IN THE SUPRME COURT OF SEYCHELLES

ELIES MARIAN DENOUSSE
(Formely Belmont) **APPLICANT**

VERSUS

MARCEL,JOHN BELMONT **RESPONDENT**

Civil Side No 68 of 2006

Mr. S. Rouillon for the Applicant

Mr. D. Lucas for the Respondent

JUDGMENT

Perera J

This is an application for a declaration of the share of matrimonial property consequent to a dissolution of the marriage of the parties. Admittedly, they were married in Seychelles on 22nd June 1976 (P1). However the marriage was dissolved in Quebec, Canada on 18th April 2002, where the applicant was residing at that time (P2). There were three children of the marriage. It has been averred that one child was given for adoption at birth, while the other two children are living with the applicant in Canada.

The applicant claims 50% share of the matrimonial home which is constructed on Parcels Nos. C. 1301 and C.1302 purchased on 4th May 1984 and on 8th June 1984 respectively in the joint names of

the parties for a total sum of Rs23,518. *(P9 & P10).* The applicant who wanted to return to Canada was granted leave to file affidavit evidence. In her affidavit dated 3rd April 2006 she has averred that her contribution to the house built on Parcel C. 1301 included money that her mother gave her and the children after selling her own house at English River, which was Rs20,000 for the children and Rs.47,000 to her. She also had Rs5000, and money she received as gratuity from government service, and also money from her embroidery work. She further avers that land Parcel No. C. 1301was bought with the help of her mother, and Parcel C. 1302 was purchased later with a loan from Barclays bank. She averred that she regrets having put the name of the respondent as a joint purchaser. She produced a copy of the loan application made by her to the Seychelles Credit Union dated 4th August 1988 (P4) for a loan of Rs.40,000. She claims that that loan was obtained before the house was built, and that the money was used partly to purchase a motor vehicle, and partly to prepare the building site for the house. The applicant further avers that that vehicle was sold to finance the respondent who went to Egypt on a six month study course. She also avers that Rs.6000/- was given to him, and the balance was refunded to the Treasury. The Applicant further avers as follows. While the Respondent was away in Egypt, she paid all utility bills, loans, and looked after the children. She also improved the house by fixing kitchen cabinets, wardrobes, extra electrical fittings and plumbing for hot water. All receipts were handed over to the Respondent on his return. She also paved the driveway and built a short wall at the back of the house. Thereafter she left for Canada to visit her mother and to seek the possibility of giving a

better future for the children. The Respondent refused to come to Canada. He decided to stay back and repay the loans. Arrangements were made for him to repay the SHDC loan of Rs98,628 in monthly instalments of Rs.994, (P5) and the Credit Union loan which had a balance of Rs26,127. The SHDC loan was repaid by her for one year before she left. She admits that she did not send any money from Canada to the Respondent to assist him in repaying the loans, as she had her own expenses there. She however avers that the Respondent received Rs600/- per month as rent from the small house built by her on his parent's land. When she came to Seychelles after 11 years, she found that the Respondent was having another relationship with a woman, and hence decided to divorce him. She avers that she intends to return to Seychelles in a year or two when the children complete their studies. In paragraph 14 of the affidavit, she has listed several household items and improvements made by her at her sole expense. She maintains that the receipts in the possession of the Respondent are for items purchased or works done by joint contributions, and that it was she who contributed most to the family.

On the application made by Counsel for the Respondent, the Applicant was cross examined on her affidavit evidence. She stated that her mother who was living in Canada for about 20 years died in April 2005. She however stated that she came to Seychelles off and on, and that she gave her Rs.47,000 and the children Rs20,000 after selling her property. She however had no documentary proof of such payments. She stated that the monies

given to the children were not put in a bank account. The construction of the house started in September 1988. One Gerald Belle was contracted in October 1988 to construct an additional bedroom. That was done with the loan from the Credit Union. The SHDC loan financed the construction of the house. She also admitted that while the Respondent was in Egypt, two thirds of his salary was credited to his account, and that she withdrew part of it. She further testified that while she was in Canada, the Respondent repaid all the outstanding loans (exhibit D2 & D4). It was put to her that when she left, the outstanding amount of the SHDC loan was Rs.101,588, and that the cost of maintaining the house was Rs42,000. She did not contest these amounts.

Gerald Belle (Dw1) testified that he constructed a two bedroom house for the parties in 1988. Later he added another room and a verandah. He was paid Rs.18,000 in instalments. At that time both parties were living in the house. Jacques Renaud, Quantity Surveyor, testified that he prepared a valuation report dated 22nd May 2006 (P13) at the request of one Mr. Louis Sham Hong on behalf of Mrs Elies Denousse (The Applicant). He valued the house at Rs287,000, but deducted Rs10,000 for defects, and added Rs.58,000 for external works, land Parcels C. 1301 and C. 1302 at Rs241,000 and Rs214,000 respectively, making the total value to be Rs790,000.

