SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 75
CS02/2015

ROGATIEN LOUIS BERTIN **Plaintiff**
(rep. by Alexia Amesbury)

versus

DIDIENNE EMMANUEL **Defendant**
(rep. by Brian Julie)

Neutral Citation:	*Bertin v Emmanuel (*CS 02/2015) [2019] SCSC (23 January 2019).
Before:	Dodin J.
Summary:	Co-habitation – investment in concubine's property – unjust enrichment – claim for a share of current value of property.
Heard:	8 August 2018, 24 November 2017, 5 September 2018
Delivered:	23 January 2019

ORDER

The appeal is dismissed with costs, including the costs of two counsel. Notice of this judgment is to be served on the Registrar for Land.

JUDGMENT

Dodin J.

[1] The Plaintiff and the Defendant were in an unmarried civil relationship and they co-habited for a period of 16 years. At the time they started living together the Defendant owned a plot of land, parcel PR4687 situated at St Joseph, Grand Anse Praslin upon which she was constructing a 2 bedroom house. The Plaintiff who had skills in carpentry and masonry was working for a construction company, D & M Construction at the time. The Defendant was employed by the Ministry of Education at the Praslin School Meal Centre. After moving in with the Defendant, the Plaintiff completed the construction of the house and as there

was enough construction material, a third bedroom was added which was converted into a bedsitter.

[2] The Plaintiff testified that apart from his labour, he took two loans, one for SCR 10,000 and one for SCR 41,500 which he invested in the house by buying construction material and other fixtures such as tiles, kitchen and toilet appliances. The Plaintiff produced his loan documents and several receipts for material he maintained that he purchased towards the construction of the house. The Plaintiff admitted that the Defendant took a loan of SCR 125,000 and made other purchases of construction material and other fixtures from her salary as well as from the proceeds of the sale of a portion of her land to Allied Builders for the sum of Rs60,000. The Plaintiff contends that after completion of the house, the insurance company gave the house a value of SCR1,600,000.

[3] The Defendant testified that she had been living on Praslin since 1993 and she acquired the land at St Joseph in 1995 with a loan agreement of SCR125,000. from Housing Finance Corporation (HFC). She already had savings of SCR45,000 which she invested into the construction of the house. The house was almost completed when she met the Plaintiff in 1998. In addition to buying material and fixtures from her salary, she also invested her gratuity payment of SCR20,000 and a further SCR60,000 from the sale of a plot of land to Allied Builders. She agreed that the Plaintiff put in the labour after he moved in as he was her partner and her support the Plaintiff never asked her for any payment and she did not give him any. She opposes the Plaintiff's claim for a share of the increased value of the house and maintains that in any event she does not believe that the house is valued at more than SCR1 million although SACOS has given it a value of SCR1.6 million for insurance purposes.

[4] The facts of the case are not particularly contentious with regards to contributions of the parties towards the construction of the house. However no valuation was done to ascertain the real value of the property. The Defendant submitted that the Plaintiff is not entitled to a share of the current value of the property and did not state whether the Plaintiff should be entitled to his contribution into the property at all.

[5] It is now common for many couples to live together in long term committed relationships without married. In these circumstances it is important to realise that the legal rights afforded to cohabiting partners are different from those of married couples. The law treats unmarried couples as two separate individuals. This means that any assets such as bank accounts, savings or investments remains in the ownership of the individual.

[6] It is also common for unmarried couples to own a home together. If the property is held in joint names then the asset might usually be divided equally between the parties unless there is sufficient evidence that they have agreed to something else. On separation, one party will usually buy the other out by paying for the other's share of the property and usually take on the outstanding charge if any. If this is not possible then the property will be sold so that each partner can retrieve his or her share of the property.

[7] In this case where the property is held in the sole name of one party who already owned the land and house before the parties got together, the person whose name the property is in will retain full ownership whilst the other person can only be entitled to his or her contribution into the property. This would be for example where a party who does not owned the property contributes financially to the property by means of mortgage payments, purchase deposit or paying for improvements to the property.

[8] This leads to the Plaintiff's claim that the Defendant has been unjustly enriched and conversely he has been unjustly impoverished by the situation for which he must be compensated.

[9] Unjust enrichment occurs where one party gains a valuable advantage from another without lawful reason. The requirements for a finding of unjust enrichment are that:

i. one party has been enriched;

ii. there is a corresponding deprivation to the other; and

iii. there is no legal reason for the enrichment.

[10] The Court must examine the parties' common law relationship and the roles the parties played. A party can claim that he or she ought to be compensated by damages or an interest

in the other partner's property by reason of his or her contributions. In response the other party counter that the claimant has done nothing out of the ordinary and that the party has been compensated fairly during the relationship.

