

2018

No. 328/ FD

BERBICE

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA

FAMILY, DIVORCE AND MATRIMONIAL JURISDICTION

(FAMILY DIVISION)

BETWEEN:

DEOMATTEE RAMPERTAB

Petitioner

-and-

1. SANKAR RAMPERTAB

2. SOBHEENAUTH RAMPERTAB

Respondents

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Adrian Anamayah for the Petitioner

Mr. Rodwell Jugmohan for the Respondents

Delivered via electronic mail on June 25th 2019

DECISION

It must be noted that the evidence in the trial of this Application was received at the same time that the evidence in the trial of Fixed Date Application **2018-HC-BER-CIV-FDA-81** was received since both Applications concerned the same subject matter property, though the matters were not consolidated.

The Petitioner applies to the Court for a Declaration that she is entitled to a one-half share in the land and building situate at Lot 91, being a portion of Lot lettered "H", being a portion of the Front Lands of Lot No. 78, Corriverton, Berbice [hereinafter referred to as the Property].

The Petitioner and the First Named Respondent [hereinafter referred to as Sankar] began living together as man and wife in a common law relationship in the year 1997.

The only child born of the union, Seermatie Ravina Rampertab, was born on April 2nd 1998.

The Second Named Respondent [hereinafter referred to as the SNR] is the brother of Sankar.

In 2005, Sankar, who was a Teacher was transferred to Line Path Secondary school in Skeldon, Berbice and as a result the Petitioner and Sankar moved to the nearby village of Springlands [Berbice] where they lived in rented premises at Lot 40 Springlands, Berbice.

The Petitioner contends that she and Sankar opened a business which included a stationary store, a book store, a library and canteen, at that location in the year 2006.

Though Sankar accepts that he and his wife started a business in 2006, he testified that it only entailed him giving extra lessons to students.

The Petitioner contends that in 2008 the they had a discussion with SNR whereby he informed them that he had lost his job and since they did not have a property he would transfer the land at lot 91 to them which had a partially completed foundation and they could apply for a loan and build on the lot. He made this offer because he would not be able to complete the building since he had lost his job.

The Respondents have denied this assertion and the SNR claims that he applied for loans to build the building that is on that lot that is referred to herein as the “Property”.

The Petitioner and Sankar were legally married on August 7th 2011.

ISSUE I

Is the “Property” form part of the Petitioner’s and Sankar’s matrimonial property?

FACTS

The Petitioner’s evidence is that she and Sankar abandoned an application house lot in the No. 77 Housing Scheme based on the offer by the SND to transfer the land at lot 91 to them.

However, since the Transport [Exhibit “M1 - M4”] was in the name of the SNR, they could not apply for a loan.

Rana Persaud, the Operations Manager of the New Building Society [hereinafter referred to as the NBS] testified that the SNR had obtained a loan from the NBS in 2005 in the amount of \$7,500,000.00 to construct a building on the land [Exhibit “A1”] but had only taken two disbursements of \$1,000,000.00 each in 2005.

The Petitioner testified that in 2009 she and Sankar actually took over the loan since they would not have been able to obtain same since the Transport was in the name of the SNR.

Documents pertaining to the loan were tendered by Mr. Rana Persaud. These documents show that in 2009 the loan was reactivated with Sankar signing as a guarantor on the loan repayment [Exhibit “A10 - A15”].

Further, the “Amendment to Mortgage” [Exhibit “A35”], which is signed by the SNR states that Sankar will be responsible for all payments.

An estimate for the construction was done in 2004 by K. Dhanai & Associates [Exhibit “A2 - A5”] as part of the application for the loan and a new estimate was done by the said K. Dhanai & Associates in 2009 [Exhibit “A29 - A33”] to reactivate the loan. The new estimate shows that the foundation had been completed.

She testified that the building was constructed and furnished through the income from the business she and Sankar had and Sankar’s income from his job and the extra lessons he taught.

Numerous loan repayment receipts issued by the NBS were tendered [Exhibits “A41 - A64”] which show that the vast majority of payments were made by Sankar and none by the SNR.

