

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 701
MA 395/2019
Arising in DV 101/2016

In the matter between

JEAN MARC JEREMIE
(rep. by John Renaud)

Petitioner

and

LINSEN-PHELEN JEREMIE (FORMERLY WAYE-HIVE)
(rep. by Karen Domingue)

Respondent

Neutral Citation: *Jeremie v Jeremie* (MA 395/2019 (arising in DV 101/2016) [2020] SCSC 701 (25 September 2020))

Before: Twomey CJ

Summary: division of matrimonial property when property in joint names

Heard: 30 July 20

Delivered: 25 September 2020

ORDER

The Petitioner is to transfer to the Respondent Title LD1805 after payment by her to him of the sum of SR2, 684,500. Proof of the payment of this sum produced to the Registrar of Lands will suffice to effect the said transfer. Further, given the present economic circumstances from the pandemic, the Respondent is granted one and a half years to make this payment. If the Respondent fails to make this transfer within one and a half years hereof, the whole property will be sold and the proceeds shared in the ratio and with the deductions specified above.

JUDGMENT

TWOMEY CJ

Background to the claim

[1] The parties were married on 30 March 2007 and conditionally divorced on 15 February 2017 with decree absolute granted on 31 March 2017.

- [2] The Petitioner, by way of ancillary relief to the divorce, applied to the Court for an order that the Respondent pay him a three quarter share of the value of the guesthouse they jointly owned in La Digue, as well as half of the money collected from the business from 1 April 2013 and 50% of the immovable property” (sic). In his affidavit supporting the application he averred that since April 2013 his former wife had been running the guesthouse they owned while he occupied a one-bedroom apartment therein. He further averred that he paid the full purchase price of the property from his own funds and that during his marriage with the Respondent, he earned revenue which he used to build the guest house. He also used other personal funds to assist in the construction of the guest house.
- [3] In her response affidavit, the Respondent averred that she met the Petitioner in 2005 during the time he was still living in Canada and was on holiday in Seychelles. They started a relationship and after the holidays he returned to Canada. When he returned to Seychelles in 2006, she was the one who paid for his airfares and he came to La Digue to live with her and off her earnings because at that time he was unemployed.
- [4] At the time they started living together and subsequent to their marriage in 2007 she worked as the manager of Tournesol Guesthouse and earned a salary of SR 7500 per month. She was renting the guesthouse from her family and above her salary was earning between Euro 2000 to 3000 per month from the profits she made.
- [5] Her earnings were used to pay for Parcel LD1805 which she purchased by instalments from her uncle. In 2008, she finished paying the term payments and the property was transferred into her name and that of the Petitioner. The property was transferred into their joint names because the Petitioner had contributed some money towards it from money he had received from a vehicle he had sold. The property was currently valued at SR2,000,000 although she had purchased it at the favourable price of SR 120,000 from her uncle.
- [6] After two years of the Petitioner’s return to Seychelles, he obtained employment with Cable and Wireless in Mahe and moved there in December 2007. Some of the weekends he spent on La Digue and after two years returned to La Digue and was unemployed for

five to six months. He then started working as a cook at the Tournesol Guesthouse but this lasted less than a year. When he worked as a cook she assisted him and they earned some extra income. At this time, she kept her job as manager of the guesthouse earning her salary and profits as already stated.

[7] When the Petitioner stopped working at the guesthouse they rented a shop from Carl Mills until 2018 when they had to vacate the shop for its demolition by the owner.

[8] Although it was the Petitioner who worked in the shop and controlled the earnings from it, she assisted him after her working hours at the guesthouse till 8.30p.m. at night. Sometimes in August they would close as late as 12 midnight or 1 am.

[9] The Petitioner used some of the earnings from the shop for his personal expenses and some of the earnings were invested in the building of their own guesthouse. She also invested her earnings from her job at Tournesol Guesthouse into the construction work.

