

IN THE SUPREME COURT OF SEYCHELLES

Alexis Marcel Dijoux of

Anse De Genet, Mahé

Petitioner

Vs

Mary Eva Dijoux of

Bel Ombre, Mahé

Respondent

Civil Side DV No: 49 of 2005

=====

Mr. W. Lucas for the Petitioner

Mr. F. Bonte for the Respondent

D. Karunakaran. J.

JUDGMENT

This is a petition filed by the former husband - hereinafter referred to as “the petitioner” - against his former wife - hereinafter referred to as “the respondent” - for an ancillary relief following the dissolution of their marriage. The petitioner, aged 72, partly incapacitated due to a stroke, who is now bed-ridden, prays this Court for a judgment:

“Declaring that the land Title S 3054 with the matrimonial house situated thereon (hereinafter called the suit-property), which remains registered in the joint-names of the parties belongs to both in equal shares;

consequently, ordering the respondent to compensate the petitioner for the market value of his half-share so that the respondent could become the sole owner thereof by having registered the property in her sole name.”

After living together for over 35 years, the parties separated in 2005. They have no children born of the marriage. In 2005, at the instance of a petition filed by the petitioner, the marriage was dissolved on the ground that the marriage had been irretrievably broken down due to unreasonable behavior on the part of the respondent. A final decree of divorce was also granted on the 5th of April 2006.

The background facts of the case as they transpire from the evidence on record are these:

On 29th July 1985, the parties got married. After the marriage they lived and cohabited at Anse Aux Pins. They were living in a rented house for about 5 years. That house was in a very bad state of repair. Therefore, the parties wanted to have a house of their own and move in. The petitioner identified a house at Anse De Genet, - the suit property - situated on Parcel S3054. He wanted to have it purchased in the joint-names of the parties. With financial assistance by way of housing loan from the Seychelles Housing Development Corporation both parties jointly acquired the property under a joint-purchase agreement. The petitioner testified that throughout the marriage, he was an earning member in the family. He contributed towards the purchase price of the property. He also spent money for the extension and renovation of the house. According to the petitioner, during the loan repayment period, he was working as a cook in a restaurant belonging to one Ferdinand at Anse Royale. He was earning a salary of Rs 2,500/- per month and was repaying the housing loan by monthly installments of Rs675/- He also produced a bunch of receipts in exhibit P4 showing all such payments for a total sum of Rs 9450/- According to the petitioner, when the final document of transfer was made, the respondent stealthily without the petitioner's knowledge and consent, got the

property registered in her sole name. When the petitioner came to know about it, he asked the respondent to reregister the property in their joint-names. Therefore, the respondent subsequently, transferred an undivided half share in the property to the petitioner. Following the dissolution of the marriage, the petitioner left the matrimonial home. Now the property is in the full use and occupation of the respondent. Admittedly, the present market value of the property is Rs 500,000/- as per the valuation made by Ms. Cecil Bastille, the Quantity Surveyor. In the circumstances, the petitioner seeks this Court to make property adjustment order awarding him Rs 250,000/- the 50% of the market value of the property so that the respondent shall become the sole owner of the property.

On the other side the respondent denied the entire claim of the petitioner. The respondent testified that the petitioner never had any permanent job. He was not contributing any sum towards the purchase price or renovation or extension of the house. When their marriage was on the rocks, the respondent threatened to kill her and so was forced to transfer a half share in the property to the respondent. According to the respondent it was she who paid in full for the property availing a housing loan and was repaying Rs1000/- every month to SHDC. She was working for Skychef for about 12 years and paid a total sum of Rs81, 000/ to SHDC. The respondent claims that she is the sole owner of the property and seeks for a declaration accordingly.

I carefully analyzed the evidence on record and the arguments advanced by both counsel for and against their respective claims. I meticulously perused the provisions of law relevant to the issues. I went through the judgments of the Courts in the following cases so as to ascertain the law applicable in matters of this nature.

1. *Linda Jenna Mathiot Vs. Gilbert Phillippe Mat hi ot-S C DV. No: 105 of 1994*, wherein the court used both its inherent as well as statutory

powers in determining the property disputes between the parties and granting ancillary relief following the dissolution of their marriage, vide page 6 of the judgment.

2. *A. U Maurel Vs M. J Maurel SCA C. A No: 1/97*, wherein the Court of Appeal discouraged the use of the terminology “*Matrimonial Property*” in matters of such ancillary relief without giving alternatives. In that particular case, the respondent had claimed a beneficial interest in the appellant’s property. She had applied under the Status of Married Women Act for a declaration to that effect. The Court held that the jurisdiction of the trial Court would have been confined to the equitable powers conferred upon the Supreme Court by section 5 of the Courts Act. In such cases, the claim to the beneficial interest could have been based only on equitable principles analogous to the English doctrine of implied, constructive or resulting trust as explained by the House of Lords in *Lloyds Bank plc V Rosset (1990) 1 A. E. R 1111*.
3. *In Mrs. M. Renaud Vs Mr. G. Renaud SCA CA No: 48 of 1998* in respect of property disputes between the parties, following the divorce, the Court of Appeal held that the Supreme Court has jurisdiction pursuant to section 25(1) (c) of the Act, without prejudice to any other power of the Court, on an application by a party to the marriage, to grant order as it thinks fit in relation to the property of a party to the marriage or the matrimonial home. In addition, the Court may even exercise its equitable power to make any order in the interest of justice under Section 5 of the Courts Act.

