

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 100/2016

[2018] SCSC 716

DORICIA MARIELINE SAMSON

Plaintiff

versus

DANIEL HERMITTE

Defendant

Heard: 15th November 2017 and 23rd February 2018 (subsequent mentions for Submissions).

Counsel: Mr S. Roullion for plaintiff

Mr. C. Andre for defendant

Delivered: 26th July 2018

JUDGMENT

ANDRE-J

[1] This Judgement arises out of a Plaint of the 25th November 2016 filed by Doricia Marieline Samson (“*Plaintiff*”), who lived in *concubinage* for over nineteen (19) years with Daniel Hermitte (“*Defendant*”). The Plaintiff claims, “***unjust enrichment as against the Defendant for his alleged general failure to contribute to the payment for the property or any improvements thereto without lawful cause to her detriment and that the***

detriment has not been caused by the fault of the Plaintiff hence claiming for a declaration in her favour of her true share in the house enclosed on and the land on the property and for such declaration to cover the real contribution and developments of the property in rebuttal of the presumption of equal shares of co-owners.”

[2] The Defendant by way of reply of the 15th February 2017 denies the claim and moves for dismissal of the Plaint with costs and avers in support of his prayer that, “*if division is done, it should be done in respect of (S.R. 125,000/-) divided into two which will be (S.R. 62,500/-) each. In this respect the balance is (12,500/-) which when taking into account the amount of work he has done without being paid, it amounts to a lot more than (S.R. 12,500/-) and therefore, it is the Plaintiff who owes him and not him to the Plaintiff.*”

[3] The hearing took place on the above-mentioned dates and submissions filed on the 30th April and 19th July 2018 respectively and of which contents have been considered for the purpose of this Judgement.

[4] The salient factual and procedural background as per Records of proceedings and relevant to this Judgement are in a gist as follows.

[5] The Plaintiff avers that herself and the Defendant lived together in *concubinage* for over a period of 19 years and during that period they acquired an immovable property known as parcel number S2103 (“*the property*”), at Anse Aux Pins, Mahe, of an extent of 340 square meters which property is registered in their joint names (*Exhibit P2*).

[6] It is further averred by the Plaintiff that the property was transferred in the joint names of the Plaintiff and the Defendant on the 8th August 1996 by the Seychelles Housing Development Corporation (“*SHDC*”) for a sum of Seychelles Rupees Fifty Thousand and the property was charged to *SHDC* for that amount with repayment terms of (S.R. 1200/-) per month with interest charged at 8% per annum repayable by both parties.

[7] It is averred further by the Plaintiff that when the parties purchased the property it was in a dilapidated state and constructed of corrugated iron sheets and that over the years the

Plaintiff has been using several loans and monies due to her from her employment paid the full purchase price for the property and improvements and developments thereto and the defendant made no financial contributions.

[8] That the transfer of the property in their joint names was a condition of the *SHDC* at the time for giving loans and the plaintiff has paid for the purchase of the property and all improvements thereto presently amounting to Seychelles Rupees Four Hundred and Fifty Thousand (*S.R. 4,50,000/-*).

[9] It is averred by the Plaintiff that at the beginning the defendant was working as part time driver with social security service and the plaintiff was working as a primary teacher in charge with the ministry of education. That the *concubinage* ended around 2014 when the Plaintiff was forced to leave the property as a result of the unreasonable behaviour of the Defendant and he is now enjoying the property with his new partner.

[10] It is averred that as a result of the behaviour of the defendant and his general failure to contribute to the payment for the property or any improvements thereto he has been unjustly enriched without lawful cause to the detriment of the plaintiff without lawful cause and that the detriment has not been caused by the fault of the Plaintiff

[11] The Plaintiff averred that she had contributed financially and in kind and hence claims for a declaration in her favour of her true share in the house on the property and the land and for such declaration to cover the real contribution to the purchase and development of the property in rebuttal of the presumption of equal shares of co-owners.

[12] The defendant on his part denies the averments of the Plaintiff as illustrated and further avers that he was the one who renovated and constructed the house enclosed on the property along with one Theophane Marie who was paid (*S.R 20,000/-*) and he was not paid at all hence claiming that he made more contributions towards the renovation of the house than the plaintiff and that the plaintiff used a lot of the loans for travelling purposes.