Greta Marie-Annnette Matatiken, the Senior Loans Officer of the Seychelles Savings Bank testified that the Applicant opened a joint account at the bank in the names of the two children on 31st July

1998. That account commenced with initial deposits of Rs20 each, but on 4th March 1999, two cheque deposits of Rs8000/- and Rs10,000 were made. One child's account was closed on 11th January 2006 when the balance was Rs14,359.63. No withdrawals had been made from that account. However in the account of the other child, the balance on 2nd November 2006 was Rs.522.33. In June 2005, there was a withdrawal of Rs.3800 by that child after reaching the age of 18 years. There were no other withdrawals previously. She produced the relevant bank statements marked D10, D11, and D12.

Ms Cecile Bastille, Quantity Surveyor produced her valuation report of the property dated 1st September 2006 (D17), in which she valued Parcel C. 1301 at Rs.211,000, Parcel C. 1302 at Rs190,000 and the house inclusive of all external works on Parcel C 1301 at Rs.250,700. Her total valuation therefore is Rs651,000, that is Rs.139,000 less that the valuation of Jacques Renaud Q.S.

The Respondent in his testimony stated that the construction of the house was funded by an SHDC loan of Rs98,000. The loan was for a two bedroom house, but with that loan, a three bedroom house was built in 1988/1989. However a loan of Rs40,000 was obtained from the Credit Union by the Applicant. He denied that any other contributions were made by the Applicant or the children towards the construction of the house. He however stated that the mother of the Applicant deposited Rs10,000 in the account of one child and Rs8000 in the account of the other child in 1999. No monies were withdrawn from those accounts before 2005. He maintained that

the house was constructed purely from the money obtained from the two loans. He denied that a car was purchased partly from the Credit Union loan, and stated that at that time he had his own car. From the Credit Union loan of Rs40,000, Gerald Belle was paid Rs18,000 for constructing the additional room, and the balance amount in purchasing a bathroom set and ceramic tiles.

The Respondent stated that the two lands were purchased jointly. He obtained a loan of Rs8000 from Barclays Bank to purchase one land, and the other land was purchased from money in a joint account at the Savings bank. He stated that before going to Egypt, it was both of them who were repaying the SHDC and Credit Union loans by equal contributions, but while he was abroad, it was the Applicant who did it. The monthly instalment for the SHDC loan was Rs.994, while for the Credit Union loan was Rs800. She was given access to his bank account to repay the loans. After he returned, she decided to go to Canada to visit her mother, but later she sought political asylum there. He discovered that while he was abroad, she had arranged with SHDC and Credit Union to consider him to be the sole person to repay the loans. It took 12 years for him to repay those loans.

The Respondent produced various receipts (D6) in proof of payment of Rs143.30 being stamp duty on the charge of the property to obtain a loan of Rs98,625 from the SHDC, Rs.510.80 being the Notary's fee, Rs.232 being registration charges and Rs826.50 being charges for installing electricity. A further receipt from Rs2600 was produced (D7) being charges for relocation of beacons on Parcel C.

1302. He stated that apart from the stamp duty charges, all other repayments were made solely by him. He further produced a bundle of salary statements from January 1992 to December 1999. (D5). These statements show that a sum of Rs500 was deducted from January 1992 to April 1993, then Rs700 from May 1993 to July 1996, Rs.1200 in August 1996, and Rs904 from September 1996 to December 1999. In addition, a sum of Rs655 was deducted under an item termed “debtors” from January 1992 to December 1999. These two sets of payments amount to Rs132,781.

The Respondent denied that the Applicant supplied the items set out in paragraph 14 of her affidavit evidence. She stated that most of these items were already fitted before he left. He also denied that she paid for the masonry work she claimed to have done. He further stated that payment for some of these items were made from joint contributions, or from the loans taken, while others were those included in the contract with the construction company. He however stated that the Applicant bought a sofa set, and bricks for the driveway.

The Respondent stated that the Applicant was not entitled to 50% of the property as claimed, but was prepared to pay Rs.38,449 being what he claimed was her actual contributions, provided that he be declared the sole owner of Parcel C 1301 and the house. He also admitted that the Applicant repaid the housing loan from 1988 to middle of 1991 when she left for Canada. Hence where the contributions are concerned, it is an admitted fact that loan repayments were made by the Applicant from 1988 to 1991 and

thereafter by the Respondent from January 1992 up to December 1999.

Although Parcels C. 1301 and C. 1302 are the joint names of the parties, the Respondent conceded that the Applicant paid for Parcel C. 1302, while he paid for Parcel C. 1301. As regards repayment of loans, Bagnell J in the Case of ***Concher v. Coucher (1972) 1.A.E.R. 943*** stated –

> *"…. there mere payment by one beneficial owner of a mortgage instalment properly payable by the other could not alter the beneficial interest, or, in my view, imply an agreement to alter these interests*".

