

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No.780 of 1992

BETWEEN

SOOKDEO LALCHAN

Petitioner

AND

DEOMATIE LALCHAN

Respondent

Before the Honourable Mr. Justice Ventour

Appearances:

Ms. L. Lucky-Samaroo for the Petitioner

Mr. A. Pierre for the Respondent

JUDGMENT

By Notice filed on April 8, 1993 the Respondent is seeking from this Court the following reliefs:

- (a) A declaration that the property known and assessed at No.56 9th Street, Barataria is jointly owned by the Petitioner and the Respondent;

- (b) That the Respondent be granted a property transfer order in respect of the property known as No.56 9th Street, Barataria namely that the said property be transferred into the joint names of the Petitioner and the Respondent; or alternatively the Petitioner do pay to the Respondent such lumpsum as the Court thinks reasonable in lieu of the Respondent's share, interest and entitlement in the said property;
- (c) That the Petitioner be ordered to make a lumpsum payment to the Respondent in accordance with his other capital assets;
- (d) Cost of the proceedings certified fit for advocate Attorney.

By an order of the Court made on the 6th day of December, 1995 an amended Notice was filed on 9th December, 1997 to include in the said Notice the property which was considered to be the matrimonial home located at Lalwah Trace, Don Miguel Road, San Juan comprising 406.6 s.m. (the Lalwah Trace property).

In support of the said application the Respondent filed three affidavits and sought leave of the Court to use four other affidavits filed in other applications. Two affidavits were filed on behalf of the Petitioner.

I consider it very important at this stage to indicate the basis upon which the Respondent sought and obtained leave to amend her Notice to include the property described as the Lalwah Trace property.

The parties were married on 23rd June, 1985. Prior to the marriage, however, the parties lived together as man and wife at the Lalwah Trace property. The Petitioner testified that their first child was conceived by the Respondent in the year 1983 and it was during her period of conception that he invited her to live with him and so they lived together as

man and wife from February 9, 1984 at the Lalwah Trace property. At that time the said property was owned by the Petitioner's mother. Unfortunately, she died on 2nd February, 1987 and by her Will she bequeathed to the Petitioner the "dwelling house together with the lot of land on which it stands for his absolute use and benefit." The Petitioner who was named as the Executor in his mother's Will was granted probate on 8th November, 1991. The Deed of assent was registered as No. 9467 of 1993 in which the said property was conveyed to the Petitioner as the beneficiary named in the Will of his mother.

By Deed of Conveyance dated 14th January, 1994 and registered as No.3488 of 1994 the Petitioner conveyed the Lalwah Trace property to his nephew Vickram Lalchan with whom he had a close relationship.

Notwithstanding the above facts the Petitioner stated quite categorically under oath in paragraph 16 of his affidavit filed on 25th June, 1993 that the said property, that is the Lalwah Trace property was owned by his sister. He puts it this way:

"The Respondent resides in the former matrimonial home which is in reasonable good repair. The house belongs to my sister and I have her assurance that the Respondent and the children can remain there for as long as the Respondent desires."

This sworn statement was made by the Petitioner even though he had on the 12th day of February, 1992 executed a Deed of Assent conveying the said property to himself as the named beneficiary under the Will of his deceased mother. At the time, he was still residing with his family in the matrimonial home and as the evidence will reveal he did not disclose to his wife (the Respondent) that he had inherited the said property from his deceased mother.

In the course of events the Respondent had cause to carry out a title search of the property described as the matrimonial home and the search revealed to the Respondent for the first time that in fact the Lalwah Trace property was owned, not by the sister of the Petitioner as he had alleged, but rather by the Petitioner himself. It was that revelation which gave rise to the Respondent's application to amend her Notice to include the Lalwah Trace Property which was in fact the matrimonial home.

Not only was the Respondent granted leave to amend the said Notice as I have indicated earlier but a subsequent application was made by the Respondent for an **avoidance of disposition** order with respect to the conveyance of the matrimonial home by the Petitioner to his nephew Vickram Lalchan. The Order avoiding the said disposition was in fact made by the Honourable Madam Justice Barnes on 10th February, 1998.

As a consequence of the above, the Respondent is now seeking an order of this Court transferring the property described as No. 56, 9th Street, Barataria (the Barataria property) and the Lalwah Trace property into the joint names of the Petitioner and the Respondent.

There were two other applications before the Court. Although there appear to be some misunderstanding as to the status of those applications the official record of this Court clearly shows that when the Notice seeking property settlement or lumpsum payment came up before the Court for hearing on 22nd day of October, 1998 counsel for both parties indicated to the Court that there were two other applications before the Court viz. a summons filed on 24th February, 1993 for a Section 47 declaration and a summons filed on 19th April, 1993 for variation of the consent order made by the Court with respect to

the maintenance of the Respondent and the children of the family. I shall deal with both applications in the course of this judgment.

