

Re MCA; HM Customs and Excise Commissioners and Long v A and A

22/07/2002

Barristers

Christopher Hames KC

Court

Court of Appeal

Facts

The husband and wife had been married for over 10 years; there were no children. The couple separated in November 1996, decree nisi was granted on the wife's petition in June 1997 and decree absolute was granted in May 1999. At some stage after the separation the husband became involved in drug trafficking. The husband was arrested in September 1997 and in July 1998 was convicted of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug and sentenced to 5 years' imprisonment. On 3 December 1998 the wife filed her Form E in support of her application for ancillary relief. On 4 December 1998 the Crown Court made a confiscation order against the husband under s. 2 of the Drug Trafficking Act 1994 requiring the husband to pay £47,868.22, and setting a consecutive term of imprisonment in default of 21 months. In 2001 HM Customs and Excise applied for an order directing the receiver to realise the husband's interest in the matrimonial home in order to satisfy the confiscation order, of which £26,520.18, plus interest, was outstanding. The ancillary relief proceedings, in which the wife sought the transfer to her of the matrimonial home in satisfaction of her claims, were transferred to the High Court to be heard with the HM Customs and Excise application. HM Customs and Excise accepted that no part in the equity in either the house or the policies had been acquired with the proceeds of drug trafficking. The judge discharged the receiver, dismissed the HM Customs and Excise application and ordered the husband to transfer to the wife his interest in the matrimonial home and endowment policies on the wife's undertakings. The judge considered that he had jurisdiction to make a property transfer order notwithstanding the existence of the confiscation order, and that in this exceptional case, in which the wife was wholly innocent of wrongdoing and ignorant of the husband's criminal activities and in which the assets were wholly untainted by drug trafficking, the order to be made in the ancillary relief proceedings was the one which would have been appropriate if there had been no confiscation order. HM Customs and Excise appealed on the question whether the court was precluded from making a property adjustment order under s. 24 of the Matrimonial Causes Act 1973 when the property in question was also the subject of criminal confiscation proceedings by HM Customs and Excise.

Held

Held – dismissing the appeal –

(1) The judge's seven summarised conclusions as to the true meaning and interactive effect of s. 31(2) and 31(4) of the Drug Trafficking Act 1994 were correct and supported by the authorities, with the exception of the first sentence of conclusion (v), stating that a wife's claims under s. 24 of the Matrimonial Causes Act 1973 could amount to rights in or in relation to property within the meaning of s. 31(4) of the 1994 Act, as an application for an order under s. 24 of the 1973 Act did not of itself confer any property rights on the party making the application (see paras [9], [55], [85]).

(2) There was nothing in either the 1973 Act or the 1994 Act which required the court to hold that either statute took priority over the other when the provisions of each were invoked in relation to the same property. Both statutes conferred discretion on the court, which the court might or might not choose to exercise, to make orders depending on the facts of the individual case. The fact that s. 31(2)-(6) of the 1994 Act required the court's powers for realisation of property to be exercised in a particular way in enforcement proceedings under the 1994 Act did not mean by necessary implication that those subsections either excluded or took priority over the powers of the court under the 1973 Act. The assumption that the provisions of the 1994 Act excluded the operation of s. 24 of the 1973 Act was capable of leading to an injustice which parity between the statutes would prevent (see paras [43], [45], [47]).

(3) Section 31(4) of the 1994 Act, construed disjunctively, conferred on third parties a right to enjoy property in specie as opposed to protecting only the monetary value of their beneficial interest; this interpretation allowed the statute to give full weight to a wife or former wife's right to retain a matrimonial or former matrimonial home. A postponed charging order registered against a husband's interest in a matrimonial home under s. 27 of the 1994 Act would also allow a former wife to 'retain' the property in specie for so long as the charge lasted (see paras [51], [54]).

(4) Once it was accepted that neither the 1973 Act nor the 1994 Act had priority over the other, any need to identify a claim under the 1973 Act as a right in or in relation to property became unnecessary. What mattered was that the wife's rights in relation to the property should be preserved until such time as the court could adjudicate upon them under s. 24 of the 1973 Act (see para [58]).

(5) There was no need for HM Customs and Excise to concede that a confiscation order under the 1994 Act would not bite if an order under s. 24 of the 1973 Act, and the consequent transfer, pre-dated the application to enforce the confiscation order. There was nothing in the Family Proceedings Rules 1991 to prevent HM Customs and Excise applying to set aside the court's order under the 1973 Act on the ground, for example, that the court had not been given full disclosure by the parties (see paras [75], [76]).

Per curiam : judges should bear in mind that the primary function of a first instance judgment was to find facts and identify the crucial legal points, and to advance reasons for deciding them in a particular way. The longer a judgment was and the more issues with which it dealt the greater the likelihood that it would not be possible to identify the crucial matters which swayed the judge; that the judgment would contain something with which the unsuccessful party could legitimately take issue; that citation of the judgment in future cases would involve time sorting out the precise status of the judicial observation in question; and that reading the judgment would occupy a considerable amount of the time of legal advisers in other cases, adding to the cost of obtaining legal advice (see para [83]).

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