

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 166/2016

(arising in XP104/2014)

[2018] SCSC 421

CHRISTOPHER HOAREAU

Petitioner

versus

NOELLA RADEGONDE

Respondent

Heard: 3 May 2018
Counsel: Mr Kieran Shah for petitioner
Miss Kelly Louise for respondent
Delivered: 3 May 2018

JUDGMENT

R. Govinden, J

Introduction

- [1] The Plaintiff is the joint owner with the Defendant of parcel V3269, upon which is located a dwelling house. The Plaintiff case is that he solely paid for the consideration for the purchased of the said parcel. The Plaintiff avers that he is the sole owner of parcel V3269

for having paid the property and carrying out all improvement and maintenance at his cost. Therefore, he pray that this court declare that he is the sole owner and to order the land registrar to amend the land Registry records with respect to title V3269, accordingly.

[2] The Defendant took a plea in limine and aver that the Plaintiff has no right of action as the Plaintiff has admitted that he purchased the property jointly with the Defendant and that they were registered as the joint owners and fiduciaries of the same. It is also the Defendant's case that she gave consideration for the purchased of the parcel through a separate agreement she entered with the Plaintiff.

[3] I will deal with this plea in limine together with the merits of the case given that this plea is intrinsically link to the facts in issue in this case.

[4] Issues to be decided

1. Are the Plaintiff and the Defendant joint owners and fiduciaries of parcel V3269?
2. If the Plaintiff and the Defendant are joint owners and fiduciaries and are registered as such, how will the court apportioned the shares in the property to the Plaintiff and the Defendant in parcel V3269 to the extent that they have shares that they have contributed in the property?
3. Apportionment of the respective shares of the parties based on evidence.

[5] Plaintiff's case.

The Plaintiff testified. He testified that he and the Defendant purchased property V3269 from the Roman Catholic Mission of Seychelles. He testified that the property housed his family home which was started by his grandfather and his then mother and later his foster mother. He said that when his mother died, his foster mother suggested to him to buy the house. He surveyed the land and valued the plot.

The Plaintiff further testified that the Defendant was his girlfriend at the material time that he decided to purchase the property. The Defendant was working in Italy. He called the Defendant over the phone and told her that he was going to borrow a loan from Barclays

Bank in order to buy this property and that he was told by the Defendant that if he was not going to put her name on the legal documents she would not come down to live with him in the house. The Plaintiff testified that as a result of this he agreed to the Defendant signing the documents. He testified that the Defendant accordingly came back from Italy and she co-signed the loan Agreement and the Transfer Agreement. According to the Plaintiff the repayment for the loan was in monthly installments of RS 1443 and that the Defendant agreed to pay RS 600 to the Plaintiff each month in order to assist him in the installment payments. He testified that she never paid the RS 600.

The Plaintiff testified that he has made drastic changes to the house and that it is totally different from what he originally purchased. Photographs produced by the Plaintiff supported this contention. The Plaintiff testified that he finally paid the Barclays Bank loan on the 27th of November 2013.

The Plaintiff claimed that he is the sole owner of the property because he was the one who borrowed the loan and the deductions were made from his account. It is his case that he was coerced and compelled by the Defendant to have her name put on the transfer document and the loan Agreement.

It is the Plaintiff's case that under article 815 of the Civil Code of Seychelles, co ownership arises when property is held by two or more persons jointly. Furthermore the Plaintiff submitted that the Article 815 provides that in the absence of any evidence to the contrary, it shall be presumed that the co-owners are entitled to equal shares and that equality is not cast in stone, but merely a rebuttable presumption. It is the Plaintiff's case that the Defendant has managed to rebut the presumption under Article 815 of the Code as he alone paid for the purchase price in full including making repairs, maintenance and extension of the house.

[6] The Defendant's case.

