

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. D14 of 1996

BETWEEN:

AGAPIT STANISLAS

Claimant

AND

THERESA STANISLAS

Defendant

Appearances:

Mr. Evans Calderon for the Claimant

Mrs. Lydia Faisal for the Defendant

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2005: March 11, 14, 18

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JUDGMENT

Introduction

1. **Shanks J:** The parties were married in London in September 1982. The husband petitioned for divorce in St Lucia in 1996 and Matthew J granted a decree nisi in July 1997. The wife applied 7 ½ years later in January 2005 for ancillary relief in the form of an order for the payment of a sum of money (£33,956) representing half the proceeds of sale of a property in London and the value of her half share in two properties in Choiseul (parcels 0223B 60 and 0223B 108). There was no suggestion that this delay in any way debarred the court from dealing with the application.

Affidavits were sworn and a hearing held at which the parties and the wife's sister Margaret Joseph were cross-examined.

Relevant findings of fact

2. The parties are both St Lucian. The husband was born in 1932 and the wife in 1935 and they are now 72 and 69 respectively. The husband went to London in 1959. At some stage he was married and in 1967 he purchased a property at 155, Chamberlayne Road, London NW10 with his first wife.
3. There is a dispute as to when the parties met but it was no later than 1980. At the time the wife was living in a council house with her five children. She received social security; although husband was apparently unaware of the fact she also did part-time factory work. When they married in September 1982 the husband came to live in the council house. The wife was going to purchase the council house under the "right to buy" legislation but the husband did not wish to stay with all the children and he persuaded her that they should buy out his first wife's share of 155, Chamberlayne Road and move in there.
4. The parties jointly borrowed money on a mortgage to pay for the first wife's share and the property was registered in their joint names. This fact was disputed by the husband but it was quite clear from two documents produced by the wife that it must have been the case. Those documents were a copy of a letter signed by the wife dated 7 January 1993 authorising the net proceeds of sale to be sent to an account in his sole name with Barclays Bank in Willesden and a copy of the transfer document

dated 6 January 1993 which shows that she and the husband jointly transferred the property to the purchasers. Mr Calderon for the husband took great exception to the production of the latter document at the hearing; although it was unfortunate that the document was produced so late in the day I accept Ms. Faisal's word that it was only obtained very recently and I have no hesitation in admitting it, taking account of the fact that it would not have been clear that the question of ownership of 155, Chamberlayne Road was in issue until the husband served his affidavit on 1 March 2005 and that this document was in any event almost the best possible evidence for resolving the issue once raised.

5. The husband says that the wife made no contribution in money or kind towards 155, Chamberlayne Road. She agreed that she made no direct payments towards the mortgage. However, I accept her evidence that after she married the husband she obtained full-time work at the Hammersmith hospital (the salary from which I infer must have gone to support the household) and that she looked after him. Her daughter Sonia also lived with them and contributed £80 to the monthly mortgage payments of some £200. While the husband was on an extended visit to St Lucia she paid the mortgage. I see no basis for not applying the normal presumption that two joint owners each have a 50% share in the case of 155 Chamberlayne Road.
6. In 1987 parcel 0223B 60 in Choiseul was purchased and registered in the names of the husband and the wife each with a half share. I was not told anything in detail about the acquisition of this piece of land or where the purchase price came from but I infer that it was purchased with a view to building a retirement home for the two of them. In January 1993 155, Chamberlayne Road was sold and the net proceeds £67,912 were

paid to the husband's account and used by him to build the house which now stands on parcel 0223B 60 (see first sentence para 15 of the husband's affidavit). It was not disputed that he supervised the building of the house. In September 1993 parcel 0223B 108 which is next to parcel 0223B 60 was purchased in the names of husband and wife each with a half share. Again I was not told anything expressly about the money used for this purchase.

7. The wife did not move to St Lucia full time in 1993 because she wanted to complete some further time at the hospital in order to qualify for a pension. I do not accept the husband's evidence that he had no idea why she remained in London. In May 1994 she made an unannounced visit to St Lucia. I accept her evidence (although it was disputed by the husband) that on arrival she found that the husband was having an affair with another woman who was living in the house. I also accept her evidence that this caused her to have a nervous breakdown.

8. There followed an incident about which there was a major conflict of evidence: there was a fire at the house in Choiseul on the morning of 16 May 1994. The husband says that it was deliberately started by the wife and that it caused very substantial damage, completely burning out three bedrooms. The wife says that the fire was started accidentally by a candle which she had to have burning at night in the absence of electricity and that it caused only superficial damage in one room. I accept that the wife did start the fire deliberately while she was suffering from her nervous breakdown (the medical report from Dr Raju dated 16 August 1994 which she has produced says as much). However, I prefer her evidence as to the extent of the damage which was supported by that of her sister. The husband's case that there had been substantial

damage and that he had he incurred expense re-instating the house was unsupported by any detail or document save for a letter dated 18 February 2005 from the Chief Fire Officer to Mr Calderon: the letter states that the house was "completely destroyed" (which is inconsistent with the husband's own evidence) and it simply gives an estimate of damage of \$110,000 with no further substantiation. I am afraid that this letter has the hall marks of one prepared at the request of the lawyer for one party without access to proper records and I take no notice of it.

