

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 10/2014

[2018] SCSC 289

ROBINSON LOUIS

Plaintiff

versus

CHRISTELLE MARIE

Defendant

Heard: 21 March 2017, 3 April 2017, 3 July 2017, 28 July 2017, 13 September 2017

November 2017, Submissions 17 January 2018,

Counsel: Ms. Karen Domingue for plaintiff

Ms. Alexandra Madeleine for defendant

Delivered: 22 March 2018

JUDGMENT

M. TWOMEY, CJ

[1] The parties lived in concubinage for twenty-eight years after which time their relationship ended and the Plaintiff sought to evict the Defendant from what he claimed was his home. The Defendant averred that she was a beneficial owner of the home and that she had life occupancy therein.

- [2] The Plaintiff adduced evidence that he started cohabiting with the Defendant while she occupied a house at the police-housing compound at Mont Fleuri in 1983. He had purchased land, Title S891 in 1990 from his own salary and built a house thereon. The house was built from money earned from his salary with the government of Seychelles, from transportation trips made by him in a pick-up he owned and from a loan by SHDC. He had started with a salary of SR1266 at the Ministry of Health.
- [3] The Defendant bought household effects and brought her personal furniture and other items from her home into the new home which was built in 1991. The Defendant performed household chores but did not contribute to groceries and utility bills. They had two sons from their relationship but the Defendant had had a daughter from a previous relationship who also lived with them. The Defendant's mother also moved in but passed away after two months or so.
- [4] The Plaintiff supported his testimony with documentary evidence for the title deed, the planning permission for the house, and a loan from SHDC, all in his sole name. He admitted that the Defendant was a co-applicant for the loan but that he had solely made the repayments.
- [5] He decided to leave his government job where he was by then earning SR3950 and start his own business. He had some savings in the bank and used the same to clear his loan with SHDC in June 1998.
- [6] He got a licence for constructions, obtained a maintenance contract with the hospital and also did trips for IDC. Eventually he focussed on his transportation business and had two pick-ups.
- [7] A second house was built on his land from a loan of SR100, 000 he obtained from the Credit Union in 2001, which he repaid fully in 2003. Again, he was the only one who repaid the said loan. The house was rented for SR 4000. He supported this evidence with the lease agreement.
- [8] The Defendant built her own home in 2002 on another piece of land.

- [9] The Plaintiff also built a bed-sitter, store and a shed in which he manufactures sugar cane baka on Parcel TS891. The latter structures were built from proceeds of his pick-up business. He made about SR 8,000 monthly from the baka business. He hired a maid in 2006.
- [10] The parties had difficulties in their relationship as far back as 2009 but remained under the same roof until 2016 although he had asked the Defendant as far back as June 2013 to vacate his home.
- [11] He admitted that their son Stephen who moved into the bedsitter after his marriage made some minimal contributions towards the building of the bedsit, namely the purchase of a sliding door, wooden floors and air condition.
- [12] The Plaintiff purchased a pickup, S8305 in 2000, which he sold in 2010 for SR145, 000. He purchased another vehicle S7136 in 2004, which he sold in 2014 for SR125, 000 but denied that the Defendant had contributed to their purchase in any way. He admitted that she oversaw his baka business while he was away but he had other workers operating the business.
- [13] June Lucy from the Seychelles Revenue Commission confirmed that the Plaintiff was registered as a commercial pick up hirer since May 1998 and as a baka operator and produced his tax returns. Alford Nourice confirmed helping the Plaintiff construct his house. He did the carpentry work while Mr. Souris did the masonry work. The Plaintiff paid them both. Mr. Philip Belle testified that he built a retaining wall for the house in 1999 and then constructed a second house on the land in 2002 for which he was paid by the Plaintiff.
- [14] The Defendant, presently a Superintendent in the Police Force, testified that she had started a relationship with the Plaintiff in 1982 and that they had purchased land together. They built a house together and moved into it in 1991. She earned SR2350 when they were residing in police quarters and by the time she was promoted to Superintendent in 2012 was earning SR16, 993 with an inducement allowance of SR3, 600, SR12, 000 for clothes and meals and SR3000 as transport allowance.

