

Judgment Book
JAMES M. MORRISON
1985-1988

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. D.C.021 OF 1988

IN THE MATTER OF PREMISES AT 22 PARK AVENUE,
MONTEGO BAY in the parish of St. James.

AND

IN THE MATTER OF PREMISES LOT 323 CHARLES AVENUE,
MONTEGO BAY in the parish of St. James.

AND

IN THE MATTER of Married Women's Property Act.

BETWEEN	THELMA CAMPBELL	PETITIONER
A N D	JOHN ROBERT CAMPBELL	RESPONDENT

Mrs. Margaret Forte Q.C. and Miss Frankson for Petitioner.

Mr. Dennis Morrison Q.C. instructed by Messrs Knight, Pickersgill & Dowding for Respondent.

Heard: November 6 & 7, 1995 &
February 7, 1996.

LANGRIN, J.

By an Originating Summons dated 2nd day of October, 1989, the applicant seeks a determination of the respective ownership of interests of the abovementioned properties and in particular for the following Order:

1. A report on and valuation of the said premises be taken or alternatively that a valuation agreed upon by the Petitioner and respondent be taken.

The parties were married on the 7th July, 1979 and obtained a Decree Nisi on the 15th December 1988. They were previously married to each other between 1960 and 1975. The respondent spent a large number of years in the United States of America.

The Petitioner in her affidavit stated that sometime in 1977 the Respondent visited her while she was in the process of purchasing 22 Park Avenue, Montego Bay in order to remove from Adelphi, St. James where she had resided. The Respondent merely accompanied her to view the house as part of the attention he was showing in his effort to

be reconciled with her. However he signed the transfer of title as well as the mortgage instrument to facilitate her purchase of the property. It was never her intention that he should share in the equity of the property. She conceded, that subsequent to the acquisition of the property there was an agreement that the Respondent's net half of the proceeds of sale of \$25000 from the property at Adelphi should be used to upgrade the new premises and to purchase furniture.

The purchase price of the property was \$43000 and she paid a deposit of \$15000 leaving a balance of \$28000 for which she obtained a mortgage loan from Jamaica National Building Society. Apart from the $\frac{1}{2}$ proceeds from the Adelphi property nothing was contributed by the Respondent.

Mr. Campbell, the Respondent in a subsequent affidavit stated that he paid a deposit of US\$12000 to the law firm of Nation and Company to purchase the Park Avenue property. He said the balance of the purchase price was derived from proceeds of sale of the Adelphi house and a mortgage loan subscribed to by both of them.

It is beyond contention that in July 1981 both parties bought the 323 Charles Avenue property for \$165,000. There was a deposit of \$12,000.

The Petitioner stated that the respondent paid a further sum of \$43,000 towards the purchase price, while she contributed \$37,000. She paid the mortgage without the Respondent's assistance but there was a balance on mortgage of \$65,000. The legal estate is vested in both of them as joint tenants. The deposit of \$12,000 was equally paid by them.

It is common ground that Charles Avenue was purchased as an investment property. Subsequently, two bedrooms and two bathrooms were added to the house by way of improvement. The Petitioner devoted much time, energy and money to the improvement of this house. It is in dispute as to whether the Respondent contributed to the cost of the improvement. Proceeds from the sale of the Pembroke Hall property which was in the joint names of the parties were used to partially defray the expenses of the improvements.

The respondent contends that he paid the entire deposit of \$45,000 in addition to a Volvo Motor Car which he shipped to the Vendor in Jamaica. The balance of \$75,000 was obtained through a

mortgage of the property to Jamaica Mutual Life Assurance Society in which both parties undertook liability.

The primary issue before the Court was what was the common intention of the parties at the time of acquisition of the properties concerned.

In situations where property is transferred into the joint names of husband and wife two propositions of law are generally applicable. Prima facie, the parties are to be treated as beneficially entitled in equal shares.

