

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 82/2015
(Arising in DV 01/2014)

[2018] SCSC 690

DOROTHY KETTY PADAYACHY NEE THELERMONT

Petitioner **Versus**

BRYAN MICHEL PADAYACHY

Respondent

Heard: 30th and 31st May 2016; 29th January and 20th February 2018

Counsel: Mr John Renaud for Petitioner

Ms. Vanessa Gill for Respondent

Delivered: 18th July 2018

JUDGMENT

ANDRE-J

[1] This Judgement arises out of a Petition of the 12th March 2015 and filed on the 23rd March 2015 filed by Dorothy Ketty Padayachy (nee Thelermont) (“Petitioner”), pursuant to Section 20 (g) of the Matrimonial Causes Act (Cap 124) (“the Act”), praying for, **“a three quarter share in the house situated on property number B2335 (“the property”), for the Respondent to move out of the property and sell his one quarter share in the matrimonial home to the Petitioner or transfer to their children with costs”**.

[2] Bryan Michel Padayachy (“Respondent”), filed an Affidavit in Reply of the 28th July 2015, admitting to the marriage and divorce of the 18th December 1993 and 17th December 2014 respectively. The Respondent however, contests that the Petitioner is entitled to three quarters undivided share and that he is only entitled to one quarter

undivided share in the matrimonial home and he moved for full possession of the matrimonial home.

- [3] The following are the salient factual and procedural background to the pleadings pertinent for the purpose of this Judgement.
- [4] Petitioner and Respondent were married in the Seychelles on 18th December 1993 and they have two children born of the marriage, one being a minor. The parties were divorced on the 28th January 2015.
- [5] The Petitioner avers that she is the sole owner of the property which the Petitioner had inherited from her father. (*Exhibit P1*).
- [6] The Petitioner further averred that she is seeking an Order from the Court that the Respondent moves out of the matrimonial home situated on the property and sell his alleged one quarter undivided share to the Petitioner or it can be transferred to their children.
- [7] At the hearing, Petitioner testified on her own behalf and called one witness Quantity Surveyor Stanley Valentin and Defendant likewise in support of their respective stand points.
- [8] The Petitioner testified that the Respondent and herself took out a loan jointly on the 30th September 2005 from Home and Finance Company for a construction on the property and that the loan repayment was done solely by her, up until 2012, when they were able to settle the loan balance in full.
- [9] The Petitioner further testified that she is entitled to a three-quarter undivided share and the Respondent one quarter undivided share in the matrimonial home and that she wants to have full possession of the matrimonial home and testified that if she had not been earning a salary and doing most of the payment of the loan taken to construct the matrimonial home, they would not have been in a position to build the house on the property.
- [10] Mr. Stanley Valentin who testified for the Petitioner produced his valuation report (*Exhibit P2*), attesting to the quantitative analysis and estimated market value of the matrimonial home, more particularly, the dwelling house and other developmental work observed on the property estimated at Seychelles Rupees One Million Two Hundred and seven Thousand Eight Hundred and Forty Eight and Cents Eighty Four (*S.R. 1, 207, 848.84/-*).
- [11] The Respondent on his part testified and contests the evidence of the Petitioner and her prayers afore-mentioned [paragraph 1] (*supra*), and testified that he is entitled to a half undivided share in the matrimonial home, which is valued at Seychelles Rupees Two Million Seven Hundred Thousand (*S.R 2,700 000/-*).