- [15] While they cohabited at the police compounds he paid bills and the Plaintiff only contributed towards groceries. She admitted that the Plaintiff had bought the land but stated that she had contributed to the purchase price in the sum of SR15, 000 from her personal savings. She admitted that he made the repayments to the housing loans but she paid for the expenses for the children.
- [16] Her name as a co-applicant for the loan was removed from the documents in 1998 as she had obtained land from her grandmother in La Digue, which she sold in order to purchase land at Au Cap (S3956). This allowed her to obtain a personal loan from SHDC and build house thereon which she rented out to the University for SR4, 500, then to St. Anne Resort for SR5, 000 and then Garry Albert for SR5, 750 until 2014. The lease agreement with the latter was produced.
- [17] She contributed to the construction of the second house by giving cash amounts to the Plaintiff. She also contributed to the construction of the bedsit by buying materials and tiles. She stated in cross-examination that she derived this money from the rental income of her own home that she had built.
- [18] While living together she contributed to the household expenses and also bought tiles for the renovation of the second house. She paid for a maid to iron the clothes.
- [19] She stated that she contributed towards the Plaintiff's pickups by paying for the insurance of the vehicles which she estimated was about SR10, 000. She vacated the home they shared together in 2010 but had left all her personal belongings and furniture at the house, which she had listed.
- [20] Stephan Louis testified. He stated that although his father built the bedsit, he paid him SR 1000 on a monthly basis for two years to repay his father's outlay for the building. He denied that was his contribution towards utility bills when he resided there. He also paid for the plumbing work, the electrical connection and the furniture.
- [21] His mother had paid for the house cleaning. He admitted that he was not on speaking terms with his father.

- [22] Walter Pillay also testified. He had sold to Stephan Louis flooring plywood, a shower cubicle and had done the plumbing work for the house, the whole for the sum of SR38,000.
- [23] Jacques Renaud, a quantity surveyor produced a valuation report of the properties in issue. He valued the first house in which the parties had resided in the sum of SR1,090,000, the second house at SR775,000, the bedsit at SR335,000, external works at SR446,000 and valued the land (Parcel S891) at SR1,855,000, the total of the properties altogether being SR4,501,000.
- [24] In her closing submissions, Counsel for the Defendant admitted that the Defendant had not kept receipts for the contributions she had made towards the home she had shared with the Plaintiff. She submitted that the Defendant had paid all household expenses allowing the Plaintiff to build a second home and purchase the pick-ups. She had assisted in the baka business. She claimed a half share in the properties on the grounds of unjust enrichment or in the alternative under section 5 and 6 of the Courts Act through the courts' equitable powers.
- [25] I have received no submissions from the Plaintiff.
- [26] The Plaintiff has prayed for the eviction of the Plaintiff - that was in 2014, when she resided in the home and when he filed the case. It took four years to complete this case as it dragged in a previous courtroom. In the meantime she vacated the house. The only subsisting claim is the counterclaim of the Defendant. Notwithstanding her closing submissions, in her pleadings, the Defendant only states that she contributed in equal proportions to the immovable and movable properties and that she is therefore entitled to half of the combined value. The prayers are for the court to declare her a beneficial co-owner and to grant her a life occupancy and a *droit de superficie* in the property or in the alternative to order the Plaintiff to pay her a half share of the property and that if he fails to do so within six months to allow her buy out his share.
- [27] Let me say from the outset that the Defendant's pleadings display a flawed understanding of the law and powers of the court in cases of property claimed by concubines. This case is not about matrimonial property where the courts have wide discretion to make property

adjustments. I do not at this juncture propose to rehash the law in Seychelles as concerns shares in joint properties claimed by unmarried partners when they cease to cohabit. I, together with countless other judges for decades have stated that there are no specific legal provisions in this respect and have begged the legislature to provide the same to no avail. I can only do an imperfect job given the lacuna in the law and state that by applying the law justice is not delivered. Nevertheless this cannot be my preoccupation.

[28] Suffice it to say that common law spouses do not acquire property rights, only personal rights. The Defendant therefore cannot obtain co-ownership, beneficial or otherwise- it is simply not permitted by the law.

[29] In terms of the Defendant's prayers and her right of action, is clear that this is also not a case where a *droit de superficie* arises. Such a right emanates from a party building onto another's land with the owner's permission. It is a *right in rem* as opposed to a *right in personam*. For the same reason, her alternative prayer that the Plaintiff or she be allowed to buy each other out of their respective shares in the properties is also a non-starter as no property right arises where an unmarried partner moves into a property registered solely in the name of one concubine. She can only receive her share in kind.

