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SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1995

Suit No. D30 of 1992

BETWEEN:

EGBERT DOLCIE — Petitioner

and

MADELEINE DOLCIE — Respondent

Mr. D. Theodore for Petitioner

Mr. V. La Corbiniere for Respondent

1995: October 12 and 18.

J U D G M E N T

MATTHEW J. (In Chambers).

The husband is 56 years old and the wife is 49. They were married on March 21, 1970 and the wife obtained a decree nisi for divorce on March 5, 1993.

There are no children of the family.

On November 8, 1994 the husband filed a notice for ancillary relief and the only issue that arises for determination is a property

order and costs.

By an affidavit filed on the said November 8, 1994 the husband alleged that he is a stevedore and earns on average $1,000 a month.

He stated that the only property which falls into community was a lot of land at Ravine Chabot on which is located the matrimonial home, a partly wooden and partly concrete structure where the Parties reside, the wife upstairs and the husband downstairs.

The husband tendered a valuation of the property at $77,451.00 which was accepted by the wife.

The husband alleged that he was willing to purchase the wife's one half share of the property.

In her affidavit in opposition filed on November 17, 1994 the wife stated that the community property also consists of a Mitsubushi Lancer Motor Vehicle valued at $10,000. Learned Counsel for the husband accepted that valuation but stated that the wife should pay him $5,000 for his half share and keep the car.

The wife stated that she verily believes that the husband's average salary was between $2,000 and $3,000.

She stated that in 1978 she left her employment at Cunard Hotel La Toc to take care of the husband and his minor son. She said that throughout the marriage she was not adequately maintained by the husband. Strangely enough the wife did not ask for a maintenance order or any other financial provisions. Her only claim was for the whole of the lot and the land.

She stated that for over 5 years the husband rented the bottom floor of the house at $350.00 a month and gave her nothing even though the Parties were living together on the top floor.

During the course of the proceedings a letter from Geest was tendered to show the husband no longer worked as a watchman after August 1993. I do not see the relevance of this for none of the affidavits had mentioned him to be working for Geest. They both treated him only as a stevedore.

Learned Counsel for the wife stated as already indicated that he had no problem with the valuation of the property except that the top where the wife lives is the wooden part which is in need of substantial repairs.

Both Counsel agreed to rely only on their respective affidavits and neither Party wished to cross-examine the other Party on his or her affidavit.

Mr. La Corbiniere asked the Court to make an order under Section 45(a) (ii) of the Divorce Act but bearing in mind the guidelines laid down in Section 45 (b).

He submitted that the wife had made a substantial contribution both in terms of her money which went into the maintenance of the household and also by her services.

In his reply Mr. Theodore joined issue with the other side on the question of the wife leaving her employment at La Toc to take care of the husband and his son.

Counsel submitted that the wife is entitled by law to share in the community property.

Counsel referred to Sections 24 and 25 of the Divorce Act and especially paragraph (f) of sub-Section (1) of Section 25.

Counsel submitted that it has to be heinous conduct on the part of one spouse to have his share forfeited.

Counsel referred the Court to Suit D27 of 1993 CAMILLA FRANCES JN. BAPTISTE v. LUCIEN GEORGE JN. BAPTISTE decided on March 3, 1995 at Page 13 where it was stated by the Court that it must take both the law of community and the Divorce Act into contemplation in such actions for both of them represent the law of Saint Lucia.

I have had regard to the provisions of the Divorce Act to which I was directed.

I am of the view that both Parties made substantial contributions to the household over the 24 years that the marriage existed. I do not find this is a suitable case where I should ask the husband to forfeit his share of the community property. I have not been shown that there is an alternative home for him and such an order would result in placing him on the streets.

Although I was not asked to do so I gave serious consideration to sharing the ownership of the house so that each Party gets one storey but I had to reconsider this in view of the fact that the bottom storey may be more valuable.

It will have to be left to the Parties and their Counsel how they shall give practical effect to the order I propose to make.

My order in respect of that property is that it be owned by the Parties in equal shares just as it is registered in the Land Registry as parcel 1047C 415.

I further order the husband to pay the wife $5,000 for her share of the Motor Car.

There shall be no order as to costs.

A.N.J. MATTHEW
Puisne Judge