- [13] The defendant avers that the plaintiff has taken all the furnitures from the said house which he estimates at a cos of Seychelles Rupees One Hundred Thousand (*S.R. 100,000/-*) and which he also claimed he owed half hence entitled to Seychelles Rupees Fifty Thousand (*S.R. 50,000/-*).
- [14] The defendant further avers that he has made substantial contribution if not all contributions in ensuring that the said house is renovated and that the plaintiff used almost if not all the loans she procured for travelling and other enjoyments.
- [15] The defendant further avers that if division is done, it should be done in respect of the loan in the sum of (*S.R 125,000/-*) divided in half hence Seychelles Rupees Sixty Two Thousand and Five Hundred (*S.R 62,500/-*) each and that in the latter respect the defendant avers that the balance is Seychelles Rupees Twelve Thousand Five Hundred (*S.R 12,500/-*) which when taking into consideration the amount of work he has done without being paid, it amounts to a lot more than Seychelles Rupees One Hundred and Twenty Five Thousand (*S.R. 125,000/-*) and therefore it is the plaintiff who owes him and not vice-versa.
- [16] At the Hearing as afore-mentioned, the Plaintiff testified on her own behalf and the Defendant likewise and also called two witnesses namely his brother Justin Hermitte and the Carpenter Theophane Marie to also testify in favour of the Defence.
- [17] The Plaintiff testified in line with the averments of the *Plaint (supra)*, that during her *concubinage* with the defendant, they acquired the property (*Exhibit P2*).
- [18] That for most of their time together the Defendant was working as a part-time driver with the Social Security Services earning approximately a basic sum of (*S.R3500/-*) per month and the Plaintiff was working as a Primary Crèche Teacher, employed by the Ministry of Education earning amount (*S.R.7000/-*) per month.
- [19] Plaintiff further testified that the property was charged with *S.H.D.C* for the amount of (*S.R. 50,000/-*) with repayment terms of (*S.R. 1200/-*) per month with interest charged at

8% per annum repayable by both parties; (S.R. 75,000/-) (*first line mortgage*) (*Exhibits P3*) and (*second line mortgage*) in the sum of (S.R. 75,000/-) to be repaid with interest a 6% per annum in equal monthly instalments of (S.R. 31.00/-) as per clause 2 of the Charge (*Exhibit P4*).

[20] It is not disputed that all the loans mentioned in this suit were repaid by the Plaintiff albeit the Defendant claiming that he repaid the Plaintiff in the form of his 'unpaid labour towards the reconstruction of the house' (*which the Plaintiff partially agreed to*).

[21] The Plaintiff testified to have contributed both financially by using several loans and personal savings over the years to have paid the full purchase price for the property along with its improvements and developments thereto (*Exhibits P5, P6, P7*) and that the Defendant made no financial contributions.

[22] The *concubinage* ended around 2014 and the Plaintiff testified that it was due to the unreasonable behaviour of the Defendant and his general failure to contribute to the payment of the property which forced her to leave their house, and that it is the Defendant, who is currently living in the house with a new partner and he has been unjustly enriched to her detriment without without lawful cause and due to no fault of hers and that as a result the Defendant remains the registered owner of a half share of the property paid for by the Plaintiff (*Exhibit P2*).

[23] The Plaintiff further testified that she left the property because of the Defendant's unreasonable behaviour and lack of contribution towards the household. As well as owning most of the property in the house, which she either bought or got from her mother.

[24] The Plaintiff thus prays for declarations in her favour as enunciated at [*paragraph 1*] (*supra*).

[25] The Defendant on his part testified in response that his contribution towards the property was through manual labour (confirmed by the plaintiff herself as well as defence witness

Theophane Marie (*below*) and which manual labour, defendant testified equals to more than what the plaintiff has contributed financially.

[26] The defendant in addition testified that he refunded the plaintiff the loan money every month by purchasing the main household goods, as well as having assisted with the construction and improvement of the property right up to around 2006, however his exhibited receipts ends in 2002 (*for some materials purchased for renovation of the house amounting to (S.R. 14,233.40/-) (Exhibit D1)*).

[27] In rebuttal, the Plaintiff testified that she paid for the building materials by giving the money in cash directly to the defendant to purchase them. The Defendant therefore prays for dismissal of the Plaintiff with cost.

[28] The defendant also produced (*Exhibit D4*) as proof of him being a part-time driver at Social Security Fund without proof of salary slip but the Defendant testified that his salary was about (*S.R. 3500/-*).

[29] It is to be further noted that the defendant testified that he is convinced that he contributed more than fifty percent in the property, and thus it would be unfair for the Plaintiff to get fifty percent but instead he estimated that she should get around twenty five percent.

[30] Mr. Theophane Marie testified that he worked with the defendant through his manual labour for the renovation of the house and he was paid cash (*S.R. 20,000/-*) by the defendant and he also confirmed that defendant helped in manual works on the renovation of the house.

[31] Mr. Justin Hermitte testified having been paid by his brother, the Defendant, to transport materials like cement to the house on the property (*Exhibit D1*).

[32] It is crucial to note finally that the Defendant (as well as the Plaintiff) agreed that the defendant had contributed financially on a monthly basis by buying some household

items in the sum of approximately (S.R. 1200/-) considered as monthly refund of the loan repayment that was being deducted on the Plaintiff's salary.

[33] 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 Article 815 of the Civil Code (*Cap 33*) ("*the Code*") with respect to the rebuttal of the presumption of co-ownership contained therein namely that:-

"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-owners are entitled to equal shares."

[34] Now, this is an action based on unjust enrichment, also known as '*an action de in rem verso*', being a cause of action derived from the provisions of Article 1381-1 of the *Code*.