[10] Their own guesthouse was completed in 2015 and they registered the business as JML Holiday Apartments and started operations in mid-2016 after obtaining the necessary permits. They purchased a club car in August 2015, which the Petitioner used as a taxi business from January 2016 to October 2019 when he moved to Mahe. He would charge about SR 100 per trip and foreign guests SR 1500. He kept all the money earned for such trips.

[11] After their marriage declined, the Petitioner stopped contributing to expenses. He withdrew SR 500,000 from their joint account which she only discovered in March 2016. He also damaged the club car which is no longer in use. She approached the Petitioner and offered to settle the issue of matrimonial property in an amicable way. She paid him in instalments of SR 6,000 a month from January 2017 to date and altogether he had received SR 143,600 and Euros 14,700 (about SR 220,500 altogether).

[12] Prior to their divorce, the Petitioner moved into one of their apartments and did not contribute anything towards the expenses nor assisted in the business or paid the utilities, wifi and anything else. He still occupied the apartment as his belongings remain there and cannot be rented out. The Respondent averred that she was entitled to a three quarter

share of the guesthouse and the sum of SR 500,000 should be deducted from the Petitioner's quarter share.

The Petitioner's evidence in court

- [13] In his evidence in court the Petitioner expanded on the evidence in his affidavit. He stated that he had solely bought Parcel LD1805 by paying the seller, Maxwell Draver, SR10,000 monthly for the first four and five months and then took a loan of SR200,000 in 2008 from Cable and Wireless and paid him the outstanding amount on the purchase price of the property. In order to build the guesthouse, he put in his wages from operating a restaurant at the Tournesol Guesthouse and a grocery store which he ran. The rest of the money came from two properties he sold. One of these properties he sold for SR1.4 million and the other was for SR250,000. He also took a loan of SR 500,000 from Nouvobanq.
- [14] He produced a letter dated 23 January 2009 from Cable and Wireless which explained that he was due SR32,423.85 as benefits owing to him but that he owed SR172,320.31 for a housing loan he had taken with the company and that he had twelve months to repay the same.
- [15] He also produced the transfer of Parcel LD1805 from Maxwell Draver to himself and the Respondent for the sum of SR120,000 dated 28 March 2008 and a discharge of charge by Maxwell Draver on the property dated 4 November 2008 and with a receipt for SR88,000 also dated 4 November 2008 from himself and the Respondent to Maxwell Draver. He further produced a document charging a property to secure the loan taken from Seychelles International Mercantile Banking Corporation (SIMBC aka Nouvobanq) and the document of discharge of the same charge.
- [16] In 2019, he had had the property surveyed and valued by the quantity surveyor Nigel Roucou who valued the land and external structures comprised in Parcel LD1805 at SR2,350,000 and the building at SR 5,959,000.
- [17] He was not aware that the Respondent had paid her uncle any money towards the purchase of Title LD1805. He stated that when he came to Seychelles in 2006 he had

taken a one year's sabbatical paid leave from his job as a fiscal auditor with Revenue Quebec and whilst here he continued to receive 80% of his salary and that he did not need any financial support from the Respondent during that time.

[18] He agreed that the Respondent had paid a ticket for him to come to Seychelles but that it was a month before they got married. He also agreed that for two years after coming to Seychelles he was not employed in Seychelles but said he was still employed by the Canadian government. He could not comment one way or the other on whether his wife had supported him during the time he was not employed in Seychelles as he stated that they were a family then. He did not know how much his wife was earning when she worked at Tournesol. He did not know exactly how much he had invested in the construction of their own guesthouse.

[19] He was adamant that all his earnings from the employment he had went into the construction of the guesthouse and for family expenses and holidays. He also stated that the company did not buy a club car but that he had personally bought it from the sale of his property at Anse Aux Pins. He agreed that the money from operating the club car had not been ploughed back into the business but had gone into his pocket. He agreed that the club car had been damaged perhaps vandalised but that it had been replaced by another in the company's name but he was not sure who had bought it although he personally had not.

[20] He disagreed that his wife had continued to pay for bills for the business and the guesthouse. He was of the view that he deserved a three quarter share in the value of the guesthouse.

