IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 416a/1995

BETWEEN	DAHLIA VIVIENE GORDON-HINDS	APPLICANT
A N D	EWARD DEEN HINDS	RESPONDENT

Patrick Brooks instructed by Nunes, Scholefield DeLeon and Co., for the applicant

R.B. Manderson-Jones for the respondent

Heard: March 10 and 24, 1998; April 1 and July 30, 1999

PANTON, J

In an amended originating summons filed on May 6, 1996, the applicant is seeking an order that -

"(a) she is the beneficial owner of a one half interest in that parcel of land known as 9 Dorothy Avenue, Edgewater in the parish of St. Catherine being comprised in Certificate of Title registered at Volume 1085 Folio 384 of the Register Book of Titles (hereinafter called the said land).

(b) that there be partition of the joint tenancy registered on the Certificate of Ttile for the said land.

(c) or alternatively to (a) and (b) above:

(i) that it be declared what are the respective interests of the applicant and the respondent in the net monies standing to the credit of the parties at Jamaica National Building Society, New Kingston Branch as proceeds of sale of 9 Dorothy Avenue.

(ii) that the joint tenancy between the applicant and the respondent in the said land be severed.

(iii) that the applicant do have first option to purchase the respondent's interest in the said land failing which the land be sold on the open market and the net proceeds of sale be divided equally between the parties.

(d) that there be partition of the interest between the applicant and the respondent in the lands situate at Linstead in the parish of Saint Catherine.

(e) that the respondent be ordered to pay the sum found due to the applicant as a result of the debts incurred by him to Ocean Blue Fisheries Ltd., Citizens Bank Ltd. and National Commercial Bank Ltd.

(f) the respondent do pay the costs of this application.

(g) the applicant do have such further and other relief as to this Honourable Court amy seem fit."

On March 7, 1997, No. 9 Dorothy Avenue was sold by private treaty by Jamaica National Building Society for $2.15 million. After the mortgage account was settled a residue of $736,595.42 remained. It was used by the Society to open a savings account in the names of the applicant, the respondent and his sister they being the names on the title.

The real question for determination so far as No. 9 Dorothy Avenue is concerned is the apportionment of this residue. This is sought in paragraph c (i) of the summons.

Looking at the summons as a whole, there are three matters for determination:

(1) the parties share in the proceeds from the sale of 9 Dorothy Avenue.

(2) the share, if any, of the applicant in the land at Linstead.

(3) the nature of the liability of the respondent Eward Hinds to the applicant in respect of debts incurred by the former to various institutions.

It is convenient to firstly deal with the last-named matter. According to the applicant, in April 1994, her husband borrowed money from Ocean Blue Fishery Ltd., "to conduct his own affairs", and requested her to join with him to enable him to qualify for the loan. She complied with his request but he failed to properly service the said loan. As a result, the company levied on several items of personal property owned by the applicant. In addition to suffering the loss of some of these items which were eventually sold, the applicant also paid $20,000.00 on the debt and incurred legal costs. She has not been re-imbursed. Further, she has complained of irresponsible spending by her husband in respect of credit card accounts held jointly by them. National Commercial Bank, at 30th August, 1995, was owed $33,871.95 and Citizens Bank $72,544.35 at 15th September, 1995. These amounts, according to the applicant, represented expenditure solely by her husband. The applicant has paid $6,000.00 on the accounts.

In my view one question for consideration is whether the use of the Married Women's Property Act is appropriate in the circumstances. For all practical purposes, the debt in each case has been incurred by both parties as they are co-signors. There is no evidence to suggest that the debts were to be the responsibility of one, as opposed to the other; and there is nothing to indicate that there was benefit to only one as against the other. I doubt very much that the Married Women's Property Act was designed for this type of dispute. On the 10th March, 1998, when the matter commenced, I expressed my doubts to the learned attorneys-at-law in the case.

On the final date of hearing, the 1st April, 1999, Mr. Brooks for the applicant was kind enough to draw my attention to **Re Camkin's Questions** (1957)1 All E.R. 69. **Wynn-Parry, J.** at page 71, in reference to the use of section 17 of the Married Women's Property Act, said:

> "In my judgment on an application under s.17 the Court has no jurisdiction to conduct an inquiry with a view to finding out whether or not property exists. Its jurisdiction is confined to deciding questions relating to property which, on the evidence before it is shown to exist. Further, in my view, the court has no jurisdiction to entertain questions which, if resolved in favour of the party raising them, will only result in showing that a debt is owed to that party by the other party to the summons."

In my view, the words of Wynn-Parry, J confirm that paragraph (e) of the summons ought to be determined against the applicant.

No. 9 Dorothy Avenue

The certificate of title shows that on the 13th June, 1994, a transfer was registered to the applicant, her husband and his sister Camille as joint tenants. The consideration was $500,000.00. A mortgage was also registered on the said date to Jamaica National Building Society to secure $450,000.00. This suggests that $50,000.00, the remainder of the consideration, came from another source.

