SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.23 OF 2004

BETWEEN:

MAGDALENA RAMBALLY

Applicant

and

RAMRATHAN INCE RAMBALLY

Respondent

Before:

The Hon. Mr. Brian Alleyne S.C. Justice of Appeal

Appearances:

Mr. Bryan Stephen and Mr. Cajeton Hood for the Applicant
Mr. Vandyke Jude and Mr. Clarence Rambally for the Respondent

---

2005: February 8;
February 11.

JUDGMENT

[1] ALLEYNE, J.A.: This is an application for an extension of time to file a notice of appeal against a decision of Barrow J. contained in a judgment dated 27th June 2001 in an ancillary relief hearing following the grant of a decree nisi of divorce on 26th November 1998. By his order the learned trial Judge made a declaration that four identified properties were community property and made an order for their distribution accordingly. In relation to two other properties which the applicant claimed to be community property, the applicant says that the learned trial Judge was not satisfied on the evidence that these were community property, and consequently did not make an order in respect of them.

[2] The learned trial Judge described the proceedings as 'curiously originated proceedings' in that it was the husband who filed a notice of application for ancillary relief, seeking orders for maintenance of the wife and children, for custody and visitation rights, and for a declaration that the aforementioned four properties were community property. He also sought other relief which is not relevant to the present application.

[3] The learned trial Judge came to the conclusion, 'based on the husband's acknowledgement', that the four properties were community property. As regards the other two properties, the learned Judge held that there was no 'challenge – although there were certain contrary assertions by counsel for the wife to which successful objection was taken – to the husband's testimony that this property belongs to his brother to whom he pays rent.' He consequently excluded these properties from his order.

[4] The applicant says that she now has new evidence, both documentary and the evidence of the husband's brother referred to in the preceding paragraph, which was not available to her at the time of the hearing, and some of which, indeed, did not exist at that time, which tends to prove that these properties did in fact belong to the husband, were by operation of law community property, and were registered in the name of his brother as a device to deprive her of her legitimate interest in it. On that basis she seeks leave to appeal out of time, and will, if granted leave, seek permission to introduce the evidence before the court.

[5] Counsel on both sides are in agreement on the legal principles governing the exercise of the court's decision to grant leave. However, I think it is unnecessary to go into that. It seems to me that it would be wholly inappropriate for the court of appeal to undertake, as part of an appeal process, the examination of the type and range of evidence which the applicant proposes to seek leave to introduce, especially if there are other, more appropriate, avenues whereby the party may obtain relief through the courts. Such a process would involve a full trial of heavily

disputed facts and the examination of witnesses as well as evaluation of the intent and purpose of deeds dealing with title to lands, allegations of failure to observe the obligation to make full disclosure in ancillary relief hearings, and other matters which would be more properly dealt with by a trial court.

[6] In addition, the applicant does not contend that the learned trial Judge was wrong in his findings of law or fact, only that new evidence has become available which may lead to different conclusions, and that this new evidence should be heard and assessed in relation to her entitlement in the distribution of matrimonial property.

[7] Section 24 of the Divorce Act[1] provides in part;

> 24. On granting a decree of divorce .... *or at any time thereafter* (whether .... before or after the decree is made absolute), the Court may, subject to the provisions of sections 28 and 32(1), make any one or more of the following orders, that is to say –
>
> (a) an order that a party to the marriage shall transfer to the other party, ... such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion.
>
> (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the Court for the benefit of the party to the marriage ....

[8] It seems to me that it is precisely to address such issues as the issues raised by the applicant in this application that this section was enacted. There is a well-recognised and strict obligation in ancillary relief matters, which applies to both parties to the marriage, to make full and frank disclosure of assets[2]. Where, as here, it is alleged that there was a failure to make disclosure, or worse, a deliberate attempt to deceive the court in relation to the assets of one party, the

[1] Act No. 2 of 1973.
[2] Hughes v. Hughes (1993) 45 WIR 149 at 154 b.

court can clearly re-consider the matter, hear the evidence and come to a conclusion. The High Court, rather than the Court of Appeal, is clearly the appropriate forum for such an exercise and, it seems to me, is the forum provided by the Divorce Act for the purpose.

[9] In exercising its statutory powers under section 24 of the Act, the court would be guided by the principles set out in Rayden on Divorce, 14th edition at page 847 paragraph 144; 'the court must have regard to all the circumstances of the case including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.'

[10] The Court of Appeal considered the application of sections of the Matrimonial Causes Act 1989 of Saint Vincent and the Grenadines[3] which are similar in terms and intent to section 24 of the Divorce Act of St. Lucia, in Civil Appeal No. 10 of 1991[4]. In that case Byron J.A. as he then was, at page 5 of the judgment, quoted Ormrod L.J. in Lewis v. Lewis[5];

> "I am bound to say that it has always seemed to me, with respect, that the powers of variation, which were given by statute to this court in a series of enactments going right back to 1857, have been, if anything, progressively enlarged and that the intention of Parliament is that, in handling these family matters where money is concerned, the court should have as unfettered a discretion as possible to deal with the situation as it is when the matter comes before it. I am sure it is not the intention of Parliament in any way to trammel the discretion by any kind of technical reasoning or technical grounds."

[11] Another example of a case concerning a variation of an order is Lang v. Lang; Lang v. Lang & Sunset Motors[6]. In that case, while accepting that jurisdiction exists in the court to vary an order, the learned Judge, Matthew J. as he then was, declined to exercise jurisdiction because the former order was a consent order.

[3] Act No. 58 of 1989.
[4] Da Silva v. Da Silva
[5] [1977] 3 All ER 992.
[6] High Court, St. Lucia, No. 30 of 1991 and 420 of 1994.

[12] It seems to me that the appropriate course for the applicant to pursue is not an appeal against the order, but an application for a variation of the order, enabling the court to examine all the evidence and to exercise its jurisdiction as it appears just.

[13] In the circumstances I would refuse the application for leave to appeal out of time, and make no order as to costs.

Brian Alleyne, SC
Justice of Appeal