

IN THE FIRST CLASS MAGISTRATE'S COURT OF FIJI
(WESTERN DIVISION) AT NADI

Matrimonial Cause No: 57 of 2002

BETWEEN : HUGH NICHOLAS PETRIE RAGG
of Lot 12 Kartaram Estate, Namaka, Nadi Pilot

PETITIONER

AND : MOLLY ALICE MURPHY
of Lot 19, Qanville Estate, Nasoso, Nadi, Safety Education Officer
with CAAFI.

RESPONDENT

AND : DEBORAH WILLIAMS
of Suva, Bank Officer

FIRST CO-RESPONDENT

AND : CHRISTINE JULIE JONES
of Hamilton, New Zealand, Salesperson.

SECOND CO-RESPONDENT

For the Petitioner : M/s. Vasantika Patel

For the Respondent : Mr. Roopesh Singh

Date of Hearing : 10th November, 2003

Date of Judgment : 19th February, 2004

J U D G M E N T

In an Ex-parte Notice of Motion dated 26.11.03, the Respondent's counsel is seeking, inter-alia, an order that the Respondent be allowed to rent out the dwelling house on the land comprised in Certificate of Title number 17517.

The Respondent has submitted that in the best interest of the parties and the children of the marriage the matrimonial home (CT 17517) be retained as a capital investment for the future benefit of the children. Mr. R. Singh on behalf of the Respondent has submitted the following :

- a) The Respondent feels that there is no guarantee that the Petitioner will continue with maintenance payment once the matter is concluded;
- b) The Petitioner has liquidated or is in the process of liquidating his assets and sending money overseas;
- c) The matrimonial home is the only asset not yet liquidated and if the Petitioner resides overseas the Respondent will have difficulties if maintenance is not paid by the petitioner;
- d) The Petitioner is a flight risk.
- e) It would be fair and just between the parties to rent out the matrimonial home instead of selling it.

The Petitioner's counsel Ms. Vasantika Patel submitted that :

- a) The Respondent's submission for the matrimonial home not to be sold is tantamount to depriving the Petitioner of the whole of his interest in the matrimonial home in the circumstances which are unjust and unreasonable;
- b) The Respondent's allegations that the Petitioner is a flight risk is totally without substance. He had been to Australia and has corresponded with her by e-mail.
- c) Maintenance payments have always been paid in advance and consequently any fear on her part that he will not pay maintenance once the matter is concluded is without basis and contrary to court records.
- d) The order for Sale of the matrimonial home granted by this court to the Petitioner is a fair and reasonable one and that both the parties could be paid out after going into accounts.


The learned counsel Ms. Patel referred to Section 86 of the Matrimonial Causes Act Cap 51 under which the Respondent is asking for a stay of the order for sale of the property comprised in CT 17517 and for an order that she be allowed to rent out the dwelling house. She submitted that the Court must consider what is "just and equitable in the circumstances of the case" in Section 86. She also pointed out that the court has already taken into account the best interest of the children in making orders for their maintenance

Ms. Patel has put forward another option instead of selling of the matrimonial home i.e. the Petitioner is prepared to defer the sale until the youngest child turns 18 years of age in November, 2015. Then it could be sold within 12 months with both of them sharing 50% of the proceed.

Alternatively, one party buys out the other party's half interest at 50% of the fair market value after being valued by three (3) independent registered valuers. Or it could be sold in the open market and the proceeds could be divided on a 50/50 basis between them after all relevant costs in relation to the sale have been taken into consideration.

The learned counsel for the Respondent in his reply in writing dated 02.01.04 stated as follows:

- a) the Petitioner's FNPF contributions ought to be taken into consideration when distributing the matrimonial property between the parties since a large part of it was accumulated during the period of the marriage;
- b) the Respondent has made greater financial contribution to the matrimonial home and consequently a constructive trust exists in favour of the Respondent over a greater part of the matrimonial home.
- c) Furthermore, the Petitioner has already taken his fair share of the matrimonial property
- d) The court should consider the Petitioner's financial gain from the liquidation of the various matrimonial assets like the boat and cars.

I accept the submission by Ms. Patel that for the matrimonial home not to be sold is tantamount to depriving the petitioner of the whole of his interest in the matrimonial in the circumstances which are unjust and unreasonable. 

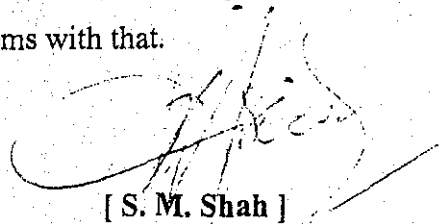
I am also of the view that the order for the sale of the matrimonial home is a fair and reasonable one in that both the parties would be paid out once all accounts have been taken into consideration.

There is no concrete evidence that the petitioner is a flight risk. In the past, he has been to Australia on numerous occasions and has kept in touch with the respondent.

There is also no evidence before the court that the petitioner will run away from Fiji without paying maintenance. My perusal of the records indicate that maintenance payment have always been up to-date and on most occasion in advance.

Apart from sale of the matrimonial home, the other option floated is to the effect that the sale of the house be delayed until 2015 when the youngest child turns 18 years old. This would mean that status quo is maintained. Also, in my view, this is a compromise favouring neither party. His interest remains in the matrimonial property until 2015 when it could be sold and proceed shared equally. The end result of this option will be that the sale would be delayed in the interests of the children until the youngest one reaches 18.

The motion before the court seeks to stop the sale of the house and that it be rented out by the respondent. For the reasons given above, this motion fails. However, if both the parties themselves with the assistance of their counsel agreed to delay sale of the matrimonial house until 2015, then I see no problems with that.



[S. M. Shah]

Resident Magistrate

19th February, 2004