

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2019] SCSC 291
CS 52/2018
(Appeal from / Arising in/20...)

JOSTTE MENDE
(rep. by Mr. Joel Camille)

Plaintiff

and

1. MICHAEL PAYET
(rep. Ms. Lucie Pool))

1st Defendant

2. PROPERTY MANAGEMENT CORPORATION 2nd Defendant
(rep. by Mrs. Alexandra Madeleine)

Neutral Citation: *Mende v Payet & Anor* (CS 52/2018) [2019] SCSC 291

Before: 13 March 2019
Nunkoo Judge
Summary: **Matrimonial home- share of the parties-Court has discretion in the
absence of documentary evidence.**

Heard: 20 February 2019
Delivered: 5th April 2019

ORDER

**The plaintiff to pay amount of SR 50,000.00 to Defendant-PMC to transfer property in the
name of the Plaintiff**

JUDGMENT

NUNKOO JUDGE

[1] By plaint dated 18 April 2018, the Plaintiff is praying the court to make the following orders:

1. Declaring that the Plaintiff has been impoverished and that the first Defendant has been unjustly enriched in enjoying his name on the Purchase Agreement with the 2nd Defendant in regard to the property
2. Declare that the second Defendant has also been enriched and the Plaintiff impoverished in having paid the full consideration price for the property which to this remain in ownership of the second Defendant.
3. Declare that the Plaintiff has 100 per cent share in the property
4. To make an order directing the 2nd Defendant to transfer the sole ownership and title of the property onto the sole name of the Plaintiff
5. To make any other orders that the court shall deem fit in circumstances of the matter.

[2] Plaintiff's version is that in April 1999, as she and the first Defendant were in a relationship, they entered into a lease agreement with the Seychelles Housing Development Corporation, for a two bedroom house, at Roche Caiman, for a monthly rent of Rs 696.00.

[3] Plaintiff avers that it was she who was paying the rent throughout.

[4] In July 2001 both Plaintiff and Defendant started living together in Canada.

[5] In the year 2005, the second Defendant invited them that is herself and the first Defendant to buy the said house. Plaintiff avers that she secured a loan of Rs 695, 000 from Property Management Company (PMC) and paid for the house. The House purchase agreement was signed in 2007.

[6] Plaintiff and Defendant started living separately at some stage in Canada and are still living separately. Plaintiff has averred that ever since the loan was obtained it is she who is paying the monthly instalments and finally in the year she cleared the final payment

due that is a balance of Rs 35,000.00 and the second Defendant, as per her version, then acknowledged the payment and also undertook to transfer the house in the name of the Plaintiff.

[7] The Plaintiff states that because of the facts as alleged by her she has been impoverished as she has been deprived of the use and enjoyment of the house and that the Defendant has been unjustly enriched.

[8] The Defendant has averred that the Plaintiff was employed at the Seychelles Savings Bank at the time of the purchase of the house and both their salaries were taken into consideration for the purposes of the loan by the Bank. That it was agreed that the Plaintiff would pay for the loan and he would take care of all the household expenses and for the maintenance of the child.

[9] Defendant has also avers that by letter dated 5 October 2005, the 2nd Defendant invited the parties to purchase the house under the House Ownership Scheme and they were informed that the purchase price would be reduced from SR 227,304 to SR 28,377.15 and monthly repayment was to reduced from SR 696.00 to SR 487.20.

[10] Defendant No. 1 maintains that the house is in both their names and that he is entitled to a share in the property.

[11] The Defendant has further made a counterclaim to the effect that he is entitled to half share in the property and that the 2nd Defendant should register the property in title V11018 in their joint names or alternatively the Defendant offers for sale his share in the property for SR 400,000.00.

[12] He has asked the Court for the following orders: that the 2nd Defendant be ordered to register the land title V11018 in the joint names of the Plaintiff and the 1st Defendant, alternatively to order the Plaintiff to buy out the first Defendant's share and lastly order the Plaintiff to pay the interests and cost of the suit.

[13] I have gone through the evidence which can be summarised as follows:

PLAINTIFF'S TESTIMONY

The plaintiff stated that when they that is herself and the defendant were living together she took all the steps to obtain a house from the Seychelles Housing Development Company (SHDC) and the Housing Finance Company (HDC). She was the first to go to the HFC. When a house was allocated to them through a tenancy agreement it was she who was paying the monthly rental of SCR 695.00 from her account at the Seychelles Savings Bank. The house was found at Roche Caiman at Eden Island. She had obtained the support of a lady one Zelia and also that of her Member of National Assembly, Madame Charles. They were allocated the house in 1999 and later in 2001 they both moved to Canada. During their stay in Canada it was her brother one Danny Marie and her girlfriend occupied the house and they also paid the rental.

