

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2020] SCSC ...
CS 7/2018

In the matter between:

LISETTE LESPERANCE
(rep. by Lucy Pool)

Plaintiff

and

ROBERT ROSE
(unrepresented)

Defendant

Neutral Citation: *Lesperance v Rose (CS 7/2018)* [2020] SCSC (..... 2020)
Before: Pillay J
Summary: The parties are former concubines. The Plaintiff seeks a declaration is entitled to the land Parcel C5614 and the house thereon.
Heard: 7th February 2020
Delivered: June 2020

ORDER

The Plaintiff is dismissed

JUDGMENT

PILLAY J

[1] The Plaintiff in the matter seeks the following orders from the Court:

- (1) *a declaration that the Plaintiff is entitled to the land Parcel C5614 and the house thereon;*
- (2) *order the Land Registrar to register Title C5614 in the Plaintiff's sole name;*
- (3) *any other order which the Court thinks fair and just in the circumstances of the case;*
- (4) *order the Defendant to pay the costs of this action.*

[2] Attempts were made to serve the Defendant to no avail, resulting in the Plaintiff being granted permission to effect substituted service. The Defendant failing to attend the matter proceeded ex-parte against him.

[3] The Plaintiff's claim is as follows:

(1) The Parties are co-owners of the land comprised in title No. C5614 situated at Anse Boileau, Mahe, Seychelles which they purchased from the Seychelles Government for the sum of R30, 000.

(2) At the time they purchased the land C5614 the Parties were living in a common law relationship.

(3) The Plaintiff avers as follows:

a) That she paid the entire purchase price of the land

b) That she has fully repaid the loan to Housing Finance Company Ltd (HFC)

c) That she constructed the house on the land using her own funds.

(4) The Plaintiff avers that the Defendant has left the property since October 2006 and has not made any repayments towards the loan taken by the Parties.

(5) On the basis of the matters aforesaid the Plaintiff avers that she is entitled to claim full ownership of the property Title C5614.

[4] The Plaintiff testified that she lives at Anse Boileau and the Defendant lived with her since 2001. They lived in concubinage as husband and wife. When the parties met the Plaintiff was already living in the house which belonged to "agriculture". The Plaintiff testified that she worked throughout the time that she lived with the Defendant and paid the rent and utilities. According to the Plaintiff the land was already under her name when the Defendant came to live with her in 2001. In 2003 she received a letter from Mrs Afif of Ministry of Land Use and Habitat giving approval for her to buy the land parcel C5614. Subsequently the land was transferred into hers and the Defendant's names. The Plaintiff testified that the Defendant never brought a salary home though on being asked by the Court she accepted that sometimes he brought food which they cooked as a whole, sometimes he would bring a bottle of oil or fish and SCR 25/-. She further testified that if

there was a door to be fixed he would fix it. Otherwise, according to her testimony, he “did not contribute anything for the payment of the land”.

- [5] Counsel for the Plaintiff submitted that the parties were in a “de facto” relationship for a period of about 24 years from 1981 to 2006 until the Defendant left for good in 2006. The Plaintiff sought legal advice seeking to have the Defendant remove his name as joint owner of Title C5614 to no avail. It was counsel’s submission that the Plaintiff began proceedings around 2015 but somehow the case went off track and the Plaintiff was left without a remedy. Counsel submitted that there is sufficient evidence adduced by the Plaintiff to satisfy the Court that the property should be transferred in to her name.
- [6] Essentially the parties were concubines and they purchased the property in question in their joint names but now the Plaintiff does not wish to remain in co-ownership anymore.
- [7] Before addressing the issues at hand, it is noted that the matter proceeded ex parte. The fact remains that the Plaintiff still had to prove her case on the same civil standard as an inter partes matter; on a balance of probabilities. Further, the Court is duty bound to ensure that the Plaintiff has made out her case before a judgment can be given in her favour. Simply because a matter is heard ex parte it does not follow that judgment should automatically be in favour of the Plaintiff.
- [8] Now to the issue before the Court. The key question for the Court to decide on before examining the evidence is, how can parties wishing to terminate their joint ownership proceed? And more specifically, how can parties who were in living in concubinage terminate their joint ownership of property?
- [9] The case of **Monthy v Esparon (SCA 29 of 2010) [2012] SCCA 5 (13 April 2012)** clearly answers the question as to how the rights of unmarried parties in property held in joint ownership should be dealt with at the dissolution of the relationship, in the following paragraph:

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.

[10] Applications for sale by licitation and division in kind are governed by the provisions of the Immovable Property (Judicial Sales) Act (Cap 94). Clearly the matter at hand falls in neither category for obvious reasons.

[11] As for an action based on the principles of unjust enrichment, Article 1381 -1 of the Civil Code which governs such matters reads as follows:

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.

[12] In essence, in order to succeed on such a claim the Plaintiff would have to show that the detriment was without lawful cause, the Plaintiff had no other action available to him/her and the detriment was not the Plaintiff's own fault. Regrettably, the Plaintiff has failed to satisfy the Court that these three elements exist. It is not for the Court to go looking to prove a party's claim but for a party to bring all facts before the Court and for the Court to then come to a reasoned decision by analysing the facts in line with the law.

[13] In any event the Plaintiff did not plea unjust enrichment. As was found in the case of **Vandagne Plant Hire Ltd v Camille (SCA 03/2013) [2015] SCCA 17 (17 April 2015)** that *"It was not therefore open to the Judge to disregard the pleadings and deal with an issue which was not pleaded in the first place to reach a conclusion that he thought was just and proper."*

[14] With that said there is no better way to express the view of this Court than to echo the sentiments of the Twomey JA in the case of **Monthy v Esparon** above:

"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,... continue in a

state of limbo, it was up to the [Plaintiff] who wished no longer to remain in indivision to bring the correct suit to court.”

[15] On that basis there is no necessity in examining the evidence. The case is hereby dismissed.

Signed, dated and delivered at Ile du Port on ...

Pillay J