

CANADA / JUDGMENT

B.S.D. v. S.K.D.

2024 BCSC 505

COURT

Supreme Court of British Columbia

DECIDED

27 March 2024

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2024 BCSC 505 B.S.D. v. S.K.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

B.S.D. v. S.K.D.,

2024 BCSC 505

Date: 20240327

Docket: E14025

Registry: Chilliwack

Between:

B.S.D.

Claimant

And

S.K.D.

Respondent

Before: The Honourable Justice Schultes

Supplementary Reasons re: Appraisal of Properties in India

Counsel for Claimant:

U.K. Dhaliwal

Counsel for Respondent:

C.K. Sabharwal

Written Submissions of the Claimant:

June 14, 2023

Written Submissions of the Respondent:

August 8, 2023

Place and Date of Judgment:

Chilliwack, B.C.

March 27, 2024

Introduction

- [1] In November 2021 I gave reasons for judgment in this family law trial (2021 BCSC 2327). Unfortunately, the parties have not carried out one of the orders that I made in those reasons - a joint appraisal of two properties in India that are registered in the name of the claimant- and have sought further directions with respect to it.

Background

- [2] I will refer only to those background facts that are essential to providing the required directions.
- [3] The parties were married in 1991 and separated for the final time at the end of December 2014. In addition to their family home in Abbotsford, they also owned several investment properties in Canada jointly with another couple.
- [4] The claimant testified that he had inherited the properties in India from his parents. He was unable to recall the date of that inheritance in his testimony, but it is now common ground that it was in 2007. They consist of agricultural land and, in a separate location, a lot on which he had a 1700-1800 square foot house built.
- [5] The agricultural land is leased out, and as of the time the respondent testified it was earning 150,000 rupees per year. He said that those payments are retained by the person who looks after the house for him and are used for expenses related to it.
- [6] The construction of the house began in 2013. The claimant testified that \$35,000-\$40,000 was spent on the construction, but did not produce any documents confirming that amount. The evidence showed that the construction was largely financed by withdrawals from the parties' line of credit, although the claimant also referred to receiving loans for that purpose from his family in India.
- [7] The respondent was involved in the advance discussions about building the house, and both parties envisioned the family, including their two adult children, using it.

- [8] There was a pretrial order to have all of the parties' properties appraised. Unfortunately, there was a disagreement about whether the order included the properties in India, so no appraisals were obtained for them.
- [9] During the trial, the respondent sought to tender a document from an official in the district where the properties are located, indicating that the "agricultural collect rate" for them in 2018 was 654,000 rupees per acre. This was some indication of their value, but not a satisfactory basis on which to value them for property division purposes.
- [10] To complicate matters further, the respondent began an action in India with respect to those properties, and obtained a stay in that jurisdiction to prevent the claimant from selling them.
- [11] At para. 295 of the reasons I referred to the provisions of the Family Law Act ("FLA") that deal with the division of property located in other jurisdictions:

With respect to extra provincial property, if one of the conditions in s. 106(2) of the FLA is met (in this case by the fact that both spouses habitually reside in this province) then s. 109(2)(a) permits the court to substitute family property or debt that is located in British Columbia for a spouse's rights in the extra provincial property (ss. (i)), or to require the spouse who has title in that extra provincial property to pay compensation to the other spouse (ss. (ii)), instead of dividing the extra-provincial property. A court can only make orders dealing directly with such property if it is satisfied that the orders would be enforceable against a spouse in the jurisdiction where the property is located (s. (2)(b) and (c)).

[12] My conclusions on this issue were:

- [337] First of all, I think there is a sufficient basis in the evidence, including [the respondent's]'s pleadings in the action there, to find that these were inherited properties, and thus excluded property under the FLA regime. It is also clear that family debt, in the form of withdrawals from the line of credit, was incurred to build the house on the village property, which will have increased that property's value. That does not remove those withdrawals from the definition of family debt, but any potential unfairness to [the respondent] is moderated by the fact that, if the FLA regime is applied, she is entitled to half of its increase in value of the property during the relationship, which will have been substantially due to the construction of the house.
- [338] As I indicated in my summary of the legal principles, the requirements for the court to take jurisdiction over dealing with this property under s. 106(2) have been met by the parties' habitual residency [in British Columbia], and none of the factors listed in ss. (5) lead to the conclusion that such jurisdiction should be declined. In fact, several of the ss. (5) factors, especially "(b) the relative convenience and expense for the spouses and their witnesses" and "(d) the desirability of avoiding multiple proceedings or conflicting decisions in different courts or tribunals" strong favour the assumption of jurisdiction.

