number S784 situated at Reef Estate, Anse aux Pins, Mahe (hereinafter referred to as the "Property") and which Property he acquired from the W & C French (Seychelles) Limited on the 16th of July 1982.

[4] On the Property, the Plaintiff maintains that he built a single storey two- bed roomed house and to achieve this, he took a loan from the Seychelles Housing Development Company (hereinafter referred to as "SHDC"), coupled with his own funds.

[5] The Plaintiff and Defendant were married on the 5th November 1987 and on the 17th of November 2009, the Supreme Court granted the Plaintiff and the Defendant a Conditional Order of Divorce which was made Absolute on the 11th January 2010.

[6] Since their separation, the Defendant has been occupying the Plaintiff's house on the Property, which house was constructed by the Plaintiff prior to his relationship with the Defendant.

[7] No proceedings have ever been filed by the Defendant or Plaintiff in regards to the division of any matrimonial property and or the matrimonial home under the Matrimonial Causes Act since the final dissolution of the marriage.

[8] The Plaintiff avers that the Defendant has no right whatsoever to occupy the house and/or Property and that the Defendant is occupying the house without the Plaintiff's consent or approval.

[9] It is the submission of the Plaintiff that on the basis of the matters aforesaid, the Defendant is in unlawful occupation of the house and the Property, is a trespasser and squatter.

[10] It is averred in the Plaint that despite repeated requests to the Defendant to vacate the Property, the Defendant has failed to vacate the house and leave the Property.

[11] It is the prayer of the Plaintiff for this Court to order the Defendant to vacate the dwelling house with immediate effect.

[12] As indicated above, a plea *in limine litis* has been raised in that this Court has no Jurisdiction to order the eviction of the Defendant from the dwelling house for that this is purely a matter exclusively within the Jurisdiction of the Rent Board.

[13] It has been submitted by Counsel for the Defendant that the proper cause of the action would have been a *Writ Habere Facias Possessionem* in the event of a trespasser or a squatter on somebody else's property. Alternatively, as the whole subject matter stands from a matrimonial issue, the parties having been married and later divorced and yet Property was not adjusted, the Plaintiff could have applied for an adjustment of Property under the Matrimonial Causes Act.

[14] Addressing the legal standards and its analysis with regards to the evidence ex-facie the Pleadings, it transpires that the crucial issue to be determined firstly is whether the house in question is a matrimonial home. The Seychelles Matrimonial Causes Act (Cap 124) (hereinafter referred to as the "Act") does not define what a matrimonial home is.

[15] According to the *Family Law Act* of USA, Section 18(1) thereof defines a matrimonial home as "*every property in which either spouse has an interest and which is currently, or was at the time of separation, ordinarily occupied by the person and his or her spouse as their family residence.*"

[16] Further on, it states, "*the house in which the couple cohabited is known as the matrimonial home. The matrimonial home may either be owned fully by one of the two spouses or jointly by both*"

[17] According to English law, the case of [***Watchel v Watchel 1973 1 ALL E.R. 113***], *matrimonial properties was defined to mean assets acquired by one or the other, or both parties married with the intention that these should be continuing provision for their joint lives and should be for the use and benefit of the family as a whole.*

[18] Additionally, according to a book written by (**Lilian Mushota: Family Law: Cases and Materials, 2005 page 281**), she defines a matrimonial house as follows:

"Is every property in which a person has an interest and that is or, if the spouse have separated, was at the time of the separation ordinarily

occupied by the person and his or her spouse as their family residence”

[19] The significance of having a matrimonial house is that both spouses have an equal right to possession regardless of ownership.

[20] In relation to Property, when a French Judge decrees a Divorce, the Court generally includes in that decision an Order concerning the division of the properties and appoints a Notary to divide the properties even owned in “*Communauté universelle*”.

[21] However, the default arrangement in a French marriage is “*communauté réduite aux acquets*”. This is equivalent to “*communauté universelle*” for purchases made during the marriage and for most forms of income but each spouse remains sole owner of property they brought into the marriage and of gifts and inheritances received during it. In the case of divorce or death the property held in common is split half and half.

[22] There is another principle in French law called “*Communauté réduite aux meubles et acquets*”. All money and other property is placed in common ownership except real estate owned before the marriage.

[23] As Seychelles civil law is based on the French law, the conclusion is that the Property in question cannot be regarded as matrimonial property for the Property was bought and the house erected thereon prior to the marriage.

[24] As a result, this is not a matter to be addressed by the Act. Similarly as there is no tenancy agreement (in either explicit and or implicit form as provided for by the Control of Rent and Tenancy Agreements Act), this is not a case to be heard by the Rent Board.

[25] I am inclined to agree with counsel for the Defendant that a *Writ Habere Facias Possessionem* ought to have been filed, however, I am of the view that this Court has been granted enough power to be able to grant what has been prayed for.

[26] Section 22 of the Seychelles Code of Civil Procedure (Cap 213), provides that: “*All civil and commercial suits, actions, causes and matters shall be brought before the Supreme Court, save in cases where other provision is made by law.*”

- [27] Section 5 of the Courts Act (Cap 52), provides that: *“The Supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes, and matters under all laws for the time being in force in Seychelles relating to Wills and execution of Wills, interdiction or appointment of a Curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be the nature of such suits, actions, causes or matters, and, in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with all the powers, privileges, authority and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England”.*
- [28] In my final analysis as above-explained and illustrated in this regard, I find that the preliminary objection raised by the Defendant fails and is accordingly dismissed.
- [29] It follows, further, having regards to the Statement of the Defence of the Defendant *“on the basis that the property is the matrimonial home”*, that *there is no raison d’etre* in the circumstances for this Court to continue to hear this matter on the merits, hence the Defendant is hereby ordered to vacate the dwelling house forthwith.

Signed, dated and delivered at Ile du Port on 9th day of November, 2017.

Govinden J
Judge of the Supreme Court