The Defendant testified. She said that she is the joint owner together with the Plaintiff of a parcel of land found at Belonie. She said that she is a co-owner of that property. She

testified that she was the girlfriend of the Plaintiff, working in Italy when the Plaintiff asked her to come back to Seychelles in order for her to co-sign a loan Agreement and a Transfer Agreement relating to the said parcel. The Defendant further contended that for the purpose of the purchase of the property both the Plaintiff and the Defendant went to the Barclays Bank to sign the loan agreement and that the Plaintiff accepted to repay the loan. The Defendant testified that the Plaintiff she took RS 30,000 loan from the Savings Bank in order to furnish the house on parcel V3269 and it was agreed that she would make the repayment by SR900 in cash. Thus the Defendant does not agree that the Plaintiff is the sole owner of the parcel V3269, as she contended that her part payment of the RS 30,000 loan taken jointly for the benefit of the property was in part consideration of the purchase of the parcel.

The Defendant said that she was aware that a house situated on the property required repair and that it was the Plaintiff that effected the repairs.

The Defendant said that she was approached by the Barclays Bank as the co-signatory to the loan Agreement as a result of non repayment of the loan by the Plaintiff. She said that she was ready to pay half of that of the repayment of the installment, which was SR 600 but that was refused by the Plaintiff. She testified further that she had asked for the Plaintiff for her share in the property but that this was refused as the Plaintiff only offered only SR 100,000.

The Defendant submitted that on the face of the pleadings that no cause of action is disclosed in pursuant to S 92 of the Civil Procedure Code. The Defendant submitted that the four elements for a valid contract, which is consent, capacity, object and lawful cause is clearly present in the contract regarding the purchase Agreement signed by the Plaintiff and the Defendant from which the Roman Catholic Mission.

The Defendant's case is that she and the Plaintiff undertook to repay one loan each because she was earning much less than the Plaintiff at the time of entering into the loan Agreement with Barclays Bank.

It is further the Defendant's case that any and all disbursements made by the Plaintiff on the property does not extinguish her real rights a co-owner of the property and the matter brought before the court is but an effort by the Plaintiff to delay the licitation proceedings before the court and not because of a genuine lack of property interest.

[7] Discussions

- (1) Are the Plaintiff and the Defendant the registered joint owners and fiduciaries of parcels V3269?

It is common ground that the Plaintiff and the Defendant are the registered owners and fiduciaries of parcel V3269.

This is averred in paragraph 1 and paragraphs 7 of the Plaint. The same is admitted in paragraph 1 of the Statement of Defence.

This fact is also admitted in the testimonies of the Plaintiff and the Defendant.

I therefore find that the Plaintiff and the Defendant are the registered joint owners and fiduciaries of parcel V3269.

- (2) How will the court apportioned the shares to the Plaintiff and The Defendant in parcel V3269.

Article 815 of the Civil Code would have direct application in this case. This article reads as follows, "*Co-ownership arises when property is held by two or more persons jointly. In the absence of any evidence to the contrary it shall be presumed that co-ownership are entitled to equal share*".

On this basis I find that in pursuant to article 815 of the Civil Code the property in issue is in a state of co –ownership between the Plaintiff and the Defendant. I would have to find

that both parties are entitled to equal shares unless any of the parties produced any evidence to the contrary. The Defendant is clearly relying on the presumption under Article 815, whilst the Plaintiff case is that the evidence adduced has shown that the Defendant is not entitled to equal shares as she has not adduced evidence to show that she has contributed in any way in the purchased of parcel V3269.

The applicable law and legal principles in this case would be that of case law arising in matters regarding co-ownership and division of co-ownership under the common law and not in cases falling under the Matrimonial Causes Act. As the latter have its own specific rules regarding division of matrimonial properties and at any rate the property in issue in this case is not a matrimonial property but one of co-ownership arising out of a state of “concubinage”

The Matrimonial Causes Act in that regards has special mechanism under S20(1) of the Act to deal with property adjustment and apportionment following a divorce. It appears that matrimonial law recognized the principle of equal shares in cases of immovable own jointly. However, this is mitigated when one is considering “all the circumstances” under S20(1) of the said Act. The “all circumstances” have been held to be factors such as (a) standard of living before the breakdown of the marriage; (b) age of the parties; (c) duration of the marriage; (d) physical and mental disability of either party; (e) contribution made to each party to the welfare of the family, including house work and care roles . Vide *Esparon v Esparon* SCA 12/ 1997.

