

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

APPELLATE JURISDICTION

ACTION NUMBER:	APPEAL CASE NUMBER 0009 OF 2017
BETWEEN:	SATEN APPELLANT
AND:	MAYRA RESPONDENT
APPEARANCES:	<i>Mr. D. Nair for the Appellant</i> <i>Mr. R. Prasad for the Respondent</i>
DATE/PLACE OF JUDGMENT:	<i>Thursday 25 January 2024 at Suva.</i>
CORAM:	Hon. Madam Justice Anjala Wati
CATEGORY:	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any persons is purely coincidental.</i>

JUDGMENT

Catchwords:

FAMILY LAW – PROPERTY DISTRIBUTION – APPEAL – *Did the wife make any recognized contributions under s. 162 (1) of the Family Law Act 2003 to be awarded 20% distribution in the property of the parties to the marriage – no recognized contribution could be established on the evidence before the trial court and as such any orders for distribution is not just and equitable- orders of the trial court dismissed and consequently the wife’s claim for distribution.*

Legislation:

1. *Family Law Act 2003 (“FLA”): s. 162(1).*

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Cause

1. The wife appeals the decision of the Family Division of the Magistrates' Court of 17 July 2017.
2. After a trial, on the wife's application for distribution of the property of the parties to the marriage, the court, amongst other orders, made the following pertinent orders for distribution which are now subject of the appeal before me:
 - (i) *The wife to have 20% of the value of the investment property and the vacant lot which in monetary term amounts to \$230,000. The husband could retain this property if he pays the sum of \$230,000 to the wife within 5 months of the order. In absence of the payment within 5 months from the date of the order and any agreement of the parties, the property could be sold to the highest bidder not below the valuation price. The realization costs was to be deducted from the sale proceeds.*
 - (ii) *The wife was entitled to 20% of the monies in the party's joint account.*
 - (iii) *Despite the wife not being able to establish her contribution to the acquisition, conservation and improvements to the chattels and furniture, the husband was to pay to her \$10,000.00 for the same within a month from the date of the judgment.*

Appeal Issues, Law and Analysis

3. The so many grounds of appeal simply distills to one major issue which is whether the distribution by the court is just and equitable and in order to address that issue I have to determine whether the court has properly worked out the contributions of the parties outlined in s. 162 (1) of the FLA to justify the percentage distribution in some of the assets.
4. I will begin with the order for payment of 20% of the value of the investment property and the vacant lot. In determining whether the percentage split is proper I will have regard to the parties' contributions towards the acquisition of the assets and also towards the conservation and improvements of the same. The types of contributions that the court must have regard to, are financial contributions, non-financial contributions and contributions made by the parties for the welfare of the family.

5. The court below made a finding that the wife did not make any direct or indirect financial contributions to the acquisition, conservation or improvement of the investment property and the vacant lot. It also did not find that the wife made the contribution to the welfare of the family or made any contribution as a homemaker or parent.
6. It found that the husband had made direct and indirect contributions towards the acquisition, conservation and improvement of the investment property and the vacant lot. It also found that the husband had made contribution towards the welfare of the family.
7. The only reason why the court granted 20% distribution to the wife was on the basis that she had seen to the renovation of the investment property for 2 years out of the 7 years of cohabitation as the husband was away in New Zealand. Even in regards the non-financial contribution, the court stated that her contribution was “somewhat there” without making a conclusive finding that it accepted the evidence of the wife on the balance of probabilities.
8. The relevant provision of the judgment which makes the wife’s finding on non-financial contribution is paragraph 103 of the judgment which reads as follows:

“I have noted that the wife some amount of work was done on the property and she supervised and worked with hired help on renovating the property...she listed in point form how she assisted in relation to the work carried out on the property and general instructions in relation to housekeeping and related matters when the respondent was in New Zealand. The renovation of the property was completed in 2006, they were married in 2004 and she continued to remain on the property and look after the property with the respondent until separation meaning whatsoever contribution for the renovation of the property was for 2 years and until separation the applicant also benefited from the property. She and her children had an accommodation and food on the table and all the necessities was catered by the man before the applicant started to work”.

9. I do not find that there was any justifiable or equitable basis on which the court had determined that the wife was entitled to 20% of the value of the investment property and the vacant lot.

