SAINT VINCENT & THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL No.6 of 1995

BETWEEN:

KENDOL M. WILSON

Appellant

and

VALARIE E. WILSON

Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Hon. Mr. Satrohan Singh - Justice of Appeal
The Hon. Mr. Albert N. J. Matthew - Justice of Appeal (Ag.)

Appearances:
Mr. A. Williams and Mr. R. Williams for the Appellant
Mr. B. Commissiong Q.C. and Mr. G. Bollers for the Respondent

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1995: December 15;
1996: January 15.

JUDGMENT

MATTHEW, J.A. (Ag.)

The appellant and the respondent, a seaman and a teacher respectively, were married on December 28,1976 and lived together for almost sixteen years before a decree nisi was pronounced in favour of the appellant on May 21st 1992. The decree nisi was made absolute on October 13, 1992. The record does not indicate the age of the parties but there are three children of the marriage namely, Teroy, Karen and Joy aged approximately 16,13 and 7 years respectively. The appellant still resides in the matrimonial home despite the order of the learned Judge that he should give up possession and the respondent is in the United States of America pursuing studies.

By notice filed on May 25, 1992 the respondent sought certain ancillary relief and on April 6,1995 *Cenac* J. made the following order:

> "In regard to the matrimonial home, I have already found that the land on which the dwelling house was built belongs solely to the wife. The house was built by their joint efforts with money from the business operations. There is no professional valuation of that property. The Respondent's valuation is approximately $200,000.00. The wife has put a valuation of $275,000.00.
>
> The Campbell property was acquired by the Respondent before the marriage. During the subsistence of the marriage renovations were done on the property with money from the business - the wife's evidence which I accept - which gives her a beneficial interest in that property. Having regard thereto and also the fact that the Respondent has been enjoying the profits of the business operations since the divorce in 1992, I accordingly award the matrimonial home to the Petitioner and the Campbell property to the Respondent. The respondent is to have in addition, the other assets of the marriage viz the truck, the toyota van and the passenger van.
>
> The Respondent must give up possession of the said matrimonial home within three months from the date hereof.
>
> The Petitioner is to have custody of the three children of the marriage and the Respondent is to pay her a monthly sum of five hundred dollars ($500.00.) in respect of each child until they attain the age of eighteen (18) years."

I wish to make two observations here. I am not too sure how the learned Judge could have found that the land on which the dwelling house was built belongs solely to the wife. The exhibits which form part of the record of this appeal indicate that the respondent obtained the land by an indenture made on August 30, 1989 but two months later on October 24, 1989 she donated to the appellant an undivided portion of the hereditament in consideration of love and affection of the donor to the donee and also in consideration of the sum of $100.00 paid to the donor by the donee to be held jointly with the donor as joint tenants. The learned Judge seems to have accepted the respondent's testimony that she put the property in the joint names of her husband and herself because the husband wanted to get a loan from the bank. Of course this does not affect in any serious way the order the learned Judge has made neither does it affect the main issue in the appeal.

The other observation is that the schedule in both deeds states that the lot,

piece or parcel of land in question is situated at Ashton, Union Island in the State of Saint Vincent.

In his grounds of appeal the appellant states the following:

> *"The learned trial Judge was wrong in law on file question of property adjustment order in accordance with sections 32 and 34 of the Matrimonial Causes Act 176 of the Laws of Saint Vincent and the Grenadines.*
>
> *(a) In interpreting the principles applicable particularly in relation to the family business from which the Respondent/Appellant earns a living and which is established in the said matrimonial home.*
>
> *(b) In applying those principles the learned Judge failed to evaluate and or give evidential weight to the exhibits in this matter.*
>
> *The learned Judge failed adequately to assess the evidence given in these proceedings."*

It is therefore obvious that the only portion of the Judge's order which the appellant seeks to challenge is that relating to the real property and in particular the matrimonial home. Indeed in his main submission to this Court he asked that the appellant be awarded the matrimonial home free from encumbrance or alternatively that he be given a lump sum to erect a building.

Learned Counsel for the appellant submitted that the matrimonial home valued at approximately $200,000.00 was the principal family asset where the family business was conducted in the bottom storey. Counsel asked that the matrimonial home be awarded to the appellant and that the Campbell property valued at approximately $110,000.00 which the learned Judge awarded to the appellant be awarded to the respondent together with a lump sum of $80,000.

Learned Counsel submitted strenuously that the respondent did not "make" the husband and the learned Judge was wrong to find that when the respondent's mother was about to migrate to the United States of America in 1980 she literally handed over the construction business at Clifton to the appellant.

Learned Counsel placed reliance on a passage from the case of **Wachtel v**

Wachtel (1973) 1 AER 829 at page 830 letter (f) the substance of which is repeated at page 840(j). The passage is as follows:

> "Where the matrimonial home is the principal or only capital asset, and where the wife has left the home and the husband remains in it, the house should be vested in the husband absolutely, free of any share in the wife, the husband alone being responsible for the payment of mortgage instalments; the wife should be compensated for the loss of her share in the house by the award of a lump sum sufficient to enable her to acquire her own home; that sum should be such as the husband can raise by a further mortgage on the matrimonial home."

Learned Counsel for the respondent contended that the order of the learned Judge should stand but if it should be contemplated that the appellant be awarded the matrimonial home and the respondent get the Campbell property the sum which would be adequate to compensate the respondent for her contribution to the family assets would be $400,000.