- [12] The Respondent further testified that he made various financial contributions during the marriage which include, paying of utility bills, buying food during the time that the house was being constructed, as well as physical labour and undergoing pig farming which he estimated to be around Three Hundred Thousand (S. R. 300,000/-) in total.
- [13] The Respondent further testified that he would have still been able to repay the loan back even if the Petitioner would not have been working.
- [14] The Respondent further testified that he is claiming a half share in the Terios jeep of registration number S15997 (*Exhibit D7*), which he purchased by way of an MCB loan in the sum of Seychelles Rupees Ninety Six Thousand (S.R. of R96, 000/-) and a loan of Seychelles Rupees Fifty Thousand (S.R50,000/-) from a friend (*Exhibit D2*). Respondent additionally, testified that he was also making a claim with respect to cost of repairs to the jeep as a result of the Petitioner causing damage to it after it had been transferred on the parties' joint names. Due to the damage, the Terios jeep was estimated to be valued at about Two Hundred Thousand (SR200, 000/-).
- [15] The Respondent testified further that he had to bear the cost of repairs after the Petitioner had damaged the Terios jeep and that it cost Dirham Fifteen Thousand (*DHS15,000*) to purchase the spare parts \from Dubai in 2011 (*exchange rate of 1 Dhs 3.33349 (SCR in 2011)*) (*Exhibit D3*), Seychelles Rupees Five Thousand Nine Hundred and Twenty Four and Cents Thirty (*SCR 5924.30/-*) to clear the spare parts from the port and Seychelles Rupees Thirty One Thousand One Hundred and Ninety Nine and Cents Thirty Three (*SCR 31,199.33/-*) (*Exhibits D4, D5, D6*).
- [16] The Respondent, hence claims that he is entitled to recover half of the costs associated with the indicated repairs and would like the Petitioner to pay him his half share of the Terios jeep since she had made no contributions to it.
- [17] It is to be noted further that the Respondent produced (*Exhibit D1*), being a valuation report of the 2nd July 2015 from one Quantity Surveyor Gustave Larue indicating the value of the matrimonial home, namely, the three bedroom house at Seychelles Rupees One Million Four Hundred and Twenty Eight Thousand (S.R. 1,428,000.00/-), the externals at Seychelles Rupees Five Hundred and Thirty Seven Thousand Five Hundred (S.R. 537,500.00/-) and loose furniture inside the house with a provisional value of Seychelles Rupees One Hundred and Thirty Thousand (S.R. 130,000.00/-). Total value of the components evaluated at being Seychelles Rupees Two Million Seven Hundred Thousand (S.R. 2,700,000.00/-).
- [18] Having dealt with the evidence of the parties I shall now move on to the relevant law to be considered and applied in this matter more particularly, the provisions of the Act which clearly does not establish, “*in any form, the system of community of property between spouses during marriage so as to constitute ‘Matrimonial Property’.*” (*Maurel v Maurel, (SCA 1/1997 (9th April 1998) at pp. 4-5*).

[19] Section 20(1)(g) of the Act, entitled “Financial relief” provides that:

“Subject to section 24, on the granting of a conditional order of divorce or nullity or an order of separation, or at any time thereafter, the Court may, after making such inquiries as the Court thinks fit and having regard to all the circumstances of the case, including the ability and financial means of the parties to the marriage

(g) make such order, as the Court thinks fit, in respect of any property of a party to a marriage or any interest or right of a party in any property for the benefit of the other party or a relevant child.”

[20] Now, although parties that own property jointly are in principle entitled to equality of share, this is only a starting point for the Court’s determination under Section 20 (1) (g) (Reference is made to **(Charles v Charles 2005 SCCA 13, Pgs. 22-23)**). The Court is enjoined by section 20 (1) (g) to make such matrimonial property adjustment as is far and just in the circumstance of a case.

[21] The Court must, *“determine the contribution both financial and otherwise of both parties to the family enterprise and apportion ownership accordingly.”* (Reference is made to **(Sabadin v Sabadin 2014 SCSC 35)**).

[22] In exercising its broad discretion, the Court may consider, *inter alia*, ‘who paid the purchase price and the loans for the family home as well as the

- 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) *Contributions made by each party to the welfare of the family, including housework and care roles; and*

f) *Any benefits which a party loses as a result of the divorce*’.
(Reference is made to **(Esparon v Esparon, SCA 12/1997)**)

[23] As the Court in **(Esparon v Esparon [2012] SCSC 5)** held, there is, “*no mathematical formula by which matrimonial property should be divided, and each case is considered on merits. Where the Court concludes that the matrimonial assets belong to both parties, it must then determine what portion of ownership each party holds depending on the level of contributions made by each party*”.

