

CANADA / JUDGMENT

Kooner v. Kaur

2020 BCCA 288

COURT

British Columbia Court of Appeal

DECIDED

23 October 2020

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2020 BCCA 288 Kooner v. Kaur COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Kooner v. Kaur, 2020 BCCA 288 Date: 20201023 Docket: CA46869 Between: Ranjit Singh Kooner Respondent (Claimant) And Harjit Kaur aka Harjit Kaur Kooner Appellant (Respondent) And Mohinderjit Kaur Kooner and Jaswinder Singh Kooner Respondents (Respondents by Counterclaim) Before: The Honourable Madam Justice Saunders The Honourable Mr. Justice Goepel The Honourable Mr. Justice Hunter On appeal from: An order of the Supreme Court of British Columbia, dated July 30, 2018 (Kooner v. Kaur, New Westminster Docket E040944). Counsel for the Appellant (via videoconference): H.M. Dale K.E. Pintye R. Wong, Articled Student Counsel for the Respondents, Ranjit Singh Kooner and Mohinderjit Kaur Kooner (via videoconference): P.I. Sahota Place and Date of Hearing: Vancouver, British Columbia October 2, 2020 Place and Date of Oral Judgment with Written Reasons to Follow: Vancouver, British Columbia October 2, 2020 Place and Date of Written Reasons: Vancouver, British Columbia October 23, 2020 Written Reasons of the Court Summary: The appellant and her sister were married to two brothers, and resided together with their children in the same family home, legal title to which was registered to the two brothers and their mother. Both marriages broke down, and their respective family law actions were consolidated by consent. The judge dismissed both sisters' claims for an interest in the family home. An appeal by the appellant's sister was allowed in respect only of her claim, for insufficiency of reasons necessary for review on appeal. The appellant now appeals the same order in respect of her own claim. Held: The appeal has been allowed with these reasons to follow. The reasons of the judge are incapable of review on appeal and, in light of the consolidation of the two actions by consent, it is in the interests of justice to allow the appeal and to remit the matter to the trial court. Reasons for Judgment of the Court:

- [1] We allowed this appeal on October 2, 2020, and the order appealed was set aside in respect of its application to the appellant Harjit Kaur, with reasons to follow. As a term of our order the parties are to bear their own costs, and the costs of all the proceedings in the Supreme Court of British Columbia are to be determined on the new trial that is consequent on this successful appeal. These are the reasons for our order.

- [2] Consistent with the parties' practice in these proceedings and certain court decisions, we shall refer to the appellant as Harjit, the respondent Ranjit Kooner as Ranjit, the respondent Mohinderjit Kooner, the mother of Ranjit, as Mrs. Kooner, the sister of Harjit as Daljit, and the brother of Ranjit as Jaswinder.
- [3] The appeal has a confused history, at least in part because the family law action in the Supreme Court of British Columbia between Harjit and Ranjit arising from the breakdown of their marriage was consolidated by consent with a family law action arising from the breakdown of the marriage of the sister of Harjit, Daljit, and the brother of Ranjit, Jaswinder. Both actions addressed spousal and child support, child care and responsibility, and property. The two married couples, two sisters and two brothers, resided for a time in the same family home, legal title to which is registered 1% to each brother and 98% to their mother Mrs. Kooner. The property claims in the two family law actions include a claim by each sister to a share of the family home, and it is for that reason Mrs. Kooner is a party to the litigation. In our respectful view, however, the single common issue of ownership of the family home did not justify consolidation of the two actions, which easily could have been set for a trial together on that issue. Notwithstanding the consolidation there have been three trials before three judges, one in respect of Harjit's claim for child and spousal support and child custody, one in respect of Daljit's claim for child support and child custody, and one in respect of the sisters' claims in relation to the family home and Daljit's claim for spousal support. Because of the consolidation, the trial in respect of the family home produced one order under one action number, dismissing the sisters' claims to a property interest. The order prompted a successful appeal by Daljit in respect only of her claim: 2019 BCCA 188. However, the entered order, approved by counsel, set aside the order of the Supreme Court of British Columbia, without reservation.
- [4] Harjit was not named as a party to Daljit's appeal. In reasons for judgment allowing her application for an extension of time to appeal the trial order, indexed as 2020 BCCA 133, Madam Justice Griffin accepted that Harjit had considered the result of Daljit's appeal protected her position. When she learned the respondents considered she was still bound by the trial decision, Harjit started this appeal, leading to the hearing before us. The entered order of this court in Daljit's appeal has now been corrected under R. 50 of the Court of Appeal Rules to provide that the trial order is set aside only in relation to Daljit, thereby resurrecting the trial order as it applied to Harjit, now the subject of this appeal.
- [5] We have set this train of events out in detail so as to illustrate the degree of confusion that can be sowed by exuberant efforts at efficiency, without analysis of the questions that should be addressed - in this case, do the multiple actions involve common claims, disputes, and relationships, and are they so interwoven as to make separate trials before different judges undesirable and fraught with problems. An admirable discussion of consolidation is found in *Raymond James Investment Counsel Ltd. v. Clyne*, 2018 BCSC 720.