Obviously, the law relevant and applicable to property claims or disputes between the parties to a marriage in matters of matrimonial causes is Section 25(1) (c) of the Matrimonial Causes Act. At the same time, the Court is empowered by this section to grant any order as it thinks fit in relation to the

property of a party to the marriage, who may apply for any relief in the nature of a declaration or otherwise.

In the light of all the above I examined the evidence on record including the affidavits and documents adduced by the parties. I gave diligent thought to the submissions made by both counsel. First of all, as regards the issue of repayments of the SHDC-loan, on the strength of the evidence adduced by the parties, I am satisfied more than on a balance of probabilities that it was the respondent who has fully or to say the least substantially repaid the housing loan in question, except the sum of Rs 9450/- which sum the petitioner, has directly paid from his own earnings. As regards the renovation and extension to the house, I find that the respondent was the one who contributed her money in full or to say the least substantially contributed towards the cost of those improvements made on the property. Although the respondent has not produced all the receipts as they are old dating back to 1980s for the loan-repayments and for expenses incurred on renovation and extension, in my considered assessment, she should have contributed approximately 80% towards the loan-repayments and to procure the necessary construction materials and the labor costs for extension and renovation. Since the respondent has contributed towards repayments of the housing loan and to the renovation and extension of the house, I find that she is entitled to 80% shares in the present market value of the property, which amounts to Rs **400, 000/-**, whereas the petitioner is entitled to 20% shares, which amounts to Rs **100, 000/-**.

Now, the question arises: *Who should be given the sole ownership of the suit-property among these two co-owners upon payment of compensation paid to the other for his or her share?*

It is not in dispute that the petitioner has moved out of the suit property. He is presently living with another person in the South Mahé and has an alternative accommodation, a house of his own. However, the respondent who

has been continuously living in the suit-property for the past about 30 years has no other house to live in. Hence, the **degree of personal requirement** for the respondent to have a shelter of her own by acquiring the sole ownership of the suit-property is undoubtedly, **higher** than that of the petitioner, who already has a house to live in. Besides, the fact remains that the amount of contribution the respondent has made towards the purchase-price is substantially more; in other words **higher** than that of the petitioner. In a situation of this nature, when two or more co-owners compete among themselves to acquire sole ownership of their co-owned property and especially, when their claims are based on the **varying degree of their personal requirement** and **varying degree in the quantum of their contributions**, the Court cannot fully honor its separate duty to do justice to each co-owner by granting each, the sole-ownership of the property. The Court is inevitably, placed in an impossible position. What is then, reasonable to do in the given circumstances of the instant case? In such a conflicting situation, to my mind, the only solution is to apply **“reasonableness”** and choose the **“least detrimental alternative”** and make a determination accordingly. As rightly observed by Lord Green (M. R) in **Cumming Vs. Janson 1942 2 All E R 653** and p656:

“In considering reasonableness, it is my opinion perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing that he must do, in what I venture to call, a broad commonsense way as a man of the world, and come to his conclusion giving such weight, as he thinks right to the various factors in the situation. Some factors may have little or no weight; others may be decisive but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”

Applying the above dictum and in considering **“reasonableness”** in this matter, I gave due weight to various factors in the situation. In striking

a balance amongst others, I find that the factor as to “**higher degree of contribution**” relied upon by the respondent outweighs the factors as to the “**lesser degree of personal requirement**” *operates in favour of* the petitioner. The factor as to the “**degree of personal requirement**” since based on **equity**, the Court ought to be cautious that this factor should not be allowed to unduly influence its mind in deciding which co-owner should be given the sole ownership and which one should be compensated for the contribution made. Having said that, I conclude that the decisive factor, which the Court ought to take into account in determining the issue as to “**sole ownership**”, is the “**higher degree of contribution**” the respondent has made towards the repayments of the housing loan and renovation. Indeed, **reasoning** dictates that the respondent should be granted the sole ownership of the property since she has substantially contributed or has made major contributions towards loan-repayments a fortiori the **higher degree of personal requirement**. At the same time, **justice** demands that the respondent should also be compensated for the material, labour and financial contributions he has made.

In view of all the above, and in summing up I make the following declaration and orders: -

- (a) *I hereby declare that the respondent **Mary Eva Dijoux (born Talma)** is entitled to sole ownership of the property namely, parcel of land **Title S 3054** situated at Anse Des Genets, Mahé, whereas the petitioner **Alexis Marcel Dijoux** is entitled to compensation in **the sum of Rs. 100,000/- payable by the** respondent in settlement of the petitioner’s share in the property.*
- (b) *Further, I order the respondent **Mary Eva Dijoux (born Talma)** to pay the said sum of Rs. 100,000/- to the petitioner within six months from the date of the judgment hereof.*

- (c) *As and whereupon such payment under paragraph (b) above, is made in full by the respondent either directly to the petitioner or through his attorney, I order the petitioner to transfer thenceforth to the respondent all his rights and undivided interest in **Title S 3054** including all or any super structure thereon.*
- (d) *In the event, despite receipt of the said sum in full, should the petitioner **Alexis Marcel Dijoux** fail or default to execute the transfer in terms of order (c) above, I direct the Land Registrar to effect registration of the said parcel **Title S 3054** in the sole name of the respondent **Mary Eva Dijoux (born Talma)** upon proof to his satisfaction of payment of the said sum **Rs. 100,000/-** by the respondent to the petitioner; and*
- (e) *I make no order as to costs.*

.....

D. Karunakaran

Judge

Dated, this 30th day of January 2013