

SAMORI v CHARLES

(2012) SLR 371

Joel Camille for the appellant
Charles Lucas for the respondent

Judgment delivered on 7 December 2012

Before Fernando, Twomey, Msoffe JJ

FERNANDO J:

The appellant being dissatisfied with the judgment of the Supreme Court dated 16 of November 2009 has appealed against the said judgment which ordered –

in terms of section 20(1)(b) of the Matrimonial Causes Act, the respondent to pay a lump sum of R115,000 to the petitioner [appellant in this case] as settlement of matrimonial property and financial adjustments

And ordered the appellant to vacate the matrimonial house and hand over vacant possession to the respondent when the full sum of R115,000 is paid to her. The said sum consisted of R65,000 “to be paid back to the appellant in respect of the purchase of the land” and “a sum of R50,000....as a lump sum.” The ownership of the house and property was ordered to be with the respondent.

The appellant, a French national, and respondent, a Seychellois were married on 30 May 2006 and on application made by the appellant, an order absolute granting the divorce had been issued by the Supreme Court on 16 February 2009. According to the appellant she had been in cohabitation with the respondent for about 7 years prior to their marriage. According to the respondent the cohabitation started about two years prior to the marriage and prior to that they were only “lovers”.

The grounds of appeal are:

- 1) The order that the appellant be paid a lump sum of R115,000 as settlement of matrimonial property and financial adjustments is manifestly inadequate as regards the amount payable and is incomplete.
- 2) The Judge erroneously omitted to make an order for monthly payments or a lump sum payment, by the respondent as his contribution towards the domestic expenses.
- 3) In the premises, the Judge failed to have made any or a proper award as regard the appellant’s share of contributions in the matrimonial property, in the face of the evidence before the court.

By way of relief the appellant had sought an order reversing the Judge’s evaluation of the appellant’s share in the matrimonial property and an order declaring the appellant’s share in the property.

In her application as petitioner before the Supreme Court for property and financial adjustments under the Matrimonial Causes Act, the appellant had sought the following orders:

- i. *an order, as the Court thinks fit*, for the benefit of the petitioner in respect of any of the respondent's property and of any interest or right he has in any property including the matrimonial home;
- ii. an order that the respondent makes monthly payments starting from the date of presentation of the petition 169/08 for the benefit of the petitioner
- iii. an order that the respondent makes monthly payments from the date of the presentation of the petition 169/08 or a lump sum payment, to the petitioner, being the respondent's contribution towards domestic expenses;
- iv. an order that the respondent secures to the satisfaction of the Court the payments ordered under paragraphs i, ii, and iii above;
- v. an order that the petitioner be made to continue to occupy the matrimonial home. [emphasis by us]

It is clear from the above application that the appellant had not asked for any specific amounts or a percentage of the value of the properties but left the determination of all amounts to the court. In her affidavit attached to the application she had however stated that she believes that she is entitled to a fair share in the matrimonial properties.

In her affidavit she lists land parcel PR 2590 and the house built thereon, motor car bearing registration number S 7434 and a fishing boat bearing the name *Lady Mary* as properties acquired during the 10 period she was in cohabitation and the 2 years of marriage with the respondent. In setting out her contribution towards the matrimonial property the appellant had stated that she had advanced a total sum of R65,000 for the purchase of land parcel PR 2590 on which the matrimonial house was built and a further sum of R20,000 for the purchase of motor car bearing registration number S7434. She had claimed that she contributed towards the upkeep and maintenance of the matrimonial home and had helped in the fishing business without drawing a salary during this period.

The respondent in his affidavit in reply states that the appellant had lent him only R20,000 for the purchase of land parcel 2590 and that he had refunded that amount to her "as at that time they were only lovers". It had been his position that the appellant had a free hand with his earnings and had converted his money into foreign exchange and deposited it in her bank account in France meant for their use in their retirement. He had stated that he does not have a bank statement of this account to produce to Court but had seen a balance of Euro 200,000 when the appellant had shown him the statement sometime back. The respondent had averred that the matrimonial home became the base for holiday of the family and friends of the appellant who had "full board lodging free of charge at his expense". The fishing boat was procured by him on a loan. The matrimonial home had been solely occupied by the appellant since December 2008 and the appellant was in the habit of letting rooms in it for tourists and collecting the money. He had also claimed that the appellant had sold off some of the items in the matrimonial home. It had been his position that the appellant is not entitled to any of his money in view of the fact that

she had misappropriated his savings to the amount of Euro 200,000 which she had banked in an account in France.

On 7 October 2009, about 8 months after the filing of the application for property and financial adjustments under the Matrimonial Causes Act, counsel for the appellant had agreed to settle the case for a sum of R100,000. It must also be emphasized that as stated earlier the appellant had left the determination of the amount due to her to court, claiming however that she is entitled to a fair share of the matrimonial properties. It is clear that such determination was entirely a factual issue based on the evidence led by the appellant and respondent. The trial judge was in the best position to determine whose evidence was creditworthy, having had the opportunity to see both the appellant and respondent testify in relation to the financial contributions towards the matrimonial properties, for the evidence in this regard, consisted of claims and denials.