The Respondent has testified that she married the Petitioner on 23rd June, 1985 having previously lived with the Petitioner as man and wife for approximately one year before the actual marriage. In fact, the parties had established a relationship since 1977 and until 1984 when she became pregnant with their first child she was employed full time and during that time it was her practice to give to the Petitioner whatever monies he requested of her.

Prior to 1984 when she ceased to be employed full time the Respondent worked first at Holiday Foods Ltd. and then at Joseph Charles Bottling Works and Investment Ltd. (Solo Beverages). During that time she said that the Petitioner, on many occasions, took part of her fortnightly earnings. She said he also took the money she received as "sou sou" hands together with her maternity benefits which she had received from Solo Beverages. The Petitioner has denied that his relationship with the Respondent began in the year 1977. In fact he testified that it actually began in 1982 while the Respondent was casually employed at Holiday Foods Ltd. He also denied that he ever took money from the Respondent or that she ever gave him part of her earnings.

The Petitioner's evidence is that the Respondent was no longer employed when they started living together as man and wife and that even while she was employed it was for periods of no more than three months as a casual worker with Solo Beverages. He was bold to say that as a casual worker she was not entitled to any maternity benefits from her employer. The Respondent however produced documentary evidence confirming her receipt of the total sum of \$2,245.00 representing payments of maternity leave benefits

from Solo Beverages and from the National Insurance Board. It is significant to note that the Petitioner does not contradict the Respondent's evidence to the effect that sometime after she had given birth to her first child in 1984 and having returned to work that she and the Petitioner agreed that she should resign her job and remain at home to care for the child. I consider that bit of evidence to be very important.

During the marriage the Respondent said that she had to undertake odd jobs such as baby sitting, washing and ironing for relatives and friends in order to offset some of her expenses for "intimate personal necessities" since the Petitioner gave her no personal house keeping allowances. She said she earned approximately \$320.00 per month from these odd jobs. She also said that the Petitioner took responsibility for basic family expenditures and that his expenses were kept at a bare minimum.

The Respondent testified that life at the Lalwah Trace property was substandard for the family. She said her husband exercised stringent control over the family finances and that all surplus funds were directed to the construction of the Barataria property. The income derived from the operation of his taxi; his employment as a bus driver with PTSC and the rental of the apartments on the ground floor of the Barataria property were all deployed for the purpose of completing the Barataria property.

A description of the matrimonial home may help to put the Respondent's application in its proper context. She testified that for approximately one year before the marriage and for a period of about six years during the marriage she lived with the Petitioner and children of the family at the matrimonial home. The two children are Bindra Lalchan who was born on 23rd March, 1984 and Cindra Lalchan who was born on 18th April, 1985. She described the apartment as a two room apartment which is located at the

downstairs portion of the Lalwah Trace property. One of the rooms was used as a bedroom and it measured 10 feet by 10 feet. The other room was used as an all purpose room which measured 8 feet by 8 feet and affords no privacy whatsoever. The kitchen is below ground level and is located outside the house. She said that the area she uses as a kitchen is under a shed and whenever it rains there is flooding. The toilet and bathroom are also located outside of the house and provided no privacy whatsoever. The toilet is in a dilapidated condition and unfit for use.

The Respondent has testified further that while she lived with the Petitioner he effected no repairs whatsoever to the Lalwah Trace property. In fact her evidence is that during the marriage she endured the hardship and inconvenience because it was agreed that the family would remain at the Lalwah Trace property notwithstanding its condition and the Barataria property would be rented out until such time that it was economically prudent for the entire family to be relocated at one of the apartments at the Barataria property. She testified that she cared for the Petitioner and the children and looked after the running of the home but in the process she and the children suffered in health but she had made the sacrifice in the belief that it was necessary and in the interest of the family. She said that in December 1991 the Petitioner finally announced that the family would be relocating to the upstairs portion of the Barataria property as the tenant had been given notice to vacate same. Immediately thereafter the Petitioner cemented a relationship with another female companion and the Respondent said that thereafter there were frequent quarrels at home. On the morning of May 16, 1992 the Petitioner walked out on the family and took up residence at the Barataria property.

The Petitioner denied the several allegations made by the Respondent. In particular he denied that he received any assistance from the Respondent in the construction of the dwelling house in Baratara. He said that the house was constructed from his own funds with monies he had borrowed from his relatives and from the bank. He testified that at no time did he make any arrangements with the Respondent to relocate the family at the Baratara property.