In Cobb v. Cobb (1955) 2 AER 696 Lord Denning MR. in delivering the judgment of the Court at p.698 had this to say:

"When both husband and wife contributed to the cost and the property is intended to be a continuing provision for them during their joint lives, the Court leans towards the view that the property belongs to them both jointly in equal shares. This is so even where the conveyance is taken in the name of one of them only and their contributions to the costs are unequal, taken, as here, in their joint names and was intended to be owned by them in equal shares. The legal title is in them both jointly and the beneficial interest is in them both as equitable tenants in common in equal shares."

The second is that where there is a common intention as to whom the property is to belong or in what definite shares each should hold is ascertainable, effect should be given to that intention.

Lord Upjohn's observation in Pettit v. Pettit 1970 A.C. p.777 at p.813 is apposite:

"The property may be conveyed into the names of both spouses jointly in which case parol evidence is admissible as to the beneficial ownership that was intended by them at the time of acquisition and if, as very frequently happens as between husband and wife, such evidence is not forthcoming, the Court may be able to draw an inference as to their conduct. If there is no such available evidence then, what are called the presumptions come into play."

Where the evidence shows substantial contribution whether in moneys or services or both, the maxim, 'Equality is Equity' is applicable.

In Joseph v. Joseph C.A. 13/94; a judgment delivered in 1985 Carey J.A had this to say:

"In the absence of express agreement on the part of the spouse, the Court will presume or impute that having jointly contributed they intended to

share equally. That proportion will be altered only where either the share can be precisely ascertained or the contribution is trifling."

In so far as the property at Park Avenue is concerned the parties held the legal estate as tenants in common. The parties at the relevant time of purchase were not husband and wife and consequently there can be no presumption of advancement. There is clear evidence to show that the respondent made a contribution to the purchase of the property at Park Avenue and the Petitioner provided a part of the purchase price and paid the entire mortgage. In those circumstances a resulting trust could not be established.

Against that background there can hardly be any question that both parties had a beneficial interest in the property. Since there was no express agreement as to the proportion of the shares in the property at the time of purchase, I hold that the proportion of the beneficial share will be fixed at the proportion it bears to the overall price of the property at the time of acquisition. That portion of the Respondent's share in the purchase price is fixed at 25% which is based on the proceeds from the sale of the Adelphi property.

A couple embarking for a second time on a serious relationship, discussion as to how the property should be owned beneficially is almost inevitable. I have little doubt as to what the answer should be in so far as the beneficial interest in the Ironshore property at Charles Avenue is concerned. Both parties undertook liability of the mortgage and contributed equally to the purchase price.

It is common ground that the property should be an investment property and the rental from tourists should provide income to pay off the mortgage. Both parties contributed to the purchase as well as the costs of improvement to the property. The risks of indebtedness suffered and the profit of the business while it prospered must be shared equally by the parties. The fact that the results proved otherwise than expected cannot in my view detract from the common intention of the parties at the time of purchase.

I hold that both parties made substantial contributions to the acquisition of this property as well as its improvement and therefore the maxim "Equality is equity" should apply.

The Court is indebted to leading Counsel on both sides for their examination of the evidence and cases by submissions which were

careful as they were orderly. At the end the answers to the many questions emerged clear.

For the reasons given the judgment of the Court is as follows:

- (1) That in respect of the property at 22 Park Avenue, Montego Bay the petitioner/wife is entitled to seventy-five percent (75%) beneficial interest in the property while the respondent/husband is entitled to twenty-five percent (25%) beneficial interest.
- (2) That in respect of the property at 323 Charles Avenue Montego Bay the petitioner/wife is entitled to fifty percent (50%) beneficial interest while the respondent/husband is entitled to fifty percent (50%) beneficial interest.
- (3) That the property at 1 & 2 be valued and that each party be at liberty to purchase the share of the other with the petitioner/wife having the first option to purchase the respective shares of the respondent.

Alternatively:

- (4) That the properties be sold at public auction and the net proceeds be divided as at (1) and (2) above.
- (5) That there be no order as to costs.