Counsel further submitted that **Wachtel's case** was not applicable to this case since **Wachtel** dealt with a situation where the only asset was the matrimonial home even though Counsel recognised a passage in **Wachtel** which stated that a lump sum order was not appropriate unless the husband had the means to pay such a lump sum.

Counsel informed the Court that the respondent intended to open a school on completion of her studies in the United States of America and the matrimonial home was ideal for that purpose and all that the wife was getting out of the marriage was the matrimonial home.

The Court notes that the learned Judge did not specifically make any award of the stock of the business. After making awards of the matrimonial home and the Campbell property he simply stated:

> *"The respondent is to have in addition, the other assets of the marriage, namely, the truck, the toyota van and the passenger van."*

So presumably the business goes to the appellant and from his submission learned Counsel for the respondent accepted that interpretation of the order of the

learned Judge.

Both sides have referred to **Wachtel's case.** The case is important as laying down guidelines for the Court when granting ancillary relief under the provisions of the Matrimonial Proceedings and Property Act 1970 of the United Kingdom which are similar to the Matrimonial Causes Act of Saint Vincent. This is what both experienced silks asked of the Court and *Lord Denning* responded when he said at page 833 letter (f) that it was very desirable to remove uncertainty and to assist parties to come to agreement. It cannot be expected that every case which comes before the Courts will contain identical facts.

After *Lord Denning* set out the guiding principles he went on to apply them to the facts of the case at page 841 letter (j).

It is to be noted that the passage relied upon by learned Counsel for the appellant was said in the context of an order for a lump sum. See pages 830 letter (f) and 840 letter (j). The dentist husband in the case who had paid the mortgage instalments was held to be the owner of the matrimonial home in law. See page 841 letter (j). In that circumstance the husband who remained in the matrimonial home which the wife had left was permitted to retain the house but the wife was to be compensated for the loss of her share by being awarded a lump sum.

But **Wachtel's case** states quite clearly with reference to lump sum provisions at page 830 letter (e) "but no such order should be made unless the husband has capital assets out of which to pay a lump sum without crippling his earning power". Again at page 840 under the caption "the lump sum provision" *Lord Denning* states:

> "The circumstances are so various that few general principles can be stated. One thing is, however, obvious. No order should be made for a lump sum unless the husband has capital assets out of which to pay it - without crippling his earning power.

Section 34 of the Matrimonial Causes Act stipulates some of the matters to which the Court is to have regard in deciding how to exercise its powers with respect

to property. One such matter is the income, earning capacity, property and other financial resources which each of the parties to the marriage has, or is likely to have, in the foreseeable future.

Both parties seem to have or are likely to have other property besides the family assets as described by *Lord Denning* at page 830, letter (b). In his affidavit sworn on June 29, 1993, the appellant set out the respondent's property at Richmond Beach and property she is likely to have from her father's intestacy. In her affidavit sworn to on June 14, 1994 at paragraph 17 the respondent stated that the appellant's father is a very wealthy man and he also stands to benefit from his father's estate and that was not denied by the appellant in his affidavit following on June 30, 1994.

Be that as it may, it does not afford evidence as to the appellant's capacity to meet a suitable lump sum order. In his affidavit filed on June 29, 1993 the appellant shows that his net income per month is only $1,800 and before this Court, Mr. Richard Williams, who ably assisted his father, stated that the appellant's present income was $2,500 gross per month from the combined businesses.

The Court could neither agree with the figure of $80,000 proposed by the appellant nor the $400,000 proposed by the respondent in the event that it contemplated awarding the matrimonial home to the appellant and would perforce have to arrive at an appropriate figure somewhere between the two but in any case we are not convinced that the appellant could pay such sum having regard to the state of his businesses that is grocery, cooking gas, trucking - which are his only source of income.

Another factor to be taken into account by the Court in determining ancillary property matters is contained in Section 34(1)(f) of the Act and this is the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family. For the appellant it was

argued strenuously that the wife's mother did not hand over the construction business to him. The Judge's finding in that respect was severely criticized. It was further submitted that the respondent did not "make" the appellant.

Assuming the appellant is right that he received no assistance from the wife's mother and he stared the business at Ashton I doubt that would be an answer to deprive the respondent of the award of the matrimonial home. It cannot be denied that the respondent inherited the land on which the matrimonial home is constructed from her father and as an act of donation for the consideration of love and affection and $100 cash she made the appellant a joint owner by deed of indenture dated October 24, 1989. The learned Judge having observed their demeanour as they gave evidence accepted the respondent's evidence that she actually contributed money from her salary and extra teaching in the construction of the matrimonial home. Section 34(1)(f) speaks of contribution made to the welfare of the family and apart from actual financial contribution, the respondent looked after the home and cared for the family during the time she lived there.

The learned Judge paid due regard to the last few lines of Section 34(1) when he said in his judgment that the principal consideration is that *"the Court should exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other."*

I am unable to say the learned Judge exercised his powers wrongly and I would therefore dismiss the appeal with costs to the respondent to be agreed or otherwise taxed.

ALBERT N.J.MATTHEW
Justice of Appeal (Ag.)

I concur.

SIR VINCENT FLOISSAC
Chief Justice

I concur.

SATROHAN SINGH
Justice of Appeal