Moreover, the Petitioner denied that he ever exercised stringent control over the family expenses. His evidence is that his family was always adequately maintained. He said he purchased food stuff regularly and in sufficient quantities for the entire family. He also purchased clothes and personal necessities for the Respondent and the children and he took care of all medical expenses.

I have had an opportunity to carefully assess the evidence of the Petitioner and the Respondent as deposed in their affidavits and the evidence elicited from cross examination from the respective Attorneys at Law. I must admit that while being cross-examined the Respondent struck me as an honest witness. She looked quite comfortable answering the questions under cross-examination and she impressed me as a witness of truth. In fact she was very straight forward in her answers.

The Petitioner on the other hand appeared at times to be uncomfortable during cross-examination. His testimony from the very start was calculated to mislead the Court and he never once sought to apologise for what was obviously conflicting testimony falling from his pen and his lips. For example, on more than one occasion he said under oath that the property described as the Lalwah Trace property belonged to his sister at the time when he knew and the documentary evidence confirmed, that he was in fact the

legal owner. When the truth was discovered he sought to complicate matters by stating under oath again that he was merely carrying out the wishes of his deceased mother even though the terms of her Will were clear and unambiguous. His deceased mother had in no uncertain terms bequeathed the property to him.

Another example of the Petitioner's conflicting testimony has to do with the operation of his motor vehicle registration number HAU 8122. Without thinking he was quick to deny under cross-examination that he ever operated the vehicle as a taxi but when he was referred to paragraph 12 of his affidavit filed on 25th June, 1993 (where he had admitted having used the vehicle as a taxi) he then changed his testimony to admit that he had so used the vehicle.

In many other instances under cross-examination he seemed confused and uncertain when answering questions from Counsel for the Respondent. I was unimpressed with the quality of his testimony. I believe he was not being truthful to the Court on a number of issues. In assessing the credibility of the Petitioner's testimony the Court will take into consideration the witness' lack of candour and honesty and consequently wherever his evidence conflict with that of the Respondent I am inclined to accept the testimony of the Respondent.

Counsel for the Petitioner has submitted that the Court should take into consideration the fact that the marriage was relatively short, having endured for only seven years. She argued that on the evidence before the Court the Respondent has made absolutely no contribution towards the acquisition or enhancement of any of the two properties owned by the Petitioner. Counsel further submits that the pre-marital cohabitation of the parties ought not to be taken into account in assessing the contribution of the Respondent to the

marriage and the acquisition of the matrimonial assets. She referred to the case of **Campbell –vs- Campbell (1977) 1 AER 1** in support of her submission. Counsel believes that in all the circumstance it would be fair and just that the Petitioner be ordered to pay a lumpsum of \$30,000.00 to the Respondent and that her application for a declaratory order and transfer of property order as well as increased maintenance payments ought to be dismissed.

In assessing the Respondent’s contribution to the marriage Counsel for the Respondent has asked this Court to take into consideration the duration of the relationship from 1977 to the date of the order absolute dissolving the marriage. Counsel relies on the dictum of Justice Crane made at page 3 in the case of **Cleghorn –vs- Cleghorn H.C.A. No.403 of 1978** where the learned Judge said:

“Suffice it to say that it is established, certainly in this Court, that pre-marital association can be taken into account when assessing the period of contribution made by a party to the marriage. See Jack –vs- Jack H.C.A. No.491 of 1994, Coram Bernard J.”

In the Cleghorn’s case the learned Judge was referring to the period of cohabitation prior to marriage. In fact, the undisputed evidence was that the parties had cohabitated since 1955 and were actually married in 1970. With respect, I agree with the Judge that such period of cohabitation ought to be taken into account when assessing the period of contribution made by a party to the marriage. The case of **Jack -vs- Jack (supra)** is also instructive in that regard.

In the instant case the undisputed evidence is that cohabitation only began in 1984 and not 1977 as Counsel for the Respondent would have this Court believe. I am therefore

not prepared to consider any period of the relationship prior to cohabitation for the purpose of assessing the Respondent's contribution to the marriage. It was in 1984 while the Respondent was pregnant with the first child that the Petitioner invited her to live with him at his parents home. She obliged and continued living with him until they were lawfully married on 23rd June, 1985. The Respondent gave birth to the two children of the family before the marriage. In effect her duties and responsibilities as a mother and a wife (albeit common law) began before she was married to the Petitioner. I am not prepared on the authorities to which I have been referred to ignore that period of her contribution as Counsel for the Petitioner has submitted.