[24] The underlying issues surrounding this case are as follows:

(i) What are the share entitlements for each party with respect to the matrimonial home situated on the property?

(ii) Whether the Respondent is entitled to a half share in the Terios jeep and claim for the total amount spent on repairing it.

[25] In the present case, the evidence reveal that it is not disputed that the land parcel B 2335, the property belongs to the Petitioner solely (*Exhibit P1*). However, the matrimonial home is jointly owned by both parties in view of their contributions therein during the marriage both in terms of loan repayments by the Petitioner and financial contributions to the household needs again during the marriage by the Respondent.

[26] As per the valuations reports exhibited before the Court by both parties namely (*Exhibits P2 and D1*), the value of the matrimonial home and other developmental works inclusive of retaining wall of solid block work, walling and ground filling to make up level at northern and southern elevation of the dwelling house is at Seychelles Rupees One Million Two Hundred and Seven Thousand Eight Hundred and Forty Eight and Cents Eight Four (*S.R. 1, 207, 848.84/-*) (*Exhibit P2*) and (*Exhibit D1*) at Seychelles Rupees One Million Four Hundred and Twenty Eight Thousand (*S.R. 1,428, 000/-*) with externals at Seychelles Rupees Five Hundred and Thirty Seven Thousand Five hundred (*S.R. 537,500/-*) and loose furniture inside house at Seychelles Rupees One Hundred and Thirty

Thousand (S.R. 130,000/-)and the land at Seychelles Rupees Five Hundred and Seventy Five Thousand Two hundred (S.R. 575,200/-)

- [27] The Petitioner testified to the fact that she is the sole owner of parcel B2335 on which the matrimonial home has been built and this stands undisputed by virtue of (*Exhibit P1*), being the Title deed in the name of the Petitioner.
- [28] The Petitioner also testified to the fact that both her and the Respondent took a loan from HFC to construct the matrimonial home which she paid monthly through deductions made from her salary and this is also undisputed by the Respondent albeit contributions towards household needs on his part in view of his farming activities and personal input in the constructions on the property.
- [29] Both parties were able to settle the loan payment by compensation money awarded due to the water pollution incident which took place at La Misere as well as the compensation the Petitioner had obtained from the Ministry of Employment.
- [30] The Petitioner testified that she strongly opposes the Respondent's evaluation of the property and the house of Seychelles Rupees One Million Four Hundred and Twenty Eight Thousand (SR 1,428,000/-) (*Exhibit D1*) on the basis that the house and the land should not be valued together and that the house was incomplete. The Petitioner testified that it is fair and just that the Respondent be paid Seychelles Rupees One Hundred Thousand (S.R. 100,000/-) (*a quarter share of the matrimonial home*) so as he can leave the matrimonial home. She admitted that she can only afford to pay Seychelles Rupees One Hundred Thousand (SR100,000/-) to the Respondent and that the Respondent's contribution was Seychelles Rupees One Hundred and Fifty thousand (SR150,000/-) and not Rupees Three hundred Thousand (R300,000/-) towards the construction of the matrimonial home.
- [31] With respect to the Terios jeep the Petitioner testified to not having any involvement other than signing the bank agreement for the loan. She agrees that it was the Respondent

who handled the repayment of that loan all on his own. However, she wishes to be compensated for half of the Terios jeep.

