

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[201...] SCSC 596
CS 115/2017

JOHN FIGARO

(rep. by Alexandra Madeleine)

Plaintiff

and

SUZANE MATHIOT

(rep. by Lucy Pool)

Defendant

Neutral Citation: *John Figaro v Suzanne Mathiot* (CS 115/2017) [2019] SCSC 596 (15 July 2019).

Before: Vidot J

Summary: Shares of co-owners in co-owned property; Article 815 of Civil Code of Seychelles

Heard: 21st March 2019

Delivered: 15th July 2019

JUDGMENT

VIDOT J

[1] The Plaintiff and the Defendant are co-owners in indivision of a parcel of land on which a house is situated. This is land title B806 (hereafter “the Property”). The land and house were purchased and funded by a loan from the Housing Finance Company (hereafter “HFC”). It is the Plaintiff’s contention that he solely repaid the loan and that payment has been completed. This was deducted directly from his salary. The Defendant on the other hand bought furniture that is found in the house.

- [2] In 2010 to 2013 he was posted for work in Brussels. He is Head of protocol drivers with the Ministry of Foreign Affairs. During his posting abroad, the Defendant developed a relationship with another man in Seychelles. Therefore, upon his return he had nowhere to live and had to rent an apartment at La Louise. Alternative accommodation was rented out for SR4,500.00 monthly and at the same time he was repaying the loan to HFC.
- [3] The Plaintiff claims that he has attempted to find a compromise with the Defendant, but this has not been successful and the Defendant continues to occupy the house whilst he resides in rented accommodation. The Plaintiff is for the Court to evaluate their respective share in the property. He is willing to buy out the Defendant's share in the Property.
- [4] The Plaintiff prays to Court for the following reliefs;
- (a) To declare the shares of the parties in land parcel B806 and the house thereon;
 - (b) That the Plaintiff be given right of first option to purchase the Defendant's share in the property;
 - (c) That the Defendant be made to move out of the Property;
 - (d) That the Defendant compensates the Plaintiff for the cost of renting out accommodation at the rate of SR4500/- per month from July 2014 and SR30,000/- as moral damage for the denial of enjoyment of his property as co-owner;
 - (e) Interest on the compensation to be paid from July 2014;
 - (f) Any other orders as the Court might deem fit in the circumstances.

Defence and Counter-Claim

- [5] In the Defence apart from denying most averments made in the Plaintiff, the Defendant filed a Counter Claim. She alleges that they are co-owners of the Property and that it was the Plaintiff who voluntarily moved out of the house and she was left thereat alone with their child. She avers that she does not live with anyone and does not have any other property and therefore she is offering to buy the Plaintiff's share in the property which

she estimates to be worth SR150,000.00, but alternatively that the Plaintiff buys out the her share.

The Plaintiff's Case

- [6] The Plaintiff enjoyed a 15 year relationship with the Defendant and out of which a child was born. The relationship ended in 2010. When the relationship started, he lived at La Misere and the Defendant at Mont Buxton but would now and again stay with him. After his mother died she stayed more regularly at La Misere. She moved to La Misere permanently around 2006 and when the house was built in 2006 they moved into it. In November 2008 the child was born. The child is now 10 years old.
- [7] The house they built was in both their names. That means they are co-owners in indivision. The land was purchased on 16th December 2004 (exhibit P1). It was purchased for the sum of SR50,000/-. Therefore, a loan was secured from HFC of SR350,000.00 for both land and house. He made application for the loan but HFC requested that his partner be included on the application, thus the reason why the loan was secured in both their names. Nonetheless, his salary was sufficient for him to secure such a loan. It did not need the Defendant's salary to be taken into account. However, he was the one who repaid the loan in the sum of SR3, 347.00 monthly (as per his payslip and bank Loan Statement; exhibits P2 and 3 respectively) and they were given up till 2018 to complete payment. He nonetheless completed payment on 12th September 2017. In 2007 an additional loan from HFC for SR50,000.00 was secured in both their names. That was for the purchase of furniture. They repaid that loan together with interest, equally.
- [8] In 2010 the parties were staying together but they were not on good terms. In 2011 he was posted to Brussels for 3 years. He continued to pay for the loan when in Brussels and the same was deducted from his salary. He heard that there was someone else staying at the house. His child who was 3 at that time mentioned of an uncle who was coming to the house and he later found out that that person was Brian Payadachy. He confronted the Defendant who denied of anyone staying on the property. In 2013, the person by the name of Brian was staying there. He did not want to confront him and enter on the Property by force because he wanted to avoid causing any trouble in the presence of his

child. So he decided to break up the relationship with the Defendant as he had found someone else. Therefore, he moved in an apartment with that person at La Louise and he was paying monthly rent of SR4,500.00. He entered into the lease agreement on 11th July 2014 (exhibit P4). However, at the time he signed the lease, payment the loan for the Property had not yet completed and that means that he had to pay the loan as well.