Numerous receipts issued for payments made to the contractor [Exhibit “G1 - G9”] also show that Sankar issued those receipts.

She further testified that they received \$4,500,000.00 out of the loan and the SNR received the rest.

The Petitioner testified that numerous requests were made to the SNR to convey the Transport for the land to her and Sankar but the SNR told them that that can only be done when the loan was repaid.

They began to reside in the partially completed building in 2010 and also moved the business over.

The Petitioner testified that in 2010, after her daughter had sat the Common Entrance examination, she and Sankar agreed that their daughter would continue her education in the United States of America and to this end she and her daughter moved to the U.S.A.

She secured employment there, however, she visited Guyana frequently and also bought and sent goods for the store to be stocked. Also Sankar would visit her in the U.S.A.

During a visit to Guyana in 2017 she became convinced that Sankar was having an extra marital affair and the person with whom he was having this affair was coming to the "Property".

This caused quarrels and in fact in January 2018 she caused her Attorney-at-Law to send a letter to the person [Exhibit "F"].

Sankar testified and claimed that they simply managed the construction for his brother, the SNR, and he nor the Petitioner did not contribute to the costs of the construction or to the repayment of the loan from the NBS.

He testified that he retired from teaching in December 2012 and at that time he was earning a net salary of \$80,000.00 per month.

It is noted that a statement from the Regional Democratic Council for Region No. 6 [Exhibit "A15"], which was supplied to NBS, shows that he was earning a net salary of \$256,942.00 per month in June 2009.

He testified that his extra lessons fee was between \$500.00 to \$800.00 per student per month and at some time he had 100 students attending monthly.

He testified that they **he** now has a stationary store business on the premises which earns about \$10,000.00 per week.

According to his evidence in his witness statement [Exhibit "S2", paragraph 10] the monies from his salary and the store were used for their *survival*.

Further due to the Petitioner's travels abroad and sending their daughter to school they could not have had money to build a house.

The SNR testified that he built the house and he owns the "Property". He relies on his Transport, the fact that the loan from NBS is in his name and his brother's testimony as proof of his ownership.

The SNR instituted a Fixed Date Application [2018-HC-BER-CIV-FDA-81] against the Petitioner and Sankar for possession of the "Property" in February 2018.

He accepted that he constructed a house at lot 48 Area "Q", Turkeyen, East Coast Demerara where he resides.

He testified that that the construction of his residence at Turkeyen cost about \$50,000,000.00 - \$52,000,000.00 and was not financed by a loan.

ANALYSIS

The documentary evidence in this case clearly show that everything related to the construction of a building at lot 91, Corriverton was undertaken by the Petitioner and Sankar.

The SNR represented to NBS that he was unemployed and therefore, conveniently, his brother, Sankar, will sign as guarantor **and** be responsible for all payments.

It cannot be that he needed this advancement from NBS when he constructed a \$50,000,000.00 - \$52,000,000.00 property from his savings.

This evidence demonstrates firstly, the reason he would be willing to part with ownership of lot 91 and secondly, the loan was not for his use and benefit. He clearly divested himself of any responsibility attached to the loan.

The Court found the Petitioner to be an honest witness and the Court accepted her testimony that they only received \$4,500,000.00 from the loan and the clear reason for that is though they are subject to repay the entire loan, the additional monies is, in a manner of speaking, payment for the foundation that was there.

The Court noted that based on the SNR's mortgage application to NBS in 2004 [Exhibit "A37 - A40"] he purchased the land for \$767.87 in 1987.

The Court finds that having laid a foundation at lot 91 in 2005 but being dismissed form Guysuco, where he was stationed at the Skeldon Estate, shortly thereafter and

at the said time building a house in Turkeyen, he clearly determined that he no longer desired to be on the Corentyne and considering the price he paid for the land did not find it difficult to give his brother and sister-in-law the land.

In fact the Application to Reactivate the loan in July 2009 [Exhibit "A34"] shows that the SNR was at that time living in Turkeyen.

