

Jaspal Singh v Melville Marie-Anne
[2000] SGHC 200

Case Number : Div P 865/1997
Decision Date : 29 September 2000
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Imran H Khwaja (Tan Rajah & Cheah) for the petitioner/respondent; Ramalingam Kasi and B Uthayancharan (Raj Kumar & Rama) for the respondent/appellant
Parties : Jaspal Singh — Melville Marie-Anne

Family Law – Matrimonial assets – Division – Apportionment of assets – Matrimonial home being separately apportioned – Whether separate apportionment justified – Steps to be taken in apportioning assets – ss 112(2) & 120(10) Women's Charter (Cap 353, 1997 Rev Ed)

Family Law – Matrimonial assets – Division – Apportionment in percentage terms by court – Parties allowed to agree between themselves on how to divide assets

: The parties were married in December 1977 in Australia. The petitioner is a Singapore citizen and the respondent is an Australian citizen. After they married the petitioner returned to Singapore with the respondent to set up home, and they had three children. Eventually the marriage broke down. The respondent returned to Australia, and they were divorced in December 1997.

The divorce itself on the ground of the respondent's unreasonable behaviour was relatively uneventful. Matters became contentious over the division of the matrimonial assets.

These matters were heard before a district judge who ordered that:

1 The respondent shall retain the property known as 1 Rosewood Avenue, Thornton, New South Wales, Australia and shall bear the outstanding mortgage thereon;

2 The respondent shall transfer her share of the property known as 13 Balmoral Crescent, Singapore to the petitioner within four months of the date of the order herein and the petitioner shall refund to the respondent all moneys withdrawn from the respondent's CPF account and applied to the purchase of the property known as 13 Balmoral Crescent, Singapore together with accrued interest.

3 If the respondent fails to execute the transfer of her share of the property known as 13 Balmoral Crescent, Singapore pursuant to cl 2 above, the Registrar of the Subordinate Courts is hereby empowered to do all acts and sign all documents to transfer the respondent's share of the property known as 13 Balmoral Crescent, Singapore to the petitioner.

4 The property known as 36 Gwandalan Close, Seaham, New South Wales, Australia shall be sold within four months of the date of the order herein and the proceeds of sale shall be divided within 85% to the petitioner and 15% to the respondent.

5 Each party to retain their respective CPF contributions.

In his grounds of decision, he explained that

In view of all the facts and circumstances of the case, I found that it would be just and equitable to award the respondent 35% of the Balmoral property, and 20% of the other matrimonial assets. I found that the respondent should have 35% of the Balmoral property, because of the following factors:

a The respondent`s contribution of S\$15,210 from her CPF to the initial purchase of the property.

b The respondent`s contributions to the acquisition of the property in terms of searching for a suitable property to buy, working with the contractors and purchasing materials.

c The fact that the bulk of the respondent`s contributions would have been there and to that property, it being the matrimonial home.

The district judge had arrived at the orders set out in the foregoing paragraph on the basis of the respondent`s 35% and 20% shares of the matrimonial assets.

The respondent was dissatisfied with the orders and appealed that

1 the (respondent) be entitled to an equal division or alternatively to a fair and equitable distribution of all the assets acquired jointly or by either party to the marriage during the course of their marriage;

2 the (respondent) be entitled to an equal division or alternatively to a fair and equitable distribution of the matrimonial assets of the club memberships and shares in the public listed companies, upon which the learned District Judge failed to make an order;

The matrimonial assets comprised real property in Singapore and Australia, club memberships in Singapore and Malaysia, shares in listed companies, and the moneys in the parties` Central Provident Fund accounts.

The principal assets were two houses at 1 Rosewood Avenue, Thornton (`the Thornton property`) and at 13 Balmoral Crescent (`the Balmoral Crescent property`) and a plot of land at 36, Gwandalan Close, Seaham (`the Seaham property`).

The district judge made the orders after taking into account the circumstances and purposes of the acquisition of each property.

The Thornton property was purchased by the respondent in her own name for A\$160,416 in August 1996 after the marriage had broken down. The funds came from the sale proceeds of another property also purchased in the respondent`s name. There was a bank loan of A\$59,000 taken by the

respondent secured by this property. The district judge found that the loan was not taken for the purchase of the property but for the respondent`s own use. The property is the respondent`s home following her return to Australia.

