

IN THE SUPREME COURT OF SEYCHELLES

JEAN-BAPTISTE BARBE

Plaintiff

VS.

MONICA BARBE nee ADELINE

Defendant

Civil Side No 121 of 2004

Mr. Juliette for the Plaintiff

Mr. Bonte for the Defendant

JUDGMENT

Gaswaga, J

This is an application for a division in kind under Section 107 (2) of the Immovable Property (judicial sales) Act, Cap 94. The parties are co-owners and have both clearly indicated their unwillingness to remain in a state of in-division. The said property is comprised in and known as J 1625. It is located in a prime residential area at Beau Bel Estate, Belombre. The Court had the opportunity to visit the site. Further, the parties agree that this land is small, measuring about 769 sq m and cannot be physically subdivided but the petitioner is willing to be bought out. However, the offer of SR 25,000.00 made by the respondent on the ground that this is the sum contributed towards the purchase price by the petitioner is unacceptable to the petitioner.

The court had opportunity to visit the site. It was submitted that the petitioner had separated with the respondent some years back before even the house standing on

the said land was built. That the respondent incurred a total cost of SR 50,000.00 on leveling and filling up the holes on the land and generally clearing and preparing the plot before beginning construction. A wall to hold and retain the soil on the mountain side of the plot was built. She also worked on the land physically by planting grass and removing weeds on weekends and holidays from 06.30 am and generally maintained the property during the five or so years the petitioner was away. No doubt, the property has appreciated over the years.

Both Mr. Juliette and Mr. Bonte concurred that the market value of the property be divided equally (into two portions of 50% each) but Mr. Bonte submitted further that this formula could only apply after deducting the SR 50,000.00 referred to above and another SR 35,000.00 contributed by the respondent towards the purchase price. There was no dispute or objection to his proposal. A valuation report submitted by the quantity surveyor Ms. Cecile Bastille has put the current value of the property comprising of the **land only** at a sum of SR 190,000.00. Therefore, deducting SR. 85,000.00 from SR. 190,000.00 would leave a balance of SR. 105,000.00 which, when divided into two equal portions would entitle each party to a sum of SR. 52,500.00.

Accordingly, the petition is granted but in the preceding terms. Further, as proposed by the parties, the respondent who has already constructed a house on this land shall be given opportunity to buy out the petitioner by paying him a sum of SR. 52, 500.00 within a period of time to be agreed upon by the parties on the 24th October, 2007 at 9am when the case will be coming up for review.

I make no order as to costs.

D. GASWAGA
JUDGE

Dated this 15th day of October, 2007.