On the evidence I am satisfied that the Respondent's commitment to her family including the Petitioner was as sincere as it was unquestionable. I accept her testimony that even after the birth of the first child she sought to return to full time employment but by agreement with the Petitioner a decision was taken for her to remain at home to care for her family. The evidence has shown that she made no demands and she was not even given the opportunity to shop for her personal necessities. In fact the Petitioner proudly testified that he purchased clothes, food and all personal necessities for the Respondent and the children. The Respondent admitted that the physical living conditions at Lalwah Trace deteriorated badly but she and her children suffered in silence because they were assured that soon they would be relocated in one of the many apartments at the Barataria property.

But alas! that was not to be. The Petitioner established a relationship with another woman and on the morning of 16th May, 1992 as the evidence has shown he moved out of the matrimonial home and occupied premises in Barataria leaving behind the Respondent and

the two children of the family who continued to live at the Lalwah Trace property under conditions which are far from satisfactory.

I have had regard to the several matters referred to in Section 27 of the Matrimonial Proceedings and Property Act, Chapter 45:51 (the Act) and I have noted the statutory duty placed on this Court to exercise its powers so as to place the parties so far as it is practicable and having regard to the conduct, just to do so, in the financial position they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

Clearly, if the marriage had not broken down this Court is of the view having regard to the evidence that the entire family would have been residing at the Barataria property. In so far as Section 27 of the Act is concerned I have paid particular attention to the income, earning capacity and other financial resources which each of the parties has or is likely to have in the foreseeable future.

The evidence shows that the Respondent is employed at Charles Candy as a part time worker and takes home an after tax weekly income of \$365.00. She has no particular skills. She still has a lot of youth left in her. She is only forty-seven years old (see her marriage certificate which was filed by the Petitioner with the petition).

Unfortunately she has not indicated in any of the seven affidavits upon which she has relied in support of her application before the Court what monthly expenses she incurs in maintaining herself and the two children of the family. What is clear is that her income is relatively small by any standard. She is also receiving a monthly sum of \$750.00 from the Petitioner which he has been ordered to pay by the Court.

In deep contrast to the Respondent and the children of the family, the Petitioner appears to be very comfortable at the Barataria property. He is gainfully employed with the Public Transport Service Corporation and in receipt of a weekly income of \$830.00. He is also in receipt of a monthly rental income of \$2,400.00 from the Barataria property. His gross monthly income is approximately \$5,700.00. He also owns a motor vehicle which he has converted from a taxi to a private car. I have noted his monthly expenses.

The evidence before this Court highlights the significant difference in the living conditions of the Petitioner and the Respondent following the break down of the marriage. There is therefore a need for some adjustments to be made to the relative positions of the parties pursuant to the provisions of the Act. The Respondent's contribution to the marriage has to be recognised and appreciated. While it is true from an analysis of the evidence that she has not made any significant financial contribution to the marriage nor to the acquisition of the matrimonial assets it cannot be denied that while she stays at home to care for the family, particularly the children, that she is making as great a contribution to the marriage and by extension to the family as that of the husband who goes out to work and brings home an income at the end of the week or month as the case might be.

In the instant case the undisputed evidence is that the Respondent has been a faithful wife and a good mother during the period of cohabitation, that is, both before and after the marriage. During the marriage it is clear that the Petitioner had made tremendous sacrifice, enduring the gravest hardship and inconvenience at the Lalwah Trace property in the forlorn hope that one day the entire family will together enjoy better days, better living conditions and of course a brighter future at the Barataria property. Little did she

know that the Petitioner, her husband, had other plans which regrettably did not include her.

The reality is, however, that the property at Lalwah Trace did at one time during the marriage belong to the Petitioner's parents. However, when the Petitioner's mother died he became the legal owner. His brother occupied the upper portion while his parents were still alive and he (the brother) continues to occupy same to this day. There is no evidence of a formal valuation of that property before the Court. However for stamp duty purposes the said property was valued at \$120,000.00. I am not prepared to question that figure for the purpose of assessing the value of the assets. The Petitioner has estimated the Barataria property at a value of \$175,000.00 (see paragraph 17 of his affidavit of 25th June, 1993). That estimation was given in 1993 and no doubt it seems reasonable to assume that that property has enjoyed an increase in value since. The Respondent however has put the value at \$275,000.00. Doing the best I can in the absence of proper valuation and having seen photographs of the building put into evidence by the Respondent, I believe that the Barataria property can easily capture a price of no less than \$200,000.00 on the open market. Then there is also a motor vehicle which is owned and is still being used by the Petitioner. That vehicle would have some value attached to it although no evidence of the value is before the Court. The Petitioner's monthly income approximates some \$5,700.00.

