IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES

CLAIM NO.: 122 OF 1993

IN THE MATTER of the Petition of **MATTHEW JOYCELYN** for Dissolution of Marriage

BETWEEN:

STEPHANIE LOURINE JOYCELYN	**PETITIONER**
VS	
MATTHEW JOYCELYN	**RESPONDENT**

Mr. Parnel R. Campbell Q.C. and Mr. Macaulay Peters for the Respondent/Applicant
Ms. Paula David for Petitioner/Respondent

2005, April 25
2005, May 20

Ruling:

1. This is an application by the Respondent for the setting aside of an Ex Parte Order dated 13th February 1995, whereby the Respondents one-half share in the matrimonial home at Cane Garden was ordered to be transferred to the Petitioner.

2. The marriage was dissolved on the 31st December 1993, the parties having married in England on 19th October 1968. The parties are now 65 years old (Petitioner) and 68 years old (Respondent) respectively.

3. By a summons filed on 19th September 2001, the Respondent applied for the setting aside of the said Ex Parte Order of the Court, some 5 years and 7 months after the said order had been made.

4. On the 22nd October 2004 the respondent swore to an affidavit and filed herein where he has given evidence as to the reasons for the delay in filing the application to set aside the Ex Parte Order.

5. There are four factors to be taken into consideration by the Court in an application to set aside an order obtaining ex parte and to give leave for a Defence to be filed. These factors are (1) the length of the delay, (2) reasons for the delay, (3) the degree of prejudice to the other party, (4) the strength of the proposed Defence.

6. As stated earlier the delay in this case was 5 years and 7 months from the date of the Ex Parte Order of 13th February 1995 and the date of the application to set aside that order being 19th September 2001.

7. Counsel for the Applicant/Respondent has conceded that on the authorities that delay is inordinate. He however posits that that inordinate delay does not by itself render the application futile, and is by no means fatal to the application.

8. Counsel for the Petitioner/Respondent has resisted this application and arguments of Counsel for the applicant to the Will. Her main contention is that the delay in applying for the Ex Parte Order to be set aside was inordinate and then went further in her oral arguments to the Court in Chambers why she felt the Petitioner would be unduly prejudice if this Ex Parte Order was set aside.

9. I have examined the reasons offered by the applicant for the delay. These would have been matters that the Learned Trial Judge, Cenac J. as he then was would have considered in arriving at his order. There was no evidence before him that the Applicant was suffering from an illness. It was incumbent upon the applicant to have furnished the Court with some medical evidence so as to be able to assess the physical effects of that illness. This was not done. Secondly, if the applicant was at all material things continuously out of the jurisdiction and residing out of England, it is my view that this would also have been considered by the Learned Judge, Cenac J., as he then was before making his Order. It is clear that having regard to the applicants absence and the failure of his Counsel to advance his case any further since the filing of summons for the setting aside of the Ex Parte Order, that the Applicant was not in any way serious about the Petition for Divorce nor its subsequent effects.

   I do not think that his third reason for the inordinate delay merits any serious consideration by this Court. I cannot envisage that the Applicant rested on his oars for 5 years and 7 months whilst endeavoring to secure legal representation from other solicitors after the breakdown of the relationship between himself and the original solicitors and then expect this Court to believe that he had been in a state of agitation where he had not succeeded in getting serious responses from the solicitors he had endeavored to engage from his distance in England.

10. It is my view that a delay of 5 years and 7 months really is outrageous and does not merit the consideration of this Court with a view to setting aside this Ex Parte Order. On that score alone, I think this application to set aside the Ex Parte Order of 13th February, 1995 should fail.

11. Flowing from this premise consideration of the other three factors which the Court should consider in setting aside an Ex Parte order need not bother this Court. But for completeness I shall deal with the prejudicial effect a setting aside order would have on the Petitioner, in these circumstance before me.

12. Because of the length of the delay in bringing this application before the Court spanning a period of ten (10) years since the Ex Parte Order was made on the 13th February, 1995, the Petitioner through no fault of her own now faces the prospect of losing property that was put solely in her name as a result of the Ex Parte Order. The Petitioner as I said earlier is 65 years old and now single. She has no children. The Applicant on the other hand has gotten on with his life, remarried, and together owns property with his new wife. To order that the parties revert to the Ex Parte Order - 13th February, 1995 position where each would own a one-half share in the said matrimonial property would be letting the Applicant "have his cake and eat it," to say so proverbially. That to my mind would be totally unfair and unjust in the circumstances, and highly prejudicial to the Petitioner. I am minded to say that in applying the "clean break" principle, the most sensible thing to do in the circumstances would be to let sleeping dogs lie. In other different circumstances the authorities (case law) provided by the Applicant's Counsel would have been very useful. But not in these circumstances. I therefore rule that the Ex Parte Order of 13th February, 1995 given under the hand of Cenac, J., as he then was, be allowed to stand. The application by the Respondent to set aside that order is hereby dismissed with no order as to costs.

Justice Frederick Bruce-Lyle
20th May, 2005