[9] The Plaintiff further testified that he tried to reach a compromise with the Defendant. He feels that he should get the Property which loan he has paid and has never enjoyed. He was born at La Misere and his relatives live within close proximity of the Property. However, the compromise has not worked out despite his best endeavours and letter from his counsel to the Defendant. He wants the court to assess the Defendant's share in the Property and he will pay her off but the Defendant is adamant that the property should go to her.

[10] Mr. Figaro also denied that there was arrangement that he would pay the loan and the Defendant would be responsible for household expenses. He was equally making contributions toward household expenses and paying for the utilities, but which was paid by the Plaintiff paid when he was in Brussels. However at times he made the payment. He stopped paying when he became aware that the Defendant had someone else. When the child came in 2008, he made contributions towards the child's upkeep. He was doing odd extra jobs in order to make such contribution.

The Defendant's Case

[11] The Defendant who is a Finance Officer with Air Seychelles stated that the loan was for the amount of SR312,000.00 and an additional of SR50,000.00, but admitted that the payment was being deducted from the Plaintiff's salary. It was for the amount of SR3,347.00. However, she maintains that there was an agreement that the Defendant would pay the loan and she pays for household expenses. She stated that she is co-owner of half share in the Property. She says that when the Plaintiff returned to Seychelles she had a standing order with here bank whereby the Plaintiff was paid SR1,000.00 in order for him to pay the loan. That was from September 2013 to January 2018. However, at

some point during cross-examination she admitted that the SR1,000.00 was to help out the Defendant with his rental.

[12] She further claims that the Plaintiff separated from her even before he was posted overseas and that he had moved out and living with a girlfriend. After 3 years when he came back he did not return to the Property but went to live with a girlfriend. She denies that there was anyone living with her in the house and that she has been asking the Defendant back to the house. She however admits that she had a relationship with Brian Paydachy but that now she has another party. Brian now only comes to the house as a helper but no man is sleeping at the house.

[13] She stated that she is willing to pay the Plaintiff SR150,000.00 being the Plaintiff's share in the property and in return that the Plaintiff transfers his share in the Property to her. She further stated that she does not have anywhere else to go. She has proposed to the Plaintiff that he comes to build his house on the land as the land can accommodate another house.

Discussion

[14] It is not in dispute that the parties are as per law co-owners of the property. This is evidenced by exhibit P1, the transfer document. There was no appointment of fiduciaries produced and unknown if the parties are indeed fiduciaries of the land parcel. Therefore, this Court has to determine in the circumstances the individual shares of the parties. In the absence of any document attesting as to the individual share of each of the parties, in terms with Article 815 of the Civil Code of Seychelles ("the Code") it is presumed that they are co-owners of undivided half shares each. The Court has to consider which of the parties shall be granted the Property and the amount the other has to pay as compensation of the other party's share.

[15] Article 815 provides that;

"Co-ownership arises when property is held by two or more persons jointly. In the absence of evidence to the contrary it shall be presumed that the co-owners are entitled to equal share"

[16] The Plaintiff is relying on the presumption which is provided for in Article 815, that is that his share is greater than that of the Defendant, if she ever had a share, which he denies she does. The Defendant on her side, in submission states that the Plaintiff should have prosecuted this action under Article 1381 of the Code because he contends that he repaid the entire loan and the Defendant paid nothing. I believe that she was in fact referring to Article 1381-1. This article deals with unjust enrichment. She relies on the case of **Monthy v Esparon [2012] SLR 104** and quoted therefrom that *“in cases of co-ownership there are 3 options available under the Civil Code to be the joint owner who does not wish to remain in indivision; sale by licitation, partition or action de in rem verso (based on unjust enrichment, vide Edmond v Bristol [1982] SLR 353. These remedies could have been availed of by the Respondent. Instead both the respondent and the trial judge erroneously dealt with the matter either as if it was a case of matrimonial property or a matter of equity.”*

[17] Article 1381-1 reads thus;

“If a person suffers some detriment without lawful cause and another is correspondingly enriched without lawful cause, the former shall be able to recover what is due to him to the extent of the enrichment of the latter. Provided that this action for unjust enrichment shall only be admissible if the person suffering the detriment cannot avail himself of another action in contract, or quasi-contract, delict or quasi-delict; provided also that detriment has not been caused by the fault of the person suffering it”

[18] Property in this case is one of ownership arising out of concubinage. Under Article 815, there are no equitable factors to be considered, but rather facts which will establish the value of co-owned property and the parties' contribution towards that property. In the case of **Christopher Hoareau v Noella Radegonde [2018] SCSC MA 166/2016**, Learned Judge Govinden referred to **Dupres v Balthide C.S 220/94** noted that in that case the Plaintiff who had been living in concubinage with the defendant sought a declaration of her share in the property purchased and wholly paid for by the Defendant while they were living together. She claimed that she had been paying maintenance for the family. The court held that the claim must fail as it was based on property adjustment which had no place in concubinage. It was further held in **Esparon v Monthy [1986]**

SLR 124, that the principles of division of property cannot be applied between parties living in concubinage. Chief Justice Twomey referring to the latter case in **Georgie Monnaie v Lina Waye Hive [2016] SCSC 57** stated that where property is legally in joint names of concubines whose relationship end and the parties no longer wish to remain in indivision, they may proceed on actions either for a sale by licitation, partition or by action de in rem verso (base on unjust enrichment) to recover their shares of co-owned property.