Despite Sankar's attempt to contend that he could not afford to construct a building, the \$170,000.00 per month from his salary that he tried to hide from the Court coupled with the \$10,000.00 per week that he sought to make disappear by claiming that the stationary store did not yet exist would be more than sufficient to fund the construction and this is not taking into account another, at least, \$80,000.00 per month from the extra lessons he taught.

The Court further finds that it is too coincidental that within a month of the Petitioner's Attorney-at-Law sending a warning letter to the person she suspected Sankar to be having an extra marital affair with, a Fixed Date Application is filed by the SNR seeking possession of the "Property".

Further, on the first date that the matter is called in Court, Sankar consents to give up possession despite living there, operating a book store there and holding his extra lessons classes there.

Yet, almost a year later he comes to Court with the SNR and testifies that he is still in occupation of the "Property".

The Court finds that the SNR did promise to transfer title to the land at lot 91 to the Petitioner and Sankar and in furtherance to that they acted to their detriment by

abandoning the possibility of securing a lot in the No. 77 Housing Scheme, by expending large sums of monies in developing lot 91 and constructing a permanent concrete structure thereon, and the SNR in fact assisted them in this venture by helping them secure financing.

In these circumstances the Court finds that the SNR is barred by the principle of promissory estoppel from legally claiming any share in and to the "Property".

It is clear that the Rampertab brothers have deceitfully determined that since the Transport was never conveyed out of the SNR's name they can cheat the Petitioner out of her lawful entitlement to her share of the "Property".

The Court further accepts the Petitioner's evidence that throughout her union with Sankar she was working, by running the store.

Counsel for Sankar argues that since the Petitioner's claim is based on promissory estoppel, the claim cannot be sustained in "Family Court" and should have been brought in "Civil Court".

The High Court has several divisions, two of which are the family division and the civil division. These divisions are convenient for administrative reasons but they certainly cannot give rise to jurisdiction arguments. The matter has engaged the attention of the High Court and the High Court will adjudicate upon it.

Notwithstanding the foregoing, since the Petitioner's base claim is for equitable distribution of property the claim is properly in the "Family Court". Proving that the "Property" is matrimonial property is simply a preliminary issue to establishing her claim.

CONCLUSION

In the circumstances the Court finds that the “Property” is matrimonial property between the Petitioner and Sankar.

The Court finds that the SNR is barred from claiming a share in the property on the principle of promissory estoppel.

ISSUE II

Counsel for Sankar also argues that assuming the Court found that the “Property” is matrimonial property, it was acquired during the period when it could be said the Petitioner and Sankar were in a common law relationship.

That since it was acquired before they were married in 2011 then her claim would have had to be brought within three years of the marriage, which would have been the end of the common law relationship.

This argument is defeated on several grounds in this case.

In the first place it cannot be said that the common law union between the Petitioner and Sankar ended, it was simply made more secure and legalised by marriage, and in fact they are still married.

In any event, it is the Petitioner’s evidence that the building was completed in 2012 and according to Sankar, the building is not complete.

In the circumstances the Court grants paragraph 28, subparagraphs (a) [including sub-sub paragraphs (1) and (2)], (c) and (d).

The Court accepts the present market value of the “Property” to be \$41,200,000.00 [Exhibit “E1 - E2”] and orders that by private treaty Sankar Rampertab can purchase Deomattee Rampertab’s share in and to the property for half of the said \$41,200,000.00 minus any sums owed to NBS, such agreement to be entered into and sealed on or before July 30th 2019, failing which either party may secure a private sale for the “Property” for a price not less than \$41,200,000.00 on or before December 31st 2019, the net proceeds of the sale to be divided equally between the Deomattee Rampertab and Sankar Rampertab, failing which the “Property” is to be sold at a public auction with a reserve price of \$35,000,000.00, the net proceeds of the sale to be divided equally between the Deomattee Rampertab and Sankar Rampertab.

It is further ordered that notwithstanding which of the afore-stated option is exercised the NBS loan is to be satisfied before any disbursement is made to Deomattee Rampertab and Sankar Rampertab.

Liberty to apply.

The Court awards costs in the sum of \$100,000.00 against each Respondent to the Petitioner.

Justice N. A. Singh