

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.463 OF 1998

BETWEEN:

JANICE HALL

Petitioner

and

JOEL HALL

Respondent

Appearances:

Victor I Cuffy Esq for the Petitioner

Stephen Huggins Esq for the Respondent

2000: February 25, March 14, April 3

DECISION

[1] MITCHELL, J: This is an application by a Wife for ancillary relief brought in divorce proceedings. Neither the petition nor this application was expressed to have been made under the provisions of any Act.

[2] The facts as I find them are as follows. The Wife is a nurse, while the Husband is a self-employed welder. The parties began an intimate relationship in late 1991. The Wife was a student nurse at the time. They began living together shortly after that date. The Husband acquired the matrimonial property in 1993 after they had started living together but before the marriage took place on 11 January 1997. He took either \$15,000.00 or \$20,000.00, it is not clear which, from his savings. He

borrowed the balance from the St Vincent Co-operative Bank to complete the purchase.

[3] Long before the marriage, the Wife's salary was an integral part of the family income. Part of her salary went to pay the Husband's workmen in his welding business, part of it was used to purchase materials and equipment for the welding business from time to time, part of it was used to purchase building materials for renovating and extending the building on the premises, and part of it was used to pay the mortgage. There were periods of time, as with many a young couple, when the Husband had little income and the Wife's income was the mainstay of the family. They both worked hard, and contributed to the paying off of the loan and the building of the matrimonial home on the land. The property was assessed at the request of the Wife on 10 June 1999 as being worth \$87,300.00 for the house, and \$62,712.00 for the land, to a total of \$150,012.00. The husband accepts that value. He claims that she cleaned out all the furnishings when she left the house. She claims she took none. I have no list or value of the items claimed under this head. I assume she took half of the furniture and household equipment.

[4] The parties were married on 11 January 1997. The marriage, once formalized, lasted only a short time. It is not disputed that in early 1998 the Husband began severely beating the Wife, and she had to apply to the Family Court for an order restraining him. Even after the order he continued beating her until she fled from the matrimonial home in September 1998. The Wife moved out in September 1998. She has been living in rented accommodation since, while the Husband has been enjoying the comforts of the matrimonial home. He continues to pay the small mortgage remaining on the home. There are no children of the marriage. The Decree Nisi was granted to the Wife in uncontested proceedings early with leave, on 29 April 1999.

- [5] The Wife also claims a share in the Husband's welding business. She clearly bought the welding plant used in the Husband's welding business. He claims both that it was a gift and that she lent him the money and he paid it back. She claims it was an investment in the business, so she is entitled to a partnership share in the business. I find that this is a small one-man business, even though the Husband admittedly has 2 to 4 employees. There is no evidence other than the Wife's say-so that she bought the welding plant and gave it to the Husband expecting to become a partner or investor in the business. It is extremely unlikely in the context of a young marriage that the Wife considered she was investing as a business partner in the Husband's business. I find that the welding plant and the business is the Husband's alone.
- [6] The Wife claims that she is entitled to at least an equal share or division of the matrimonial property. The Husband admits the Wife has a one-third interest, 35% he put it, in the matrimonial property. He claims a two-thirds share.
- [7] The Matrimonial Causes Act, Cap 176 of the 1991 Revised Laws of St Vincent and the Grenadines applies in these cases. This Act authorizes the court to order a party to a dissolving marriage to pay to the other party a periodic or lump sum for the purpose of adjusting the financial position of the parties. The court considers matters set out in section 34 of the Act in deciding how to exercise its powers to make an order. The court's jurisdiction kicks in on proof of neglect by one party to the marriage to provide reasonable maintenance for the other party or a child of the marriage. Still a part of the law of St Vincent is the old Married Women's Property Act, Cap 175. This is the Act that in England and in the West Indies removed the old common law disability against a married woman owning her own separate property. It traditionally provided, inter alia, a summary mechanism for a divorcing wife to have the court adjudicate on her property interests. She was required to prove her property rights before the court could make an order. Seldom is a separate application made today under Cap 175. The cases demonstrate that the tendency today is for the court acting only under Cap 176,

and applying the matters set out in section 34, to deal with all the maintenance and property rights of a divorcing couple. Both counsel in this case addressed the court on the principles that apply under Cap 176, and both by implication argued on the basis that Cap 175 did not apply. Even though in this case there is no application for maintenance, and this is purely a property dispute, the court will adjudicate on the interests of the parties to the marriage under the principles set out in Cap 176 and the case law that has flowed from that Act. There is no need to set out those principles here in full. The duty of the court under Cap 176 is to attempt to place the parties, so far as practicable, in the financial position in which they would have been if the marriage had not broken down. A one-third interest is now a starting point for a wife whose contributions to the acquisition of the matrimonial home are insignificant. In this case, the parties used their best efforts to contribute to the acquisition and construction of the matrimonial home. The Wife's contribution to the acquisition of the matrimonial home was not insignificant. The court is not required any longer to assess the financial contribution of each spouse nicely, and to apportion interests accordingly. I am satisfied that other than the initial \$15,000.00 put in by the Husband, the Wife more than did her share to build up the property to what it is today. It is only the Husband's evident bitterness to the Wife that caused him to deny her full and fair one half interest in the matrimonial property. A fair order in the circumstances of this case would be that the Husband pay the Wife one half of \$150,012.00 the agreed value of the matrimonial home. The Wife shall have her costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge