

SUPREME COURT OF SEYCHELLES

Reportable

MA 215/2018
Arising in DV 50/17
[2020] SCSC 260

In the matter between

BILLY XAVIER MUSSARD

(rep. by Ms Dick)

Petitioner

and

MARY-JANE HUMBURTE MUSSARD NEE ATHANASE

Respondent

(rep. by B Julie)

Neutral Citation: *Mussard v Mussard* MA /215 /2018 [2020] SCSC 260

Before: Govinden J

Summary: Division of matrimonial property; property in the name of one party; non-financial contributions

Heard: 4th November 2019

Delivered: 24th November 2020

ORDER

1. The share of the Petitioner is assessed to amount to SCR100,000.
 2. The Respondent is ordered to transfer to the Petitioner the sum of SCR100,000 within 6 months from the date of this judgment. If the Respondent fails to make payment as ordered, the property shall be sold and the proceeds of sale shall be distributed in accordance with this judgment.
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JUDGMENT

GOVINDEN J.

[1] This is an application for apportionment of shares in a matrimonial property. The Petitioner has averred in his affidavit in support of his application that he was previously

married to the Respondent and that the latter is the owner of parcel of land PR1918, situated at Baie Sainte Anne, Praslin on which a house has been constructed. It is his averments that it was agreed that the Respondent would take a loan in her name because she worked at Barclays Bank and she benefitted from a special employee's scheme.

- [2] He has further averred that during their marriage, which lasted 9 years, he contributed in cash and in kind to the construction of the house, which became the matrimonial home, and that his contributions have been acknowledged by the Respondent. He has averred that the contribution included cash, the purchase of furniture for the house, and work on the site and towards the construction of the house.
- [3] The Petitioner avers that he took four loans from 2009 to 2012 for house repair, house renovation and house maintenance and that he contributed towards the construction of a boundary wall around the matrimonial home. According to him, he has made a proposal for settlement of the matrimonial property but the Respondent has declined the terms. Accordingly, the Petitioner claims a half share in the matrimonial property, namely PR1918, including the house thereon and its content.
- [4] In answer to the Application, the Respondent has averred that she is the sole owner of parcel PR1918, that she obtained the ownership 6 years before her marriage, that there was no agreement between her and the Petitioner regarding a loan to build the matrimonial home, that she took the loan in her name and that it was repaid by her mother.
- [5] The Respondent has further denied that the Petitioner contributed to the household expenses. She avers that all the fixtures in the house were purchase by her from the Barclays loan; that the furniture and house appliances were loaned from her relatives, and that the furniture was paid for from her yearly bonuses.
- [6] The Respondent avers further that as the Petitioner was not in affixed employment he could not have obtained loans as he claims. In that respect she puts the Petitioner to the proof of the existence of the loans and how they were spent. According to her, the only effort that the Respondent has put in was supervision of the construction of the house.

- [7] Lastly, the Respondent avers that during their nine years of marriage the Petitioner has been employed only for two years and that she paid the bills and effected all repairs to the house.
- [8] The Petitioner testified that he had been married for thirteen years and that he and the Respondent has been blessed with a child. When they got married the Respondent had a parcel of land (parcel PR1918) and, as they wished to start a family, they agreed verbally to build a house thereon. At that time he was working at La Reserve Hotel and the L'Archipel Hotel and also as a skipper. The Respondent took the loan, as it was easier for her as she was a senior officer at the Barclays Bank. Though, he did not repay the loan, the Respondent testified that he constructed the beds and other things in the house and that he, together with a friend, helped in its construction. He claimed that he took a loan to build a boundary wall for the house and that he helped in its maintenance. He produced his Nouvo Banq statement (Exh P7), which shows that he took four different loans from this bank, during the course of the marriage, which came to the total sum of SCR75,000. According to him he is a freelance skipper and was also employed during the marriage, this being the reason why he managed to secure the loans. He communicated with the Respondent with a view of effecting a settlement of the matrimonial property issues, including access for a Quantity Surveyor unto the property but the Respondent was unresponsive.
- [9] The Petitioner further testified that he had, through his lawyer, asked for SCR200,000 as part of his contribution towards the cost of the house. However, he could not come to an exact figure as to his share as the Respondent prevented the proper assessment of the property. The Petitioner is asking the court to determine his rightful share in the property.
- [10] Ms Agnes Quatre, the Assistant Branch Manager of Nouvo Banq Praslin, was called as a witness by the Petitioner. She confirmed that the Petitioner took the loans, however, she could not say for which purpose and to which use the loans were put. She confirmed that in order for him to have obtained the loans, he should have had means of income. She could remember two of those incomes, being remuneration for employment at the L'Archipel Hotel and as a boat charter.

[11] On the other hand, the Respondent testified in chief that she has been working for 29 years with the Barclays Bank and that she is currently holding the post of a Personal Banker. According to her the plot of land PR1918 is her property, bought by her in 1997 before her relationship with the Petitioner. At the time that she got married to the Petitioner, the house situated on the parcel, in which they set up their matrimonial home, was built, though, not fully furnished. She built the house on her own from a SCR150,000 loan taken from the Seychelles Housing Development Corporation (SHDC), which had to be topped up by other additional investments. The total amount of which came to SCR350,000. She does not recall the Petitioner taking any loans and buying materials for the house, except that he got a friend to do the roofing for which she paid. According to her, she paid for the painter and the wireman, and the plumber was for free. Her mother assisted her with the loan and her family donated the furniture. The only contribution on the part of the Petitioner was in supervisions of some works, such as the roofing and a boundary wall. The Petitioner did not do any repair to the house and she even had to repair damages done by him. They had to remove their daughter from a private school, as they could not honour their commitments, as she was the one paying the loan, the utilities, household items and costs of food. The Respondent is of the view that in total throughout the relationship, the Petitioner has contributed only SCR5,000 in cash.

[12] The parties were once lawfully married. They were divorced by order of this Court. The certificate of making their conditional order absolute was issued on the 11th day of August 2017. The Petitioner has by way of ancillary relief applied to the Court for an order determining his share in the matrimonial property, namely PR1918, of which he claims half together with the content of the house thereon.

[13] As far as the law applicable to this matter, *Renaud v Renaud* CA 48/1998, *Maurel v Maurel* CA 1/1997, and *Esparon v Esparon* CA 12/1997 stand for the propositions that the provisions of section 20(1)(g) and 25(1) of the Matrimonial Causes Act 1992 protect a party to a marriage from being put at an unfair advantage in relation to the other by reason of the breakdown of the marriage and enable the party to apply to maintain a fair

and reasonable standard of living commensurate with or near to the standard the parties had maintained before the dissolution of the marriage.

[14] When it comes to the Petitioner's contribution to the matrimonial property, *Chetty v Chetty* SCA 11/2008 and *Finesse v Banane* (1991) SLR 103 are authorities for the proposition that the contributions to matrimonial property cannot be measured in pure monetary terms and that the spouses' love and sweat and the long hours of vigil to bring up the family – all have a role to play in the accumulation of matrimonial property.

[15] Section 20(1)(g) of the Matrimonial Causes Act provides in relevant form that the Court:

“ . . . may, after making such enquiries as the court thinks fit and having regard to all the circumstances of the case, including the ability and financial means of the parties to the marriage . . . make such order as the court thinks fit, in respect of any property to a marriage or any interest or right of a party in any property for the benefit of the other party . . . ”

[16] Case law has established that the point of departure in the division of matrimonial property where only one party has title to the property is to consider the assets held in the name of one spouse as that spouse's property unless it is established that it was not the intention of the parties (see *Etienne v Constance* (1977) SLR 233 and *Maurel v Maurel* (1998-1999) SCAR 57). However, it is also firmly established in Seychellois jurisprudence that where the legal ownership of a matrimonial asset is vested solely in one party but there is overwhelming and convincing evidence that the other party made significant contributions towards the matrimonial asset in issue, the matrimonial property should be vested in both parties given the express terms of section 20(1) of the Matrimonial Causes Act giving a large discretion to the court with regard to all the circumstances of the case (*Esparon v Esparon* (1998-1999) SCAR 191).

