

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 88/2016

[2018] SCSC 446

ANGELLE ESPARON

Plaintiff

versus

MARLYN ESPARON

Defendant

Heard: 14th November 2017
Counsel: Mr. Brian Julie for plaintiff
Mr. Charles Lucas for defendant
Delivered: 16th May 2018

JUDGMENT

Pillay, J

[1] The Plaintiff seeks a judgment from the Court ordering the Defendant to:

- a) pay the Plaintiff the sum of SR 142, 360 with interests and costs.
- b) give the Plaintiff access to her house.
- c) give the contractor access to the premises.

- [2] The Defendant denied owing any sums to the Plaintiff and countered by suing the Plaintiff for the sum of SR 175, 000.00 as her half share of the car the Plaintiff owes, as well as SCR24, 700.00 being her contribution to the Plaintiff's house and SCR25, 000.00 as moral damages.
- [3] The Plaintiff denied all the Defendant's claims and we proceeded to hear the case.
- [4] In essence the Plaintiff's case is that she left the Defendant's house in December 2015 because she did not like the environment at house and the Defendant, her mother, told her to leave. She tried to get back into the house even with Police assistance and went back to the house a few times to "remove some of her things" but could not because "she [the Defendant] did not want me to take my things." She denied owing the Defendant any money and stated that her mother gave her money "just like a mother gives the child money." She also testified that the Defendant never asked her to "return any money except for the day that I left the house she started me making threats and asking me for money."
- [5] The Defendant for her part testified that she gave her daughter everything. She stated that she was the one who sent money for the Plaintiff to purchase the car while she was in Malaysia. She further testified that she gave the Plaintiff SCR2500.00 per month on the basis that on her death the Plaintiff would have her own house and Yannick (the Defendant's son, Plaintiff's brother) would have the Defendant's house.
- [6] The issues to be decided are as follows:
- a) is the Defendant liable to the Plaintiff for the loss and damage to the Plaintiff's belongings?
 - b) is the Defendant liable to give the Plaintiff access to her house?
 - c) is the Defendant liable to give the contractor access to the Plaintiff's house?
 - d) is the Plaintiff liable to the Defendant for a half share in the car?

- e) is the Plaintiff liable to the Defendant for contribution to the Plaintiff's house?
- f) is the Plaintiff liable to the Defendant for moral damages?

[7] Mr. Brian Julie for the Plaintiff filed submissions dated 19th February 2018 with a number of documents including receipts attached.

[8] I am at a loss to understand the purpose for which he has attached those documents in view of the fact that they were never exhibited at all during the hearing.

[9] In any event I find his submissions to be of no help whatsoever. It is simply a repeat of the pleadings without any arguments as to why the Court should find in favour of the Plaintiff.

[10] Mr. Charles Lucas for the Defendant opted not to file any submissions leaving the Court to decide the case on the evidence adduced.

[11] From the outset I have to say that I found the most credible witness to be the Defence witness number two, Michel Yannick Esparon. In fact his evidence gives answer to many of the above questions. He was very candid about the fact that his relationship with his mother and his sister was not always good but that he was now on good terms with both of them.

[12] I note his answer to Mr. Julie's question in cross examination at page 22 of the proceedings of 14th November 2017, 2pm;

“My mother asked me to come but I am not siding on any side but I am telling the truth. If I start from the beginning to the end you will see that the mother and daughter has a very good relationship compare to me.”

[13] **Is the Defendant liable to the Plaintiff for the loss and damage to the Plaintiff's belongings?**

[14] With regards to the Plaintiff's belongings the Plaintiff's brother testified that he was present when his sister was removing her things from her mother's house. In spite of him

telling her not to remove all her things she did and she “removed all her things and she placed some in the constructing house and some she went with.”

[15] The Plaintiff for her part testified at page 18 of the proceedings of 13th November 2017 thus;

“ Q: Now, did you manage to retrieve all the items from your house?

A: I left the paint behind.

Q: So apart from the paint, there are no other items from your house that you did not retrieve?

A: Only construction things like pipes and the paint.

Q: So these items in this list are in her house?

A: Yes.”

[16] Following the issuance of a Court order the Plaintiff collected her belongings in December 2015.

[17] As regards the claim for personal belongings at paragraphs 9 through to 12 I see no evidence of any personal belongings that were left behind and exposed to the sun and rain.