- [32] In cross-examination, the Petitioner testified that both herself and the Respondent lived a comfortable life during the time of their marriage where everything was provided for. She further admitted that the Respondent was taking care of all utility bills and expenses in the running of the household for over twenty years. The Respondent confirmed same at the stage of the defence albeit no receipts produced in support and this lacuna is surely understandable in view of the nature of the contributions.
- [33] Mr Stanley Valentin who is an expert Quantity Surveyor and the sole witness on the Petitioner's behalf provided a valuation of the dwelling house at Seychelles Rupees One Million Two Hundred and Seven Thousand Eight Hundred and Forty Eight and Cents Eight Four (*S.R1,207,848.84/-*)
- [34] The Respondent on his part testified that he had a part time job other than working at PUC in that he was undergoing pig farming and stated that the part time job helped to pay for bills, utilities and repairs more than his actual job would. He testified that he earned approximately Thirty five thousand to Forty Five Thousand (*S.R35, 000- R45, 000/-*) after seven or eight months of pig farming.
- [35] The Respondent in his testimony claimed that it was natural for him to be contributing more than his ex-wife for the running of the household, thus, the reasoning behind why he is claiming that his contribution in the house is more than Seychelles Rupees Six Hundred Thousand (*SR600, 000/-*). The Respondent maintained he was contributing more than Rupees Four Thousand Five hundred (*R4, 500/-*) monthly in terms of maintaining the household.
- [36] In cross-examination, the Respondent admitted that he is prepared to vacate the matrimonial home when he receives the share that he deserves. He maintained that he

wishes to give the Petitioner her half share in the matrimonial home only as well as the Terios jeep.

- [37] Mr Gustave Larue, the Quantity surveyor who drew up Report for the value of the matrimonial home on behalf of the Respondent (*Exhibit D1*) at Seychelles Rupees One Million Four Hundred Thousand (*SR1.400,000/-*) as it was in good condition, well maintained and big enough, with the materials and housing appliances still being in good working conditions. Although, the house itself was not completed in that parts of the internals of the house, as well as some parts of the ceiling were not painted, he did state that the structure of the house was good. The house was built six years prior to the report being compiled and it was made clear that the value of the house was evaluated by way of using a standard market rate.
- [38] As indicated at [*paragraph 1*] (*supra*), the Petitioner prays that this Honourable Court to declare that she owns a three-quarter share in the house situated on her property surveyed as parcel B2335; to order to the Respondent to move out of the said property and sell his quarter share in the matrimonial home to the Petitioner or to transfer it to his children; and to order the Respondent to pay costs to his action.
- [39] The Respondent on his part prays for orders to be paid his claimed undivided half share in the matrimonial home and that the Petitioner's half share in the Terios jeep, including the cost of repairs to be repaid to him.
- [40] Now, in line with the evidence as illustrated above, in my considered view, both parties contributed towards the construction of the matrimonial home in terms of the structure and its appurtenances indoors and outdoors in both financial terms (*both*) and physical labour latter on the part of the Respondent as analysed.
- [41] However, the valuation Reports of the quantity surveyors (*Exhibits P1 and D1*) illustrates slight discrepancies in terms of what was valued, hence leading to a difference in total value of the property. However, the Court is of the view that the valuation Quantity

Surveyor Stanley Valentin is to be preferred in all the circumstances of this case noting its well structured nature upon explanations given as to the quantitative analysis hence the total sum of Seychelles Rupees One Million Two Hundred and Seven Thousand Eight Hundred and Forty Eight and Cents Eighty Four (*S.R.1,207,848.84/-*) estimated as at 12th July 2016.

[42] It follows thus that I find as follows:

(i) Firstly, that the Respondent is entitled to a half undivided share of the value of the matrimonial home as per valuation report of Quantity Surveyor Stanley Valentin namely, in the sum of Seychelles Rupees Six Hundred and Three Thousand Nine Hundred and Twenty Four and Cents Four Two (*S.R. 603, 924.42/-*).

(ii) Secondly, that due to the own admission of the Petitioner of not having contributed towards the purchase and maintenance of the Terios jeep (*which is albeit registered in the joint names of both of the parties*), she is thus not entitled to any share on that Terios jeep and should transfer same in the sole name of the Respondent and in fairness no claim of repairs as incurred by the Respondent as illustrated in evidence is to be paid back; and

(iii) Thirdly, that the Respondent shall vacate the matrimonial home within a period of three months as of the date of payment of his share in the matrimonial home by the Petitioner in this matter.

[43] Both parties shall bear their own costs in this case.

Signed, dated and delivered at Ile Du Port on this 18th day of July 2018

ANDRE S.-J

Judge of the Supreme Court