The Balmoral Crescent property was purchased in the parties` joint names. Both of them contributed to the acquisition of this property. The property was purchased in 1989, before the marriage broke down. It was the matrimonial home, and still is the petitioner`s home. There are three loans secured by the property.

The Seaham property is a plot of land bought as an investment in 1990 by the parties in their joint names, funded by a bank loan which has since been repaid. The district judge found that both parties had contributed in the repayments.

After hearing counsel, I allowed the appeal and ordered that

(i) the matrimonial assets shall be shared 65:35 between the petitioner and the respondent.

(ii) the total value of the matrimonial assets is assessed at \$805,082.

(iii) in the implementation of the division the petitioner may retain the property known as 13 Balmoral Crescent, Singapore and the respondent may retain the property at 1 Rosewood Avenue, Thornton, each to be adjusted against the agreed values, and

(iv) the parties are to work out within two weeks an agreement for the division to be completed in three months, or in such extended periods as may be agreed.

Sections 112(1) and (2) of the Women`s Charter stipulate that

(1) The court shall have power, when granting or subsequent to the grant of a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

(2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

(a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;

(b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;

(c) the needs of the children (if any) of the marriage;

(d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;

(e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;

(f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;

(g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and

(h) the matters referred to in section 114 (1) so far as they are relevant.

Subsection (2) requires that all relevant matters including but not limited to those set out be considered in the division of matrimonial assets. In most cases, it would be practical and desirable to have a global apportionment of all the assets. Where circumstances require, an asset can be apportioned specifically, the overriding consideration being to come to a just and equitable result.

I did not think that the circumstances referred to in [para] 4 required a separate apportionment for the Balmoral Crescent property, and I dealt with the apportionment on a global basis.

A court may want to avoid displacing parties from their homes when dividing matrimonial assets. This can be done by allowing them to retain their homes within the framework of the overall division, as provided in my order (iii). In this case, if the petitioner wants to retain the Balmoral Crescent property, he will have to pay the respondent 35% of its value or give credit for it to the respondent in the division, and if the respondent wishes to keep the Thornton property, she can do that by paying the petitioner 65% of its value, or give credit for it to the Plaintiff in the division.

In the course of working out the values of the matrimonial assets, the district judge made two errors. He adopted the agreed market value of the Thornton property of A\$155,000 as its value without deducting the A\$59,000 loan secured by it. This is wrong because the respondent`s interest in the property is subject to the bank`s interest. If the property is sold the respondent will not be able to retain the full sale price. She has to repay the bank and can only keep the remainder. The district judge should have taken the value of the property at A\$96,000 (A\$155,000-A\$59,000).

When the district judge worked out the total value of the matrimonial assets he added up the values of all the assets, then he deducted from that the petitioner`s personal overdraft liabilities to several banks totaling \$115,481. He should take those debts into consideration in the course of the division, but he should not take them out of the value of the matrimonial assets. These debts which are not secured by the matrimonial assets do not diminish their value, and should not be deducted from the matrimonial assets. They should be considered as debts under s 112(2)(b) (if they come within the provision) and s 114(1)(b).

The district judge could have avoided the pitfalls by

(i) identifying the assets which are matrimonial assets in accordance with s120 (10),

- (ii) ascertaining as far as possible their values that may be realised and be available for division,
- (iii) taking into account all relevant circumstances including the matters under s 112 (2), and then
- (iv) deciding on the apportionment.

I went through the process, worked out the value of each matrimonial asset and came to the total of \$805,082, and I ordered a 65:35 apportionment in favour of the petitioner. I will not go into the makeup of the \$805,082 or the basis for the apportionment as the parties have accepted them.

I then departed from the usual practice at this stage. I did not set out how the division is to be carried out. There was a variety of types of assets involved. Some of them are more readily realisable and disposable than others. A party may have a greater attachment to some of them than the others. The parties should be allowed to agree between themselves on how to divide the assets by keeping those they want to keep, liquidating the remainder, and completing the division by cash adjustments. They can come to any arrangement as long as each party gets its share of the assets in kind, or cash, or both.

I felt that the petitioner, a senior civil servant, and the respondent, a lawyer, and their respective solicitors should be able to work out the division better than I could without consultation with them. I gave them time to work out an arrangement between themselves, with the proviso that they were to revert to me for me to order the division if they failed to agree, or if they needed the terms of agreement to be embodied in an order of court.

In the event the parties had made good use of the opportunity and agreed on the division without coming back to me. I believe this practice can be employed to good effect in appropriate cases.

Outcome:

Appeal allowed.