The Seychelles Court of Appeal in the case of ***Andre Edmond v. Helen Edmond*** **S.C.A. no. 2 of 1996** took a somewhat similar view in relation to Article 815 of the Civil Code and held that –

> *"Where a co-owner has discharged an obligation jointly incurred by the co-owner, in respect of the property under the co-ownership, that the co-owner may recover what he has spent beyond his own share of liability from the other co-owner or co-owners would not affect the entitlement of the co-owner to equal shares".*

Article 815 of the Civil Code provides that the presumption of equality of shares could be rebutted by evidence that it was not intended to be so held. The evidence in the case discloses that the

Applicant had made arrangements with the two lending institutions for the Respondent to repay the outstanding loans. Although the Applicant had sought to rent the matrimonial home to pay for the loans, the Respondent was not prepared to move into a small dilapidated house built on his parent's land. He therefore undertook the entire responsibility for the loans for over 9 years, after the Applicant decided to settle down in Canada. In these circumstances there was a clear intention of the Applicant not to hold the property in equal shares although initially that could have been her intention. Hence the presumption of equality of shares in Article 815 has been rebutted.

There is overwhelming evidence that it was the Respondent who repaid the loans that were utilized for the purchase of Parcel C 1301 and the house constructed thereon. The Credit Union loan for Rs40,000 was obtained by the Applicant. She stated that only Rs18,000 was spent on site clearing and the balance to purchase a car. The Respondent denied the purchasing of a car and stated that he already had a car by then. The Applicant's claim that she received Rs72,000 from her mother's account remains unsubstantiated by an documentary evidence from the bank. There is also no evidence as to how much she paid towards the two loans, or what her monthly earnings were at the relevant time.

The prayer of the Applicant is to "declare (her) 50% in the properties and to make such appropriate orders as may be necessary to enable the liquidation of (her) 50% share of the properties or any order which the Court deems fit, just and

convenient to both parties". Clearly the Applicant is relying on the presumption in Article 815 to the Civil Code and Article 817 for liquidation of the shares. In short, she claims 50% of the market value of the matrimonial property in monetary terms. In the case of ***Marie Andre Renaud* v. *Gaetan Renaud* (S.C.A. no 48 of 1998) Ayola P,** examining the provisions of Section 20 of the Matrimonial Causes Act stated –

> *"Section 20 enjoins the Court to make such inquiries as it thinks fit before making an order, and to have regard to all the circumstances of the case, including the ability and financial means of parties to the marriage. Hence a "property adjustment" becomes necessary under Section 20(1)(g) for the purpose of considering the payments to be made to a party to the marriage or to a relevant child under sub sections (a) to (f). In the present case, these issues are not being canvassed."*

In the present case as well, these issues are not being canvassed. In these circumstances Ayoola P proceeded to state that –

> *"Where the objection is to ascertain the respective rights of the husband and wife to disputed property, the appropriate jurisdiction to invoke is that under Section 21 of the Status of Married Women Act which provides for the determination of property disputes between husband and wife*".

Although the application in that case was based on Section 20(1) (g), as is also in the present case, the Learned President of the Court of Appeal stated –

> *"Bearing in mind the distinction between the Court's jurisdiction under Section 20(1) (g) of the Act and Section 27 of the Status of Married Women Act, the question that must be addressed relates not to the form in which the Applicant's prayer is couched, but to what is revealed as the substance of the application and, as has been said, the substance of the trial Judge's conception of the jurisdiction invoked*".

In these present case, both the form and substance of the application is to determine the respective rights to the property. The documentary evidence in the case is insufficient to arrive at a Division on any mathematical basis. Hence on the basis of the evidence, and on the basis of the determination that the presumption in Article 815 has been rebutted, the most equitable order would be to declare that the respondent (Marcel John Belmont) be entitled to 75% of market value of the two Parcels of land C. 1301 and C. 1302 together with the house standing on Parcel C. 1301 as valued by Mr Jacques Renaud Q.S, whose valuation report I prefer to accept due to its detailed analysis and on the basis of his evidence. The Applicant will be entitled to 25% of the said valuation. In respect of the Applicant, I have taken into consideration the indirect contributions made, and movable items in the house which may have been purchased by her.

In the circumstances, the Respondent shall pay the Applicant 25% of Rs790,000/- that is Rs197,500/- with 6 months hereof, upon which the Applicant shall transfer ½ shares in both Parcels C. 1301 and 1302 to the Respondent. Failing which, the Registrar of Lands shall register the two properties in the sole name of the Respondent.

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A.R. PERERA

JUDGE

Dated this 4th day of October 2007