On the issue of the construction of the matrimonial house the trial judge had stated:

When one considers the evidence of the respondent Melton Charles it is clear that he was in receipt of an income throughout his relationship with the petitioner [appellant], the most lucrative being the sea cucumber business which he did in collaboration with Timothy Morin. According to the evidence of the respondent which is corroborated by Mr Morin it is clear that the respondent was to get a minimum of R37,000 on each trip and would do a minimum of 3 trips for a period of two months which would mean the respondent earned a minimum of R52,000 a month on the said cucumber business. Furthermore the petitioner [appellant] admittedly states that he had been doing this business since July 2002. Hence this court is satisfied that he would have had sufficient funds to construct his house which according to the valuation report P23 is valued at R511,000.

However as regards the contributions towards land parcel PR 2590 on which the matrimonial house was constructed the trial judge having fully analysed the evidence of both the appellant and the respondent has stated: "Therefore this court is satisfied that the petitioner did contribute a sum of R65,000 for the purchase of the said land."

As regards the fishing boat and the car the trial judge has stated:

....it is clear that the boat Lady Marie was paid for by the respondent. This fact is corroborated by the evidence of Mr Timothy Morin and an advance of R100,000 was paid by mortgaging the property to the bank. This fact is admitted even by the petitioner. Although the petitioner claims that she contributed towards the purchase of the car there is no documentary proof of same and the respondent denies this fact...

At the hearing before us the appellant's counsel did not contest these findings.

The trial judge had not accepted the respondent's claims of the appellant renting out rooms in the matrimonial house and of her converting and transferring his savings to a bank account in France which the respondent had reason to believe was about Euro 200,000, due to lack of any documentary proof.

As regards other expenses borne by the appellant the trial judge had said:

When one considers the evidence of the petitioner [appellant], that she has on and off made payments for rent, household expenses payment of utility bills purchase of house appliances. She has also shown that she has transferred sums of money regularly from her bank account in France. No doubt a portion of this money would have been spent on her travelling and holiday expenses.

We have no reason to interfere with any of the above findings of fact made by the trial judge as regards the financial contributions made by the two parties to the marriage. But a marriage is not only about financial contributions, it is also about love, of friendship, of security, of commitment, of moral and emotional support, which combine together to make a success of the lives of the two people to the marriage. These are matters that cannot easily be measured in monetary terms and also cannot be ignored when a court is called upon to make a determination on matrimonial property. We are surprised to find that the trial judge had failed to give any consideration to any of these matters.

It is clear from the respondent's evidence that the appellant had a role to play in the success of his business whether as boat charterer or in his sea cucumber business. The respondent's evidence in this regard verbatim from the brief needs to be noted -

I am not so well educated when it comes to academics; she was better educated than me so she took care of the monies and paperwork for the business.

She was the one handling the paperwork because I am not so good at dealing with the paperwork, I know nothing of papers.

She would get access to the money I bring home, and these money I hand it to her she would do what I tell her to do with it, just like a secretary would

When I come from out at sea, I give her the money and she is the one who takes the money to bank and do whatever needs to be done with the money because after that I depart to sea.

It is clear from the respondent's evidence that it was the appellant who had even introduced him to the concept of banking his money. His evidence in this regard is to be noted -

Q. Now tell me Mr Charles at the time that you went with Ms Samori did you have any bank account here in Seychelles

A. No I did not have one.

Q. So you had a bank account after you had met Ms Samori?

A. Yes, because she told me that you have to put money in a bank and money should not be kept unlocked in a house, because I am not wise where paper work is concerned so I listened to her and I placed all the money in the bank.

The trial judge has not taken these matters into consideration in considering "the appellant's share of contributions in the matrimonial property in the face of the evidence before the court," as argued by the appellant in her third ground of appeal.

We are of the view that the trial judge was in error in awarding only R 65,000 to the appellant in November 2009, towards the purchase of the land parcel PR 2590 for which she had paid the said R65,000 about 10 years back. The trial judge had come to the finding that the petitioner did contribute a sum of R65,000 for the purchase of the land. The appellant's contribution towards the purchase price when taken into consideration with the respondent's testimony as to the price paid by him for the purchase of such land had been more than 86%. The trial judge had also failed to take into consideration that according to P23 land parcel PR 2590 had been valued at R221,000 in August 2005. We are of the view that the appellant is entitled to the full amount of R221,000 in respect of her contribution to the purchase of the land parcel PR 2590, bearing in mind that the value of such land as at the date of divorce would have been much more than in August 2005.

We also take the view that the lump sum of R50,000 that had been awarded is inadequate taking into consideration the assistance rendered by the appellant to the respondent towards his business as referred to at paragraphs 12 and 13 above and determine that a sum of R129,000 be awarded in this regard.

We therefore allow the appeal, reverse the trial judge's valuation of the appellant's share in the matrimonial property and award her a total sum of R350,000. We also order that the appellant vacate the matrimonial house and hand over vacant possession to the respondent when the full sum of R350,000 is paid to her.