[21] In cross examination, the transfer document relating to Parcel S1151 which had been sold by the Petitioner in July 2015 was produced. The transfer was made for SR 1,400,000. He stated that the transfer took place after their guesthouse in La Digue was built as the latter was completed in 2013. Similarly, the sale of his other property Parcel S1466 for SR 250,000 was made in 2016 and the proceeds could not have been used towards the construction of the guesthouse.

- [22] He had a batch of receipts for the construction of the guesthouse but had not brought them to court. He had worked for Cable and Wireless for about two years and then rented a restaurant for SR 15,000 a month from the Respondent's father. He agreed that the Respondent helped him manage and cook in the restaurant. He also agreed that after getting out of the restaurant business he had opened a retail store which his wife had helped him operate after her working hours. He also agreed that JML Holiday Apartments received the occupancy certificate and started operating in 2015.
- [23] He disagreed that he had withdrawn SR500, 000 from a joint account he held with the Respondent. He stated that he was receiving SR 6,000 from the Respondent monthly. He stated that he could not comment on whether she had paid him SR 143,000 and Euros 14,700 and that he had received the equivalent of SR 720,000 so far. He didn't know or had no recollection of that.
- [24] With regard to the SR 500,000 which the Respondent claimed he had withdrawn from the account, this was in respect of the sum paid for maturity of a fixed deposit of money he had personally invested.

The Respondent's evidence in court

- [25] The Respondent testified and in the main repeated the averments in her response affidavit. She added that the property in La Digue had been purchased at a knock down price because of the relationship she had with her uncle (her mother's brother) who at the time of the agreement was living in Switzerland. She was a single mother of two girls and he wanted to help her by selling her land at a favourable price. She started by paying him what she could afford, which was about SR1000 a month. The Petitioner knew this as she had told him before they had got married.
- [26] She stated that the document (P4B) from the bank showing a standing order in favour of Maxwell Draver for SR 10,000 was the money they put together from her earnings and rent she was obtaining from the apartments and any contributions that he added to it. The last payment of SR88,000 had been made together when her uncle was in Seychelles.

- [27] With regard to the construction of the apartments, she had initially received help from her family who united to help her. She applied all her earnings in the various capacities she had worked to the construction of the apartments. The Petitioner came to work as a cook at Chalet Bamboo which belonged to her parents but soon had to stop because of his drinking problems. It was after that that he had operated a retail business in which she had helped him. From these ventures they put money aside at the end of the month to buy wood for the apartments although he used much of the money for drinking.
- [28] She disagreed that the business had started operating in 2013 as was proved by the certificate of occupancy of 2015. Also, it was she who ran the business. The Petitioner never helped. She did not know anything about the transfers of his properties in Mahe apart from the fact that at one point he took SR 25,000 from her to pay for the repair of one of the houses on the property. He had subsequently sold the properties and told her that he had put the money in their joint account. He then withdrew SR500,000 from the joint account.
- [29] Her husband's violence had forced her to seek an order to stop him trespassing into her home, a house she owned in her own name before she met him. After that he had moved into one of the apartments. She continued to pay the utilities for all five apartments including the one he occupied from 2016. She had continued to wash his clothes and give him meals. He played music loudly, partied and disturbed the other guests and she had to call the police on occasions until his departure in December 2019.
- [30] She kept a note of all the money she had paid him as part of his share in the guesthouse since his departure as proved by the documents she produced in Exhibit R 2 which amount to about SR 220,500.
- [31] With respect to the club car she stated that they had obtained a licence for it because they had an apartment of five rooms but she had not benefitted in any way from the trips made from it. The Petitioner had kept all the money for himself and even hid the key of the club car from her. Then he had damaged it and it could not be used. She had had to purchase another from money her parents gave her.

[32] She stated that she had little help from the Petitioner in the building of the guesthouse and the business. He would not even cut the grass. She would be happy to pay him his share which she estimated was one quarter of the value of the property.