9. Shortly afterwards some of the wife's children came and took her back to England where she has lived ever since while the husband has remained in the house in Choiseul. There was some sporadic correspondence and the wife has paid the odd visit to St Lucia in an attempt to vindicate her rights but the husband has denied any entitlement on her part. It was not until January 2005 that she brought this application. Mr Herman Phillip was appointed by the court to value parcels 0223B 60 and 108 and has come up with figures of \$455,564 and \$74,172 respectively.

Conclusion on ownership of parcels

10. The starting point must be the position as shown on the Land Register in respect of parcels 0223B 60 and 108: according to this the parties each have a half share in those parcels and would be entitled to half the net proceeds of sale. Mr Calderon accepted that this was the position in relation to the land but he said that the wife had no entitlement to the house on parcel 0223B 60 since she had not contributed to its building and he referred me to Art 1192(2)(e) of the Civil Code. It seems to me that his submission is probably wrong as a matter of law (see in particular Art 369 of the Civil

Code) but, in any event, on the findings of fact I have made, the money used to build the house represented the proceeds of sale of the jointly owned property in London. Prima facie the wife is therefore entitled as owner to half the value of the two parcels but not entitled to the £33,956 which represented her share of the London property, the whole proceeds having been used to build the house in Choiseul.

11. Ironically this result (apart from the £33,956) is what the wife seeks under the Divorce Act 1973 so it does not seem to me that there is likely to be any benefit to her in considering whether the court should make orders in her favour under section 22, 24 or 45 of the Act. Nevertheless since the parties have argued the case on the basis of the Act I will briefly consider the factors set out in section 25 and what the just solution would be applying the test set out there.

Divorce Act discretion

12. I take the factors in turn:
 - (a) *Income, earning capacity, property and other resources*: I have made findings as to two parcels of land in Choiseul: they are each owned 50/50 and they are worth \$455,564 and \$74,172 respectively. I was told that the wife has a pension from her work at the hospital: I do not imagine this is large. I was told the husband had no money but I would infer that he has some means of support. Neither side suggested that the other had any other income, earning capacity, property, or resources

- (b) *Financial needs, obligations and responsibilities*: I was given no details but, in view of their age, I doubt the parties have obligations or responsibilities and their needs are probably roughly similar.
- (c) *Standard of living before breakdown of marriage*: I was given no details of this either the parties were living in London and have not been together for many years in any event.
- (d) *Age of parties and duration of marriage*: They are now 72 and 69 and were married for nearly 16 years.
- (e) *Physical or mental disability*: There was no evidence of any apart from the wife's breakdown and a suggestion of diabetes in the report of Dr Raju.
- (f) *Contributions made by each of the parties to the welfare of the family*: the wife contributed by looking after the household in London and working full time; I have no idea whether the husband was also working though it appears he must have been paying the mortgage in London; the husband contributed by arranging and supervising the building of the house in Choiseul albeit that the wife did not enjoy that for long.
- (g) *Value of benefits lost*: I have no evidence in relation to this.
- (h) *Other relevant factors*: the husband has had the benefit of the house in Choiseul on his own for the last 10 years while the wife has been living with her children in England; if I make an order as asked by the wife the husband will have to move out of the house he has occupied for so long; the fire incident in my view is no more relevant to this exercise than the fact that the husband started an affair in 1993/4.

13. Taking relevant factors into account I see no reason to make an order which will simply allow the wife to realize her half share in parcels 0223B 60 (including the house) and 108. Given the length of time the husband has been living at the house I think it is reasonable to give him an opportunity to buy out the wife's share of parcel 0223B 60 for \$227,782 but if he is unable to raise the funds within a reasonable time a sale will be ordered without further delay.

Result

14. I will therefore order as follows:
- (1)The husband is to pay the wife the sum of \$227,782 in exchange for her half share in parcel 0223B 60 by 31 May 2005;
 - (2)If the husband fails to comply with paragraph (1) parcel 0223B 60 shall be sold and the net proceeds divided between the parties 50:50;
 - (3)Parcel 0223B 108 is to be sold forthwith and the net proceeds divided between the parties 50:50;
 - (4)Liberty to apply for further directions as to sale of properties.
15. I will hear the parties as to costs and any directions in relation to sale required at this stage.

Murray Shanks
High Court Judge (Acting)