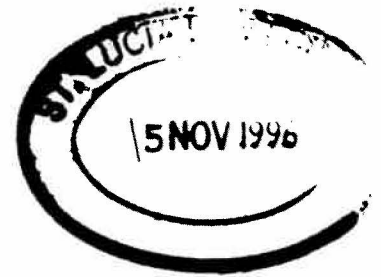


SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996



Suit No. D.5 of 1995

BETWEEN:

LUCIEN ELIAS CHARLES

Petitioner

and

ALETHA CHARLES

Respondent

Mr. A. Arthur for Petitioner
Respondent served. Does not appear.

1996: May 8 and 15

J U D G M E N T

MATTHEW J. (In Chambers).

On September 21, 1995 the Petitioner obtained an order for decree nisi dissolving the marriage of the Parties which was solemnized on July 7, 1974 in the City of Castries.

The Order stated that ancillary proceedings would be adjourned to Chambers.

The Petitioner filed a notice of application for ancillary relief asking for a declaration under Section 41(1) of the Divorce Act and that a portion of land at Riche Bois in Micoud and shown as parcel 1627B 25 be divided between the Parties or alternatively that one Party purchase the share of the other.

The notice was supported by an affidavit of the Petitioner stating that the Respondent and himself own community property consisting of two lots of land a house erected thereon and that he is in occupation of the house. He said the lots of land and house are valued at approximately \$200,000 and he is willing to purchase the Respondent's half share in the said lots and house.

The Respondent resides in the United States of America and she was served with the summons and affidavit by prepaid registered mail. The Respondent replied by a document purportedly made on April 21, 1996. It is described as an affidavit in support of summons but nowhere in the document does it say it was made before an authorised officer. There is no jurat.

So at most it is a letter in reply. In that letter she admits that she and the Petitioner own the lots and land in community but she says the Petitioner has not been in occupation of the house since 1992 but resides elsewhere and that the Petitioner owns other land in Mahaut of Micoud. She says she has been the one spending for the renovation of the house from 1979 to the present and in that period the only thing the Petitioner has bought for the house is a toilet seat.

She said that the child of the family, Reinette Natasha Charles born on April 24, 1977 is solely under her care and dependant on her for her needs and college fees.

On the record is a document dated May 2, 1996 and purportedly signed by both Parties to the effect that they are willing to send their daughter to the United States to further her education which would mainly be borne by the child's uncle and aunt.

At the hearing before this Court learned Counsel for the Petitioner did not dispute the facts in the Respondent's letter, save to say that the property is community property registered in the names of both Parties and that each Party is entitled to a half share.

I have stated many times before that in considering applications for ancillary relief in respect of property, the Court cannot look at the law of community only but must have regard to the Divorce Act as well. In Suit D.27 of 1993 between Camilla Jn. Baptiste v.

Lucien Jn. Baptiste I said at Page 13 the following:

"In earlier decisions I said the Court must take both the law of community and the Divorce Act into contemplation for both of them represent the law of Saint Lucia. Indeed Section 45 acknowledges that".

In her letter the Respondent stated that the Petitioner was brought to the Social Welfare authorities in Saint Lucia but because of the system's inadequacy he never paid one cent in child support. The Petitioner has not denied that either. I believe the Respondent.

In the circumstances of the case and in exercise of my discretion under Section 45 of the Divorce Act I declare that the Petitioner should forfeit some of his share of the property and I order that he shall be entitled to one-third of the community property and the Respondent to two-thirds.

The Respondent shall pay to the Petitioner one-third of the value of the property as determined by a competent valuer and she shall retain the property.

There shall be no order as to costs.

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A.N.J. MATTHEW
Puisne Judge