[14] Later in 2005 an offer to sell the house was made to them by the SHDC. They had to pay the balance on the price. She stated that as her brother was still staying there she did not pay for the house. But in 2009 she had to come back as she was informed by her sister that the SHDC was searching for her in regard to the house. That is when she came back alone; the defendant was allegedly not interested in the acquisition of the house. She deponed to the effect that she paid the total amount of SCR 34 850.00 in three instalments, of SCR 19000.00, 15000.00 and 850.00 in December 2009.

[15] The plaintiff stated that she informed the Defendant that she was going to pay for the house and wanted to know from him if he was interested in buying it but then the defendant had flatly indicated that he was not interested and allegedly said that he was not going to buy a guinea pig's house. She denied any agreement as to the payment of the loan by herself and the defendant making the family expenses. She stated that the Defendant could not have contributed towards expenses for their child as she did not have with him during that time and later whilst still in Canada they separated. She maintained that she had spent money on renovations after the acquisition of the house that is around the year 2010.

[16] In cross examination she admitted that some renovations were initially made by the Defendant, like laying of the tile or the furnishing of the kitchen. She also stated that her brother who had been staying in the house had stopped paying the rental and that was

after she had signed the purchase agreement in 2007. She also stated that the Defendant is contributing about SCR 6000 for the upkeep of their daughter. To a question that she benefitted from the rental she maintained that she did not benefit from any rental that was paid by her brother. She stated that it was who had benefitted from the rental paid by her sister when the latter had rented the house.

- [17] The sister gave evidence to the effect that she had initially rented the house for SCR 2000.00 but later reduced to SCR 1000.00 upon Defendant's intervention.

TESTIMONY OF MR NELSON AUGUSTIN FROM PMC.

This witness confirmed that there was a tenancy agreement signed between the PMC and the plaintiff as well as the Defendant in April 1999. Later in 2007 an offer was made to sell the house to the parties abovenamed at a discount price of SCR 28377.15. Until 2009 no payment was made. By December 2009 the price along with interests had accumulated to SCR 35569.34. This sum was paid in three sums as follows: SCR 19000.00 in December; then cash payment of SCR in the sum of SCR 15000.00 and SCR 738.38. in January 2010.

He confirmed that the receipt was issued in the joint names and that as there is a dispute between the parties relating to ownership the PMC has not been able to transfer the property.

- [18] He confirmed that the payments were made by the plaintiff.

- [19] The Defendant deponed and stated that he had been living with the plaintiff for 7 years in Seychelles since 1995 and 7 years in Canada. They were not civilly married. He stated that when in Seychelles he used to work on a tuna fishing boat but that his work was not regular and when not on the boat he would work in the garage of the Plaintiff's brother as panel beater. He could earn about SCR 2000.00 and spent that money on household expenses. He testified that he and the plaintiff entered into a tenancy agreement for the lease of a house at Roche Caimans from the SHDC and moved into it in 1999.

- [20] Now I come to the issue of unjust enrichment. I am of the view that the circumstances do not show that there has been any unjust enrichment and the conditions set out in law have not been met.
- [21] The question I have to determine is whether the Plaintiff is solely entitled to the ownership of the house or both jointly? I am satisfied that the plaintiff put in a lot of effort in to get the house and also that payments were made to a large extent from her salaries and later a loan obtained by her to settle the final balance of R 35000??
- [22] It is relevant to note that the loan was obtained by her and she paid for the house at a time when she had already separated from the Defendant.
- [23] What about the contributions of the Defendant? Did he contribute towards improving the house and making it more inhabitable and comfortable. The evidence points towards this. The court cannot ignore the fact that a significant amount of money was paid to the SHDC between 2001 and 2006 from rent when both parties were living together in Canada. This amount can be quantified. And there is no reason to doubt that throughout whether in Seychelles or in Canada the Plaintiff was supported by the Defendant; the fact that he is also paying the sum of SCR 6000.00 for their daughter cannot be overlooked though I would haste to add that this entitles him to claim a share in the property but it has relieved the plaintiff from a significant financial burden.
- [24] In the absence of documentary evidence to show who has paid for what and the extent of monetary contribution made by the Defendant or how the loan obtained in Canada was used it becomes difficult for the court to reach precise conclusions. I am therefore going to use my discretion under sections 5 and 6 of the Courts Act, which reads as follows:

“ The Supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes, and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a Curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be the nature of such suits, actions, causes or

matters, and, in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England.

The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.”

[25] In the absence of document regarding the valuation of the property I am using my discretion to decide the share of the parties in the light of the evidence adduced and the visit locus in quo.

[26] I therefore order the Plaintiff to pay the sum of SR 50,000.00 to the Defendant within six months from date; I order the PMC to transfer the property in the name of the Plaintiff after document of payment is produced by the Plaintiff.

[27] I make no order as to costs.

Signed, dated and delivered at Ile du Port on 5th April 2019.

Nunkoo J