The evidence before this Court suggests that the Petitioner is relatively comfortable in life. He enjoys the occasional vacation in the United States of America and on one occasion he had taken his son with him. Compared with the Respondent she can only dream of such luxury. As I have said earlier her living conditions are unsatisfactory. She

has sought help from the Petitioner to effect repairs to the Lalwah Trace property since he has left the matrimonial home but she has not been successful in that regard. Her pleas for him to effect repairs to the toilet and the bath facilities have fallen on deaf ears.

Counsel for the Respondent has asked the Court to assign to the Respondent the Lalwah Trace property together with a lumpsum of 40% of the value of the Barataria property in satisfaction of her entitlement. In support of his submission he has referred the Court to the authorities of **Hunter –vs- Hunder (1973) 3AER 362** and the case of **Browne & Pritchard (1975) 3 AER 721**. In the former case the marriage lasted for thirteen years and there were four children of the family. The wife was gainfully employed (save for a period of two years) throughout the marriage. Her income was used mainly for the purpose of caring for the family. The Court assigned to her a one-half share of the matrimonial home which was purchased during the marriage.

In the case of **Brown –vs- Pritchard (supra)** the Court assigned a one-third share of the matrimonial home to the wife even though the property was purchased in the joint names of the parties during the marriage which, incidentally, lasted only four years. There were three children of the family. The wife had made no financial contribution to the purchase of the house. The Court, nevertheless, assigned her one-third value of the property in view of her contribution to caring for the family.

In the instant case neither of the property was purchased during the marriage. There is evidence that the Barataria property was completed during the period of cohabitation and the Respondent did testify that certain monies she had earned, including her maternity benefits, had been given to the Petitioner. Notwithstanding the Petitioner's denial I accept the evidence of the Respondent that she did give the Petitioner certain sums of

money she had earned during the period of cohabitation and that he had used those monies in the completion of the building. The Lalwah Trace property was inherited by the Petitioner from his mother.

Having regard to all the circumstances I do not believe that justice will be done by assigning to the Respondent the Petitioner's interest in the Lalwah Trace property. But I have taken note of Ormrod, LJ. dictum in the **Pritchard's case** where he said at page 725:

“Property rights are ancillary to the interest of the family and in most families the most urgent need is a home. It is therefore to the provision of homes for all concerned that the Courts should direct their attention in the first place. Whenever the Court is dealing with families of limited means, needs are likely to be much more important than resources.”

The Respondent needs to continue to care for the two (2) children of the family and she would need a roof over her head for that purpose. While I am not prepared to assign to her the Petitioner's interest and/or title in the Lalwah Trace property having regard to the evidence before the Court I believe that she must be allowed to remain in the matrimonial home with the two children until they attain the age of majority. In the meanwhile the conditions at the Lalwah Trace property ought to be improved. The Petitioner must effect immediate repairs to the toilet and bath facilities and I would expect the legal advisors to collaborate on a time frame within which such repair work is to be effected.

I agree with Counsel for the Petitioner that a lumpsum payment to the Respondent would do justice to the case. But I disagree with her that the sum of \$30,000.00 would be

adequate having regard to all the circumstances. I consider the sum of \$70,000.00 to be fair and reasonable.

Finally, with respect to the two other applications before the Court I have found on the evidence no basis upon which this Court could effect a variation of the consent order made by the Court for maintenance of the Respondent and the two children of the family to be paid by the Petitioner. Moreover, the Petitioner has refused to consent to any such

variation. In the circumstances, I am left with no alternative but to dismiss the Summons.

With respect to the Section 47 declaration I am satisfied on the evidence that the arrangements made for the children are satisfactory and shall make the declaration accordingly.

In the circumstances I make the following orders and declaration:

- (1) The Respondent is to remain in the matrimonial home, that is the Lalwah Trace property at Don Miguel Road, San Juan with the two children of the family until the children both attain the age of majority;
- (2) The Petitioner is to effect repairs to the toilet and bath facilities of the said property within a reasonable time from the date hereof.
- (3) The Petitioner is to pay to the Respondent the sum of \$70,000.00 within six months from the date hereof.
- (4) The Petitioner to pay to the Respondent the costs of her application for property settlement certified fit for advocate Attorney.
- (5) The Summons filed by the Respondent on the 19th day of April, 1993 is hereby dismissed with costs;

- (6) The Court declares that the arrangements made for the welfare of the two (2) children of the family viz. Bindra Lalchan born on the 23rd day of March, 1984 and Cindra Lalchan born on the 18th day of April, 1985 are satisfactory;
- (7) Liberty to apply.

Dated this 4th day of December, 2000

**Sebastian Ventour
Judge**