The “evidence to the contrary” under article under 815 is evidence of proof of ownership that would rebut the presumption of ownership under the said article. They are not equitable factors, but facts that shows that they have given value to the co-owned property or at least have acquired it through lawful means. Equitable principles as those applicable under S20(1) of the Matrimonial Causes Act would hence be of little assistance.

In *Dupre v Balthilde* (C.S 220/94). The Plaintiff who had been living in “concubinage” with the defendant sought a declaration of her share in a property purchase and wholly paid

for by the defendant while they were living together. She claimed that she had been paying maintenance of the family. The Court held that the claim must fail as it was based on property adjustment which had no place in “concubinage”. It was held also in *Esparon v Monthly* (1986) S.L.R P124 that the principles of division of property between married parties cannot be applied between parties living in “concubinage”.

Accordingly, case law submitted by the parties such as *Charles v Charles* SCA 1/03 and other matrimonial proceedings would find would no application in this case.

Moreover, the defence of the defendant as pleaded in the Statement of Defence does not plead a defence of a cause of action “de in rem verso”. Neither does the Defendant present a Counterclaim based on the cause of action of “de in rem verso”. As it was held in the case of *Larame v Payet* (1983 –87) 3 SCAR (VOL) . 355, “ *No enforceable legal rights are created or arise from the mere existence of a state of concubinage , but a cause of action “de in rem verso” or “enrichissement sans cause” can operate to assist a concubine who has suffered detriment without lawful cause to the advantage of the other party to the concubinage*”. Therefore, the court will not consider such a defence in this case.

What this court would have to do is to scrutinize the evidence and find whether evidence tender shows that the Plaintiff has managed to rebut the presumption of co-ownership under Article 815 in this case and that notwithstanding the registration of the Defendant as a registered joint owner under the provisions of the Land Registration Act, the Plaintiff should be declared as the sole owner of parcel V 3269 .

(3) Apportionment of the respective shares of the parties in parcel V3269, based on evidence.

The plaintiff testified that parcel v 3269 is a property that has been in his family for more than a generation. His foster mother finally told him to purchase it after her mother died. He had caused the property to be valued by GM Survey and Barton and Barton .The Roman Catholic Mission decided to sell him the plot a SR.100,000. At that time his girlfriend of six and a half years was working in Italy. The Plaintiff applied for a Home Finance loan

from the Barclays Bank to assist him to purchase the parcel. The loan came in a sum of SR.125000. He thereafter called the Defendant, who was in Italy and asked her to assist him in the purchase by putting her name on and signing the Loan Agreement and the Land Transfer Agreement and to assist in the settlement of the loan. The resettlement was in a monthly instalment of RS1443 and it was agreed between the Plaintiff and the Defendant that the Plaintiff contribute RS 843 and the Defendant contribute RS 600. The Defendant came back to Seychelles and she co-signed the Loan Agreement and the Transfer Agreement. The Plaintiff paid the personal contribution of 29 percent from his personal account.

The Plaintiff testified that the Defendant after that took a loan from the Savings Bank. It was in the sum of SR 30,000. The purpose was to buy households items for the house. According to the Plaintiff he gave RS 900 to the Defendant each month so that she could repay this loan. The Plaintiff claims that when Defendant left his house he stopped paying the RS 900 to the Defendant as the defendant had already removed the items bought from the proceeds of the loan from his house.

The Plaintiff further testified that the Defendant never paid a cent to assist him to repay the joint loan with Barclays. The Plaintiff fully and finally paid the Barclays Bank Loan in November 2013. The final payment being a cash deposit of RS73,000.

