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Prazic v Prazic

[2006] 2 FLR 1128

16/03/2006

Barristers
Private: Jonathan Cohen QC

Court
Court of Appeal

Facts
The divorcing parties had been married for some 25 years. Having lived in Essex for the first few years of their marriage, they had sold their Essex property and moved to France. During the marriage they had acquired two flats in Notting Hill. The husband petitioned for divorce in France in 2004. The wife responded by issuing divorce proceedings in this jurisdiction, which were frozen by the application of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels II Revised) (2003) OJ L 338/1. The wife then brought proceedings under the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) in which she sought a declaration that she was an equal owner in equity of the Notting Hill flats and a tracing order in relation to the proceeds of sale of the Essex property. Ancillary relief proceedings were ongoing in France. The wife sought to rely on Art 22 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (2001) OJ L 12/1 (the 2001 Regulation) to establish the jurisdiction of the English court in relation to the TOLATA proceedings. Article 22 provides that 'in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated' shall have exclusive jurisdiction. The wife's argument succeeded on appeal. The husband sought permission to appeal

Held
Held – granting permission and allowing the appeal –

(1) The requirements of s. 55 of the Access to Justice Act 1999 were satisfied in this case and a second appeal could therefore be granted on the basis that the proper authorities relating to the interpretation of Art 22 of the 2001 Regulation had not been not cited at either of the previous hearings (see paras [9]-[10]).

(2) The English TOLATA proceedings did not fall within Art 22 because they were not based upon rights in rem, but upon rights in personam and there was nothing in dispute which required any on-the-spot investigations or enquiries (see paras [11]-[13]).

(3) It was self-evident that the TOLATA proceedings and the French ancillary relief proceedings were not the same causes of action. They were related actions, meaning that the English court, as second seized, had the discretion to stay the proceedings under Art 28 of the 2001 Regulation. Since there was a risk of irreconcilable judgments being reached in the two sets of proceedings and since the wife's application under TOLATA was plainly strategic and superfluous to the French ancillary relief proceedings, the English proceedings should be stayed (see paras [16], [18], [26]).

Per curiam : it was hard to conceive that where a married couple were engaged in contested ancillary relief proceedings, the application of a TOLATA claim by one against the other could possibly be justified. Issues between a husband and a wife were to be determined within the four corners of the Matrimonial Causes Act 1973 and on the application of the statutory criteria there set out. The issue of separate proceedings to establish relatively arcane questions as to equitable entitlement between them was to be deprecated. That general proposition could not be disapplied simply because the ancillary relief proceedings had been instituted in one Member State and the parties to the proceedings were not both attached to that jurisdiction (see paras [25], [30]).