

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO: 15 OF 1995

BETWEEN:

NORRIS DEANE

APPELLANT/PLAINTIFF

AND

MARCELLA DEANE

RESPONDENT/DEFENDANT

Before: **The Hon. Mr Justice Satrohan Singh** **Justice of Appeal**
 The Hon. Mr Justice Albert Redhead **Justice of Appeal**
 The Hon. Mr Justice Odel Adams **Justice of Appeal Ag.]**

Appearances: *Mr Samuel F. Commissiong for the appellant*
 Miss Nicole Sylvester for the respondent

1998: July 27

JUDGMENT

SATROHAN SINGH J.A.

This judgment concerns a petition by Marcella Deane for leave to appeal to Her Majesty in Council from a judgment of this Court delivered on July 23, 1997. That judgment was concerned with ancillary matters in a petition for divorce in which the applicant was granted a Decree Nisi on July 29, 1991.

During the arguments before us in the ancillary proceedings, we expressed the opinion to both sides, that the trial judge having been unable to quantify the respective contributions of each party to the family assets, and the evidence disclosing that both parties may have made substantial contributions to those assets, that there should be equal distribution of those assets. We then invited the parties to negotiate a settlement. It was subsequently reported to us, that whereas the lawyers in the matter had come to an agreement, the petitioner herein was not willing to accept the terms. We then heard further arguments and then, orally repeating the opinion aforementioned, we made the order we did for that reason, having considered the law on the matter and the provisions of Section 34 of the Matrimonial Causes Act Cap. 176 of the Laws of St. Vincent and the Grenadines (1990).

Power in this Court to grant leave to appeal to Her Majesty in Council is given by Sections 98 and 99 of the Constitution of St. Vincent and the Grenadines. We have no jurisdiction to go beyond that power. The petition itself did not state under which rule it was brought and Mr Commissiong himself seemed to be quandary as to which rule should be applied. Learned Counsel submitted that ancillary matters in matrimonial proceedings were civil matters and as such leave was to be granted as of right under Sections 99 (1) (a) of the Constitution, the value of the property in the proceedings being of upwards of the prescribed value. Counsel then described our judgment as a final decision in proceedings for dissolution of marriage and suggested leave as of right under Section 99 (1) (b) of the Constitution. He even made bold to say that we should grant the leave because if we did not Athe Privy Council would do so.@ I sensed threat rather than jurisdiction in this submission of Mr Commissiong.

I propose in order to determine this petition, to take a stroll through Sections 98 and 99 of the Constitution and see if we could assist Mr Commissiong.

Section 98 of the Constitution would not apply as this deals with litigation brought under the provisions of the Constitution. Section 99 (1) (a) gives leave as of right in civil matters where the appeal involves directly or indirectly a claim to or question respecting property or a right

of the prescribed value or upwards. We do not share the opinion of Mr Commissiong that ancillary matters in matrimonial proceedings can be categorised as civil matters. If Mr Commissiong were correct, then there would have been no need for Section 99 (1) (b) of the Constitution which gives us power to grant leave as of right in final decisions in proceedings for dissolution of marriage. It is obvious that the Constitution was here drawing a distinction between civil litigation and matrimonial matters.

This provision of the Constitution (Section 99 (1) (b), also does not give us the power to grant the petition as we do not agree with learned counsel for the petitioner that a judgment in ancillary matters can be categorised as a final decision in proceedings for dissolution of marriage. Finally, Section 99 (2) will not assist as this again deals with civil proceedings.

We are bound by statute in matters of this nature. We cannot go beyond the statute. We therefore, consider ourselves without jurisdiction to entertain the petition and we order that it be dismissed with costs to the respondent to the petition to be taxed if not agreed.

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SATROHAN SINGH
JUSTICE OF APPEAL

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ALBERT REDHEAD
JUSTICE OF APPEAL

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ODEL ADAMS
JUSTICE OF APPEAL [Ag.]