

BARBADOS.

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Family Division

No. 505 of 2002

BETWEEN:

JORDAN LESENTE ARMENTHA

Applicant

AND

JORDAN VIVIAN NATHANIEL

Respondent

Before the Honourable Madam Justice Elneth Kentish, Judge of the High Court.

2005: March 09 and 10

April 05

Ms. Margot Greene for the Applicant.

Mr. Chezley Boyce for the Respondent.

DECISION

The History

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- [1] The Applicant and the Respondent now aged 72 years and 71 years respectively are both retirees having spent their working lives in England.
 - [2] When the parties first met in England the Respondent was in the process of divorcing his first wife now deceased. That marriage produced three children the youngest of whom Sarah was a minor aged 12 at the date of her mother's death in June 1982.
 - [3] In 1977 the Respondent took up residence with the Applicant, then residing at No. 60 Palmers Court, Shrewsbury Crescent, Stonebridge, London, where they both lived until their marriage on 15 September 1979 at Brent, London.
 - [4] At this time the property at No. 10 Christ Church Gardens, Kenton, Harrow Middlesex ("the U.K. property") which formed the matrimonial home of the Respondent and his then late wife was occupied by her until her death.
 - [5] In or about 1996 whilst the marriage between the parties was still subsisting the U.K. property which was in the sole name of the Respondent was sold.
 - [6] The marriage between the parties was later to falter. After much acrimony and bitterness, allegations of domestic

violence on the part of the Respondent and a protection order excluding him from No. 6 Waterhall Terrace, St. James ("the Barbados property"), on 29 August 2003 a decree absolute was granted under the provisions of the Family Law Act Cap 214 of the Laws of Barbados. ("the FLA").

The Application

- [7] In her application filed 2 July 2003 the Applicant seeks orders as follows:
- (a) an alteration pursuant to Section 57 of the Family Law Act transferring to the Applicant at least one-half share of the property situate at Number 6 Waterhall Terrace in the parish of Saint James in this Island;
 - (b) that the Respondent pay to the Applicant one-half share of the net proceeds of sale of the property situate at No. 10 Christ Church Gardens, Kenton Harrow, Middlesex, England;
 - (c) such other Orders as to the Court may deem fit.
- [8] That Application is supported by two affidavits of the Applicant filed 3 February 2004 and 16 February 2005 respectively.
- [9] In opposition to the Application two affidavits of the Respondent were filed on 16 March 2004 and 8 March 2005 respectively.
- [10] Other affidavits filed on behalf of both parties are no longer relevant. These were directed towards the issue of the contribution made by the Applicant to the construction of the dwellinghouse on the Barbados property. However, during the course of the hearing, Counsel for the Respondent, conceded the Applicant's financial contribution to the construction of the dwellinghouse and her entitlement to a one half share in the dwellinghouse. The affidavit evidence was supported by oral testimony by both parties.

The Issues

- [11] In view of that concession the issues for the court's determination are:
- (1) Whether (a) the proceeds of sale from the UK property and (b) the land itself of the Barbados property form part of the property of the parties or either of them for the purposes of the FLA.
 - (2) If so, whether the Applicant is entitled to the orders sought in her application."

The Assets

- [12] It is convenient to deal first of all with the land at No. 6 Waterhall Terrace, St. James. This land was conveyed into the sole name of the Respondent by a conveyance dated 20 October 1978 made between Emma Carmen Walcott et al of the First Part, Dodsworth Investment Co. Ltd. of the Second Part and the Respondent as Purchaser of the Third Part prior to the marriage but at a date when the parties were already living together but not yet married.
- [13] "Property is defined in s. 2 of the FLA thus:
- "Property" in relation to the parties to a marriage or either of them, means property to which those parties are, or that party is, as the case may be, entitled whether in possession or reversion."
- [14] It is now well settled law that the word "property" must be given a broad construction. See: **In the Marriage of Duff [1977] FLC 90-217**. It is equally well settled that all the assets of the parties must be considered in dealing with the distribution of property on the breakdown of the marriage.
- [15] Counsel for the Applicant referred the court to **W and W (1980) FLC 90-872** where Nygh J in affirming his earlier decision in **Aroney and Aroney (1979) FLC 90-709 at p. 78,785; (1979 5 Fam. L.R. 535 at 540** observed that
- "the Court must look at the totality of the assets of the parties whether acquired by inheritance, by pre-marital effort ... or by any way of business activity during the marriage, although as will be shown later, the manner in which the particular assets have been acquired or contributed to may be relevant in determining the overall distribution between the parties."
- [16] Counsel for the Respondent, however, referred the Court to **Nutting and Nutting (1978) FLC 90-140** in

support of his contention that the Applicant having made no financial contribution to the purchase price of the land it ought not to be regarded as property of the parties or, more specifically, property of the Respondent for the purposes of s. 57 of the FLA.

[17] **Nutting and Nutting** was decided in 1978 before both **Aroney and Aroney (1979)** and **W and W (1980)** but is not referred to in either of those cases.

[18] In the Barbadian case **In the Marriage of McClean and McClean (No. 131 of 1982)** unreported, former Chief Justice the Honourable Sir Denys A. Williams, then Puisne Judge, endorsed the following extract from the judgment of the Full Court of the Family Law Court of Australia in **Carter v Carter (1981) FLA 91-061 p. 76, 485 at p. 76,492**

"That it is her property, the husband's property or joint property is not a relevant issue ... It is not necessary to approach section 79 (section 57 of the 1981 Act) by way of section 78 (section 56).

Section 79 (1) (section 57 (1) of the 1981 Act) is quite clear. It refers to applications as to the property of the parties to the marriage or either of them. It does not differentiate as to when or how the property was acquired or which of the parties owns that property. The section provides that the court may make such order as it thinks fit altering the interests of the parties "in the property including an order for settlement of property". Again, there is no differentiation as to when or how the property was acquired or which of the parties owns that property.

Any property of either party or their joint property can therefore be dealt with by the court. No part of the property is to be separated out and defined as matrimonial property or any other sort of property. There is no part of the property that is to be excluded from the jurisdiction of the court to make an order changing the ownership of that property.

The proper approach is to ascertain what property is owned by the parties and then, applying the principles set out in subsection (2) and (4) of section 79 (subsections (2) and (3) of section 57 of the 1981 Act), to determine what orders ought to be made.

Where there is only one piece of property e.g. an interest in a matrimonial home, then the determination of the issue is relatively simple. Where the property is diverse, its acquisition took place at various times and the parties made differing contributions at differing times, then the position is more difficult from the practical point of view but the principles to be applied do not vary.

Where property is absolutely owned by one spouse before marriage, different considerations may apply under section 79 (4) (a) and (b) (section 57 (3) (a) and (b)) in the sense that the other spouse may not be able to show any direct or indirect contribution to the acquisition of that property. Nevertheless the other spouse may be able to rely on a contribution to the conservation or improvement of that property ... The position is that all property is to be brought into account and appropriate weight is to be given to the different factors relevant to each of them."

Thus it is clear that the assets of both parties must be taken into account whether owned jointly or separately and however acquired.

[19] I find therefore that the land does form part of the property of the Respondent for the purposes of s. 57 of the FLA.

[20] I now turn to the proceeds of sale of the UK property. It is first necessary to deal with the UK property itself. Counsel for the Respondent contends that the UK property must be excluded from these proceedings because the property was the subject of separate County Court proceedings in England between the Respondent and his late wife.