10. I find that the wife had not made any direct or indirect financial or non-financial contribution towards the acquisition, conservation or improvement of the investment property or the vacant lot. She also did not contribute towards the welfare of the family or as a homemaker parent.
11. The property was purchased in 1998. The parties to the marriage started living together in 2003. The property was therefore purchased 6 years before the parties started living together. The loan repayment on the property was always met by the husband before and after the parties to the marriage started living together. When the wife started living with the husband, she was not working then. The husband spent money on her, educated her and she became a school teacher. Even then, all the loan repayments and costs for renovation of the property was met by the husband.
12. The husband contributed immensely towards the wife's capacity to earn income and support herself. That was a major contribution on his part which was recognized by the court.
13. When the parties started living together, the evidence establishes that the husband borrowed more money to invest in the house. He also sought financial assistance from his family members to assist in payment of the loans. His effort in borrowing, paying the loan, and renovating the property saw to the property reach a state where it became an extensive investment property. The wife could not establish on evidence that she made any contributions at all. The court had correctly concluded that the husband made direct and indirect financial contribution to the property through his family's and his funds.
14. The wife's only non-financial contribution to which the court gave weight to was her staying in the property when the husband was away in New Zealand and seeing to the renovations. The evidence reveals that the period the husband was away in New Zealand was for 6 months. However I do not find that it is just and equitable to grant the wife any distribution. There was hired help for her to assist in domestic duties and a caretaker was always on the property to see to works being done. All these workers were paid by the husband.
15. All that the wife did was to enjoy the accommodation that her husband provided for her and the two children and whilst she was on the property she saw what was being done and carried

out. That would have been a relief for the husband but it is not proper to attach any value to what she did. She was being fully supported by the husband and she got all the benefits and luxuries of life from him and the property. In return, just seeing to work being done by the hired help and labourers and that too for such a short period of time cannot be given any value in the circumstances when she benefited more from the marriage and the property.

16. I do not find that it was the wife's contribution in seeing that work was being done that increased the value of the property. All of the costs for renovation and labourers was paid for by the husband. The wife did not pay anything for the household expenses and the accommodation for the two children and herself. If she had to pay for their living, she would have had to spend a substantial amount of money to sustain the family. She could save her money.
17. I also do not find that the wife made any contributions as a homemaker parent. There was always hired help for the family to do the domestic duties. She could use all the time to study when she did not have to do any domestic duties. She upgraded her education to be a qualified teacher. In the 7-8 years of cohabitation, the husband contributed towards the family.
18. The court found that the wife did not look after the husband's children. However the husband contributed towards the wife's 2 children from her previous marriage. He looked after their welfare and education.
19. The husband spent a lot of money in maintaining and providing for the wife and the 2 children. He educated them too. He paid for all 3 of them to get a permanent residence in New Zealand. He made his wife a school teacher. He paid health insurance for the 3 of them. He took a year off to live with the wife and 2 children so that they could satisfy the requirements of their Permanent Residency Permit. They benefitted a lot from this marriage.
20. I do not find that the wife made any recognizable contributions to the property to entitle her to any initial split. I also do not find that she had established any factors under "*future needs*" to qualify for any form of distribution. None was given by the court and she has not

appealed that finding. There is no reason why the wife should be given any share from the investment property and the vacant lot.

21. The husband's counsel also raised that the property which was subject to division by the order of the court has immense debt which was not taken into account in determining the actual value of the property. I find that the court failed to give any regard to the loan on the properties whilst acknowledging that there exists one (Paragraph 100 of the Judgment). It would have been proper for the court to discount the value of the properties with the existing secured disbursements to the least. Even if there was to be any distribution to the extent of 20%, the wife's share in monetary value would then have decreased drastically.
22. I now turn to the order for division of the monies in the parties' joint account. There was no evidence of any monies in the joint account of the parties to order a split. The court stated that the wife failed to give any details about the monies in the bank. If that is the case, I see no basis to order the split.
23. Further, it was incumbent on the court to find out who contributed towards the savings before any split was ordered. No finding was made that the wife contributed in any way. I note from the judgment that the court had used "asset to asset" approach in determining the contributions and division of the property of the parties to the marriage. It was therefore an error on its part to have not determined the parties' contributions towards the acquisition of the monies in the bank account.
24. The court's order for the husband to pay to the wife \$10,000 for the furniture and chattels is unjustified in light of its findings that the wife had failed to satisfy the court that she contributed to the acquisition and improvements of the same.

Final Orders

25. I do not find any basis in law and equity for the distribution orders to have been made. I therefore dismiss all the orders of the Magistrates' Court and consequently dismiss the wife's application for distribution.

26. Each party shall bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

25.01.2024

To:

- 1. Sairav Law for the Appellant.***
- 2. Robinson K. Prasad Lawyers for the Respondent.***
- 3. File: Family Appeal Case Number: 0009 of 2017.***