This contradicts the applicant's affidavit which states that she and her husband had to seek mortgage financing from the building society to the extent of the entire purchase price. The applicant has deponed that the purchase was secured without any financial input by Camille Hinds. This statement is questionable when it is considered that the applicant contributed nothing to the initial payments which would have included the balance of $50,000.00 as well as the commitment fee which is stated as

$30,000.00 in the Exhibit EDH1 (page 25 of bundle). I find that the respondent was unable to afford the deposit and the commitment fee. As a result Camille Hinds, his sister, provided $50,000.00 towards the deposit on condition that she was to be a joint tenant. To that extent, therefore, she has secured an interest in property that I find was being purchased by the applicant and her husband with the intention that they both should share in the beneficial interest.

Dr. Manderson-Jones on behalf of the respondent submitted that on the basis of the total actual payments made by the parties that their entitlement is dependent on the percentage of their contributions. With that in mind there having been a total contribution of $232,000.00 he calculated Camille Hinds' $50,000.00 at 21.55%, the applicant's $22,000.00 at 9.48% and the balance of 68.96% to the respondent.

I do not agree with this method of calculation. I think the appropriate way to approach the matter is to view Camille Hinds' contribution in the context of the total purchase price - that is $50,000.00 out of a total of $500,000.00; that is 1/10th. There is nothing to suggest that it was intended that she should share equally with the applicant or the respondent, so she would not be entitled to one third, as she said in her affidavit. Further, she was not expected to contribute to the mortgage payments, and she was not asked to. Hers was a one-time contribution which in my view has to be viewed in the context of the value of the property at the time of the contribution. That would therefore entitle her, in my view, to 10% of the proceeds left over from the sale of the property.

So far as the applicant and the respondent are concerned, the position is quite different, I find that it is they who in the first place intended

to acquire and hold property jointly together. Camille Hinds came into the picture to facilitate this acquisition. Her situation is in no way prejudiced however as, in my view, she has gained the equivalent of her contribution based on the value of that which she invested in at the time of the investment.

It follows that the remaining 90% value belongs to the applicant and the respondent. The only matter for determination is the proportion in which each holds. I am not satisfied that they hold in equal shares. I accept the evidence of the respondent that his mother insisted that the applicant's name be placed on the title. He accepted her advice. That being so, it really does not matter that he had to be persuaded. He had an intention that she should benefit. It was an intention common to him as well as to the applicant. I find that there was an agreement that she should hold not just a nominal share, as Dr. Manderson-Jones' submission infers. She was obviously to hold a significant share by virtue of the agreement that she would "contribute on a regular basis towards the monthly mortgage payments" (see respondent's affidavit dated 23rd October, 1996 - paragraph 8).

I find that the applicant did fulfil her undertaking, in that she made some mortgage payments and also contributed to "the cost of the household expenses" (paragraph 8 of her affidavit dated 15th Novmeber, 1995).

It is always a difficult proposition for a spouse to give an accurate mathematical picture of contributions to household expenses in a situation such as this. The Court however, has to do its best with the information available. In the circumstances I find that the applicant's overall contribution would have entitled her to no less than 40% of the remaining 90% value of the property. That I find was in keeping with their intention, in any event.

The order in respect of 9 Dorothy Avenue is that -

(a) Camille Hinds is entitled to 10% of the proceeds remaining after the sale;

(b) The remaining 90% is to be shared between the parties as follows -

40% to the applicant; and

60% to the respondent.

The Linstead property

The parties were joined in marriage on the 29th June, 1990. Within two years, the respondent purchased land in Linstead in their joint names. There was no financial contribution from the applicant who now claims a half interest in the property. She said she was assured by the respondent that the property would be for both of them. The respondent is asserting that he "had her sign the transfer and placed her name on the title" as it was his "intention as she well knew that she would hold her legal interest in trust for (him) during (his) lifetime but if (he) died the land wold become hers by survivorship. Conversely, if she died before (he) did the legal interest which she held in trust for (him) would revest in (him) by way of survivorship." It was, he said, never his intention that she was to receive a gift of the interest in this land during his lifetime.

The respondent has not advanced any acceptable reason for this position that he claims he had in the very early days of their marriage. I reject this feeble attempt by him to offer a rebuttal of the presumption of advancement. I find that the presumption is applicable and that they hold equal shares in this joint tenancy.

In summary, it is hereby declared and ordered as follows:

1. In respect of paragraph c(i) of the amended summons, the applicant and the respondent are entitled to 40% and 60% respectively of 90% of the monies standing to their credit at the Jamaica National Building Society, New Kingston Branch, in savings account No. 024782521; the remaining 10% being that to which Camille Hinds is entitled.

2. There is to be partition of the interests of the applicant and the respondent in the lands situated at Linstead, St. Catherine, each being entitled to a half share.

3. There is liberty to apply for necessary consequential directions in respect of the order for partition.

4. The claim in paragraph (e) of the summons with respect to debts incurred is denied.

5. The applicant is to have the costs of this application, such costs to be agreed or taxed.