[18] On the above I see no basis for the claim at paragraph 9 through to 12.

[19] **Is the Defendant liable to give the Plaintiff access to her house? Is the Defendant liable to give the Plaintiff’s contractor access to the Plaintiff’s house?**

[20] I will consider both issues together since they are inter-related.

[21] From pages 29 through to page 33 of 14th November 2017 proceedings it is clear that the Defendant has no issues with the Plaintiff having access to her house (the house under construction).

- [22] Her objection is to the Plaintiff's husband coming to her property because according to her he was disrespectful to her and in a sense created a rift between the Defendant and her daughter by interfering in the plans that they had made together.
- [23] In fact the Defendant's answers are indicative of the situation between the parties, a close mother and daughter relationship that soured once the daughter married and started making plans with her husband rather than her mother.
- [24] It is admitted by the Defendant that she gave the Plaintiff permission to build her own house on the Defendant's land, S4047.
- [25] It is also not denied that the house is near completion save for certain planning issues (DE3).
- [26] Having authorised the construction on her land the Defendant cannot now seek to impose restrictions on whom the Plaintiff can bring to her house.
- [27] The Plaintiff has a right to use the part of the land on which the house stands (see **Mussard v Mussard (1975) SLR 170** and **Coelho v Collie (1975) SLR 78**).
- [28] By the same token then the Defendant cannot seek to stop the contractor from having access to the Plaintiff's house.
- [29] I note that the Plaintiff at paragraph 7 of her Complaint has averred that she had offered to sell the house to the Defendant and the Defendant in turn has averred at paragraph 6 that she shall not unreasonably refuse access should it be carried out with the Court's permission solely for the purpose of evaluation of the Plaintiff's house.
- [30] However there is no prayer for the Defendant to pay the Plaintiff the value of the house.
- [31] **Is the Plaintiff liable to the Defendant for a half share of the car?**
- [32] Yannick Esparon supported his mother's evidence that it was his mother who paid for the expenses relating to the car. It was his evidence that he assisted to remove the car from the port. It was further his evidence that the car was supposed to be the family car though he was not a party to that agreement.

- [33] Mr. Esparon further testified that it was his mother who paid the duty to remove the spares from the airport after the car was involved in an accident in 2015. However he did not know who paid to purchase the said spares.
- [34] It was his evidence that every year his mother sent money to his sister. In as much as he stated that he was frustrated that his sister was getting the money while he was the one doing the work, I detected no animosity nor ill feeling towards the sister or his mother. His evidence was that his mother sent his “sister money and his sister sent two pictures of a car; one a MIVI and the other one is Daihatsu Charade...”
- [35] The witness admitted that he did not know if his sister, the Plaintiff, had been to the airport to pay the duty before him and his mother collected the spares.
- [36] From the statements (DE1) cash totalling SCR 159, 276.00 was withdrawn from the Defendant’s account out of which three transactions tally in the name of the Plaintiff with regards to date (DE2).
- [37] It is clear from the evidence that the mother sent the daughter money every so often in various amounts. That fact was admitted by the Plaintiff but she stated that these transfers were for specific transactions.
- [38] I note at this point the evidence of the Plaintiff at page 29-30 of the proceedings of 13th November 2017 at 930am:

“Q: I put it to you that you had requested that your mother contributes towards the price of the purchased car, so that you managed to import the car one year later into Seychelles in order for you to get duty exemption when the car would arrived in Seychelles so that in the end of the day the two of you gets a car at a much cheaper rate than what a car would have cost in Seychelles?

A: I paid for the car I never asked my mum for any loan.

Q: was there not such an arrangement with your mother?

A: There was no such arrangement, she put it before me but I did my own things.”

[39] It is obvious that there were discussions for the purchase of the car presumably to benefit from the concessions granted to returning graduates, so that the family as a whole could benefit.

[40] In as much as I accept that funds were transferred some of which was to be used for the purchase of the car, there is no evidence as to how much of the funds were to be used for the car.

[41] That said I do not believe that the Plaintiff is liable to the Defendant for a half share in the car. Whatever funds were given was on the basis that the Plaintiff was her daughter and she did everything for her daughter. So I find.

[42] **Is the Plaintiff liable to the Defendant for contributions she made to the construction of the house?**

[43] With regards to the house, when asked if his mother contributed to the house his (Yannick Esparon) evidence was as follows:

“Q: Do you know if your mother made any contribution towards the construction of the house?