[35] Article 1381-1 of the *Code* 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 that 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."

[36] In interpreting Article 1381-1 of the *Code*, the Courts in Seychelles have understood it to include five elements namely, '*(i) an enrichment; (ii) an impoverishment; (iii) a connection between the enrichment and impoverishment; (iv) an absence of lawful cause or justification for the transfer of wealth from the patrimony of the impoverished to that of the enriched; and (v) absence of another remedy. Importantly, the root principle of unjust enrichment is that an economic benefit is added to one patrimony to the economic detriment of another, without a corresponding transfer of compensation intended to be adequate.*' (**Reference is made to *Felix v/s Witz and Anor.* [2011SCSC 39]**).

[37] It is further observed in the Court of Appeal case of (**Michel Larame v/s. Neva Payet (1987) SCA 4**), ("**Larame case**"), that the following principles are enunciated in respect of similar cases in that, inter alia, (a) *The present value of the property is irrelevant and the fact the valuation report as put in as an exhibit is not material to such cases;* (b) *It is immaterial that at the time of the action that the value of the benefits enjoyed are much more;* (c) *No enforceable legal rights are created or arise from a mere state of concubinage;* (d) *A course of action 'de in rem verso' can operate to assist a concubinage who has suffered actual ascertainable loss and the other party has correspondingly enriched himself by allowing the party to has suffered loss to recover from the other party who has benefited;* (e) *The actual detriment suffered by the claimant has to be proved by party alleging impoverishment and it is wrong to award an aggrieved party a portion of jointly acquired assets;*(f) *The claimant can only recover what he has contributed;* and (g) *No moral damages are allowed in such cases.*

[38] In the case of (**Dubel v/s. Soopramanian (2008) SLR 41**), the Court dealing with a case under Article 815 of the Code made the following findings *inter alia* that:-
“*In Dupres v Bathilde (1996) SLR 101, the plaintiff, who had been living in concubinage with the defendant, sought a declaration of her share in a property purchased 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, and as there had been no claim de in rem verso or unjust enrichment. It was also held in Esparon v Monthy (1986) SLR 124 that the principles of division of property between married parties cannot be applied between parties living in concubinage. In Edmond vs Bristol (1982) SLR 353, the Court in similar circumstances held that the plaintiff (a woman) was entitled to recover contributions only to the extent of which the defendant had been unjustly enriched. Hence the defendant will be entitled to recover her actual contributions, albeit indirectly towards the acquisition of the property.*”

[39] Coming back to evidence in this case as illustrated above, the property albeit being in the joint names of the both parties in this case (*Exhibit P1 and P2*), it is clear by way of (*Exhibits P5, P6 and P7*) and the uncontested testimony of the Plaintiff, that it is the

Plaintiff who paid for the SHDC loan for the purchase of the property and renovations of the house enclosed thereon on a monthly basis from her salary and also gratuity and other loans as testified.

[40] It is also uncontested that the Defendant has also contributed to regular household expenses on a monthly basis but the quantum of contribution was uncertain in view of his part time job and his lack of proper ascertainable quantification of his manual works conducted on the house in the course of its renovations. The only ascertainable income is that of (S.R. 3500/-) on a part-time basis and it is thus difficult to understand as to how the Defendant acquired alleged monies to pay the carpenter and his brother as driver for transportation of materials purchased on the property and same applies to proof of payment of the materials amounting to a total sum as per exhibits of (S.R. 14,233.40/-) (Exhibit D1).

[41] Now, in the light of the above analysis based on evidence led and exhibits produced on record and noting that the evaluation report which sought to illustrate the value of the house on the property which ought to have been produced as exhibit if at all to be considered by this Court was left as an item (*through choice of counsel*), and also observing that there is, **“no mathematical formula by which jointly owned property should be divided, and each case is to be considered on the merits”**, I hereby conclude in determining what proportion of ownership each party holds in the property and the house enclosed thereon, that it will entirely depend on the level of their contribution(s) respectively.

[42] I find that in the absence of proof payment of loan by the Defendant but in view of his contributions through admitted manual labour towards the house renovation and monthly contributions (*which amount could not be ascertained with certainty*), that the Defendant has unjustly enriched himself to the detriment of the Plaintiff in terms of his joint ownership of the property and the house enclosed thereon.

[43] It follows, that this Court hereby finds in the end result, that the Defendant in the circumstances noting his above contribution, is only entitled to 35% share in the property and the house enclosed thereon. Rectification of the respective shares of the parties

ordered is to be reflected on the Land Register namely on Parcel No. S 2103 and the Land Registrar is accordingly directed to effect the necessary rectification accordingly.

[44] Should the parties decide to sell the property in the future, a proper evaluation shall be conducted and value ascertained accordingly prior to subdivision. The Plaintiff is thus allowed on above-stated terms and conditions with costs to the Plaintiff.

Signed, dated and delivered at Ile du Port on 26th July 2018

S. Andre J
Judge of the Supreme Court