- [6] Here, the main litigants and relationships were not common in the two family law actions. As it turned out, consolidation of the claims arising from these two marriages ill-served the parties on the only issue that had any overtones of commonality - property - as it has led to confusion on how to address it in this court, creating delay, hard feelings, and extra expense. We respectfully suggest that consolidation of family law claims arising in different families will rarely, if ever, be a suitable manner of proceeding.
- [7] With that commentary, we turn to the appeal itself. Daljit's appeal was allowed on the basis that the judge's reasons for judgment were insufficient to allow for appellate review. On this appeal, the parties each filed factums addressing the merits of the order made by the trial judge, but in light of the commonality of the trial proceeding, the first question we addressed was the issue that determined Daljit's appeal, the sufficiency of the reasons of the judge.
- [8] In the reasons for judgment in Daljit's appeal, also written by Justice Griffin, the court said as to Daljit and Jaswinder's case:
- [41] Several relevant provisions of the FRA were not drawn to the judge's attention, including:
- a) s. 56, which provides that each spouse is entitled to a one-half interest in a family asset upon certain events, including a declaratory judgment under s. 57 or an order for dissolution of marriage. This is commonly referred to as the triggering event. The date of the triggering event was not mentioned before the judge;
 - b) s. 58(2), which defines family asset as "[p]roperty owned by one or both spouses and ordinarily used for a family purpose";
 - c) s. 58(3), which includes in the definition of family asset, property over which a spouse has a power of appointment or power to use or dispose of the property;
 - d) s. 60, which provides that the onus of proof is on the spouse opposing a claim that the asset in question is a family asset; and
 - e) s. 65, which allows a court to reapportion the presumptive equal share of family assets set out in s. 56, if the court finds that equal division would be unfair having regard to a number of factors including:
 - i. the duration of the marriage, ii. the duration of the period during which the spouses have lived separate and apart, iii. the date when property was acquired or disposed of, iv. the extent to which property was acquired by one spouse through inheritance or gift,
 - v. the needs of each spouse to become or remain economically independent and self sufficient, or vi. any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse.
- [50] Simply put, based on the submissions before the judge and the result, we do not know:

- a) if the judge found that the Husband [Jaswinder] had an interest in the Property and what the interest was;
 - b) if the judge knew what was the date of the triggering event, and found that the Husband's interest in the Property was a family asset or not at that date, and why he made that finding;
 - c) if it was a family asset, why the judge reapportioned the Property interest all to the Husband;
 - d) if the judge considered it relevant and found that the Wife [Daljit] made no indirect contributions to the acquisition of the Property despite her affidavit evidence that she looked after the child and made other household contributions as well as her claimed financial contribution to the Husband's company from which he derived income;
 - e) if the judge considered the length of the marriage or the needs of each spouse to become self-sufficient; and
 - f) if the judge was aware of the present value of the asset.
- [52] While every effort should be made to conduct efficient litigation, the interests of efficiency do not outweigh the interests of deciding a case on the merits. Reasons for judgment may be quite brief, but do need to explain why the decision is made. The factual findings and legal pathway that might have led the judge to make his orders are unexplained and thus incapable of review on appeal.
- [9] In respect of Harjit's claim to an interest in family property, the judge had before him the pleadings and Ranjit's affidavits. Harjit, who is not fluent in English, was not represented by counsel and did not file evidence. Nor did she file an application response. Nonetheless she appeared at the hearing and the judge heard her. Harjit recounted to the judge her history of sponsoring Ranjit to immigrate to Canada, details of the couple's living conditions in Canada, details of family violence, and loss of work because of the family violence. Further, it is apparent from the transcript that the two sisters' accounts and positions in respect of the property were interdependent.
- [10] In dismissing Harjit's claim, the judge said: And the first order is pursuant to the claim of Ranjit Kooner and his notice of application, which is filed May 16, 2018. And I want to stress with respect to all the orders that I am making today that they are based, as they must be, on the evidence which has been sworn to or affirmed and filed in front of me. And I cannot be making orders on any other basis. And returning, then, to the applications of Ranjit Kooner, I am taking the facts as stated in part 2 of the notice of application, which have been demonstrated to be supported by the underlying affidavits, and I am granting the order requested in paragraph 1 of the application with the recognition that the reference to family assets is restricted to the house at 491 East 61st Avenue.

- [11] Many of the questions posed by this court in relation to Daljit's property claim apply equally to Harjit. The judge had before him evidence of the marriage of Harjit and Ranjit and their cohabitation in the house with Daljit and Jaswinder, as well as evidence of the state of the title. This evidence, at a minimum, established Ranjit's small interest in the property in respect of which there was presumption of equal sharing. Further, Ranjit's notice of application recognized the interrelated circumstances of Daljit and Harjit. Given these features, we consider it was incumbent on the judge to explain why Harjit had no claim to Ranjit's share of the property, paying attention to the statutory provisions relating to family assets noted in the reasons of Justice Griffin. He said nothing on these matters.
- [12] We accordingly concluded that the reasons of the judge are incapable of review on appeal and, in light of the consolidation of the two actions by consent, it was in the interests of justice that the appeal be allowed, the order relating to Harjit be set aside, and the action relating to the property claim respecting the family home be remitted to the trial court for fresh adjudication.
- [13] This means that Harjit may maintain, if it is still in place, or re-file if it is not, a certificate of pending litigation against the family home. "The Honourable Madam Justice Saunders" "The Honourable Mr. Justice Goepel" "The Honourable Mr. Justice Hunter"

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