Closing submissions

[33] The Petitioner has made closing submissions but the Respondent has made none. He states that he has proved his claim for a three quarter share of the land and the building and half the monies collected from the business from April 2015 and half of the value of the movables. He has also submitted that the plea of the Respondent to be paid SR220,500 is not supported by evidence. (The court finds this confusing as the plea was not made). Additionally, it is submitted that the Respondent's averment that he has removed SR500,000 from their joint account is not supported by evidence; it was in fact 'an adjustment as the redemption of the Applicant's term deposit registered on the joint fixed deposit account as identified clearly on the bank statement, sum which was transferred to the Joint Current Account upon redemption" (sic).

[34] Additionally, the Petitioner has submitted that he had no access to the accounts and it was incumbent on the Respondent to produce accounts, statements and the earnings of the business since the beginning of the operation. Much of the rest of the submissions related to evidence by the Respondent adduced which the Petitioner submits is vague and unsupported. Some documents which were not produced as exhibits are also attached to the submissions which are not considered by the court for obvious reasons. Counsel for the Petitioner has also referred to the cases of *Etienne v Constance* (1977) SLR 233 and *Camille v Joubert* which he claims to have attached but didn't.

The court's assessment of the evidence and the law

[35] I first remark that the case of *Camille v Joubert* cited by Counsel for the Petitioner could not be found as no citation for the authority was made available. I assume that Counsel may have been referring to the case of *Camille v Pillay* (1973) SLR 254, which is authority that if a joint owner were to enjoy the use of a jointly owned house exclusively, that owner would be liable to pay the other their share of the expenses in the construction of the house. The case of *Etienne (supra)* is authority that property acquired by one

spouse with his own money or resources remains the property of that spouse although property may be jointly acquired but there must be proof of such joint acquisition.

[36] The cases cited concern co-ownership in general. Article 815 of the Civil Code is to the effect that when property is held by two or more persons jointly, co-ownership arises and in the absence of any evidence to the contrary it shall be presumed that the co-owners are entitled to equal shares. Equally significant is section 20 (1) (g) of the Matrimonial Cause Act which 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...”

[37] In this regard, case law has established that the point of departure in the division of matrimonial property where the parties own the property jointly is the presumption that they have intended to own the property in equal shares. There remains a judicial discretion that must be exercised in the consideration of all relevant factors (*Charles v Charles* (2004-2005) SCAR 231. Such discretion is not arbitrary and the factors considered are not circumscribed but included the ability and financial means of the parties to the marriage or the benefit of the other party thereof (*Charles*).

[38] I assume therefore given the contents of the transfer document of Parcel LD1805 that it is jointly owned. I have to consider all the other relevant evidence adduced by the parties to consider whether the presumption is rebutted (see *Figaro v Figaro* (1982) SLR 200 *Edmond v Edmond* (1996-1997 SCAR 101) and that the parties are not entitled to equal shares.

- [39] The evidence of the Petitioner's contributions to the joint property over and above what is proven by the transfer document is rather vague. While the Respondent has made full disclosure of her wages which was not disputed by the Petitioner, the Petitioner has not made available his earnings. He has also not been very forthcoming with what he invested exclusively into the joint property.
- [40] The evidence before the court is that an instalment of SR 88,000 was paid to the seller of the property on the day the transfer was signed. The receipt (Exhibit P 4 (d)) is issued in both names and I therefore assume that this consisted of contributions from both parties. I however believe the Respondent, whom I found credible and very forthcoming in her testimony, that the land was purchased at a favourable price and with her goodwill because of the special relationship she had with her uncle. I also believe her uncontroverted evidence that she had as single mother paid her uncle by instalments of SR1000 for the property long before the Petitioner appeared on the scene. I would therefore think that her share in the land must be greater than that of the Petitioner.
- [41] Subsequent to the purchase of the property the construction of the apartments began. It is not clear when the housing loan of SR172,320.31 was granted by the Petitioner's employer Cable and Wireless to the Petitioner and for what purpose. I say this because the Petitioner has adduced evidence of other properties that he owned, namely Parcel S1151 and S1466 and the Respondent testified that he was repairing a building on one of those properties.

