



SAINT LUCIA

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

Suit No. D19 of 1994

BETWEEN:

JOSEPH FAUCHER

Petitioner

and

THERESA FAUCHER

Respondent

Mr. M. Francois for the Petitioner

Mr. A. Richlieu for the Respondent

1995: May 3 and 9.

J U D G M E N T

MATTHEW J. (In Chambers).

The Petitioner is approximately 68 years old and the Respondent is approximately 64 years old. They were married in England on April 28, 1980.

On April 20, 1994 the Petitioner filed a petition for divorce but the petition has not yet been heard.

On April 4, 1995 the Petitioner filed a summons for an

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interlocutory injunction to restrain the Respondent from denying him access to the matrimonial property situated at Goodlands in the Quarter of Castries and from assaulting or persecuting him until the hearing of the divorce proceedings.

In support of that summons he filed an affidavit on the said April 4, 1995.

In opposition to the summons and the supporting affidavit the Respondent filed an affidavit on April 19, 1995. In paragraph 25 of that affidavit the Respondent asked to dismiss the application of the Petitioner and to grant an injunction in her favour.

I took cognizance of paragraphs 2, 3, 4, 5, 6, 7 and 8 of the Petitioner's affidavit in particular. The Petitioner stated that he acquired sole and absolute title of the matrimonial property which was purchased before his marriage to the Respondent.

I question this last allegation for in paragraph 2 the Petitioner stated that the deed of sale was executed on January 9, 1981 and the marriage certificate clearly states that the Parties got married at the Register Office in London, Borough of Brent on April 29, 1980.

The Petitioner stated that the Respondent had sold a portion of the property and withheld all the proceeds of sale.

He stated that there is an adjoining dwelling house which was also part of the matrimonial property and which he used to occupy and live in on his own. He said he has been denied access to that property and the Respondent has changed the locks and has assaulted him on several occasions and as a result, he has been forced to leave the said house.

In her affidavit and in particular paragraphs 3, 4, 5, 6, 7, 10 and 12 to 17 the Respondent alleged that the property was bought with their joint funds but because she was unable to read and write she left the Petitioner to handle the conveyance. She said it is only recently that she has realised that the deed was in the sole name of the Petitioner.

She admitted that the property was sold but she states that the proceeds were utilised to pay off their debts. She said the Petitioner remained in England from 1977 to 1993 and he came to Saint Lucia unknown to her and took up residence with his former wife at La'bayee.

She said she still has a connection with England but when she comes to Saint Lucia she resides on the property at Goodlands and that while she is in Saint Lucia the Petitioner does not live at the home.

She said when she returned to Saint Lucia in March 1995 she found

that the Petitioner and his former wife had been utilising her bedroom.

She stated that on March 24, 1995 the Petitioner and his two brothers entered the house about 6:00 a.m. and proceeded to use obscene and abusive language to her and proceeded to beat her using a piece of iron in the process.

She tendered a medical certificate by Dr. Marius who saw her on April 11, 1995. He found her lower lip swollen, tender over the chest and upper back muscles, and her shoulder movements were painful and limited.

In his submissions learned Counsel for the Petitioner has asked me to be guided by the leading case on interlocutory injunctions **AMERICAN CYANAMID vs. ETHICON LTD. 1975 AC 396** and the principles there laid out and he made mention of Lord Diplock's mention of the preservation of the status quo.

I thank learned Counsel for the reference and I have also looked at the United Kingdom Supreme Court Practice, 1979, Volume 1 where these principles are set out at paragraphs 29/1/11; 29/1/11A and 29/1/11B.

In his submissions learned Counsel for the Respondent referred to the medical certificate and said that the Petitioner has

alternative accommodation. He asked the Court to look at the respective physiques of the Parties.

There is no doubt in my mind that the marriage is on the rocks and the relationship of the Parties is severely strained. I do not believe that the Respondent did, nor is she capable of inflicting, assault on the Petitioner. Rather I believe he was the one who dealt serious blows to her.

I also believe that not only has the Petitioner alternative accommodation but he in fact regularly lives with his former wife and sometimes with his brother.

I believe the Petitioner wants to use his right of entry to beat up the Respondent.

During the last Christmas vacation I dealt with a similar case in Dominica. It was Suit 32 of 1994 **JANE FONTAINE v. JAMES FONTAINE** heard on December 28, 1994 and decision given on December 30, 1994. On page 5 of that judgment I referred to a passage from Rayden on Divorce, the 14th edition, at page 941. The passage reads:

"Pending divorce proceedings the Court has power to grant an injunction to compel a husband to allow his wife to remain in the matrimonial home and where he had been guilty of adultery or cruelty, to exclude him from the home, even though the husband is the legal owner or tenant thereof.

Injunctions requiring the other spouse to leave the matrimonial home should never be made ex parte save in the most exceptional circumstances."

I believe the Respondent is in fear of her safety and I am of the view that there is need to protect her health.

The balance of convenience suggests that I refuse the application of the Petitioner and grant a temporary injunction in favour of the Respondent. Indeed that would be a preservation of the status quo till the divorce hearing.

My Order is therefore -

Upon the Respondent's undertaking to pay the damages in case the Court shall hereafter be of opinion that the Petitioner shall have sustained any by reason of this Order which the Respondent ought to pay:

1. **IT IS HEREBY ORDERED** that the Petitioner is restrained and an injunction is granted restraining the Petitioner from entering on or remaining on the property at Goodlands which is the subject matter of these proceedings until further order;
2. **IT IS FURTHER ORDERED** that the Petitioner be restrained from molesting, harassing, threatening, assaulting or beating the Respondent;

3. Costs in this matter shall be reserved.

A.N.J. MATTHEW

Puisne Judge