

**IN THE SUPREME COURT OF SEYCHELLES**

**Milicinth Chiffone of  
Mon Button Lane, Mahe**

**Petitioner**

**Vs**

**Paul Volcere of  
Anse Boileau, Mahe**

**Respondent**

Civil Side No: 151 of 2008

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Ms. L. Pool for the Petitioner  
Mr. F. Ally for the Respondent

**D. KARUNAKARAN, J.**

**Ruling**

The petitioner was at all material times, the common-law wife of the respondent. After about 13 years of cohabitation, they separated in 2005. Both are admittedly, co-owners of an immovable property Title C4063 situated at Anse Royale, Mahe having acquired the same during the period of their cohabitation. Consequent upon separation, the petitioner no longer intends to remain in a state of indivision of the property with the respondent. Hence, by a petition dated 3<sup>rd</sup> June 2008, she applied to the Court demanding *a sale by licitation* of the property presumably, under Section 100 of the Immovable Property (Judicial Sales) Act and to award the proceeds of sale to be shared among the parties.

Following her demand, the petitioner filed the necessary memorandum of charges with the Registry of the Supreme Court for the proposed sale as contemplated under Section 101 of the Immovable Property (Judicial Sales) Act. Having taken notice of the said memorandum charges,

the respondent has now applied to the Court by way of a motion dated 4<sup>th</sup> November, 2008 for an order that the proceedings instituted by the petitioner for the sale by licitation be stayed pending the final disposal of a suit, which the respondent has on the 3<sup>rd</sup> November 2008, filed against the petitioner in the Supreme Court of Seychelles for the determination of the shares of the parties in their co-owned property first-above mentioned.

The respondent contends in essence that he owns more than half share in the property, and hence he has filed the suit in question in the Supreme Court to determine his share entitlement in the property. According to the respondent, his share should first be ascertained and determined before any sale by licitation or otherwise is effected. Therefore, it is just and necessary that the sale proceedings in Civil Side No. 151/2008 should be stayed pending the final disposal of the suit that he has filed, which is *pendente lite* in the Supreme Court.

The petitioner, on the other hand objects to the stay for a number of reasons stated in her affidavit dated 6<sup>th</sup> January 2009 filed in support of her answer to the motion. All those reasons in pith and substance, relates to the same issue as to the determination of their respective shares in the property in question.

I carefully, perused the affidavits filed by the parties for and against the motion. On the face of the record, it is evident that the respondent has filed the said suit in order to ascertain the shares of the parties in the property held in co ownership. Obviously, it is important in a practical point of view as well as logical too, that the proportionality of shares each entitled to, in the proceeds of sale by licitation ought to be determined before the property is sold in a public auction. In the circumstances, as rightly contended by Mr. Ally, learned counsel for the respondent it is fair, just and the best interest of justice that the sale-proceedings instituted by the petitioner in Civil Side No. 151/2008 should be stayed pending the final disposal of the suit filed by the respondent in this matter or until further

order of the court. I therefore, grant a stay of the sale proceedings accordingly.

Consequently, the instant matter in Civil Side 151 of 2008 is hereby *adjourned sine die* but with liberty for the parties to restore this matter after the final and effective disposal of the connected suit.

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**D. Karunakaran**

**Judge**

**Dated this 27<sup>th</sup> day of January 2010**