The Plaintiff said that the Defendant failed to pay up any parts of the loan even when the bank moved to recover its security against the property as a result of certain difficulties that he was having in repaying the loan.

The plaintiff further testified that the Defendant asked him for some compensation for her share in the property but he refused to pay as he considered that the Defendant has no shares in the property.

The Plaintiff called Ms Paulette Labonte, the Collection and Recovery Officer at Barclays Bank, who testified that according to her record it was the Plaintiff who paid the entire

Barclay loan.

The Defendant admitted that she never paid any sum in the repayment of Barclays Bank loan. This, although it was initially agreed between the parties that the Defendant pays SR 600 out of a total SR1443 per month. It is her testimony, however, that it was agreed that the Plaintiff repay the Barclays Bank loan and that she would repay the Savings Bank loan. She said that, contrary to what the Plaintiff says, that it was the Plaintiff who borrowed the Savings Bank and she gave SR 900 monthly to the Plaintiff to settle the loan. The Defendant further testified that it was she who gave SR 900 to the Plaintiff to repay this loan.

Finally the Defendant testimony is that the Plaintiff offered her SR 100,000 for her share in the parcel and that she refused and counter offer in a higher sum of SR 300,000; then SR 280,000 and after that SR. 250,000.

Having carefully considered the evidence on record in the light of the pleadings and the submissions of counsels and the law applicable in this case to the facts of this case I am of following determination;

I am of the view that though the Defendant signed the loan agreement jointly with the Plaintiff, the Defendant did not participate in the repayment of this loan. The Loan was repaid wholly by the Plaintiff. I disbelieve the Defendant that she attempted to repay the loan when the Plaintiff met certain difficulties in the settlement of the said loan. This evidence is not corroborated by the evidence of Mrs Labonte. I find that the latter evidence, to the contrary, renders the testimony of the Plaintiff regarding his repayment and the challenges that he met in effecting same to be more credible. To that extent I find that the Plaintiff has reversed the presumption of ownership under article 815. Though the property is in the joint names of the plaintiff and the Defendant, the Defendant did not make any contribution in its purchase directly or indirectly. Neither did the Plaintiff intended to give her half of the property as a gift or by any other means, this is not borne out by evidence. The plaintiff is seen as always insisting that she give valuable consideration in order to

acquire ownership in the land.

I am of the further opinion that it was the Defendant who took the Savings Bank loan in order to pay for some household furniture and that the Plaintiff assisted her in the repayment of the said loan through a monthly contribution of RS 900. This loan was however not a consideration for the purchased of parcel, it came after the purchased through the Barclays bank loan of the said parcel. Therefore, it cannot account for evidence of a share or interest of a property prior to purchase by the parties. At any rate the fact that the Defendant removed all the movables purchased with the Saving Bank loan from the house situated on V3269 clearly shows that these were items bought in her personal name and not as her direct or indirect contribution in the purchase of the said parcel.

The Defendant is seeking to rely on the presumption under article 815 on the basis of indirect contribution allegedly made by her, as I have said since no legal rights flow from a “concubinage”, consideration such as domestic service rendered will be irrelevant here. Moreover the cause of action “*de in rem verso*” is not pleaded by the Defendant. Therefore, the only contribution that can be attributed to the Defendant would have been contribution towards the Barclay Loan repayment or at least contribution by way of assisting in furnishing the movables for the house situated on the said parcel. But as I have found this was not the intention of the Defendant and moreover she removed the movables from the house when she left the Plaintiff for good.

- [8] Therefore , I make the following orders;
- (a) I declare that the Plaintiff is the sole owner of title V3269
 - (b) I order the Land Registrar to amend the Land Registry records with respect to title V3269 and enter the Plaintiff as the sole owner of parcel title V3269.

- [9] I further award cost in favour of the Plaintiff.

Signed, dated and delivered at Ile du Port on 3 May 2018

R. Govinden, J
Judge of the Supreme Court

