

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 465.

DV 160/2014

In the matter between:

MARIE ANETTE ROSALIE

(rep. by Serge Rouillon)

Petitioner

and

RONALD ROSALIE

Respondent

Neutral citation: Marie Anette Rosalie DV 160/2014

Before: Govinden J

Summary: Division of matrimonial Property. S 20 (1) (a) Matrimonial Causes Act (CAP 124)

Heard: 30th May 2019

Delivered: 30th May 2019

JUDGMENT

GOVINDEN J

[1] This is a Petition filed for property adjustment following the divorce of the two parties. The Petitioner filed her petition on the 2nd of February 2016. She amended the petition. The Amended petition is filed on the 23rd November 2017. The Respondent filed a reply to the original petition and then on the 24th of July 2018 an amended reply to the Amended Petition.

[2] Thereafter, a referral of the case to mediation by the trial judge proved unsuccessful.

[3] Subsequently, as a result of default in appearance of the Respondent and that of his learned counsel on the date fixed for parties to appear to set down a hearing date, this court made an ex parte hearing order in favor of the Petitioner. The hearing took place on the 31st of January 2019, with the sole witness being the Petitioner testifying on her own behalf.

[4] It transpired in evidence that the parties got married on the 2nd of May 1985 and that thereafter they settled down at their matrimonial home at Pointe Aux Sels, Mahe, on parcel C1257. Their marriage was blessed with four issues, one of which was still a minor as of the date of the hearing.

[5] With the passage of time the marriage relationship between the Petitioner and the Respondent turned sour. This prompted the Petitioner to petition this court for divorce in November 2014. The court granted the Petitioner a conditional order of divorce on the 1st of July 2015, which was made absolute in November 2015.

[6] In her petition the Petitioner has asked this court to order that parcel C1257 and the matrimonial property, consisting of the house found on parcel C1257, be valued. For an order determining the share of the Respondent in the matrimonial property and an order that the Petitioner is given the 1st option to purchase the Respondent's share in the matrimonial property upon receiving payment from the Petitioner.

[7] In his amended reply the Respondent agree to the valuation of the matrimonial property and parcel C 1257. He aver that he is entitled to half share in both the matrimonial property and parcel C1257. The Respondent aver, however, that he is ready and willing to sell his half share in the matrimonial property to the Petitioner , with the proviso that he maintain his carpentry workshop and that he continues to perform his carpentry works.

[8] In a case of this nature the court has to be guided by the provisions of sections 20 (1) (a) of the Matrimonial Causes Act and its equitable powers under section 6 of the Courts Act in order to adjust and settle the matrimonial properties. In the case of *Marie Andre Renaud V/S Gaetan Renaud 1998 SCAR, P 48*, the Court of Appeal had the

occasion to pronounce itself on the scope and application of section 20 (1) (a), it held, “*the powers of the court pursuant to section 20 (1) (a) of the Act must be read within the context of the totality of section 20 of the Act which is designed for the grant of financial relief. Such relief may consist of a periodical payment (section (20) (1) (a) or lump sum payment under(section 20 (1) (d)) for the benefit of relevant children or property adjustment order (section 20 (1) (e) .*

[9] *The purpose of the provisions of the subsections is to ensure that upon dissolution of the marriage, a party to a marriage is not put at an unfair disadvantage in relation to the other, by reasons of the breakdown of the marriage and as far as possible, to enable the party applying to maintain a fair and reasonable standard of living commensurate with or near the standard the parties have maintained before dissolution”.*

[10] Having scrutinized the pleadings in this case in the light of the evidence and submissions of counsel, I find that the following issues are left for determination by this court;

- (1) The value of parcel C1257; the matrimonial property and the carpentry workshop.
- (2) The shares of the respective parties in parcel C1257 and the matrimonial property.
- (3) The shares of the parties in the carpentry workshop and the used and continued occupation of the carpentry workshop found on parcel C1257by the Respondent

[11] As regards the value of the value of parcel C1257; the matrimonial property and the carpentry workshop. These properties were valued by a Quantity surveyor and property Consultant, Mr Nigel Roucou. His valuation report is dated the 5th of October 2017. The report was produced by the Petitioner and marked as exhibit P (17). Mr Roucou has valued the property as a whole to have the estimated market value of SR 2,025,000.00. (Seychelles Rupees two millions and twenty five thousand). This sum is broken down as follows;

Land: SR 1,150,000.00

Dwelling House: SR 755,000.00

Workshop: SR 120,000.00

[12] The house, referred to as “*Dwelling House*” on the report of Mr Roucou, is the structure described as “*the matrimonial property*” in the pleadings of the parties. Whilst the “*Workshop*” is the carpentry workshop found on parcel C1257, used by the Respondent. The Petitioner accept the valuation of this Land Valuer during the course of her testimony, be it reluctantly. The Respondent on the other hand has not come with a counter valuation. This court will therefore rely and make a determination based on the uncontroverted report placed before it. In doing so I find that the total estimated market value of parcel of parcel C 1257 to be SR 1,150,000.00; that of the matrimonial property to be SR 755,000.00 and the carpentry workshop to be SR 120,000.00.