[19] In fact section 107(2) of the Immovable Property (Judicial Sales) Act provides that “*Any co-owner of an immovable property may by petition to a judge ask that the property be divided in kind or if such is not possible that it be sold by licitation*”

[20] Therefore, this follows that cases such as **Dupres v Balthide (supra)** and **Esparon v Monthy (supra)** relied upon by the Defendant have no application to this case.

[21] I further note that the Defendant in its Defence and Counter claim has not pleaded a cause of action de in rem verso. It was held in the case of **Larame v Payet (1983 – 1987) 3 SCAR 355** that “*No enforceable legal rights are created or arise from the mere existence of state of concubinage, but a cause of action de in rem verso or enrichissement sans cause can operate to assist a concubine who has suffered detriment without lawful cause to the advantage of the other party to the concubinage.*”

Findings

[22] I am convinced that the Plaintiff made application for the property and as is common practice HFC required that since he was in a relationship with the Defendant, he bringsS along both their payslips and HFC interviewed both of them. However, I believe the Plaintiff that based on his salary he could have secured the loan. The loan granted was SR350,000.00. An additional loan of SR50,000.00 was also granted. The loan of SR350,000.00 was used towards the purchase of the land and the construction of the house. It is admitted by the Defendant that the loan was paid solely by the Plaintiff. He even continued to pay the loan after he decided not to return to the Property. He paid that

even when he was posted to Brussels from November 2010 to December 2013. The loan of SR50,000.00 was paid for by both the Plaintiff and the Defendant.

[23] As to whether the Defendant was taking care of the household expenses so as to permit the Plaintiff to honour the loan repayment, I do not believe so. The Defendant was vacillating in her answers to that question but at some point she agreed that Mr. Figaro took the responsibilities of the relationship. In fact she admits that as was deponed by the Plaintiff, he contributed towards the household expenses. She admitted in answer to a question as to whether Mr. Figaro's contribution towards the household surpassed that which she was making in the affirmative. She agreed that he was making '*substantial*' contributions. That means that her contribution was not required to facilitate the repayment of the loan. The Plaintiff was even paying towards most of utilities the times.

[24] I further do not believe that the Plaintiff was and is not making contribution towards his child. In any case if the Plaintiff was not making adequate contribution, the Defendant would have made an application before the Family Tribunal. I am of the opinion that the issue of child maintenance should not form part of such action where parties are asking court to assess their respective shares in Property.

[25] I believe that the Plaintiff left the property both because he had found a girlfriend and that the Defendant had someone else living in the Property upon his return from Brussels. The Defendant was outright lying when she said that she was not having an affair and that the person with whom she was having such affair was not living with her. She finally admitted that she was having an affair but not with the person named John but someone else. However, it is possible that she is now having an affair with someone other than John, but there is no doubt in my mind that she did have an affair with John.

[26] It is not in dispute that the Defendant gave the Plaintiff SR1000.00. monthly for a few years. It is disputed if that was paid towards rent as he was living in rented accommodation, or towards payment of the Property. I believe it was for the former because even after the loan was repaid she continued to pay the amount.

[27] Based on the above, I find for the Plaintiff. I find that he paid for the Property on his own and at the same time was making substantial contribution towards the household.. The Defendant enjoyed the Property for around 10 to 11 years without making any contribution. The Plaintiff had no enjoyment of his house since his return from Brussels in December 2013. He had to live in rented accommodation. The Plaintiff during the course of the hearing abandoned his claim of SR4500/- for renting alternative accommodation and SR30,000.00 as moral damage.

[28] Therefore, I do not consider in the circumstances that the Defendant has any share in the Property.

[29] Therefore, I make the following orders;

- i. The Plaintiff is the sole owner of B806 together with buildings thereon and that the Defendant has no share therein.
- ii. The Land Registrar shall amend the Land Registry records with respect to title B806 to reflect that the Plaintiff is the sole owner.
- iii. The Defendant is given 4 months within which to move out of the Property. The Defendant shall not do anything to damage or cause the property to lose value. Towards that end the Plaintiff shall be allowed without obstruction, within this week, to visit the property and document its present state.
- iv. The Plaintiff shall refund to the Defendant the sum of SR48,000.00 being a sum equivalent to the amount paid to him towards the rent. He has 4 months within which to make such reimbursement.
- v. The Defendant shall at the time of leaving the Property inform the Plaintiff of the same.
- vi. The Defendant is entitled to all the furniture in the house. If not removed within 4 months, any item of furniture remaining in the property shall form part of the property.

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Vidot J