[17] Contributions to matrimonial property are not only in monetary terms but may consist of contributions in terms of love, friendship, security, commitment, moral and emotional support as well as the maintenance of the home and bringing up the children of the

marriage (see *Chetty (supra) Desaubin v Perriol* (1996) SLR 90, *Samori v Charles* (2012) SLR 371).

- [18] In the present case, the property at issue is registered in the sole name of the Respondent, therefore, this court has to find out whether there is overwhelming and convincing evidence that the other party made significant contributions towards the matrimonial asset in issue, namely the house constructed on parcel PR1918. The fact that a Quantity Surveyor was unable to access the property and do a valuation of the property would not debar this court from making an evaluation on the shares of the respective parties, given the power that it exercises under section 20(1) of the Matrimonial Causes Act.
- [19] I have thoroughly considered the facts led before me and I have appraised myself with the submissions of the parties. Having done so I find that the Petitioner has not managed to convince me that he used any of his material resources to help in the building, renovating or refurbishing the matrimonial home. It has not been shown that the loans that he took from the *Nouvo Banq* have been used by him for these purposes. He was very vague and abstract on how and when he gave financial assistance in that regards. To the contrary, I am of the view that the Respondent used her own financial means to build the house, refurbish it and maintain it throughout the marriage. I also find that the house was built well ahead of the marriage of the parties.
- [20] On the other hand, though, the house was built at a time when the two parties were only having an amorous relationship, I am of the view that evidence proves that during that pre-marital relationship, contrary to what the Respondent says, the Petitioner was ever present in her life. He would shuttle between Praslin and La Digue, trying to help his future wife in whatever ways that he could. He got one of his La Digue friends to assist in the roofing of the house, though, that friend was paid by the Respondent. According to the Respondent, "*Billy made the arrangement for him to come*" to Praslin and in that regards it is her testimony that, "*he contributed. . . but not in cash*". The painter, though, paid by the Respondent, was, to use her own words, "*offered by Billy*". She testified further that "*he (Billy) was supervising whenever I was not around or if I had something he supervised*". She also admitted further in cross examination that he supervised the

boundary wall and “*look for workers to build the wall*” and her evidence is also that “ *he (Billy) helped like getting people to do certain work on the house which I had to pay those people*”. Finally, she also admitted that the Petitioner did some roofing work and plastering. Therefore, the contribution of the Petitioner came in the form of his time and efforts that he put in the house construction, rather than financial assistance. These are pertinent and relevant circumstances that equity and fairness calls for due consideration to be given to in assessing the Petitioner share in the matrimonial home.

[21] Another important aspect for consideration in this case is the fact that the Petitioner’s contribution came at a time when the two parties were not married. However, the Petitioner is looking for his share in respect of his interest or right to a property to a marriage. It is not a condition in section 20(1)(g) that the property must be acquired during the course of the marriage, a claim for property adjustment of properties acquired by one party prior to the marriage would still be valid if the prosecuting party shows that due to supervening circumstances he or she came to acquire an interest or right therein.

[22] There is no evaluation of the matrimonial home in this case due to the refusal of the Respondent to allow access of a Quantity Surveyor onto the property. The Petitioner’s rough estimate is that the property costs SCR1.5 million. The Respondent’s evidence is that all in all the construction of the house cost SCR400,000. The house is presently 15 years old. Given his contributions in the matrimonial home and the length of his cohabitation and marriage with the Respondent, I assess the share of the Petitioner to amount to SCR100,000.

[23] In these circumstances I order the Respondent to transfer to the Petitioner the sum of SCR100,000 within 6 months from the date of this judgment. If the Respondent fails to make payment as ordered, the property shall be sold and the proceeds of sale shall be distributed in accordance with this judgment.

Signed, dated and delivered at Ile du Port on the ... day of April 2020

Govinden J.