A: Yes because the pillars that has put tank on, the soak away for the pit hole; I know during the day she was there with the contractors.

Q: You assisted, did you ask any payment for that?

A: No, the house you have to be a millionaire or either you had to have a lot of money abroad because the size of the house and from my observation I can say that my mother has contributed.”

[44] The Plaintiff averred in her Complaint that she got a loan to build her house, she stated that she got a loan of SCR 300, 000.00 from HFC in 2014 and started construction in 2015 (pg. 36) plus a grant of SCR 60, 000.00.

- [45] The car was bought at SCR 175, 000.00 money that the Plaintiff would like the Court to believe came from her savings as a student. I note at this point that the Plaintiff received a student allowance of Euro 400 according to the Defendant. The Plaintiff paid SCR 150, 000.00 for freight, SCR 12, 000.00 and SCR 2, 000.00 for insurance and road fund. All this from her own funds according to her.
- [46] The Plaintiff also testified that whatever money was sent to her while she was in Malaysia, came from the joint account she held with her mother. However her brother testified that the money on that account came from the Defendant who reared animals and bred dogs to sell.
- [47] In any event there is no evidence to support any argument that the money on the joint account came from the Plaintiff. She went to Malaysia straight from school, she returned in August or September 2013 and started work in November 2013.
- [48] According to the Plaintiff she paid SCR12, 000.00 for the architectural plans (pg. 34) and left money with her mother to pay the contractor when he came to do the construction on her house.
- [49] I take judicial notice of the high cost of construction in the country since 2008 up to the present time and on the evidence I find it close to impossible to believe that the Plaintiff built a storied house to the stage it was at when she and her mother fell out without other financial help.
- [50] I also take note of the Defendant's evidence at page 4 and page 27 of 14th November 2017 proceedings "I spend more on my daughter than my son, school fees, extra classes, I.T. classes. I did more for my daughter than I did for my son....Until 18 years I have provided for them, I bought Yannick a laptop and Angelle I gave her everything."
- [51] On an examination of the evidence I accept that the Defendant assisted the Plaintiff financially in building the house as she had with so many other things. However I do not believe that whatever funds she gave to the Plaintiff was by way of a loan. It is my firm belief that whatever assistance the Defendant offered to the Plaintiff was as a result of the close relationship that existed between mother and daughter. If at all, her contributions would be relevant if the value of the house was in issue. So I find.

[52] **Is the Plaintiff liable to the Defendant for moral damages?**

[53] The Defendant claims SCR 25, 000.00 for moral damage. There is no particularisation of what moral damage she suffered.

[54] At page 23 of the proceedings of 14th November 2017 counsel proceeded to question the Defendant on her claim for moral damage.

[55] The Defendant described the incident of 25th December, how her daughter took some pills and went to her bedroom resulting in the Defendant calling the Plaintiff's husband to come check on her. According to her own testimony, following what she seems to have viewed as a threat by her daughter to take her own life ("I told her that blue flies will come get her out") she "did not bother myself with them" and proceeded to cook her food and go to her brother's for lunch. (pg 23) The next day the Plaintiff's husband came back and told her that she (the Defendant) is "one of nine kids and you are the most domineering of them all even your mother is scared of you." According to the Defendant that affected her and for that she claims SCR 25, 000.00.

[56] On the above I do not see any basis for the claim for moral damages. The incident of 25th December did not affect her in my view since she carried on to cook her food and went to a lunch at her brother's place.

[57] As for the incident of 26th December, there is no explanation as to how the problems affected her. In any event whatever was said was said by the Plaintiff's husband and not by the Plaintiff.

[58] On the basis of the above I make the following orders:

- a) the claim of SCR142, 360.00 by the Plaintiff against the Defendant is dismissed.
- b) the prayer by the Plaintiff to be given access to her house is allowed. The Plaintiff shall be allowed access to her house which is under construction immediately.
- c) the prayer by the Plaintiff for the contractor to be given access to the premises is allowed. The contractor shall be allowed access to the Plaintiff's house immediately.

- d) the claim for SCR 175, 000.00 by the Defendant being a half share in the car is dismissed.
- e) the claim for moral damages by the Defendant against the Plaintiff is dismissed.
- f) each party shall bear their own costs.

Signed, dated and delivered at Ile du Port on 16th May 2018

L. Pillay, J
Judge of the Supreme Court