

[3] The Particulars of Claim allege that the parties were husband and wife. That after marriage they purchased 8 Blaise Close in their joint names and that they lived and cohabited there. In 1982 they ceased living together as man and wife. The Claimant went to live in the United States in 1995 and has been residing there since then.

[4] It is further alleged that the Claimant's sister on diverse occasions stayed at the premises in question sometimes for as long as a week or two "thereby asserting the Claimant's right to proprietorship."

[5] By way of Defence and Counterclaim the Defendant alleges:

- a. The Claimant made no contribution to the purchase of the property
- b. At the time of purchase the marriage had been in difficulties
- c. The parties separated in 1982
- d. The title to the premises is in the name of the Plaintiff and Defendant as joint tenants.
- e. The Claimant has had nothing in the house since 1995 when she moved out.
- f. The Claimants sister had stayed as a guest but it was with the Defendants permission.
- g. The Defendant claimed to be entitled to the entire beneficial interest as the Claimant abandoned her interest and by virtue of the Limitation of Actions Act.
- h. The Claimant has acquired property in the United States of America.

[5] By way of a Reply and Defence to Counterclaim the Claimant alleged that the premises were purchased with resources jointly provided. Further the Claimant had by agreement purchased household items as well as goods and services for the household whilst the Defendant paid the monthly mortgage. Further that until 1995 when the Claimant left the island with the Defendant's consent the Claimant continued to perform all household duties of a wife. It was denied that

the Claimant abandoned her interest. Her clothes and household items and furniture were left in the premises. It was admitted that the Claimant had not returned to the matrimonial home since 1995. It was denied that the Claimant's sister had sought the Defendant's permission to stay at the premises. It was also alleged that the proceeds of sale of another property jointly owned in Bridgeport St. Catherine were used to help pay for the said premises.

[6] The parties each gave evidence and were effectively cross examined. At the end of the day however the salient facts were not in dispute. However, having seen and heard the parties give evidence, I was impressed by the Defendant as a witness of truth. I find it incredible that the Claimant, as she stated when giving evidence, could not recall the date or the year when the marriage broke down. Her attempt to resile from the 1982 period as stated in her Particulars of Claim was unconvincing. I also find it equally incredible that she left consensually in 1995 and yet never returned to the matrimonial home although her husband and two children remained there. I find the reason she never returned was that the marriage had effectively ended.

[7] My findings of fact are as follows:

- a). The Claimant and the Defendant sold premises jointly owned in Bridgeport St. Catherine and applied these proceeds to the purchase of the premises in question.
- b). The premises in question were purchased in the parties' joint names with the common intent that each would have an equal legal and beneficial share.
- c). The premises were purchased in 1979.
- d). In 1982 the parties whilst living at the said premises separated and occupied different bedrooms.
- e). In 1995 the Claimant left Jamaica of her own volition and without the knowledge or consent of the Defendant. He did not take her to the airport and nor did he pay for the ticket.

- f). The Defendant and the children were the sole occupants of the said premises.
- g). The Claimant's sister on two occasions spent 2 or 3 days at the premises in 2002 and 2007. This was done at the sister's request and with the Defendant's permission. The sister did not act as agent of the Claimant for this purpose and was here in Jamaica on her own business.
- h). The 2 children subsequently migrated one in 1996 and the other in 1998.
- i). The Defendant and the Claimant have never reconciled.
- j). The Defendant did not intend to migrate and the departure of the Claimant in 1995 was not in pursuance of such a plan.

[8] These being my findings of fact the legal consequence as it relates to the Claimant's interest in the land can be shortly stated.

[9] It is now too late in the day to submit, as the Claimant did, that a jointly owned registered title cannot be defeated by a possessory claim. See ***Wills v Wills PCA 50/2002*** and ***Pottinger v Raffone (2007) 70 WIR 238***. Furthermore it is not entirely relevant whether the Claimant intended to abandon her half interest or whether she intended or thought that her half interest remained unimpeachable. What is important is the Defendants state of mind and the Defendant's conduct. ***Pye JA (Oxford) v Graham (2002) 3 All ER 865***, and ***Pottinger v. Raffone (2007) 70 WIR 238***. The fact that he asked her to sign over her share to the children is irrelevant because:

- a. such conversations as to offers or negotiations do not amount to acknowledgements in writing as required by the statute ***J (Pye) Oxford v. Graham. (above)***
- b. The conversation according to the Defendant occurred "before 2010." We are not told how long before. Mr. Steer submits it was before 2007 and hence time had already accrued. I am prepared to infer that as a fact. It is to be noted in this regard that contrary to the Claimant's contention it is not the Property Rights of Spouses Act which gives the Claimant a right to half interest because she is

already registered on the title. Her right accrued from the moment of registration.

[11] When regard is had to these principles it is clear on the evidence that the Defendant has obtained a possessory title and that the Claimant's half interest in the premises is defeated. He has treated the entire premises as his own since 1995. He believed his wife abandoned him and the children. He enjoyed all the profits and took all decisions, including whether or not to allow the Claimant's sister to stay there.

[12] There will therefore be judgment for the Defendant against the Claimant. The Claim is dismissed and judgment is given for the Defendant on the counterclaim as follows:

- a. A Declaration that the Defendant is entitled to the entire legal and beneficial interest in all that parcel of land known as 8 Blaise Close Kingston 8 and being the land Registered at Vol. 1046 Folio 277 of the Register Book of Titles.
- b. Costs to the Defendant to be taxed if not agreed.

[13] The Parties may submit a Minute of Order to give effect to this Judgment.

David Batts
Puisne Judge