



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

Application no. 11735/09
Claudia CORNEI
against the Republic of Moldova
lodged on 12 February 2009

STATEMENT OF FACTS

1. The applicant, Mrs Claudia Cornei, is a Moldovan national, who was born in 1953 and lives in Durlești. She is represented before the Court by Mr V. Pruteanu, a lawyer practising in Chisinau.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 31 January 2006 the applicant's husband sold to B., without her consent, a plot of land acquired during their marriage. The applicant was abroad at the time the contract was signed and found out about it only when she returned and saw that B. was building a garage on the sold plot.

4. On 2 October 2007 the applicant brought an action in court against B., claiming the nullity of the sale contract, the demolition of the garage and the compensation of damages. The applicant argued, *inter alia*, that the plot of land constituted community property (*proprietate comună în devălmășie*), jointly owned by her husband and herself, as property acquired during marriage. She claimed that any deed of transfer by one spouse in regard to real estate, part of such marital property, was null if concluded without the notarized consent of the other spouse.

B. submitted a counterclaim to obtain the court's acknowledgement of the fact that he had acquired property in good-faith, because he did not know that the applicant was co-owner of the disputed plot of land.

5. On 31 March 2008 the Ialoveni District Court rejected the applicant's claims as ill-founded. The court noted that the title of property was held by her husband alone, fact which the applicant did not dispute or challenge; that the applicant's husband had infringed on her right to property and a compensation for such infringement would be possible with the award of a

larger share of marital property upon its subsequent division. The court dismissed B.’s claims as ill-founded.

6. The applicant appealed the judgment, arguing, *inter alia*, that according to Article 20 of the Family Code under marital property law, title to property held by one spouse carried no weight in determining whether property is separate or community property because the law instituted the presumption of marital property which had to be rebutted by legal documents instituting separate property on a particular asset. The applicant also noted that the law did not institute any presumption of consent in regard to real estate transactions; on the contrary, the law required that her consent be materialized in a notarized statement. She outlined that the notary who certified the contested contract must have seen in her husband’s identity documents the reference to their marriage but, contrary to the law, did not require her presence and consent.

B. did not appeal the judgment.

7. On 4 June 2008 the Chişinău Court of Appeal admitted the applicant’s appeal, quashed the Ialoveni District Court judgment of 31 March 2008 and delivered a new judgment which upheld all her claims, except those for compensation of damages. The court dismissed B.’s counterclaim as ill-founded. The court found that the disputed plot was acquired during the applicant’s marriage and thus constituted joint marital property; that any deed of transfer in regard to this plot required the applicant’s notarized consent and that the absence of such consent amounted to the nullity of the contract. The court cited the provisions of Article 21 (1), (2) and (4) of the Family Code and of Article 369 (1) - (3) of the Civil Code to support its legal conclusion.

B. appealed this judgment, reiterating the arguments of his counterclaim.

8. On 3 December 2008 the Supreme Court of Justice upheld B.’s appeal on points of law, quashed the appellate judgment and upheld the first-instance judgment. The court argued that the applicant’s husband appeared in the land registry as the sole owner of the disputed real estate and that the applicant failed to prove B.’s bad-faith, that he knew or could have known about the joint ownership and about her consent being required; the court thus concluded that B.’s presumption of good-faith was not rebutted. Although the court acknowledged that the applicant had not consented to the conclusion of the sale contract, it noted that the applicant failed to prove that she had opposed the conclusion of the contract or that she had not known about it.

B. Relevant domestic law and practice

9. The Civil Code reads as follows:

Article 369. Deed of transfer in regard to assets held in community property (*proprietate comună în devălmăşie*)

“(1) Each co-owner of community property may dispose of the movable asset held in community property if an agreement concluded between them does not provide otherwise.

(2) Any transfer of real estate held in community property shall require the written consent of all co-owners.

(3) The deed of transfer concluded by one co-owner may be declared null if one proves that the other party knew or should have known about the agreement limiting the co-owners rights, about the opposition of the other co-owners to the conclusion of such deed or that their consent was not requested upon transfer of real estate.”

Article 371. Community property of spouses

“(1) All assets acquired by spouses during marriage constitutes community property if, under the law or the agreement concluded between them, another form of property is not established for those assets.

(2) All assets acquired by spouses during marriage is presumed community property until proven otherwise.”

10. The Family Code reads as follows:

Article 20. Marital property (proprietatea în devălmășie a soților)

“...

(3) Movable assets, real estate, securities, deposits, shares in the capital of financial institutions and commercial entities, which were built, established, bought or acquired from joint resources as well as other assets acquired during marriage, even if bought or registered in the name of one of the spouses, shall constitute community property of spouses (marital property).”

Article 21. Right of spouses to possess, use and dispose of marital property

“(1) Spouses, in mutual agreement, possess, use and dispose of marital property.

(2) Each of the spouses is entitled to conclude agreements disposing of marital property, the other spouse’s consent being presumed, except real estate.

...

(4) The agreement concluded by one of the spouses may be declared null by the court, upon the request of the other spouse, if it is established that the other party to the agreement knew or should have known that the other spouse opposed the conclusion of the agreement. The request to declare the agreement null may be submitted to court in a three-year term from the moment when the other spouse found out or should have found out about its conclusion.”

11. The explanatory judgment of the Plenary Supreme Court of Justice No. 2 of 27 March 2006, in so far as relevant, reads as follows:

“20. The real estate ... acquired by the spouses during marriage is their marital property (Art. 19 (1) of the Family Code), unless the real estate was acquired by gift, inheritance or other gratuitous deed, in which case it will constitute the separate property of the acquiring spouse.

The fact that the sale contract or other acquiring deed is made in the name of only one spouse does not carry legal weight in determining whether the property is separate or community property. In such case, the property is considered community property, unless a marital contract changes the legal regime of the property to separate property.”

COMPLAINTS

12. The applicant complains in substance under Article 6 about the arbitrariness of court decisions.

13. She also complains under Article 1 of Protocol No. 1 to the Convention about being unable to recover her property owing to arbitrary decisions that did not have a basis in domestic law.

QUESTIONS TO THE PARTIES

1. Did the court proceedings in respect of the applicant's property claims comply with the requirements of fairness and absence of arbitrariness, inherent in Article 6 of the Convention?

2. Did the judgment of the Ialoveni District Court of 31 March 2008, as upheld by the Supreme Court of Justice on 3 December 2008, constitute an interference with the applicant's rights as guaranteed under Article 1 of Protocol No.1 to the Convention? If so, was that interference in accordance with the law?