[11] In respect of the contribution, the Court's mandate is wide which may include the consideration of the claimant's contributions which may have been for domestic services, such as housekeeping, child care, unpaid work in her partner's business, yard work, repairs or renovations, financial contributions, or quasi-financial contributions such as the purchase of consumables for the family. If as a result of a person's efforts, the other party has improved his or her lot the claimant party would have enriched the other party somehow.

[12] Deprivation is usually the converse of the enrichment. A person will have put herself or herself out caring for her partner's interests and in the process will have sacrificed his or her own opportunities, energy, free time, future, finance and prospects, There is a presumption in a long-term relationship, in the absence of cogent evidence to the contrary that the enrichment of one party has resulted in a deprivation of the other.

[13] If the claimant person was under no contractual or statutory obligation to provide the contribution he or she did, then there is no legal reason for the enrichment. Article 1381-1 of the Civil Code of Seychelles Act provides as follows on unjust enrichment/detriment:

> *Article 1381 – 1*
>
> *"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."*

[14] The Court of Appeal in the case of *Searles v Pothin (Civil Appeal SCA 07/2014) [2017] SCCA 14 (21 April 2017)* summed up the dilemma in applying article 1381-1 of the Civil Code:

"The general principle is that a person who confers a benefit upon another manifesting that he does not expect compensation or restitution therefore, is not entitled to restitution merely because his expectation that an existing relationship will continue or that a future relationship will come into existence is not realized, unless the conferring of the benefit is conditioned thereon. In this case, the Appellant gave the money and other properties to the Respondent without attaching any conditions. While the law is that a gift lawfully given cannot be returned the Appellant is himself to blame for being so gratuitous. It is too late in the day for him to claim restitution in the name and spirit of equity."

[15] In this case the parties did not have any legal arrangement or attached any condition to their existing situation or contribution. Particularly, the Plaintiff did not at any time seemed to have considered that the relationship could have ended as it did and there is no evidence that the Defendant went out to deliberately induce the Plaintiff to invest his labour and finance in her property with a view to benefit in the future. Where both parties are ignorant of the future development it is my view that the Court cannot just leave the party who would no longer benefit from his contribution without any means of redress. Furthermore I am satisfied that the contributions made by the Plaintiff were not mere gifts to the Defendant but real valuable benefits which he expected to also benefit from during their cohabitation. He is therefore entitled to recover the value of his contribution.

[16] The question now is how this calculation is calculated. The Court of Appeal also addressed this issue in the case of *Mathiot v Rose (SCA 37/2013) [2016] SCCA 9 (22 April 2016);*

"Does the Court award her the exact amount she gave, the enhanced value that grew from her or peg her disadvantage on the advantage that the Appellant has obtained at her expense? The Court must consider the disadvantage suffered by the Respondent, contrasted to the corresponding advantage obtained by the Appellant. Article 1381-1 supra provides for a recovery "to the extent of the enrichment of the party enriched."

[17] The Court of Appeal case of *Michel Larame v/s. Neva Payet (1987) SCA 4* set some guidelines on this which are:

> *"(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 ha[ve] 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."*

[18] Considering the evidence in this case, I am satisfied that the Defendant is the sole owner of the land parcel PR 4687 and the house thereon. The Plaintiff cannot claim a share of the property as his contribution to the construction of the building and improvements done by him whilst he was living in concubinage with the Defendant. The value of the property is therefore irrelevant to the matters at issue.

[19] I find that the Plaintiff made the following financial contributions into the property: two loans, one for SCR 10,000 and another for the sum of SCR 41,500 (Exhibits P2 and P3) respectively and several receipts relating to material and fixtures purchased by him although as noted by the Defendant, the value on the receipts did not amount to the total loans taken. I am sure that neither the Plaintiff nor the Defendant invested every single cent from their respective loans into the property but from the evidence it is obvious that both spent the money on the household. With respect to the labour contributed by the Plaintiff, it is obvious that neither party contemplated a form of payment for the same so long as they were living together and both benefiting from the comfort of the improved

environment. In any event the Plaintiff did not bring any evidence to establish the financial value of his labour. I also find that for the period of 16 years that the Plaintiff and the Defendant were in concubinage, the Plaintiff also benefited from his stay with the Defendant in her property.

[20] Based on the above established facts, I find that the Plaintiff has made significant contributions at his detriment and to the benefit of the Defendant. I find from the principles enunciated above the Plaintiff has proved that he has been unjustly impoverished whilst the Defendant has been unjustly enriched in the process. The Plaintiff is therefore entitled the return of his investments but is not entitled to any share in the property. However I shall award the Plaintiff interest at 4 percent per annum on his investment from the date he had to vacate the Defendant's property, (March 2014) up to the date of final payment of the award by the Defendant.

[21] I award the Plaintiff the total of his financial loan contributions amounting to SCR 51,500 plus 4 percent interest per annum on the award calculated from 31st March, 2014 until the full settlement of the judgment debt by the Defendant.

[22] I award costs to the Plaintiff.

Signed, dated and delivered at Ile du Port on 23 January, 2019.

Dodin J.