[30] The submissions of Counsel for the Defendant made a reference to unjust enrichment although this was not pleaded and therefore even if applicable would not have been entertained as parties are bound by their pleadings. Nevertheless albeit that this exercise is academic, let me say that insofar as unjust enrichment is concerned, Article 1381-1 provides that:

“If a person suffers some detriment without lawful cause and another is correspondingly enriched without lawful cause, the former shall be able to recover what is due to him to the extent of the enrichment of the latter. Provided that this action for unjust enrichment shall only be admissible if the person suffering the detriment cannot avail himself of another action in contract, or quasi-contract, delict or quasi-delict; provided also that detriment has not been caused by the fault of the person suffering it.”

- [31] Such an action is maintainable so long as all the five conditions specified in Article 1381-1 are fulfilled, that is: an enrichment, a corresponding impoverishment, a connection between the enrichment and the impoverishment, the absence of lawful cause or justification for the enrichment or impoverishment and there being no other remedy available (see *Dodin v Arrisol* (2003) SLR 197, *Gangadoo v Cable and Wireless* (2011) SLR 253).
- [32] I am not however satisfied that the conditions above would have been satisfied, first, I have no doubt from the evidence that the Plaintiff has been enriched from the energy expended and financial contributions of the Defendant whilst they cohabited. He is now the sole occupant of the properties that was constructed during the concubinage. However she moved out of her own volition and her resulting impoverishment is as a result of her own acts partly. Secondly, there are also difficulties with the Defendant satisfying the fourth condition, that is, the absence of lawful cause or justification for the enrichment or impoverishment. The nonfulfillment of these conditions are fatal to the claim as has been discussed in a number of similar cases, namely *Charlie v Françoise* (1995) SCAR 49 (judgment of Silungwe JA), *Dodin v Arissol* (2003) SLR, *Labiche v Ah-Kong* (2010) SLR 172, *Waye Hive v Monnaie* (unreported) CS 19/2012.
- [33] The counterclaim is only saved by the obfuscated prayer that the court make an “order [for] the Plaintiff [to pay] such share of the property as the court shall declare as hers”. This is in effect an appeal to the court’s equitable powers pursuant to sections 5 and 6 of the Courts Act. They provide in relevant part that:

“5 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 ...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, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England.

6 The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.”(Emphasis added)

[34] As I stated in *Waye Hive (supra)*, that case and now the present case is one where the dissenting judgement of Sauzier J in *Hallock v d’Offay* (1983-1987) 3 SCAR (Vol1) 295 should have proper application. He stated:

“... it would be a denial of justice if the Supreme Court were to decline to use such powers on the ground that there is no remedy and that the solution to these problems are better left to the legislator.”

[35] Having established that there is no legal remedy applicable to the facts of the present case, I therefore propose to make an order to bring justice and settle the material issues between the parties.

[36] The Defendant has produced no hard evidence of her cash contributions. I have no doubt whatsoever that she did contribute financially and in kind with her energy, housekeeping, her caring and nurturing of the parties’ children which permitted him to buy the properties. I also do believe from the evidence that the Plaintiff worked extremely hard and is a self-made man. He worked for what he now has. His pickup business and baka business brought considerable revenue into the home. I also cannot get away from the fact that the property, the mortgages taken for the property are in his sole name.

[37] Given the paucity of evidence in terms of the Defendant’s financial contributions and the fact that she was building another house from a loan she had taken, I come to the conclusion that the Plaintiff contributed more to the home they once shared as she would have had less disposable income. I see little help to the Defendant’s case of the contributions made by the parties’ son to the bed sit as he occupied those premises and it is normal to expect that he made contributions towards it.

[38] In order to avail myself of the equitable powers of the court I have considered all the matters above and I award the Defendant a one third share in the total value of all the properties on Title S891, that is, SR1, 500,333.33. I also find that she left behind personal

effects and furniture which is hard to identify as the list was not accepted as evidence. It will be hard to identify the same at this stage, given the passage of time. Hence, I grant her the total sum of SR 30,000 as replacement value for the same. I do not find sufficient evidence adduced by the Defendant in relation to financial contributions towards the purchase of the Plaintiff's pickups and cannot therefore grant her money in that respect.

[39] I therefore make the following orders:

1. The Plaintiff shall pay the Defendant the total sum of SR1, 530,333.33.
2. The same with costs.

Signed, dated and delivered at Ile du Port on 22 March 2018.

M. TWOMEY
Chief Justice