- [42] The sale of those two properties were subsequent to the apartments becoming operational and therefore do not provide any corroboration of the Petitioner's testimony that he used money from the transaction to fund the building of the apartments. I am more inclined to believe the Respondent that it was their joint earnings from her work at the Tournesol and other work and the Petitioner's work in the restaurant and in the retail shop that helped fund the building of the apartments. I have no difficulty in believing the Respondent that she worked harder than the Respondent. She seemed to have worked her fingers to the bone at all hours of the day and night to make enough income to sustain the project and their dreams of having their own business. She also received financial help from her family.
- [43] The Petitioner cut a picture of feeling entitled to the property by reason of his marriage and of sullenly helping the project but with minimal effort. He did not contradict the Respondent's evidence in this respect nor of squandering his earnings on drink and thus diminishing his contributions to the building project and ultimately of the business.
- [44] Equally the evidence of the charge on Parcel S1151 for SR500,000 taken in March 2014 was in respect of that property and does not indicate that the money was used toward the construction of the apartments in La Digue and not towards other ventures linked with Parcel S1151.
- [45] I am more inclined to believe that the construction of the apartments was in dribs and drabs from money that was raised by each of the parties from their earnings and with some help from the Respondent's family. It is abundantly clear that it is the Respondent who raised more money for the project and who did the bulk of the work. I would think her share in the property would be higher. The club car is yet another example of the Petitioner not putting the proceeds from his earnings towards the construction or the business.

- [46] With regard to the withdrawal of SR 500,000 from their joint account, the document (Exhibit P8 (b) produced speaks for itself. There was a withdrawal of SR507,782 on 3 February 2016 in effect closing the joint account. The Petitioner has attempted to say that this was a sum of money that had matured from a deposit he had made. I see no evidence of that fact. However, the Respondent accepted that that money was from the sale of property owned by the Petitioner. I therefore do not propose to take into account that amount for deduction from his share in the property they jointly owned
- [47] However, the sum of SR220,500 paid to the Petitioner will have to be deducted from the Petitioner's share. Although he has submitted that there is no supporting evidence that this amount was paid to him by the Respondent, he did not cross examine the Respondent on this issue and did not dispute the amounts he had attested to receiving by his signature and the receipts for the money paid to his lawyer on his behalf. I really find it hard to believe the Petitioner who was evasive or gave smart replies when cross examined.
- [48] The Petitioner has asked for a three quarter share of the land and buildings on Parcel LD1805 and half of the monies collected from the joint business and 50% of the value of the movables. No inventory or evidence of any movable was provided to this court nor any evidence of the business from the apartments and in the circumstances, no adjudication could be made on these issues.
- [49] The marriage of the parties lasted ten years although they lived apart for about a year. The Petitioner then had the full benefit of one of the apartments rent free with meals delivered to him and his laundry done. He was on full board treatment as in a hotel for about three years and did not contribute at all to the household. I take all this into account when considering the parties' share in the property they jointly owned which has been valued at SR 8,300,000.

[50] All things considered, I find that the adjustment I should make in the present case is to award the Petitioner 35% and the Respondent 65% of the value of the property. I note that the Petitioner has only asked that he be paid his share of the value of the property and has not prayed for an order that he be allowed to buy out the Respondent. The Petitioner would have been entitled to SR 2,905,000.00 but from this sum must be deducted the sums of SR220,500 already paid to him by the Respondent.

[51] In the circumstances, I order that the Petitioner transfers to the Respondent Title LD1805 after payment by her to him of the sum of SR2,684,500. Proof of the payment of this sum produced to the Registrar of Lands will suffice to effect the said transfer. Further, given the present economic circumstances from the pandemic, the Respondent is granted one and a half years to make this payment. If the Respondent fails to make this transfer within one and a half years hereof, the whole property will be sold and the proceeds shared in the ratio and with the deductions specified above.

Signed, dated and delivered at Ile du Port on 25 September 2020.

Twomey CJ