2012 No. 39/ APL DEMERARA

IN THE FULL COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL APPEAL JURISDICTION

BETWEEN:

In the matter of the Married Persons Property Act Chapter 45:04 as amended by the Married Persons Property (Amendment) Act No. 20 of 1990.

-and-

In the matter of an application for Division of Property by SHEVANI SEWEDA.

SHEVANI SEWEDA

Appellant

-and-

AMAR CHAND SEWEDA

Respondent

The Honourable Justices James Bovell-Drakes and Navindra Singh, Puisne Judges

Mr. C. A. Nigel Hughes representing the Appellant

Mr. K. A. Juman-Yassin representing the Respondent

Heard November 20th, December 19th 2013, January 6th and March 3rd 2014

DECISION

Civil Action No. 459/ SA of 2010 was instituted by the Appellant on June 28th 2010 by way of an originating summons claiming *inter alia* a Declaration that the Appellant is entitled to an equity in the movable and immovable properties in the name of the Respondent purchased from the resources of the marriage and during the marriage.

Written submissions were presented on behalf of both the Appellant and Respondent to a Judge in Chambers and on May 18th 2012, her Honour Justice Insanally gave a decision granting the Appellant "*a 1/3 share in and to the matrimonial property and the furniture and equipment less the items already taken by the applicant (the Appellant herein), and since the applicant already owns one of the vehicles, the Respondent shall retain the other vehicle for his own use and benefit, the television to remain in the possession of the Respondent.*"

It is from that order that this appeal lies.

The substantive law applicable in this case is the Married Persons' Property Act, CAP 45:04 as amended by the Married Persons' Property (Amendment) Act 1990; Act No. 20 of 1990.

Section 4 (b) (9) of the Married Persons' Property (Amendment) Act 1990 is very clear in its wording and therefore no lengthy discourse by me is required regarding its interpretation.

Counsel for the Respondent, Mr. Juman-Yassin, submitted that contribution by a spouse is a factor which a Trial Judge can take into account in considering whether to vary the statutory award (Section 4 (b) (9) (b) of the Married Persons' Property (Amendment) Act 1990. I disagree.

In my opinion the Married Persons' Property (Amendment) Act 1990 was principally enacted to bring to an end to and remove the need for a Court to sit and engage in forensic matrimonial accounting. A Court is no longer required to sit and determine what every penny that came in to a marriage was spent on or by whom.

It is a pragmatic recognition that both spouses contribute to the operation of the family unit and the value of that contribution, where the parties have been living together for at least five years, has been assessed by the legislators to be either one-third or one-half, based on whether or not the claimant spouse was gainfully employed and that statutory assessment can only be varied by a Judge for good and sufficient reason.

Good and sufficient reason in a legal context and in the context of varying a statutory award, in my opinion, simply means a legitimate reason supported by compelling evidence.

Counsel for the Respondent accepts that by virtue of the statute the Appellant is entitled to a ½ share or interest in the parties' matrimonial property, however he submits that the learned Trial Judge was entitled to vary and did vary that award, firstly, because the Appellant did not rebut the assertions of the Respondent that he, the Respondent, made all of the payments, particularly towards the purchase of the real property; and he is probably right, that this is a conclusion of the Trial Judge since the record of the decision states;

"*The law (MPPA and Amendment) starts from the premise that if the wife does not work she is entitled to 1/3 and if she worked she is entitled to a ½ subject to the court's discretion to vary these amounts based on* ***the contribution of the parties.***" [Bold print emphasis mine]

"*He also told the court that the applicant worked from 2001-2010 as a pharmacist but that she banked all her money in her personal bank Account. The applicant provided none of this information for the court to be able to see how she got the money and how she made the contributions. The Respondent said that he also paid the monthly groceries. The Applicant has not proven to the court what contribution she has made, nor how much and to which of the assets she made these contributions. The applicant's application is bare and* ***the court is unable to ascertain what contributions the applicant made to the acquisition of the matrimonial assets.***" [Bold print emphasis mine]

I must say, it is trite law that a specific contribution does not have to be made to a specific property for a spouse to be entitled to a share in and to that property. As long as the property is matrimonial property the entitlement is statutory.

Nevertheless, I do not find that the statute requires proof of contribution and I further do not believe that contribution can be taken into consideration as a reason for varying the statutory award.

Indeed, the fact that Section 4 (b) (9) of the Married Persons' Property (Amendment) Act 1990, specifically gives a Judge discretion to take contributions into consideration in cases where the parties have been living together for less than five years, confirms such an interpretation.

Notwithstanding this, assuming that the Trial Judge took this into consideration as a good and sufficient reason for varying the statutory award, it is not disputed in the evidence that all of the payments towards the liquidation of the mortgage for the purchase of the real property was made from a bank account held jointly by the parties and therefore as a matter of law neither of the parties can claim to have solely paid for that asset. Whether they were married or not the funds in that account were by law jointly owned by them.

Secondly, Counsel for the Respondent submitted that the Trial Judge varied the statutory award because the Appellant failed to make a full and frank disclosure regarding her contributions; and, again, maybe the Trial Judge did misdirect herself in this regard since the record of the decision states;

"*Her application is bare. She merely said that the money came from a joint Bank Account,* ***but when asked to produce the Bank Accounts, she neglected to do so.***" [Bold print emphasis mine]

I find this submission of Counsel and finding of the Trial Judge disturbing since the Respondent had filed a summons for particulars but before that summons was determined, the Respondent withdrew it and I cannot find anything in the record to show or suggest that a Court or a Judge had requested that these Bank

Accounts be produced. There is nothing before this Court to support a claim that the Appellant failed to make full and frank disclosure before the Trial Judge.

In any event based on what I have already said with regards to the issue of contributions, this really is a non-issue.

I further find that the Trial Judge erred in making a determination as to which party gets which vehicle, since there is no evidence of the value of any of the vehicles listed and an award under the MPPA has to do with value rather than requiring a Court to physically divide assets. If the parties determine that they can divide their assets amicably in settling the judgment, that's their prerogative.

Further, the Trial Judge has provided no basis for ruling that "*the television to remain in the possession of the Respondent*". I find that the television forms part of the matrimonial assets and as such will be subject to the final order of this Court, stated below.

Having examined the record of appeal I did not find any circumstance arising or any good and sufficient reason, from the evidence, that would cause me to exercise my discretion to vary the statutory entitlement of the Appellant.

The order of the Trial Judge is therefore vacated and it is hereby ordered that the Appellant is awarded one-half of the net value of the matrimonial assets, that is to say, one-half of the total value of the assets listed in Schedule A and B attached to the Appellant's affidavit dated June 28th 2010 in Action No. 459/ SA of 2010 having deducted any liability/ies that may be attached to any of those assets.

In the circumstances and for the reasons stated above the appeal is granted with costs in the sum of $75,000.00 against the Respondent.

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Justice N. A. Singh