THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHMT2006/0099

BETWEEN:

DELBERT CHARLES

Petitioner

AND

MARIA CHARLES NEE PIPER

Respondent

Appearances:

Ms. Samantha Charles for Petitioner
Mrs. Veronica Barnard for Respondent

2008: October 7, 14
October 30

JUDGMENT

[1] The parties were married on 16th August 1997. On 1st February 2007, a decree nisi for the dissolution of the marriage was pronounced. This was later made absolute.

[2] The petitioner now applies for ancillary relief. He seeks a declaration that Parcel 1052B 619 and the house built on it constitutes community property to which he is entitled to a one half share. He also seeks consequential orders.

[3] It is convenient to state at the outset that from the evidence I find that Parcel 1052B 619 cannot possibly be community property. The lands were purchased by the respondent in 1988 many years before the marriage. The house which is affixed to that land forms part of the land. The respondent can have no interest in the parcel on the basis that it is community property. Article 1192 of Civil Code is clear:

> *"1. The property of persons married in community is divided into separate property and the property of the community;*
>
> *2. Separate property comprises –*
> *(a) the property, movable and immovable, which the spouses possess on the day when the marriage is solemnized.*
>
> *……*
>
> *(e) fruits, revenues and interest, of whatever nature they be, derived from separate property, the proceeds of separate property, and property acquired with separate funds or in exchange for separate property.*

3. Property which is acquired by the husband and wife during the marriage in any manner different from that above is declared the property of the community."

[4] In the alternative I understand the petitioner to be seeking to have the court make an order under Section 45 of the Divorce Act Cap. 4:03 of the law of St. Lucia.

[5] Section 45 provides as follows:

"The Court, on making a decree of divorce or of nullity of marriage may, if it think fit, on the application of either party made before the decree of divorce or nullity is made, make an order –

(a) if any property of the parties is community property within the meaning of the Civil Code

(i) Directing that either party shall, for such time as to the Court may seem fit, be entitled to use or usufruct of a part or the whole such property; or

(ii) Declaring either party forfeit to the other of his or her share of a part or of the whole of such property

(b) if any property of the parties or of either of them is separate property within the meaning of the Civil Code and the court is satisfied that the other party has made a substantial contribution (whether in the form of

money payments, or services, or prudent management, or otherwise howsoever) to the improvement or preservation of such property –

(i) directing the sale of such property and the division of the proceeds, after the payment of the expenses of the sale, between the parties in such proportions as the Court thinks fit; or

(ii) directing that either party pay to the other such sum. Either in one sum or in installments and either forthwith or at a future date and either with or without security, as the Court thinks fair and reasonable in return for contributions made by the other party."

[6] Under this section the court is not empowered to make a property adjustment order is the sense that section 24 of the Divorce Act permits. The court cannot order the transfer of the respondent's property to the petitioner taking into account the factors enumerated in section 25 of the Divorce Act.

[7] The court when acting under section 45 (b) is limited to directing the sale of the property and dividing the proceeds or directing that one party pay a determined sum to the other in return for contributions made by that other to the improvement or preservation of the property.

[8] It is important to bear the distinction between applications for a property adjustment order under section 24 and the order available under section 45.

[9] Alas, it does not appear that this distinction was appreciated by the petitioner. Under Rule 50 the application for ancillary relief including an application for a settlement of property order under section 24 of the Divorce Act is to be made by notice using form 15. This is the procedure the claimant adopted. As I have noted above he cannot succeed because the property in question is separate property and the contributions he swears to in his affidavit are not contributions to the welfare of the family but to the improvement of the property of the respondent.

[10] Rule 75 of the Divorce Rules requires that applications for a property order under section 45 of the Divorce Act must be made by summons with supporting affidavit. By itself this is fatal to the petitioners' application. But even if the court were minded to ignore the breach of this mandatory requirement the petitioner would still fail. The evidence adduced by the petitioner fell far short of convincing me that he in fact contributed significantly to the improvement of the respondent's property.

[11] Thus in this case where the applicant has not applied for a property order under section 45 and has failed as well to demonstrate that he made substantial contribution to the improvement of the respondent's property, I decline to grant the petitioner's application.

[12] The application is dismissed with costs to the respondent which I assess at $3,000.00.

BRIAN COTTLE
HIGH COURT JUDGE