- [339] However, I would not make an order purporting to divide that property, because there has been no evidence that permits me to be satisfied that such an order would be enforceable against [the claimant] in India, as s. 109(b) requires. Rather, I think this is a case in which [the claimant] should pay compensation in this jurisdiction to [the respondent] for her interest in it. Accordingly, I order that he compensate her for one-half of the increase in the value of both properties, from the date he inherited them until the date of separation.
- [13] Ultimately, I concluded that all of the family property and debt should be equally divided. To facilitate that order, I directed that:
- [368] The family home, the remaining unsold Ontario properties and the properties in India will be the subject of updated joint appraisals (or in the case of the Wainfleet property, an initial appraisal), with the appraisal of the properties in India to include the change in their value between the date on which they were inherited and the date of separation. The cost of the appraisals will be borne equally by the parties.
- [369] The lack of current values for the family property and the increase in value of the excluded property makes it impossible to arrive at the required equalization payment at this point. If the parties are unable to agree on the calculation of any amounts that are required to give effect to this division of property, there will be a reference to the Registrar, who will certify the resulting findings.

The Present Situation

- [14] In keeping with the highly contentious nature of this litigation, the parties have been unable to implement these orders in a cooperative way. This included failing to obtain the joint appraisal that I ordered for the properties in India.
- [15] In February 2023, the claimant obtained an appraisal for them himself.
- [16] According to this appraisal, the value of the land on which the house was subsequently constructed was Rs. 480,000 (\$7,868 CAD) in 2007. The total value of the land and the house in 2014 was Rs. 2,769,440 (\$45,400 CAD).
- [17] The value of the agricultural land in 2007 was Rs. 3,102,000 (\$50,852 CAD). Its value in 2014 was Rs. 4,512,000 (\$73,967.21 CAD).
- [18] After experiencing some difficulty in persuading her selected appraiser to provide values on a historical basis, in July 2023 the respondent obtained such an appraisal for the property on which the house was constructed, which provided a value of Rs.6,225,000 (\$100,408 CAD) as of 2014. It did not contrast this 2014 value to the 2007 inheritance date, but only indicated that "[t]he [fair] market value of above said Residential House is Standing From 29-11-2007 To 2014".

- [19] For reasons that are not clear, the respondent's counsel submits that her share of the increase in value of the land on which the house is located should be \$55,889.80 CAD. This is more than half of the 2014 value.
- [20] In her written submissions, her counsel is also critical of the claimant's appraiser for purporting to assign a value to the house in 2007 when it had not been built yet.
- [21] According to the respondent's appraiser, the value of the agricultural land was Rs. 5,781,000 (\$93,246.43 CAD) in 2007 and Rs. 6,486,000.00 (\$104,617.95 CAD) in 2014. The increase in value is \$11,371.52.
- [22] In short, the respondent's value for the house in 2014 is considerably higher than the claimant's, but her appraisal does not provide a 2007 baseline for the bare land from which the increase in value can be calculated. The respondent's increase in value for the agricultural land is considerably lower than the claimant's.

Conclusion

- [23] At this late stage, more than two years after the reasons for judgment, the focus should be on what is necessary to bring this matter to a resolution as efficiently as possible.
- [24] While it is not a joint appraisal, the one provided by the claimant complies in substance with my order, in that it provides the increase in value of both properties over the periods in question.
- [25] In my opinion, it is pointless for the respondent to quibble over the relative reliability of these appraisals, because hers is missing the crucial value on which her share of the increase in value of the land with the house would be calculated, and the claimant's appraisal of the increase in value of the agricultural land is actually to her benefit. In fact, if I accepted her appraisal, the increase in the value of the land with the house on it would be zero, since the appraisal purports to span the period from the inheritance to the parties' separation.
- [26] Accordingly, the claimant's appraisal report will form the basis of the valuation of the properties in India for the purposes of the compensation order.
- [27] The claimant has had substantial success on this application and will receive his costs of it at the usual scale of difficulty. Since it is my expectation that the proceedings will now be able to conclude without further applications, and there are no additional events that could affect his entitlement in relation to this application, I will order that the claimant receive those costs in any event of the cause.

"Schultes J."

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