

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 263

MC 96/2019

In the matter between:

LOUIS DOGLEY

(rep. by Brian Julie)

Petitioner

and

HELENA CAMILLE

(rep. by Alexia Amesbury)

Respondent

Neutral Citation: *Dogley v Camille* (MC 96/19) [2020] SCSC 263 (24 April 2020)

Before: Pillay J

Summary: Plea in limine on the basis that the Petition is bad in law and discloses no cause of action – case dismissed

Heard: By way of submissions

Delivered: 24th April 2020

ORDER

The pleadings, which are indicative of the Petitioner’s wish not to remain in indivision, make no averments with regards to, nor prayers for, any of the three options as outlined in *Monthy v Esparon* (SCA 29 of 2010) [2012] SCCA 5 (13 April 2012).

In the circumstances it is the finding of this Court that the Petition discloses no cause of action and is hereby dismissed.

RULING

PILLAY J

- [1] The Petitioner in the matter seeks an order for the Respondent to pay the Petitioner one half of the value of the Parcel S3542 with the house thereon.
- [2] The Petitioner avers that the Respondent was his concubine and the co-owner in title of the other half share of parcel number S3542.
- [3] He further avers that the parties are now separated and he does not wish to remain as co-owner in indivision together with the Respondent.
- [4] The Respondent in answer filed a plea in limine on the basis that the Petition is bad in law and discloses no cause of action and should be dismissed.
- [5] Counsel relies on the case of *Barado v Labonte* MC 53/2017 [2019] SCSC 657 (31st July 2019) for the proposition that there is a specific law under which a division in kind must be sought and the Petitioner had failed to do so.
- [6] Indeed a division in kind is to be sought in accordance with section 107(2) of the Immovable Property (Judicial Sales) Act (Cap 94) as referred to by the Chief Justice in the above-mentioned case. However, I find the said case to be more relevant to the present with regards to what the Chief Justice said about the “bizarre” pleadings.
- [7] In any event, in order to decide the point in issue it is important to examine the status of the parties in the matter and the relief that is sought. The parties were concubines as averred in the Petition. Their relationship has broken down and the Petition seeks to divide the property they held jointly. The question then is: what is the process for parties who lived in concubinage to divide their assets?
- [8] *Monthy v Esparon* (SCA 29 of 2010) [2012] SCCA 5 (13 April 2012) clearly answers the question as to what are the rights of unmarried parties in property held in joint ownership at the dissolution of the relationship, in the following paragraph:

“In terms of the actual cause of action, a division of co-owned property, the order of the court is clearly ultra vires. Much as one might have sympathy for either

party and it is certainly not the wish of this Court that the rights of the parties in co-ownership, rights now denied to the appellant, continue in a state of limbo, it was up to the respondent who wished no longer to remain in indivision to bring the correct suit to court. In cases of co-ownership there are three options available under the Civil Code to the joint owner who does not wish to remain in indivision: sale by licitation, partition or action de in rem verso (based on unjust enrichment). Vide Edmond v Bristol (1982) SLR 353. These remedies could have been availed of by the respondent.”

[9] Though the pleadings are indicative of the Petitioner’s wish not to remain in indivision, there is no averment with regards to, nor is there a prayer, for any of the three options outlined in Monthy v Esparon (supra).

[10] In the circumstances it is the finding of this Court that the Petition discloses no cause of action and is hereby dismissed.

Signed, dated and delivered at Ile du Port on 24th April 2020

Pillay J