

Customs and Excise Commissioners v A and another A v A

[2003] 2 WLR 210

22/07/2002

Court

Court of Appeal

Facts

Following the grant of a decree nisi of divorce the wife issued a claim for ancillary relief under section 24 of the Matrimonial Causes Act 1973. The husband was subsequently convicted of a drug trafficking offence and a confiscation order was made against him under section 2 of the Drug Trafficking Act 1994. A receiver was appointed under section 29(2) of the 1994 Act in respect of all the husband's assets save for his interest in the former matrimonial home, which he owned jointly with the wife, and the surrender value of the two life insurance policies securing the mortgage on the property. The Customs and Excise Commissioners applied for the house and the husband's interest in the policies to be included in the realisable property over which the receiver was appointed and that the receiver be empowered to take possession of and sell the house in order to realise the husband's interest in it. The judge, hearing the ancillary relief application together with the commissioners' application, rejected the contention that proceedings under the 1994 Act took priority over proceedings under the 1973 Act. He found that the wife had no knowledge of the husband's criminal activities and that no part of the equity in the house had been acquired with the proceeds of drug trafficking, and exercising his discretion under section 25 of the 1973 Act ordered that the house and policies be transferred to the wife and dismissed the commissioners' application.

On appeal by the commissioners and the receiver, intervening in the ancillary relief proceedings—

Held

Held, dismissing the appeals, that neither the 1973 Act nor the 1994 Act took priority over the other when both were invoked in relation to the same property; that both statutes conferred discretion on the court to make orders, the exercise of which would depend on the facts of the individual case; that it was not axiomatic that it was more in the public interest to enforce a confiscation order than to make a property adjustment order; that, therefore, the court's jurisdiction to make a property adjustment order under the 1973 Act was not ousted when the property in question was the subject of an application to enforce a confiscation order that had been made under the 1994 Act; and that, accordingly, since the manner in which the judge had exercised his discretion under the 1973 Act was not criticised by the commissioners his decision would stand (post, paras 43-49, 72, 85, 96-99, 109, 112).

Ahmad v Ahmad [1999] 1 FLR 317, CA followed.

In re Peters [1988] QB 871, CA distinguished.

Per curiam . If a property adjustment order under section 24 of the 1973 Act and the consequent transfer predates an application to enforce a confiscation order under the 1994 Act, the property adjustment order will not necessarily be unassailable. The outcome should not depend on whether the order under the 1973 Act was concluded in the wife's favour before the confiscation order was made (post, paras 75 , 76 ,92 , 102).

Per Schiemann and Judge LJ. Judges should bear in mind that the primary function of a first instance judgment is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. The longer a judgment is and the more issues with which it deals the greater the likelihood that it will contain something with which the unsuccessful party can take issue and that any readers of the judgment will not be able to identify the crucial matters which swayed the judge (post, paras 83-84 ,98).

Per Schiemann LJ. An application for an order under section 24 of the 1973 Act does not itself amount to a right in or in relation to property within the meaning of section 31(4) of the 1994 Act (post, para 55).

Decision of Munby J [2002] EWHC 611 (Admin) affirmed.

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