[13] In respect of the shares of the parties in parcel C1257, the Petitioner in her testimony testified that she took a loan from the then Seychelles Savings Bank in the sum of RS 25,000 and bought this parcel land with the borrowed sum early on during the course of her marriage . In support of her evidence she has produced an “*Acknowledgement and Agreement*” document dated the 28th of April 1986. Which shows that she borrowed this sum from that bank. This document was produced as exhibit P 4. Also produced in evidence by the Petitioner was a charged document, in which both she and the Respondent charged parcel C1257 in favor of the Savings Bank in order to secure the said loan.

[14] In his Reply the Respondent agreed that the loan for the purchased of the house was borrowed in the sole name of the Petitioner and that she repaid it. However, he claim that the borrowing was the joint decision of both parties. He averred therefore that he is entitled to half share of both the matrimonial property and parcel C1257.

[15] Evidence revealed that the parcel, though purchased by the Petitioner, was thereafter registered in the name of both the Petitioner and the Respondent as shown in exhibit P3.

[16] Bearing in mind the above I find that parcel C1257, though registered in the name of both parties, has been purchased solely by the Petitioner. No cost was met by the Respondent in this transaction. She is therefore entitled to all the shares in this property.

[17] Regarding the partition of the shares of the respective parties in the matrimonial property. I find that though in her pleadings the Petitioner had denied that her ex - husband has any shares in that property, in her evidence she agreed to have their shares distributed evenly.

[18] She stated, *"I accept to give him half share in the house because he was the one, as I mentioned before who built the house we did it together, we bought the materials together so it's both ours. I am willing to give him half. "*

[19] The Petitioner is and was at all material time a salaried public employee, she was able therefore to secure different loans to improve on the matrimonial property and to provide the building materials to build the home. The Respondent on the other hand, as a carpenter, was not able to secure such kind of facilities. However, he could use the skills and the tools of his trade as a carpenter towards the building of his family home. Evidence of the Petitioner shows that he did this in the company of and the help of his friends. I am of the view that the labour of the Respondent counter balance the financial efforts of the Petitioner. At any rate, as I have found, I am strongly persuaded by evidence of the Petitioner wherein she has agreed to an equal distribution of the shares in the matrimonial property

[20] After taking into consideration the principle of equity and fairness that should be applicable in this case and taking note of this judicial admission of the Petitioner, I find that the Respondent and the Petitioner is entitled to each an equal share in the matrimonial property.

[21] Regarding the carpentry workshop. This property is admittedly the property of the Respondent. This fact is accepted by all parties. The Petitioner testified that she is willing to pay the Respondent for the workshop though it is in ruin and have no electricity supply. I find that indeed the workshop has fallen in disrepair and that if the Respondent

was to resume his carpentry works on the premises it will cause a nuisance to the Petitioner. Moreover, given the acrimonious relationship between the parties this would prove unworkable. I therefore find that the Petitioner has to pay to the Respondent the estimated value of his carpentry workshop.

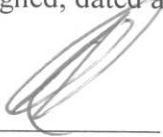
[22] As to the moveable properties found in the matrimonial home, the Respondent does not make a case for their partitioning in his Reply. They are moreover also not subject to a direct claim in the Petition. Nevertheless, they have to be subject to a property adjustment order to the extent that it transpired that they are the properties of respective parties. In her evidence, the Petitioner testified that she is willing to give to the Respondent furniture that he came with in the marriage, these are; a dining table; six easy wooden chairs and a round table.

[23] In view of all the above and in summing up I make the following declarations;

- (1) I declare that the Petitioner entitled to all the share in parcel C1257.
- (2) I declare that the Petitioner has to pay a lump sum of SR 120,000 to the Respondent in full and final settlement of his share in his carpentry workshop.
- (3) I further declare that the Petitioner has to pay to the Respondent the lump sum of SR 377,500, being the half share of the Respondent in the matrimonial property.
- (4) The total sum payable to the Respondent by the Petitioner is therefore SR 497,500.
- (5) I direct the Land Registrar to effect the registration of parcel C1257 in the sole name of the Petitioner once the payment of SR 497,500, is fully paid to the Respondent.
- (6) Respondent is to quit, leave and vacate the matrimonial property and parcel C1257 and his carpentry workshop, taking away his furniture, once he has been paid this said sum by the Petitioner.

[24] I make no order as to costs.

Signed, dated and delivered at Ile du Port 30th May 2019.

A handwritten signature in black ink, appearing to be 'R. GOVINDEN J', written over a horizontal line.

R. GOVINDEN J